



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel
Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: December 5, 2012

Approved

Date

12/6/12

COUNCIL DISTRICTS: 3 and 4

**SUBJECT: REALLOCATION OF AFFORDABLE HOUSING UNITS UNDER THE
NORTH SAN JOSE AREA DEVELOPMENT POLICY**

RECOMMENDATION

(a) Adopt a resolution amending the North San José Area Development Policy to:

- 1) Allow reallocation of up to 174 of the remaining affordable housing units in Phase 1 as market-rate housing units to enable a shovel-ready market-rate housing project to proceed in Phase 1 if such project developer ensures by written agreement with the City a substantial benefit to the City towards the provision of high rise, high-density residential development in North San Jose and new affordable housing to balance the reduction of affordable housing allocation in Phase 1; and,
- 2) Shift the number of reallocated affordable housing units originally reserved for Phase 1 to Phase 2, and correspondingly decrease the number of market-rate housing units in Phase 2, to ensure the vision of a mixed-income community.

(b) Direct the Administration to negotiate and bring back for Council consideration a written agreement with Mill Creek Residential Trust LLC that meets the criteria set forth in subsection (a).

OUTCOME

Affordable units will continue to be built in North San Jose, but in a later phase. One hundred seventy-four units now reserved for affordable housing in Phase 1 of the North San Jose Area Development Policy will be allocated to Phase 2. These changes will enable a shovel-ready

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market-rate housing development meeting certain criteria to proceed this coming year as part of Phase 1, creating much-needed construction jobs and providing funding that will enable pipeline affordable housing projects that need subsidy to proceed.

BACKGROUND

In 2005, the City Council approved the North San Jose Area Development Policy (NSJADP) with a goal of creating a well-planned community with a balance of employment, commercial, and residential uses. The NSJADP calls for the eventual development of 32,000 residential units, with 8,000 units in each of four phases. In 2009, the City Council took action to require that twenty percent (20%) of the residential units developed in each phase be set aside for lower- and moderate-income households.

Developers were quick to propose new residential development in North San Jose, and the full allocation for market rate units in Phase 1 was soon awarded. Changes to the Redevelopment Agency Inclusionary Policy and the implementation of an incentive program for North San Jose housing developers negatively impacted the number of affordable units developed. And while several affordable housing developments were also underway in North San Jose, considerable affordable housing allocation in Phase I remained available. Developers with market rate projects that were ready to start construction requested consideration by the City to enable them to begin construction in the first phase.

In 2010, the City Council approved a "loan" of up to 220 Phase 1 affordable housing units to be utilized as market-rate units for the first phase of the Century Center towers that was proposed by Barry Swenson Builder (BSB), provided that 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. Ultimately, no projects were abandoned and thus no projects returned units to the affordable housing pool.

On May 17, 2011, the City Council accepted a staff report on the status of residential development in North San Jose. At that meeting, the Council took action to temporarily allocate to the market-rate pool an additional 552 of the units set aside for affordable developments in Phase 1, 275 of which were allocated to the for-sale Fox Properties development at Brokaw and Old Oakland Roads. This project is subject to an inclusionary requirement, and the developers agreed as part of this approval to pay an in lieu fee to the City, the precise amount of which is currently being negotiated.

On November 29, 2011, the City Council again accepted a staff report on the status of housing development in North San José. As a part of this action, the Council approved the staff recommendation to take steps to amend the NSJADP to allow for the reallocation of up to 600 more affordable housing units in Phase 1 to market-rate housing developers who agreed to enter into an agreement with the City to meet specific development milestones and provide a

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substantial benefit to the City toward the provision of affordable housing. To be considered, a project needed to demonstrate that it would (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) that it was shovel-ready with construction to begin within 18 months.

In February 2012, the City Council approved that NSJADP amendment, allowing the reallocation of up to 450 (rather than 600) affordable units to market-rate units in Phase 1, and also memorializing the previously approved “loans” from the Phase 1 affordable pool. The City then entered into a Development Agreement with Irvine Apartment Communities to allow its 450-unit Crescent 6 market rate residential project to proceed in Phase 1. Irvine’s proposal incorporated into the Development Agreement a contribution of \$8.8 million to be used for the construction of affordable housing—an amount in excess of the in-lieu fee that would have been received under the affordable housing requirement. With this action, 174 units of affordable housing allocation remained in Phase 1.

ANALYSIS

Rationale for Policy Amendment

The proposed amendment of the NSJADP would allow the City to enter into an agreement with a developer that meets the four criteria set forth in the November 2011 action, to allow a shovel-ready housing development to proceed in Phase 1 at the same time providing substantial benefits to the City’s affordable housing program.

Project Proposals

Recently, Mill Creek Residential Trust LLC (Mill Creek), the developer of the Century Center Towers high rise residential project, requested that the City consider allocating additional Phase 1 market-rate units to its two-phase development. While BSB had received the initial loan from the affordable allocation to begin construction on its first tower, it found that it was impossible to finance the development of only one tower given the shared base parking and amenities and the uncertainty of timing for development of the second tower. BSB is now working with Mill Creek, which will be the developer of the two towers.

In order to evaluate the request by Mill Creek, City staff sent out a notice to the development community to determine interest in the 174-unit affordable allocation. The notice announced that interest had been expressed in reallocating these units for the Mill Creek development and requested that any developer that also wanted to make a proposal for these units contact the City. The notice indicated interest in developments that differed from the four story over podium product that is the predominant construction type in North San Jose. The City received two written responses, one from Mill Creek Residential Trust, LLC for the 440-unit Century Court

towers and one from ROEM Corporation for a 174-unit project at the intersection of Gish and Kerley Drive. (Attachment A)

Mill Creek proposed that, in exchange for the allocation of the 174 remaining affordable units in Phase 1, it would build the two high rise towers, with up to 394 apartment units, and contribute \$2.6 million dollars to the City's Affordable Housing fund. Mill Creek is not requesting any City fee offsets. The project has received its Planning approvals for up to 440 units in two towers. Building permit applications have not yet been submitted to the City.

ROEM Development Corporation submitted a proposal to use the 174-unit allocation for an affordable housing development in North San Jose. ROEM's project would target families at 50-60% of area median income and does not envision the need for any City subsidy. The project site has a General Land Use Planning Designation of Transit Corridor Residential (25-65 DU/AC) in addition to a General Commercial Overlay. A PD Zoning and development permit application would be required to be filed and approved. Staff has done no analysis on the conceptual design of the project to determine the consistency with applicable regulations.

Staff reviewed these two proposals and believes that the proposal from Mill Creek would provide more substantial benefits to the City for the following reasons:

1. It is important to encourage high rise development in North San Jose. To date, all of the housing built in Phase 1 has been rental housing of similar 4 story of housing over parking type densities and heights. This two tower project will set the stage for future high density high rise development, and will provide a different product type for residents of North San Jose.
2. Mill Creek is a high-rise developer and has assured City staff that it is ready to start construction quickly. The specific schedule would be delineated in a Development Agreement. The agreement would also specify the number of construction jobs that this signature project would create.
3. The ROEM project is proposed in the southern part of the NSJADP, an area that is already home to several affordable housing developments. Ideally we would like to see affordable development dispersed throughout North San Jose and not clustered in one geographic area.
4. Mill Creek is offering to contribute \$2.6 million to the City's affordable housing fund to fund projects currently in the City's affordable development pipeline. This contribution is equivalent to that made by Irvine Apartment Communities for the Crescent 6 development. Due to the loss of redevelopment funding, several pipeline affordable housing projects are in limbo awaiting needed subsidy. This contribution will help move forward projects that have been years in the planning, and already have approved zoning. Additionally, the City will be able to use the funds for units that are affordable to families with the lowest incomes.

Thus, staff recommends that Council provide direction to negotiate and bring back for Council consideration a Development Agreement with Mill Creek based on its proposal described in this

memo. A key reason for staff recommending this action is the willingness of Mill Creek to make a contribution to the affordable housing fund that will substantially benefit the City and enhance its ability to provide new affordable housing. These funds will help to offset the negative impact from the reallocation of affordable units from Phase 1 to Phase 2. Additionally, they will help the City address the need for affordable units, something made much more challenging with the elimination of redevelopment and the 20% Low and Moderate Income Housing Fund. This is of particular importance as the City struggles to meet the housing needs of its lowest income residents, including the homeless. More than 1,100 affordable housing units have been waiting for funding for the past several years.

However, it is important to note that, assuming the Policy amendment is approved reallocating the remaining Phase 1 housing units, there would be no more allocation available for affordable housing development in Phase 1 for North San Jose. Since all of the pre-existing market-rate allocations have also been assigned, this action would commit the last of the 8,000 Phase 1 residential units.

The purpose of the recommended Policy amendment is to allow a project meeting the established criteria to proceed. If this action is approved and the recommended direction given, staff anticipates that a Development Agreement with Mill Creek Residential Trust, LLC will be brought before the Planning Commission and the City Council for consideration in early 2013.

EVALUATION AND FOLLOW-UP

If this action is approved, staff anticipates that a Development Agreement with Mill Creek Residential Trust, LLC would be brought before the Planning Commission and the City Council in early 2013.

POLICY ALTERNATIVES

Alternative #1: Allocate the remaining 174 units to an affordable housing project in North San Jose.

Pros: No additional affordable housing units from Phase 1 would be deferred to Phase 2, reinforcing the statement that the City supports the creation of mixed-income communities. An affordable housing project would be allowed to proceed.

Cons: The only remaining high rise project in North San Jose would not proceed. The proposed change preserves in the long-term the area's overall affordability requirements, generates income that can be used to subsidize pipeline affordable housing developments, and recognizes that near-term, feasible, market-rate residential developments should be allowed to go forward in order to support our local economy.

Reasons for not Recommending: The benefits of the proposal for the high rise market rate project outweigh the drawbacks and exceed those of the alternative.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- 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.
- 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.

The proposed amendments meet Criterion 2 and have been posted on the City's website and emailed to interested parties.

COORDINATION

The preparation of this Memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with applicable General Plan policies and prior City Council-approved direction to amend the North San José Area Development Policy. This action is also consistent with the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by Council on June 12, 2007, to increase the City's supply of affordable housing and with the City's *Consolidated Plan 2010-2015* to provide housing units for very low- and extremely low-income residents.

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CEQA

Resolution No.72768, Addendum to the North San José Policy Update EIR.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

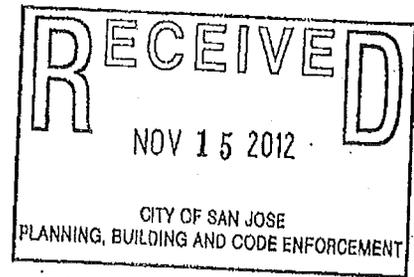
/s/

LESLYE CORSIGLIA
Director of Housing

Attachments: Mill Creek Proposal
ROEM Proposal
Revisions to North San Jose Area Development Policy

For questions, please contact Joseph Horwedel at 408-535-7900 or Leslye Corsiglia at 408-535-3851.

MILL CREEK
RESIDENTIAL TRUST LLC



November 9, 2012

Mr. Joseph Horwedel
Director
Planning, Building and Code Enforcement
City of San Jose
200 East Santa Clara Street, San Jose, CA 95113
San Jose, CA

Re: In-Lieu Allocation for 1731 and 1733 N. First Street, San Jose, CA

Dear Mr. Horwedel:

We are writing to inform you that Mill Creek Residential and Barry Swenson Builder have entered into a Letter Of Intent (LOI) for the Century Center project on North First Street. Our agreement is based on the following assumptions:

- Our executed deal hinges on the combination of the existing 220 market-rate phase one units plus an In-Lieu allocation of 174 units.
- In consideration for the In-Lieu allocation, a contribution of approximately \$2.6 million (Price of \$17/nrsf x 152,000 sf) will be made when building permits are pulled.

Please note that we are not asking for any City fee offsets, and that all parties involved have made financial concessions in order to make the project feasible.

We feel that the Century Center project will be an iconic gateway to the City of San Jose and will foster the beginning of an urban village in this part of North San Jose. The project will signal that the City is committed to denser, more walkable neighborhoods near light rail stops and mass transit. Further, Century Center will provide numerous economic development benefits to the City of San Jose, including hundreds of construction and permanent jobs as well as a significant contribution to affordable housing efforts.

We ask for your feedback in the near future as to (1) your support for this plan, (2) what the next steps are to move it forward, and (3) what time frame we might expect for formal approval of this plan by the city. We very much appreciate your support and assistance. Feel free to reach out to either of us with any question or concerns.

Sincerely,
Mill Creek Trust

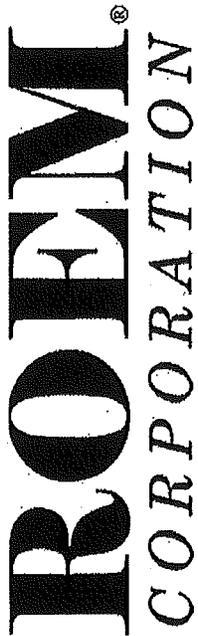


David Fiore
Development Associate



Kevin Andrade
Senior Managing Director

cc: Leslye Corsiglia
Sam Liccardo
Ru Weerakoon
Mike Black
Scott Connelly



AFFORDABILITY AT ITS BEST®

September 25, 2012

Ms. Kristen Clements
Policy Director
City of San Jose Housing Department
200 East Santa Clara Street, 12th Floor
San Jose, CA 95113

Dear Ms. Clements;

As per our recent communications, ROEM is working closely with the owner to secure site control for a 2.23 acre parcel at the intersection of Gish Road and Kerley Drive within the North San Jose Rincon South Specific Plan and is seeking an allocation from the City of San Jose for the remaining available affordable housing units. I have provided for you herein a summary of deal specifics and look forward to speaking with you about next steps to secure the Housing Department's support for obtaining the requisite allocation from City Council and Planning Staff.

Project Concept

ROEM envisions a 170-174 unit large family 100% affordable housing development comprised of one, two, and three bedroom units targeting workforce incomes ranging from 50-60% of area median income. The 75-80du/ac density is allowable per the Envision San Jose 2040 General Plan's land use maps; however, a PD Zoning application will be required to change the current (CG) Commercial General zoning to the proper zoning designation and provide by-right privileges for affordable housing units. The property has a General Land Use Plan of Transit Corridor Residential (25-65 DU/AC) in addition to a General Commercial Overlay, per the Rincon South Planned Community 2020 General Plan. ROEM anticipates the PD Zoning change to take approximately 6-9 months before entitlements are obtained for the proposed development.

Design

We are proposing a 5 story Type III modified wood framed product over 1 level of Type I residential construction in two buildings surrounding an above grade parking structure. Given the close proximity to light rail and other means of connecting transportation, units are parked at an average of 1.5 spaces per unit for a total of 255 stalls.

Per the attached layout, we are providing protected courtyard open space for residents while repairing the street wall along Kerley and Gish with active uses. A single vehicular point of access is provided on Gish with the pedestrian entrance at the intersection. Moving forward, we will explore architectural expressions for the building and study opportunities to shield the presence of the parking garage from street-level perspectives.

Please be advised that all architectural representations are conceptual. ROEM will continue to work further with the departments to refine the details of the project, as we are currently seeking conceptual approval and/or support for the overall project while highlighting; location, units, product type, etc.

Financing and Timing

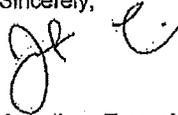
ROEM has not only identified a site that will provide for the remaining 170-174 affordable housing units, but ROEM will provide this housing without a request for City subsidy. ROEM intends that if any gap in the financing does exist, then it will be funded with a combination of deferred developer fee and GP loan from ROEM as the project sponsor. We would like to discuss using the City as the Issuer of the bonds.

We are currently in discussions with the seller to determine whether a fee simple sale or ground lease makes the most sense for both sides in this transaction. We hope to have these discussions finalized within the next week such that we can execute a purchase and sale agreement and move forward full speed ahead.

Given the outline above for PD Zoning, ROEM would anticipate having full approvals in hand such that we can submit to CDLAC and TCAC in the 3rd or 4th quarter of 2013 and breaking ground either before year end 2013 or in the 1st quarter of 2014.

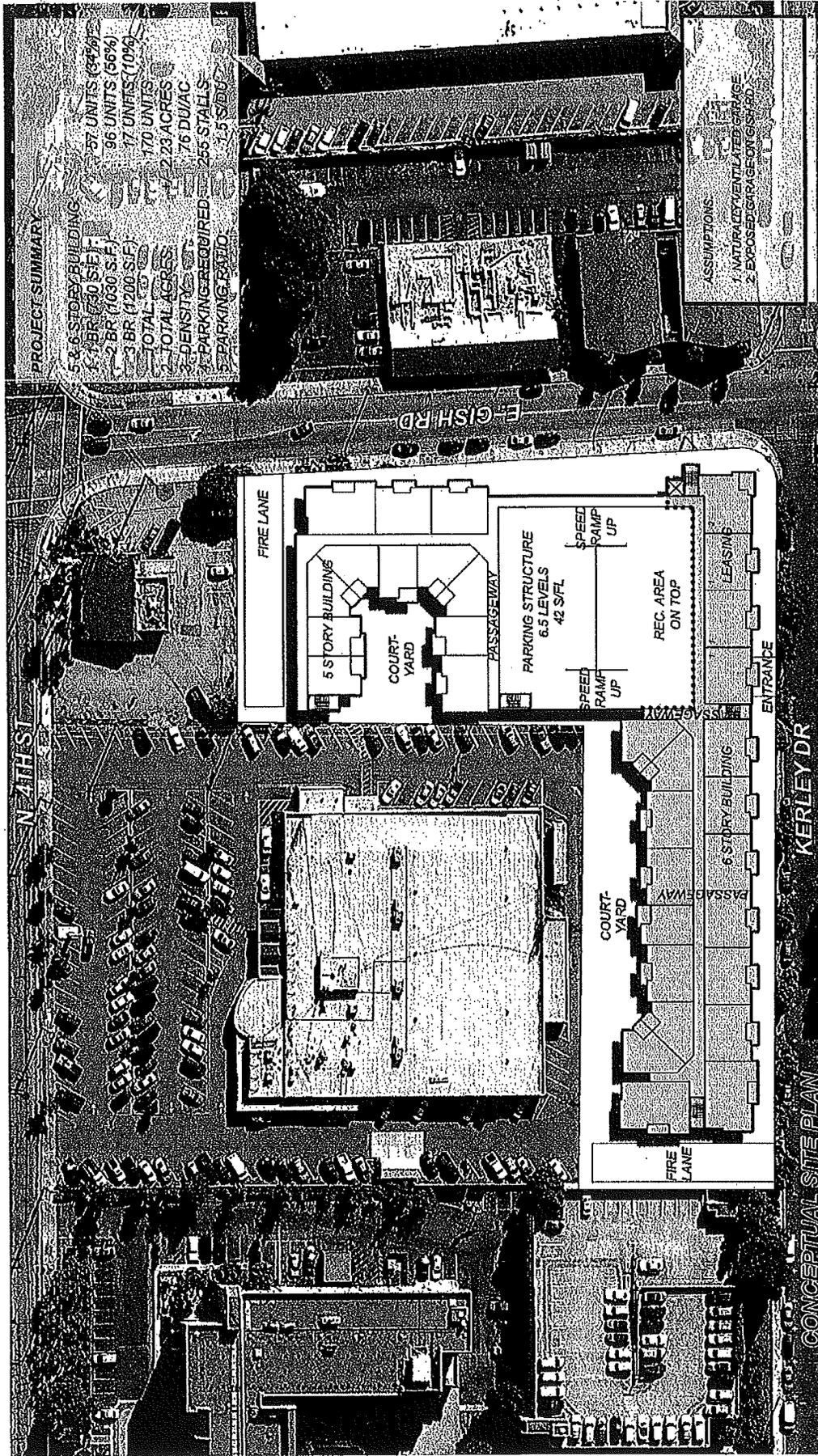
I welcome all of your questions or comments. Please contact me to discuss the project in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Emami', written in a cursive style.

Jonathan Emami
Vice President

Enc: 2



PROJECT SUMMARY

5 & 6 STORY BUILDING
 1 BR (730 S.F.)
 2 BR (1030 S.F.)
 3 BR (1200 S.F.)
 TOTAL UNITS
 2 TOTAL ACRES
 3 DENSITY
 2 PARKING REQUIRED
 255 STALLS
 1.55 DU/AC
 57 UNITS (34%)
 96 UNITS (56%)
 17 UNITS (10%)
 170 UNITS
 2.23 ACRES
 76 DU/AC
 255 STALLS
 1.55 DU/AC

ASSUMPTIONS

1. NATURALLY VENTILATED GARAGE
2. EXPOSED GARAGE ON GISH RD



DATE: 08/15/2011



ARCHITECTS ORANGE
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92665 (714) 835-9880

SAN JOSE, CALIFORNIA

KERLEY DR APARTMENTS

ROEM Development Corporation

CONCEPTUAL SITE PLAN

ATTACHMENT B

REVISIONS TO NORTH SAN JOSE AREA DEVELOPMENT POLICY

Allowance for Reallocation of Affordable Housing Units in Phase I

Notwithstanding provisions to the contrary in the Policy, including the foregoing *Development Capacity Allocation Guidelines* and *Affordable Housing Implementation Guidelines*, the balance of affordable housing units to market rate units in Phase 1 and 2 may be modified as described in this section:

- If affordable housing units are reallocated to market rate units in Phase 1, the number of reallocated affordable housing units will be shifted to Phase 2, increasing the number of Phase 2 affordable housing units and correspondingly decreasing the number of Phase 2 market rate housing units, with the result that in Phases 1 and 2 together the balance of affordable to market rate units will remain as described in Table 2, Phasing Plan, above (a total of up to 12,800 market rate housing units and up to 3,200 affordable housing units by the end of Phase 2).
- If multiple developers desire to convert the affordable housing units that are available for reallocation as market rate housing units in Phase 1, the City will prioritize the project that: (a) best implements the criteria described in the *Criteria for prioritization of proposed residential conversions*; (b) provides the best results for the affordable housing program; and (c) broadens the diversity of residential unit mix.
- Effective May 17, 2011, up to 552 of the 1600 units reserved for affordable housing in Phase 1 may be temporarily reallocated to market rate housing units in Phase 1 to allow market rate housing projects without an existing Phase 1 market rate housing reservation to proceed in Phase 1. As development permits for market rate housing projects expire in Phase 1, those market rate housing reservations will be returned to the pool of affordable housing reservations until all of the temporarily reallocated units are restored as affordable housing units. However, if less than the total amount of reallocated affordable housing units is restored in Phase 1, the balance will be applied to Phase 2, consistent with the first bullet-pointed provision above.
- Effective February 28, 2012, up to 450 additional units reserved for affordable housing in Phase 1 may be reallocated to market rate units to enable a market rate housing project without an existing Phase 1 market rate housing reservation to move forward in Phase 1 if the following criteria are met:
 1. The developer ensures through a development agreement with the City to provide a substantial benefit to the City towards the creation of new affordable housing in San Jose to balance the reduction of affordable housing allocation in Phase 1; and
 2. The proposed development is a shovel-ready project that would begin construction within 18 months of the effective date of the development agreement.

- Effective December 18, 2012, up to 174 additional units reserved for affordable housing in Phase 1 may be reallocated to market rate units to enable a market rate high-rise housing project without an existing or sufficient existing Phase 1 market rate housing reservation to move forward in Phase 1 if the following criteria are met:

1. The developer ensures through a development agreement with the City to provide a substantial benefit to the City towards the creation of new affordable housing in San Jose to balance the reduction of affordable housing allocation in Phase 1; and
2. The proposed development is a shovel-ready project that would begin construction within 18 months of the effective date of the development agreement.