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>> Mayor Reed: Good afternoon. I'd likely to call this meeting to order this is the city council study session on the Santa Clara Valley habitat plan review. We have a couple more councilmembers that are here that will get to the dais in a minute. We have a pretty lengthy agenda and a lot of things to cover. Before we get started I had a couple of comments I wanted to make. It was somewhere around 2003 I think when Don Gage called me up, and asked me if we could get San José moving towards a habitat conservation plan. Which I had never heard of before. But was of some interest to Santa Clara County and other entities and agencies. And so after I talked to Don I agreed to be something of an advocate to try to get this moving, and I recall at the time that our staff had some reluctance due to cost and complexity of what it would take to do this. So it's clearly been complex and costly to get here. And in retrospect the staff was right, which is quite often the case, when we're making decisions. It's good to see this work done although I know there's so much work aheadbut I want to thank the staff and the partners and collaborators and the environmental groups and the other agencies that have worked together. It's really hard to get everybody moving at the same time and in the same direction. You've been doing it for years now, so that's good, a lot of good work, excellent report. But I have some concerns about where we are based on what I thought we were going to achieve six years ago, when we got rolling on this thing. Because I'm looking at it now as something that's going to cost over \$1 billion to implement. That's pretty big. We're not covering as many species as I thought we would. And I think that's a drawback. I think we have less certainty possible, begin the state of affairs that our state and federal governments and unreliability of statutes and regulations, I'm not quite so confident that we're going to gain certainty if we participate in this plan. And then another new and interesting question is the tax impacts. I know that we're already on fees and taxes for development projects, higher than many other places that we compete with here in the local county and this would be another one to add onto it. So I think those are all issues that I'm interested in hearing people's comments on as we go through the day. It's really an assessment of the costs and the benefits and, while the environmental benefits are a category that are important, the direct cost and direct benefits to San José is something that I have to try to focus on. And there would certainly be some direct costs to San José, whether it's tens of millions of dollars directly to the city or not, I don't know. But it's certainly probably hundreds of millions of dollars to San José, not just the government, but the development projects in there. So those are things I'm interested in hearing from folks on, because I think those are questions the council needs to consider as we move ahead. And then the other question we'll get to at some point is the impact of prop 26 on this and whether or not

this can be defended as a development fee or if we have other things that is come out of prop 26 that will make this more difficult to implement it. With that I want to thank Darryl and Joe and the planning staff that have worked on this so hard. I know it's taken a lot of work when we have less people and less resources to do it. Thanks for getting it here and now we'll I think move into the presentation unless the City Manager has any comments to adds.

>> City Manager Figone: Month mayor, thank you, we'll turn it over to staff.

>> Joe Horwedel: Thank you, Mr. Mayor. Today staff does want to thank council for spending time in study session for the habitat conservation plan. As the mayor, noted this is a really important policy document that's coming forward, and with long term benefits and consequence. So today what we wanted to spend time was to walk through in a lot of detail. You'll see in the presentation that we're stopping at certain points with questions. There are questions we framed for council but certainly if you have questions that you have that staff is here to answer those. We also have with us today Kay Goody with U.S. Fish and Wildlife Service, and Scott Wilson with the California Department of Fish and Game. They have been very active helpers, shepherds, owners, helping the partners move forward and putting together this plan. As the mayor noted, it has been a multiyear effort. We spent really the first year between the local partners just deciding how to even approach this. It is a major undertaking. We have a panel put together later today, this afternoon, that we have brought in a mixture of environmental groups and industry representatives, to talk about, give a quick intro of what they think about the plan. Their experience, concerns, benefits that they see in the plan. But really as a resource for helping answer questions of the council today. So with the presentation I'm going the turn it over to Darryl Boyd to walk through a little bit of background the questions that the mayor asked or questions that we have framed. The last thing I will put in is a part of to kind of kick this off, in some ways this really is a general plan for plant and wildlife in Santa Clara County. It is a -- looking at it in a more holistic manner. We have done some case studies to compare what life would be with and without the plan to help put some context. Because it is a really big number when you look at it bit itself like this. I think when we look at it on a 50-year horizon it changes that number a bit and if you look at it on a project by project basis on what projects do today, in some cases it makes it work better in some cases it is more expensive. We want to talk about that today, what those risks are, and you will certainly

hear about that from some of the panelists that we have here today. But one of the challenges is that staff has looked at this plan. We have grappled with what is the upside of the plan? Certainly having certainty for 50 years is a good thing. But as we go through and figure out, working on major infrastructure for the city that we will need for our general plan, is how do we get through and work through the permitting process. And so Kay and Scott are here to talk about how that operates in other cities and how the plan can help that and what some of the challenges are with that. So with that I will turn it over to Darryl.

>> Thank you Joe. Thank you mayor and council. So this is just the outline for today. As Joe said we do have the afternoon broken up into some discrete pieces to allow better use of time for question-and-answer and discussion. We've really reached a major milestone in the process which is really why we're here today. The formerly the draft documents, that's the draft habitat plan, the draft EIR EIS and the draft implementing agreement which is the contract that we would ultimately enter into with the wildlife agencies, those three documents are represented by this pile here in front of me, the stack I should say. And so we're in this formal review and comment periods. The city's comments are due, it closes April 18th. It has been open 120 days so that's really the major impetus for us coming to you now is that we're in the formal part of the process. Just as a reminder in this process we the local partners, the six local partners are actually the applicants if you will and then with regard to lead agency for the CEQA NEPA process that's the fish and wildlife service. Coming to you today is the culmination of a larger process, we've had community meetings, the other partners are undertaking similar study sessions like this. I believe the Gilroy City Council had a study session last night. We did some development outreach, we were at the chamber. We had a joint study session with both the Planning Commission and the parks and rec commission and we were at CED committee on Monday. Just by way of reminder as how we came to get here as was mentioned by the mayor and Joe, this really started in 2001 shortly on the heels of the approval of the Coyote valley research park project. At that time there were some other public projects that are listed up here at the top of this slide, primarily dealing with the 101 widening and the 85-101 interchange. Partly why I want to highlight that is because this just isn't about private development project. This also applies to our own public projects going forward. This is just a one statement out of the 2001 biological opinion that Kay perhaps herself even authored but this really is the essence of the commitment that we along with our other partners would develop an ACP and NCCP. So what is the habitat plan? As Joe mentioned what this really is it's really a

mitigation program. It's not a land use policy. It's more of a -- an environmental review document, if you will. So it concludes both mitigation and conservation. The permit term would be over 50 years and it's really at a programmatic level. With this process and these documents we're satisfying both federal and state requirements for endangered species. What the plan would actually do as listed here, again a lot of this information is also included in the staff report that you got for today so we're just trying to hit some of the highlights. Some of the expectations by adopting the plan we would streamline our development review process, both for private and public projects. For biological impacts there would be predefined mitigation that would essentially be the same regardless of whether you were dealing with Santa Clara County, us, Morgan Hill Gilroy so forth. One of the key things that the plan adoption the plan would do is providing the resources. East Contra Costa county has been up and running for the past two or three years. Because their plan is up and running they are eligible for grant funding about \$40 million in terms of grant money. So the plan has a lot to do on the environmental side as well with open space and species habitat conservation. This is a map of the permit study area. It's about 520,000 acres, comprises primarily southern Santa Clara County. All of the City of San José is included in the study area with the exception of generally the area north of 237 because we did not want to deal with the -- with the wet land species along the pay. There's other efforts underway and so this is really, this plan is really dealing really with the so-called upland species. Originally, Morgan Hill and Gilroy were not part of the project, they came in later so we basically deleted those doughnut holes. The other thing I wanted to mention real quick. Bring to your attention the area outlined in green, at the top of this map with regard to burrowing owls. We'll come back and talk about that in a minute, but I just wanted to highlight that on this map. So the species that are being covered, as is mentioned in the staff report, we started out with the large universe, the complete universe which was about 147 species. At this time the plan's covering 21 species, 10 plant, 11 animal. The species that are bolded on this slide only occur on the study area. Nowhere else on the earth do these species occur but within our study area. The one exception, slight exception is with the bay checker spot butterfly. There is a little bit of butterfly habitat outside the area. Those species that are italicized on this slide primarily occur in the study area although they do bleed out beyond the study area boundaries. So what projects does the plan cover? In terms of thinking about the plan based on my experience, the easiest way to think of it is sort of like an EIR. In terms of the covered activities are really the project description. The plan then looks at what would the potential impacts, biological impacts from those covered activities be over the course of 50 years, what's the appropriate mitigation that would be required

for those impacts. And then this plan also requires some fair certainty about the financial feasibility of implementing those mitigation and conservation measures. The plan area, the covered activity areas are divided up as you see here in these major categories. The City of San José's primarily in the urban development area and then of course we have our public and capital projects. Rural development would be more unincorporated Santa Clara County and so forth. So the covered activities essentially again private projects, public projects. The plan estimates that over the course of 50 years there'd be just less than 23,000 acres impacted. There are some projects that are either not covered or exempted from the plan, you know anything less than one half an acre parcel is exempted. Anything that really doesn't deal with actual land disturbance wouldn't be included. And again just to underscore that the plan's not approving any new development. It is not a land use policy document, it is a consequence document, in terms of if you have impacts, what do you need to do. So what does the plan actually provide? It builds a reserve system of upwards of 58,000 acres. Some 45,000 acres would be acquired from willing sellers, county parks would contribute 13,000 acres. What the plan does for them is it provides management dollars that they don't necessarily have to manage all of their land holdings at this point in time. A couple of other benefits of this conservation strategy is it deals with the wildlife corridor issue that we started to hear a lot about when we were dealing with the coyote valley specific plan. So this plan takes that on, and to the extent possible, this plan also deals with climatic change issues with regard to biology over the future over the course of the 50 years. Also there's restoration and so forth. A couple of key components or concepts with the plan, one is that this plan is really forever. The permit term may only be for 50 years but there is a requirement for ongoing management in perpetuity. Some plans have not addressed the need, the financial need, the financial cost of that up front. This plan does. And we'll talk a little bit more about that when we get into cost and funding but just recognize that this plan goes on. There are responsibilities, obligations beyond the 50 years. One of the key species that we really wanted to make sure that we were able to deal with as a part of the plan was the burrowing owl. The burrowing owl is not currently listed but obviously it's been an issue or a species we've had issues with over time and so the plan does include a burrowing owl conservation strategy that's very experimental, unique, it is a one of a kind approach that the agencies have agreed to. Because we only have about 26 nesting pairs currently existing within the study area within the county and it's been a declining population even in recent years, the approach has been to stabilize the burrowing owls where they exist. They're primarily indicated in North San José, we have a pretty good population in the airport and in North San José

around the bay lands is where the bulk of the 26 pair live. So the idea is that we would first want to stabilize those populations and not have a declining population, stabilize where they are. The second step would be to try to increase the populations where they're at and then thirdly which is this last bullet is to expand the range of the burrowing owl, it is a fairly unique approach that has been arrived at. The other probably most unique part of the conservation strategy is the area in green at the top of this map because that area is outside of our study area or actually our permit boundaries. So this is undertaking trying to undertake a more regional holistic approach to deal with owls and work with our neighboring jurisdictions with regard to stabilizing the existing burrowing owl populations. The plan does deal with riparian corridor issues. The plan is -- the foundation of the riparian conservation strategy is essentially the City of San José riparian corridor policy study which you see here. There's the 100 foot setback for those projects that are along a fish bearing stream within the urban service area and are on a slope less than 30%. As you go out into -- outside the areas of the cities and the unincorporated areas the setback then goes to 150 feet and then also it's 150 feet for properties that have a slope greater than 30%. So the plan does deal with riparian, and in this case, again, this is really a good example of what the plan does, it establishes consequences. So there would still be the ability to do exceptions and so forth but there would be essentially financial consequences if you weren't meeting the setbacks as established in the plan. Just quickly, some of the benefits both environmentally and development-wise. Again, this is to ensure greater survival potential of the endangered species over the long run. It's a very scientific, holistic approach. We actually get more mitigation on this program than we would on a project by project basis and as we said earlier reality allows us to be eligible for state and federal grant funding that we would otherwise not be eligible for. With regard to public and private activities it is a notion of a more clear and certain local permitting process for endangered species. You would know what the rules are for biology going into a project. Streamlining we think would be helped, time savings as well and then again the notion that over 50 years, there would be assurances as far as what the applications would be for biological impacts. And then it's also very cumulative oriented. One of the things the plan doesn't do that we've heard a lot about is dealing with permits, other regulatory permits. Primarily the best example is Army corps of engineers permits for wetlands. The plan initially, we thought about doing this, at the time it didn't seem the best approach primarily because we didn't think we were going to get a lot of cooperation from the San Francisco district of the army corps of engineers. The plan went forward. The way it's currently developed, it doesn't deal with wetlands permitting. However, East Contra Costa county has been able

to work with the Sacramento district office of the corps and come up with a process that we think would be a really good model to adapt for our needs here, and some of the panelists can actually speak more directly to that and I think David Zippin can as well. But essentially it would allow us to get permits from the other rearing agencies, so truly we would have certainty around all of the regulatory permits going forward, and this wetlands permitting approach would allow us to do that without needing to open up this draft plan and amending it. So with that we wanted to provide an opportunity for Kay and Scott to make comments as they thought would be helpful and appropriate so with that I'll turn it over to them, Mr. Mayor.

>> Hi, my name is Scott Wilson, I'm with the Department of Fish and Game. Thank you very much for having us here today. I'll make my comments very brief. I think like Darryl has summarized, our agencies have been working with staff from the city and the other local partners for a number of years on the plan that you've been developing. We're here because we support the plan that has been put out as a public draft. We're aware of a number of benefits that might come from the plan, as well as also hearing some of the concerns that are coming out from the draft plan. One of those being the issue of economic development and the fees. And those were of course developed by the local partners, and our agencies are more than willing to work with those issues, and see if there's a way to make that more equitable as the plan moves forward and have -- welcome any questions you have, thank you.

>> Well, as many of you may be aware, as the Fish & Wildlife Service has had a number of consultations on public infrastructure projects that related to indirect impacts to the butterfly. And just so that you know, that those biological opinions, the only way we saw at the time to solve those issues, working with you as applicants and VTA, Water District, numerous developers, different projects, was to deal with those through a comprehensive planning. And that was the found of the commitments that were made in the biological opinions, by all the agencies that participated. We have -- we obviously thought -- had a different optimistic view that we put four years I think in the biological opinions but we haven't been addressing those indirect effects or bringing them you up as an issue for all this time because the progress that local jurisdictions have made on developing an HCP. We want to applaud their efforts. I mean it is a complicated area and a very significant planning effort and they've done a very good job trying to balance a lot of different issues. But again it started because we, as Darryl

pointed out, you have a number of species that are only located here in the world. And that doesn't make us having a -- dealing with the consultations or dealing with those effects very easy. Because there's just no other place to look. It's not a widespread species, they're declining and they have major management issues. And you all have done a very valiant effort trying to conserve those species. But a lot of the issues is not just about ownership of the land. It has to deal with management of the land, also. So we're very supportive of the HCP. We think you've done a very good job. But we're also here to work with you, if there are issues or things that need to be fixed or addressed, to get to a plan that meets everybody's needs.

>> Joe Horwedel: So Mr. Mayor, in our presentation, the slide we just put up, these are some of the questions that we've received as we have done outreach on the plan through chamber, the Planning Commission, the round table, some of which we talked about is through our presentation that at this point would really like to open up questions from the council about the ground we've covered thus far about some of the benefits of the plan or you know are the benefits -- how the council sees the benefits of the plan, are there things that we should be working on to work into the plan at this point.

>> Mayor Reed: Let me start with a couple of questions. Could you talk about what's not covered? We have started with 147 species, now we're down to 21. So there is 126 species that are not covered. So what happens if a project has some involvement with one of those 126 species specifically, I guess, fish, there are no fish species covered. So how about the bridge at King Road over Penitencia creek near Berryessa that I got started working on ten years ago as a councilmember? How would that be affected by this if at all?

>> Let me start off Mayor then others may want to join in as well. Firstly I would say that projects will still need to go through the environmental review process just like they otherwise would, so this isn't a replacement for CEQA. So we would still need go through the CEQA process, do the proper assessment of what we think the impacts from any particular project may be to any species. Then to the extent that the project was impacting endangered species, and that's partly why the list is the way it is because we're dealing with endangered, endangered species some primarily, there are some species that, as we worked the man through, the initial -- if early draft plan did cover more species. But in working through with the wildlife agencies and with our consultants,

some species just -- it doesn't make sense or it's really not appropriate for this plan to try to cover them. Others may speak to that more. In more technical detail. But I think it -- we would still do CEQA. We would still assess impacts. You would still need to do the mitigation measures if you're impacting endangered species then the plan basically tells you here's what you need to do based on those particular -- those particular impacts. So if you had an impact to a species that's not covered by the plan we'd still do appropriate CEQA mitigation for say like preconstruction surveys for our raptors nesting on the site. Something like that. There are still other mitigation measures that would be enforced above and beyond the plan.

>> Joe Horwedel: The issue of the bridge at Penitencia creek was related to steelhead salmon that were in the creek. Originally the plan did include aquatic species. We ran into some real challenges in south county in trying to meet the legislative requirements for the state provisions and NCCP part of this because it's not actually mitigation, it's actually bringing the species back to recovery. And the projects that the Water District was trying to do in the South coined and mitigation to get to recovery the dollars just did not match up so we consciously pulled that out. So at this point we would still have to deal with steelhead salmon issues in San José in the study area separately. So that's one of the things that you know of how we work through that. Yes, that is one of the -- a kind of a potential hole right now.

>> Mayor, if I could introduce David Zippin with ICF who is our biological consultant. David could speak to the technical reasons why some of the species fell out as we went along. David.

>> Thanks Darryl thanks for having us here today. The original list of species we considered were a very broad list of species that might be considered under CEQA. We simply narrowed the list to those that are listed now by the state and federal government. There's only eight of them actually and then another 13 species that we expect could become listed, have a high likelihood of becoming listed during the 50 year permit term. So the plan really does provide a very robust insurance policy if you will in the event that a species like burrowing owl becomes listed and that is something we do feel is pretty likely in the near future and any of those other 12 species that are currently nonlisted. Even though we are limiting it to 21, they're the 21 that matter the most for a lot of the projects

out there and because the plan is pretty far reaching it will provide a lot of benefits for those other 120-odd species, that can also help with CEQA guidelines.

>> Mayor Reed: As I said earlier I'm focused on what's in it for us and I'm trying to figure it out. I get the environmental benefits and the benefits for the species. That's really not the issue for me, I'm still pondering what's in it for us as a city. I'm trying to figure out places where it could have been helpful or would be helpful on something we want to do. Let me give you another one, convention center expansion, a project we hope to build sometime in the future. What would be the cost and what would be the benefit if we had this in place for the convention center expansion which we won't be, I think we will be on with that project before we get done with this process but it's a project I can think of.

>> We'll definitely touch on that more in this next part of the presentation. But projects like that downtown, let me start it this way. Any -- most of the City of San José is already developed. So any parcels, properties within the City of San José that have already been disturbed, if you will, would only be subject to the nitrogen deposition fee, assuming there's not riparian corridor along the site. So it would be the convention center expansion, based on the expected number of new trips to be generated by that project. The way the plan's currently drafted, it would be a \$7.29 per trip charge on the convention center expansion and that is all that would be required on the HCP for the convention center expansion.

>> Mayor Reed: That would be the cost?

>> That would be the cost yes.

>> Mayor Reed: What's the benefit?

>> Joe Horwedel: Currently they would not have that kind of obligation because they themselves aren't creating an impact that's measurable. In looking at the plan, what has been proposed is using this trip fee as a way of spreading the cost of that mitigation that otherwise would fall into infrastructure. So in San Diego county they do it

through their water rate base and sewer rate base. It's just a charge in utilities because they could not build their utility system without mitigating that impact. In this case we have not gone to putting it in as a water fee or a garbage fee or a sewage fee. So it's -- what we looked at because the impact is from air quality, the connection is, what are the things that generate air emissions and so vehicle trips is one of the major causes of that. So that's why it went to a per-trip fee trying to fit within the limits of prop 26.

>> Let me try it another way perhaps is one of the issues and staff's been aware of this from the very beginning. Certainly one of the concerns about adoption of this plan is that you would have projects like the convention center expansion paying for a fee, when otherwise, through the normal CEQA process there wouldn't necessarily be such a fee. What would happen absent the plan is that if we had some other public project to go that was going to impact an endangered species, that project would have to bear full-freight cost of all of its direct impacts versus the way the plan approaches it, it spreads those costs out amongst more projects. So that the per-project cost wouldn't be as high as it might otherwise be. So that's one of the benefits of the plan I guess, is that it's spreading that cost out. It captures more projects, but the -- it minimizes the effects to those few projects that might otherwise need a take permit.

>> Mayor and council, Vera Todorov from the city attorney's is office. I'd like to actually add and clarify to what has just been said. The NOX emissions are identified in the EIR, the draft EIR for the plan as a cumulative impact, not necessarily an individual project impact but a cumulative impact that does need to be mitigated. So the cumulative impact of all of these smaller projects on bay checker spot butterfly an at that time is significant and it is being mitigated through the plan.

>> Mayor Reed: Well but it's being mitigated by people who aren't causing all of the impact. And that would be us. Not Santa Clara, Sunnyvale, Milpitas, et cetera, et cetera.

>> We can get to that, but the way the fee has been set up for the NOX emissions fee excludes people who are not generating from new development in Santa Clara County. So it excludes people generating from San Mateo county, it excludes people generating from outside the jurisdiction of the plan, it excludes the generators who

have separate permit authority from the federal government who are doing other mitigation plans in that in particular. When we took a look at the fee schedule we are just very, very careful to only charge development that is within the plan area.

>> Mayor Reed: Well that's good I think at one level, but those other people aren't paying any fee.

>> Joe Horwedel: Kind of let me put another layer to that, is that we've quantified what is the impact of development in San José and one of the questions that we've got queued up I think in the next question is what -- how do other cities fill into it? We have up here, why isn't the plan county wide? The original goal was to do a county wide plan, but because we didn't have at the time a hook or a nexus with the other smaller cities, we felt it was going to drag the plan out even longer to get -- to reach a conclusion, that those communities weren't stopped from getting development moving ahead, like we were dealing with Coyote valley like VTA was dealing with the road projects. But it is one of the things as we're working on the plant master plan, there is a switch plan for the City of San José provides sewage for the City of Milpitas, City of Santa Clara, City of Cupertino, Saratoga. So there are other agencies that are part of feeding into that system, that in San Diego County, they loaded those costs into the treatment plant. That is certainly one of the things that we will have the ability to look at, is a part of leveling the playing field with the other cities around us on this air fee, is how do we connect sewage flow to air emissions and vehicle -- it's a lot more complicated to do that, and that's why we haven't started there. But it is one of the concerns that staff has, is how putting this fee in place affects what goes on with on the other side of the creek or the road where it's in another city that doesn't have the \$7 fee. We're not requiring developers in San José to mitigate for the impacts coming from those other cities but we're not also asking those developments on the other side of the street to pay that same fee. So it does put us at a bit of a competitive disadvantage and that's one of the concerns we have.

>> Mayor Reed: Well, I think it's a real concern because we are already on a competitive disadvantage on fees and taxes as it is, and this would add to that disadvantage. Maybe you'll cover this in a later section. If so, you can defer answering it until then. But I get this feeling that we're facilitating sprawl and actually inhibiting infill development and the idea that reuse of an existing site in Downtown San José is going to have to pay a tax, and

green field development wherever, out in whether it's in San José, Gilroy or Morgan Hill, they are going to pay a tax too but this is going to make it a whole lot easier for them, compared to what it is now. So there's no processing benefit for a project downtown. There's huge processing benefits that would I see for a green field development of a single family out in the country side. So we're making it harder to do something downtown by charging a tax, make it easier to do something in Morgan Hill, Gilroy or in the county by making it easier. I'm not really sure that that's the right set of incentives. I mean it's good for the environment, I get that. But is there a sprawl issue here? I assume you'll have to deal with that in the environmental impact.

>> Joe Horwedel: That would be one of the issues described as potential growth inducement of the plan or areas that would be impacted. We are going to cover the whole issue of case studies and we have some from Gilroy and Morgan Hill and San José that look at before and after so that's a little bit -- I think in the next section, we'll cover it. Okay Kay.

>> Well since we're the lead for the EIS I want to correct one little statement. That the -- we're right now have the document out for review and they are looking at alternatives. And the way the document has is that there are incidental take limits. Yeah there's 25,000 acres and David can explain better but basically the way the analysis is, is it's based on where their current general plans or their planning documents so there is a level of rural development that is in the analysis but it isn't necessarily in the NEPA document a free-for-all for development. Did you have anything? So I just wanted to explain that, especially since we're currently having the EIS under review.

>> Mayor Reed: When you spread the cost of something across a large universe, you make it harder for some people and easier for some people. And when I look at the spread of who is it harder for, and who is it easier for, it's definitely easier for doing development in Morgan Hill than it is for Downtown San José. This is just a tax on Downtown San José projects. And in Morgan Hill, it facilitates the development. So -- and I'm less interested in the benefits to Morgan hill than I am the benefits to San José just because, well, I'm the mayor of San José. Councilmember Herrera had a question.

>> Rose Herrera: Thank you, Joe or anybody on the Pam, first of all thank you very much for the report and we heard this also in the economic development committee. We were able to get some comparisons of projects and how they sort of netted out. I don't have that information in front of me but I thought that was --

>> It's coming in --

>> Rose Herrera: So you'll talk about that. Which part of this gives us, is the simplest, if you can take a piece of this plan where it works well it sounds like for projects in South county and the mayor reviewed some of those in the green field areas and they are dealing with specific species, it's fairly straightforward and it's a benefit to developers. Can you -- and then which piece is -- it seem like the vehicle trip miles is more of an issue where there's not so much the immediate benefit -- I understand you're amortizing it across everybody. But could you explain that? And then it seems like Santa Clara if those studies are not involved as has already been pointed out it puts San José at kind of a competitive disadvantage. And is there a way to defer some of the requirements for or phase them in or something in terms of certain aspects of this that would be the most negative to San José, specifically? And would we contemplate having Santa Clara and Sunnyvale and those other cities join us in that effort in certain portions of that plan so it wouldn't be such a negative impact on San José?

>> Joe Horwedel: I think the most straightforward parts of the plan are really dealing with the direct impacts. So where a developer is proposing to build on pristine hillsides, wants to go out and put a large custom house on the hills, somebody wants to go through and build a subdivision on flat grasslands, that potentially might have tiger salamander, red legged frogs that are using that lands today, that this plan does a -- it cuts straight to how do you deal with that? It puts forward a mitigation structure, cost structure, that allows those species to have a survival plan and restoration plan. It will give the developer certainty about how to proceed with that. And the mayor's correct that predominantly those types of benefits are going to be experienced outside of San José where it's predominantly built. We still have some lands in South San José that have never been developed. We have to deal with burrowing owls in San José on a project-by-project basis. I think at a second level the burrowing owl is the one that provides a more streamlined, simple kind of implementation what's in the plan. Though as Darryl said, it's a little more applicanted because it's a lot of recovery and not just mitigation. I think the bay checker spot

butterfly is the one that's probably the most challenging because it's an indirect impact, because we're not developing serpentine grasslands in San José. It's dealing with the consequences air pollution, which has a real challenge for how the habitat operates. This it puts fertilizer on the grounds and causes problems. So that's the one that I think the real tension has been you know as we've talked to the council in the past as we've talked to the community, that indirect complication, how do you spend that mitigation around. As Kay has continued to remind me, it's more of a dispositive decision for the local partners of how we want too structure that, that fee, that whether it's something that, you know, is based on a per-trip basis, that it's something that's on some acreage basis, that it's based on gasoline sales, there's a lot of ways you can do it. But that's one we've got to grapple with. And as the mayor pointed out, we don't want to be in a situation where we are disincenting the things that we want to occur. And we spent a lot of time with the home building industry -- Paul Campos is going to be one of our panelists from the home building industry -- about how do we go through and not -- to not disincentivize smart growth? On the other hand, how do you put consequence to dumb growth? And we're working through a lot of that but you know things like prop 26 makes that really, really hard to go truly do. Because even a high rise downtown has trips. Not every there are still parking spaces in those buildings and those parking space have cars. Because of the limitations of prop 26 I can't just go through and say we're not going to charge it because somewhere we got to pay for it in the plan. That said, we have spent a lot of time seeing how do we go through and look at those costs to really try and minimize those. There are still some things we can do around those so we don't put ourselves to a competitive advantage of the things we really want to occur in San José. That said, going back, the proposals to put more housing in Evergreen on industrial lands I would say would be the epitome of dumb growth. And we should not be doing anything in this plan that encourages that. It should put severe consequence to that type of development. So we've tried to make sure that the plan while it may Lou some dumb growth to happen, there should be severe consequence with that.

>> Councilmember Herrera: The bay checker spot butterfly then is -- I thought I heard, because we had a discussion prior to this, is there some different way of treating that within the plan that would give more equity to San José and would we move forward on this knowing that Santa Clara and Sunnyvale, that they don't have the same kind of plain in effect hour would we address that and I guess if our South County partners don't join in, we don't have a plan, right. They have to say yes to this ultimately in Morgan Hill and Gilroy.

>> Joe Horwedel: My read of it is that if we don't have all six partners saying yes to do the plan, that it's going to be really hard to move forward, because we're going to have to do a lot of work renegotiating the plan. I think one of the real questions is, are there ways that we go through and bring those other cities that have air quality impacts that are putting impact, on the butterfly. How do we bring them to the table and so it's part of one of the things that I talked with Kay and Scott about today is that question, is are there some things that we can be doing that kind of put pain to those cities? So that they come to the table. Because there's no way I can go walk over and say, hi, do you want to charge \$7 per trip to your city, that ain't happening. You know, the reality is the reason we're at the table is that we wanted to do Coyote valley, the VTA wanted to go do 101, and we needed to go through and receive approvals from the resource agencies to do that. And that's why we put together the plan which does a comprehensive strategy for it. But again, you need to have parties willing to participate. You can't mandate it by itself.

>> Mayor Reed: What about Coyote valley? Is it in or out?

>> Joe Horwedel: Coyote valley is in. Originally, we had it out but we brought it in so that if and when Coyote valley even with the rest of the industrial entitlements, or we move forward at some point in the future on mid Coyote. That we have analyzed the environmental impacts, the wildlife corridors, the air quality impacts, and put forward the mitigation to do that.

>> Mayor Reed: Anything else Councilmember Herrera?

>> Councilmember Herrera: No, that's it. I just want to -- at this point, I know it's to get the council input, we're not making the decisions, I'd be interested in an No. from my colleagues.

>> Mayor Reed: Councilmember Chu. I neglected to mention earlier that Councilmember Chu and Councilmember Kalra have served as members, liaisons, I forget what it is called, for this committee too.

>> Councilmember Chu: Thank you, mayor, in regards to acknowledge you may be covering that later, the fee structure was divided into different zones and San José is zoned 1, that has a fee structure based on the trip, and then in the south county they're in a different zone and their charge is based on acreage or something like that?

>> Joe Horwedel: Right, I think it's six slides up we have the fees.

>> Councilmember Chu: We can cover that later on.

>> Mayor Reed: I think we'll move on.

>> Joe Horwedel: Kay goody had a comment.

>> Bay checkered butterfly is federally listing not state issue. I can only say on the butterflies, there's numerous butterflies in the area, in the Bay Area and in the area that are suffering a huge decline. And it's not getting better for any of them. So any development or any issues that have indirect impact on those butterflies will not get simpler. It's getting worse. I can only give you an example in Antioch dunes. It's owned by the refuge, but right now the butterfly is in such bad shape, it's not the bay checker spot. We're actually having to do -- capture them and do captive breeding. And we're actually dealing with every single power company, every single partner, every single person that adds the missions in that area to deal with the management of that site and they're having to mitigate for those effects and we have been testifying in numerous areas. I guess I just want to say that this plan does provide a certain amount of certainty and hopes for you and provides in my mind a competitive advantage as it relates to potential indirect effects that you would have into the future as it relates to San José. And if those other municipalities aren't participating in that, when they have their infrastructure project or their effects they will have to be coming to see Fish and Wildlife Service for those very same effects, but the difference is, you would address them.

>> All right, thank you. We'll move on. So now we wanted to move into a little bit of a discussion about the implementation, cost and funding, some of which we have already started to touch on, as far as who would

actually implement the plan. For most intents and purposes, our development customers, our development applicants would not really notice a distinguishable difference. They would still be coming in dealing with us going through our regular process. Most of the changes for us would actually happen in the back room other than perhaps collecting some additional fees and other pieces of paper beyond which is normally collected. There would need to be a new entity formed, the implementing entity and in this case what's being provided is a joint powers authority. The joint powers authority would be responsible for the implementation of the plan, the conservation strategy implementation. Because of the unique circumstances of the six local partners, the Water District and VTA are under different legal constructs, the way -- their roles and responsibilities are different than the other four of us that are land use agencies has implications for how the JPA can be structured. That's what you see these bullets under the governing board relationship and the implementing board relationship, is that when it comes to actually setting fees for the habitat plan, it's really the four land use agencies, and that's the governing board membership, is the land use agencies. They would set the fees. Then there would be a larger implementing board that would include representatives from the Water District and from VTA so that they also have a seat at the table. But they're not able to deal with the fees because of how they're established. So again, there would be some change in the permitting process, essentially what happens with the habitat plan is that the state and the fed, federal government, the wildlife service and state fish and game are basically giving us the authority to issue take permits as long as we live up to our contractual obligations as established in the implementing agreement. And so that is being pushed down to the local level. The plan does impose new conditions of approval on projects, but to a great extent those are really based on existing best management practices and so forth. We've tried very hard to not create new things or something that's really different or unusual. In some cases there might be certain types of biological surveys that would be required and so forth that aren't necessarily required now. This slide is barely just showing the difference -- actually I think in thinking about this slide more, on the top row really what there should be is a box beyond the local partners that would show the implementing entity. Because we, the cities and local partners, we would collect the fees, but the fees would actually go to the implementing entity, and then they would acquire the land and manage the land. The conventional process is shown on the bottom, and so essentially what happens is, the need to go negotiate mitigation requirements and so forth would be eliminated by adoption of the plan. The applicants would not have to go talk with Scott and Kay. Not that they're not good people, but this would just do away with that. So here's the

sticker price. So what would the plan cost? Current dollar estimate is over the course of 50 years just over \$900 million. With annual cost just less than \$19 million. The bulk of the funding for, public around private impact fees, not quite 60%. There is credit for both the lands that the county parks and the open space authority would be putting into the 58,000 acres of the reserve system. As we mentioned before, this would -- adoption of the plan makes us eligible for State and federal grant funding. And then we have consciously decided in this plan to show the endowment cost. The in perpetuity cost. Unlike other jurisdictions that may put that off for 25 years, or more, into the plan, we thought, in order to really give a fair representation of the true plan cost we should show the endowment. So that's one reason why there's this postpermit land management fund is really the endowment dollars. There would be some commissions to implementing the town for us the city. There would be additional tracking work and so forth that we would be taking on responsibility for as we coordinate with the new implementing entity. And keeping track of information and so forth, tracking data. These next two slides are actually included in the brochure that we handed out, and this is just the pie chart that shows the costs. And again, the bulk of the costs are in land acquisition. There's some amount of money for program administration. Several of these bullets are really what one could think of as the mitigation monitoring reporting program, because this is a mitigation program essentially. The cost for ongoing management of the land so forth comprise a fairly large portion of implementation cost. Plan funding, as we mentioned, the biggest percentage comes from the land cover fees. Here you can see the nitrogen deposition fee is not a great amount of money. Actually, the plan for all intents and purposes could probably go forward if that fee was eliminated. However I think that there may be some political considerations there because of the way the City of San José's land use policies are structured as Joe mentioned earlier. We don't tend to have a lot of directly impacts given the amount of development that we do and the size of the city that we are. And so one of the ways for the city to provide more contributions to the implementation of the plan is through the indirect impact fees. And so if that fee were to go away I think the other local partners would probably not be pleased about that because they would somehow think the city was really not paying its fair share of implements. So here is the zone map that I think Councilmember Chu is referring to. The fees are really established based on the quality of the habitat and the land that's being impacted. So the zone A fee is really the best quality habitat and therefore has the highest per acre cost. That would tend to be more natural, more pristine, previously undisturbed land. Zone B fee are lands that have been previously disturbed but still have a pretty fair amount of habitat value. So they may be ag

land and so forth. Coyote valley urban reserve would be probably zone B fees predominantly. Zone C fees are for small properties, between half an acre and ten acres. That are essentially surrounded by urban development. And may have some modest amount of habitat value, and therefore, the fee is much lower. There was previously some of you may recall a zone D fee. That fee is -- has now been reflected in other ways in the plan so the zone D really is just showing the brown color which is most of the City of San José so there would be no fee associated with zone D right now. So here's the actual dollar amounts for the impact fees. As we say the natural lands pay the most per acre. And so forth. There are some special fees. And so here's the nitrogen deposition fee or the vehicles per trip fee. The serpentine fee would be direct impacts to serpentine fee. If you were on Coyote ridge and wanted to build out there this would be the fee would you pay. There is a western burrowing owl fee. This fee is really only applied to projects in San José because that is really where the owls are at and essentially this fee would be collected for projects that meet certain criteria and are within a half a mile of known nesting sites. And then also there's a riparian and wet land impact fee that varies the range, varies depending on the actual type of habitat that's being impacted. So with that, mayor, here's some questions again that we were hearing. Or comments that we've rephrased as questions so I think with that we wanted to open it up for, again, for questions and discussion.

>> Mayor Reed: Okay, I'll start with asking about a slide, the endangered species permitting slide, the two alternative ways of doing that, and I'm going to go back to the butterflies question. That slide. So if I understand the way this works, we have 21 species that are covered including the bay checker spot butterfly. So if the bay checker spot butterfly is involved after the plan is approved, people go through that top line. If we don't have the plan they go through the bottom section.

>> That's correct.

>> Mayor Reed: What if there's another butterfly? You mentioned other butterfly species that are threatened now. You go through the top line for the bay checker spot and you go through the bottom for the other one, so you're really doing the same thing for every other species; is that right?

>> When the Fish & Wildlife Service and Fish and Game worked with you guys over a number of years, we went to the -- what species that were projected to be listed. We know what is coming up and threatened. So basically the species that you have is a very good robust list. That deals with a lot of -- with most likely occur except for some of the issues as you related to not having steelhead. So as far as our species, we anticipate that we would be dealing with -- we would cover everything within the 50 year horizon. That's how we decided it. And a lot of the other species let's say because of the way you developed your conservation strategy and the way you've dealt with things, they're kind of a -- it's like an umbrella that helps other species. So you provide protection just because, on a cumulative basis and it should help you with a lot of your fish and wildlife evaluations as it relates to CEQA. But not so much, not the steelhead. So --

>> Mayor Reed: Well steelhead you still got to do the bottom process. Any fish you got to do the bottom process.

>> If it's listed.

>> Mayor Reed: Fully fish that becomes listed in the next 50 years. Any other butterflies other than bay checker spot butterfly, you got to go through the bottom process.

>> I guess what I would say, as it relates to a mum of HCPs in the area we haven't had that happen. What you've dealt with what we tried to deal with is a conservation strategy that pays attention to those habitat types and provides the protection so that you have that kinds of certainty. And I would be very doubtful that there would be any other species that we haven't already addressed or dealt with.

>> Mayor Reed: But we're talking about 50 years. I'm back to the certainty. One of the things that is good about this is the certainty. I'm not certain, we have a lot of certainty.

>> Uncertainty is always a possibility but I think to answer your question all of the species that are known to occur in Santa Clara County that are currently listed or we envision becoming listed except for steelhead would go

through that top process. So I think the example you're giving we're not aware of any things that would fall into that bottom process. There's no other butterflies, et cetera.

>> Mayor Reed: But you'd have to look for them, and if you find them, then you're in the bottom process.

>> There could always be a new species discovered somewhere, yes.

>> If I can add, too, I think that probability is fairly low. Santa Clara County has some of the best universities and researchers in the world and while the taxonomy of species does change, I think we have a much better sense of what occurs in Santa Clara County than we do in many other places in the state and the world. I think we're pretty confident, this list is the list that will give you the most certainty based on what we know now.

>> Mayor Reed: I understand your confidence but if you're wrong then you go through the box process on whatever species happens to --

>> That's right, and what more likely what we'll do is, we'll amend the plan. It is a much simpler process to amend an existing plan to add a species that you did not anticipate than to develop one from scratch.

>> Mayor Reed: I hope so, because this was tough.

>> This was tough, and we don't want to do it again. And amendments have occurred on San Bruno mountain, most recently, and I can tell you we were part of that. It was much simpler than doing the original plan.

>> Mayor Reed: Councilmember Herrera.

>> Rose Herrera: I guess it's not like the rain forest where you keep discovering new species. I actually remember those bay checker spot burden flies flying around when I was a kid. I captain remember when I saw one. It does remind me when there were a lot of butterflies. Which was nice. What I do see is ravens. Seems like

they migrated up from L.A. I used to see them in Southern California and not Northern California, I'm assuming that's climate change. What kinds of climate change do we foresee happening that would cause migration or species changes that you know we wouldn't be able to mitigate or you know does that -- are there things that we're just not going to be able to make changes based on some things that are going to happen that are sort of bigger, bigger picture kind of things? Good let me give the more general answer and then others may want to be more specific. The planning does acknowledge that there is climate change. It also acknowledges that we don't necessarily know, we can't predict which way climate change is going to go. And so a great accident it is so the of the adaptive management of the plan, the ongoing monitoring of what's happening that will really allow us to better address climate change once we know what is it that's really happening. What does it really mean? Will there be more rainfall, will there be less rain? How might certain specific species be affected? So the plan goes as far as it can based on what we know today but also acknowledges that there's a lot that we don't know but as we learn more, than the plan, we'll make appropriate adjustments if you will based on that data.

>> I should add that the habitat plan really does -- is our best solution for climate change that we know right now for these species. For two reasons: One is it will preserve escape routes for these species if and when the climate does change, if it changes in directions we're not predicting it will allow species to move in response to those changes as best we can. The second thing it does is it provides funding and a blueprint for long-term managing and monitoring. And because we know that when the climate does change we'll need to change our management of these habitats in response, and monitor the response of the species. This plan provides that as well.

>> Rose Herrera: Well I just want to say I do think it's very important to protect species. We saw today an article in the paper about predicted mass extinction. So I think we have to be wise about how we do that and my concern is that San José not be at a disadvantage that we get our partners involved in this too how we do it so we're not creating unintended consequences but I think it's laudable for us to be working on trying to preserve species.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. You know, I've got some going back to cost it's a huge cost over 50 years, \$1 billion. My question is, on the endowment. I'm trying to figure out what funds the endowment, is that through impact fees? Or how is --

>> Joe Horwedel: It is part of the fees that we were showing, the \$7 per trip fee or the \$20,000 fee. It's built into that.

>> Councilmember Campos: Okay. So the endowment would act basically as an interest bearing type trust?

>> Joe Horwedel: That's the goal with this is wanted to make sure we collected enough money up front so we could do go and make this thing run out. We've done a lot of work with actuarials, and the council has gotten very familiar with actuarial analysis and some of the risk with that, so that is one of the things we want to make sure we're collecting enough money up front to not run out down the road.

>> Councilmember Campos: Okay because whether I was looking at this sources and uses chart here it does have endowment listed as -- actually in both areas but nitrogen deposition fees have their own category, so does that mean only certain fees will go into endowment?

>> Joe Horwedel: No it's built into all the fee structures. So every number that you see whether it's wetlands or burrowing owl or nitrogen fee or direct impact all of those have built into that the administrative cost, the endowment cost, the monitoring cost.

>> Councilmember Campos: Okay, okay, thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you mayor. I wanted to make sure all the causes are not General Fund?

>> Joe Horwedel: That's correct.

>> Councilmember Chu: Thank you.

>> Joe Horwedel: It is a question that has come up with the community meeting and one that staff is very attuned to. It is in the general plan it talks about there should not be an expectation that any of the local partners will be using general fund moneys to finance the plan, we actually have built into the draft plan acknowledgment that development activity may be slower and therefore the revenues would be slower as well as recognizing at the state and federal level the grant moneys we were thinking about coming in to fund parts of the plan, if those slow down, how does the plan adjust to recognize how finances work with it.

>> Councilmember Chu: Thank you very much for clarifying those to all of us including the audience. Quick comment on competitive disadvantage. This plan may put us in a competitive disadvantage for a short term. But I believe we would yield some long term advantage to the City of San José. The message to those neighboring cities that haven't joined the plan is very simple: Either you pay us now or you pay us later.

>> Joe Horwedel: Well I think the message should be, you pay you us later much more. It gets really expensive later, and that's what I think Gilroy and Morgan Hill saw is that investing sooner was a business decision those councils made a couple years ago.

>> Councilmember Chu: I was using an attorney's term, pay me now or pay me later. Was the understanding if you pay later you have to pay a higher price.

>> Mayor Reed: I have a question about plan cost. The slide you had that showed program administration, 6%, reserve management at 19%. So that's roughly \$250 million out of \$1 billion. Will any of that come to San José to pay for the extra processing cost and time that we're going to pick up to handle this?

>> Joe Horwedel: Yeah, these costs are with as revenues cost would be with the JPA that's running, owning the lands, managing the lands, dealing with the reality of having perpetual funding for this. So that risk is on their side with the JPA. So we will have on the city side some processing fees that we're already working on for mitigation monitoring, reporting that we have a legal requirement already to do. I think that work is not going to be much more, so from the City's administration cost we'll look at you know covering that but it's not in these numbers.

>> Mayor Reed: What about the \$200 million or so for reserve management?

>> So those costs are to deal with monitoring, actually managing land in that you know when you have thousands, tens of thousands of acres of land it does take staff to go and manage those lands, go through and fix fences, to go through and deal with paying insurance, staff gets out on those, that is what that cost is for essentially the perpetuity.

>> Mayor Reed: How does that cost compare to what the open space authority or land trust are paying? I don't really know what it takes to manage land because I've never owned any land except my little backyard, know the price is really high in my backyard, but I got to pay it personally with sweat.

>> To a great extent the cost estimates really relied on real data from county parks and from the open space authority. So these figures should be very much in line with what the open space authority or county parks or other land management organizations would be paying. That's what we based our estimates on.

>> Mayor Reed: Does that reserve management 19% include the in perpetuity part of that or just over 50 years?

>> The post-permit land management, the very bottom bullet, that 19% would be the in perpetuity.

>> Endowment piece.

>> The endowment.

>> Mayor Reed: For 20% you get 50 years and another 20% you get forever?

>> Joe Horwedel: I guess that's how I would read that.

>> Mayor Reed: Okay, any other questions from council on this stage? Okay I think we can move on.

>> All right. So here we wanted to just go through some case studies, examples. We realize that as we've worked on these few that we have, that we need to do a lot more test driving of the plan, or as Joe would say, we need to keep trying to break the plan. So we do need -- recognize that we need do more work on this, particularly for San José-specific projects. So this first slide really deals with some of the examples we were talking about. The convention center expansion would fit into this group or type of projects. Essentially already previously developed sites, brown field sites if you wanted to refer to them that way that are being redeveloped. Would essentially only pay the nitrogen deposition fee, unless they were on riparian and they we would have to work through particular details of that. So just by way of example, based on the trips generated by the ballpark, there is the dollar figure, the access tower, City Hall, and then the Irvine apartment store San José project, these would be the approximate dollar amounts that they would pay for nitrogen deposition fees based on their total average daily trips. This is the small vacant site is the zone C fees and again, there's an assumption there's no riparian or stream or wetlands. The per acre cost is a little less than \$5,000. They would also pay the nitrogen deposition fee. There would be no requirement for biological surveys unless we were proximate to burrowing owl nesting areas. All other conditions on the project would be the same they are now. So just to take a hypothetical example, if we had an 8-acre site with, say, 33 residential units there's the zone C fees, the nitrogen deposition fees total would be not quite \$42,000 or around 12 to 1300 a unit for a zone C fee project. Urban expansion project fees, this is one that we still need to really do a case study on. But this is more the actual green field developments like we've mentioned. The Coyote Valley urban reserve for instance. Land in there would be in this category. Most of these are going to be -- our case, in the City of San José's case are going to be zone B category, although if it was previous undisturbed obviously it would be zone A. There would be some requirements for surveys, conditions on the project would be much as they are now again with the exception of the riparian stream issue and the

difference between whether you're inside or outside the urban service area. So here is an actual case study. This one still needs a little bit more work, but we wanted to try a project that actually had riparian. This is the Ducat way project, as some you may remember. Essentially 19 units on Calabazas creek. We did a mitigated negative declaration. The riparian setback that was approved was 30 feet from the outer edge of the riparian habitat. Because it is previously disturbed there would no -- there wouldn't be any land cover fee so it would be zone D, there's no acreage fee there but because the habitat conservation plan requires a 35 foot setback from the outer edge of the riparian vegetation, technically this project would not meet that condition which then means it would pay a riparian impact fee based on the total acreage of the site. And then in addition to that there would be the nitrogen deposition fees, and so there at the bottom, working with Barry Swenson's office we came up with around \$113,000 was what it actually cost them. Under the ACP it would be around \$191,000. One of the benefits though of the habitat conservation plan is this particular case they granted an easement back of around 13,000 square feet or something like that. The plan would potentially give them some credit for that easement area which would bring the ACP fees down, perhaps substantially, perhaps to zero, depending on the quality and so forth of the habitat that was provided in that easement area. Here is a small commercial project in Morgan Hill. On a little less than eight acres. The City of Morgan Hill currently has their own burrowing owl habitat mitigation fee, so that's what that BOH mitigation fee is there. It was on ag land, zone B fee, there were no surveys required. And then in this particular case is an example of where the HCP would cost actually more than what the current process would be. Here's 12 lots in Gilroy on about 16 acres. Again, there were extensive species that were required for red legged frog and California salamander, it was in Zone D and the habitat plan would actually save them a substantial amount of money over what their estimated costs really were. Again it's that predetermined mitigation requirements and so forth would just save time and effort for surveys and that sort of thing. This particular case study is one where the City of Gilroy was applying for a grant, and actually probably would not be able to get the grant without having the HCP. They really needed the HCP to actually go forward. And so again, the HCP would make a substantial difference not only in cost, but without the habitat plan, the project would essentially have been infeasible just because they wouldn't have been able to meet their timing deadlines in order to get the grant funding. So that's just by way of a few examples. Now again we can open it up for questions.

>> Joe Horwedel: Yes Mr. Mayor, the one comment I would put on this, that in doing the case studies I think we need to do some more of these case studies before the council and city decides to approve the plan and I would recommend that we go and actually put it on the T&E committee agenda to maybe every month bring one or two in just so it's on a manageable pace for staff to do it. But I think it would give some real examples. The Ducat Way example that we looked at I actually found pretty surprising, the result that came out of it. I suspected it to be more that there would be a much higher penalty for the project, that the HCP would have put on and to come up with a fee that would be essentially zero because they did a riparian setback easement which we already require. In looking at the amount of controversy that surrounded that project, when Darryl says breaking the plan, those are the kinds of things that I would like to go through and do some exercises up putting projects up on the wall and for the group, community go through and say what would your expectation be and run through plan and does the plan meet the expectation of the result? At the end of the day, when we're trying to provide mitigation and restoration rehabilitation of the species, how we allocate those costs, are we encouraging sprawl or are we encouraging smart growth? I think some of the examples of how it has been weighted may in fact be encouraging sprawl versus smart growth.

>> Mayor Reed: I think that's a really important question to know the answer to. Because I was thinking of our general plan, our 2040 plan, and what impact this might have on the elements or the things that we want to do, versus things we don't want to have happen. This seems like at least in the little bit of case study here, the urban outfill project, this is a huge benefit for an urban outfill project. 10% of the cost. It's a great deal. But I'm not sure I want to incentivize that. So I'm interested, back to my question what's in it for us, what's in it for San José, being able to figure out some of those scenarios in which it's really to our advantage to us to do this, because there's a benefit for San José. Because right now I'm feeling like, well, we're the biggest city, we've kind of got to go along, there are people who want us to do this. We're trying to do good, good for the environment. But I'm thinking about golden triangle. And the golden triangle task force, and we agreed to development restrictions, a .35 FAR ratio, floor area ratio in North San José because it was good. Santa Clara refused to play, and all you have to do is drive up Great America Parkway, and look what got built in Santa Clara, and drive up First Street and see if I could build on First Street. It's clearly to our disadvantage to get into that transaction with Santa Clara, not in it. So I don't want to participate in something that is not good for San José in and of itself. It is a bonus that it's good for

other people but I want to see that this is good for us and I think additional case studies could be helpful in that regard. Councilmember Liccardo.

>> Sam Liccardo: Thanks mayor. I'm interested in calculations around the nitrogen disposition fee or deposition fee I'm sorry. When you've calculated the trips, first of all is there a uniform calculation used by all the jurisdictions in the county?

>> Joe Horwedel: All the cities are supposed to be using the same methodology through the congestion management agency that we have trip generation rates we use. One of the things that this plan does do is it allows each agency to look at the unique circumstances of that site to adjust the trip generation rates. So that's part of what we built in to give ourselves some flexibility to acknowledge that infill development mixed use development would have less trips than all those pieces mixed up and spread out. But it is one that gives me a bit of pause that potentially having cities going through and calling pass-through trips on a stay highway that takes you to the Central Valley, retail is all pass-by and therefore has no trip impact, would have some skepticism.

>> Sam Liccardo: Yes, I agree wholeheartedly.

>> If I could add something to that.

>> Sam Liccardo: Yes.

>> One of the things that we wanted to ensure was that smart development that was located close to mass transportation could be given credit for that. The balancing act with what Joe just informed you of or what he just described is that we were also very, very careful and legal counsel to the HCP was very very carefully in attempting to preserve local land use prerogatives and land use authority and your local fee authority and how you -- how you exact from projects. They didn't necessarily want the implementing entity for a proposed JPA to be doing that for you, so they wanted to preserve local decision making and land use authority. So that was the balancing act that this was attempting to strive for.

>> Sam Liccardo: Okay, I think I'm not probably not fully understanding. I appreciate the explanations. It sounds as though we're obviously trying to be sensitive to the geographic context in which development is happening. You know when we look at the list of projects in the downtown for instance, some of those projects being built, probably save vehicle trips in the aggregate. I think the presumption is if you build the building they will come but the reality is we are growing whether we're going to build the building or not and how we build and where we build is critically determinative of how many vehicle trips we have. So I'm concerned about an assumption that if it's getting built that must mean it's generating trips because we know some construction won't. And I guess I'm also concerned that if it's left purely subjective, you're going to have certainly a lot of room for malfeasance around how I calculate this thing and Gilroy is suddenly going to look really transit oriented because they have one CalTrain stop. At least today. We hope that continues but who knows? So I mean I guess I'm sure a lot of the concerns the Mayor expressed, and I'm trying to understand why we couldn't have a very fairly robust formula. I mean, since VTA is the CMA that's studying this formula, why VTA could not impose a formula or a calculation we would all agree on that would really account for the geographic context that we want to account for.

>> Joe Horwedel: Yeah, last year we spent a fair amount of time in trying to answer this question because of the concerns the home building industry raised about at the time was the zone D fee and we're trying to structure something that essentially would make the fee go away for in fill mixed use developments and then we started parsing it looking at distance away from transit, parking ratios above and below market, proximity to retail or work employment. So that it really incented the right things and disincented the wrong things. The real challenge is really working within the tight box that you have with things like prop 26, that don't allow me to take what trips that are still left and then assign that cost to somebody else. So that was really the problem we were running into. Though as I said I think there's other ways to come round and cover those costs, that I think we still want to look at. You know, and whether it's something you know that we mix into the sewage rate or the water rates or something like that. There is some other ways to approach it that still put a trip fee for the wrong things but put some incentives for the right things. I think there's still a way to get there. We just haven't been able to get it all to

paper yet. But that's our goal. At the end of the day I really don't want to be coming to council for adoption of a plan that says mixed use development on transit has got this burden put on it that we should be incenting it.

>> By way of example I mean one thing that we've talked about because we realize that we need to look at what are the options that are available to the way the nitrogen deposition fee is constructed, because at the end of the day, we just need to be able to assure there's the revenue to implement the plan. And so how we get there, Kay and Scott don't necessarily care about how we get there, as long as we get there. And so as we indicated on the one hand the fee could potentially go away completely and the plan could still survive because it's not that large a percentage of the cost. But on the other hand, like Joe was saying, make it's a matter of having more fees paid by development, say, in Coyote valley or something like that so that you actually are putting higher fees on those kinds of development that may not be as supportive of the long range general plan vision because again that's one of the reasons we're here is we wanted to be able to implement our general plan, make it easier to implement the general plan. So doing things on the outside of the UGB you know reinforcing the green line and so forth may be an approach that allows us to come to some better resolution on nitrogen deposition.

>> Sam Liccardo: Okay. Joe I want to come back to something you said in just a moment, but I do want to just throw out what I think could be a poster child for the project that we wouldn't want to impose a nitrogen deposition fee on, which is the state courthouse that is presumed to be built downtown, we hope, if all works well in Sacramento. That is a consolidation courthouses in Los Gatos, Santa Clara, other parts of the county. It would all be consolidated in a single place, it's the most transit-rich portion of the county. You could look at it from one perspective, and say, see something is getting built, now we've got trips. But the reality is, we're significantly reducing VMT by building that structure and hopefully vacating the others. So I guess I'm sure you guys could think of many others and I know you've been thinking about this. It's just something that concerns me, obviously, but my parochial interests are on the downtown but in terms of the larger goals we have. And something, Darryl, that's very important to me. You said this will make it easier for us to implement our general plan. I'm sorry?

>> It should be, I mean, that's part of the reason why we're here is that we think or at least I think that we -- this effort if we embark on this effort it needs to reinforce and we think it does the way it's constructed, it could do

better but we want it to facilitate the right kind of development and let the City of San José implement its general plan, public and private projects.

>> Sam Liccardo: Look, I know you guys are in many ways trying to do the impossible here, working on a regional effort in ways that are -- I think I can anticipate many of the challenges you're having right now. And this is a very difficult task. Where I'm wondering is, is given where I think we're going as a task force with this general plan, where the council's ultimately going to go, does it really matter is the question in my head. In other words, if you don't have this plan, we don't want to build a lot of housing down in the southern part of the city anyway. So does it really matter? And you know, I don't know if that's an easy question to answer or not.

>> Joe Horwedel: Well I'll start with it and then I'll throw it to Kay and Scott. I think the value that comes from the plan because most of our development is in Zone C, it's already developed, urbanized areas, is going to be are there going to be infrastructure projects that we do that, one, we're either looking for federal or state dollars, or that trigger the need for state and federal permits by themselves. And so as the mayor pointed out the bridge project on Penitencia creek, those are the types of projects that typically that we end up getting tripped up on. The VTA widening the 101, we're just finishing or getting started with building BART, we've got a lot of money we've got to chase down as a part of that, that we're still kind of working through parts of decisions on CEQA and NEPA about route segments, as we go through and deal with the treatment plant rebuild.

>> Sam Liccardo: We're doing separate EIRs on BART.

>> Joe Horwedel: We are and as you kind of heard from Kay and Scott they kind of took kid glove approach because we're doing this plan. What would be about for them to say is how would they deal with those kinds of projects without the HCP. I think that's the value I see it to it. The question is, is it worth that process, you know, the dollars.

>> Well, the first thing we would do is, if the HCP went away we would have to reevaluate every section 7 and the commitments that were made that set that they were going to have an HCP because basically those were in the

project description and that means that the way we evaluated our effects within our biological opinion were inaccurate. We have been -- and then also there has been a number of others processes where we have continually been saying that the HCP is coming and that that will deal with those effects. We have been kind of shuffling it to the future. And I guess the comment of pay now and pay later, I guess we'll have to pay in the back and pay in the future too, because we would have to evaluate, and it's not just, you know, I don't want to -- you know, it's everybody that we have been dealing with, some of these issues with a number of jurisdictions for a number of years. Contra Costa County, you know, we did an HCP with them and an NCCP. But one of the ways that they started and proceeded in it was because Los Vaceros, Contra Costa Water District wanted additional water that had indirect effects on endangered species. And so it started in that fashion, because they needed the water. Santa Clara Valley Water District is in a very similar issue with their contract renewals and their providing water. And all I can say is what I've seen as an example from HCP. Contra Costa County has only been involved in it four years, do I have it right? Four years. Right now the city of Antioch had been originally part of -- a participant in the planning process. We thought that they were going to stay with us. They pulled out of it, of the HCP. Subsequent and you know Paul Campos probably knows more about than I do. But basically a lot of developers, I've been contacted now by the City of Antioch who decided not to participate in the HCP and they're finding that they have a problem with permitting. That everybody else, they're at a disadvantage. That Antioch is suffering from some disadvantage because it's taking them longer to get through their permitting process. They have asked if they can do an HCP or could they possibly join back into the Contra Costa HCP. I mean that's an example I can at least provide.

>> Sam Liccardo: And I appreciate that. I don't know much about Antioch. I guess the question that would arise in my mind is that maybe the development should not happen in Antioch anyway. I don't know. I don't know how much transit infrastructure they have there or really how much density they are planning to build. It's just -- the question that arises under any of these scenarios, I don't see how BART for instance should be a project that pays enormous nitrogen deposition fee for taking 98,000 trips off the road.

>> I am -- the way you structure your fees or how you deal with your policy, you know, as Scott said earlier we would work with you in any way to achieve it. We can only speak as it relates to the conservation. So I'm not

saying that how you deal with your fees -- I understand your concern. I was not disputing it. I was just saying the benefits that come with an HCP and the benefits on regulatory certainty and the benefits of what would happen or what the outcome would be if we didn't proceed with an HCP and what our agency might have to deal with.

>> Sam Liccardo: Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you. I have a long list of questions, and after I got the 15th one, I decided I'll just ask Joe to meet with me and talk about this so I don't have to make my colleagues or the audience suffer through all those.

>> Mayor Reed: We have been making you suffer. It would be okay but you're welcome to meet with Joe offline.

>> Councilmember Rocha: Thank you. I won't invite anybody then. I do have a question how this folds into existing EIRs or future EIRs, and maybe you can talk about that. And probably my second question I might leave it there, because again, there's a long list of things that would follow, is why not just modify CEQA or the EIR process to accommodate this, as opposed to a new fee, a new whatever you call it, a new process?

>> Thank you. So if the plan was adopted we would still be required to go through the CEQA process. What the adoption of the man would do is that if you were going -- if a project had biological impacts the plan just basically tells you what your mitigation measures are. So that -- it's that kind of certainty, that if you know you have a certain species or certain circumstance, it just has predetermined what your mitigation measures would be for biology. So that's the main difference with the adoption of the plan. So and then the real difference is if you're mitigating on a project by project basis, sometimes you know, sometimes we might end up doing onsite mitigation. Say we would set aside some portion of a project site for burrowing owl habitat or something like that. And that set aside may not actually be large enough to make a difference for the owls. So this approach gets

rid of that need to do the onsite project by project mitigation and basically puts it into this larger program where all of those mitigation requirements together actually have a greater benefit for the species and for the habitat and so forth. So that's actually another difference is that we get away from the onsite project by project mitigation. Essentially you're writing a check for your biological impacts. But we'd still have to go through CEQA analysis, if that helps.

>> If I can add to that, your other part of the your question is why can't we deal with CEQA alone? And that answer is that state and federal endangered species act are separate, so any applicant that also goes through the CEQA process, that also has impacts to federal or state listed species, still has to get separate permits from fish and game, Fish & Wildlife Service. So this habitat plan would eliminate that need. They would never have to go talk to those state or federal agencies, and all they would need to do is just the CEQA process and get their species needs addressed directly through the city.

>> Joe Horwedel: Kind of the real world example is in North San José we've had developers go deal with fish and game directly dealing with burrowing owls bought we had burrowing owls directly on the property. On this plan, we go through what the mitigation is what the strategy is to address bringing back the population of burrowing owls. In the past that's been on a one off basis, so on every process it's been a separate negotiation. It's evolved over time as the population has declined over time. We have certainty how that looks like over time. As a developer looking at a site you know what you need to do from day 1. And so I think that's the difference of from what we do today without the plan, we deal with it on an individual EIR basis. It's just every one of those is different.

>> Councilmember Rocha: Help me in terms of background. I will ask one for background. The intent of this originally started when impacts were played of new development and you were kind of buying land elsewhere to make up for that impact.

>> Joe Horwedel: This started for San José's standpoint with the synch -- Coyote valley research project so the part of getting permits from fish and game and Fish & Wildlife to do I think it was the bridge projects to get over to

highway 101 across the river. We agreed in the biological opinion to do the habitat conservation plan to go prepare a plan. We agreed to then also acquire habitat. But it forced the city to be out in the marketplace and we ended up working with VTA to go buy lands in the Coyote bridge as well as butterfly, as well we were dealing with some tiger salamander red legged frog habitat. We -- it took us a couple of years to go through that process, get the permits, get the opinions, find land, acquire land to do that. It was really a costly process to do that and the developers do that, Public Works has to do that. So this really went and said, here's how we're going to do had a and you know what your fixed costs are to do it. And the one thing that Kay can hit me, is that the other thing that we saw when we were doing the Coyote valley research project is at the same time the Metcalf power project was moving forward, the VTA was doing their widening project. All were dealing with impacts to the bay checker spot butterfly with indirect impact for air quality. When you stop to look at the mitigation acres per ton of emission of nitrogen oxide, they were different numbers. So really you got into a spot that if a given developer really really wanted to move forward, they had an incentive to go, I'll give you 12. As a public agency you were trying to live within the budget of a particular project you could only afford three, you get into the dichotomy of what is the real number out there? Part of this is to say the number is five and you know, here's why.

>> Councilmember Rocha: Now I didn't notice this not presentation or in the document. But projects that are entitled or pipeline projects, is that just a later-date discussion and how to deal with those? Or was it in there and I missed it? I'm sorry.

>> Joe Horwedel: We're still working through what is a pipeline process for the habitat plan and for projects that already have entitlements. And as Kay said, some of those have section 7 permits that require them to do certain things. Others are just permitted through the city, and they have an EIR or a negative declaration that says here's what you need to do, and you know, how do we work through those. Some we have development agreements on projects that say we can't put additional fees on them. On others we can do, if we apply them on a citywide basis. So each of the local agencies are working through that issue of when does somebody know whether they are subject or not subject? We've written it thus far with not assuming a pipeline grandfathering provision in but that is one of the things that as this comes forward to each of the councils I'm expecting to be a very sensitive issue, so we do have to work through what is a reasonable pipeline. But recognizing every project that is on the

other side that we've essentially let through, someone else -- you know, you've got a cost that you've got to then respread, and how to do that and deal with prop 26 and that. So it's, as you can imagine, so kind of a lot of moving pieces with that. And that will be one of the things that we will be working through and obviously has to be sorted out before any plan could ever get adopted.

>> Councilmember Rocha: Thank you. I'll just state that I do have concerns over impact our TOD and our general plan and all the efforts that we've done above and beyond that other jurisdictions haven't so thank you.

>> Mayor Reed: Think we're ready to microphone to the stakeholder panel I think is the next sex of work.

>> We need to play a little bit of musical chairs mayor, so we'll just get reconfigured. Here is a list of our panelist list. We told them they each could have two to three minutes of opening comments and then we'll let you open it up for dialogue and discussion with them.

>> Mayor Reed: Are you the timekeeper?

>> I can be. I actually said that you would be but I can do that too.

>> Mayor Reed: I can be. I need to know who's in charge of clock. Welcome, everybody. Darryl, are we going to proceed in order of this slide panel is?

>> Yes, I thought it would be easier to go alphabetical.

>> Mayor Reed: Let everybody get in place. Devon Bryant is our first presenter hoop.

>> Appreciate the opportunity to speak to you today. I came to the process in 2005 as a stake holder. Like you Mayor Reed I really didn't know what an HCP was I think I had heard the initials but didn't really know what it was. I do now. It's been a six-year crash course. I consulted my CMPS colleagues, California native plant society,

a number of them have been involved in these processes, largely in Southern California where oftentimes these early HCPs involved 80 species plus, you know. And initially I thought oh boy yes, conservation of 80 species here. Turns out that those plans down in Southern California were a little unwieldy and hard to get proper mitigation for. My colleagues in CMPS did not have a very good view of HCPs in general so I was aware of this going into this process and I had an open mind. Throughout the process the partners have been very careful to learn the lessons that have been taught to us from other HCPs and that is to make sure the mitigation is proper, make sure it's in perpetuity. And I think a balance has been created, as a person has paid attention to biological resources I would say that we've done enough take and there shouldn't be anymore. But I'm also a pragmatist and I'm sure there's developers that would say that this environmental species act just isn't working. And I can understand that too. But somewhere in between is the truth and I think this plan has walked a careful line to reach that truth. That balance between proper mitigation for the species that will be impacted and the desire to continue to develop our area and have it be an economically viable area. Look, San José is a diverse and world class city that has an incredible gem within it's city limits, that's Coyote ridge, east of Coyote valley, it is a beautiful place that few people in this area know about. It's something to behold especially in April when it's in full bloom. It has processes going on that we may never figure out but they are going on there within view of the City of San José. One of the benefits, I understand what's in it for us. One of the benefits for the City of San José is to have this area preserved in perpetuity for the citizens and for the better many of their lives and so I would say that CMPS is largely behind the HCP, the plan. We still have a few things to work out for the final plan but the draft plan as it stands would be a far better mitigation for what's going on right now. Right now it's sort of piecemeal mitigation that costs a lot of money for developers, causes a lot of time to go by and doesn't usually address the biological needs of the species that are looking to be preserved. This plan with its reserve systems being managed in perpetuity would benefit the species and reach that balance.

>> Mayor Reed: Three minutes exactly, thank you. Good work. I know that when staff says two to three, it's always three so we're going for three minutes. Next on the list is Paul Campos.

>> Thank you, Mayor Reed and members of the council. Paul Campos with the building industry association of the Bay Area. BIA comes to the issue of regional HCPs generally predisposed to favor them for several

reasons. One, they do provide the regulatory certainty that has been mentioned, no surprises. Historically they have provided a good alternative to the designation of critical habitat, although you may have an asterisk next to that one, but that's important. And as a general proposition they across the board, not in all instances but generally speaking, involve lower mitigation cost, when you combine the fees and permitting. So overall, we like good regional HCPs and that's why we supported the East Contra Costa HCP and worked hard for it. Turning to the proposed draft here. There are some good things in it but there are also some issues of significant concern to BIA. The fishes one I'll mention is the infill tax or the nitrogen deposition fee, whatever you want to call it. We agree very much with the remarks of Councilmember Liccardo and yet concerns raised by others that it just is utterly inconsistent with policy of smart growth in promoting densification and urbanization to impose any fee whatsoever. And really these are not new vehicle miles tripped and even under the U.S. EPA under its methodology does allow you as taking trips off the road because this is a different kind of development. Something that I just heard today that is -- that has really concerned me though, is the statement by the representative from the city attorney's office about preserving local control and maximum discretion on some of these ESA mitigation issues. I would have to say that is something we would be very much opposed to. We are looking for not only regulatory certainty from the federal and state agencies but the local agencies as well. So local, no surprise, is that something we really insisted on in East Contra Costa County and it was part of the plan and that's why we supported it. Finally I'll say this is a concern and an opportunity as your staff has noted and that is the opportunity to pursue wetlands integration into this plan would be a significant benefit to the development community. I mean a big one. And so the fact that the core in Sacramento has finally taken this step is something that we all ought to applaud and I would urge everyone to comment, it's out for comment now and support it and then establish that precedent so that we can then integrate wetlands permitting into the HCP and then put pressure onto the regional water board to then come on board and integrate its own wetlands and aquatic resources permitting process. So that's very exciting and I think would be a tremendous benefit of this plan.

>> Mayor Reed: Next would be Jan hindermeister.

>> Good afternoon. I've worked in high tech in the valley for about 30 years. Currently working for Motorola and I'm the chair of the county parks and recreation commission. I've been interested through my career as a hobby

getting involved in nature and biology and that type of thing and that's how I came to be on the commission, the parks commission for the county. And on a number of agencies and groups in the area. I think the regional approach, I've heard several times that everyone sees the benefit of this from the environment. Just to say a couple of words about that. The regional approach that we're taking in the HCP is going to be of tremendous advantage. For certain species like the burrowing owl specifically, the approach that we as an area, a nine county area have taken just really hasn't worked. And doing something through the HCP to provide regional coverage for the burrowing owl is really to me like the La last chance we have of saving that species. So I look for this plan in particular to provide a lot of benefit in that area. Regional benefits can be hard to quantify because they are kind of fuzzy. If we can improve the biology, the ecology and protect the species that protects every citizen in the area in some unquantifiable sense. Another advantage of the plan will be the additional acreage that will also be open for different types of recreational activities like hiking, biking and horse riding. So there are some peripheral benefits to the -- every citizen just based on that. So even though these things are hard to quantify I think there are some real advantages. I really appreciated being on the stakeholder group and in particular listening to the questions here, because hearing the different perspectives from in my case people outside the environmental community and the issues you have here actually has been very interesting to me, and I appreciate the opportunity to come here and just hear the concerns that the people raise here. So thanks very much.

>> Mayor Reed: Thank you. And Dennis Martin.

>> Thank you mayor. I'm here speaking on behalf of Naop Silicon Valley and just so you know Naop represents over 120 member firms in commercial real estate and about 2,000 local and regional commercial real estate development professionals so we have a large reach across Silicon Valley. We are concerned about jobs. And competitiveness of San José and the region. And we are also concerned about the adopting and implementing of this extremely ambitious plan. The scope of the plan seems extraordinary to us. The cost is alarmingly high and the consequences of failure especially on the funding side are risky given the City's current and foreseeable economic condition. Council, more questions need to be asked regarding the City's obligation when the funding falls short. The touted benefits of the plan are portrayed as worthwhile but achievement of these limited benefits to the city carry a hefty price tag adding millions of dollars a year in business and development taxes. The plan

potentially encumbers the city's economic competitiveness by burdening business decisions on where to locate and where to grow. This council had the opportunity last year to draw the line on this plan and demand a right-sized HCP capable of being more realistically funded and administered. You didn't act at that time, cautioned as you were by staff, warnings regarding the expense of reorienting the direction of the planning effort. But the local costs are clearly staggering especially in the light of any true benefits to business, you should act now to try to cut the scope back of the plan and cut the cost of the plan. At minimum, the council should demand that urban infill development impact fees or the nitrogen deposition fees be eliminated altogether or, in the worst case scenario imposed county wide on all new development. This city needs to protect whatever competitive position it may have at least by leveling the playing field right here in Santa Clara County, if not throughout Alameda County and San Mateo County as well. This is a tax remember on jobs, not just on residential. Despite sincere and appreciated efforts by the city to streamline permitting processing, I want to tell you that I hear often from my members about how much easier cheaper and faster it is to do business in the neighboring cities of Santa Clara, Sunnyvale, Mountain View and even Palo Alto. NAIOP recommends that San José not add yet another hurdle to fair competition for our property owners, developers and businesses. Thank you.

>> Mayor Reed: Daniel Oldsteen would be next.

>> Thank you, Dan Oldsteen, I'm representing the nature conservation here global conservation organization working in approximately 30 countries around the world as well as in all 50 states. My position is as a project director for our Mt. Hamilton project which is an area that covers the area stretching from Silicon Valley over to the edge of the Central Valley a landscape that's approximately a million acres and a lot of that is encompassed within the habitat plan area. So the nature conservancy has participated as a stakeholder on this process since its inception, very interested in both conservation of the resources here as well as continuing to extend the benefits of the resources here to the communities here. One of the reason the nature conservancy has been involved in investing in this area and in particular in Mt. Hamilton across all the landscapes that we could be working across California is because of just some of the really rare and unique values that this area has. It's pretty unique to have such a large in tact landscape here, so close to such a large and vibrant urban community. And that provides you know some of the unique quality of life that we all enjoy here. On top of that we've got robust populations of iconic

species things like tule elk, mountain lions, golden eagles, as well as what was talked about earlier, some of the rare and really unique species that are found here and if -- either only here or here and very few other places in the world, things like the bay checker spot butterfly, California tiger salamander, red legged frog, among others. So just briefly to touch on some things that have already been mentioned, but things that I wanted to highlight, of why the nature conservancy supports this plan and sees it as incredibly important for this area. First is that the coordination that this plan provides really directs protection to the most important areas. To ensure that the species that are in this area and that are found here and the populations that are here continue to remain robust and there aren't any additional listings as Kay mentioned this you know it's considering the species that are already listed but those that could potentially be listed, one of the real benefits of this plan is to prevent any future listing. Second is that it provides the long-term in perpetuity management dollars to manage the resource out here and to make sure that the resource can be on the lands that are protected can be managed into the future. Thirdly, thirdly and lastly is that it allows the city and the county to leverage opportunities as was mentioned earlier for additional funding, both at the state level and at a federal level, and is a great example Contra Costa County over the last four years has gotten something like \$40 million in federal funding to implement its plan. Thank you for the opportunity to comment and also for all the thoughtful comments that you all have provided today in discussing this.

>> Mayor Reed: All right, last on our panelists is Tim steele.

>> Thank you mayor council and staff for the invitation for the opportunity to speak to you today, also want to thank the task force for all their dedication and extensive patience six years, two hours this afternoon and a lot of good questions. I also think by design I was put at the very end. Staff knows how I like to speak and talk and carry on and so all the questions on my sheets have been stolen from me, looks like someone has been looking over my shoulder and has asked some of the comments, I was also on the HPA board and the residential side of the Sobrato house and Dennis has done a good job carrying through some of the questions and issues that NAIOP has. Since most of my questions have been taken, I'd like to make a couple of points. First I want to remind the council that this is an elective opportunity not a mandated opportunity to consider a plan. So in an elective environment you get to elect what it is or what it isn't and what is best for San José. There is a lot of good

questions have been asked today by a lot of people, not just the council, a lot of point has been put on the table, obviously there's a lot of different interest groups that are interested in a good HCP. It benefits everybody. If it's done right and it's done with San José's scope in mind. With all the few questions I have left, I do want to pose, does this plan improve, or not, San José's competitive market land use position and its ability to capture jobs? We are have competitively marked against Santa Clara, San José, Sunnyvale, excuse me Mountain View Palo Alto. The come back of the current economy has centered in Palo Alto. Palo Alto fills up, it trickles down to Mountain View, then trickles down to Sunnyvale, then the Santa Clara then to San José for primarily the cost of rent and the cost of doing business in San José. If you take that away, where does it go? It pushes back up the peninsula for the same costs of Mountain View or the same costs ever Palo Alto. So I just pose the question, keep in mind that you get to make the choice of whether this plan is right for San José or not and keep in mind also that we need jobs, we want to see jobs, we want to see housing all to have a vibrant environment and economy. Second question I'd like to ask is, what percentage of the undeveloped or the potential redeveloped properties within San José truly benefit from all of the points and principles that are in the HCP? Finally I'd like to say that the market in Silicon Valley, not just San José is incredibly expensive. Incredibly competitive. And incredibly efficient. Meaning that as I go as a developer or a land use perspective of property a landowner and I go to buy a piece of property, before I buy the property I enlist all of the professionals that are out there available to me to take a look at the property and what issues that property might have relative to sensitive habitat plans and so forth as well as wetlands. Any kind of traffic mitigations, any kind of archaeological, the whole gamut of CEQA and federal and state issues all are looked at in advance of even buying the piece of property. Nothing is going to change relevant to being aware of that before I buy a piece of property because you have a plan in place or not. We need to find what the competitive advantage of San José adopting an HCP is so we can get more jobs in San José and not push them to cities north of here. Thank you very much again for the opportunity to be here and be happy to answer any questions for you.

>> Mayor Reed: Thank you. Well, this is the time for councilmembers to address questions to any of the panelists on the topic. So of course staff is still here and could answer questions. I had a couple to begin with, first for Tim Steele. I said something earlier, I'd just like to see if you agree with which is that San José is already a higher cost when you add in fees and taxes, for development, and I'm thinking of the industrial-commercial

development than our surrounding cities and this would be layered on top of this. Am I misperceiving that? You're out there looking.

>> Well I'm glad you used the word perception because the absolute perception is yes. There have been studies in the past using models of typical projects that was co-done between the Planning Department, City of San José and HBA at the time, BIA now. We haven't done wip in a while to really look at it because there's been a lot of fees added to the various cities because of the economy and the change of the economy and such but the perception is absolutely, San José is more cumbersome to do processing in, more time and more money.

>> Mayor Reed: Then from the developer's perception in terms of cumbersome factor in development would you see us having an HCP in place as a plus or a minus or say a project in North San José which of course we have plans for many millions of square feet of new commercial and industrial development. Is that a plus or is it just another tax? From the developer's perception?

>> Perception it would be another burden. Could it be better, could it be something that advances the ball better in North San José? Most of North San José has either been analyzed under a program EIR for the RDA, the expansion of the update of the plan, most of the property owners out there now are sophisticated developers that are aware of what issues they have to deal with to develop their property. The perception is does this buy you any additional time or comfort and I would suggest today, it does not.

>> Mayor Reed: What if you found a nesting pair of burrowing owls on a large commercial property up there does this make it easier or more difficult? Seems to me it's helpful with regard to burrowing owls.

>> You still have to do a burrowing owl survey under the current suggested HCP. If I'm buying a piece of property I know there's a process associated with assessing whether there is a burrowing owl or not on site but the precedent of how to mitigate that burrowing owl is pretty defined. There's certain habitat conservation plans that are -- excuse me there's easements out there to mitigate and relocate those burrowing owls if in fact they're on your property. There's a market value and a market cost associated with that relocation. So it's not like it's

nebulous. You pretty much know how to characterize the risk or cost associated with that, including time. I know generally how long it should take me to get through that process and the burden of that on my property and to develop it might be.

>> Mayor Reed: Maybe to Joe back to the burrowing owl question if somebody has a piece of property I'm thinking of that nice big orchard property north of North park still owned by the original property, if we end up with burrowing owls, maybe there's some there I don't know, how would they be handled under the HCP, if you got a live pair, a nesting pair of burrowing owls. That would be handled differently under the HCP than we would today.

>> Joe Horwedel: I think the today question I may defer to Scott Wilson because I think how we have done it in the past, the Fish and Game Service have said that they will no longer do it that way, the way we were allowed to buy land in the Central Valley. With the HCP we are first about recovery, so the ability to go through and displace owls basically that is going away for a while is my memory of how that structure, maybe Darryl you want to take it of how the first phase of the HCP deals with owls?

>> Yeah. Thank you. So if you had -- if you had a nesting pair located on site, as we said before you'd still need to go through the CEQA process and so forth. CEQA doesn't necessarily go away. The intend is to stabilize the populations that are currently existing and so there would need to be consideration for whether -- whether we would try to say relocate the existing pair that was onsite or whether you would -- because again, the goal is to try to not end up with onsite mitigation. So we already have known colonies, communities that we would want to reinforce. So again it would be the notion of essentially writing a check, and then we would still have to deal with the disposition of the owls that are onsite. Am I characterizing that correctly David?

>> Thank you.

>> Joe Horwedel: I guess the message out of it is today, the way fish and game had allowed mitigation to happen a couple of years ago, they said they would not do that on a project by project basis anymore, they are really ratcheting down on that. The plan puts together the assurances of the long-time survival of the owl, saying

here are the places that that should happen in the valley, that it is about bringing -- growing the populations, and the goal is looking at the plant buffer lands, the Seroni bus shard area and the airport area, of how to make those colonies more sustainable, but that we would clear development sites such as North San José for doing comment.

>> Mayor Reed: I still don't see the difference between having a plan or not having a plan because it sounds to me we're going to handle the burrowing owls the same either way, because we've got burrowing owls there's a nesting pair and you can't just evict them.

>> Joe Horwedel: The difference is without having the larger strategy about how do you grow the population over time, that fish and wildlife or fish and game is not going to allow the way they've done the relocations in the past, essentially passively relocate, to close the burrows down, that the goal is to stop doing the one-off mitigation, because we've seen the one-off mitigation has actually resulted in the population declining.

>> Mayor Reed: But if we have a habitat conservation plan, will we be able to passively relocate just by closing the burrows?

>> Joe Horwedel: Well, because you would be acquiring the sites where we would be relocating them to, you would have long term active management with it. That you would also be settling forward the plan of bringing owls into other parts of the county where they have left. So it's a large -- that much larger plan. So while you may still be passively relocated on this site, you're doing that in conjunction with a larger effort that protects the -- you know the long term survivability of the owl. I think the cost would go up, I think that's the difference, is that because you're not just going and buying some land in the Central Valley for \$5,000 an acre, you're buying land here in the valley where it's much more expensive to put easements and active management on it. So I think that's the difference going open.

>> Mayor Reed: Well, we'll have to talk about this further. I don't see any difference whether you have a plan or don't have a plan, basically. From the developer's standpoint. Maybe from the owl's standpoint there is a

difference. But from the developer's standpoint we're going to deal with the owls in order to protect the owls either way. We'll talk more about that later. I had a question for Paul. Paul could you be a little bit more detailed what you think would be a good plan since you have experience with the other plan, East Contra Costa or whatever, what would we do to make this plan to make it a good plan?

>> First, remove the infill tax/nitrogen fee, I think that would be a very good step. Second, commit to pursue the wetlands integration that I talked about. Third I think one thing that has from my perspective been missing and it's hard to get my arms around it but we're starting to see some of the information in the case studies, is really look at not just the mitigation and fees that the HCP may impose, but how does that cumulatively interact with all of the existing fees and taxes in not only San José but the county and the other jurisdictions? One of the concerns that I have voiced from the outset is that a lot of the conservation strategy and mitigation requirements and fee levels developed for the plan were done so during what now in hindsight appears to be an historic housing bubble, with new housing prices in many instances twice what they are today. So I think -- and this is more in the nature of a question for additional research -- I think that we really need to understand what is the combined if you will fee load that is going to be placed on new housing over the next five, ten, 20 years, and what is the ability of that new housing to bear that fee load? Because it's going to be different than the housing that's been built that we're kind of all used to, six, seven, eight, \$900,000, million-dollar new houses were sort of the norm. And at those price points, you can absorb a lot higher fees, level of fees. I don't see those new house prices coming back, maybe even for the 50-year life of this plan. And so if you still have the same fee level, but sales prices in half, that ratio of fee load to sales price is markedly out of balance. And so I think that goes to a fundamental question that Tim also alluded to, and that's the financing and the financial feasibility and ground truthing of the plan's financing and, can the development that is going to occur, realistically be expected to shoulder the fee levels, not only in the HCP but all the other fees that are imposed by cities and counties, some for very good reasons and some for not so good reasons here in the Bay Area? So I think more information on that is critical, in order to make a real informed decision. And if I could just a point on the burrowing owl just in favor of the HCP or a good HCP and that is, as I think it was David Zipin suggested, I think that the burrowing owl is likely to become listed both at the state and perhaps the federal level. And having an HCP in place that covers the owl could potentially blunt some very, very bad consequences of that listing. I mentioned earlier critical habitat and historically HCPs and the service

has been very good about this, has excluded new areas from critical habitat dissensions if they're covered by an HCP and that species is covered. And from my own experience working with Kay in the Sacramento office, they were fantastic in East Contra Costa in relying on the HCP to exclude critical habitat designations for the tiring salamander and the red legged frog. That was a very big deal for us because we think critical habitat is a loaded gun in the hands of some groups that do not want any development. Now, recently, there's -- it has come to my attention that out of Washington, the new administration may be taking a bit of a different tack and not excluding entire HCPs from critical habitat designation. That is very concerning to me, very troubling. I think it's something that I don't want to put words in Kay's mouth but I think she would be troubled because she I know supports that idea because it incentivizes HCPs. But that is something that we all ought to look into and research. And with respect to the burrowing owl, you know, really get a firm answer if we need to from secretary Salazar at the DOI that no critical habitat is going to be overlaid on this HCP if it's adopted.

>> Mayor Reed: Question for all the panelists drawing on that. How many of you think we can rely on the next administration for a president that's not been elected to maintain these same environmental policies that we have today, and during the 50-year habitat term we're talking about multiple administrations, how do we get certainty? That's a piece I don't really understand. We can be certain with the people we're dealing with and their interpretation and whether it's a curriculum habitat or something else, isn't that just going to change with the next administration, it will get better or it will get worse depending on your informative but it will change. Does anybody want to talk about, convince me we'll get certainty, who believes we'll have certainty of our panelists. We can't be certain what the state government's going to do in the next three days, let alone the next 50 years. And the same is true with the federal government. And even if the statute currently says okay we really mean it Congress can change that statute. Constitution, that's just for guidance. You know? That's a problem we face, it's a problem with a democracy. It's always changing.

>> Well since I might be the only federal agency person here I guess I'll respond. I mean a deal is a deal. That's the premise of the HCP. That's what we say and put into the document. It is in essence a contract for us and it's a item for you. So the implementing, our attorneys all the attorneys here don't like it when I refer to the implementing agreement as in essence a contract.

>> Mayor Reed: That's why they don't want to worry about the constitution problems for contract. They want the flexibility for the federal government wants to change its mind. That's why Rick always wants to maintain flexibility for us.

>> That's when I talk about burden flies, people's eyes roll back and when I talk about contracts, that's what I go. But all I can say --

>> Mayor Reed: We start seeing butterflies when we talk contracts. They're connected.

>> So it is a deal, that's the whole premise. We were litigated about it, we have prevailed in it, we drafted regulations. It's been enacted. You know, for better or worse San Bruno was the first HCP. There's been a lot of litigation, a lot of issues, and as somebody mentioned, we just did a plan amendment to add a new -- add a species that hadn't been included on Calipi. So and the other part that people don't often talk about at the end of the day, when you have a permit and let's say somebody does sue, at that point the Fish & Wildlife Service comes to court with you. It's a federal action. We support it. When we issue the permit we defend that case and we defend the issue. And on the Tonlas HCP for example we were there every step of the way with the city of Sacramento defending that court case. And we will continue to do that. I mean, I can't say, obviously I don't -- I've been a federal employee for -- I'm not telling, but a long time. I've gone through a few administrations, and I might not be here on the 17th, I think it is, I might have a vacation. As far as the permit at the end of the day, it's a deal. Now how the Congress deals with the endangered species act or thousand president or how things change all I can say is the endangered species act has been around for a long time. It hasn't necessarily gotten weaker, it's gotten more regulations and stronger in its implementation. We've tried to be better partners and work together, but as an agency can, you know, it's widely supported and appreciated by the public. So that's the best I can say.

>> Mayor Reed: Okay. Anybody else have any comments on the certainty issue? We will of course have to rely on our lawyers to figure out whether there's any certainty in the contract that we might enter into whether or not

it's a contract. Any other questions from the council at this time? I do have some requests from the public to speak I think. I don't have all the cards but if you want to speak please bring the card down, we'll collect them. While we're collecting cards Councilmember Rocha.

>> Councilmember Rocha: Thank you. I'm going to put Mr. Campos on the spot a bit and I'm sorry for that. I'm a former employee of the BIA and I've been on that side before and so I was a bit surprised when you talked about the positive side of it as much as you did I want to thank you for --

>>> We've evolved.

>> Councilmember Rocha: I want to thank you for doing that and having an open mind when you approach these issues. It helps our jobs on this side now. But I'm going to press you a little bit in the sense of these type of agreements or these HCPs the value for you is a certainty but is there any other value to you in terms of potential land right anonymous that is undevelopable? And it's a loaded question but that could be you know infill or not.

>> Generally, my general answer would be no. HCPs both as I read this one and Contra Costa and others typically have a mapped conservation strategy that seeks to pick out the best land for conservation. And that sends a pretty strong signal that that land is not going to be developed. I think that often, the reverse is true, that the -- there are individual land Owens and let's be clear there will and it will always be winners and losers in regional HCPs, based on where you own land and what your plans were. If you happen to be a property owner who had grand designs for a large project that is marked high priority for acquisition, you are going to be perhaps a loser in the HCP. Whereas if the HCP were not there you might have a better chance going through the individual existing process. So I have heard from some of the more, call them extreme, whatever, opponents of HCP on the environmental side that they are licenses to kill, you know, a lot of rhetoric like that. But I've not seen that in practice, where areas that would not have been open to development, are opened up, because of an HCP. I think if anything, the balance tilts a little to the other direction where, as I think you know one of your staff slides said, you get a little more mitigation than you would project by project through an HCP. And I think the -- again, there are winners -- and the reason that that happens is that's why there's winners and losers. Some

landowners will end up paying significantly more, or some more in mitigation. They might have had no mitigation under the current regime. Whereas others would have spent six years arguing over permits and doing surveys and might not have even been able to avoid a certain impact and had very high steep mitigation. So I think generally on balance it works out that the environment and the resources get a little bit more than they would on a project by project basis. Which is why the service has for the last decade really pushed regional HCPs, you know, through the hook of section 7 consults on necessary infrastructure projects. Why we're here. Why Contra Costa Water District was at the table. Why Solano was at the table. Regional seize this as being able to get that little extra mitigation for recovery so that's how I would respond.

>> Councilmember Rocha: Thank you. If I may ask Joe a question back to the mayor's question what's in it for us, is there value on the public projects? So outside of the public projects is there any other value to us I guess given what Paul just talked about of potential development? Because our interest in some cases are potential development, providing housing for the residents or jobs. Can you speak to that a little bit?

>> Joe Horwedel: I think the real value ultimately is going to be building infrastructure. There are -- we don't do big green field developments like you see happening in Gilroy or East Contra Costa county. Coyote valley would have really been the big green field development in San José and we've pushed that out of the horizon past the year 2040. So you know, looking in this near-term planning horizon, the next 30 years, we're really in the business of reusing land, repurposing land rather than taking what's open and putting something on it. That said, there still are properties that have never been developed in North San José and Evergreen parts of the city. But for the most part we're built out. The value we're going to see as a city is dealing with infrastructure, improvements and getting through the section 7 process. Or where you need, you know because you have consultation because you're using federal dollars or because you need a federal permit for some reason, you need a wetlands project.

>> Councilmember Rocha: Tim do you have something?

>> I was going to say, there's an opportunity to buy 300 acres in Coyote valley for the HCP if in fact it's approved, on Bailey avenue and Santa Teresa, I can give you the APN numbers afterwards if you like. But it does present

an opportunity but a quandary, too, that land is currently in the general plan as jobs. And with this kind of a plan in place it actually might have a higher marketplace as mitigation land.

>> Councilmember Rocha: You haven't disked it, have you? Go ahead.

>> Actually just to follow on that point and the point that was made a minute ago, the one benefit that it can have, an HCP can have for landowners whose lands might be identified as a high priority for protection is that it generates an additional market for those landowners. As the -- working for the nature conservancy, an organization that works with private landowners to find ways to protect land, this is a mechanism that provides additional funding and additional opportunity for us to work with those types of landowners to protect, so it may reduce the opportunity for development but it might provide an alternative market for those landowners to realize the value that is in their land and in some cases their land may be more valuable for protection than it would have been otherwise without the HCP.

>> Councilmember Rocha: Thank you.

>> That's APN number 264, 65, 27, 298.6 acres.

>> Mayor Reed: You can find it on eBay.

>> Councilmember Rocha: Last question for Joe. Can you share with me a little bit of how the relationship between this and the general plan would be, I mean, is our general plan honored in the sense of is there a potential property that may under an HCP look more developable than it does under our general plan or do you not see that potential at all?

>> Joe Horwedel: The HCP really looked at what was our urban growth boundary line and with the general plan update we are not expanding the urban growth boundary line. We are assuming everything in the city limits in the urban growth boundary will be developed. We're not going to build in the creeks, so we're assuming the riparian

corridor policies. But if it's in the City's urban growth boundary, we went into this effort assuming we were going to develop it versus leaving a checkerboard pattern of open habitat in the middle of a neighborhood. So you know from that end of it, we thought about that as a part of the mitigation side and the restoration side of things. You know, the question is, are those projects that would have triggered the need to pay for you know habitat acquisition or the nitrogen fee. Most likely not and it really would be I think where we would have gotten caught with those would be at the time of doing you know the sewer expansion, or looking at federal dollars for roadway project that you would see in the section 7 consultation similar to the words we showed earlier today, that that project has the responsibility to do you know X and that somehow we would then have to figure out how to pay for that. So in some ways the plan anticipates what those costs are in infrastructure and moves them more onto the private development side and infrastructure side instead of just being solely on the public agency side.

>> Mayor Reed: Couple of people mentioned the need to engage the army corps of engineers around wet land I assume, could somebody talk about that, how important is that and what value does that have? All I know is that everything we do with the army corps of engineers takes ten years longer. Would that be something that could be speeded up if we engage the army in an HCP? Your microphone needs to come on. Still not on. Let's try another one.

>> This?

>> Mayor Reed: I think so.

>> Hello, hello.

>> I wore this one out. Hello? Okay.

>> There you go.

>> Integration of the 404 permit program with HCPs has been a significant goal of the building industry, I mean nationwide for a long time. And it's been one of the chief criticisms that we have always had of HCP, regional HCPs because what you run into is if you have a project that has what's called the federal nexus you need a core permit, have federal funding within the HCP area, you have to consult with the U.S. army corps of engineers and fish and wildlife. There is the very real possibility that the corps might impose a whole new suite of mitigation requirements. And in particular, their governing statute talks about avoidance of impacts to wetlands and minimization, kind of the opposite of what a regional HCP tries to do, which is to say develop here, avoid postage-stamp mitigation, and acquire conservation areas here. Now, with the Sacramento district proposing a, what it calls a regional general perm for the HCP plan area in eastern Contra Costa county and an inlieu fee program, you would almost have one stop shopping from these two federal agencies that could potentially save years and millions of dollars. I mean, it is really important which is again why I say, you know, I would love it for all of those interested in HCPs to comment favorably on the Sacramento district's proposal. And again it's not just the corps but if we can get the corps as a first step then we can move on to the water boards. Our regional water boards are often a much bigger problem than the corps can be, in terms of looking at species and sort of getting into the business of fish and wildlife and fish and game. If we can use this to get that one stop permitting on both aquatic and species issues, it would be very beneficial. So.

>> Joe Horwedel: The one thing, Paul, is that when we were talking yesterday about this, is the HCP in East Contra Costa county set the framework that allowed the army corps of engineers to do that permit. Instead of doing a whole new set of analysis and mitigation is that it used the HCP as that document which allows you to be streamlined. And my recommendation to the council is that we should be providing comment on that proposed process that they're doing in Sacramento because it would be very beneficial to us because we have had major challenges with the San Francisco corps on this.

>> If I could just speak to this, I and my firm has been involved in developing that regional permit for East Contra Costa county. I think we do have a unique opportunity because even in the last month we have seen leadership at the San Francisco district of the corps which covers our area with a new willingness to develop regional general permits for HCPs and the wetlands program that we've designed into the Santa Clara habitat plan is very similar

to the one in East Contra Costa. So the model we have can be I think fairly easily adapted to support regional general permit application and I would recommend considering that program in the same way that Contra Costa did it, in other words, in sequence. So have the habitat plan be approved and then or even before then start to work with the corps to later get a regional general permit approved for the same plan.

>> Mayor Reed: Tim, do you want to add to that?

>> Sure.

>> If we're to fold that piece into the plan would it be easier to get some of the cities, adjacent cities to reconsider participating in the whole plan?

>> I think that's something we could look at. It would depend on their needs for wetland permits. And certainly the Water District could be interested in that. They already have some existing permits with the corps, just for their activities. But it really depends on whether those other cities might have needs for wetland permits.

>> Mayor Reed: All right, any other questions from the councilmembers? We'll take some public testimony now I think. And then we'll come back for further discussion after we get the public testimony. Come on down when I call your name please so you're close to the microphone. Stewart Weis or Weiss, Pat Saucedo, and then David Wall.

>> Thank you, Mayor Reed, and thank you, city council. I'm a biologist, and I'm also known in certain circles as the bay checker spot butterfly guy and the nitrogen guy, because it's been my research that really laid the scientific framework for this. And I'm not going to talk to you about that right now. What I'm going to do is extend an invitation to the city council for the last week in March or the first two weeks in April. You'll be receiving a written invitation to come out and see the habitat. Because right now, it's blobs on maps. It's this abstraction to you. But when you see what we have within the city limits of San José, you'll understand the value of why we need to preserve it. And actively manage it. So I remember I actually took Mayor Reed when he was a city council

member. Please come again. And we'll have it set up so you can show up, we'll get you up to the top. Couple hours, we'll feed you lunch. And you can get back to your office by 1:00, although after a beautiful springtime day in California, in more wild flowers than you've ever seen before, why you would ever want to come back to the office is a really good question. But I really want to commend everybody who's worked on this, because it's really complicated. The institutional aspects of it are even more complicated than the biology. And we're really on the verge of doing something great for the environment and great for the city, the county and the region. If we can't pull this off in Santa Clara County, I don't know where else in the world we're ever going to be able to pull this off. And there's a mass extinction taking place. And if we don't take care of our own backyard in what is by far the most efficient process to deal with these issues, I've been through the train wrecks on the project by project basis in the Silver Creek hills. It's really ugly. We have a chance to do it right. Thank you.

>> Mayor Reed: Sorry to ask you to stop. Pat Saucedo and then David Wall.

>> Pat Saucedo: Mayor and council, Pat Saucedo San José chamber. I'd like to thank staff and also the HCP staff and consultants. We held a joint meeting on the 17th of this past month. We had the chamber, the Santa Clara County Realtors, tricounty association, Naop, HBA, the architects institute and the Silicon Valley brokers participating. And we went through the HCP and I would say listening then and then listening today there are still two or three core issues I think are still quite concerning. For the City of San José looking at the future of our city over the next ten to 15 years, having a level playing field from an economic development standpoint is going to be absolutely critical. I listened this afternoon and I heard the council being corrected. This isn't a plan. It's a contract. It is a \$1 billion contract. And that's what you're being asked to sign on to. All of these organizations I've mentioned are wanting to protect our species, our habitats, our environment. For our next generations. But in order to do that, we also have to maintain a level playing field to create jobs in our community. The infill fee alone is very concerning. Our envision plan is for future development in our cities. Our villages. That's what we're talking about. The City of Santa Clara, the great America parkway area, they're still looking at infill and new development. Moffitt field in Mountain View, in Sunnyvale the old Lockheed lands they haven't been all redeveloped. They are going to be repurposed. They have great plans and in downtown Sunnyvale. So I say we don't stop today, but what the cities must do is tell all work that's been done, now you need to go back and let's

make this the regional plan it should be. That was the original intent. All of our cities that would come in here today and say this is very important, then they need to step up and be part of the contract. They need to step up and say we're going to link arms with San José, we're going to protect our species, we're going to create the resources to create long term protection and conservation areas.

>> Mayor Reed: Sorry your time is up.

>> Pat Saucedo: Thank you, mayor.

>> Mayor Reed: Thank you. Our last speaker, I believe, David Wall.

>> I have been out in the habitat today, watching the honey bees in my plum trees, apricot trees are now waking up. The cherry trees and apple trees are still asleep. I have a plan for you that will solve everything, make everybody in this room happy. Suspend the habitat plan for 50 years. Suspend also, sewer hookup moratoria for 50 years. This will ease permits from the stayed and Feds so we can rebuild the water pollution control plant with ease, rebuild a collection system, secure water supply, and comply with the regional municipal storm drain permit. Land values will skyrocket. People will be growing fruit trees again. City will be able to consolidate its services due to years, decades of incompetent fiscal planning and incompetent management by councilmembers and mayors. Now, a habitat plan's a good thing and I was seeing out there today in the orchard, I provide a habitat plan for burrowing politicians, okay? And really, a sewer hookup moratorium is the best thing for you because 50 years from now, most of the city employees that are on retirements will be dead. And that will focus a whole new amount of money to help you out for the tax reasons you'll lose from the sewers hookup moratorium. Including probably one city employee who may not live to be 107. Thank you. Former city employee.

>> Mayor Reed: That concludes the public testimony. I think there are probably some additional council comments or questions. We'll see if there are. Before we close, Councilmember Kalra.

>> Ash Kalra: Thank you mayor. I've had my opportunity as liaison to ask all the questions and I really appreciate the questions that you as well as other councilmembers have been asking. I thank all the councilmembers for being here and adding their input and the staff this has been years in the works as well as with the other agencies. I know that -- I think that we're -- arrived at or very close to a good balance that we have here. That can add some certainty and I think allows San José to take a leadership role, once again in the area of the environment, and protecting some of the habitats that are incredibly special. And so I certainly would second the suggestion of having an opportunity to go and visit some of these areas that we're referring to, and some of the beautiful hillsides that we have down in South San José and I think it will give you some sense of why these protections are needed, and I appreciate some of the comments of some of the pannists of the certainty that this plan gives can in some ways be a benefit to the development community as well, thanks.

>> Mayor Reed: Anybody else? I had a couple of comments that I wanted to add. The things that we didn't talk about today in great detail but are still on my list of issues to be concerned about and that's cost. We talked about it a little bit. I'm concerned about the direct cost to the City of San José because budget is our number 1 problem, our number 1 issue and I suspect over the course of 50 years it probably will remain that. So I know there's a direct cost to us for whatever fees that we might have to pay, whether it's \$20 million or some tens of millions it's a significant number. The administrative cost to us of doing this, over which we don't get any extra money, and then the cost of administering the new entity, the JPA, there's a lot of money in this plan contemplated for administrative costs and managing the land and haven't had a chance to look at those and I don't really know that those are the right numbers or reasonable I think is an issue we'd have to deal with. And then finally I mentioned earlier prop 26. And whether prop 26 applies or whether this is -- can be defended as a development fee I think is an interesting legal question that the City Attorney will probably want to give us a confidential memo at some point when we get around to making a decision. Because I think the nitrogen fee or whatever we're calling it, it's a very interesting nexus question and I think that will take some careful thinking about whether or not we can make that stick and defend it. And under prop 26 we don't really have a choice, or for some other ways to approach it. But I'm concerned about those. In addition to the things I mentioned earlier, I want to thank everyone for being here, our participants, our panelists who take an entire afternoon out of your schedule to be with us. You don't get to do this very often, we do it all the time. So we appreciate the fact you've come in to spend some time with us, and as

well as the public who participated in this whole process. I know we have a lot of stakeholders participating in addition to councilmembers Kalra and Chu who have been to a lot of meetings. Acknowledge that. And unless there are any other council questions or comments, I think we are done, unless staff tells me we have to keep going. No, we can quit? All right, we're done, we're adjourned.