

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton
Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: November 4, 2022

Approved



Date

11/4/22

COUNCIL DISTRICT: 3, 4, 6

**SUBJECT: CITY INITIATIVES ROADMAP - NORTH SAN JOSÉ: HOUSING
STRATEGY AND PROPOSED LAND USE FRAMEWORK**

RECOMMENDATION

Accept the staff report regarding the North San José housing strategy and next steps.

OUTCOME

City Council will give feedback on staff's work thus far and guide staff in formulating new programs and strategies to serve the goals of increasing total housing production and meeting the City's 20% affordable housing goal in North San José.

BACKGROUND

On May 17, 2022, the City Council took several actions that effectively retired the North San José Area Development Policy (ADP) with respect to future development. These urgent and overdue changes were primarily focused on:

- 1) Elimination of a phasing policy to allow processing of entitlements applications for new housing developments in North San José, and
- 2) Elimination of the transportation impact fee and requiring all future projects to complete project-level environmental review consistent with vehicles mile traveled and the California Environmental Quality Act.

As discussed in May, one of the most important goals established in the ADP was to achieve an affordable housing target of 20% of all new housing development. This goal was significantly

missed for a variety of reasons, some of which were beyond the City's control. Out of the initial 8,000 units approved, 432 affordable homes were built, resulting in just 5.4% of all units. Staff explained that the next steps of policy work in North San José would be pursued in conjunction with the Housing Element Update. To achieve the City's long-term goal that 20% of all North San José housing be restricted affordable, a strategy with multiple layers must be implemented.

The primary purpose of this memorandum is to respond to the City Council's direction from last May to return to the City Council in fall 2022 to provide a status update and seek feedback, including any necessary clarification in direction, so that staff's North San José work will synchronize with housing sites and policy work being included in the Sixth Cycle Housing Element.

Proposed North San José Policies in the Sixth Cycle Housing Element

The following policies have been incorporated into the draft Housing Element with respect to North San José:

- **Program P-3 - North San José Affordable Housing Overlay Zones**
 - Identify areas for housing to be integrated into North San José and propose changes to the General Plan, zoning code, and Rincon South Urban Village Plan to facilitate the production of all 24,000 planned housing units in North San José.
 - Integrate affordability by creating North San José-specific Affordable Housing Overlay Zones that support only Industrial Park uses, 100% affordable housing, or market-rate housing that integrates affordable units into their developments.
 - Identify locations and rezone sites in the North San José Affordable Housing Overlay Zones through the Sites Inventory rezoning process.
 - Communicate to the development community about the new program.
- **Program P-4 -Affordable Housing tools for North San José**
 - Produce an analysis of new programs and tools to help ensure 20% of all North San José homes are restricted affordable for lower-income residents.
 - Conduct a feasibility study to examine the affordability levels that would be feasible for developers to construct affordable homes onsite, both standalone and combined with a proposed North San José Density Bonus program.
 - Create a North San José Affordable Housing Implementation Plan that identifies strategies and projects for affordable units created through these tools and City subsidies.
- **Program P-5: Affordable Housing Investments in North San José**
 - Direct City resources to help ensure 20% of all North San José homes are restricted affordable for lower-income residents.
 - Prioritize City land acquisition in North San José for future 100% affordable housing and new construction opportunities, then conduct Requests for Proposals to award land control through ground leases to developers.

- Ensure that affordable development proposals in North San José are prioritized with the City's funds.

Recap of Residential Development Under the ADP

The ADP goal included a total of 32,000 housing units with 8,000 (20%) of those affordable. The Phase 1 target of 8,000 entitled housing units was accomplished. No additional entitlements were granted because residential development could not move forward to Phase 2 until a certain level of commercial development and transportation improvements associated with Phase 1 development were achieved. Those milestones were never reached. With the exception of one small project with five units, all residential projects allowed in Phase 1 were entitled before the end of 2014. Most of the market-rate housing was built on sites designated Transit Employment Residential Overlay (TERO). This includes 6,884 units out of 7,565 market-rate units built. The 432 affordable housing units built in Phase 1 were all built within the Rincon Urban Village area.

ANALYSIS

The proposed next steps for North San José dovetail with policies/programs in the draft Housing Element. As part of the Housing Element, 3,000 units of the total 32,000-housing unit capacity in the General Plan, and goal in the North San Jose ADP, are proposed to be transferred to other parts of the city. This would be done to address the need for more residential capacity in several urban villages which have yet to adopt formal urban village plans. The proposed transfer of units is intended to target moderate- and high-resource areas of the City. Facilitating housing development in these areas is consistent with the State's direction to affirmatively further fair housing choices in the Housing Element. Additional units are planned to be transferred to lands designated Public/Quasi-Public in conjunction with assembly uses, as directed by the City Council as part of the Citywide Anti-Displacement Strategy. The proposed capacity shift would result in a reduction of the North San José total housing capacity in the General Plan to 29,000 units, with 21,000 units remaining unbuilt. In keeping with the 20% affordability goal, the adjusted affordable housing goal becomes 5,800 units. With 432 units accomplished to date, the remaining proposed goal would be 5,368 affordable units in North San José.

Staff from both the Planning, Building, Code Enforcement Department and Housing Department have studied several ideas in recent months to encourage the production of affordable housing units and have the following recommendations below:

1. Proposed Affordable Housing Overlay

An Affordable Housing Overlay has been used by several cities throughout California in recent years to encourage the production of affordable homes rather than requiring it. This tool is similar to San José's existing TERO General Plan and zoning overlay which allows for residential development as an additional use in the base Industrial Park land use designation and zoning district. Rather than imposing restrictions, an Affordable Housing Overlay would provide

developers with the opportunity to build affordable housing in addition to building the industrial, office, and research and development uses allowed in the Industrial Park land use designation and zoning district, thereby incenting the development of affordable housing in North San José.

Staff proposes to implement the Affordable Housing Overlay on 10 sites that would require 100% affordability if the owner/applicant chooses to develop the site with residential uses. These sites are listed in Attachment A. Five of the identified sites are currently in the TERO and their designation would be changed to the Affordable Housing Overlay. Several are vacant sites that are more likely to develop soon. Two of the sites are owned by the City of San José, enabling the Housing Department to control the process. Many of the other sites have recent transaction activity that will result in site control by a non-profit affordable housing developer. All sites score well using the State's criteria to rank development applications for funding in the Low Income Housing Tax Credit Program. The anticipated number of units is taken from the anticipated density for each site in the draft Housing Element site inventory. Based on these figures, 2,332 units could potentially be built on these sites. Staff recommends establishing a minimum of 75 dwelling units per acre on these sites. These sites are shown on the map and included in Attachment A.

In order to fulfill the obligations of the Affordable Housing Overlay, it is proposed that each project must qualify as an "Affordable Housing Development" as defined in the Revised Guidelines for Implementation of the Inclusionary Housing Ordinance approved by the Director of Housing on August 24, 2022. This is defined as follows:

Rental Residential Development that has a recorded affordability restriction that:

- Has a term of at least 55 years, and
- Limits the rental of all dwelling units except the managers' units to an Affordable Housing Cost for households earning no more than 60% of the area median income (AMI) for a given household size or the units have rents not in excess of those rents required by the California Tax Credit Allocation Committee (TCAC) for an income averaged 100% affordable housing project (i.e., the average rent of 60% of AMI using TCAC rents and incomes and consistent with a project-specific TCAC allocation resolution), and
- Restricts at least 10% of the units to very low-income households at incomes up to 50% of AMI, and
- Is made for the benefit of and enforceable by the City of San José, County of Santa Clara, or a state or federal agency.

For-sale Residential Development that has a recorded affordability restriction that:

- Has a term of at least 45 years, and
- Limits the sale of all dwelling units to households with an income not exceeding 110% of AMI at a price not exceeding the Affordable Sales Price, and
- Is made for the benefit of and enforceable by the City of San José, Count of Santa Clara, or a state or federal agency.

Additional incentives that could be included in the affordable overlay consist of reducing development barriers (e.g., waivers/concessions in development standards) and changes to the process itself (e.g., streamlining/accelerating entitlements/permits). However, waivers/concessions are already available using State Density Bonus Law, and the City's own Affordable Housing Density Bonus and Incentives (see San José Municipal Code section [20.190.140](#)) already adds some concessions for developers not specified in state law. There is also an action item in the Draft Housing Element's work program suggesting the City develop its own streamlined permit ordinance that would expand the type of projects that qualify for streamlined processing beyond what is required under state law.

2. Proposed Mixed-Income Housing Overlay Zone

While the affordable overlay sites would supply a large portion of the future affordable units in North San José, this would not come close to meeting the proposed new affordable housing goal of 5,800 units in North San José. Staff believes it is important to provide additional incentives to construct inclusionary housing units on-site, as opposed to paying an in-lieu fee which is allowed under the City's Inclusionary Housing Ordinance and is often the chosen option by market-rate housing developers.

The now-retired ADP had a goal of constructing up to 6,000 housing units in the "Core Area" of the Plan clustered along the North First Street corridor, the area of the highest intensity of industrial development in North San José. No specific sites or development standards were established for the former Core Area, but it remains designated as a Transit Employment Center (TEC) in the 2040 General Plan with residential noted as an allowed use. Staff proposes a Mixed-Income Housing Overlay to provide a residential development alternative that would apply to several contiguous properties within the Core Area and three sites that are currently designated Industrial Park further north. In addition to these properties, a 40-acre site owned by Apple would be added to this list for a total of 13 properties; the 40 acres identified for the overlay is one-half of the 80-acre property that Apple owns. All of the sites are 3.5 acres or larger and four of the sites exceed 15 acres. This Core Area is bounded roughly by Daggett Drive to the north, Orchard Parkway on the west, West Plumeria Drive on the south, and Zanker Road on the east. It is anticipated that this could provide an opportunity for sites to develop in a master-planned format enabling market and affordable housing communities to thrive while sharing community and commercial services. All of the proposed Mixed-Income Housing Overlay sites are shown on the map included in Attachment B.

Staff proposes a minimum density of 75 dwelling units per acre be applied to these sites. With no projects built at less than 75 dwelling units per acre, the development of the Mixed-Income Housing Overlay for residential use could yield an estimated 12,013 housing units. Staff proposes that a 25% affordable requirement be applied as well, five percent higher than what is required in the Inclusionary Housing Ordinance. This would result in an additional 3,003 affordable units. It is recommended that the affordable units be included in the project with no option to pay the housing in-lieu fee. This increases the potential affordable unit count to 5,335,

new affordable units in North San José when combined with the anticipated Affordable Housing Overlay units described above.

3. Proposed Addition to TERO

The TERO has in the past allowed industrial-use properties the option to develop instead as residential. All of these sites currently have an underlying General Plan designation of Industrial Park. In addition to the retirement of the ADP in May 2022, the City Council raised the minimum density within the TERO from 55 dwelling units per acre up to 75 dwelling units per acre. Staff proposes to add one site (1601 Technology) to the TERO overlay after discussions with this property owner, who expressed interest in potentially developing the site with residential uses. This five-acre site is ideally located just outside the Rincon Urban Village, adjacent to a community park, and provides an excellent opportunity for additional units close walking distance to the urban village.

At the same time, staff is proposing to update the TERO and is recommending the removal of nine sites that are no longer believed feasible to develop as residential properties due to changed circumstances. Six of the nine properties are located along Tasman Drive. These sites have some of the best transit access in North San José given their proximity to the intersection of two light rail lines along Tasman Drive and North First Street. These lines provide superior access to the new Milpitas BART Station, the Capital Corridor, and ACE trains. The removal of these sites with the intent to focus future development as industrial park uses only helps facilitate transit ridership into North San José. With respect to other sites, formal applications are currently being processed for industrial use, while several publicly owned sites have been committed for parks/open space. The sites to be removed are shown on the map included in Attachment C.

4. Additional Strategies

Based on the above-stated goal of 5,800 affordable units in North San José, the strategies above could result in 5,335 new affordable units. When combined with the 432 affordable units achieved to date, this would result in 5,767 affordable units in North San José, just 33 units short of the overall goal for affordable units in North San José.

The Housing Department plans to take additional actions and make investments in this area to increase the number of affordable housing units in North San José and therefore increase the chances of meeting and exceeding the City's goal. The Housing Department will ensure that North San José is eligible for subsidy awards on sites that developers acquire. The Housing Department also intends to prioritize land acquisition for affordable housing developments using City funds, and would temporarily hold and then convey land to affordable housing developers through a competitive process. The Housing Department's work will include the creation of an Affordable Housing Implementation Plan for North San José which will estimate the number of affordable homes to be obtained through different strategies. These strategies will provide an additional 300 affordable units to ensure the goals for North San José are met.

As a part of the May discussion with the City Council, staff was directed to explore additional strategies including:

- *Studying the feasibility of modifications to the Inclusionary Housing Ordinance to provide flexibility and incentivize on-site development of affordable units* – In February 2021, the City Council passed amendments to the Inclusionary Housing Ordinance allowing for clustering of affordable housing within the site of market-rate development. This change has led to several conversations with developers regarding options for building affordable housing. Based on current interest, this modification to the Inclusionary Housing Ordinance has led to the development of affordable units on-site. Staff is not currently recommending additional modifications.
- *Increasing the per-unit affordable housing subsidy in North San José where construction costs necessitate a need for a larger subsidy* – Staff recommends an increase in the per-unit subsidy as a part of the Housing Crisis Workplan report being considered by City Council on November 15, 2022. The increased cost of construction combined with the limited availability of funds by the County of Santa Clara has led to the need to increase subsidies throughout the City.
- *Park Fees in North San José.* The Department of Parks, Recreation, and Neighborhood Services is completing a fee study of park development impact fees. A status report about this effort was provided to the Community and Economic Committee on August 22, 2022¹. A report on the completed results of the fee study is anticipated to be considered by the City Council in spring 2023. All qualifying affordable housing units currently receive a 50% per unit reduction on park fees. Additionally, private recreation credits can lower the fee by up to an additional 50%. These credit programs are anticipated to stay within the park fee program.

Additional strategies will be explored through an Affordable Housing Implementation Plan for North San José. This plan will be initiated in 2023 and will be completed by winter 2023.

5. Consideration of establishing a minimum density of 100 dwelling units per acre

The City Council directed staff to return with recommendations for increasing the minimum density within the TERO, including identifying areas that could sustain minimum densities of up to 100 dwelling units per acre. The report on the Cost of Residential Development was the subject of a City Council Study Session on November 1, 2022. The analysis in the report looked at two residential prototypes in North San José; a seven-story mid-rise with a density of 90 dwelling units per acre and a 22-story high-rise with a density of 350 dwelling units per acre. Under this analysis, neither of these two scenarios was shown to be feasible under current conditions.

¹ August 22, 2022, Community and Economic Development Committee Agenda Item 3.

<https://sanjose.legistar.com/View.ashx?M=A&ID=987868&GUID=BBB05D32-1452-4477-90B4-A354B99E514A>

As part of the development of the Draft Housing Element site inventory, staff worked with its consultant to develop estimated densities for identified sites within the inventory. These estimated densities were determined based on comparable sites that had developed in recent years and their associated dwelling units per acre. The top comparable sites that matched the inventory site were averaged to determine estimated dwelling units per acre. None of the sites in the TERO had estimated densities at or above 100 dwelling units per acre. There were several sites that showed estimated densities above 90 dwelling units per acre but below 100 dwelling units per acre. Two sites, one on the Moitozo property and one in Rincon South, had an estimated density greater than 100 dwelling units per acre.

Based on the findings of the Cost of Residential Development, and the estimated densities in the Draft Housing Element site inventory analysis, staff recommends maintaining the minimum density at 75 dwelling units per acre. Higher minimum densities could present additional challenges for sites to develop in the near term that would be counter to the housing goal in North San José. Summerhill, for example, has a site permit on file to develop 210 Baypointe Parkway with a blended density that included high density apartments and townhomes to achieve an overall density of 75 dwelling units per acre. In conversations with the developer, it stated that it did not anticipate 100 dwelling units per acre would be feasible in its intended timeframe for development.

If City Council desires, however, to establish a 100 dwelling units per acre minimum density on portions of North San José, staff recommends that this minimum density be applied to properties planned for housing that abut North First Street and the light rail line, from Interstate 880 to Tasman Drive. Setting a higher minimum density in these locations could further support light rail ridership in the long run. This approach would also build off the land use and urban design approach included in the former ADP. Given the anticipated challenges to developing at 100 dwelling units per acre or greater, however, these properties may develop later than the ones farther from light rail with a minimum density of 75 dwelling units per acre.

CONCLUSION

Staff recommends multiple strategies to meet the goal of 20% of all residential development in North San José be restricted affordable. Key strategies include creating an Affordable Housing Overlay, Mixed Income Overlay Zone, and completing an Affordable Housing Implementation Plan to identify additional tools to ensure the affordable goal is met. Table 1 below outlines the goal and strategies to meet the goal.

Table 1: Strategy to Meet 20% Affordable Housing Goal in North San José

Strategy	Anticipated Affordable Units
<i>Original ADP Goal: 32,000</i>	<i>Affordable ADP Goal: 6,400</i>
Updated NSJ Goal: 29,000	Affordable housing Goal: 5,800
• Existing Affordable Units Built	432
• Affordable Housing Overlay	2,332
• Mixed Income Overlay Zone	3,003
• Additional Strategies	33
TOTAL	5,800

With the implementation of the steps above, and the additional strategies proposed by the Housing Department, staff believes this would result in the accomplishment of both overall housing and affordable housing unit goals in North San José. This recommendation would allocate some of the housing units previously to be in North San José to other areas outside of North San José.

EVALUATION AND FOLLOW-UP

Should the two new proposed overlays be supported by City Council, the next steps will be to direct staff to move forward with the preparation of General Plan text amendments and zoning text/map amendments to add the two new land use overlay designations to the City's General Plan and Zoning Ordinance. If the proposed changes to the TERO sites are supported, an amendment to the City's Zoning Map would be processed concurrently to make these adjustments. If determined appropriate by City Council, the above work will proceed in tandem with the next steps in preparation for the Sixth Cycle Housing Element and proceed to City Council concurrently in 2023.

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals by helping to facilitate high-density new development in North San José.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the November 15, 2022 City Council meeting.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office, the Parks, Recreation, and Neighborhood Services Department, the City Manager's Office of Economic Development and Cultural Affairs, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action. An update on this policy recommendation will be shared with the Housing and Community Development Commission as a part of the Director's Report at the November 10, 2022 regular meeting.

FISCAL/POLICY ALIGNMENT

This expenditure is consistent with the following policy documents: *The City's Envision 2040 General Plan* and the *2014-23 Adopted Housing Element* in that it will help the City meet its Regional Housing Needs Allocation; the City's current *Housing Investment Plan* in that it increases San José's supply of affordable housing; the *City's 2015-20 HUD Consolidated Plan* in that it will provide rental apartments affordable to very-low- and extremely-low-income households.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
CHRIS BURTON
Director of Planning, Building
and Code Enforcement

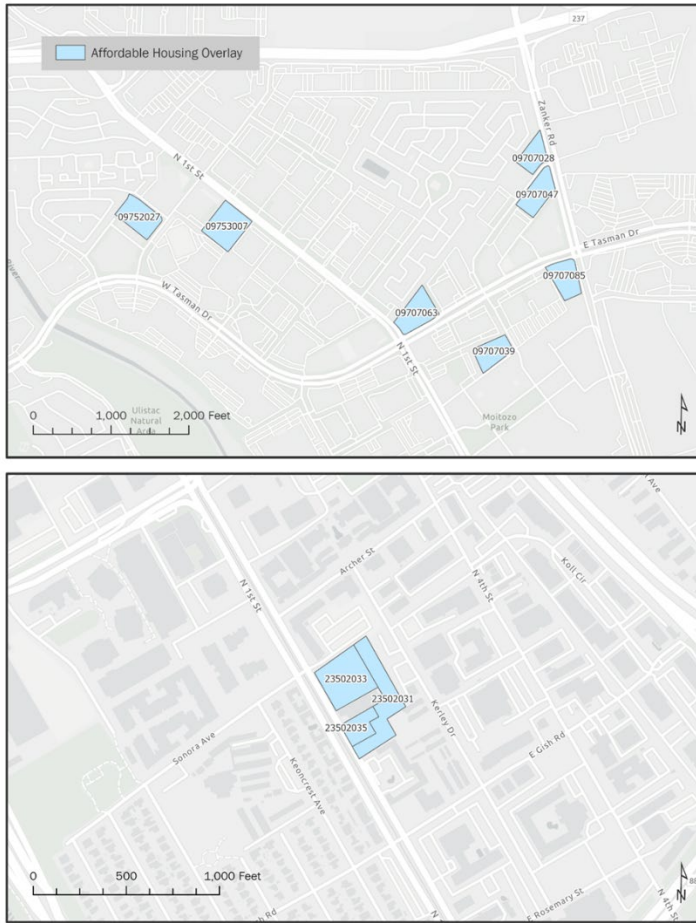
/s/
JACKY MORALES-FERRAND
Director of Housing

For questions, please contact Michael Brilliot, Deputy Director of Planning, Building and Code Enforcement, at (408) 535-7831 or Rachel VanderVeen, Deputy Director of the Housing Department, at (408) 535-8231.

Attachments:

- A - Map and List of Affordable Housing Overlay Sites
- B - Map and List of Mixed Income Housing Overlay Sites
- C - Map and List of Sites Proposed for Removal from TERO

Attachment A – Map and List of Affordable Housing Overlay Sites

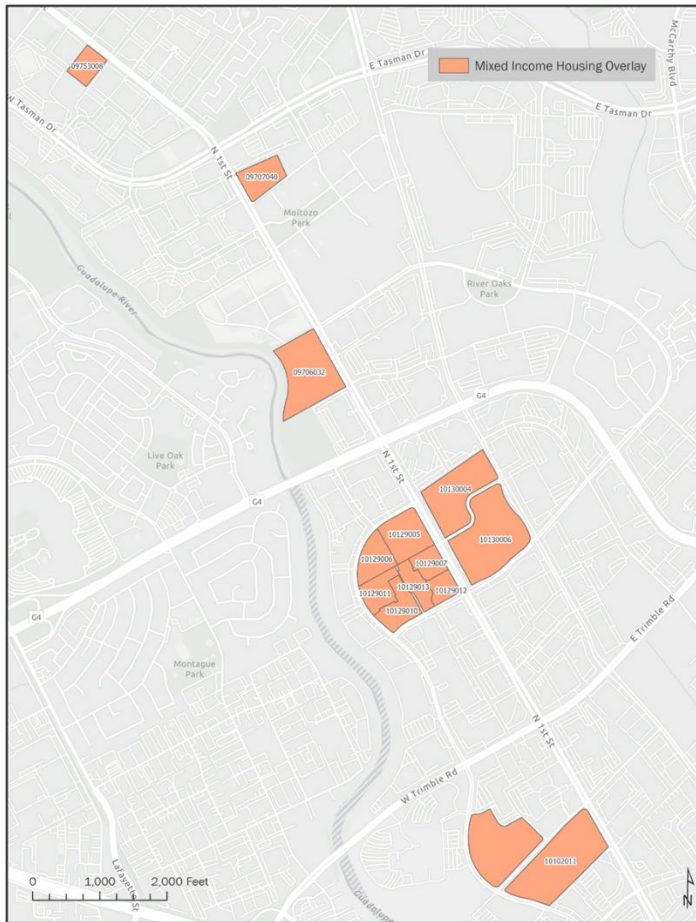


List of Proposed Affordable Housing Overlay Sites

#	Owner	APN	Acres	Address	Units*	General Plan	Proposed
1	Peery/Baypointe	097-07-063	4.1	Not assigned	307	Industrial Park	TERO/Change to AHO
2	Peery/Tasman	097-07-085	3.5	Not assigned	259	Industrial Park	TERO/Change to AHO
3	City of San José	097-52-027	4.2	71 Vista Montana	312	Industrial Park	TERO/Change to AHO
4	Peery Richard Trustee & ET. AL.	097-07-047	3.7	240 Baypointe Parkway	335	Industrial Park	TERO/Change to AHO
5	Peery Richard Trustee & ET. AL.	097-07-028	2.6	255 Baypointe Parkway	239	Industrial Park	TERO/Change to AHO
6	Peery/Tasman & Zanker	097-07-085	3.5	Not assigned	280	Industrial Park	AHO
7	Second Harvest Food Bank	097-53-007	5.05	4001 N 1 st St.	379	Industrial Park	AHO
8	City of San José (hotel)	235-02-031	1.4	1488 N 1 st St.	72	Urban Village	AHO
9	Wang, Leo (EZ* Motel)	235-02-033	1.5	1550 N 1 st St.	74	Urban Village	AHO
10	Kitsap Way Investments	235-02-035	.5	1490 N 1 st St.	75	Urban Village	AHO
	SUBTOTAL UNITS				2332		

*Unit count is based on the Sixth Cycle Housing Element Site Inventory

Attachment B – Map and List of Mixed Income Housing Overlay Sites

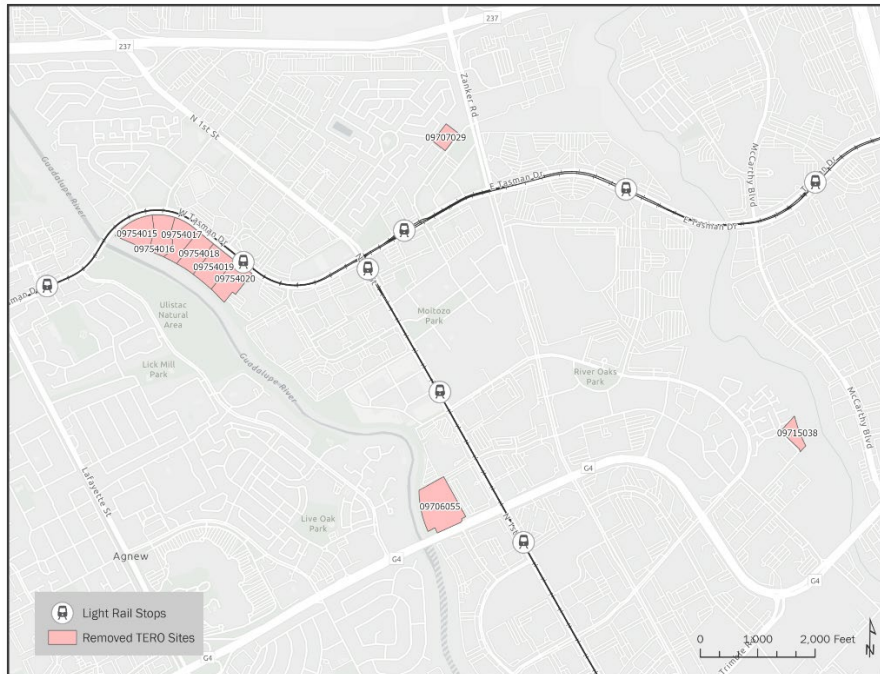


List of Proposed Mixed-Income Housing Overlay Sites

#	Owner	APN	Acres	Address	Units*	General Plan	Proposed
1	SIR Properties Trust	097-53-008	4.3	3939 N. 1 st St.	321	Industrial Park	MHO
2	Santa Clara VTA	097-06-032	17.7	3331 N. 1st St.	1,356	Industrial Park	MHO
3	Analog Devices	097-06-040	6.3	3550 N. 1st St.	475	Industrial Park	MHO
4	Apple Inc.	101-02-011	40.6	2347 N. 1 st St.	3,839	TEC	MHO
5	WH Silicon Valley II LP	101-30-004	15.6	101 Daggett	1,170	TEC	MHO
6	BP North 1 st LLC Et. Al.	101-29-006	22.8	2865 Zanker Rd.	1,711	TEC	MHO
7	3011 N 1 st Owner LLC	101-29-005	9.2	3011 N. 1 st St	693	TEC	MHO
8	LBA Riv-Co XXX LLC	101-29-007	4.1	3003 N. 1st St.	307	TEC	MHO
9	LSMD Fund Propco LLC	101-29-006	5.1	2904 Orchard Parkway	406	TEC	MHO
10	LT Orchard Pkwy LLC	101-29-006	6.5	3000 Orchard Parkway	641	TEC	MHO
11	Align Technology Inc.	101-29-010	6.3	2820 Orchard Parkway	474	TEC	MHO
12	Align Technology Inc.	101-29-013	4.4	2825 N. 1 st St.	332	TEC	MHO
13	Miramar 2825 N 1 st E	101-29-012	3.5	3 W. Plumeria Dr.	288	TEC	MHO
	SUBTOTAL UNITS				12,013		

**Unit count is based on the Sixth Cycle Housing Element Site Inventory*

Attachment C – Map and List of Sites Proposed for Removal from TERO



#	Owner	APN	Address	Current Use	Status/Reason
1	Gerina Tasman LLC	097-54-015	250 W Tasman Dr	Office	Class A Office/ Tasman line proximate
2	Tcsp LLC	097-54-016	230 W Tasman Dr	Office	Class A Office/ Tasman line proximate
3	Tcsp LLC	097-54-017	210 W Tasman Dr	Office	Class A Office/ Tasman line proximate
4	Tcsp LLC	097-54-018	190 W Tasman Dr	Office	Class A Office/ Tasman line proximate
5	Santa Clara County	097-54-019	180 W Tasman Dr	Office	County owned/ no housing plans
6	Santa Clara County	097-54-020	150 W Tasman Dr	Office	County owned/ no housing plans
7	SK Hynix America, Inc	097-06-055	Montague Expwy	Undeveloped	Proposed Campus Expansion
8	City of San José	097-07-029	225 Baypointe Dr	Park	City Park/Partially improved
9	City of San José	097-15-038	Unassigned	Park	Iris Chang Park Completed