



## Agenda Report

20-33

Agenda Date: 1/14/2020

### REPORT TO COUNCIL

#### SUBJECT

Update on the Proposal by the City of San Jose to Modify the North San Jose Area Development Policy [Council Pillars: Deliver and Enhance High Quality Efficient Services and Infrastructure and Promote and Enhance Economic and Housing Development]

#### BACKGROUND

##### North San Jose Background

The North San Jose Area Development Policy (NSJADP) was approved by the San Jose City Council in 2005, an approximately 4,987 gross acre area in the northern boundary of the City of San Jose (Attachment 1). The NSJADP approved 26.7 Million SF of industrial space and 32,000 housing units generally divided into four approximately equal phases. The policy also included \$519 million (2005 dollars) of Transportation Mitigations also divided into four equal phases and planned to be constructed in parallel with new development. One of the key outcomes of the policy was that development could not proceed from one phase to the next (i.e Phase 1 to Phase 2, etc) until both industrial and residential development occurred in each phase and the transportation improvements, identified in each phase, were 85% funded. This was for two reasons:

1. To assure that development would not occur without the required transportation mitigation.
2. To assure that industrial development and residential development occurred in parallel so transportation trips would be internalized (people who lived in North San Jose also worked in North San Jose). The policy assumed over 30% of trips would be internal - meaning they had an origin and destination within the NSJADP boundary. Without internalization there would be additional transportation impacts.

##### Settlement Agreements

When the City of San Jose (San Jose) approved the NSJADP the City of Santa Clara, City of Milpitas, County of Santa Clara, and Santa Clara School District School District all filed lawsuits to challenge San Jose's plan. Ultimately all parties into settlement agreements. The City of Santa Clara entered into the NSJADP Settlement Agreement on November 16, 2006. The Settlement Agreement is attached to this report (Attachment 2). The City of Santa Clara (Santa Clara) also has two additional settlement agreements with San Jose related to development within San Jose and Santa Clara:

- Santana West Settlement Agreement - January 12, 2018
- City Place Settlement Agreement - January 12, 2018

Although this report provides an update only on the NSJADP (staff has provided regular updates on all three settlement agreements - including the attached Council Report Attachment 3), it is important to note that the City Place settlement agreement included the following language related to the

## NSJADP:

“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 NSJADP. This provision only applies to modifications to the NSJADP 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” and

“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.”

San Jose Proposal to Modify The NSJADP

In 2018 San Jose approached Santa Clara to communicate that they would like to modify the NSJADP with the goals to:

- Accelerate the construction of an additional 8,000 housing units which are currently part of NSJADP Phase 2 development. Under the current policy additional residential development could not occur until Phase 1 Transportation Improvements are 85% funded and Phase 1 (7.0 million sf) of industrial development is constructed.
- San Jose would like to consolidate the existing four phases (1-4) into two phases - Renamed Phases A & B
- Allow the next 8000 housing units to move forward (also next phase of industrial development) immediately.

**DISCUSSION**

In general, San Jose requested to modify the NSJADP to consolidate development and transportation improvements into two phases instead of four and maintain the same transportation package but move transportation projects to different phases. As required by the Settlement Agreements staff met in good faith to review San Jose’s proposed modifications to NSJADP. Staff’s concerns with the proposal are summarized below and in the comment letters provided to San Jose (Attachment 4):

- 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

NSJADP and Construction of Transportation Mitigations

One of the key issues that Santa Clara has with San Jose’s proposal to modify the NSJADP is that any change should require transportation mitigations/improvements to be constructed in parallel to new development (one of the key goals of the current NSJADP) - otherwise San Jose could build 8000 housing units (and industrial) without any of the transportation improvements that the Settlement Agreement recognized as necessary to phased development. This issue was also

included in the City Place Settlement Agreement language:

“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 NSJADP. “

Staff worked in good faith to try to achieve the goal of moving forward with housing and assure construction of transportation improvements. However, San Jose never proposed any changes from their initial proposal. The attached August 6<sup>th</sup> letter from staff best summarizes the concerns as the negotiations progressed:

- Santa Clara staff once again noted that an Addendum to the original Environmental Impact Report is probably not the right approach for such a significant change to the NSJADP and circumvents appropriate public review.
- Santa Clara communicated that we will provide specific comments on the traffic analysis at the appropriate time.
- The policy change is significant and collapses four phases into two phases. As stated to San Jose staff on May 28<sup>th</sup> this 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 per the current level of development that has already occurred in North San Jose (Staff has requested multiple times a simple list of all Phase I transportation improvements highlighting which projects are **fully** funded or constructed - San Jose has not provided this list. Based on a different list provided to Santa Clara (Attachment 5), staff can infer that there were 31 Phase 1 improvements and only 5 have been constructed and no additional improvements are fully funded).
- The proposed change to reduce the phasing from 4 to 2 phases, effectively defers half of the transportation phasing funding requirements for development. Santa Clara staff commented that under the proposed change approximately 16 million square feet of office and 16,000 housing units 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.

As part of the process San Jose has stated to staff multiple times that they are committed to building transportation improvements and have shared a schedule for some of the major transportation projects. This schedule has been made public by San Jose staff (Attachment 6). Santa Clara staff communicated to San Jose that 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 and their schedules. Santa Clara staff informed San Jose that they are open to considering any phasing plan that ensures transportation is occurring in parallel to new development and that San Jose has the flexibility to develop and propose a phasing schedule that works with their current project schedules. Staff also communicated that since some of these are major projects that

have major milestones prior to completed construction (Completion of Environmental Review, Design Milestones, Funding, Construction Awards), and phasing could be developed to align with milestone completion.

As part of a good faith effort, staff was willing to consider any enforceable commitment to transportation improvements and mitigations. Because an additional 8,000 housing units will require time to build out for many reasons (permitting, design, construction, housing market absorption) San Jose has significant flexibility to develop a plan that will allow for the units to be built along with the necessary transportation improvements.

For many months San Jose declined to propose any commitments that aligned development with transportation improvements, but at a Sept 20, 2019 meeting San Jose agreed to develop a phasing plan that would assure transportation improvements would be completed as development occurred. Unfortunately, at a follow up October 30<sup>th</sup> meeting San Jose declined to offer a proposal, and once again reverted to their initial proposal to allow an additional 8,000 housing units to move forward with no legally enforceable commitments. In response, on November 18<sup>th</sup>, Santa Clara sent a letter to San Jose (Attachment 7) that reiterated all our previous concerns.

#### San Jose intent to Proceed under Senate Bill 330 (SB 330)

San Jose sent a response letter on November 27<sup>th</sup> (Attachment 8) and stated that “with no resolution in sight, San Jose intends to stop pursuing the current proposal of consolidating Phase 1 and 2 into Phase A” and that San Jose believes they can proceed under SB 330. In addition, they stated “our attorneys will follow-up with your legal team to discuss various mediation options.” On December 10<sup>th</sup> San Jose presented an update to the San Jose City Council on their proposed modifications to the NSJADP (Attachment 9).

At the December 10<sup>th</sup> San Jose City Council meeting, the San Jose City Council approved staff recommendation. The recommendation and approach has a number of different elements but its implications are contained in the Conclusion of the report “The elimination of housing caps by SB330 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.” In addition, the body of the report states the following language: “the advancement of housing can occur effective January 1, 2020 because of the elimination of housing caps by SB 330”.

Prior to the Council Meeting Santa Clara sent a letter (Attachment 10) opposing San Jose’s attempt to rely on SB330 as a means of avoiding their obligations under the Settlement Agreement:

- 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.

### Conclusion

As required and demonstrated by the settlement agreements, Santa Clara acknowledges our commitment to the development of housing and modifying the NSJADP to accelerate housing development. Santa Clara also supports the development of housing and affordable housing as a key priority for the region. However, this commitment to new housing cannot come at the cost of failing to provide necessary transportation infrastructure improvements that are necessitated by the new development. Santa Clara remains fully open to reasonable changes to San Jose's phasing to allow housing to advance, and Santa Clara continues to be open to good faith negotiations to modify the NSJADP to accelerate new housing units, but the development of additional housing units should still include the required transportation improvements to mitigate impacts. Santa Clara has been flexible in discussing how to best assure transportation improvements will be implemented with the next 8,000 housing units in the NSJADP. 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.

However, it appears that San Jose plans to ignore their legal obligations to build transportation improvements within the proposed NSJADP. Per Santa Clara's comment letter, staff does not agree with San Jose's contention that SB330 removes San Jose's existing responsibility to fund and construct required transportation mitigations and that 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 commitment that aligns new housing and transportation mitigations within their schedule for funding, design, and construction.

Per Attachment 5, 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. As part of a good faith negotiation process Santa Clara is only requesting that additional transportation projects show completed progress and/or funding in parallel to the next 8000 residential units.

### ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that this is a governmental organizational or administrative activity that will not result in direct or indirect changes to the environment.

### FISCAL IMPACT

There is no additional cost to the City other than administrative staff time and expense.

### COORDINATION

This report has been coordinated with the Public Works Department and City Attorney's Office.

### PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's

Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

**RECOMMENDATION**

Note and file this report regarding the proposal from San Jose to Modify the North San Jose Area Development Policy.

Reviewed by: Manuel Pineda, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. NSJADP Boundary Map
2. Settlement Agreements
3. Settlement Agreements Updates - Council Report
4. Letters
5. NSJ Draft Rephasing Plan Current Phasing
6. San Jose Schedule
7. November 18<sup>th</sup> Letter
8. November 27<sup>th</sup> Letter
9. San Jose Status Report Council Policy Priority #8 - North San José Area Development Policy Update
10. December 10<sup>th</sup> Letter