



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel  
Leslye Corsiglia

**SUBJECT:** SEE BELOW

**DATE:** November 7, 2011

Approved:

Date:

11/15/11

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

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

## RECOMMENDATION

It is recommended that the City Council:

- (1) Accept the status report of housing unit reservation and allocation in North San José and direct staff to continue to track residential developer progress.
- (2) Request that staff return to the Council with an amendment to the North San José Area Development Policy to reallocate up to 600 unused affordable rate units for projects that:  
(a) best implement the North San José Area Development Policy criteria, (b) result in the best results for the affordable housing program, (c) broaden the diversity of residential unit mix, and (d) are shovel-ready projects that would begin construction within 18 months.
- (3) Request that staff return to the Council at the same meeting with a recommended amendment to the Policy that maintains the overall allocation of affordable units at 20% of total units constructed

## OUTCOME

The Council's discussion and acceptance of this report will result in the reallocation of up to 600 units now reserved for affordable housing, enabling shovel ready market-rate housing units to proceed in Phase I. To ensure that affordable housing remains a priority, staff will formalize the criteria and process to select projects that generate the largest affordable housing contribution above

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and beyond the previous 20% housing requirement and will make recommendations to amend the policy to ensure that the original policy that 20% of the units built under the Policy are affordable to ensure a mix of housing types and affordability.

## **BACKGROUND**

Staff regularly updates the City Council 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, 7376 units are reserved in the first phase and 2,313 units have been allocated (received Building Permits). In addition, staff maintains a list of projects that include approximately 1,620 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).

The NSJADP has four phases with a total build out of 32,000 units. In each 8,000 unit phase, 20% of the units are required to be affordable to low- and moderate-income households. 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 January 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 June 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 November 2010 of development incentives for multi-phase projects in North San José that guaranteed that future phases would not be subject to reinstated

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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”). The City entered into Satisfaction Agreements with five developers that specify the dates and milestones that must be met to obtain these incentives.

- Approved a “loan” of up to 220 affordable housing units in May 2011 for the first phase of the Century Court towers if the project broke ground by July 1, 2012 and completed the building superstructure by July 1, 2013. The “loaned” units were assumed to be returned to the affordable unit pool when the development permits for market rate units expired.
- Approved up to 275 units for the first phase of the Fox Markovits property by a “loan” of affordable housing units.

Since the last review of housing development in North San José in May of this year, many of the projects with a Phase I allocation have begun construction in order to comply with the requirements of the Satisfaction Agreements that they obtain Building Permits and commence construction by September 30<sup>th</sup>. While the Crescent Village development has progressed on a very aggressive development pace, some have moved at a very anemic pace, raising questions of the level of conformance with the Satisfaction Agreement requirements. Others that are single phase projects that did not benefit from the Satisfaction Agreement provisions have started the plan check process. The specific accounting of all the projects with Phase I reservations and allocations are shown in Attachment 1 – NSJ Approved Residential Unit Allocations Phase I.

In recent months, staff has received several inquiries from developers without Phase I units asking if there was a means by which they could obtain Phase I units. During those discussions, staff has explained the NSJADP phasing constraints, but asked what types of extraordinary offers the developers might be willing to make for Phase I units. It is clear from those discussions that the apartment market is now much stronger and that developers are willing to not only pay the full previous affordable requirement that the City waived with the Satisfaction Agreements, but some offered to exceed those requirements and make contributions to the affordable housing fund. Should the Council wish to pursue the policy revision proposed, staff would return to Council with the appropriate documents to implement the change and memorialize the unit reservation.

Several affordable housing developments in North San José are now under construction or are seeking final funding commitments. The amount of funding available for future developments has been hampered by reductions in property valuations, the payment of the FY 2010 and 2011 SERAF monies to the State of California, and the ongoing uncertainty of the future of redevelopment. Given these constraints, and given the current pipeline of affordable developments outside of North San José that are awaiting funding, it may be several years before funding would be available to finance new developments in this area.

## **ANALYSIS**

Staff has identified three policy alternatives that the City Council should consider related to residential unit reservations in the phases. These are: allowing allocation now reserved for affordable units to be used for market rate units; maintaining the current reservation system; and, eliminating the separation of affordable and market-rate units. Each of these policy alternatives is explained and analyzed below.

### **Option 1: Allow some portion of the units reserved for affordable housing to be used for market-rate projects for developers willing to meet or exceed the inclusionary requirement.**

The strength of the rental market has brought new interest in building additional units in Phase I that do not have a reservation. As noted above, the City approved five Satisfaction Agreements with developers of multi-phase projects that allowed them to proceed with construction without including affordable units. The result is that all of the remaining units in Phase I are reserved for affordable housing. Those market-rate developers that have approached the City to request inclusion in Phase I have made offers to meet or exceed the 20% affordable housing requirement.

Pros: Option 1 would allow construction to move forward now, generating new jobs and economic activity. Additionally, an affordability component would be included, allowing affordable units to move forward now at a time when the City's traditional source of funding—redevelopment funding—is scarce. This could be achieved either by integrating the affordable units in a development or by generating funds through an in lieu payment to allow other affordable projects to break ground. One proposal for 600 units would have the developer contributing approximately \$8,800,000 to the affordable housing fund. Beyond providing funds that would allow a previously approved affordable project to proceed, it would also reset the economic base related to the need of the City to continue to offer incentives to housing in North San José through the use of Satisfaction Agreements or similar vehicles. The other proposal would set aside one building for an affordable housing development, and might include other affordability mixed in to the market components.

Cons: This Option would reduce the amount of affordable housing units built in Phase I below the 20% level. Most of the housing now under construction is rental, with anticipated rents that will require higher incomes. In order to ensure a balanced community, where people can afford to live near where they work, it is important to ensure that the NSJADP includes a balance of housing types and affordability. This will result in the need for more affordability in future phases.

**Option 2: 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 or the allocation could be reserved for affordable units. Currently, the full 6,400 market-rate units are reserved with an additional 544

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market rate units reserved “loaned” from the affordable unit pool. Of the 6,944 market-rate units reserved, 2,171 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. The current NSJADP recognizes the need for a balanced community with both market rate and affordable units.

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, adding jobs and economic activity at a time when the construction industry is struggling. Also, the lack of financing for affordable housing likely means a significant delay in meeting the 20% requirement. If shovel ready market rate projects with an affordable component proceed, more affordable units will get built in the short term.

**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.

Cons: It is important to have a balanced community where people of different incomes can afford to live. The original plan to require that 20% of the units in the NSJADP be affordable is a strong one. Affordable housing advocates were supportive of the plan with this requirement, and have been supportive of the Council’s recent actions that allowed shovel ready market rate developments to move forward using the reservation for affordable developments, but have done so with the understanding that the overall 20% allocation has not changed. They would likely oppose any further allocation adjustments should the overall allocation be altered in this manner.

### **STAFF’S PREFERRED POLICY ALTERNATIVE**

Staff supports **Option 1: Allow some portion of the units reserved for affordable housing to be used for market-rate projects** for the reasons listed under that Option.

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### **EVALUATION AND FOLLOW-UP**

If these recommendations are supported by the City Council, staff would return with policy amendments that establish guidelines for approving development offers from market rate developers seeking to begin construction now, and that lay out how affordability will be ensured going forward.

### **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 was coordinated with the Redevelopment Agency and the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies

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**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 or Leslye Corsiglia at 408-535-3851.

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 Submittal	Plan Check Approval	Units Allocated Market*	Units Allocated Afford.	Found. Permit Issued	Building Permit Issued	Project / Phase Status
Kearley - Charities Hang	PD08-058	12/5/10	Yes		42		42		y	y		42	y	y	Under Construction -
Brokaw - Oyama	PD08-063	8/2/11	Yes		3	3			y	y	2		y	y	Under Construction 2 of 3 units
Rosemary - ROEM	PD08-053	7/30/11	Yes		290		290		y	n					Seeking project funding
Seely Ave - Essex	PD08-056	1/23/11	AD10-068	1/23/13	769	761		y	y	n			y		Foundation under construction. Adjustment reduced units to 761
Baypointe - LCOR	PD08-023	8/1/10	AD10-523	8/1/12	229	174			y	n					Adjustment filed to reduce units to 174. Plan Check filed
River Oaks - Baywest	PD08-036	8/29/10	AD10-667	8/29/12	297	297		y	y	n	293				293 units Plan Check submit in Dec
Crescent Village - Irvine	PD07-006	1/29/10	AD10-058	1/31/12	1750	1750			y	y					
Phase 1 - 380 units									y	y	380		y	y	Under Construction
Phase 2 - 370 units									y	y	370		y	y	Under Construction
Phase 3 - 357 units									y	y	357		y	y	Under Construction
Phase 4									y	n					
Phase 5									n	n					
4th Street - First Community Housing	PD06-011	1/30/10	AD10-057	1/31/12	100		100		y	y		100	y		Under Construction
Baypointe - Fairfield	PD07-036	1/30/10	AD10-060	1/31/12	183	183			n	n					
Tasman (Northpoint) - Fairfield	PD07-033	1/31/10	AD10-042	1/31/12	704	704			y	n					
Phase 1 - 498 units									y	y	498		y		Under Construction
Phase 2 - 206 units															
North 1st - Thompson Dorfman / Wyse	PD07-090	4/4/10	AD10-077	4/15/12	1579	1579		y							
Parcel 1 - 407 Units									n	n					
Parcel 2 - 293 units									n	n					
Parcel 3 - 233 units									n	n					
Parcel 4 - 271 units									y	n			y		Partial foundation poured. Demo Permit pending
Parcel 5 - 216 units									n	n					
Parcel 6 - 133 units									n	n					
Vista Montana - Equity Residential	PD07-082	3/21/10	AD10-106	4/1/12	444	444		y	y	n			y		Under Construction
Vista Montana - Equity Residential	PD07-091	4/24/11	AD10-105	4/24/13	554	554		y	n	n					DA and PDC revisions underway
Fox Markovits - Brokaw	PD11-007				650	275			n	n					PD Permit in process for up to 275 units
Century Court - BSB	PD08-046	4/29/15			220	220			n	n					7/1/12 reqmt for concrete in ground
<b>Total Approved To Date</b>					<b>7814</b>	<b>6944</b>	<b>432</b>				<b>1900</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>-544</b>	<b>1168</b>					<b>4500</b>	<b>1458</b>			

\* Allocated - Building Permit issued for complete building shell for that number of units.  
Updated Nov 15, 2011

**NSJ Residential Projects Awaiting Phase 1 Reservations**

Project Applicant	Zoning File No.	Permit File No.	Permit Expiration Date	Total Unit Count	Units Resv'd Market	Units Resv'd Afford.	Project / Phase Status
Oyama - Brokaw	PDC07-088			31			Balance of project
Fox Markovits - Brokaw	PDC07-010			375			Balance of project
Crescent 6 - Irvine	PDC11-018			450			New request on River Oaks
Hyundai	PDC05-099			575			PD Permit expired and Plan Check done 5 years ago
BSB - Century Court		PD08-046	4/29/15	220	220	0	Pending completion of Phase One tower
<b>Total Pending To Date</b>				<b>1620</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>		