

1/14/2020

item 5



**Update on Proposal to Modify  
the North San Jose Area  
Development Policy**

January 14, 2020



**City of  
Santa Clara**  
The Center of What's Possible

**Agenda**

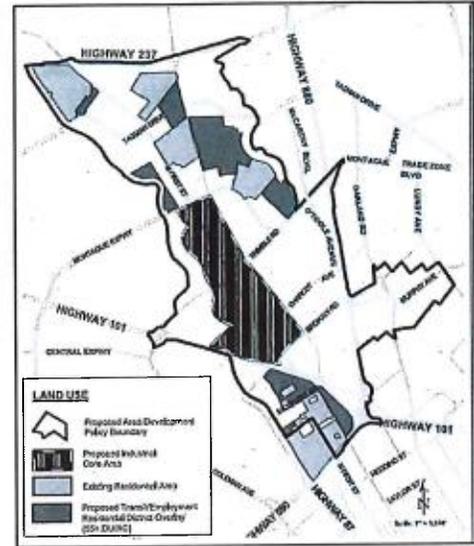
1. North San Jose Area Development Policy (NSJADP) Background
2. North San Jose Settlement Agreement
3. Status of Discussions
4. Recent San Jose City Council Action
5. Conclusion

**POST MEETING MATERIAL**



## North San Jose Background

- Approved by San Jose City Council in 2005
- 26.7 Million SF of Industrial and 32,000 Housing Units.
  - Divided into four approx. equal phases
- \$519 million Transportation Improvements
  - Divided into four equal phases
- Could not proceed from Phase 1 to Phase 2 until both industrial and residential occurred and funded transportation improvements
- Lawsuits by City of Santa Clara, City of Milpitas, County of Santa Clara, and School District



## Background

- **Three Settlement Agreements with the City Of San Jose**
  - Santana West Settlement Agreement - January 12, 2018
  - City Place Settlement Agreement - January 12, 2018
  - North San Jose Settlement Agreement - November 16, 2006
- **Provided Update on All Settlement Agreements**
  - Council update at the January 29, 2019 meeting
  - Copies of correspondence
- **Discussion today is focused on proposed changes to North San Jose Policy and Settlement Agreement**
- **Good faith negotiations per City Place Agreement**



## Good Faith Negotiation

### (City Place Agreement)

#### 3. Modifications to NSJ Settlement.

a. Consistent with the policies of both Santa Clara and San Jose to encourage the development of housing in each respective jurisdiction, in the event that San Jose elects to alter the phasing structure of the NSJ ADP to allow more housing units to be constructed earlier than envisioned in the four phases of the NSJ ADP in effect upon the Effective Date of this Agreement, Santa Clara shall make good faith efforts to support any modifications to the NSJ Policy that accelerate the construction of housing units, so long as such modifications include revision of the timing, nature and scope of related traffic improvements where necessary to serve the acceleration of housing under the NSJ ADP. This provision only applies to modifications to the NSJ ADP contemplated by this paragraph. San Jose will provide to Santa Clara notice of any public meetings or hearings before the San Jose Planning Commission and City Council regarding proposed modifications to the NSJ ADP to accelerate the construction of housing units.

b. Santa Clara shall in good faith participate in San Jose's discussions with the City of Milpitas and County of Santa Clara to address modifications to the NSJ Settlement, and Santa Clara shall in good faith consider the resulting changes.



## Proposed NSJADP Modification

- **Key San Jose Goal** – Accelerate the construction of 8000 housing units (Currently Phase 2)
- Currently NSJADP is four phases
- San Jose would like to consolidate into two phases – Phases A & B
- Would allow the next 8000 housing units to move forward (also next phase of industrial development)
- **The Policy would be modified to**
  - Consolidate development and transportation into into two phases instead of four
  - Maintain the same transportation package but shift projects
- San Jose staff has met with Santa Clara and County staff multiple times
  - Written communication with our concerns



## **Staff Concerns with Proposal**

- Santa Clara reiterated the same concerns every time
  - Level of CEQA Analysis required
  - Conformance to the 2006 Settlement Agreement
  - Changes to the transportation improvement phasing
    - Changing from four phases to two phases
    - Timing and funding of transportation improvements
- Key Issue – Santa Clara has stated any change should require transportation improvements to be constructed in parallel to development – otherwise San Jose could build 8000 housing units (and industrial) without improvements
- Attached communication - August 6, 2019 letter includes all the details



## **Highlights of August 6 Letter**

- Addendum is probably not the right approach – this a significant change to the NSJAPD and circumvents appropriate public review.
- Collapsing four phases into two is a significant change as the main purpose of having four phases with phased housing and office development was to ensure that transportation improvements and traffic internalization occurred in parallel with the new development.
- Santa Clara staff commented, and San Jose staff acknowledged that San Jose has not built the required transportation improvements.
- Santa Clara staff commented that under the proposed change new development could be built without any transportation improvements. San Jose staff acknowledged this was possible and that there are no assurances that this level of development could not happen without transportation improvements.
- Santa Clara staff requested consideration of policy options that align development with the construction of transportation improvements.



## Meetings Summary

- There is a lot of flexibility to develop a phasing plan that ensures transportation in parallel development
- If San Jose can fund these projects (not currently funded) and are confident that San Jose can meet their advertised design and construction schedules, San Jose should be able to commit to phasing the next 8,000 units to align with these transportation improvements.
- Staff informed San Jose that they are open to considering any phasing plan that ensures transportation is occurring in parallel to new development
- San Jose has the flexibility to develop and propose a phasing schedule that works with their current project schedules.
- We even communicated that since some of these are major projects with significant milestones (Completion of Environmental Review, Design Milestones, Permits, Funding, Construction Awards, Construction Completion), phasing could be developed to align with milestone completion.



## Most Recent Communication

- Met on Sept 20<sup>th</sup> and San Jose staff changed their position – would submit phasing plan
- Oct. 30<sup>th</sup> Meeting reverted back to their original proposal
- Staff sent letter to San Jose on November 18
  - Reiterated our concerns
  - Not in good faith, no phasing plan, only promises no legally enforceable obligations
- San Jose sent response on November 27 (attached)
  - “Santa Clara’s unwillingness to explore a full range of alternatives is contributing to a worsening of the housing crisis and its impacts on all of the residents.”
  - “With no resolution in sight, San Jose intends to stop pursuing the current proposal of consolidating Phase 1 and 2 into Phase A.”
  - They believe they can proceed under SB 330
  - “Our attorneys will follow-up with your legal team to discuss various mediation options.”
- San Jose went to Council on December 10



## Santa Clara Response Letter

- SB 330 applies prospectively to the enactment of *new* policies
  - Newly enacted Government Code section 66300, subdivision (b), states that an affected city “shall not *enact* a development policy, standard, or condition”
- Nothing in SB 330 prevents San Jose from fulfilling its obligations
- Nothing in SB 330 prevents the City from continuing to require transportation improvements as a condition to the issuance of permits for residential development
  - Section 66300 (f)(3), its requirements “shall not be construed as prohibiting the adoption of amendment of a development policy, standard, or condition in a manner that imposes or implements mitigation measures a necessary to comply with the California Environmental Quality Act.”
- Requiring transportation improvements required by new housing **is not** a moratorium.
- Letter was not provided by Staff to San Jose Council



## Dec. 10 - San Jose Seven Next Steps

### Four Significant ones

1. Stop work on amending the Policy’s phasing requirements.
2. Return to Council in early- to mid-2020 with the first initial group of specific changes to city land use laws, particularly with regard to general plan, policy, and zoning in to respond to the new state legislation.
3. Negotiate amendments to the 2006 Settlement Agreement with the City of Santa Clara and the County of Santa Clara to translate the current obligations which are tied to the North San Jose ADP phasing into obligations that are not tied to the **phasing that will be invalid on January 1.**
4. Allow **individual projects to move forward on a case-by-case basis** that have conducted their own environmental analysis.



## Additional Points

If Council approves staff's recommendation, **residential development may occur** in North San Jose **regardless of the limitations** on residential development in each Policy phase in accordance with state law effective January 1, 2020, so long as each development obtains appropriate CEQA environmental clearance for its project. Moreover, state law encouraging **affordable housing development** that meets specified criteria is **exempt from CEQA** and may also move forward

### San Jose Conclusion

The **elimination of housing caps** by SB 330 means that residential development may move forward without changes in the Policy (with compliance with CEQA where required), but at the same time the 2006 Settlement agreements require modification to reflect the **elimination of the phases of development** in North San Jose.

Approved Staff Recommendation



## Conclusion

- Santa Clara acknowledges our commitment to the development of housing and modifying the NSJADP to accelerate housing development.
- New housing cannot come at the cost of failing to provide necessary transportation infrastructure improvements
- Santa Clara remains fully open to reasonable changes to San Jose's phasing to allow housing to advance – but new housing should have transportation mitigation
- Santa Clara has communicated to San Jose that they can develop a phasing plan that works with the realistic construction of new housing and San Jose's advertised schedules for transportation improvements.
- We have a valid reason for concern - San Jose has a significant requirement for completion of transportation improvements with approximately 31 projects required as part of Phase 1. Only five of these projects are currently completed (per San Jose's submittal) and no additional ones are fully funded.



## Conclusion

- Per December 10 Council action San Jose plans to ignore their legal obligations to build transportation improvements within the proposed NSJADP
- We do not agree that SB330 removes San Jose's existing responsibility to fund and construct required transportation mitigations
- Pursuing this approach will only further delay the construction of housing.
- Staff believes that San Jose should easily be able to accelerate housing construction in the NSJADP by providing a legally enforceable phasing commitment:
  - An additional 8,000 housing units will require time to build out for many reasons (permitting, design, construction, housing market absorption)
  - Includes transportation mitigations within their schedules for funding, design, and construction.



## Update on Proposal to Modify the North San Jose Area Development Policy

January 14, 2020



Item 5

*Office of Economic Development*

January 14, 2020

Manuel Pineda  
Assistant City Manager  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

Via USPS and email

Re: Item 5. 20-33, January 14, 2020, Council Meeting: Update on the Proposal by the City of San Jose to Modify the North San Jose Area Development Policy

Dear Mr. Pineda:

I am writing to ensure that the City of San Jose's actions and position are adequately and accurately represented to Santa Clara City Council regarding this item. As detailed below, the posted staff report for the item does not fairly or accurately characterize the San Jose team's efforts to reasonably work with Santa Clara staff to date. San Jose continues to approach this work in an open and collaborative way as we attempt to find solutions that help ease the regional housing crisis.

- San Jose agrees that assuring that private development occurs in parallel with the construction of necessary transportation improvements is an important priority. To that end, 55% of transportation improvements included in Phase 1 of the NSJ Policy, measured in cost estimates (\$70.1 million of \$128 million in 2019 dollars), are completed, underway, or have funding allocated or reasonably assured by other sources. This parallels the 56% of private development capacity in Phase 1 that has been developed or is in construction. In addition, another two intersection improvements from later phases have also been completed further demonstrating San Jose's commitment to this goal.
- San José staff provided detailed information to Santa Clara staff on the status and funding for transportation projects in at least three previous letters. It is inaccurate to suggest we have not responded with requested information. As conveyed to your staff in multiple meetings and correspondence, the City of San Jose remains committed to funding and completing the key projects included in the NSJ Policy and Settlement Agreement.

- Currently the City of San Jose, working with our partners at VTA, Caltrans and the County, has either completed or initiated work on the following improvements:
  - 6 local transportation projects with an estimated cost of ~\$32.8M – completed
  - 7 regional transportation projects including interchanges and other projects involving Caltrans that are estimated to cost ~\$470M – underway/partially completed
  - 5 local transportation projects that are estimated to cost ~\$30.7M – underway/partially completed.

We will continue to deliver improvements where future growth happens in accordance with the NSJ Policy and Settlement Agreements.

- Following our September 13 meeting, San Jose committed in good faith to explore Santa Clara's proposal to meter development with a more granular phasing plan as mentioned in the staff report. After much analysis, San Jose determined that this approach would be contrary to the City's goal of producing housing in a timely manner; the proposal would restrict San Jose's ability to approve housing projects by effectively adding new phases, rather than consolidating existing ones. San Jose was disappointed that Santa Clara was unwilling to explore any other alternatives and to recognize San Jose's progress in delivering major transportation improvements in the area.

As noted in all previous letters to Santa Clara staff, the City of San Jose has continued to deliver transportation improvements in parallel to new development approved within the area and we remain committed to this outcome. Our goal remains to deliver housing solutions to residents and workers in the South Bay region, to benefit all local cities. I kindly request that you continue to work with us in good faith to find solutions that work for all parties.

Sincerely,



Kim Walesh  
Deputy City Manager

cc: Mayor and City Council, City of Santa Clara  
Hosam Haggag, City Clerk, City of Santa Clara  
Deanna J. Santana, City Manager, City of Santa Clara  
Brian Doyle, City Attorney, City of Santa Clara  
Dave Sykes, City Manager, City of San Jose  
Rick Doyle, City Attorney, City of San Jose