

SUPPLEMENTAL*Memorandum*

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: June 8, 2009

Approved

Paul Kent

Date

6/9/09

COUNCIL DISTRICT: 3 & 4

SNI AREA: N/A

SUPPLEMENTAL MEMO

**SUBJECT: VISION NORTH SAN JOSE AREA DEVELOPMENT POLICY
PROPOSED AMENDMENT**

REASON FOR SUPPLEMENTAL

Staff has received significant community interest regarding certain aspects of the proposed amendments to the North San Jose Area Development Policy. In order to allow time to adequately respond to this public interest, staff is revising its previous recommendation to have the Council consider only three discrete items at this time; changes to the Policy to 1) allow for time extensions for development permits, and 2) to provide a mechanism to deliver affordable housing in North San Jose, and 3) to update the Traffic Impact Fee Plan. Staff recommends that all other changes to the Policy that were discussed in the Memo to the Council dated May 27, 2009 be heard at a later date, after additional public outreach is conducted. This Supplemental Memo provides a complete description and analysis of the proposed changes to the Development Policy that staff recommends the Council consider at this time.

RECOMMENDATION

Staff recommends that the City Council:

- (1) adopt a resolution amending the North San Jose Area Development Policy to:
 - (a) facilitate the delivery of affordable residential units within North San José consistent with City goals for affordable housing; and,
 - (b) allow the Director of Planning the discretion to grant permit time extensions; and
- (2) approve an ordinance amending the North San Jose Area Traffic Impact Fee.

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OUTCOME

Adoption of the two proposed amendments to the North San José Area Development Policy will establish requirements for affordable housing within each Phase of the Policy and will allow the Director to use his discretion to issue time extensions to development permits that would otherwise expire. Adoption of an ordinance amending the North San Jose Area Traffic Impact Fee will set a fee for large scale retail and hotel uses within the Policy area. Staff recommends Council defer discussion of the square footage allocation of these uses to a future time.

BACKGROUND

Since the preparation and issuance of the May 27, 2009 memorandum, the proposed changes were heard before the Planning Commission on May 27, 2009, and the Planning Commission voted 5-2-0 (Platten and Cahan opposed) to recommend that the City Council approve the subject amendments to the Policy, Traffic Impact Fee, and accept the Neighborhoods Plan. Their discussion and comments have been transmitted to the Council in a separate memorandum.

Subsequent to the Planning Commission Hearing, staff has received significant interest regarding the Policy Amendments from various members of the public. Much of the input received has been regarding the proposed inclusion of up to one million square feet of regional/large scale retail uses and up to 2,000 new hotel rooms within the Policy area. Some of the current permit holders have expressed concerns about the need for permit time extensions. Based on this input, staff has determined it would be beneficial to conduct additional public outreach before the majority of the previously proposed changes to the Policy are brought before the Council for consideration. A Task Force meeting has been scheduled for the evening of June 11 at 6:30 and staff is working on additional outreach meetings in July.

At this time staff is bringing forward only three items relating to the Policy update that are time sensitive (i.e. the ability for the Director to issue time extensions for development permits), are not of a controversial nature (i.e. affordable housing), or will require subsequent action by the Council before they can be implemented (update to the Traffic Impact Fee).

ANALYSIS

Proposed Amendment to the North San Jose Area Development Policy

Development Permit Time Extensions

The subject policy amendment would allow the Director to exercise his existing legal discretion to grant time extensions prior to the expiration of approved Development Permits. The Zoning Ordinance allows him to grant permit extensions for development permits near expiration, but the current North San Jose Policy does not.

The earliest PD permits that have been issued for development in the first phase of the Policy will expire in late June this year (Legacy and Kerley Charities). Another small group of permits will

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expire later this year (Nov./Dec.) with the majority of permits expiring in the spring of 2010. Some permit holders have provided staff with documentation of their diligent efforts towards completing implementation of their entitlements. Other permit holders have not recently been in contact with staff and in some cases the companies have downsized substantially, or no longer exist. Staff proposes to amend the Policy to allow the Director the discretion to grant an initial time extension for those permits set to expire in 2009 utilizing the current extension process already allowed by the Zoning Ordinance. Staff is considering an early date in 2010 for these immediately needed extensions to relieve concerns of permits expiring while a longer term solution is implemented.

Over the course of the next 60-90 days staff will undertake an assessment of the progress projects have made towards construction. The Director would then grant time extensions for up to two years for those projects that are most prepared to proceed with a guarantee of Phase 1 unit allocations. Staff would try to extend the architectural approval for the remaining projects that are not making any progress towards construction, but not guarantee Phase 1 unit allocation status, so that they do not have to go back through the public hearing process.

Affordable Housing

The proposed Amendment also incorporates a requirement that within each Phase of new residential development at least 20% of the units available (e.g., 1,600 units out of 8,000 units) be developed as affordable housing units. In 2005 when the Policy was adopted, the City did not have an in-lieu fee for affordable housing projects built within Redevelopment Project area; therefore, it was expected that units would be built by each developer and integrated as "inclusionary" units in each development. Subsequently, the City adopted an in-lieu fee provision which, based on discussions with the North San Jose residential developers, is likely to be used by each of the projects. Therefore, because of the unique nature of the North San Jose Policy area's phasing plan and cap on residential units, it is apparent there may not be any affordable units actually constructed within the Policy area upon build-out of the residential units allowed by the Policy.

The proposed Amendment would remedy this situation by specifically requiring that a set-aside of a minimum of 20% of the units in each Phase be allocated to affordable housing projects. Because the Policy allows for a range of residential units in each phase, the proposed Amendment will not preclude industrial development from proceeding ahead of the development of affordable housing of a given phase. Once the Citywide Inclusionary Ordinance is adopted by the City Council any developer which does not yet have a building permit may choose to provide their inclusionary units in North San Jose under the provisions of the new ordinance.

Proposed Amendment to the North San Jose Traffic Impact Fee Plan

Based on an expressed interest by the development community and input of the North San Jose Taskforce, analysis was completed to allow new regional retail and hotel uses in the Policy area. The proposed amendment to the Traffic Impact Fee Plan would establish a trip generation rate and fee for these regional retail and hotel uses. The PM peak hour trips for the retail and hotel uses would be matched to the equivalent PM peak hour trips of industrial uses to maintain consistency with the completed environmental analysis for the NSJDP.

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Because of the sporadic pace of development, traffic capacity from new industrial development may be used as a short term “bridge” to create the traffic capacity for the regional retail or hotel uses that preceded sufficient demolition activity. These uses through an amendment to the Traffic Impact Fee Plan would be charged an appropriate trip generation rate and traffic impact fee. It is important to note here that the allocation of 32,000 housing units in North San Jose (8,000 units in each phase of development) will result in a large pool of development capacity created from the demolition of existing industrial buildings. It is anticipated that 1.4 million square feet of capacity will be generated in the first phase alone. As a result, North San Jose will not reduce the amount of capacity for industrial development below the 26.7 million square feet assumed in the North San José Plan.

While deferral and additional outreach regarding the implementation of these Policy changes and the conversion of industrial development capacity is proposed, staff recommends that the City Council adopt the amendment to the Traffic Impact Fee Plan to establish the associated fees for regional retail and hotel uses at this time. Due to the legal requirement of 60 days for an ordinance adopting a fee to become effective, approval of the Traffic Impact Fee Ordinance at this time would likely coincide with staff’s follow up to the Council on remainder of the associated amendment to the Policy.

EVALUATION AND FOLLOW-UP

Policy Update

Staff will conduct additional outreach regarding the aspects of the Policy Amendment that staff has recommended be heard by the City Council later this Summer. A further amendment to the Policy would be required to implement the Traffic Impact Fee Plan update and allow for the inclusion of new regional retail and hotel uses within the Policy, and staff anticipates that this amendment would be brought to the Council after the expanded outreach is conducted.

Permit Time Extensions

In the next 90 days staff will be conducting an outreach effort to all permit holders of record to compile current project progress information which will be used to develop criteria for time extensions for existing projects. It will also give staff the ability to determine whether some projects are not able to proceed. A standard set of key milestone achievement questions will be provided to each permit holder. Milestone examples would include, but not be limited to, property ownership by a residential developer, executed parkland agreement, parkland purchase or dedication, final map recordation, site clearance, Building Permit Plan Check status and Public Works improvement plans status. This information will be used to determine the overall progress to date as well as the potential number of units available for redistribution (if any). It would also contribute towards the development of criteria for a “round two” prioritization.

The goal is to protect those developers that have invested in their projects so that they are “shovel ready” by extending their permits for up to two years to allow them to preserve their permit entitlements while not unnecessarily locking up the residential capacity for projects that are no longer active or the developer has made no progress. The need to accommodate the affordable units in each phase, as well as the current “over approval” of Phase I will require that some number of the inactive permits be allowed to ultimately expire.

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Staff is exploring how to maintain the approvals of the site and architectural features of the project so that the applicants do not have to go back through the public hearing process in recognition of the significant investments made to date on the projects. The goal would be to maintain the PD Permit, but not guarantee a allocation in Phase I for those projects that are not "shovel ready" such as there is not a developer, or no work progressed beyond obtaining a PD Permit, etc. These projects could proceed to Phase I if no other project was ready to pull Building Permit.

POLICY ALTERNATIVES

Not applicable

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- X **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. **(Required: E-mail and Website Posting)**
- 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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The proposed Amendment meets criterion 2 and has been posted on the City's website and e-mailed to interested parties. A community meeting for the proposed amendments is scheduled for June 11, 2009. Additional outreach will be conducted prior to returning to City Council for consideration of any related items.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

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COST SUMMARY/IMPLICATIONS

Not applicable.

CEQA

Resolution No. 72768, Addendum to the North San José Policy Update EIR.

A handwritten signature in black ink, appearing to read "Joseph Horwedel", written in a cursive style.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Darryl Boyd, Principal Planner, at 408-535-7800.