

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** December 5, 2008

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Approved Paul Keith Date 12/8/08

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**COUNCIL DISTRICT:** 3 and 4  
**SNI AREA:** N/A

**SUBJECT: TEMPORARY INCREASE OF THE NORTH SAN JOSE POLICY AREA  
PHASE 1 CAP ON PERMITS FOR RESIDENTIAL UNITS**

## RECOMMENDATION

Staff recommends:

- (a) Direct staff not to modify the existing North San Jose Area Development Policy Phase 1 cap for residential units and to continue to review and process applications for residential projects in accordance with the policies set forth in the adopted North San Jose Area Development Policy and other pertaining ordinances, and
- (b) Direct staff to explore within the North San Jose Implementation Strategy, currently under preparation, adequate provisions to ensure the delivery of affordable residential units within North San Jose consistent with City goals for affordable housing, and
- (c) Direct staff to evaluate the possibility of including, within a future amendment to the North San Jose Area Development Policy, a shortened timeframe for the reservation of residential units.

## OUTCOME

As is set forth in the North San Jose Area Development Policy, reservation of the remaining residential units available under Phase 1 of the North San Jose Area Development Policy will take place at issuance of a planning permit (Planned Development Permit or Site Development Permit) with preference given to projects with a pending Permit application that best meet the Policy's goals and stated criteria for new residential development. If existing Planning permits expire, the

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units reserved under those permits will become available and may be allocated to other projects with pending Planning permit applications.

Staff will return to the City Council in 2009 with a proposed North San Jose Implementation Strategy that will include additional policy guidance for the reservation and allocation of residential units within the North San Jose policy area and for the delivery of affordable housing units. At that time, staff will also provide further analysis of the need to amend the Policy, including a potential change to the permit duration for residential project Planning permits.

### **EXECUTIVE SUMMARY**

The adopted North San Jose Area Development Policy states that the City may not issue Planning permits for more than 8,000 residential units in Phase 1 of the Policy's implementation. Staff has been asked to devise a procedure to allow a temporary increase in this cap so that additional projects may obtain Planning permits in the near term. Staff has evaluated the processes and constraints for issuance of Planning and Building permits and determined that there is not a good procedure by which a temporary change could be made to the cap. A permanent increase could be made to the cap, but staff does not recommend this option.

Issuance of Building permits is a non-discretionary action and any project with an existing Planning permit can move forward to construction if the property owner or developer decides to implement the project. Because the City cannot create a discretionary process that would stop the issuance of Building permits for some, but not all projects with approved Planning permits and that otherwise meet Building permit requirements, a temporary increase in the 8,000 unit cap for Planning permits for residential development could result in the actual construction of more than 8,000 units, equivalent to a permanent increase to the cap. A permanent increase of the Phase 1 cap to allow issuance of Planning permits in excess of 8,000 residential units is inconsistent with commitments made by the City during the North San Jose Neighborhoods Planning Taskforce and other community outreach processes.

While it could be possible under the current Policy for residential unit development rights to be moved from one site to another, based upon a survey of developers or property owners with existing Planning permits, it appears that all permit holders remain intent upon pursuing a residential project and are unlikely to be interested in relinquishing their current residential unit allocations.

Although implementation of the residential component of the Policy's Phase 1 is nearing completion, it is possible to establish additional criteria for the Policy's future phases. To address changes in the way the City implements affordable housing projects, staff recommends that the Implementation Strategy under preparation explore means through which at least 20% of all units within each future phase can be designated as affordable. Also, staff recommends consideration of a potential amendment to the Policy to reduce the duration of permits from two years, the standard for most permits citywide, to one year, with the provision that developers can obtain allocation of residential units in advance if they pay the Traffic Impact Fee and all other fees for the project (e.g., fully meet Parkland Dedication Ordinance obligations, payment of

affordable housing in-lieu fees, etc.) with the exception that certain fees may be deferred until issuance of Building Permits for units covered by an approved affordability agreement.

**BACKGROUND**

The North San Jose Area Development Policy was approved by the City Council in June of 2005 with the following stated goals:

- To demonstrate the City’s commitment to the ongoing development of the North San José area as an important employment center and as a desirable location for high-tech corporations within San José as well as the Bay Area; and
- To manage regional traffic patterns and establishing a framework for “smart growth”.

The adopted *North San Jose Area Development Policy* (Policy) provides capacity and a policy framework for the development of up to 26.7 million square feet of new industrial/commercial office space, up to 1.7 million square feet of new neighborhood serving retail space and up to 32,000 new residential dwelling units within North San Jose. This development capacity is divided into four, generally equal phases as follows:

Phasing Plan (Table 2 as shown in the approved Policy)

<b>Phase</b>	<b>Planning Permit Entitlement for new Industrial Development (Maximum Sq. Ft.)</b>	<b>Planning Permit Entitlement for new Commercial Development (Minimum Sq. Ft.)</b>	<b>Infrastructure Improvements</b>	<b>Planning Permit Entitlement for New Residential Units (Minimum &amp; Maximum)</b>
Phase 1	Up to 7 million	100,000	Group 1 Improvements	4,000 – 8,000
Phase 2	Up to 14 million	200,000	Group 2 Improvements	8,000 – 16,000
Phase 3	Up to 21 million	300,000	Group 3 Improvements	12,000 – 24,000
Phase 4	Up to 26.7 million		Group 4 Improvements	16,000 – 32,000

This Phasing Plan was included within the Policy so that residential and industrial development would proceed in relative concurrence and not too far in advance of supporting commercial retail and transportation infrastructure. The Phasing Plan establishes a maximum or “cap” for the issuance of Planning Permits for residential projects of 8,000 units within Phase 1. Similarly, Phase 2 has a cap of 16,000 residential units, Phase 3 a cap of 24,000 units and Phase 4 a cap of 32,000 units. In order to begin use of the Phase 2 capacity, Planning entitlements must be granted for over 7 million square feet of new industrial development and for over 100,000 square feet of commercial development and construction must be reasonably assured for at least 85% of the Group 1 infrastructure improvements. Until these triggers are met, the Policy does not allow the City to issue Planning permits for more than 8,000 new residential units within the Policy area.

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The City began implementation of the Policy in December 2006, following resolution of a legal challenge to the Policy made by the City of Santa Clara, the City of Milpitas and Santa Clara County. The City has since approved 15 residential projects, two industrial projects and two commercial projects that make use of the new development capacity provided by the Policy. Many of the residential projects also include commercial square footage in a vertically mixed-use configuration.

Status of pending residential Planning permits within North San Jose

Since final adoption of the Policy, Planning permits (Planned Development Permits) have been issued for 7,088 new residential units within the Policy area, leaving capacity for a maximum of 912 additional residential units within Phase 1. All of these projects have yet to obtain Building permits. At present, four more Planned Development Permit applications, all with approved Planned Development Zonings, are under review by staff and are pending City action:

1. ROEM (PD08-053) – proposal to construct 290 affordable residential units on a 4.00 acre site (72.5 DU/AC) on the south side of Rosemary Street, east of North First Street.
2. Oyama (PD08-063) – proposal to construct 3 single-family homes on a 2.99 acre site (1 DU/AC) on the southwest corner of Murphy Avenue and Oyama Drive.
3. Essex (PD08-056) – proposal to construct 777 residential in two buildings and a 2.58 acre park on a 10.48 acre site (74 DU/AC) on the east side of Seely Avenue, north of Montague Expressway.
4. BRE (PD08-046) – proposal to construct 460 residential units and 20,000 square feet of commercial space on a 2.37 acre site (194 DU/AC) on the south side of Century Center Court, west of North First Street.

In combination, the applicants for these four projects are requesting reservation of 1,530 residential units, which exceeds the capacity currently available (912 additional units) by 608 units. Three additional Planned Development Zonings on file for residential projects within the Policy area are considered to be inactive, due to a lack of evidence of activity on the part of the applicant for a prolonged time period, and do not have associated permits on file.

Staff has been in regular communication with all the project applicants to discuss the details of the Policy's Phasing Plan and to explain where each project stands in terms of reservation of residential units under the Policy's provisions. At this point, staff has indicated to the applicants for two projects, ROEM (PD08-053) and Oyama (PD08-063), that these two projects will receive the full amount of unit reservation needed for the entire project to be entitled as proposed. The applicant for the Essex (PD08-056) project has been told that they can receive a partial reservation, but not the full amount requested of 777 units. The applicant for the BRE (PD08-046) project has been told that at present they can not receive reservation for any residential units.

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### Preparation of the North San Jose Implementation Strategy

As directed by Council, staff is currently in the process of preparing an Implementation Strategy and Urban Design Guidelines for the North San Jose Policy Area. Drafts of these documents are anticipated to be brought to the City Council for consideration in early 2009 and have also been distributed to interested parties including members of the North San Jose Neighborhoods Planning Taskforce, property owners and developers and released to the general public through the City's website: <http://www.sanjoseca.gov/planning/nsj/>. These documents were reviewed by the Taskforce in October of this year and with minor requested edits supported by the Taskforce. Additionally, the principles set forth in these documents were tested with members of the professional development community (developers, business owners, property owners and consultants) through a charette exercise conducted in November. While staff initially anticipated bringing these documents forward for consideration in December 2008, additional time is needed before scheduling of the Planning Commission and City Council hearings to allow sufficient time for staff to work with the consultant to further address the input received so far and to incorporate that input into the proposed drafts of these documents.

### Recent Council direction

At the November 18, 2008 City Council meeting, the Council approved the following action based upon a memorandum from the Mayor, Councilmember Chu and Councilmember Liccardo:

- (1) Devise a procedure that allows projects to move forward on an "as ready" basis through a temporary increase in the 8,000 Phase I cap, with a retroactive reduction in Phase I as projects' reserved development capacity expires at the termination of their 2 year PD or SD Permits or other through any other feasible alternative.
- (2) Return before the end of the 2008 calendar year with a recommendation for Council action.

This memorandum responds to this direction.

### ANALYSIS

The policies for North San Jose were developed through an extended process involving considerable outreach to stakeholder groups, the North San Jose Neighborhoods Planning Taskforce effort, and a considerable amount of technical staff and consultant work. The adopted Policy sets forth a procedure for the reservation and ultimate allocation of new development capacity, carefully constructed to address numerous community concerns while also providing a legally defensible and practical mechanism by which the City can administer this allocation process. The Draft Implementation Strategy contains additional guidance to further clarify how the Policy can be implemented in a manner consistent with various other City goals and policies.

The adopted North San Jose Area Development Policy states that the City may not issue Planning permits for more than 8,000 residential units in Phase 1 of the Policy's implementation. Staff has been asked by City Council to devise a procedure to allow a temporary increase in this cap so that additional projects may obtain Planning permits in the near term, in order to allow

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unapproved projects with financing in place to advance ahead of approved projects that do not have secure financing. The City Council has also suggested consideration of a permanent increase to the Phase 1 cap on residential units, creation of a system for transfer of development rights or a market based "cap and trade" system. Staff has evaluated the processes and constraints for issuance of Planning and Building permits and determined that there is not a good procedure by which a temporary change could be made to the cap. A permanent increase could be made to the cap, but staff does not recommend this option for the reasons discussed in this report. The current Policy does allow for a transfer of development rights if a property owner or developer with an approved Planning permit for a residential project is willing to relinquish their current entitlement. Council discussion has also indicated that the delivery of affordable housing units within North San Jose is a concern that should be further addressed.

Mechanics of residential unit reservation and allocation under the adopted Policy

The Policy differentiates the "reservation" and "allocation" of residential units in that "reservation" temporarily assigns units to a project while "allocation" is functionally a permanent assignment of units. In order to avoid speculative entitlements from tying up development capacity over the long-term (as has occurred under the previous North San Jose Area Development Policy) and to insure the construction of the transportation infrastructure needed to support the new development, allocation of units is not made until issuance of Building permits, at which time the developer must pay the Traffic Impact Fee (TIF). School impact fees and other fees are also collected at issuance of Building permits.

By limiting the issuance of Planning permits to 8,000 units and by further limiting the time duration of Planning permits to two years, the Policy creates a temporary (2 year) reservation of development capacity for projects up to the maximum allowed in the current Policy Phase and prevents the City from processing Building permit applications in excess of the unit capacity available. If in two years a project does not move forward from Planning permit to Building permit, it loses its reservation of development capacity and that capacity can be then used to entitle a different project. Because the TIF can be a significant cost, to allow project developers time to complete project financing, they need a temporary allocation of development capacity, during which they have a reasonable guarantee of the ability to develop the project. Staff initially proposed a one-year time limit for Planning permits, which would allow the City greater ability to move development capacity between potential projects and encourage developers to move projects forward quickly, but to address the concerns of development industry representatives, this timeframe was modified to two years in the final staff proposal which was adopted by City Council.

There are additional challenges to using Building permits as a point of control for allocation of the development capacity. Because issuance of Building permits is a non-discretionary action, the allocation of capacity would be based entirely upon which projects were first able to complete the Building permit process. A competitive 'race' through the Building permit process would likely raise significant management issues for City staff and discomfort within the development community which normally considers obtainment of Building permits to be a "low risk" exercise. This would also preclude the use of the criteria in the Policy to determine allocation based upon the project's achievement of the Policy's goals. Further, a system where

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issuance of a Planning permit does not provide some assurance of the project's ability to progress to construction would be counter to the expectations of the real estate development community.

The Policy does allow for sites to be zoned for residential use (consistent with the General Plan) in excess of the number of residential units available for allocation in the current Phase. This allows sites to be planned in advance for potential residential use and to comprehensively plan a project that may be developed under multiple Phases. Unlike a Planning permit, a zoning can be general enough to allow alternative non-residential use of the site until residential capacity becomes available. In contrast, Planning permits are in nature very specific to a particular use and project.

#### Prioritization of pending projects

As noted above, there are currently four pending projects which need reservation of residential units in order to receive a Planning permit. When the City receives Planning permit applications in excess of the (unreserved) residential capacity currently available, reservation is to be made based upon the project's consistency with the North San Jose Policy and other City goals. Only projects which receive the reservation of units can be issued Planning permits.

The ROEM project (PD08-053) is being given first priority by staff because it is a 100% affordable project and will contribute toward the City's achievement of its affordable housing goal of 20% for Redevelopment areas. When the Policy was adopted, the City did not have an affordable unit in lieu fee, so it was expected that all projects would include a 20% affordable component. The City subsequently has adopted an in lieu fee and many developers have indicated an intent to pay this fee rather than include the affordable units within the project. Consequently, staff believes that as many of the remaining available units as possible should be reserved for 100% affordable projects to address the lack of actual affordable units being delivered in the area by other approved projects. A policy included in the Draft Implementation Strategy proposes to require that 20% of each future phase be reserved for affordable units.

The Oyama project (PD08-063) is receiving reservation of units because it is very small (3 units) and the reservation of these units will not notably affect other pending Permit applications. It is therefore not in real competition with the other projects. The subject site has been designated for residential use for several years prior to the Policy's adoption and approval of the permit will allow for development of residential units in a non-employment area.

Of the remaining two projects, the Essex project (PD08-056) best meets the criteria included within the North San Jose policy in that it directly facilitates the expansion of the adjacent Cadence industrial campus (Cadence financed their expansion through sale of the property to a residential developer), includes 2.58 acres of new parkland and is located adjacent to an existing residential project. The other project, BRE (PD08-046), also meets several Policy goals in that it includes a significant amount of commercial use in a mixed-use configuration, significantly exceeds the minimum density requirement of 55 DU/AC, and demonstrates strong Transit Oriented Design characteristics. The Policy states, however, that the criteria met by the Essex project are more important and that projects which meet those criteria should be given priority.

Means for reassignment of unit allocation between projects

The adopted Policy allows reserved or allocated units to be transferred from one project site to another only upon expiration of an existing entitlement. Planning permits issued to date for residential projects in the North San Jose area include the following permit condition language:

**Permit Expiration.** This Planned Development Permit shall automatically expire 24 months from and after the date of issuance hereof by said Director, if within such 24-month period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The reservation of development capacity allocated for this development as per the North San José Area Development Policy shall be cancelled upon the expiration of this Planned Development Permit.

The Policy states that the Director will grant extensions only for projects actively pursuing issuance of Building permits. The first projects to receive residential unit reservation will expire in June of 2009. Projects holding (reserving) a total of 3,457 units of capacity could potentially expire by the end of 2009. While several project developers have begun the Building permit process, it does not appear that any are actively moving forward at this time and it seems quite likely that some portion of the units currently reserved could become available within the next year as the pertaining Planning permits expire. Current economic conditions may very well prevent some of the projects from moving forward to Building permits within the time available, thereby making additional units available for transfer to other projects as early as June of 2009.

Unit allocation could be removed from a site in advance of the expiration of an existing entitlement by issuance of a new Planning permit for the site that supplants the existing one. If a property owner agrees to essentially a transfer of (temporary) development rights, they could apply for a new Planning permit that would reduce or remove their current residential unit reservation and those units would then become available for other projects and potentially reserved for those projects, based upon consistency with the Policy and other City goals.

Modification of the 8,000 unit maximum for Planning permits

At present, Planning entitlements have been granted for approximately 1.76 million square feet of office development and approximately 411,000 square feet of commercial development. Applications currently pending could entitle an additional 533,000 square feet and 221,000 square feet approximately of each use respectively. Given current economic conditions it will likely be several years before the Policy's industrial entitlement trigger is met in order to begin Phase 2.

The Policy could be modified to change the 8,000 unit maximum in Phase 1 to allow more residential development (and potentially a corresponding amount of industrial development) within the first phase, essentially increasing the size of Phase 1 while decreasing the size of Phase 2 or some other future phase. **Based upon a preliminary review of the traffic impacts**

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**associated with a change to the Policy's Phasing plan, the traffic concerns for such a change can likely be adequately addressed, but such a modification raises a more serious concern in that it would be in conflict with commitments made by the City through the Taskforce and other public outreach efforts.**

Amending the Policy to allow a temporary increase in the cap would allow for the issuance of Planning permits in the near term for residential projects, equating to a reservation of additional units above the current 8,000 unit maximum. However, based upon the ability that projects with existing Planning permits have to move forward through the non-discretionary Building permit process, it must be considered that more than 8,000 units could receive Building permits and be constructed. A temporary increase in the cap then could become a permanent increase in units built in Phase 1 unless developers choose or are forced to allow their permits to expire due to market conditions. Such a "decision" is outside of City control.

#### Financial readiness of entitled projects

Most residential project developers or their representatives have indicated that due to the current constriction of the credit market and the related downturn in the housing market, they are being forced to delay construction of their approved projects. While the economic pro forma for rental projects remains somewhat positive due to upward movement in apartment rental rates, the significantly increased upfront cost for project financing prevents apartment developers from moving forward with their projects. While some developers have taken ownership of their project sites and are thus committed to the development of their project and strongly motivated to complete the Building permit process, others proceeded to the Planning permit under purchase option agreements and while they have incurred substantial cost, are not as strongly committed to project completion. In one or two cases it appears that the developer of a permitted project may have already allowed their option agreement to expire.

Staff has surveyed the developers of projects with pending or approved Planning permits to evaluate the financial readiness of those projects to move forward. In a few cases the developers have indicated that they already have the needed funding in place, and in most cases the developers have indicated that they remain optimistic that they will be able to move forward with the project within the Planning permit timeframe, although at a slower pace than originally planned. In one case, the property owner's representative indicated that the project was no longer under the developer's control (e.g., the option agreement had expired). The property owner, however, appears to be looking for a new developer to pursue implementation of the approved project, and is not interested in relinquishing the existing permit. Property owners in this and similar situations indicate that they want to keep their unit reservation at least until the current permit expiration date and will likely want to apply for a new permit, if necessary, in order to extend their ability to develop the property for residential use. Some developers are considering an expanded amount of affordable housing within their projects as a means of gaining additional financing and others have indicated that declining construction costs may compensate for the increased cost of financing.

While residential developers in North San Jose are currently in a variety of financial situations, all seem optimistic about the mid-term or long-term value of their residential projects.

Consequently, it seems unlikely that any would be supportive of a transfer of their development rights to other sites.

Affordable housing

Because the North San Jose Policy area generally has the same boundaries as the Rincon de Los Esteros Redevelopment Area, 20% of new residential units are expected to be affordable per the City's established inclusionary housing policy (Inclusionary Policy). For the most part, the provision of affordable housing within North San Jose will be determined through other City policies and regulations, but given some of the unique constraints placed upon new residential development within the Policy area by the Phasing Plan cap on residential development, the Draft Implementation Strategy proposes additional policies specific to North San Jose that are necessary in order to implement the City's goals for affordable housing. Under the proposed policy, individual project developers may elect to pay the in-lieu fee for their project as allowed under other City provisions, but collectively, 20% of the residential units available in each future Phase can be reserved for affordable units.

The publicly available Draft Implementation Strategy proposes the following elements:

1. Based on the Phase requirement for new residential development, as set forth in the Policy, affordable housing units should be provided as part of the development of that Phase. To meet City goals, 20% of all new residential units should be designated as affordable (e.g., below market rate) at specified levels. Prior to commencing a new Phase of residential development capacity, the City will verify that adequate affordable units have been provided within the preceding Phase to meet the City requirements.
2. For Phases 2, 3 and 4, within each Phase of development, the City will require that at least 20% (1,600 units) of the maximum number of units allowed (8,000 units) will be designated as affordable units. Within these phases the City may issue Planning Development Permits, in accordance with the Phasing Plan and other provisions of the Policy, for up to a maximum of 6,400 units of market rate housing. Once this number of market rate units is reached, the goal would be to establish a means through which all remaining units allowed within the Phase could be reserved for affordable housing projects.
3. Per the City's Guidelines for implementation of the Inclusionary Policy, affordable housing units should be distributed geographically and also integrated within market rate projects to the extent possible. To that end, market rate projects that incorporate affordable units are strongly encouraged within North San Jose. In the event that multiple market rate projects are competing for the final allocation of market rate units available within a Phase of development, projects that designate at least 20% of their units as affordable should be given priority for the allocation of units, provided that they are otherwise equal in conformance with the other criteria of the Policy.

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These proposed policies are intended to provide a means through which implementation of the future phases of the Policy could include affordable housing units and further clarify the City's goals for the delivery of affordable housing within the North San Jose area.

Permit duration (time limits)

The Policy specified a two year permit time limit to achieve two principle goals. First, the time limit is intended to prevent speculative entitlements that tie up development capacity for many years for "paper projects" while other "real" projects are unable to proceed. This is a significant concern for the City based upon experience with the previous North San Jose Area Development Policy. Under that policy, approximately 10 million square feet of unbuilt entitlement absorbed traffic capacity that could have been otherwise used by other projects. Because the new Policy creates a significantly large amount of industrial development capacity (26.7 million square feet), speculative entitlement may not be an immediate concern. However, as each Phase of the Policy requires the construction of transportation infrastructure improvements, funded mostly through a Traffic Impact Fee (TIF) paid by developers as projects go forward, unbuilt entitlements could prevent movement from one Phase to the next. The two-year time limit also mitigates this potential problem.

Shortening the duration of Planning permits for residential (and possibly industrial) projects within the North San Jose Policy area would apply more pressure upon project developers to move projects rapidly forward to construction. This may help to implement the Policy's goal and vision by encouraging development to occur more quickly or by more readily making development capacity available for developers who will make use of that capacity. Shorter permit durations would also more quickly make unused development capacity available for projects with more certain financing in place.

Since shorter permit durations increase the risk for project developers, they could also discourage some development activity if developers are unwilling to take on the risk. As a partial relief to this risk, developers could be given the option to voluntarily make an full advance payment of the TIF and all other fees (including land dedication obligations) typically collected at issuance of Building permits (e.g., fully meet Parkland Dedication Ordinance obligations, payment of affordable housing in-lieu fees, etc.), as a means of securing residential unit allocation. Projects would still need to meet standard Building permit requirements to move forward to construction, but could have receive permanent allocation of residential unit capacity in advance of completing the Building permit process. Receipt of these fees by the City would allow the City to move forward with the construction of the infrastructure and services needed to support the development capacity committed to the project site and to allow subsequent projects to move forward as well. These fees represent a significant cost to the developer, but may be one that could be borne in exchange for the allocation of development rights. To further encourage and address the needs of affordable housing projects, staff would recommend the exception that fees may be deferred until issuance of Building permits for units covered by an approved affordability agreement. Because modification of permit durations (from a two-year to a one-year time limit) affects an issue already known to be a concern of the real estate development community, staff recommends that additional outreach be conducted before proposing a specific amendment to the Policy.

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### Conclusion

The adopted North San Jose Area Development Policy states that the City may not issue Planning permits for more than 8,000 residential units in Phase 1 of the Policy's implementation. Staff has been asked to devise a procedure to allow a temporary increase in this cap so that additional projects may obtain Planning permits in the near term. Staff has evaluated the processes and constraints for issuance of Planning and Building permits and determined that there is not a good procedure by which a temporary change could be made to the cap. A permanent increase could be made to the cap, but staff does not recommend this option.

While it could be possible under the current Policy for residential unit development rights to be moved from one site to another, based upon a survey of developers or property owners with existing Planning permits, it appears that all permit holders remain intent upon pursuing a residential project and are unlikely to be interested in relinquishing their current residential unit allocations.

Although implementation of the residential component of the Policy's Phase 1 is nearing completion, it is possible to establish additional criteria for the Policy's future phases. To address changes in the way the City implements affordable housing projects, staff recommends that the Implementation Strategy under preparation require that at least 20% of all units within each future phase be designated as affordable. Also, staff recommends consideration of a potential amendment to the Policy to reduce the duration of permits from two years, the standard for most permits citywide, to one year, with the provision that developers can obtain allocation of residential units in advance if they pay the Traffic Impact Fee and all other fees for the project (e.g., fully meet Parkland Dedication Ordinance obligations, payment of affordable housing in-lieu fees, etc.) with the exception that fees may be deferred until issuance of Building Permits for units covered by an approved affordability agreement.

### EVALUATION AND FOLLOW-UP

As referenced above, this memorandum addresses issues raised at the November 18, 2008 City Council meeting.

### POLICY ALTERNATIVES

As stated earlier in this memo, staff recommends continued implementation of the North San Jose Area Development Policy in its current form and the preparation of an Implementation Strategy to provide additional guidance on how to achieve the City's goals as set forth in the Policy. Council may want to consider:

*Alternative #1: In addition to the policy changes recommended by staff to be included in the Implementation Strategy, direct staff to prepare an Amendment to the North San Jose Area Development Policy to increase the maximum residential and industrial capacity of Phase 1, to*

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*reduce the permit duration from two years to one year, and to include criteria related to financial readiness in the evaluation of reservation of residential capacity.*

**Pros:** Would allow residential projects to move forward that implement the goals of the North San Jose Policy.

**Cons:** While traffic concerns for such a change can likely be adequately addressed, the change would conflict with the City's commitments made during the public outreach and Taskforce process.

**Reason for not recommending:** This alternative would likely lead to further delays in the City's ability to implement the City's vision for North San Jose.

*Alternative #2: Direct staff to continue implementation of the current North San Jose Area Development Policy without staff recommended policies to be included in an Implementation Strategy.*

**Pros:** May facilitate private development by providing more flexibility for conformance with the City's affordable housing policies.

**Cons:** Does not provide clear policy for achievement of the affordable housing goals within North San Jose.

**Reason for not recommending:** Experience gained through the implementation of the North San Jose Policy demonstrates a need to provide specific guidance and clarity on how to achieve the City's goals for affordable housing in North San Jose.

*Alternative #3: Approve staff recommendation and direct staff to begin preparation of an amendment to the North San Jose Area Development Policy to reduce the duration for Planning permits from two years to one year.*

**Pros:** Would accelerate amending the Policy to shorten permit durations, which could in turn create more market sensitivity for existing entitlements and potentially be applied to currently pending permit applications.

**Cons:** Cost has not yet been determined. Other potential amendments have not been considered. Adequate time is needed for public outreach.

**Reason for not recommending:** Staff recommends a more measured approach to any potential amendments to the Policy given the relatively recent acceptance of the current policy by members of the community and other public agencies. The proposed amendment is not likely to have much impact on implementation of the current Phase of the policy, and would not address the immediate concern caused by recent economic conditions, given that existing Planning permits would not be affected.

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### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

Direct community input into the development of the Vision North San Jose policies began in the fall of 2004, through the City's effort to update the North San Jose Area Development Policy. Representatives of various interests, including environmental groups (e.g. the Greenbelt Alliance, the Sierra Club), business groups (e.g. Silicon Valley Leadership Group, Homebuilders Association, Tri-County Apartment Association, Chamber of Commerce, Building Trades Council, Downtown Association, Developer's Roundtable), other public agencies (e.g. VTA, Water District, City of Milpitas, City of Santa Clara, County of Santa Clara), industrial/commercial property owners, and neighborhood residents (e.g. BCAC, SNI PAC) were invited to participate in the formulation of the Vision North San Jose policies. The environmental groups and the business interests in particular acted as strong advocates for the Policy following this engagement. The community at large was also invited to participate in the development of the policy through a series of community meetings and posted City Council meeting where the Policy was considered. Input from all of these groups was integrated into the Policy adopted by the City Council in June 2005.

In August of 2007, the City of San Jose convened a Taskforce of North San Jose residents, business owners and property owners to assist with planning for the development of new neighborhoods and neighborhood services as part of the implementation of the City's North San Jose Area Development Policy. The North San Jose Neighborhoods Planning Taskforce held its final regular meeting on March 6, 2008. The Taskforce unanimously adopted a set of Guiding Principles for future planning and development activity in the North San Jose Policy area. The North San Jose Neighborhoods Planning Taskforce was reconvened on October 2<sup>nd</sup> to review the Draft Design Guidelines and Draft Implementation Strategy. The Taskforce voted to indicate support for these documents with some requested edits.

### **COORDINATION**

The preparation of this memorandum and the associated work was coordinated with the Redevelopment Agency, Office of Economic Development, Department of Transportation, Department of Parks, Recreation and Neighborhood Services, and the City Attorney.

**FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies and North San José Development Policy.

**COST SUMMARY/IMPLICATIONS**

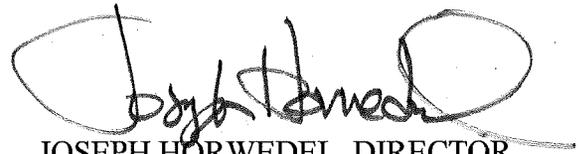
Costs for the actions recommended by staff are covered by the current budget. Direction to initiate an Amendment to the North San Jose Area Development Policy would result in additional staff and consultant costs beyond those currently budgeted.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

CEQA: North San José Policy Update EIR certified June 21, 2005 per City Council Resolution No 72768.



JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Andrew Crabtree at 408-535-7893.