



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nanci Klein

**SUBJECT:** SEE BELOW

**DATE:** May 13, 2022

Approved

Date

5/13/2022

## SUPPLEMENTAL

**SUBJECT: CITY ROADMAP - NORTH SAN JOSÉ STRATEGY: SETTLEMENT AGREEMENT WITH THE CITY OF SANTA CLARA**

### REASON FOR SUPPLEMENTAL

The purpose of this memorandum is to provide additional information relevant to the North San José Area Development Policy actions on the same agenda. The City of Santa Clara and the City of San José have reached an accord on an Amended Settlement Agreement. Staff requests that the City Council vote first on the Amended Settlement Agreement prior to taking action on the Amendment to the North San Jose Area Development Policy and related actions. Voting on this item first will ensure that the Amended Settlement Agreement is in place prior to changes to the North San Jose documents.

### RECOMMENDATION

Approve an Amended Settlement Agreement between the City of Santa Clara and the City of San José related to the North San José Traffic Impact Fees and authorize the City Manager and City Attorney to execute the Amended Settlement Agreement to amend Section 1.2 of the existing Settlement Agreement dated November 16, 2006, whereby San José agrees to a total value of \$28 million of traffic improvements in lieu of constructing the Trimble Flyover as originally contemplated in the existing Settlement Agreement.

### OUTCOME

On May 17, 2022, the City Council will consider the amendment of the North San José Area Development Policy and associated documents. The goal of amending the documents is to achieve the build-out of the full 32,000 housing units, including affordable housing units, and the industrial and commercial development in the plan.

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The North San José Area Development Policy was adopted in 2005. The City of Santa Clara filed suit on the project Environmental Impact Report (EIR) shortly after the City Council adopted the policy. In 2006, the City of Santa Clara, the County of Santa Clara, and the City of Milpitas entered into three separate Settlement Agreements. As the City of San José seeks to amend the North San José Plan and related documents, the City of San José also seeks to amend these Settlement Agreements.

The City of San José and the City of Santa Clara have reached an accord on an amended settlement agreement. Approval of the proposed amended settlement agreement with the City of San José will facilitate near-term housing and industrial and commercial development in North San José.

## **BACKGROUND**

In 2005, San José approved the North San José Development Policy which included General Plan amendments that contemplated housing, commercial and industrial development in four phases. Housing was to be phased out as a result of specified amounts of commercial and industrial development. The goal was to promote job-generating uses in conjunction with residential uses. Housing was to be built in phases after a certain level of industrial/commercial development took place. The inclusion of housing with jobs would have positive environmental impacts. Traffic impacts were to be addressed, in part, by traffic impact fees paid by developers.

An EIR was certified by the City of San José as part of the development policy approvals. The City of Santa Clara, the County of Santa Clara, and the City of Milpitas filed suits challenging the EIR. Following a trial, the City of Santa Clara and the City of San José along with the County of Santa Clara entered into a settlement agreement in November 2006. The City of San José and the City of Milpitas entered into a separate settlement agreement.

Over the past 17 years, there has been a significant change in the California Environmental Quality Act (CEQA) method of analyzing environmental impacts. In 2006, the state passed Assembly Bill 32 requiring cities to reduce greenhouse gas to 1990 levels by 2020. In 2016, the state passed Senate Bill 32 requiring greenhouse gas reduction to 40% below 1990 levels by 2030 and 80% below 1990 levels by 2050. Furthermore, the state adopted Senate Bill 743 in 2013 which led to changing the primary transportation impact measured under CEQA from an automobile level of service to the overall transportation system measurement of vehicle miles traveled. When the City of San José adopted vehicle miles traveled as its CEQA transportation measurement, the prior EIR for North San José could no longer be used for new development projects in the North San José area. In addition, state housing laws such as Senate Bill 330 minimize local control over housing development.

Several factors have stalled development in North San José including litigation, a global financial crisis, major shifts in the regional development market, the cost of North San José

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development fees relative to market economics, and a global pandemic. Perhaps most importantly a housing crisis threatens San José's and Silicon Valley's ability to provide housing for those most in need and workers alike. The provision of housing and affordable housing is inextricably linked to economic development and employers' ability to retain and attract workers. Amending the North San José Area Development Policy and associated documents and settlement agreements with nearby jurisdictions will accomplish the goals of providing much-needed housing and allowing industrial/commercial development to proceed. As such, staff seeks approval of the recommended Amendment to the 2006 Settlement Agreement with a General Release between the City of Santa Clara and the City of San José.

### **ANALYSIS**

The proposed Amended Agreement and General Release are between the City of Santa Clara and the City of San José. The City of San José is seeking to negotiate a separate Amended Settlement Agreement with the County of Santa Clara. The 2006 Settlement Agreement was between the City of San José, the City of Santa Clara, and the County of Santa Clara, as well as the redevelopment agencies of the cities of Santa Clara and San José. The parties acknowledge that the City of San José desires to amend the North San José Area Development Policy to render it inapplicable to future development in North San José and to amend the 2006 Settlement Agreement to modify the required transportation improvements previously required with prior development phasing. Additionally, the North San José traffic impact fee would be amended so that it will not apply to future development approvals. The prior North San José Area Development Policy and traffic impact fee will only apply to those projects that already have their approved entitlements (or as may be amended).

The parties acknowledge that the milestones for the completion of Phase 1 of the North San José Area Development Policy and the advancement from Phase 1 to Phase 2 of the North San José Area Development Policy have not yet occurred and that this Amended Settlement Agreement will replace the requirements of the 2006 Settlement Agreement. Section 1.2 of the 2006 Settlement Agreement required the City of San José to fund and complete the widening of Montague Expressway to eight lanes between Lick Mill and Trade Zone, including modifications at I-880 and the Trimble Flyover.

The City of San José has completed an amended nexus study in support of the retirement of the North San José Area Development Policy and associated mitigation fee program. The Amended Settlement Agreement sets forth certain transportation improvements and payments included in the attached Amended Settlement Agreement and is summarized as follows:

**Support of Measure B, Montague Expressway Widening Projects for County of Santa Clara**

- Subject to the terms of a separate written settlement agreement between San José and the County of Santa Clara, San José agrees to pay a total of \$1.5 million to the County of Santa Clara.

**Eight-Lane Montague Over Guadalupe River from First Street to Lick Mill Boulevard**

- San José will initiate the work within three years of the executed Amended Agreement.
- San José will complete the work within five years of the start of construction.
- San José will obtain all permits and clearances. If there are delays outside of San José's control, San José will promptly notify the City of Santa Clara and County of Santa Clara.
- If San José does not complete the project, San José will be required to complete alternative projects of substantially the same value which are of the benefit to the City of San José and the County of Santa Clara. The City of Santa Clara will have the right to the prior consent of alternative improvements which will not be unreasonably withheld.
- Unanticipated delay includes delays in permit review by outside agencies, CEQA litigation, and force majeure events that are beyond San José's control.

**Tasman Complete Streets Plan 2021 and Montague Expressway and North First Street Improvements (Trimble Flyover Substitute)**

- The City of Santa Clara will accept the completion of the following obligations in lieu of San José's obligations to complete the Trimble Flyover.
- San José shall contribute a total of \$28 million to improvements in the Tasman Complete Streets Plan 2021 and/or to advancing grade separation of Santa Clara Valley Transportation Authority Light Rail along North First Street at Montague Expressway: \$9,340,000 will be invested in improvements in San José; \$9,330,000 will be invested in the City of Santa Clara, and \$9,330,000 in improvements will be constructed for the benefit of the County of Santa Clara.
- Improvements to be constructed within the County of Santa Clara's jurisdiction will be subject to a separate settlement agreement between San José and the County of Santa Clara.
- Any money not spent on Tasman Complete Streets Plan 2021 or Montague Expressway/North First Street improvements must have a similar beneficial effect in the North San José Area.
- The City of San José will make payments to the City of Santa Clara totaling \$9,330,000 over a five-year period.
- The City of Santa Clara agrees that payment from the City of San José in the amount of \$9,330,000 shall fully satisfy San José's obligation for the Trimble Flyover.

- The City of Santa Clara further agrees that the improvements be constructed within San José's and the County of Santa Clara's jurisdiction will be subject to a separate written settlement agreement.
- If the City of San José does not enter into a separate written agreement with the County of Santa Clara for the construction of \$9,330,000 of improvements and the County of Santa Clara does not take action through mediation or litigation then the City of San José agrees to make an additional payment to the City of Santa Clara in the amount of \$4,700,000, after six years.

### **Police Powers**

- Nothing in the Amended Settlement Agreement shall hinder the parties' exercise of their respective police powers.

### **Third-Party Litigation**

- In the event of third-party litigation including litigation with the County of Santa Clara, San José shall defend, hold harmless and indemnify the City of Santa Clara against any claim including attorney's fees as long as the City of Santa Clara does not fail to immediately notify or cooperate with San José regarding any third-party notices or claims. The City of Santa Clara agrees and acknowledges that San José shall have sole and exclusive authority to control the third-party litigation and must cooperate in any defense.
- In the event that the Amended Settlement Agreement is invalidated the terms of the original 2006 Settlement Agreement shall remain in effect.

### **Release of Claims**

- The City of Santa Clara agrees to release all claims when San José completes stated obligations.

### **Covenant Not to Sue**

- The City of San José has provided to the City of Santa Clara all analysis, CEQA, and any other documents required to amend the North San José Area Development Policy applicable to future development. The City of Santa Clara agrees that it has reviewed all analysis, CEQA, and any other documents and agrees that after the execution of the Amended Settlement Agreement, it shall not bring any action of arbitrations, mediation, or suit challenging the North San José Area Development Policy Amendments and associated documents.

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## **CONCLUSION**

Approval of the Amended Settlement Agreement with the City of Santa Clara comes as the result of an extended period of negotiation and is an important step in moving forward with development in North San José.

## **EVALUATION AND FOLLOW-UP**

City staff will seek to reach an amended settlement agreement with the County of Santa Clara.

## **CLIMATE SMART SAN JOSÉ**

Approval of the Amended Settlement Agreement and General Release does not impact the City's Climate Smart activities.

## **PUBLIC OUTREACH**

This memorandum and the draft Amended Settlement Agreement will be posted to the City's website for the May 17, 2022 Council agenda. To view all related documents please use this [link](#).

## **COORDINATION**

This memorandum and Amended Settlement Agreement were coordinated with the City Attorney's Office, Department of Transportation, Planning, Building, and Code Enforcement and City Manager's Budget Office.

## **COMMISSION RECOMMENDATION/INPUT**

On May 3, 2022, the Planning Commission supported the staff's recommendation (9-1-1) to amend the North San José Area Development Policy, General Plan, CEQA, and other related documents.

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### **COST SUMMARY/IMPLICATIONS**

The Amended Settlement Agreement proposes obligations from the City of San José totaling \$38.5 million from the Traffic Capital Program via revenues from the Building and Structure Construction Tax (B&S) Fund and North San José Traffic Impact Fees, as detailed below:

- \$1.5 million to the County of Santa Clara in support of Measure B, Montague Expressway widening projects (B&S Fund);
- \$9.0 million for the Eight-Lane Montague Over Guadalupe River from First Street to Lick Mill Boulevard project (North San José Traffic Impact Fees); and
- \$28.0 million for traffic improvements as an alternative to the Trimble Flyover, an improvement listed in the current Agreement (\$18.5 million from the B&S Fund and \$9.5 million from North San José Traffic Impact Fees).

These allocations will be reflected in the 2022-2023 Adopted Capital Improvement Program and 2023-2027 Adopted Capital Improvement Program, and future capital improvement programs as necessary.

### **CEQA**

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San José General Plan Final Program Environmental Impact Report (Resolution No. 77617).

/s/

NANCI KLEIN  
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and Cultural Affairs

For questions, please contact Nanci Klein, Director of Economic Development and Cultural Affairs, at (408) 535-8184.