



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel  
Leslye Corsiglia

**SUBJECT:** SEE BELOW

**DATE:** May 2, 2011

Approved

Date

5/2/11

**COUNCIL DISTRICT: 3 and 4**

**SUBJECT: STATUS OF HOUSING UNITS RESERVED AND ALLOCATED FOR  
PHASE I OF NORTH SAN JOSÉ AREA DEVELOPMENT POLICY**

## **RECOMMENDATION**

Accept the status report of housing unit reservation and allocation in North San José and direct staff to continue to track residential developer progress and reallocate unused units for shovel ready projects that best implement the North San José Area Development Policy criteria.

## **OUTCOME**

The Council's discussion and acceptance of this report will result in staff tracking development progress and reallocating unused units in North San José.

## **BACKGROUND**

The City Council directed staff to return to the City Council with an update on the status of housing units reserved and allocated for the first 8,000 unit phase of the North San José Area Development Policy (NSJADP). Currently, 7,164 units are reserved in the first phase and 1,749 units have been allocated (received Building Permits). In addition, staff has a list of projects that include approximately 870 units that do not currently have a reservation, but are ready to move forward and are seeking to be included in the first phase (see attachment).

May 2, 2011

**Subject: Status of North San José Housing Units**

Page 2

The City Council has approved several modifications to the residential reservation and allocation process since it was created in June 2005, and several events occurred that also affected decisions regarding housing in North San José. These include:

- Approval in 2010 of the Citywide Inclusionary Ordinance and related changes to the City's Inclusionary Policy in Redevelopment Project Areas, in which the City allowed residential developers to choose from several options. These options included paying an in-lieu fee rather than building the required affordable residential units in each project. This option changed the base assumption in North San José that affordable housing units would be accounted for in each individual project receiving a development permit and unit reservation.
- Splitting of each of the four residential phases into Market-rate and Affordable unit reservations in June 2009 to ensure that affordable units are built in each phase to address the broader affordable housing in-lieu fee.
- Extension of the life of development permits in June 2009 for up to two additional years due to the on-going recession that eliminated the necessary financing support developers needed to move forward with projects.
- The City Council's action in 2010 to amend the Redevelopment Inclusionary Policy in order to temporarily exempt rental housing developments, mirroring the action taken with the Citywide Ordinance.
- The City Council's approval in 2010 of development incentives for multi-phase projects in North San José that guaranteed that future phases would not be subject to reinstated affordable housing requirements if they broke ground by September 30, 2011, started their last phase by September 30, 2014 (for projects with four or more phases), and met other time requirements, which eliminated the payment of in lieu fees for these rental units ("Housing Incentive Program").

Since the last review of housing development in North San José when the City Council directed staff to find a means of including the Century Court project in Phase 1 through a temporary increase in the cap, several things have occurred. First, several of the projects with a Phase 1 allocation have begun construction activities. Several others have progressed through the Building Permit stage and are prepared to start construction. Others have started the plan check process, and most of the remaining projects have some minimal level of activity. The specific accounting of all the projects with Phase 1 reservations and allocations are shown in Attachment 1 – NSJ Approved Residential Unit Allocations Phase I.

One issue that arose recently was how to account for the Market-rate and Affordable units. As noted above, many projects received development permit approval in 2007 and 2008 with requirements to provide on-site affordability for 20% of the total units to the satisfaction of the City. In at least one other case, an affordable housing developer acquired a market-rate project after it was permitted and proposed to make it 100% affordable, but later walked away after those units were reallocated to another market-rate project. Now projects that were assumed to

May 2, 2011

**Subject: Status of North San José Housing Units**

Page 3

be affordable units in 2010 are now coming back to the City asking to be allowed to proceed as market-rate projects. Because many of these projects were approved prior to the changes in the inclusionary housing in-lieu fee and were anticipated to be built as mixed income projects, and predated the separation of market-rate and affordable unit reservations, the development permits do not specifically identify units as market-rate or affordable. As a result, the market-rate units which were thought to total approximately 6,200 at the beginning of the year now appear to total 6,732--well in excess of the 6,400 market rate unit cap.

## **ANALYSIS**

Staff has identified four policy alternatives that the City Council should consider related to residential unit reservations in the phases. These are: maintain the current reservation system, reserve and allocate units in smaller sizes, eliminate the separation of affordable and market-rate units, and suspend or eliminate the housing incentive. Each of these policy alternatives is explained and analyzed below.

**Option 1: Maintain current reservation system.** Staff would continue to use the criteria established with the creation of the NSJADP in reserving residential units. As permits expire from inactivity, new projects could compete for these remaining units. Currently, all 6,400 of the market-rate units are reserved and 1,607 market-rate units are now allocated as those units have been issued Building Permits.

Pros: The development community understands and has relied upon the current system in making financial decisions. The current system also has approved some large multi-phase projects, which by their definition would take several years to come on-line. This phasing will avoid a glut in the market of similar product types within a short period of time, and may create a healthy mix of housing types in North San José.

Cons: The current reservations preserve entitlements for developments that may not be feasible in the mid-term, and eliminate possible developments that could proceed in the next year. As such, it may not be the best way to incent a rapid revival of the construction industry or near-term development of North San José.

**Option 2: Reserve and allocate units in smaller sizes.** For future development permits, staff would approve projects not for the entire development in a given phase, but would adhere to the philosophy of "use it or lose it" in the current NSJADP and would only reserve units in 150- to 300-unit increments based on project phasing.

Pros: Approvals of large projects by phases would keep the pressure on all developers to build or get out of the way of developers who are ready to build high scoring projects. With the permit extensions granted, and project developers coming back to break up mid-size projects into smaller phases, several thousand market-rate residential units are now potentially being left on the bench with no requirement for developer performance. Approvals by phasing would also be consistent with requirements in several of the larger projects now in the 8,000 unit pipeline, as their permits keep their later phases in the entitled phase only if they build preceding phases on an established schedule.

May 2, 2011

**Subject: Status of North San José Housing Units**

Page 4

Cons: Putting in place approvals by smaller phases would disrupt plans for certain large projects that are already within the current 8,000-unit pipeline. Additionally, developers have stated that multi-phase projects typically require a heavy up-front investment in infrastructure. By approving only the first phases and not future phases, this may make North San José projects financially infeasible.

**Option 3: Eliminate the separation of affordable and market rate units.** In 2009, the City Council approved a distinction between affordable units and market-rate units in the 8,000 NSJ pipeline in Phase I under the ADP. The intent of this separation was to ensure that with each 8,000 units of approved residential permits, the affordable housing production would be achieved consistent with the State law requirements in Redevelopment Project Areas and would not be left to occur in the last phase of development in North San José, if at all.

Pros: The consolidation of all units in each respective phase gives greater flexibility in approving residential projects so as to focus on those that can proceed in the near- to mid-term. Beyond a few developments already in the pipeline, affordable units that would require City subsidy cannot currently proceed, as the City currently does not have available 20% Tax Increment funds (“20% Funds”) for new projects due to SERAF payments mandated by the State in 2010. The status of 20% Funds is also currently in question given by the Governor’s proposal to eliminate redevelopment agencies.

Cons: The 20% Fund may well survive its current funding challenges or may be replaced by a new ongoing source of funding to be established, and could be available in future years to subsidize developments. It also may be possible for developers to obtain non-City subsidies and to collect negotiated payments from several market-rate for-sale developers in order to proceed with affordable standalone projects that are allowable under the Inclusionary Policy. Further, staff credits this separation of affordable units from Market-rate units in North San José in generating little opposition from the affordable housing community on the City Council’s November 2010 approval of the Housing Incentive Program, an affordability waiver for near-term rental developments meeting certain requirements. While its approval was instrumental in supporting construction to go forward in our current market, the requirement for affordability in State law remains—regardless of the recent legal decision concerning inclusionary requirements on rental projects, *Palmer v. City of Los Angeles*. Therefore, the pressure to meet affordability requirements in North San José in the future is even greater than it was before the November waiver was approved. A change to this separation could be anticipated to trigger major debate about the Housing Incentive Program.

**Option 4: Suspend or eliminate the Housing Incentive Program.** The current Housing Incentive Program enacted in 2010 protects developers from the City instating an affordable housing requirement in future phases of rental housing developments—for which the City has at this time chosen to suspend Inclusionary Housing obligations—if they comply with several triggering requirements in their Satisfaction Agreements with the City. The Incentive is available only for those rental projects with 200 or more units in a Redevelopment Project Area with: phase one obtaining a building permit and commencing construction of phase one no later than September 20, 2011; phases two and three commencing construction no later than

May 2, 2011

**Subject: Status of North San José Housing Units**

Page 5

September 20, 2013; and, any later phases commencing construction no later than September 30, 2014. Other conditions apply as well. The Incentive was structured to encourage developers to get off the sidelines and commence construction. Currently, there are 524 units under construction and 1,225 more with building permits approved ready to break ground. Developers assert that the Incentive is needed to sustain significant construction activity in the near term.

Pros: The intent of the Incentive was to help the local economy during its recession, and so is time limited in nature by definition. In addition, other cities such as San Francisco and San Diego chose reportedly not to suspend Inclusionary requirements due to *Palmer v. City of Los Angeles*, but instead made findings it was not necessary and/or changed the way that compliance was implemented.

Cons: The Incentive is already tailored to assist only certain larger developments. To remove the Incentive after implementing it only last November would likely produce opposition from eligible developers who had not yet started the process of showing compliance and obtaining approval but could meet the required construction start dates.

### **STAFF'S PREFERRED POLICY ALTERNATIVE**

Staff supports Option 1: Maintain Current Reservation System at this time for the reasons listed under that Option. However, through this Memorandum, staff seeks the City Council's feedback regarding preferences for implementation in the future.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 amendments meet Criterion 2 and have been posted on the City's website and emailed to interested parties. Staff has discussed these options with the major North San José developers. Based on the Council's direction, the North San José website will be updated so all interested parties can stay current with the Policy's implementation.

**COORDINATION**

The preparation of this Memorandum and the associated work was coordinated with the Redevelopment Agency, Office of Economic Development, and City Attorney's Office.

**FISCAL/POLICY ALIGNMENT**

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

**CEQA**

Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos.

/s/  
JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

/s/  
LESLYE CORSIGLIA  
Director of Housing

For questions please contact Joseph Horwedel at 408-535-7900.

Attachment  
North San José Approved Residential Unit Allocations Phase I

### NSJ Approved Residential Unit Allocations Phase 1

Project Applicant	File No.	Original Expiration Date	Permit Extension Approval	Revised Permit Expiration Date	Total Unit Count	Units Resv'd Market	Units Resv'd Afford.	Satisf. Agrmnt Approved?	Plan Check Submitta	Plan Check Approval	Units Allocate d Market	Units Allocate d Afford.	Building Permit Issued	Project / Phase Status
Charities Hsng - Kerley	PD08-058	12/5/10	Yes		42		42		y	y		42	y	Under Construction
Oyama -Brokaw	PD08-063	8/2/11	Yes		3	3			y	y	2		y	Under Construction 2 of 3 units
ROEM - Rosemary	PD08-053	7/30/11	Yes		290		290		n	n			n	Seeking park requirement relief
Essex -	PD08-056	1/23/11	AD10-068	1/23/13	769	769			n	n			n	Adjustment filed to reduce units to 761 Preliminary
LCOR - Baypointe	PD08-023	8/1/10	AD10-523	8/1/12	229	174			y	n			n	Adjustment filed to reduce units to 174. Plan Check filed
?? - River Oaks	PD08-036	8/29/10	AD10-667	8/29/12	297	297			n	n			n	unknown
Irvine - Zanker	PD07-006	1/29/10	AD10-058	1/31/12	1750	1750								
Phase 1 - 380 units									y	y	380		y	Under Construction
Phase 2 - 370 units									y	y	370		y	Building Permit Issued
Phase 3 - 357 units									y	y	357		y	Building Permit Issued
Phase 4									n	n			n	
Phase 5									n	n			n	
First Community Housing - 4th Street	PD06-011	1/30/10	AD10-057	1/31/12	100		100		y	y		100	y	Under Construction
Fairfield - Baypointe	PD07-036	1/30/10	AD10-060	1/31/12	183	183			n	n			n	
Fairfield - Tasman (Northpoint)	PD07-033	1/31/10	AD10-042	1/31/12	704	704								
Phase 1 - 498 units									y	y	498		y	PD Amendment on file
Phase 2 - 206 units														
Thompson Dorfman / Wyse - North 1st	PD07-090	4/4/10	AD10-077	4/15/12	1579	1579								
Parcel 1 - 407 Units									n	n			n	
Parcel 2 - 293 units									n	n			n	
Parcel 3 - 233 units									n	n			n	
Parcel 4 - 297 units									n	n			n	Revised building design proposed. PD Amendment
Parcel 5 - 216 units									n	n			n	
Parcel 6 - 133 units									n	n			n	
Vista Montana	PD07-082	3/21/10	AD10-106	4/1/12	444	444			y	n			n	Plan Check on file. DA and PDC revisions underway
Vista Montana	PD07-091	4/24/11	AD10-105	4/24/13	554	554			n	n			n	DA and PDC revisions underway
BSB - Century Court	PD08-046	7/1/13			220	220			n	n			n	
<b>Total Approved To Date</b>					<b>7164</b>	<b>6677</b>	<b>432</b>				<b>1607</b>	<b>142</b>		
<b>Phase One Capacity</b>						<b>6400</b>	<b>1600</b>				<b>6400</b>	<b>1600</b>		
<b>Remaining Units</b>						<b>-277</b>	<b>1168</b>				<b>4793</b>	<b>1458</b>		

### NSJ Residential Projects Awaiting Phase 1 Reservations

Project Applicant	File No.	Original Expiration Date			Total Unit Count	Units Resv'd Market	Units Resv'd Afford.							Project / Phase Status
Fox Markovits - Brokaw					650									
BSB - Century Court	PD08-046	7/1/13			220	220								Pending completion of Phase One tower
<b>Total Pending To Date</b>					<b>870</b>	<b>220</b>	<b>0</b>							
<b>Phase Two Capacity</b>						<b>6400</b>	<b>1600</b>							
<b>Remaining Units</b>						<b>6180</b>	<b>1600</b>							