



CITY OF MORGAN HILL

Regular Meeting Agenda

Planning Commission

Liam Downey - Chairman

Yvonne Martinez Beltran - Vice Chair

Mohammad Habib - Planning Commissioner

Juan Miguel Munoz Morris - Planning Commissioner

Joseph Mueller - Planning Commissioner

Wayne Tanda - Planning Commissioner

John McKay - Planning Commissioner

Tuesday, September 25, 2018 7:00 pm

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Pursuant to Government Code Section 54954.2

PLEDGE OF ALLEGIANCE

OPEN PUBLIC COMMENT PERIOD

Members of the public are entitled to address the Planning Commission concerning any item within the Morgan Hill Planning Commission's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the Planning Commission is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ORDERS OF THE DAY

CONSENT AGENDA

These are items of a routine or generally uncontested nature. Any member of the Planning Commission or member of the public may request to have an item pulled from the Consent Calendar and acted on individually by the Planning Commission. Items pulled will be discussed after action is taken on the balance of the Consent Calendar and before moving on to the public hearings.

1. **AAE2018-0011: CONDIT - PARADIGM ENGINEERING: A DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE COMMITMENTS AND 17 RESIDENTIAL BUILDING ALLOTMENTS AWARDED FROM THE 2016 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM FOR THE SAN PEDRO-PRESIDIO APARTMENT DEVELOPMENT PROJECT (ALSO KNOWN AS PRESIDIO EVERGREEN OR CONDIT MANA) (RDCS2016-0018).**

Recommendation:

Adopt a Resolution approving an amendment to a Development Agreement (DA2016-0004) to incorporate three awarded allotments for FY 2018/2019, and 14 awarded allotments for FY 2019/2020.

2. **APPROVE THE SEPTEMBER 11, 2018 MEETING MINUTES**

Recommendation:

Approve Minutes.

CONTINUED PUBLIC HEARING

3. **UP2018-004 MONTEREY-BLUEWAVE: CONDITIONAL USE PERMIT TO ALLOW A DRIVE-THROUGH, SELF-SERVICE, AUTOMATED CAR WASH ON PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 764-10-008 LOCATED ON THE NORTHWEST CORNER OF MONTEREY ROAD AND COCHRANE ROAD.**

Recommendation:

1. Open/close public hearing and continue to the October 23, 2018 Planning Commission meeting.

PUBLIC HEARINGS

4. **DA2017-0008, EA2017-0016: LLAGAS - STROLATA - DEVELOPMENT AGREEMENT AND ENVIRONMENTAL ASSESSMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 773-32-013 LOCATED AT THE NORTHEAST END OF SABINI COURT.**

Recommendation:

1. Open/Close public hearing; and,
1. Adopt a Resolution recommending the City Council approve a Development Agreement.

5. **GP2018-0001/ZA2018-0001/EA2018-0001: GENERAL PLAN AMENDMENT TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION FROM RESIDENTIAL ESTATE TO RESIDENTIAL DETACHED LOW AND ZONING AMENDMENT TO CHANGE THE ZONING CLASSIFICATION FROM RESIDENTIAL ESTATE ONE-ACRE TO RESIDENTIAL DETACHED LOW DENSITY (RDL-12,000) ON AN 8.34 ACRE SITE. ENVIRONMENTAL ASSESSMENT FOR GENERAL PLAN AMENDMENT AND ZONING AMENDMENT. THE PROPERTY IDENTIFIED BY ASSESSOR'S PARCEL NUMBER 728-02-002 IS LOCATED NORTH OF SORREL WAY AND SADDLEBACK DRIVE.**

Recommendation:

1. Open/close public hearing;
2. Adopt a Resolution recommending the City Council approve the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project;
3. Adopt a Resolution recommending the City Council approve an amendment to the General Plan land use; and,
4. Adopt a Resolution recommending the City council approve an amendment to the Zoning classification.

OTHER BUSINESS

6. **PRESENTATION OF THE BELOW-MARKET-RATE (BMR) PROGRAM DEVELOPMENT STANDARDS**

Recommendation:

Receive information and provide comments regarding the proposed BMR Program Development Standards.

DIRECTOR'S REPORT/ANNOUNCEMENTS

ADJOURNMENT

NOTICE

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act that are distributed to a majority of the legislative body less than 72 hours prior to an open session, will be made available for public inspection at the Office of the City Clerk at Morgan Hill City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 at the same time that the public records are distributed or made available to the legislative body. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the Commission concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Commission on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Commission Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Commission, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the Commission on any other item of interest to the public, you may do so during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the Commission.

Persons interested in proposing an item for the Commission agenda should contact a member of the Commission who may plan an item on the agenda for a future Commission meeting. Should your comments require Commission action, your request may be placed on the next appropriate agenda. Commission discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the Commission at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the Commission, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of Commission Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.



PLANNING COMMISSION STAFF REPORT

MEETING DATE: September 25, 2018

PREPARED BY: Tiffany Brown, Associate Planner

APPROVED BY: Jennifer Carman, Community Development Director

AAE2018-0011: CONDIT - PARADIGM ENGINEERING: A DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE COMMITMENTS AND 17 RESIDENTIAL BUILDING ALLOTMENTS AWARDED FROM THE 2016 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM FOR THE SAN PEDRO-PRESIDIO APARTMENT DEVELOPMENT PROJECT (ALSO KNOWN AS PRESIDIO EVERGREEN OR CONDIT MANA) (RDSC2016-0018).

RECOMMENDATION(S)

Adopt a Resolution approving an amendment to a Development Agreement (DA2016-0004) to incorporate three awarded allotments for FY 2018/2019, and 14 awarded allotments for FY 2019/2020.

LOCATION MAP:



PROJECT SUMMARY:

1. Location: Northeast corner of San Pedro and Condit (APN 817-12-020)
2. Site Area: 9.64 Acres
3. General Plan: Residential Attached Medium (16-24 units/acre)
4. Zoning: Residential Attached Medium (RAM)

BACKGROUND:

In September of 2015, the applicant submitted a multi-family apartment project for the Residential Development Control System (RDSCS) competition. On January 13, 2016,

the Planning Commission identified the project as high scoring and awarded 80 residential building allotments for FY 2017/2018 and 85 residential building allotments for FY 2018/2019 for a total of 165 allotments.

The City Council adopted Ordinance No. 2218 (Development Agreement) for a 165 unit multi-family apartment project on October 19, 2016.

The applicant submitted a 2016 RDCS application to increase the allotments from 165 to 182. The Planning Commission awarded the project an additional three allotments for FY 2018/2019 which did not complete the project. In 2017, the applicant requested on-going allotments through the Measure S competition and was awarded 14 residential building allotments for FY 2019/2020. The project has been fully allotted to allow complete build-out of the project.

PROJECT DESCRIPTION:

This applicant is requesting to amend the adopted Development Agreement to incorporate 17 allotments into the project development:

- Three, FY 2018/2019 residential building allotments
- 14, FY 2019/2020 residential building allotments

The 2016 RDCS public benefit commitments would be applicable to these allotments.

In addition to the amended Development Agreement, the request includes an assignment and assumption of the Development Agreement. Pursuant to Section 4.08 of the Development Agreement, the Assignor and Assignee have notified the City of Assignor's desire to assign and Assignee's desire to assume the rights and obligations of Assignor under the Development Agreement and have provided information acceptable to City regarding Assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property and Project to completion.

The Assignor desires to assign to Assignee and Assignee desires to assume the rights and obligations of Assignor under the Development Agreement. Upon execution of the Amended Development Agreement, Assignor desires to be released from all obligations under the Development Agreement.

ANALYSIS:

The proposed project was analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and 3) RDCS Manual

1. General Plan

The City of Morgan Hill controls population growth through implementation of the RDCS. RDCS establishes a voter-approved population ceiling, which is managed by metering the number of residential units that can be built on an annual basis.

This project is consistent with the General Plan land use designation and the amendment to the Development Agreement is consistent with RDCS.

2. **Zoning Ordinance**

Chapter 18.116 within the Municipal Code establishes procedures for the processing of Development Agreements in compliance with the Government Code Sections 65864 through 65869.5. Amendments are considered under the same criteria as approvals of Development Agreements. The Planning Commission must consider whether the proposed Development Agreement:

- a. **Is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan.**

As specified in the General Plan Section of this report, the project would provide 182 residential units on a 9.64-acre parcel, which is consistent with the General Plan. There have been no General Plan policy conflicts identified with the proposed project.

- b. **Is compatible with the uses authorized in the zoning district in which the real property is located.**

The proposed residential use is permitted within the Residential Attached Medium zone district and would be compatible with the surrounding uses.

- c. **Duly considers City mitigation programs in effect at the time of execution of the agreement.**

The project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

- d. **Will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.**

The project's construction will adhere to state, local and federal laws. The project is residential housing with typical residential uses consistent with the City's Municipal Code.

- e. **Complies with the provisions of the California Environmental Quality Act.**

The project is subject CEQA and is within the scope of the FEIR and Addendum that was prepared and certified for the site. See CEQA section below for further detail.

- f. **Will not adversely affect the orderly development of property or the preservation of property values.**

The project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

3. RDCS Manual

Chapter IV of the RDCS Manual incorporates the RDCS Implementation Policies. The Planning Commission is authorized to approve minor amendments, such as time extensions and allotment adjustments for ongoing projects through approval of a Planning Commission Resolution.

The proposed amendment will modify the Development Agreement to incorporate 17 allotments into the project and incorporate the associated public benefit commitments.

California Environmental Quality Act (CEQA):

An Environmental Impact Report (EIR) was prepared and certified for the project site on February 4, 2015. An Addendum was prepared and certified on August 23, 2016 which concluded project consistency with the development project analyzed in the EIR for the project site. The 17 additional units are within the allowed density for the project site and therefore is consistent with the FEIR and Addendum.

LINKS/ATTACHMENTS:

1. Development Agreement Amendment Resolution
2. Assignment of DA 2016-0004
3. Presidio Evergreen, LLC Development Agreement 02

RESOLUTION NO. 18-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT AMENDMENT AAE2018-0011: CONDIT - PARADIGM ENGINEERING FOR THE SAN PEDRO-PRESIDIO APARTMENT DEVELOPMENT PROJECT TO INCORPORATE SEVENTEEN (17) ALLOTMENTS TO THE RESIDENTIAL DEVELOPMENT ON A 9.64-ACRE SITE LOCATED ON THE NORTHEAST CORNER OF SAN PEDRO AVENUE AND CONDIT ROAD (APN 817-12-020)

WHEREAS, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, the Planning Commission awarded 80 building allotments for application MC-15-18 for FY2017-2018 and 85 building allotments for FY 2018-2019;

WHEREAS, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, the Planning Commission, awarded 3 building allotments for application RDSCS2016-0018 for FY 2018-2019;

WHEREAS, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, the Planning Commission awarded 14 building allotments for FY 2019-2020 to the on-going project;

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property;

WHEREAS, the procedures for processing Development Agreements have been established in Chapter 18.116 of the Morgan Hill Municipal Code;

WHEREAS, the Residential Control System manual adopted by City Council authorizes minor amendments to Development Agreements to be approved by Planning Commission resolution;

WHEREAS, on October 19, 2016, City Council adopted Ordinance Number 2218 approving a Development Agreement with Presidio Evergreen, LLC for 165 building allotments;

WHEREAS, City and Presidio Evergreen, LLC desire to amend the Development Agreement to incorporate the additional building allotments and the associated public benefit commitments;

WHEREAS, Presidio Evergreen, LLC has or intends to transfer its interest in the property to M3 Evergreen Development, LLC, and therefore desires by this same document to assign its interests to M3 Evergreen Development, LLC; and

WHEREAS, said Development Agreement Amendment request was considered by the

Attachment: Development Agreement Amendment Resolution [Revision 1] (1958 : DA Amendment for Paradigm Engineering)

Planning Commission at its regular meeting of September 25, 2018 at which time the Planning Commission and approved the amendment for application AAE2018-0011: Paradigm Engineering – Condit.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The Planning Commission approves the Development Agreement Amendment based on the determination and supporting reasoning described below as required by Chapter 18.116 of Morgan Hill Municipal.

SECTION 2. **The Development Agreement Amendment is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.**

The project would provide a total of 182 Multi-family residential units. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 3. **The Development Agreement Amendment is compatible with the uses authorized in the zoning district in which the property is located.**

The proposed residential use is permitted within the Residential Attached Medium (RAM) zoning district and would be compatible with the surrounding residential and commercial uses.

SECTION 4. **The Development Agreement Amendment duly considers City mitigation programs in effect at the time of execution of the agreement.**

The project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 5. **The Development Agreement Amendment will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.**

The project's construction would adhere to state, local and federal laws. The project is residential apartments that would include the normal daily operations of other residential sites.

SECTION 6. **The Development Agreement Amendment complies with the provisions of the California Environmental Quality Act.**

The project is subject to CEQA and a FEIR and Addendum was prepared and certified for the project. The addition of the remaining building allotments to the Development Agreement does not alter the environmental analysis.

SECTION 7. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

The project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

PASSED AND ADOPTED THIS 25TH DAY OF SEPTEMBER 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

Attachment: Development Agreement Amendment Resolution [Revision 1] (1958 : DA Amendment for Paradigm Engineering)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Community Development Agency
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

**AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF
DEVELOPMENT AGREEMENT
Development Agreement DA 2016-0004
[Evergreen Multifamily Site]**

THIS AMENDMENT TO AND ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of the ____ day of September, 2018, by and among PRESIDIO EVERGREEN, LLC, a Delaware limited liability company (“**Assignor**”), M3 EVERGREEN DEVELOPMENT, LLC, a Delaware limited liability company (“**Assignee**”), and CITY OF MORGAN HILL, a municipal corporation of the State of California (“**City**”). Collectively, Assignor, Assignee, and City are referred to as “Parties.”

R E C I T A L S

A. Assignor (in its capacity as “**Developer**”) has entered into a Development Agreement with the City effective November 18, 2016, adopted by the City Council as Ordinance 2218 and being amended substantially concurrently herewith (“**Development Agreement**”) to facilitate the development of that certain real property owned by Developer within the City of Morgan Hill, State of California, which is legally described in Exhibit A to the Development Agreement (“**Property**”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. When it entered into the Development Agreement, Assignor was the optionee party to an Option Agreement for Purchase and Sale of Real Property and Escrow Instructions (“**Option Agreement**”) with the then-current fee owner of the Property. Assignor subsequently assigned its rights under the Option Agreement, and fee title to the real property more particularly described in **Exhibit A-1** attached hereto and incorporated herein (“**Assigned Property**”) was subsequently transferred to Assignee, which in the transfer documentation agreed to assume all obligations of Developer under the Development Agreement. The parties have not yet formally memorialized the assignment to and assumption of the Development Agreement by Assignee.

C. Assignor and Assignee have previously notified City pursuant to Section 4.08 of the Development Agreement of Assignor’s desire to assign and Assignee’s desire to assume the rights and obligations of Assignor under the Development Agreement, and have provided information acceptable to City regarding Assignee’s reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property and Project to completion.

Attachment: Assignment of DA 2016-0004 (1958 : DA Amendment for Paradigm Engineering)

D. Assignor desires to assign to Assignee and Assignee desires to assume the rights and obligations of Assignor under the Development Agreement applicable as provided in this Agreement. Upon execution of this Agreement, Assignor desires to be released from all obligations under the Development Agreement as to the Assigned Property as provided in this Agreement.

E. Section 4.07 of the Development Agreement provides that Assignee can request certain assurances as to the status of the Development Agreement, which may be relied upon by Assignee and other persons having an interest in the Project. Assignor and City agree to provide written certifications as part of this Agreement in lieu of an Estoppel Certificate.

F. On January 10, 2017, the Planning Commission awarded 3 allotments to the Project.

G. On June 20, 2018, the Planning Commission awarded 14 allotments to the Project.

H. The Parties desire to amend the Development Agreement to include these allotments.

I. On February 22, 2018, Parcels C and L from tract map Number 10403 were transferred to Assignee pursuant to a Grant Deed recorded on February 27, 2018 as Document Number 23878778, and Assignor and Assignee desire that these parcels be included as part of this Project.

A G R E E M E N T

NOW, THEREFORE, Assignor, Assignee and City hereby agree as follows:

1. Amendment to Development Agreement. Pursuant to Section 3.03 of the Development Agreement as approved by Ordinance number 2218, the Development Agreement is hereby amended as follows:

Exhibit A is replaced by Exhibit A-1, attached hereto and incorporated by this reference.

Exhibit B is replaced with Exhibit B-1 to incorporate additional building allotments awarded to the Project since the date of approval of the Ordinance, attached hereto and incorporated by this reference.

Exhibit C is amended to incorporate updates to the commitments for the newly awarded allotments, attached hereto as Exhibit C-1 and incorporated by this reference.

2. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the Development Agreement that are applicable to, serve, benefit and/or relate to the Assigned Property (collectively, "**Assigned Rights and Obligations**").

3. Acceptance and Assumption by Assignee. Assignee, for itself and its successors and assigns, hereby accepts the assignment of, and assumes all of, the Assigned Rights and Obligations, accruing after (and not prior to) the Effective Date (defined in Section 18 below). Assignee agrees, expressly for the benefit of City, to comply with, perform and execute all of the covenants and obligations of Assignor arising from or under the Development Agreement as to the Assigned Property and Assigned Rights and Obligations.

4. Release of Assignor. Assignee and City hereby fully release Assignor from all of the Assigned Rights and Obligations. Both Assignor and Assignee acknowledge that this Agreement is

intended to fully assign the Assigned Rights and Obligations to Assignee, and it is expressly understood that Assignor shall not retain any of the Assigned Rights and Obligations.

5. Substitution of Assignor. With respect to the Assigned Rights and Obligations, Assignee shall be substituted for and replace Assignor in the Development Agreement as to the Assigned Property. Whenever the term “Developer” or “Party” appears in the Development Agreement, it shall hereafter include Assignee as to the Assigned Property. Whenever the term “Project” appears in the Development Agreement with respect to the Assigned Rights and Obligations, such term shall be interpreted (based on the context and in order to give effect to the terms and intent of this Agreement) to include Assignee’s proposed development of the Assigned Property in a manner compliant with the vested rights secured under the Development Agreement.

6. Assignee’s Representations and Warranties. Assignee represents and warrants to City as follows:

(a) Assignee is a limited liability company duly formed within and good standing under the laws of the State of Delaware.

(b) Assignee has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Assignee has been fully authorized by all requisite actions on the part of Assignee.

(c) Assignee’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Assignee is a party or by which it is bound.

(d) Assignee has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Assignee’s creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Assignee’s assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Assignee’s assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(e) As of the Effective Date of this Agreement, Assignee owns fee simple title to the Assigned Property.

7. Assignor and Assignee Agreements, Indemnifications and Waivers. Assignor and Assignee hereby acknowledge and agree that City has not made, and will not make, any representation or warranty that the assignment and assumption of the Development Agreement provided for hereunder will have any particular tax implications for Assignor or Assignee.

(a) Assignor and Assignee each hereby waives and releases and each hereby agrees to indemnify and hold City harmless from any and all damages, liabilities, causes of action, claims or potential claims against City (including attorneys’ fees and costs) arising out of or resulting from the assignment and assumption of the Assigned Rights and Obligations.

(b) Assignor acknowledges and agrees that the Assigned Rights and Obligations have been fully assigned to Assignee by this Agreement and, accordingly, that Assignee shall have the exclusive right to assert any claims against City with respect to such Assigned Rights and Obligations. Accordingly, without limiting any claims of Assignee under the Development Agreement related to the Assigned Rights and Obligations, Assignor hereby waives any claims or

potential claims by Assignor against City to the extent arising solely out of Assigned Property and/or Assigned Rights and Obligations.

(c) For the Term of the Development Agreement, Assignor agrees to and shall indemnify, defend and hold harmless Assignee, its affiliated entities and persons, and their respective members, partners, officers, directors, shareholders, and employees from any claims, demands, loss, liability, damages, costs or expenses (including attorneys' fees, expert witness fees, court costs and any and all litigation fees and costs) made against or suffered with regard to any breach by Assignor of the Development Agreement and/or this Agreement ("**Assignor Indemnity**"). The foregoing Assignor Indemnity shall be binding on Assignor's assignees, successors-in-interest, and any person or entity that takes title to any part of the Property.

(d) For the Term of the Development Agreement, Assignee agrees to and shall indemnify, defend and hold harmless Assignor, its affiliated entities and persons, and their respective members, partners, officers, directors, shareholders, and employees from any claims, demands, loss, liability, damages, costs or expenses (including attorneys' fees, expert witness fees, court costs and any and all litigation fees and costs) made against or suffered with regard to any breach by Assignee of the Development Agreement and/or this Agreement ("**Assignee Indemnity**"). The foregoing Assignee Indemnity shall be binding on Assignee's assignees, successors-in-interest, and any person or entity that takes title to the Assigned Property.

8. Certifications. Pursuant to the Section 4.07 of the Development Agreement, Assignor and City hereby certify for Assignee's reliance that, to their respective knowledge: (i) except for the amendment being adopted substantially concurrently with this Agreement, the Development Agreement has not been amended or modified either orally or in writing; and (ii) the Development Agreement is in effect and Assignor is not known to be in default of the performance of its obligations under the Development Agreement. In addition, City hereby certifies for Assignee's reliance that, to its knowledge, (iii) the Assigned Property has received a total of 182 RDCS allocations, the last 14 of which were awarded in 2018, and as a result the Assigned Property is currently authorized for development of a 182-unit multifamily rental project.

9. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement are hereby ratified and shall remain in full force and effect.

10. Recording. Assignor shall cause this Agreement to be recorded in the Official Records on the Assigned Property, and shall promptly provide conformed copies of the recorded Agreement to Assignee and City.

11. Successors and Assigns. Subject to the restrictions on transfer set forth in the Development Agreement, all of the terms, covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

12. Assignee Address for Notices. The address of Assignee for the purpose of notices, demands and communications under 5.01 of the Development Agreement shall be:

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7259
Fax: 408-779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

And To: Community Development Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

If to Developer: M3 Evergreen Development, LLC
601 Carlson Parkway, Suite 200
Minnetonka, Minnesota 55305
Phone: 952-476-7200
Fax: 952-476-7201
Attention: Mike Sullivan

And To: Presidio Advisory Group, LLC
9740 Appaloosa Road, Suite 230
San Diego, California 92131
Attention: Don Faye, Paul Lucatuorto and Phil Rush
Phone: 619- 573-1843

13. California Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court in Santa Clara County, State of California.

14. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

15. Severability. Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

16. Counterparts. This Agreement may be executed in one or more counterparts, including counterparts sent via electronic means, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the Parties to this Agreement had executed the same counterpart. Each party may rely upon counterpart of this Agreement transmitted via electronic means with the same effect as if such party had received an original counterpart signed by such other party.

17. City Consent. City is executing this Agreement for the limited purpose of (i) consenting to the form of assignment and assumption agreement pursuant to Section 4.08 of the Development Agreement and clarifying that there is privity of contract between City and Assignee with respect to the Development Agreement, (ii) providing the written certifications as set forth in Section 8 above, and (iii) amending the Development Agreement to include allotments awarded since the Development Agreement was approved.

18. Effective Date/Amendments. The Effective Date of this Agreement shall be the date upon which this Agreement is duly recorded in the Official Records of Santa Clara County. This Agreement shall not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

[Signature Page Follows]

Attachment: Assignment of DA 2016-0004 (1958 : DA Amendment for Paradigm Engineering)

IN WITNESS WHEREOF, Assignor, Assignee and City have entered into this Agreement as of the date first above written.

“CITY”

CITY OF MORGAN HILL

Christina Turner
City Manager

Approved as to form:

Donald A. Larkin
City Attorney

Date: _____

“ASSIGNOR”

PRESIDIO EVERGREEN, LLC,
a Delaware limited liability company

By: Presidio Merced Land II Passive, LLC, a
Delaware limited liability company, its
Manager

By _____
Name _____
Its Authorized Representative

Date: _____

“ASSIGNEE”

M3 EVERGREEN DEVELOPMENT, LLC,
a Delaware limited liability company

BY: MERCED PARTNERS III, L.P., a Delaware
limited partnership, its Manager

By _____
Name _____
Its Authorized Representative

Date: _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE
ACKNOWLEDGED BEFORE A NOTARY)

Attachment: Assignment of DA 2016-0004 (1958 : DA Amendment for Paradigm Engineering)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____
 _____ (insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____
 _____ (insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A-1**ASSIGNED PROPERTY LEGAL DESCRIPTION
[Evergreen Multifamily Site]**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

All of Tract No. 10450 "Evergreen" filed in the office of the Recorder of the County of Santa Clara, State of California on December 8, 2017 in Book 909 of Maps, pages 40, 41 42 and 43.

PARCEL TWO:

Parcels C and L of Tract No. 10403 "Evergreen" filed in the Office of the Recorder of the County of Santa Clara, State of California on December 8, 2017 in Book 909 of Maps, pages 44, 45, 46, 47 and 48 and as amended by a Certificate of Correction which recorded February 27, 2018 as Document no. 23876779, Official Records, Santa Clara County.

Attachment: Assignment of DA 2016-0004 (1958 : DA Amendment for Paradigm Engineering)

EXHIBIT B-1**DESCRIPTION OF PROJECT****MC-15-18: Condit - Mana Investments****80 allotments FY 2017-2018****85 allotments FY 2018-2019****RDCS 2016-0018: Condit-Presidio Evergreen****3 allotments FY 2018-2019****14 allotments FY 2019-2020****(San Pedro-Presidio Rental, 182 units)**

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code as established by Ordinance Number 2229, and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Allotments must be exercised as follows:

FY 2017-2018 (80 allotments)	06-30-18
FY 2018-2019 (85 allotments)	06-30-19
FY 2018-2019 (3 allotments)	06-30-19
FY 2019-2020 (14 allotments)	06-30-20

EXHIBIT C-1

SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to all 165 allotments awarded in the RDCS application date January 12, 2016 (or application # MC-15-18) and 3 allotments dated January 10, 2017, and 14 allotments dated June 20, 2018 shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements under CEQA, impact fee, in-lieu fees or other requirements under federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Estimated cost are estimates and may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
18.78.210	Schools		
B1. Developer fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.	Prior to the issuance of each building permit	Fee estimated at time of building permit submittal.
B4. Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within 3/4 miles of the project site or to a middle school or high school up to \$4,950 per unit.	Prior to issuance of Certificate of Occupancy	\$4,950 per unit
18.78.220	Open Space		

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
1.b Common useable open space	All private common open space areas are to be maintained by a Homeowners Association (or similar entity) including open space along public street frontages.	Prior to improvement plan approval	NA
1.c Convenient access to project amenities	Project includes seven feet wide paths within the project to connect to project amenities. Paths are located in areas no less than 20 feet wide, with an average width of 30 feet for the entire length of the path. Pathways will be paved, or will be constructed of another suitable durable surface.	Phase one includes the community center, phase 2 includes the programmed park amenities, and phase 5 includes the construction of the pedestrian paseo link between San Pedro Ave and the Commercial property located to the north of the project	NA
1.d Accessibility to parks/open space	Accessibility to public parks or open space is provided inside the project with sidewalks that are at least six feet wide.	Prior to improvement plan approval	NA
1.e Provides accessibility to existing or proposed public parks	Public access and parking for the Morgan Hill Outdoor Sports Complex and Aquatics Center will be provided	Prior to improvement	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
and open space areas outside the project boundary and encourages multiple uses and fee dedication of open space areas adjacent to flood control right-of-ways and recharge facilities.	through the construction of sidewalks and paved parking on San Pedro and an improved pedestrian crossing mid-block on San Pedro.	plan approval and constructed prior to completion of phase 2 (based on the attached phasing plan)	
1.g Provides public or private common useable open space which may be used for a dual purpose to include underground storm water detention, as determined by the Department of Public Works.	The project will include an underground water storage array in the southern open space area. The open space will be dual-purpose.	Prior to improvement plan approval and constructed prior to completion of phase 2 (based on the attached phasing plan)	NA
2b. Provides a high ratio of total open space area	Building coverage, defined as that portion of the overall project master plan, exclusive of sidewalks, driveways and streets, which is covered by a building, parking lot or carport, will not exceed 59%.	Prior to improvement plan approval	
18.78.230	Orderly and Contiguous Development		
2. Fills in existing utility lines	The project will fill in existing water, sanitary sewer, storm drain, and fire utility lines.	Prior to improvement plan approval	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
3. Located within existing urban service area	The percentage of a property that is adjacent to existing development is 50%.	Prior to Site Review Application approval	NA
5. Project Master Plan	Project is consistent with General Plan density and worked with staff on internal circulation and access requirements including appropriate transition of lot size and use of common open space area.	Prior to Site Review Application approval	NA
18.78.240	Public Facilities		
2.a Grids water mains into the existing water system	The property owner/designee will grid from the Condit main to the Murphy main along the project's northerly boundary.	Prior to improvement plan approval	NA
2.b Drainage concept consistent with City's storm drain system	Project is consistent with the City Storm Drainage Master plan for the local area storm drain system as determined by Public Works.	Prior to improvement plan approval	NA
2 c. Storm drain lines constructed within paved area of the street	Storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street right-of-way, or in a location acceptable to the Director of Public Works.	Prior to improvement plan approval	NA
2.d Storm drainage from the development is accommodated without the need for an on-site detention pond or open space retention areas.	Proposed on-site underground retention basin sized to accommodate project needs as well as an additional 10 acres of land beyond the project boundary and will conform to the requirements described in Open Space B.1.g. Additional 10 acres includes future residential development	Prior to improvement plan approval	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	on the adjacent easterly parcel, and a portion of the commercial parcel to the north.		
2.f Out-of-tract public improvements	For the 80 FY 2017-2018 allotments and 85, FY 2018-2019 allotments: The property owner/designee commits to provide up to \$3,300 per unit of out-of-tract public improvements to be determined by Public Works. For the 3, FY 2018-2019 allotments and 14 FY 2019-2020 allotments: The property owner/designee commits to provide up to \$4,400 per unit of out-of-tract public improvements to be determined by Public Works.	Prior to issuance of Certificate of Occupancy	\$3,300 per unit or \$4,400 per unit
2.g Contribution to RDCS Capital Improvements fund	Property owner/designee will contribute \$1,100 per unit to the RDCS Capital Improvements fund.	Prior to issuance of Certificate of Occupancy	\$1,100 per unit
18.78.250	Parks and Paths		
2. Privately owned and maintained amenities	The property owner/designee shall provide four separate cabana or shade trellis areas, two picnic/barbeque areas; a half scale soccer field; a Jacuzzi; clubhouse/kitchen area; 18 community garden plots of at least 48 square feet each with water service located in areas that will receive at least eight hours of summer sun daily for a period of 20 years when accounting for anticipated tree growth; an exercise room; a swimming pool; two tot lots within a minimum of three age appropriate activities; and a programmed park amenity near San Pedro Road. Any alteration to the amenities deemed as	Prior to site review application approval	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	minor, shall maintain the same amount of points awarded by the Measure "C" MC-15-18 application, and be reviewed and approved by the Community Development Director.		
3. Bike paths/equestrian trails	The property owner/designee shall provide at least 4.6 miles of Class II bike lanes. Prior to installation, the property owner/designee shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed.	Prior to improvement plan approval	NA
18.78.260	Housing Needs		
3. a Affordable units for sale or rent	Property owner or designee agrees to provide .6% (1 unit) Extremely Low, 3.7% (7 units) Very Low Income and 3.7% (7 units) Low Income BMR units for rent within this Market Rate Rental Project. Units shall be Model 1&3 with 1 to 2 bedrooms, one bath and between 500 and 770 square feet. Units shall be dispersed between phases of the project. BMRs are also subject to the requirements listed under “Additional Requirements” and as referenced per the Affordable Housing Agreement (AHA). Additional Requirements: BMR units are subject to the following development standards:	Prior to building permit issuance, property owner/designee shall enter into City BMR agreement	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	1. Location. BMR units shall be distributed evenly throughout the project. 2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project; 3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project; 4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate 5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.		

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	6. Minimum Interior standard finishes will be as follows a. All closets shall have doors b. Interior doors to be raised panel type or same as market rate c. Door hardware to be brass finish or equivalent d. Appliances shall be major brand name e. Microwave with an exhaust vent shall be installed over the range f. Kitchen counters shall be white ceramic tile g. Kitchen cabinets shall be stained wood with white melamine interiors h. Units will be roughed in for AC including electrical and line set i. Basic alarm system to secure all accessible openings to the home j. Carpet in bedrooms, hallways, family rooms k. Linoleum or tile entry, bathroom kitchens		

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	l. Laminate flooring may substitute for carpet or linoleum m. Electric garage door opener Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the RDCS. For example, for a project with an 8% BMR ownership housing commitment, at least one BMR unit shall be constructed before or concurrently with every 7th market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units.		
5. Enclosed garage for multi-family rental projects	100% of the units will be provided with an enclosed garage.	Prior to building permit issuance	NA
18.78.270	Housing Types		
1.a Diversity of types and categories	The project will remain 100% rental.	Any changes will require an amendment to this DA and	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
		approval of a condo map	
2. Economic diversity	Property owner or designee agrees to provide .6% (1 unit) Extremely Low income, 3.7% (7 units) Very Low Income and 3.7% (7 units) Low Income BMR units for rent within this Market Rate Rental Project. Units shall be Model 1&3 with 1 to 2 bedrooms, one bath and between 500 and 770 square feet. Units shall be dispersed between phases of the project.	Incorporate in to construction plans prior to the issuance of a building permit	NA
3. Variation of size	The project has current allocations for 80 units in 2017-2018, 88 units for 2018-2019 and 14 units for 2019-2020. The project provides a total of 182 units. The project includes one, two, and three-bedroom units. Each unit type is represented by at least 10 percent of the overall unit total.	Incorporate in to construction plans prior to the issuance of a building permit	NA
18.78.280	Quality of Construction		
1. a Exterior OSB/Plywood wrap	Installation of full exterior OSB/Plywood wrap	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.b Foundations	20% reduction of cement in the concrete mix design by use of fly ash, slag, silica fume or rice hull ash.	Incorporate in to construction plans prior to the	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
		issuance of a building permit	
1.c Wallboard	Installation of light weight wallboard for al walls excluding code requirements for fire walls.	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.d Electrical raceway	Installation of one dedicated 3/4 inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.f Heating	Installation of 90% high efficiency fan forced heating.	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.g Zoned Heating an Conditioning	Zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution.	Incorporate into construction plans prior to the issuance of a building permit	NA
1.h	The proposed development will provide all the following - Listed sound attenuated materials in walls that adjoin a bathroom and/or bedroom walls	Incorporate into construction plans prior to the	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	- Installation of high efficiency energy star water heater with energy factor of 0.70 - Installation of ultra high efficiency or dual flush toilet - Installation of rain sensor monitor on irrigation system.	issuance of a building permit	
18.78.290	Lot Layout and Orientation		
1.c Separation of buildings	The project will provide separation between building greater than 20%	Prior to site review application approval	NA
1.d Avoids Sound Walls	The design avoids the use of sound walls along San Pedro Ave and Condit Road	Prior to site review application approval	NA
1.f Transition of Lot Sizes	Project provides connectivity between neighborhoods through a pedestrian paseo and internal sidewalk pathways.	Prior to site review application approval	NA
1.g Above Average Layouts	Worked with Planning Staff to address design constraints and has complied with the newly adopted City Ordinance Chapter 18.29 of the Municipal Code.	Prior to site review application approval	NA
1.h Project design	The Multi Family rental project consists of 19 buildings. Two building types are provided (a 7-plex and a 14-plex). In addition, two elevations are proposed and satisfies the	Prior to site review	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	criteria providing different bidding types with a themed architectural style.	application approval	
2.a Access	Two points of access from to the project will be provided from Condit Road.	Prior to site review application approval	NA
2.c Sidewalks	Public and private sidewalks are detached with a 5 foot park strip along the project frontage on Condit Road and San Pedro Avenue.	Prior to site review application approval	NA
18.78.300	Circulation Efficiency		
1.b Future street extensions	The project provides for the extension of the drive aisle along the northerly boundary of the project.	Prior to site review application approval	NA
1.c Future drive aisles/parking lots	The project will complete full width street improvements along the project frontage on Condit Road and San Pedro Ave.	Prior to improvement plan approval	NA
1.e Minimum 20 ft. clear view backout distance	The project provides for a minimum 3-foot distance between garage doors and drive aisles.	Prior to site review application approval	NA
2.a Internal circulation for local residents	Two points of access to the project are provided from Condit Road	Prior to site review	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
		application approval	
2.c detached sidewalks	The project proposed to install detached sidewalks with a 5 foot park strip along the project frontage on Condit Road and San Pedro Ave.	Prior to site review application approval	NA
3.b Dedication or improvement to existing streets and parking lots outside of project	The project will pay the streetlight conversion of \$1,500 (2 x \$750) per dwelling unit.	Prior to issuance of Certificate of Occupancy	\$1,500 per unit
4. Dedication and improvement of extensions to existing streets and parking lots outside of project boundaries	The project commits to public improvements in the amount of \$2,200 per dwelling unit.	Prior to improvement plan approval	NA
6. Lighted circulation map	The project will provide a detailed and lighted entry circulation map at vehicular entry.	Incorporate into construction plans prior to the issuance of a building permit	NA
18.78.310	Safety and Security		
1.b Provide first aid kit	Property owner or designee will provide a first aid kit with a poison control document to be installed in the kitchen area of each home.	Incorporate into construction plans prior to the issuance of a building permit	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
1.d Provide outdoor lighting	Property owner or designee commits to providing lighting on all buildings that meet Police Department specifications, California Electrical Code and MHMC. Property owner or designee commits to installation of motion detector light on each unit per police department specifications.	Prior to site review application approval	NA
1.e Pedestrian scale lighting	Property owner or designee commits to installing pedestrian scaled lighting along walkways and in common areas. Project will not utilize bollard style lighting.	Prior to site review application approval	NA
1.f illuminated address numbers	Project will install illuminated address numbers on each individual building, with unit numbers illuminated as well, and painted reflective curb numbers where possible.	Prior to site review application approval	NA
1.h parks with lighting	The project includes lighting in all large usable areas and parks to a minimum of 1.5 foot candles or modified electrolier.	Prior to site review application approval	NA
1.i covered bicycle parking	The property owner or designee commits to provide long-term bicycle parking at a ratio of 10% of the required parking for residential units (including guest parking).	Prior to site review application approval	NA
1.j Security cameras	Property owner or designee commits to installing security cameras to monitor common areas such as laundry, parking and recreational areas/halls.	Incorporate into construction plans prior to the	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
		issuance of a building permit	
1.k illuminated pathway and walkways	Property owner or designee commits to illuminating all pathways and pedestrian walkways with a minimum of 1 foot candle.	Incorporate into construction plans prior to the issuance of a building permit	NA
2. Crime Prevention through Environmental Design (CPTED)	Property owner or designee commits to utilize CPTED principles of Natural Surveillance, Territorial Reinforcement per the RDCS Section 18.78.310 (2) for Multi-Family a, b, and c.	Incorporate into construction plans prior to the issuance of a building permit	NA
3. Lockable hardware	The property owner or designee commits to installing lockable hardware on all side yard and patio gates.	Incorporate into construction plans prior to the issuance of a building permit	NA
5. Neighborhood emergency preparedness program through HOA	Project will establish a Neighborhood Preparedness Program administered through the property management agency.	Prior to issuance of Certificate of Occupancy	NA
6. Neighborhood "Watch Program" in CC&R's	Property owner or designee commits to establishing a Neighborhood Preparedness Program administered through the HOA. Property owner or designee will direct HOA to contact Office of Emergency Services within 90 days of issuance of the Certificate of Occupancy.	Prior to issuance of Certificate of Occupancy	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
18.78.320	Landscaping, Screening and Color		
1.a 24" box-size trees within project	Project will provide 24" box trees from City approved list, with a minimum height of 9' and spread of 3 to 4 feet at a ratio of 1 such tree per 10 trees installed (not including street trees) per the criteria.	Prior to site review application and site improvements plan approvals	NA
1.b Shading and screening of group parking areas	Property owner or designee agrees to install 24" box trees from City approved list, with a minimum height of 9' and spread of 3 to 4 feet at a ratio of 1 such tree per 10 trees installed around and throughout the parking areas.	Prior to site review application and site improvements plan approvals	NA
1.c Varied front yard landscaping	Project will provide varied front yard landscaping as required for multi-family project in the RDCS Section 18.78.320 (c).	Prior to site review application approval	NA
1.d Adheres to Street Tree Master Plan	Property owner or designee commits to comply with the Master plan requirements.	Prior to site improvements plan approvals	NA
2.a pervious hardscape coverage	Project will include non-irrigated landscaping on about 15% of the landscaped area	Prior to site review application approval	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
2.b Use of water conserving plants	Will utilize low to moderate water use landscaping.	Prior to site review application approval	NA
3. Visible landscaping to public	Landscaping is installed on all areas visible from public and private rights-of-ways.	Prior to site review application approval	NA
4. Minimize drainage runoff	The project includes an underground retention system.	Prior to building permit issuance	NA
18.78.330	Natural and Environmental		
1. Minimize grading	The property owner or designee commits to criterion in Section 18.78.330 (1) by minimizing site grading and will restrict the amount of runoff caused by impervious surfaces in addition to covering of land areas suitable for percolation or bio-swales where applicable.	Prior to site review application approval	NA
2.f Solar panels	The property owner or designee commits to installation of solar photovoltaic panels to offset 50% of the anticipated energy demand of the clubhouse facility.	Prior to building permit issuance for clubhouse facility	NA
2.h			
2.j (1) Solar water heating	The property owner or designee commits to installing solar water heating for the community pool.	Prior to building permit issuance	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
		for the clubhouse facility	
2.j(2) Community pool	The property owner or designee commits to installing a salt-chlorinator pool system for the community pool.	Prior to building permit issuance for the clubhouse facility	NA
18.78.335	Livable Communities		
6. Architectural variation and differentiation	25% of the units have porches, decks, verandas, and balconies that can be viewed from the public right-of-way The project uses at least two different roof lines and two different roof pitches throughout the project. Architectural relief, articulation, and detailing agreed consistent on all four building elevations. Each standard base and trim color will represent no more than 15% of the project.	Prior to site review application approval	NA
7. Provides privacy for residents	The windows on units will alternate. Noise producing elements will be located away from other units (i.e. air conditioning units).	Prior to issuance of building permit per building	NA
8. Washer and Dryers	All units will include a washer and dryer within each unit.	Prior to Certificate of Occupancy	NA

23528095**Regina Alcomendras**
Santa Clara County - Clerk-Recorder**12/09/2016 12:12 PM****RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**City of Morgan Hill
Community Development Agency
17575 Peak Avenue
Morgan Hill, CA 95037**Titles: 1 Pages: 52****Fees: \$0.00**
Taxes: \$0
Total: \$0.00**RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383**

127-04-16-054

DEVELOPMENT AGREEMENT**BY AND BETWEEN****THE CITY OF MORGAN HILL****AND****PRESIDIO EVERGREEN, LLC****REGARDING****THE SAN PEDRO-PRESIDIO APARTMENT DEVELOPMENT PROJECT**

Attachment: Presidio Evergreen, LLC Development Agreement 02 (1958 : DA Amendment for Paradigm Engineering)

RESIDENTIAL DEVELOPMENT AGREEMENT (DA2016-0004)
 BY AND BETWEEN THE CITY OF MORGAN HILL
 AND
 PRESIDIO EVERGREEN, LLC REGARDING THE
 SAN PEDRO-PRESIDIO APARTMENT DEVELOPMENT PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Presidio Evergreen, LLC, a Delaware limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.80 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. Measure "C" application (MC-15-18): San Pedro-Presidio (Rental);
2. Environmental Impact Report (EA-13-09), and Addendum to EIR (EA-16-2016-0005)
3. General Plan Amendment (GPA-13-01);

4. **Rezoning (ZA-14-16);**
5. **Subdivision Map (SD2016-0006);**

The Existing Approvals are more particularly described in the *ZA-16-01*, *SD2016-0006*, *EA2016-0005* and the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 12, 2016, the Morgan Hill Planning Commission approved an allotment for the Project as set forth in the Developer's application for a development allotment pursuant to Chapter 18.78 of the Morgan Hill Municipal Code ("**Residential Development Control System**", or "**RDCS**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits included in the Developer's application as required under Section 18.78.060A of Chapter 18.78 of the Code.

G. On August 23, 2016, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute and the Enabling Ordinance, adopted Resolutions that affirmed CEQA compliance for this Agreement, adopted findings that this Agreement is consistent with the City's General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On ~~10/21~~ 20 ~~16~~ following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No. 2218, an ordinance that affirms CEQA compliance, that adopts findings that this Agreement is consistent with the City's General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement's execution by City ("Approving Ordinance"). The City adopted the Approving Ordinance on ~~Oct 19~~ 20 ~~16~~ the Approving Ordinance became effective thirty (30) days later, and the Parties signed the Agreement. The "Effective Date" in this Agreement shall be the date that the Approving Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) **"Applicable Law"** shall have that meaning set forth in Section 2.01(a) of this Agreement.

(2) **"Existing Approvals"** shall have that meaning set forth in Recital paragraph D of this Agreement.

(3) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(4) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(5) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(6) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.

(7) **"Project"** shall mean the development containing **168 apartments on APN: 817-12-0006**, as more particularly described in Exhibit B and the Measure "C" permit MC-15-18. Any reference in this Agreement to the "Project" shall mean and include the "Property,"; provided however, that the Project to which this Agreement applies may be only occupy a part of the Property and may be only a phase of a larger development on the Property.

(8) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals..

(9) **"Property"** shall mean that certain real property consisting of approximately 7.6 acres located within the City, as more particularly described and shown on *Exhibit A* to this Agreement.

(10) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.

(11) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

(12) **"Subdivision Document"** means, pursuant to Government Code section 66452.6(a) and this Agreement, the term of any tentative map, vesting tentative map, parcel map, vesting parcel map, final map or vesting final maps, or any such new map or any amendment to any such map, or any resubdivision.

(13) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps and any Subdivision Document.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.03 Term/Subdivision Documents.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated, modified or extended as provided in this Agreement) until the earliest of (1) the loss of all development allocation for the Project under the RDCS, if applicable, (2) the issuance of a certification of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations under Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) Any Subdivision Document relating to the Project shall automatically be extended to and until the end of the Term of this Agreement. The termination of this Agreement shall have no effect on the remaining term of a Subdivision Document that has not yet expired. Any improvement agreement entered into pursuant to the Subdivision Map Act (Gov. Code §§ 66410 *et seq.*) or other State or local regulation shall have that term determined by City. If this Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "**Vesting Map**"), such Vesting Map approved during the Term of this Agreement shall NOT extend the Applicable Law beyond the stated Term of this Agreement and the City rules, regulations and official policies applicable to that portion of the Property covered by such Vesting Map shall become those City rules, regulations and official policies in effect as of the date of the termination of this Agreement; provided, however, that City and Developer may agree to an extension of the Term of this Agreement with respect to the area covered by any such Vesting Map.

(c) If any "**Third Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the

foregoing, regardless of the number of Third Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section 2.01, subject only to the conditions set forth in Section 2.02(c) of this Agreement. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
 - (2) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes any requirements for notice, acts of protest and/or right to litigation pursuant to the Mitigation Fee Act and/or any other applicable law.
 - (3) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties; and
 - (iii) Duly enacted by City.
 - (4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.
 - (5) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.09. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.09(e).
- (b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

(d) Nothing contained herein will give Developer a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(e) Nothing contained herein will give Developer a vested right to develop the described Project absent valid and unexpired development allocations under the RDCS.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law. Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(b) Under this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(c) If the RDCS is applicable to the Project or any portion thereof, the vested rights to develop the Project according with Applicable Law and this Agreement shall be vested only to those residential units having a RDCS allotment. If the Project defined in this Agreement includes units that have not been awarded RDCS allotments ("Pending Units"), the RDCS allotments for the Pending Units shall be a necessary Subsequent Approval and this Agreement shall be amended to reflect the application and conditions attaching to the RDCS allotments for the Pending Units.

(d) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable city, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal

and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Project's sole and exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The following specific requirements set forth in Exhibit C are voluntarily assumed by Developer in return for benefits derived from the City's RDCS building allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement or otherwise imposed to mitigate impacts of the Project. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition under otherwise applicable city, state or federal law and waives any such right to credit, refund, reimbursement or prohibition. Instead, these requirements are voluntarily assumed by Developer in return for benefits derived from the RDCS. For example, under the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that is willing to pay fees in addition to those already required to mitigate its impacts. The payment of these additional fees results in additional points being awarded to the development proposal under the RDCS, thereby allowing the development proposal to secure a higher score under the RDCS, which in turn may provide a high enough score for the development proposal to secure allotments. The obligation that results (to pay such additional fees and to otherwise abide by the requirements derived from that RDCS process in return for additional points under the RDCS) are enforced through this Agreement.

(b) The Developer's RDCS application - MC-15-18 - **FOR SAN PEDRO-PRESIDIO RENTALS, AWARDED ON JANUARY 12, 2016** and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement; provided however, the Project under this Agreement may constitute only part of the development or Property to which said RDCS application and approvals apply and cover only part of the allotments awarded to the Property or development. Exhibit D identifies the portion of the Property, the phase of the development and the number of allotments that the Project and this Agreement covers. If this Agreement covers multiple phases of a development on the Property, then Exhibit also identifies the phase during which each of the specific requirements shall apply.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and

beginning construction dates, and satisfactory progress towards completion of the project in accordance with the RDCS, the RDCS allotment shall expire pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Developer agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units of the Project, this Development Agreement shall be deemed terminated as to the entire Project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceed Developer's estimated cost or commitment, Developer shall be solely responsible for all improvements costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot

apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (e.g., City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations under this Agreement, including without limitation Developer's obligations of full "Project Mitigation" under Section 2.03 or the "RDCS and Other Project Specific Requirement" under Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Gov. Code § 65865.5), or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer

with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Administrative Amendments.

(a) Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the City Manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, and provided further that the Project and the Developer are otherwise in compliance with all agreements and approvals related to the project, the City Manager or his designee may approve the proposed amendment or modification without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals triggering further CEQA review. Any minor amendment must be made in writing signed by the City Manager (and approved by the City Attorney) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the amendment shall be recorded with the Santa Clara County Clerk Recorder.

(b) For the purpose of this Agreement, a minor amendment shall include any of the following:

(1) Any extension, postponement or amendment of the time for commencement of construction of the Project that is concurrent and to the same extent as the time extension granted pursuant to an "exception to the loss of allotment" granted by the City Council pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code, or

(2) The addition of subsequent allocations granted as part of an "Ongoing Project" providing all of the following criteria and conditions are met:

- (A) Those subsequent allocations are and shall be obligated to meet all of the Project Requirements and Commitments (including without limitation RDCS set forth in Exhibit C); and
- (B) Such subsequent allocations are and shall be added to Exhibit B and Exhibit C, with time provisions as may be adjusted pursuant to the year in which such subsequent allocations are awarded to the Project as an "Ongoing Project" and with reference to such additional Project Phase.

(c) A "minor amendment" shall not include any of the following:

- (i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the permitted uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings, (5) provisions for reservation or dedication of land for public purposes, (6) general location of the uses or proposed buildings or (7) the relation of the project to adjacent properties; or
- (ii) Any material amendment or modification, or eliminations of provisions set forth in Article 2 of this Agreement or Exhibit C to this Agreement or any reduction in fees or Project Mitigations hereunder.

3.04 Amendments.

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the City Manager or his designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default under this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least four times per year and on a schedule to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded under the RDCS.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own

attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation

acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests under this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer under this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief under any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay under Bankruptcy Code section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer under this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Compliance with Government Code Section 65867.5.

In accordance with the requirements of Government Code section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Government Code section 66473.7.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is

formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed under this agreement and before permitting any Contractor or Subcontractors to perform work under this agreement, the Subdivider shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained

similar to that provided by the Subdivider as it may be applied to the Contractor's or Subcontractor's work.

(f) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(g) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	Presidio Evergreen, LLC c/o Presidio Advisory Group II, LLC 9740 Appaloosa Road, Suite 230 San Diego, California 92131 Attention: Don Faye; Paul Lucatuorto and Phil Rush Tel: (619) 573-1843
<u>With a Copy To:</u>	Presidio Evergreen, LLC c/o Mana Investments, Inc. 5927 Balfour Court, Suite 208 Carlsbad, California 92008 Attention: Orville T. Power Tel: 619-876-6132

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to

any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(h) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(i) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(j) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(k) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(l) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(m) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(n) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project Timeline.

Exhibit C Project Requirements and Commitment

Exhibit D Phasing Plan

5.02 Limitations on Time to Challenge Validity of this Agreement. Developer shall have ninety (90) days from the date that the City Council approved this Agreement to commence and effect service of summons of any action or proceeding to attack, review, set aside, void or annul this Agreement or any part of this Agreement. Thereafter, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision of the proceedings, acts or determinations, including any provision of this Agreement or the enforcement hereof.

5.03 Notice of 90-day Right to Protest. Developer is hereby notified that Developer shall have ninety (90) days from the date of the imposition of any fees, dedications, reservations, or other exactions, to file a protest of the imposition of any such fees, dedications, reservations or other exactions; provided however that any challenge to the validity of any provisions of this Agreement, including Project Mitigations, or any RDCS or Project Specific Requirements, shall be subject to Section 5.02 and that this notice of the right to protest shall not supplant, extend or start anew any protest period already commenced pursuant to previous notices.

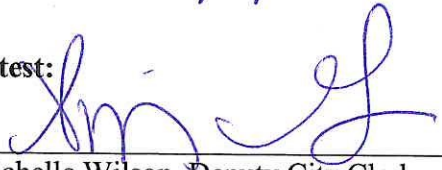
IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ 
Steve Rymer, City Manager

Date: 12/1/16

Attest:

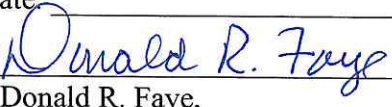
s/ 
Michelle Wilson, Deputy City Clerk

DEVELOPER:

Presidio Evergreen, LLC, a Delaware
limited liability company

BY: Mana Evergreen, LLC, a California
limited liability company, its Operating
Manager

s/ _____
Orville T. Power
Its Authorized Representative

Date: _____
s/ 
Donald R. Faye,
Its Management Committee Representative

Date: 9-9-16

Approved as to Form:

s/ 
Donald A. Larkin, City Attorney

Date: 12/1/2016

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

Attachment: Presidio Evergreen, LLC Development Agreement 02 (1958 : DA Amendment for Paradigm Engineering)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

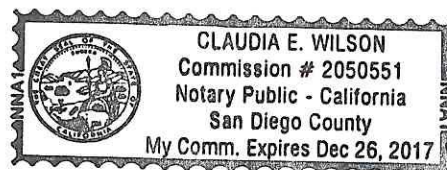
On September 9, 2016 before me, Claudia E. Wilson, notary public,
(insert name and title of the officer)

personally appeared Donald R. Faye,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Claudia E. Wilson (Seal)



IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____
Steve Rymer, City Manager

Date: _____

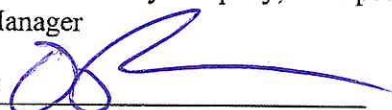
Attest:

s/ _____
Michelle Wilson, Deputy City Clerk

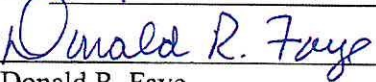
DEVELOPER:

Presidio Evergreen, LLC, a Delaware
limited liability company

BY: Mana Evergreen, LLC, a California
limited liability company, its Operating
Manager

s/ 
Orville T. Power
Its Authorized Representative

Date: 9-21-16

s/ 
Donald R. Faye,
Its Management Committee Representative

Date: 9-9-16

Approved as to Form:

s/ _____
Donald A. Larkin, City Attorney

Date: _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CA

County of SANTA

On SEPT 21 2016 before me, IRIS WISE, Notary Public,
(here insert name and title of the officer)

personally appeared ORVILLE J. POWER
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

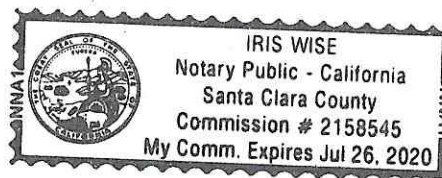
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

IRIS WISE

Signature

(Seal)



A notary or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

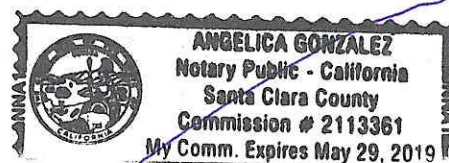
State of California
County of Santa Clara

On December 1, 2016, before me, Angelica Gonzalez, a Notary Public in and for said County and State, personally appeared Steve Rymer, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)



EXHIBIT A

**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED FOR**

**PRESIDIO EVERGREEN, LLC REGARDING THE
SAN PEDRO-PRESIDIO APARTMENT DEVELOPMENT PROJECT**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Lot 51, as shown on that certain Map entitled, "Catherine Dunne Ranch Map No. 5, being Burbank and Devendor's Subdivision of part of the Rancho Ojo De Agua De La Coche, Santa Clara, California", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 5, 1897 in Book "I" of Maps, at page(s) 59.

Excepting Therefrom that portion as granted to the State of California, by Deed recorded on January 15, 1969 in Book 8402 of Official Record, page 335, and more particularly described as follows:

Commencing at the Northwesterly corner of Lot 51 as shown on that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO.5" which Map was filed for record in the Office of the Recorder of Santa Clara on April 5, 1987 in Book "I" of Maps, at page 59; thence along the Northwesterly line of said Lot, N. 65° 15' 50" East 60.00 feet; thence South 24°44' 10" East 775.06 feet; thence along a tangent curve to the left with a radius of 20.00 feet through an angle of 90° 00' 00", an arc length of 31.42 feet to the Northwesterly line of San Pedro Avenue (90 links wide); thence along last said line South 65°15' 50" West 80.00 feet to the Southwesterly line of said Lot51; thence along last said line North 24° 44' 10" West 795.06 feet to the Point of Commencement.

APN: 817-12-006

EXHIBIT B

DESCRIPTION OF PROJECT
MC-15-18: Condit - Mana Investments
80 allotments FY 2017-2018
85 allotments FY 2018-2019
(San Pedro-Presidio Rental, 165 units)

I. GENERAL PLAN AMENDMENT	
Application Approved:	02-04-2015
II. ZONING APPLICATION(S)	
Application Filed:	01-29-2016
III. SUBDIVISION MAP APPLICATION	
Application Filed:	01-29-2016
IV. SITE REVIEW APPLICATION	
Submit to Planning Department for approval: FY 2016-2017	09-01-2017
V. FINAL MAP SUBMITTAL	
Map, Improvements Agreement and Bonds: FY 2016-2017	12-01-2017
VI. BUILDING PERMIT SUBMITTAL	
Submit plans to Building Division for plan check: FY 2017-2018 (80 units)	09-30-2017
FY 2018-2019 (85 units)	09-30-2018
VII. BUILDING PERMITS	
FY 2017-2018 (80 units)	02-30-2018
FY 2018-2019 (85 units)	02-30-2019
VIII. COMMENCEMENT CONSTRUCTION:	
FY 2017-2018 (80 units)	06-30-2018
FY 2018-2019 (85 units)	06-30-2019

Failure to obtain building permits by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the property owner/designee being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 7 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to all 165 allotments awarded in the RDCA application date January 12, 2016 (or application # MC-15-18) and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements under CEQA, impact fee, in-lieu fees or other requirements under federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Estimated cost are estimates and may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
18.78.210	Schools		
B1. Developer fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.	Prior to the issuance of each building permit	Fee estimated at time of building permit submittal.
B4. Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within 3/4 miles of the project site or to a middle school or high school up to \$4,950 per unit.	Prior to issuance of Certificate of Occupancy	\$4,950 per unit
18.78.220	Open Space		
1.b Common useable open	All private common open space areas are to be maintained	Prior to	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
space	by a Homeowners Association (or similar entity) including open space along public street frontages.	improvement plan approval	
1.c Convenient access to project amenities	Project includes seven feet wide paths within the project to connect to project amenities. Paths are located in areas no less than 20 feet wide, with an average width of 30 feet for the entire length of the path. Pathways will be paved, or will be constructed of another suitable durable surface.	Phase one includes the community center, phase 2 includes the programmed park amenities, and phase 5 includes the construction of the pedestrian paseo link between San Pedro Ave and the Commercial property located to the north of the project	NA
1.d Accessibility to parks/open space	Accessibility to public parks or open space is provided inside the project with sidewalks that are at least six feet wide.	Prior to improvement plan approval	NA
1.e Provides accessibility to existing or proposed public parks and open space areas outside the project boundary and encourages	Public access and parking for the Morgan Hill Outdoor Sports Complex and Aquatics Center will be provided through the construction of sidewalks and paved parking on San Pedro and an improved pedestrian crossing mid-block	Prior to improvement plan approval and constructed	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
multiple uses and fee dedication of open space areas adjacent to flood control right-of-ways and recharge facilities.	on San Pedro.	prior to completion of phase 2 (based on the attached phasing plan)	
1.g Provides public or private common useable open space which may be used for a dual purpose to include underground storm water detention, as determined by the Department of Public Works.	The project will include an underground water storage array in the southern open space area. The open space will be dual-purpose.	Prior to improvement plan approval and constructed prior to completion of phase 2 (based on the attached phasing plan)	NA
2b. Provides a high ratio of total open space area	Building coverage, defined as that portion of the overall project master plan, exclusive of sidewalks, driveways and streets, which is covered by a building, parking lot or carport, will not exceed 59%.	Prior to improvement plan approval	
18.78.230	Orderly and Contiguous Development		
2. Fills in existing utility lines	The project will fill in existing water, sanitary sewer, storm drain, and fire utility lines.	Prior to improvement plan approval	NA
3. Located within existing urban service area	The percentage of a property that is adjacent to existing development is 50%.	Prior to Site Review Application approval	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
5. Project Master Plan	Project is consistent with General Plan density and worked with staff on internal circulation and access requirements including appropriate transition of lot size and use of common open space area.	Prior to Site Review Application approval	NA
18.78.240	Public Facilities		
2.a Grids water mains into the existing water system	The property owner/designee will grid from the Condit main to the Murphy main along the project's northerly boundary.	Prior to improvement plan approval	NA
2.b Drainage concept consistent with City's storm drain system	Project is consistent with the City Storm Drainage Master plan for the local area storm drain system as determined by Public Works.	Prior to improvement plan approval	NA
2 c. Storm drain lines constructed within paved area of the street	Storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street right-of-way, or in a location acceptable to the Director of Public Works.	Prior to improvement plan approval	NA
2.d Storm drainage from the development is accommodated without the need for an on-site detention pond or open space retention areas.	Proposed on-site underground retention basin sized to accommodate project needs as well as an additional 10 acres of land beyond the project boundary and will conform to the requirements described in Open Space B.1.g. Additional 10 acres includes future residential development on the adjacent easterly parcel, and a portion of the commercial parcel to the north.	Prior to improvement plan approval	NA
2.f Out-of-tract public improvements	The property owner/designee commits to provide up to \$3,300 per unit of out-of-tract public improvements to be determined by Public Works.	Prior to issuance of Certificate of Occupancy	\$3,300 per unit

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
2.g Contribution to RDCS Capital Improvements fund	Property owner/designee will contribute \$1,100 per unit to the RDCS Capital Improvements fund.	Prior to issuance of Certificate of Occupancy	\$1,100 per unit
18.78.250	Parks and Paths		
2. Privately owned and maintained amenities	The property owner/designee shall provide four separate cabana or shade trellis areas, two picnic/barbeque areas; a half scale soccer field; a Jacuzzi; 17 community garden plots of at least 48 square feet each with water service located in areas that will receive at least eight hours of summer sun daily for a period of 20 years when accounting for anticipated tree growth; an exercise room; a swimming pool; two tot lots within a minimum of three age appropriate activities; and a programmed park amenity near San Pedro Road. Any alteration to the amenities deemed as minor, shall maintain the same amount of points awarded by the Measure "C" MC-15-18 application, and be reviewed and approved by the Community Development Director.	Prior to site review application approval	NA
3. Bike paths/equestrian trails	The property owner/designee shall provide at least 4.2 miles of Class II bike lanes. Prior to installation, the property owner/designee shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed.	Prior to improvement plan approval	NA
18.78.260	Housing Needs		
3. a Affordable units for sale or rent	Property owner or designee agrees to provide 4% (7 units) Very Low Income and 4% (7 units) Low Income BMR	Prior to building permit issuance,	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	units for rent within this Market Rate Rental Project. Units shall be Model 1&3 with 1 to 2 bedrooms, one bath and between 500 and 770 square feet. Units shall be dispersed between phases of the project. BMRs are also subject to the requirements listed under “Additional Requirements” and as referenced per the Affordable Housing Agreement (AHA). Additional Requirements: BMR units are subject to the following development standards: 1. Location. BMR units shall be distributed evenly throughout the project. 2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project; 3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project; 4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate 5. Minimum standards for equipment, fixtures,	property owner/designee shall enter into City BMR agreement	

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home. 6. Minimum Interior standard finishes will be as follows a. All closets shall have doors b. Interior doors to be raised panel type or same as market rate c. Door hardware to be brass finish or equivalent d. Appliances shall be major brand name e. Microwave with an exhaust vent shall be installed over the range f. Kitchen counters shall be white ceramic tile g. Kitchen cabinets shall be stained wood with		

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
	white melamine interiors h. Units will be roughed in for AC including electrical and line set i. Basic alarm system to secure all accessible openings to the home j. Carpet in bedrooms, hallways, family rooms k. Linoleum or tile entry, bathroom kitchens l. Laminate flooring may substitute for carpet or linoleum m. Electric garage door opener Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the RDCS. For example, for a project with an 8% BMR ownership housing commitment, at least one BMR unit shall be constructed before or concurrently with every 7th market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units.		

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
5. Enclosed garage for multi-family rental projects	100% of the units will be provided with an enclosed garage.	Prior to building permit issuance	NA
18.78.270	Housing Types		
1.a Diversity of types and categories	The project will remain 100% rental.	Any changes will require an amendment to this DA and approval of a condo map	NA
2. Economic diversity	Property owner or designee agrees to provide 4% (7 units) Very Low Income and 4% (7 units) Low Income BMR units for rent within this Market Rate Rental Project. Units shall be Model 1&3 with 1 to 2 bedrooms, one bath and between 500 and 770 square feet. Units shall be dispersed between phases of the project.	Incorporate in to construction plans prior to the issuance of a building permit	NA
3. Variation of size	The project has current allocations for 80 units in 2017-2018 and 85 units for 2018-2019. The project provides a total of 168 units. The project includes one, two, and three bedroom units. Each unit type is represented by at least 10 percent of the overall unit total.	Incorporate in to construction plans prior to the issuance of a building permit	NA
18.78.280	Quality of Construction		
1. a Exterior OSB/Plywood wrap	Installation of full exterior OSB/Plywood wrap	Incorporate in to construction plans prior to the	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
		issuance of a building permit	
1.b Foundations	20% reduction of cement in the concrete mix design by use of fly ash, slag, silica fume or rice hull ash.	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.c Wallboard	Installation of light weight wallboard for al walls excluding code requirements for fire walls.	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.d Electrical raceway	Installation of one dedicated 3/4 inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.f Heating	Installation of 90% high efficiency fan forced heating.	Incorporate in to construction plans prior to the issuance of a building permit	NA
1.g Zoned Heating an Conditioning	Zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution.	Incorporate into construction plans prior to the issuance of a	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
		building permit	
1.h	The proposed development will provide all the following - Listed sound attenuated materials in walls that adjoin a bathroom and/or bedroom walls - Installation of high efficiency energy star water heater with energy factor of 0.70 - Installation of ultra high efficiency or dual flush toilet - Installation of rain sensor monitor on irrigation system.	Incorporate into construction plans prior to the issuance of a building permit	NA
18.78.290	Lot Layout and Orientation		
1.c Separation of buildings	The project will provide separation between building greater than 20%	Prior to site review application approval	NA
1.d Avoids Sound Walls	The design avoids the use of sound walls along San Pedro Ave and Condit Road	Prior to site review application approval	NA
1.f Transition of Lot Sizes	Project provides connectivity between neighborhoods through a pedestrian paseo and internal sidewalk pathways.	Prior to site review application approval	NA
1.g Above Average Layouts	Worked with Planning Staff to address design constraints and has complied with the newly adopted City Ordinance Chapter 18.29 of the Municipal Code.	Prior to site review application approval	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
1.h Project design	The Multi Family rental project consists of 19 buildings. Two building types are provided (a 7-plex and a 14-plex). In addition, two elevations are proposed and satisfies the criteria providing different biding types with a themed architectural style.	Prior to site review application approval	NA
2.a Access	Two points of access from to the project will be provided from Condit Road.	Prior to site review application approval	NA
	This is a duplicate.		
18.78.300	Circulation Efficiency		
1.b Future street extensions	The project provides for the extension of the drive aisle along the northerly boundary of the project.	Prior to site review application approval	NA
1.c Future drive aisles/parking lots	The project will complete full width street improvements along the project frontage on Condit Road and San Pedro Ave.	Prior to improvement plan approval	NA
1.e Minimum 20 ft. clear view backout distance	The project provides for a minimum 3-foot distance between garage doors and drive aisles.	Prior to site review application approval	NA
2.a Internal circulation for local residents	Two points of access to the project are provided from Condit Road	Prior to site review application	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
		approval	
2.c detached sidewalks	The project proposed to install detached sidewalks with a 5 foot park strip along the project frontage on Condit Road and San Pedro Ave.	Prior to site review application approval	NA
3.b Dedication or improvement to existing streets and parking lots outside of project	The project will pay the streetlight conversion of \$1,500 (2 x \$750) per dwelling unit.	Prior to issuance of Certificate of Occupancy	\$1,500 per unit
4. Dedication and improvement of extensions to existing streets and parking lots outside of project boundaries	The project commits to public improvements in the amount of \$2,200 per dwelling unit. Improvements may include eligible San Pedro Avenue upgrades between Condit Road and Murphy Avenue as shown on the supplemental RDCS exhibits. Should the cost of these improvements be less than the committed amount, then the Applicant will coordinate with the City to determine how/where to direct the additional funds.	Prior to improvement plan approval	NA
6. Lighted circulation map	The project will provide a detailed and lighted entry circulation map at vehicular entry.	Incorporate into construction plans prior to the issuance of a building permit	NA
18.78.310	Safety and Security		
1.b Provide first aid kit	Property owner or designee will provide a first aid kit with a poison control document to be installed in the kitchen area of each home.	Incorporate into construction plans prior to the	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
		issuance of a building permit	
1.d Provide outdoor lighting	Property owner or designee commits to providing lighting on all buildings that meet Police Department specifications, California Electrical Code and MHMC. Property owner or designee commits to installation of motion detector light on each unit per police department specifications.	Prior to site review application approval	NA
1.e Pedestrian scale lighting	Property owner or designee commits to installing pedestrian scaled lighting along walkways and in common areas. Project will not utilize bollard style lighting.	Prior to site review application approval	NA
1.f illuminated address numbers	Project will install illuminated address numbers on each individual building, with unit numbers illuminated as well, and painted reflective curb numbers where possible.	Prior to site review application approval	NA
1.h parks with lighting	The project includes lighting in all large usable areas and parks to a minimum of 1.5 foot candles or modified electrolier.	Prior to site review application approval	NA
1.i covered bicycle parking	The property owner or designee commits to provide long-term bicycle parking at a ratio of 10% of the required parking for residential units (including guest parking).	Prior to site review application approval	NA
1.j Security cameras	Property owner or designee commits to installing security cameras to monitor common areas such as laundry, parking	Incorporate into construction	NA

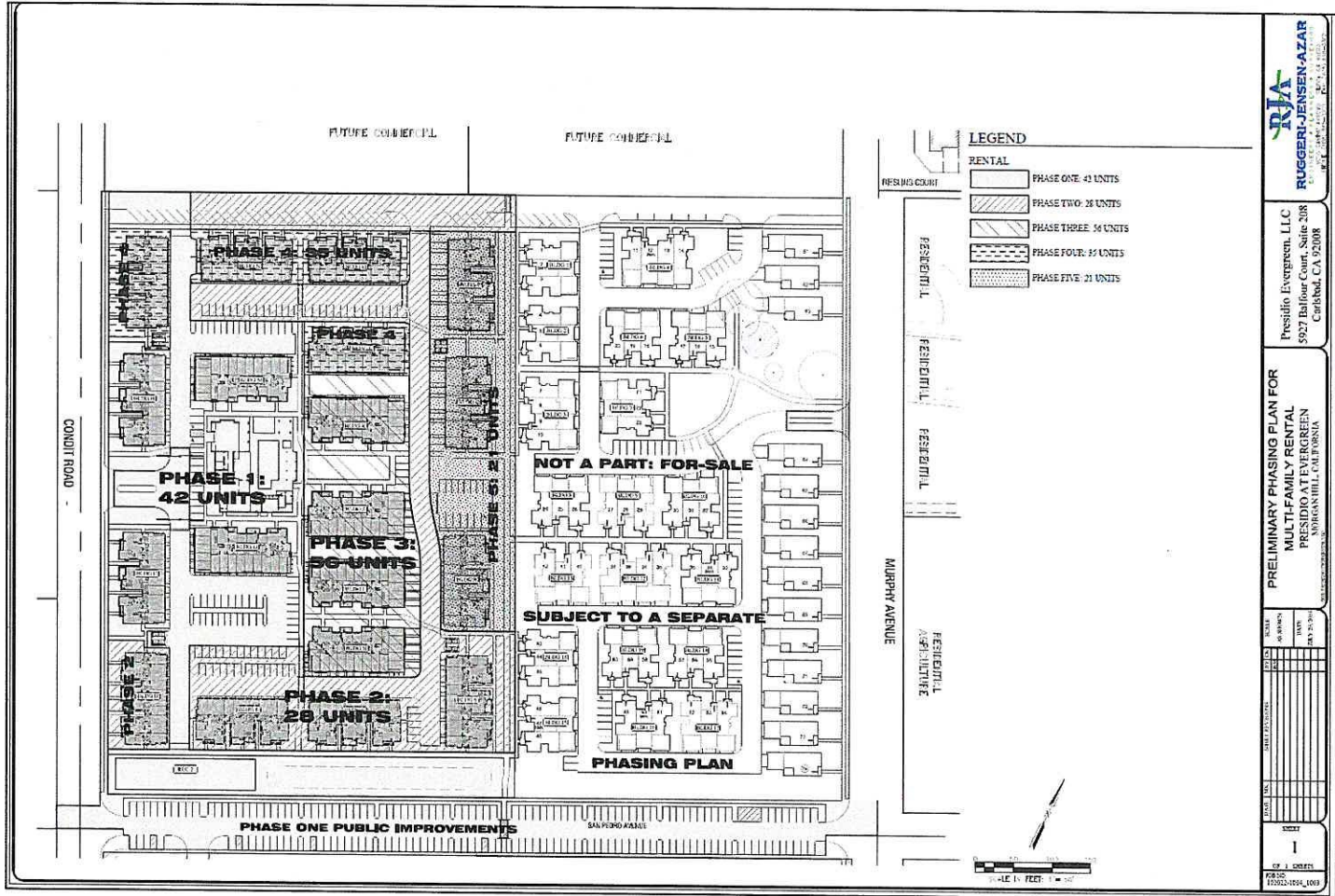
Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
	and recreational areas/halls.	plans prior to the issuance of a building permit	
1.k illuminated pathway and walkways	Property owner or designee commits to illuminating all pathways an pedestrian walkways with a minimum of 1 foot candle.	Incorporate into construction plans prior to the issuance of a building permit	NA
2. Crime Prevention through Environmental Design (CPTED)	Property owner or designee commits to utilize CPTED principles of Natural Surveillance, Territorial Reinforcement per the RDCS Section18.78.310 (2) for Multi-Family a, b, and c.	Incorporate into construction plans prior to the issuance of a building permit	NA
3. Lockable hardware	The property owner or designee commits to installing lockable hardware on all side yard and patio gates.	Incorporate into construction plans prior to the issuance of a building permit	NA
5. Neighborhood emergency preparedness program through HOA	Project will establish a Neighborhood Preparedness Program administered through the property management agency.	Prior to issuance of Certificate of Occupancy	NA
6. Neighborhood "Watch Program" in CC&R's	Property owner or designee commits to establishing an Neighborhood Preparedness Program administered through the HOA. Property owner or designee will direct HOA to contact Office of Emergency Services within 90 days of issuance of the Certificate of Occupancy.	Prior to issuance of Certificate of Occupancy	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
18.78.320	Landscaping, Screening and Color		
1.a 24" box-size trees within project	Project will provide 24" box trees from City approved list, with a minimum height of 9' and spread of 3 to 4 feet at a ratio of 1 such tree per 10 trees installed (not including street trees) per the criteria.	Prior to site review application and site improvements plan approvals	NA
1.b Shading and screening of group parking areas	Property owner or designee agrees to install 24" box trees from City approved list, with a minimum height of 9' and spread of 3 to 4 feet at a ratio of 1 such tree per 10 trees installed around and throughout the parking areas.	Prior to site review application and site improvements plan approvals	NA
1.c Varied front yard landscaping	Project will provide varied front yard landscaping as required for multi-family project in the RDCS Section 18.78.320 (c).	Prior to site review application approval	NA
1.d Adheres to Street Tree Master Plan	Property owner or designee commits to comply with the Master plan requirements.	Prior to site improvements plan approvals	NA
2.a pervious hardscape coverage	Project will include non-irrigated landscaping on about 15% of the landscaped area	Prior to site review application approval	NA
2.b Use of water conserving	Will utilize low to moderate water use landscaping.	Prior to site	NA

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
plants		review application approval	
3. Visible landscaping to public	Landscaping is installed on all areas visible from public and private rights-of-ways.	Prior to site review application approval	NA
4. Minimize drainage runoff	The project includes an underground retention system.	Prior to building permit issuance	NA
18.78.330	Natural and Environmental		
1. Minimize grading	The property owner or designee commits to criterion in Section 18.78.330 (1) by minimizing site grading, and will restrict the amount of runoff caused by impervious surfaces in addition to covering of land areas suitable for percolation or bio-swales where applicable.	Prior to site review application approval	NA
2.f Solar panels	The property owner or designee commits to installation of solar photovoltaic panels to offset 50% of the anticipated energy demand of the clubhouse facility.	Prior to building permit issuance for clubhouse facility	NA
2.j (1) Solar water heating	The property owner or designee commits to installing solar water heating for the community pool.	Prior to building permit issuance for the clubhouse facility	NA
2.j(2) Community pool	The property owner or designee commits to installing a salt-chlorinator pool system for the community pool.	Prior to building permit issuance	NA

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
		for the clubhouse facility	
18.78.335	Livable Communities		
6. Architectural variation and differentiation	25% of the units have porches, decks, verandas, and balconies that can be viewed from the public right-of-way. The project uses at least two different roof lines and two different roof pitches throughout the project. Architectural relief, articulation, and detailing agreed consistent on all four building elevations. Each standard base and trim color will represent no more than 15% of the project.	Prior to site review application approval	NA
7. Provides privacy for residents	The windows on units will alternate. Noise producing elements will be located away from other units (i.e. air conditioning units).	Prior to issuance of building permit per building	NA
8. Washer and Dryers	All units will include a washer and dryer within each unit.	Prior to Certificate of Occupancy	NA

Exhibit D



DRAFT



Meeting Minutes Planning Commission

Liam Downey - *Chairman*
Yvonne Martinez Beltran - *Vice Chair*
Mohammad Habib - *Planning Commissioner*
Juan Miguel Munoz Morris - *Planning Commissioner*
Joseph Mueller - *Planning Commissioner*
Wayne Tanda - *Planning Commissioner*
John McKay - *Planning Commissioner*

Tuesday, September 11, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

ROLL CALL ATTENDANCE

Attendee Name	Title	Status	Arrived
Liam Downey	Chairman	Excused	
Yvonne Martinez Beltran	Vice Chair	Present	
Mohammad Habib	Planning Commissioner	Present	
Juan Miguel Munoz Morris	Planning Commissioner	Present	
Joseph Mueller	Planning Commissioner	Present	
Wayne Tanda	Planning Commissioner	Present	
John McKay	Planning Commissioner	Present	

DECLARATION OF POSTING AGENDA

Minutes Clerk Luna Declared the Posting of the Agenda.

Minutes Acceptance: Minutes of Sep 11, 2018 7:00 PM (Consent Agenda)

PLEDGE OF ALLEGIANCE

Commissioner Mueller led the Pledge of Allegiance.

OPEN PUBLIC COMMENT PERIOD

Vice Chair Martinez-Beltran opened the Public Comment period at 7:04 p.m. Hearing no requests to speak, The Public Hearing was closed.

ORDERS OF THE DAY

MOTION

Commissioner Habib requested the Director's Report be moved before Item 13 is heard.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Mohammad Habib, Planning Commissioner
SECONDER:	Juan Miguel Munoz Morris, Planning Commissioner
AYES:	Martinez Beltran, Habib, Munoz Morris, Mueller, Tanda, McKay
EXCUSED:	Downey

CONSENT AGENDA

These are items of a routine or generally uncontested nature. Any member of the Planning Commission or member of the public may request to have an item pulled from the Consent Calendar and acted on individually by the Planning Commission. Items pulled will be discussed after action is taken on the balance of the Consent Calendar and before moving on to the public hearings.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Juan Miguel Munoz Morris, Planning Commissioner
SECONDER:	John McKay, Planning Commissioner
AYES:	Martinez Beltran, Habib, Munoz Morris, Mueller, Tanda, McKay
EXCUSED:	Downey

1. APPROVE THE JUNE 26, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

2. APPROVE THE JULY 10, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

3. APPROVE THE JULY 24, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

MINUTES APPROVAL

4. APPROVE THE SEPTEMBER 27, 2016 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT:	APPROVED [4 TO 0]
MOVER:	Juan Miguel Munoz Morris, Planning Commissioner
SECONDER:	Joseph Mueller, Planning Commissioner
AYES:	Munoz Morris, Mueller, Tanda, McKay
ABSTAIN:	Martinez Beltran, Habib
EXCUSED:	Downey

5. APPROVE THE NOVEMBER 8, 2016 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT:	APPROVED [4 TO 0]
MOVER:	Juan Miguel Munoz Morris, Planning Commissioner
SECONDER:	Joseph Mueller, Planning Commissioner
AYES:	Munoz Morris, Mueller, Tanda, McKay
ABSTAIN:	Martinez Beltran, Habib
EXCUSED:	Downey

6. APPROVE THE NOVEMBER 22, 2016 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT: APPROVED [4 TO 0]
MOVER: Juan Miguel Munoz Morris, Planning Commissioner
SECONDER: Joseph Mueller, Planning Commissioner
AYES: Munoz Morris, Mueller, Tanda, McKay
ABSTAIN: Martinez Beltran, Habib
EXCUSED: Downey

7. APPROVE THE DECEMBER 13, 2016 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT: APPROVED [4 TO 0]
MOVER: Juan Miguel Munoz Morris, Planning Commissioner
SECONDER: Joseph Mueller, Planning Commissioner
AYES: Munoz Morris, Mueller, Tanda, McKay
ABSTAIN: Martinez Beltran, Habib
EXCUSED: Downey

8. APPROVE THE JANUARY 10, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT: APPROVED [4 TO 0]
MOVER: Juan Miguel Munoz Morris, Planning Commissioner
SECONDER: Joseph Mueller, Planning Commissioner
AYES: Munoz Morris, Mueller, Tanda, McKay
ABSTAIN: Martinez Beltran, Habib
EXCUSED: Downey

9. APPROVE THE JANUARY 24, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

A correction to the January 24, 2018 will be made in the vote results section of the minutes to remove Commissioner Spring's name and replace it with Commissioner Martinez-Beltran.

RESULT: APPROVED [5 TO 0]
MOVER: Juan Miguel Munoz Morris, Planning Commissioner
SECONDER: John McKay, Planning Commissioner
AYES: Martinez Beltran, Munoz Morris, Mueller, Tanda, McKay
ABSTAIN: Habib
EXCUSED: Downey

CONTINUED PUBLIC HEARING

10. DA2017-0008, SD2017-0002, EA2017-0016: LLAGAS - STROLATA - DEVELOPMENT AGREEMENT, SUBDIVISION MAP, AND ENVIRONMENTAL ASSESSMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 773-32-013 LOCATED AT 1110 LLAGAS AVENUE AT THE NORTHEAST END OF SABINI COURT.

Recommendation:

1. Open/close the public hearing and continue to the September 25, 2018 Planning Commission meeting.

The Community Development Director Jennifer Carman presented the Staff Report.

Vice Chair Martinez-Beltran opened the Public Hearing at 7:19 p.m. Hearing no requests to speak, the Public Hearing was closed.

RESULT:	CONTINUED [UNANIMOUS]	Next: 9/25/2018 7:00 PM
MOVER:	Joseph Mueller, Planning Commissioner	
SECONDER:	Juan Miguel Munoz Morris, Planning Commissioner	
AYES:	Martinez Beltran, Habib, Munoz Morris, Mueller, Tanda, McKay	
EXCUSED:	Downey	

PUBLIC HEARINGS

11. GPA2018-0005/ZA2018-0004/EA2018-0013: GENERAL PLAN AND ZONING AMENDMENT TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION FROM PUBLIC FACILITIES TO MIXED-USE AND THE ZONING CLASSIFICATION FROM PUBLIC FACILITIES TO DOWNTOWN MIXED USE (MU-D) ON A 0.29 ACRE PORTION OF DEPOT STREET LOCATED AT THE CORNER OF DEPOT STREET AND EAST DUNNE AVENUE.

Recommendation:

1. Adopt a Resolution recommending the City Council approve an amendment to the 2035 General Plan;
2. Adopt a Resolution recommending the City Council approve a Zoning amendment;
3. Determine Project Consistency with the General Plan; and
4. Adopt an Addendum to the 2035 General Plan FEIR and Downtown Specific Plan FIER.

Community Development Director Jennifer Carman presented the Staff Report.

Vice Chair Martinez-Beltran opened the Public Hearing at 7:40 p.m. Hearing no requests to speak, the Public Hearing was closed.

MOTION:

Adopt a Resolution recommending City Council approve an amendment to the 2035 General Plan.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	John McKay, Planning Commissioner
AYES:	Martinez Beltran, Habib, Munoz Morris, Mueller, Tanda, McKay
EXCUSED:	Downey

MOTION:

Adopt a Resolution recommending City Council approve the Zoning Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	John McKay, Planning Commissioner
AYES:	Martinez Beltran, Habib, Munoz Morris, Mueller, Tanda, McKay
EXCUSED:	Downey

DIRECTOR'S REPORT/ANNOUNCEMENTS

Community Development Director Jennifer Carman provided a Director's Report that gave the Planning Commission updates on the following items:

1. Caputo Car Wash appeal;
2. Council adoption of Residential Development Control System (RDCS) Manual and Changes included with the adoption;
3. Council adoption of the allotments available for the next RDCS competition; and,
4. The schedule for the next RDCS competition is posted on our City's website.

PUBLIC HEARING

12. UP2018-004 MONTEREY-BLUEWAVE: CONDITIONAL USE PERMIT TO ALLOW A DRIVE-THROUGH, SELF-SERVICE, AUTOMATED CAR WASH ON PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 764-10-008 LOCATED ON THE NORTHWEST CORNER OF MONTEREY ROAD AND COCHRANE ROAD.

Recommendation:

1. Open/close public hearing; and,
2. Adopt a Resolution approving a Conditional Use Permit for a car wash.

Commissioner Habib recused himself from this item due to a conflict of interest.

Interim Principal Planner Gina Paolini presented the staff report.

Vice Chair Martinez-Beltran opened the Public Hearing at 8:36 p.m.

Geno Gingery was called to speak.

Stratton Poland was called to speak.

Joseph Samaha was called to speak.

Hearing no further requests to speak, the Public Hearing was closed.

RESULT:	CONTINUED [3 TO 2]	Next: 9/25/2018 7:00 PM
MOVER:	Wayne Tanda, Planning Commissioner	
SECONDER:	Yvonne Martinez Beltran, Vice Chair	
AYES:	Martinez Beltran, Tanda, McKay	
NAYS:	Munoz Morris, Mueller	
EXCUSED:	Downey	
RECUSED:	Habib	

OTHER BUSINESS

Community Development Director Jennifer Carman provided a few supplemental item to the Director's Report.

1. The Planned Development for the Evergreen project was approved by the City Council by a 5-0 vote; and,
2. A Consulting Firm was contracted to work with the Planning Commission and Staff on Team Building.

ADJOURNMENT

There being no further business, Vice Chair Martinez-Beltran adjourned the meeting at 9:54 p.m.

MINUTES PREPARED BY:

Jenna Luna, Minutes Clerk

Minutes Acceptance: Minutes of Sep 11, 2018 7:00 PM (Consent Agenda)



PLANNING COMMISSION STAFF REPORT

MEETING DATE: September 25, 2018

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: Jennifer Carman, Community Development Director

UP2018-004 MONTEREY-BLUEWAVE: CONDITIONAL USE PERMIT TO ALLOW A DRIVE-THROUGH, SELF-SERVICE, AUTOMATED CAR WASH ON PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 764-10-008 LOCATED ON THE NORTHWEST CORNER OF MONTEREY ROAD AND COCHRANE ROAD.

RECOMMENDATION(S)

1. Open/close public hearing and continue to the October 23, 2018 Planning Commission meeting.

PROJECT SUMMARY:

This project is being continued to allow the applicant additional time to provide information requested by the Planning Commission. The project will be re-noticed to the neighboring properties.



PLANNING COMMISSION STAFF REPORT

MEETING DATE: September 25, 2018

PREPARED BY: Tiffany Brown, Associate Planner

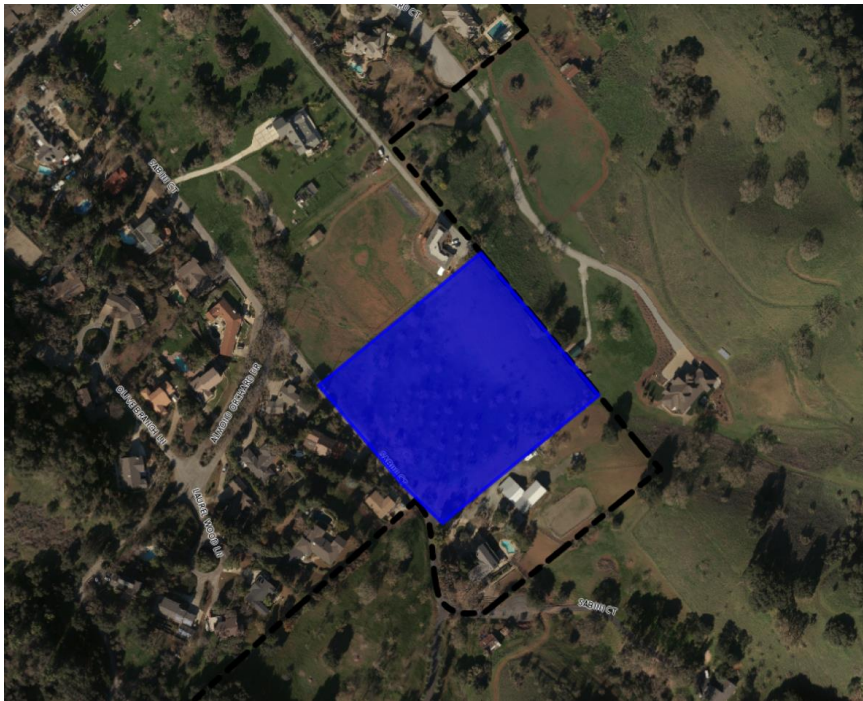
APPROVED BY: Jennifer Carman, Community Development Director

DA2017-0008, EA2017-0016: LLAGAS - STROLATA - DEVELOPMENT AGREEMENT AND ENVIRONMENTAL ASSESSMENT FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 773-32-013 LOCATED AT THE NORTHEAST END OF SABINI COURT.

RECOMMENDATION(S)

1. Open/Close public hearing; and,
1. Adopt a Resolution recommending the City Council approve a Development Agreement.

LOCATION MAP



PROJECT SUMMARY:

1. Location: 1110 Llagas Avenue (APN:773-32-013)
2. Site Area: 4.48acres
3. General Plan: Residential Estate (1 du/ac)
4. Zoning: Residential Estate (RE-1)

BACKGROUND:

An application was submitted for the 2016 Residential Development Control System (RDSCS) competition requesting three building allotments for the project site. At the January 10, 2017 Planning Commission Meeting, the Commission Adopted Resolution No. 17-01, awarding the project three Fiscal Year 2018/2019 building allotments.

On June 6, 2018, the City Council adopted Ordinance No. 2277, approving a comprehensive update to Title 18 (Zoning), including an amendment to the City's Official Zoning Map. The update re-designating the project site from Residential Estate 40,000 square foot lots, to Residential Estate one-acre minimum lots, which provides consistency with the General Plan designation.

PROJECT DESCRIPTION:

Latala Homes proposes a Development Agreement to incorporate awarded RDSCS allotments and to memorialize the RDSCS public benefit commitments for three 2018/2019 allotments. The Development Agreement specifies the duration and permitted uses of the subject property; the general location and density or intensity of uses. It also contains provisions concerning its transferability to any successor owners of the property. The Development Agreement clearly outlines the benefits provided to the City by entering into the Agreement.

Site Description

The project site is a square shaped 4.48-acre lot located in the west hills of the City near the Santa Clara County border. The site is comprised of one parcel (773-32-013) and is currently undeveloped.

Surrounding Zoning/Land Use

North:	Residential Estate, R-1-acre lot min.
West:	Residential Estate, R-1-acre lot min.
East:	Santa Clara County
South:	Residential Estate, R-1-acre lot min.

ANALYSIS:

This request is submitted pursuant to the following:

- Chapter 18.116 Development Agreements

All the requests were analyzed with respect to consistency with 1) General Plan; 2) Zoning Code; 3) Residential Development Control System; 4) Findings; 5) Tentative Parcel Map; and 6) California Environmental Quality Act.

1. General Plan

The site has a land use designation of Residential Estate minimum one acre lots. This designation also applies to the surrounding properties. It is intended to promote and encourage a suitable environment for families living on relatively large parcels of land and feather the transition from urban residential to rural and open space areas within the City. The Residential Estate designation allows single-family homes, secondary dwelling units, appropriate agricultural uses, and associated community services and facilities.

The proposed site plan includes large lots, over one acre, in addition to road improvements and creating a new access point for the neighborhood for emergency purposes.

The following General Plan policies are applicable to the project:

City and neighborhood Form Element

Policy CNF-2.1 Orderly Development. Promote the orderly development of the City, with concentric growth and infill of existing developed areas.

Policy CNF-2.3 Quality of Life. Maintain Morgan Hill's high quality of life for existing and future residents.

Policy CNF-3.1 RDSC Purpose. Maintain a Residential Development Control System (RDSC) to manage the amount, rate, type, and location of residential development in Morgan Hill.

Policy CNF-8.7 Design Sensitivity. Ensure that new development is sensitive to the character of adjacent structures and the immediate neighborhood.

Policy CNF-11.5 Outside Connections. Require new subdivisions to provide multiple connections to the surrounding community. Methods to achieve this may include:

- Providing multiple points of entry into the project for motorists, bicyclists and pedestrians.
- Planning for future connections to adjacent undeveloped property.

Consistency

The land use designation contemplates residential uses. The primary uses in the surrounding area include single family units and designated open space. The project will introduce single family units on one-acre or larger lots similar to the surrounding housing types. Available infrastructure is located adjacent to the project site including dry and wet utilities. The proposed architecture will be evaluated during the Design Review permitting process. The proposed density complies with the General Plan.

2. Zoning Code

A Tentative Parcel Map will be required for the project and would meet the requirements specified in Table 18.16-2 of the zoning code, as demonstrated in the following table:

Table 1- Zoning Consistency Summary

RE-1 Site Requirements	Requirement	Proposed	Consistency
Lot Area, Minimum	1 acre	43,600 minimum square foot lots	Yes
Lot width, Minimum	100 feet	199 feet	Yes
Lot Depth, Minimum	100 feet	220 feet minimum	Yes

Parking

The Municipal Code requires that each single-family house provide two parking spaces on site. The proposed development would provide a minimum of two covered parking spaces in each garage, with the required minimum 20-foot by 20-foot driveway apron provided. Guest parking is required at a ratio of one parking space for each of the four dwelling units. The project would be required to have one guest parking space, if the additional allotment is obtained and the remainder lot is developed. There is more than ample space to provide the required guest parking which can be reviewed during the Architectural and Site Review process.

3. Residential Development Control System (RDACS)

The applicant is requesting a Development Agreement to memorialize the public benefit commitments for the three allotments awarded to the project. The final Narrative was reviewed for consistency with the public benefit commitments provided within the draft Development Agreement.

4. Findings

Development Agreement

A Development Agreement has been proposed consistent with the RDACS public benefit commitments. The terms and conditions agreed to during the RDACS competition have been incorporated into the site plan and included in the attached Development Agreement.

Morgan Hill Municipal Code Section 18.116.040 (C), Recommendation by Planning Commission, requires that the following determinations and supporting reasoning be made by the Planning Commission when making the recommendation to the City Council with respect to the Development Agreement:

The Development Agreement:

- A. Is consistent with the goals, objectives, policies, general land uses, and programs specified in the general plan and any applicable specific plan.**

As specified in the General Plan Section of this report, the project would provide three residential units on lots larger than one acre, which is consistent with the General Plan. There have been no General Plan policy conflicts identified with the proposed project.

- B. Is compatible with the uses authorized in the zoning district in which the real property is located.**

The proposed residential use is permitted within the Residential Estate 1-acre zoning district and would be compatible with the surrounding uses.

- C. Duly considers city mitigation programs in effect at the time of execution of the agreement.**

The project would be subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

- D. Will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.**

The project's construction would adhere to state, local and federal laws. The project is residential housing with typical residential uses consistent with the City's Municipal Code.

- E. Complies with the provisions of the California Environmental Quality Act.**

An Initial Study was prepared, and the project was determined to be categorically exempt as described below.

- F. Will not adversely affect the orderly development of property or the preservation of property values.**

The project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

Conclusion

The project has been found to be consistent with the General Plan, Zoning Ordinance, and RDCS requirements. Staff recommends that the Planning Commission recommend approval to the City Council of the Development Agreement incorporating the RDCS public benefit commitments for the three allotments.

5. Tentative Parcel Map

In accordance with Section 17.24.060 of the Morgan Hill Municipal Code, the Community Development Director will act on the proposed Tentative Parcel Map for the project, making findings to support the decision.

The Tentative Parcel Map includes a four-lot subdivision, three lots with one remainder lot. Access to the site would be provided along Sabini Court. The project would include right-of-way dedication and access improvements along Sabini Court. The RDCS Competition Manual allows for the processing of a Tentative Parcel Map which exceeds the number of allotments currently assigned to a development if certain criteria are met:

- a. The overall project must be consistent with the Zoning Code.
- b. The Tentative Map shall be non-vesting.
- c. The recordation of a Final Map will not be permitted until allotments are secured under the RDCS and a Development Agreement has been recorded. The Tentative Map approval would expire after two years (or sooner as specified by the Planning Commission) and the Tentative Map approval period will not be automatically extended through the filing of a Final Map but may be extended through separate application and approval by the Planning Commission.

The applicant has proposed a remainder lot at this time to allow for the recordation of a Final Map if an allotment is not obtained in a future competition. The applicant intends to compete for one allotment in the 2018 RDCS competition for Fiscal Year 2020-2021. All lots meet the development standards for the RE – 1 Zoning District. A home site has been identified on each lot demonstrating consistency with setback requirements.

The Tentative Parcel Map will be processed following approval of the Development Agreement.

6. California Environmental Quality Act (CEQA):

An environmental assessment was prepared in conformance with the California Environmental Quality Act and determined the project Categorically Exempt pursuant to Section 15303, Class 3, relating to new construction of small structures. This exemption allows for the construction and location of limited numbers of new, small facilities or structures. Generally, this exemption applies to one single-family residence, or a second dwelling unit in a residential zone. However, in urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

The proposed project includes the construction of three residences conforming to General Plan land use designations and zoning code. Additionally, this exemption permits the construction of water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such new construction. Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences are also included under this exemption class. The proposed project would construct appropriate access and services facilities as well as

garages, patios, and fencing. The project also proposes the construction of bioretention basins for storm runoff control. Under these circumstances, a Class 3 Categorical Exemption would be appropriate for the project's environmental review.

Community Engagement

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project site pursuant to the Planning Division Requirements.

Several neighbors contacted the Planning Department to ask some general questions and see the plans. Additionally, two comment letters were submitted and attached to this report for your review.

LINKS/ATTACHMENTS:

1. Development Agreement Resolution
2. Development Agreement, DA2017-0008, Llagas - Strolata (Silva)
3. Site Plan
4. Public Comments

RESOLUTION NO. 18-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT DA2017-0008: LLAGAS- STROLATA (SILVA) FOR A 3-UNIT RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT ON A 4.48-ACRE SITE LOCATED AT 1110 LLAGAS AVENUE (APN 773-32-013)

WHEREAS, the Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded 3 building allotments for application RDCS2016-0011 Llagas-Silvas for FY 2018-2019; and

WHEREAS, the City Council of the City of Morgan Hill adopted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, said Development Agreement request was considered by the Planning Commission at its regular meeting of September 25, 2018 at which time the Planning Commission recommended City Council approval of Development Agreement application DA2018-0008: Llagas-Strolata (Silva); and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The Planning Commission recommends that the City Council approve the Development Agreement based on the determination and supporting reasoning described below as required by Morgan Hill Municipal Code Section 18.116.050(C).

SECTION 2. **The Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.**

The project would provide three single-family residential estate units. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 3. **The Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located.**

The proposed residential use is permitted within the Residential Estate zoning district and would be compatible with the surrounding residential uses.

SECTION 4. The Development Agreement duly considers city mitigation programs in effect at the time of execution of the agreement.

The project would be subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 5. The Development Agreement will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.

The project's construction would adhere to state, local and federal laws. The project is residential housing with typical residential uses consistent with the City's Municipal Code.

SECTION 6. The Development Agreement complies with the provisions of the California Environmental Quality Act.

The project is subject to CEQA and an Initial Study has been prepared for the project. The project was determined to be Categorically Exempt pursuant to CEQA Guideline Section 15303.

SECTION 7. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

The project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

PASSED AND ADOPTED THIS 25TH DAY OF SEPTEMBER 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

Attachment: Development Agreement Resolution [Revision 3] (1856 : Llagas/Sabini Ct. - Strolata (Silva))

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

STROLATA PROPERTIES, LLC

REGARDING

**THE RDCS2016-0011 LLAGAS- STROLATA (SILVA) RESIDENTIAL
DEVELOPMENT PROJECT**

Attachment: Development Agreement, DA2017-0008, Llagas - Strolata (Silva) [Revision 1] (1856 : Llagas/Sabini Ct. - Strolata (Silva))

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 STROLATA PROPERTIES, LLC
 REGARDING THE
 LLAGAS- STROLATA (SILVA) RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Strolata Properties, LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. **Allotments Approved Pursuant to RDCS Applications: RDCS2016-0011**, and conditions attached to the award of such allotments;
2. **Environmental Impact Assessment EA2017-0016**; and

3. **Zoning Amendment (Pre-zoning) ZA-05-19.**

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 10, 2017, the Morgan Hill Planning Commission awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

G. On September 25, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that its provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.

- (3) “**Commitments**” shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) “**Director**” shall mean the Director of Community Development, and his or her designee.
- (5) “**Existing Approvals**” shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) “**Existing City Laws**” shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) “**Impact Fees**” shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 *et seq.*
- (8) “**Legal Effect**” shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) “**New City Laws**” shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes “**Legal Effect**” after the Effective Date of this Agreement, and that applies City wide.
- (10) “**Project**” means the development containing **three residential building allotments for Fiscal year 2018-2019 containing three single-family homes on property identified by Assessor Parcel Number 773-32-013**, as more particularly described in the RDCS2016-0011 as described in Exhibit B. Any reference in this Agreement to the “Project” shall mean and include the “Property”.
- (11) “**Project Approvals**” mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) “**Property**” shall mean that certain real property consisting of approximately 4.2 gross acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.

- (13) **"RDSCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (15) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.
- (16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 **Term.**

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDSCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Existing Approvals.
- (3) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.
- (5) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without

limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments ("**Commitments**") voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer's RDCS application – RDCS2016-0011 - and approval actions on January 10, 2017 (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal

laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer may request, Substitution of Commitments within the same criteria category may be processed administratively by the Community Development Director. Any Administrative Amendment must be made in writing approved by the Director, and approved by the City Attorney, and signed by the Developer.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party

(unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review

pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second

notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement

shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project (“**Consumer**”) unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof (“**Mortgagee**”), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the “**Bankruptcy Code**”), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section

4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether

such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	Strolata Properties, LLC 1999 South Bascom Avenue, Suite 700 Campbell, CA 95008 Tel: (408)848-0300 Email: Paul@latalahomes.com

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

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IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney
Date: _____

DEVELOPER:

s/ _____

Name/Title [print]

*Corporate entities must provide a
second signature:*

s/ _____

Name/Title [print]

Date: _____

Adopted By Ordinance Number _____
by action of City Council on _____.

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY ON WHICH

PROJECT IS BE LOCATED

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP PORTION OF LOT 46 OF THE MORGAN HILL RANCH MAP NO. 3, BOOK G OF MAPS, PAGES 20 AND 21", WHICH MAP WAS FILED FOR CALIFORNIA ON NOVEMBER 10, 1972 IN BOOK 312 OF MAPS, AT PAGE 1.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO THAT PORTION OF SABINI COURT, AS SHOWN UPON THAT CERTAIN PARCEL MAP ABOVE REFERRED TO.

ALSO EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO A STRIP OF LAND 16.50 FEET IN WIDTH, THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE MOST WESTERLY CORNER OF SAID WALKER PARCEL IN THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID SOUTHWEST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 984.39 FEET TO THE MOST SOUTHERLY CORNER OF SAID WALKER PARCEL.

PARCEL TWO:

A NON-EXCLUSIVE RIGHT OF WAY CREATED APPURTENANT TO PARCEL ONE ABOVE IN THE DEED FROM ROBERT M. WELCH, RECORDED MAY 7, 1898, BOOK 210 OF DEEDS, PAGE 55, OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHWEST LINE OF SAID LOT 46 SOUTH 49° 45' WEST 73.92 FEET.

PARCEL THREE:

Attachment: Development Agreement, DA2017-0008, Llagas - Strolata (Silva) [Revision 1] (1856 : Llagas/Sabini Ct. - Strolata (Silva))

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY CREATED IN THE DEED TO PETER SABINI, RECORDED JANUARY 16, 1934, BOOK 674 OFFICIAL RECORDS, PAGE 73, FOR INGRESS AND EGRESS OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 16 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIED AS FOLLOWS:

BEGINNING ON THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 30 FEET.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 30 FEET WIDE, THE NORTHEAST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE SOUTHEAST LINE OF BOOK 674 OFFICIAL RECORDS, PAGE 73, SAID POINT ALSO BEING SOUTH 40° 15' EAST 16 FEET FROM THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID NORTHEAST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 17.00 FEET TO THE TERMINUS OF THIS EASEMENT.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT CREATED IN THE DEED TO CLASSINA SABINI, RECORDED JANUARY 1, 1972, BOOK 9859 OFFICIAL RECORDS, PAGE 372 FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892 IN BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST 103.92 FEET FROM THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE, AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 412.53 FEET.

PARCEL SIX:

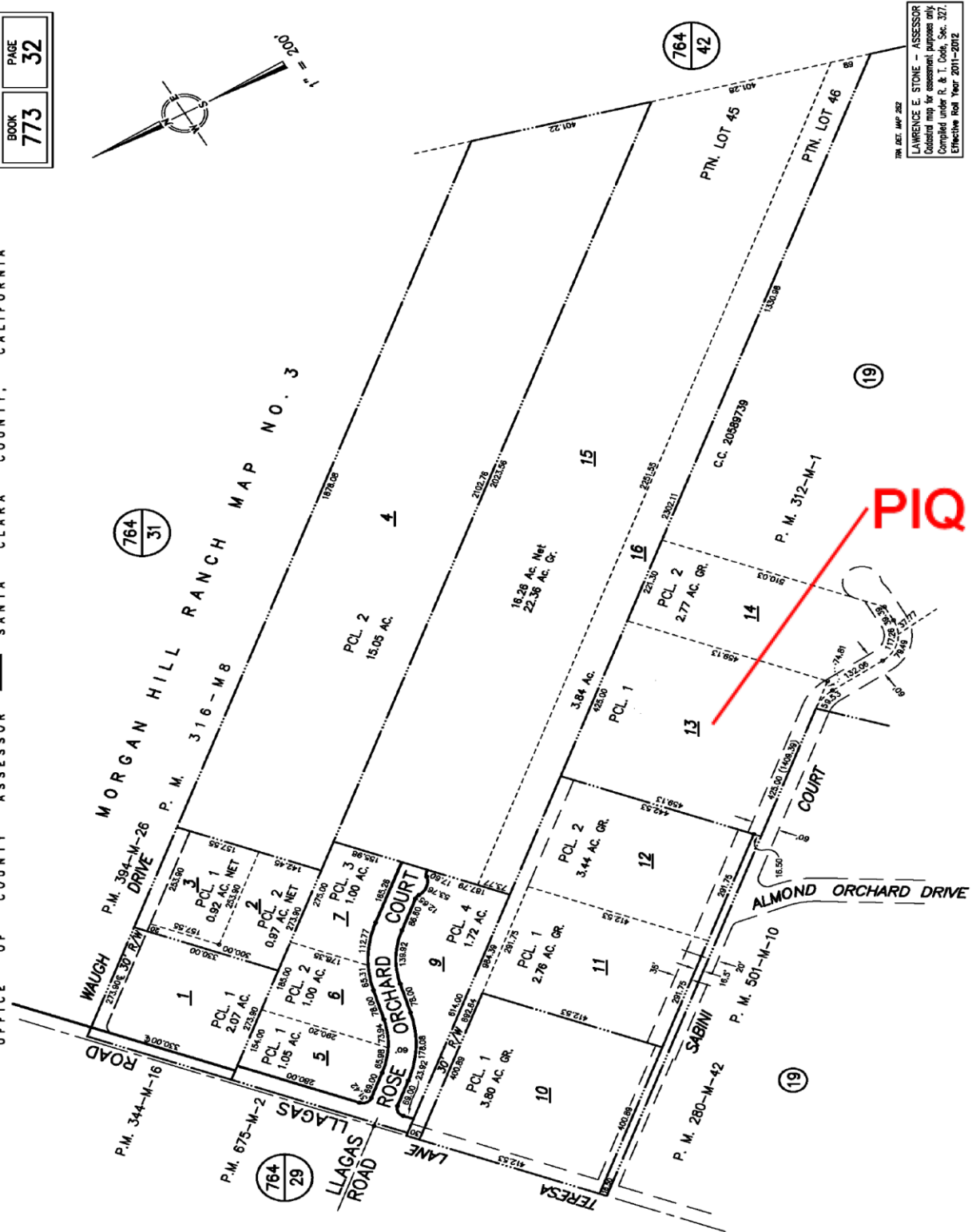
A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A 16.5 FOOT STRIP OF LAND THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, RECORDED SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS, AT PAGE 20, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 2 AS SHOWN ON THE "PARCEL MAP" RECORDED MARCH 29, 1971 IN BOOK 280 OF MAPS, AT PAGE 42, SANTA CLARA COUNTY RECORDS; THENCE NORTH 40° 15' EAST ALONG THE SOUTHWESTERLY LINE OF PARCEL 2 AND PARCEL 1 OF SAID PARCEL MAP, 984.39 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 1, AND THE TERMINATION POINT OF THE SOUTHWESTERLY LINE OF SAID 16.5 FOOT EASEMENT.

Attachment: Development Agreement, DA2017-0008, Liagas - Strolata (Silva) [Revision 1] (1856 : Liagas/Sabini Ct. - Strolata (Silva))

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA



This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

EXHIBIT B**DESCRIPTION OF PROJECT**

RDCS2016-0011: LLAGAS – SILVAS: Request for three residential building allotments for Fiscal Year 218-2019. The proposed development contains three single-family homes with remainder lot. The property, identified by Assessor Parcel Number 773-32-013, is located on Llagas Road at Sabini Court (Yancey and Lorinda Silvas, Applicant).

Attachment: Development Agreement, DA2017-0008, Llagas - Strolata (Silva) [Revision 1] (1856 : Llagas/Sabini Ct. - Strolata (Silva))

EXHIBIT C

RDCS2016-0011: Request for three residential building allotments for Fiscal Year 2018 – 2019.

SPECIFIC RESTRICTIONS AND REQUIREMENTS

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988	Prior to issuance of building permit.	\$ 4,950 per unit
B.4	Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within ¾ miles of the project site or to a middle school or high school up to \$4,950 per unit. Project commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department.	Prior to issuance of offsite improvement plans	\$4,950 per unit
	Open Space			
B.4.b	TDC for projects (>25 units)	Property owner or designee commits to double TDC's	Prior to building permit final	Double TDC fee per unit, applicable rate

EXHIBIT C

-1-

Attachment: Development Agreement, DA2017-0008, Liagas - Strolata (Silva) [Revision 1] (1856 :

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
				applies at time of payment
B.4.c				
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines	Property owner or designee agrees to fill in 1 water line, 1 sewer line, 1 stormdrain, and 1 fire. The Project requires gridding/looping of water to increase pressure/redundancy of existing and proposed water extension, by extending water line to tie into the dead-end water stub of Rose Orchard Court or alternate design reviewed and approved by the City Engineer. The required waterline easement shall be obtained prior to approval of the Final/Parcel Map and public improvement plans.	Prior to Site Review Approval	N/A
B.5	Project Master Plan design	There are two swales traversing the property that could potentially affect the design of the parcels and home sites. A geologist has stipulated that there is no defined bed or channel or defined top of bank. The property owner or designee will complete a wetland delineation for the project.	Prior to Site Review Approval	N/A

EXHIBIT C

-2-

Attachment: Development Agreement, DA2017-0008, Liagas - Strolata (Silva) [Revision 1] (1856 :

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		In Addition, project circulation will require: A. An Emergency Vehicle Access (EVA) easement for Fire and Police access for secondary ingress and egress to subdivision and neighboring lots. EVA easement shall loop back to Rose Orchard Court or alternate design reviewed and approved by the City Engineer. The required EVA easement shall be obtained prior to approval of the Final/Parcel Map and public improvement plans. B. Sabini Court shall be improved to a 2/3 rural street standard. The required right of way shall be obtained prior to approval of the Final/Parcel Map and public improvement plans. Sabini Court alignment can be shifted to utilized existing easement to widen Sabini Court to the needed 2/3 standard.		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Facilities			
B.1.	Standard design requirement for public facilities	Project will meet standard requirements for design and construction of public facilities	Prior to Improvement Plan approval	N/A
B.2.b	Drainage concept consistent with City's storm drain system	Project drainage concept will be consistent with City's Storm Drain system, Drainage Master plan, and local area storm drain system	Prior to Improvement Plan approval	N/A
B.2.c	Storm drain lines constructed within paved area of the street	Project will provide public storm drain line to convey water within the public streets from curb to curb	Prior to Improvement Plan approval	N/A
B.2.f	Excess public improvements	The project will provide public facility, off-site storm drainage improvements, or pedestrian improvements from a City-approved list or impairments on or adjacent to project in excess of standard requirements, e.g. sewer, traffic control at \$4,400 per unit.	Prior to Improvement Plan approval	\$4,400 per unit
B.2.g	Contribution to RDCS Capital Improvements fund	The project will contribute \$1,100 per unit to the RDCS Capital Improvements program fund.	Prior to Improvement Plan approval	\$1,100 per unit
	Parks and Paths			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1	Park in-lieu fee (<50 units)	The property owner or designee shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to Parcel Map Approval	See Chapter 17.28. for fee calculation
B.3	Bicycle/equestrian/pedestrian paths	Project shall provide a minimum of ¼ miles of Class II bikes lanes and coordinate with the City of Morgan Hill to determine the location.	Prior to issuance of Offsite Improvements	N/A
B.7	Additional park fees (in-lieu fee) for projects (>50 units)	In addition to standard park fees, the property owner or designee shall pay the lesser of either eighteen time the in-lieu park fee or \$6,600 per unit.	Prior to Parcel Map Approval	Eighteen times the in-lieu park fees or \$6,600 per unit. Whichever is less.
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units	The project shall provide one secondary unit for one of the lots.	Prior to Site Review Approval	N/A
B.2.a	Standard Housing Fee	The property owner or designee shall pay the standard housing fee.	Prior to building permit final	\$12,000
B.2.b	Double Housing Fee	The property owner or designee shall pay double the standard housing fee in addition to B.2.a. above.	Prior to building permit final	\$24,000
	Quality of Construction Standards			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	OSB/Plywood wrap	The project will include the installation of OSB/Plywood wrap	Prior to Building permit issuance	N/A
B.1.b	Foundations	The project will utilize alternate materials in the concrete mix such as fly ash, slag, silica fume or rice hull to achieve a 20% reeducation of cement.	Prior to Building permit issuance	N/A
B.1.c	Wallboard	The project will include the installation of light weight wallboard for all walls excluding code requirement for fire walls	Prior to Building permit issuance	N/A
B.1.d	Electrical raceway	The project will include installation of one dedicated ¾ inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.	Prior to Building permit issuance	N/A
B.1.f	90% high efficiency fan forced heating	The project will include the installation of 90% high efficiency fan forced heating	Prior to Building permit issuance	N/A
B.1.g	Zoned heating and air conditioning	The project will include the installation of zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution.	Prior to Building permit issuance	N/A

EXHIBIT C

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Attachment: Development Agreement, DA2017-0008, Liagas - Strolata (Silva) [Revision 1] (1856 :

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.h	Multiple efficiency improvements	The project will include: 1) the installation of listed sound attenuated materials in walls that adjoin a bathroom and/or bedroom walls, 2) installation of high efficiency energy star water heater with energy factor of 0.70, 3) the installation of ultra high efficiency or dual flush toilet, and 4) installation of rain sensor monitor on irrigation system.	Prior to Building permit issuance	N/A
	Safety and Security			
B.1.a	Fire proof safe	Project will include a fire proof safe in every unit.	Prior to building permit final	N/A
B.1.b	First aid kit	Project will include a first aid kit with poison control document in the kitchen of each unit	Prior to building permit final	N/A
B.1.c	Fire protection device	Exterior finishes will comply with Chapter 7A of the California Building Code.	Prior to building permit final	N/A
B.1.d	Outdoor lighting	The project includes the installation of lighted address numbers on each building an illuminated unit numbers on each single-family home. Project also includes the installation of painted reflective curb numbers where possible.	Prior to building permit final	N/A

EXHIBIT C

-7-

Attachment: Development Agreement, DA2017-0008, Liagas - Strolata (Silva) [Revision 1] (1856 :

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.f	Illuminated address numbers	The project includes the installation of lighted address numbers on each building and illuminated unit numbers on each single-family home. Project also includes the installation of painted reflective curb numbers where possible.	Prior to building permit final	N/A
B.1.k	Illuminated pathways/walkways	The project includes the installation of illuminated front yard walkways with a minimum of 1-foot candle and motion sensor/controlled lighting in the rear yard of each unit.	Prior to building permit final	N/A
B.2	Crime Prevention through Environmental Design (CPTED)	Project utilizes the design principles of CPTED of natural surveillance, territorial reinforcement for each single-family home.	Prior to building permit final	N/A
B.3	Lockable hardware	Project includes installation of lockable hardware on all side yard and patio gates	Prior to building permit final	N/A
B.4	Central Monitoring	Project includes intrusion, fire alarm, and heat detector systems monitored by a central station. Property owner or designee will include a year monitoring contract with each unit purchased.	Prior to building permit final	N/A
	Livable Communities			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.7	Maximizes privacy	Building elevations require the windows to be off set for privacy and alternate outdoor patios.	Prior to Site Review approval	N/A



Tiffany Brown

From: dlaclair@aol.com
Sent: Sunday, September 02, 2018 2:26 PM
To: Planning_Commission
Cc: paul@latahahomes.com; Jennifer Carman; Tiffany Brown
Subject: Re: Strolata Posting on Sabini Ct

To: Morgan Hill Planning Commission

I am pleased to inform you that Mr. Latala and I have reached an agreement to use my property for the Emergency Vehicle Access road needed for his development on Sabini Court. The water main at the end of Rose Orchard Court will also be extended through my property to Sabini Lane. Mr. Latala will ask RJA to draft the necessary easements.

Best Regards,

Dan Auclair

-----Original Message-----

From: dlaclair <dlaclair@aol.com>
To: Planning_commission <Planning_commission@morganhil.ca.gov>
Cc: paul <paul@latahahomes.com>; Jennifer.Carman <Jennifer.Carman@morganhill.ca.gov>
Sent: Mon, Jul 23, 2018 5:10 pm
Subject: Strolata Posting on Sabini Ct

To: Morgan Hill Planning Commission

I, Dan Auclair, have just a few days ago been able to get a copy of the Strolata Development plans. I am writing to you to let you know about a much better way to build the Emergency Vehicle Access (EVA) for the Strolata development on Sabini Ct. I am willing to have the EVA go through my property (APN 773-32-015 & 016, 17900 Rose Orchard Ct) by extending Rose Orchard Lane shown on subdivision map SD2017-002 to my driveway which is EVA qualified. See the photo on page 1 of SD2017-0002. I am also willing to have the water main that comes to the end of Rose Orchard Ct extended through my property to Rose Orchard Lane. Using this method would have many benefits including:

1. Much less grading by eliminating the substantial cut (over 7' retaining wall) required to build the EVA access shown on map SD2017-002 and eliminates the need for the EVA to be right next to a steep and possibly unstable slope.
2. Access through my property could eventually be a public road providing a public loop from Rose Orchard Ct to Sabini Ct. instead of using an easement for the EVA which can never be a public road
3. Substantially shorter (about 50%) water main extension. The water main already goes to the end of Rose Orchard Ct. and can easily be extended to Rose Orchard Lane instead of using the EVA easement for the water main extension from Teresa Ln.
4. The 8" sewer line at the end of Rose Orchard Ct could be extended to Rose Orchard Lane and at least 2 of the lots could be connected to it.. The existing plan calls for the 4 lots to be connected to the 6" sewer line on Sabini Ct.
5. The EVA new construction length is the same for both methods but going to my driveway doesn't require the upgrade of the long easement road to EVA standards. The distance from the end of Rose Orchard Lane to my EVA qualified driveway is only about 200', the same as the length of the EVA cut across lot 2

So I would guess you are wondering why this wasn't done in the first place. My property is in the county not the city. When Mr Latala contacted me about this I refused to grant him an easement because I wrongly thought it might help me get my property into the city. I have since had discussions with Morgan hill officials and LAFCO (see attached email from LAFCO). I now believe my property, which currently has city water, has a chance of being brought into the city in the next 2-3 years and that this will occur independently from Mr. Latala development. I am now trying to correct the mistake I made.

Attachment: Public Comments (1856 : Liagas/Sabini Ct. - Strolata (Silva))

I urge you to reject the current plan and ask Mr Latala to resume discussions with me to have the EVA through my property, I am not asking for any financial considerations from Mr. Latala. While perhaps suffering some delay I believe Mr. Latala's overall expenses will be reduced by going through my property.

Best Regards,

Dan Auclair
17900 Rose Orchard Ct
Morgan Hill CA 95037
C: 650 248-8216

Attachment: Public Comments (1856 : Liagas/Sabini Ct. - Strolata (Silva))

Tiffany Brown

From: Jennifer Carman
Sent: Monday, July 23, 2018 5:12 PM
To: Terry Linder; Tiffany Brown
Subject: FW: Strolata Posting on Sabini Ct
Attachments: LAFCO email.pdf

Jennifer Carman
Community Development Director
 City of Morgan Hill
Jennifer.Carman@morgan-hill.ca.gov
 P. 408.310.4657
 17575 Peak Avenue, Morgan Hill, CA 95037-4128
www.morgan-hill.ca.gov

From: dlaclair@aol.com <dlaclair@aol.com>
Sent: Monday, July 23, 2018 5:11 PM
To: Planning_commission@morganhill.ca.gov
Cc: paul@latalahomes.com; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Strolata Posting on Sabini Ct

To: Morgan Hill Planning Commission

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Best Regards,

Dan Auclair
17900 Rose Orchard Ct
Morgan Hill CA 95037
C: 650 248-8216

Attachment: Public Comments (1856 : Liagas/Sabini Ct. - Strolata (Silva))

From: Noel, Dunia <Dunia.Noel@ceo.sccgov.org>
 To: 'dlaucclair@aol.com' <dlaucclair@aol.com>
 Sent: Tue, Apr 24, 2018 3:37 pm
 Subject: RE: USA

Hello Dan,

Glad to see that since we last spoke in 2014, you were able to obtain water service from the City of Morgan Hill, due to your parcels being a part of the historical Llagas Avenue Water Project. I have reviewed our maps of cities boundaries and have determined that your two unincorporated parcels (APNs: 773-32-015 and 773-32-016) are currently located outside of the City of Morgan Hill's Urban Service Area. In Santa Clara County, each city has an Urban Service Area (USA) boundary which delineates areas currently provided with urban services, facilities and utilities; or areas proposed to be annexed into a city within 5 years in order to be developed and provided with urban services. The original USA boundaries were recommended by Cities and adopted by LAFCO in the early 1970s. Future amendment of USAs is subject to LAFCO approval, at the request of the city.

Our research indicates that your two parcels are almost adjacent to the unincorporated "Llagas Road Island" which the City was unable to annex in 2010 because portions of some of the parcels that make up this Island are located outside of the City's USA. The Llagas Road Island, your two parcels, and unincorporated parcels located just to the southeast of the Island are all located in the Llagas Water Avenue Project which, through the City, provides water service to this unincorporated area and beyond. This area is also developed, surrounded by the City of Morgan Hill on three sides, and does not contain prime farmland.

As you know, LAFCO's mission is to preserve agricultural and open space lands, curb urban sprawl, and encourage efficient delivery of services. Given the information provided above, I think LAFCO would consider your request favorably. However, if you are interested in annexing to the City of Morgan Hill, the first step is to contact the City and discuss your plans with them. As we discussed, an urban service area amendment request to LAFCO must come from the City by Council Resolution. Please feel free to contact me should you have any further questions. Thanks.

The LAFCO Office has moved! Please note our new address.

Dunia Noel, Analyst AICP

Local Agency Formation Commission of Santa Clara County (LAFCO)

408.993.4704

777 North First Street, Suite 410

San Jose, CA 95112

www.santaclaralafco.org

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From: dlaucclair@aol.com [<mailto:dlaucclair@aol.com>]

Sent: Friday, April 06, 2018 11:18 AM

To: LAFCO <LAFCO@ceo.sccgov.org>

Subject: USA

Attachment: Public Comments (1856 : Llagas/Sabini Ct. - Strolata (Silva))

Hi,

I own 2 lots (APN 773-32-015 and 773-32-016) adjacent to Morgan Hill. In May, 2012 I moved into a new home built on lot 773-32-015 which is in Santa Clara county. Because this land was part of a special assessment to bring water to Llagas valley the City of Morgan Hill agreed to provide city water to my house. I have attached a parcel map and the latest water bill from the city of Morgan Hill. Since I am receiving a city service (water) is my property considered to be in the USA of Morgan Hill? If no please help me understand how the USA is established and how I might apply to have my property (which has City of Morgan Hill land on 3 sides) brought into the USA.

Best Regards,

Dan Auclair
C: 650 248-8216



PLANNING COMMISSION STAFF REPORT

MEETING DATE: September 25, 2018

PREPARED BY: Tiffany Brown, Associate Planner

APPROVED BY: Jennifer Carman, Community Development Director

GP2018-0001/ZA2018-0001/EA2018-0001: GENERAL PLAN AMENDMENT TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION FROM RESIDENTIAL ESTATE TO RESIDENTIAL DETACHED LOW AND ZONING AMENDMENT TO CHANGE THE ZONING CLASSIFICATION FROM RESIDENTIAL ESTATE ONE-ACRE TO RESIDENTIAL DETACHED LOW DENSITY (RDL-12,000) ON AN 8.34 ACRE SITE. ENVIRONMENTAL ASSESSMENT FOR GENERAL PLAN AMENDMENT AND ZONING AMENDMENT. THE PROPERTY IDENTIFIED BY ASSESSOR'S PARCEL NUMBER 728-02-002 IS LOCATED NORTH OF SORREL WAY AND SADDLEBACK DRIVE.

RECOMMENDATION(S)

1. Open/close public hearing;
2. Adopt a Resolution recommending the City Council approve the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project;
3. Adopt a Resolution recommending the City Council approve an amendment to the General Plan land use; and,
4. Adopt a Resolution recommending the City council approve an amendment to the Zoning classification.

POLICY CONSIDERATIONS:

1. Does the proposed General Plan Amendment meet the goals of the General Plan?
2. Is the Zone Change consistent with the required findings?

LOCATION MAP:**PROJECT SUMMARY:**

1. Location: 2275 East Dunne Avenue (APN: 728-02-002)
2. Site Area: 8.34 Acres
3. General Plan: Residential Estate
4. Zoning: Residential Estate one acre (RE-1)

PROJECT DESCRIPTION

The property owner is requesting a General Plan Amendment to change the current General Plan land use designation from Residential Estate to Residential Detached Low and a Zoning Amendment to change the current zoning classification from Residential Estate one acre to Residential Detached Low Density (RDL-12,000) on an 8.34-acre site located north of Sorrel Way and Saddleback Drive.

No project specific development is proposed for the project site at this time. The proposed amendments would allow for a maximum of 30 residential lots. However, this density is unlikely due to the requirements for roads, rights-of-way, and easements. In addition, there is compelling evidence of a fault zone trending along the base of the range front which would need to be analyzed at a project level prior to approval of a project at the site. Therefore, it can be expected that approximately 75 percent of the site may be developed, with potentially 22 dwelling units.

The application includes the following requests:

- General Plan Amendment
- Zoning Amendment
- Environmental Assessment to provide the California Environmental Quality Act (CEQA) determination to carry out the project

A letter of Justification has been provided (Attachment 4).

Site Description

The project site is located at the base of the eastern foothills, north of the Heritage

Greens residential tract. The undeveloped site contains two PG&E easements that go through the center of the property (one 15-foot wide and one 50-foot wide), an access easement (30-foot wide) on the western edge of the property for ingress and egress, and an abandoned well with 10-foot wide easement.

The site is surrounded by rural residential and undeveloped land to the north and west, single-family residential to the south, and undeveloped land to the east. The General Plan designation and zoning for the surrounding properties are summarized in the table below.

Table 1: Proposed and Existing Land Uses			
Direction	General Plan Designation	Zoning District	Existing Use
Proposed Site	Residential Detached Low	RDL 12,000	Undeveloped
North	Residential Estate	RE-1	Rural Residential
South	Residential Detached Medium	RDM 9,000 RDM 7,000 RAL 3,500	Single-family residential
East	Open Space	OS	Undeveloped Land
West	Residential Estate	RE 1 RDM 7,000	Hung's Nursery

ANALYSIS:

The proposed project was analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; 3) California Environmental Quality Act.

1. General Plan

The City and Neighborhood Form Element discusses growth management, land use, and urban design. It contains goals and policies intended to ensure that Morgan Hill retains its rural atmosphere while accommodating sensible, orderly growth that will promote the local economy and fit within the City's ability to provide adequate public services.

General Plan Policies that would apply to this project include:

City and Neighborhood Form Element

Policy CNF-9.1 – Density Feathering from High to Low Densities. Encourage feathering from higher urban densities to lower rural densities to occur within the City limits. Feathering should begin as development nears the urban Growth Boundary.

Consistent

The subject site has a land use designation of Residential Estate. The lot sizes to the south and west range from 3,500 square feet to 9,000 square feet. The amendment would change the land use designation to the Residential Detached Low land use which would allow 12,000 square foot lots. This would provide density feathering a transition from the Residential Estate one acre lots to the north and Open Space to the east.

Policy CNF-10.1 – Range of Residential Densities. Continue to provide for a full range of residential land uses densities and building types, within the General Plan and Zoning Ordinance.

Consistent

The introduction of the Residential Detached Low land use designation to the area would provide an additional density option, encouraging a full range of residential land use densities and housing types within the neighborhood.

Policy CNF-10.4– Single-Family Housing Supply. Support actions to maintain an adequate supply of single-family housing throughout the community, including provisions of affordable single-family housing to those persons who work within the community.

Consistent

The proposed amendment will allow a future project to construct a maximum of 30 housing units.

Policy CNF-10.5- Affordable Single-Family Housing. To the maximum extent possible, emphasize single-family units in affordable housing allocations, rental and ownership housing assistance projects, and rehabilitation programs to improve the existing housing stock.

Consistent

A future project would be required to conform to the affordable housing requirements in Title 14 of the Morgan Hill Municipal Code, in addition to required Affordable Housing public benefit commitments required through the Residential Development Control System (RDACS) competition.

Policy CNF-11.3 – Appropriate Residential Transitions. Provide for an acceptable transition in lot size and density between adjacent residential areas.

Consistent

The Residential Detached Low land use is an acceptable residential transitional land use between the adjacent Residential Detached Medium, Residential Estate and Open Space land use designated areas.

Safety, Services and Infrastructure Element

Policy SSI-2.1-Land Use and Geologic Hazards. Limit uses on lands with geologic hazards, but allow uses on previously urbanized lands with proper mitigation. Keep development in hazardous areas to a minimum by encouraging low-density, low intensity uses and the types of uses least disruptive to the soil and vegetative cover.

Consistent

Future development will be required to prepare a design-level geotechnical investigation which shall include trenching to locate the fault zone and establish a “no build” zone. The study shall be completed and submitted to the City for review as part of the tentative subdivision map review process. All recommendations in the design level geotechnical investigation shall be implemented by the project, which shall include standard engineering and seismic safety design techniques. Future development shall also meet the requirements of applicable Building and Fire Code.

2. Zoning

The purpose of the Zoning Code is to implement the General Plan and to protect the public health, safety, and welfare. The City may approve a Zoning Amendment only if the following findings are made:

- a. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.

Consistent

The amendment would change the land use designation to the Residential Detached Low land use allowing 12,000 square foot lots. The lot sizes to the south and west range from 3,500 square feet to 9,000 square feet. The proposed amendment is consistent with the General Plan and provides density feathering required by the General Plan.

- b. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

Consistent

The subject site has a zoning classification of RE 1. The lot sizes to the south and west range from 3,500 square feet to 9,000 square feet. The amendment would change the zoning classification to Residential Detached Low 12,000. This would provide the necessary density feathering by transitioning from the Residential Estate one acre lots to the north and Open Space to the east. The rezone would allow an opportunity for 12,000 square foot lots to be developed and provide an appropriate transition to the Residential Estate one-acre zoning to the north and Open Space to the east. The proposed zone change is compatible with the neighboring zones and therefore will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

- c. The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses, and development will comply with the Zoning Code and General Plan and contribute

to the health, safety, and welfare of the property, surrounding properties, and the community at large.

Consistent

The 8.34-acres project site is large enough to create a new neighborhood that would complement the existing neighborhoods. Future development of the site will provide an opportunity to connect existing neighborhoods and enhance circulation. Future development would require additional right-of-way for future site access and circulation, and may include the following:

- Extend either Sorel Way or Saddleback Drive to the north;
- Connect dead ends of Sorel Way and Saddleback Drive to form a loop; and
- Widen right-of-way width of Sorel Way and/or Saddleback Drive to 60 feet to allow for detached sidewalk with a 5-foot landscape strip.

The zone change will provide an appropriate transition from the higher density neighborhoods located at the west and south side of the project site to the lower density ranges that are located at the north and west of the project site.

Conclusion

The project has been found to be consistent with the General Plan and Zoning Code. Staff recommends that the Planning Commission recommend approval to the City Council of the Mitigated Negative Declaration, General Plan Amendment and Zoning Amendment.

3. California Environmental Quality Act (CEQA):

An Initial Study was prepared for the project by David J. Powers pursuant to the California Environmental Quality (CEQA) (Attachment 5). The Initial Study included a program-level analysis and evaluated the reasonably foreseeable indirect environmental effects that would result from the General Plan Amendment and rezone, given that no specific development is proposed that would lead to direct physical changes to the environment.

With implementation of mitigation measures and standard measures in accordance with the City's General Plan and Municipal Code, and other applicable plans, policies, regulation, and ordinances, future development allowed with the General Plan Amendment and rezone would not result in significant geology and soils, hazards and hazardous materials, hydrology and water quality, or public services impacts and would not contribute to cumulative impacts to these resources. The project would not impact agricultural and forestry resources or mineral resources; therefore, it would not contribute to a significant cumulative impact on these resources. The Initial Study considered the anticipated effects of future residential development allowed by the General Plan and Zoning amendments and concluded that the proposed amendments would not result in any significant unavoidable environmental impacts. A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program have prepared for the project (Attachments 6 and 7).

The draft Initial Study was circulated for public review for 30 days, from June 20, 2018 through July 19, 2018. A total of 21 comment letters were received by the City during the Initial Study public review period (Attachment 8).

CEQA Guidelines Sections §15073, 15073.5, and 15074 provide direction on the public review of a draft MND, when a draft MND must be recirculated for additional public review, and the process for consideration and adoption of an MND, respectively. In contrast with the more exhaustive EIR public review process requirements (pursuant to CEQA Guidelines Section §15088) that mandate the lead agency must provide written responses to comments received involving environmental issues, written responses are not mandated for public comments received on a draft MND. No specific requirements are placed on a lead agency as to how to address issues raised in public comments received on the draft MND, other than to be vigilant for the presence of substantial evidence in support of a fair argument the project at issue may result in a significant impact, as discussed in the preceding section.

The primary issues raised with the project included the following:

- a. Opposition to the Proposed General Plan Amendment and Rezone;
- b. Change in Visual Character;
- c. Air Quality and Noise During Construction and Operation;
- d. Impacts to Open Space, Wildlife Displacement and Tree Removal;
- e. Environmental Impact Study on Existing Drainage Onsite Flooding from Existing Pond and Drainage Off-Site;
- f. Increase in Traffic and Traffic Study; and,
- g. Strain on Resources and Infrastructure.

David J. Powers prepared a memorandum (Attachment 9) addressing the comments in detail. Some of those key concerns have been summarized below.

a. Traffic and Circulation

According to the City of Morgan Hill and Santa Clara Valley Transportation Authority Transportation Impact Analysis Guidelines, a transportation impact analysis is needed when a project generates 100 or more new peak hour (AM and/or PM peak hour) trips. Based on the trip generation rates for single-family units, 22 dwelling units would not generate over 100 peak hour trips, and the proposed amendments would not conflict with the adopted plan, ordinance, or policy related to the effectiveness of the circulation system.

During the public comment period of the IS/Mitigated Negative Declaration, several comments were received pertaining to additional vehicular trips and the need for a traffic signal at Saddleback Way and East Dunne Avenue intersection.

The City takes into consideration the Level of Service (LOS) and accident reports at local intersections when determining the need for a traffic signal or stop sign.

A review of the Morgan Hill 2035 General Plan EIR shows the levels of service at intersections within the project area along East Dunne Avenue at LOS C under both existing conditions and the 2035 General Plan buildout condition. The project would generate a small amount of additional traffic and the local intersections would continue to meet the City's minimum acceptable level of service standard of LOS D for unsignalized intersections.

A review of reported crash incidents on East Dunne Avenue between Sorrel Way and Magnolia Way, provided by Morgan Hill Police Department, shows there were three accidents recorded in the past five years. Based on the City's review, it has been determined that no new traffic signals or stop signs are warranted for the Sorrel Way/East Dunne Avenue, Saddleback Drive/East Dunne Avenue, and Magnolia Way/East Dunne Avenue intersections.

b. Onsite and Off-Site Drainage

There is an existing drainage feature that passes through the site from the northeast to the southwest of the site. As part of the Initial Study, an Initial Geotechnical Investigation was prepared to evaluate potential geologic hazards and impacts to the project site and its surrounding area with development of approximately 22 single-family dwelling units allowed under the proposed General Plan amendment and rezone. The Initial Study supplemented by the geotechnical investigation concluded that future development, with incorporation of standard measures SM HYD-1 to adequately reduce and convey stormwater runoff and SM GEO-2 to prepare a design-level geotechnical investigation to include a debris flow analysis. Implementation of these standard measures would ensure future development would not result in off-site flooding through changing the drainage pattern onsite. Future project-level environmental review will require that any proposed subdivision conform with applicable hydrology and drainage requirements of the City and Santa Clara Valley Water District identified in the current Initial Study.

c. Strain on Resources and Infrastructure

Residential development within the City of Morgan Hill is controlled by the Residential Development Control System (RDCS). Morgan Hill's RDCS process meters the amount of residential development occurring within the City in any given year, typically up to 215 units annually, to ensure the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. By metering residential growth, the RDCS is a tool for the City to ensure infrastructure, including new water supply facilities have adequate capacity before development is approved. Future development allowed with the proposed General Plan amendment and rezone would require an award of RDCS allotments prior to processing entitlements for a project at the site. RDCS competition standards give points to projects that do not require off-site extension of utility lines and/or projects that do not require water improvements beyond minimum requirements. Future development of approximately 22 dwelling units onsite, if granted the allotments by RDCS, would not substantially increase water demand onsite, and would not result in significant impacts to water supplies, or

other service systems such as the wastewater treatment facilities, or landfill serving the City.

Future development allowed with the proposed General Plan amendment and rezone would incrementally increase demand on public services, including schools. Using the Morgan Hill Unified School District's student generation rates per unit for housing, the addition of 22 single-family residences would generate approximately 11 students. Future development onsite would be required to pay a school impact fee prior to issuance of a building permit, in accordance with state law (California Government Code Section 65996). Fees are assessed based upon the square footage of the new development, therefore, would not substantially degrade existing school facilities nor result in the need for new permanent facilities to be constructed.

Based on David J. Powers review of the comment letters, it has been determined that none of the comments received on the draft Initial Study warrants recirculation to provide for additional public review, nor do the comments introduce substantial evidence in support of a fair argument that the proposed General Plan Amendment and rezone may result in a significant impact to the environment. Therefore, the Initial Study/MND is eligible for consideration and adoption by the City as part of its deliberations involving the proposed General Plan amendment and rezone.

Future development of specific projects on the proposed site will require subsequent environmental review to provide project-level analysis of any proposed subdivision(s) that would occur based on the proposed General Plan Amendment and rezone. This subsequent environmental review would evaluate the impacts of future development based on the precise location of proposed lots and house building pads, proposed streets and driveways, utilities, grading, tree removal(s), etc.

Community Engagement

The Morgan Hill community was informed about the proposed project through public notification including site signage, newspaper notice, and direct mail to property owners within 300 feet of the project.

LINKS/ATTACHMENTS:

1. Resolution- MND
2. Resolution - General Plan Amendment
3. Resolution - Zoning Amendment
4. Letter of Justification
5. Initial Study (Weblink)
6. Draft Mitigated Neg Dec
7. 2275 East Dunne MMRP - 9.19.18
8. Combined Comments
9. Response to Comments Summary Memo

RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING CITY COUNCIL ADOPTION OF THE MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM THAT WERE PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE EAST DUNNE – ROSS PROJECT LOCATED AT 2275 EAST DUNNE (APN 728-02-002)

WHEREAS, prior to the adoption of this Resolution, the Planning Division of the City of Morgan Hill prepared an Initial Study and a Mitigated Negative Declaration for the East Dunne – Ross Project (Planning File No's. GPA2018-0001, ZA2018-0001, and EA2018-0001) in accordance with the requirements of the California Environmental Quality Act of 1970, as amended (“CEQA”), and state and local guidelines implementing CEQA; and

WHEREAS, the East Dunne - Ross Project (“Project”) analyzed under the Initial Study/Mitigated Negative Declaration consisted of the request to amend the General Plan land use designation and Zoning on an 8.34 acre parcel from Residential Estate to Residential Estate Detached Low and Residential Estate 1 acre to Residential Detached Low Density 12,000 square foot lots for the project site located at 2275 East Dunne Avenue (APN: 728-02-002); and

WHEREAS, this Mitigated Negative Declaration is a program level document, and further project level environmental review would be required for a future development project. The standard mitigation measures will be considered at the time of review for the future development project. If the future development project will involve preparation of an Initial Study/Mitigated Negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environment effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a Mitigation Monitoring and Reporting Program to ensure compliance with the mitigation measures during project implementation; and

WHEREAS, the City of Morgan Hill is the lead agency on the Project, and the City Council is the decision-making body for the proposed Project; and

WHEREAS, the Planning Commission has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 89.5 of the California Department of Fish and Game Code.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL AS FOLLOWS:

SECTION 1. THAT THE PLANNING COMMISSION does hereby make the following findings:

- (1) It has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon the Project;
- (2) The Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and consistent with state and local guidelines implementing CEQA; and
- (3) The Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project. The Community Development Director of the Community Development Department at 17575 Peak Avenue, Morgan Hill, California 95037, is the custodian of documents and records of proceedings on which this decision is based.

SECTION 2. THAT THE PLANNING COMMISSION does hereby recommend the adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the Project. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Community Development Department, Planning Division, located at 15575 Peak Avenue, Morgan Hill CA 95037 and (2) available for inspection by any interested person.

PASSED AND ADOPTED THIS 25th DAY OF SEPTEMBER, 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

City of Morgan Hill
Resolution No.
Page 3 of 3

ATTEST:

JENNA LUNA, Deputy City Clerk

APPROVED:

LIAM DOWNEY, Chair

Attachment: Resolution- MND [Revision 1] (1932 : GPA and ZA: E. Dunne - Ross)

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF GENERAL PLAN AMENDMENT GPA2018-0001 TO AMEND THE GENERAL PLAN LAND USE MAP ON AN 8.34 ACRE PARCEL LOCATED AT 2275 EAST DUNNE AVENUE (APN 728-02-002

WHEREAS, project applicant Alex Ross proposes to amend the General Plan land use designation from Residential Estate to Residential Detached Low on an 8.34 acre parcel located at 2275 East Dunne Avenue, identified by Assessor Parcel Number(s) 728-02-002;

WHEREAS, the General Plan Amendment to amend the map was reviewed and found to be consistent with the 2035 General Plan;

WHEREAS, a program level Initial Study/Mitigated Negative Declaration was prepared and found consistent with the State California Environmental Quality Act (CEQA) Guidelines. Further review at the project level will be required for future development;

WHEREAS, such request was considered by the Planning Commission at its regular meeting of September 25, 2018, at which time the Planning Commission recommended approval of General Plan Amendment application, GPA2018-0001: E. Dunne-Ross; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

- SECTION 1.** The proposed General Plan Amendment is found to be consistent with the policies and provisions of the Morgan Hill 2035 General Plan as described in the staff report to the Planning Commission, incorporated herein by this reference.
- SECTION 2.** A program level Initial Study and Mitigated Negative Declaration (MND) was prepared. The Planning Commission hereby finds the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case with implementation of the mitigation measures summarized in the MND and the Mitigation Monitoring and Reporting Program.
- SECTION 3.** The Planning Commission recommends that the City Council approve the General Plan Amendment as described in the attached Exhibit "A", and by this reference incorporated herein.

**PASSED AND ADOPTED THIS 25th DAY OF SEPTEMBER 2018, AT A REGULAR
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

City of Morgan Hill

Resolution No.

Page 2 of 3

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

Attachment: Resolution - General Plan Amendment (1932 : GPA and ZA: E. Dunne - Ross)

Attachment: Resolution - General Plan Amendment (1932 : GPA and ZA: E. Dunne - Ross)



RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF ZONING AMENDMENT ZA2018-0001 TO AMEND THE ZONING FROM RESIDENTIAL ESTATE ONE-ACRE LOTS TO RESIDENTIAL DETACHED LOW 12,000 SQUARE FOOT LOTS ON AN 8.34 ACRE LOT LOCATED AT 2275 EAST DUNNE AVENUE (APN 728-02-002)

WHEREAS, project applicant Alex Ross proposes to amend the zoning from Residential Estate one-acre to Residential Detached Low 12,000 for an 8.34 acre parcel located at 2275 East Dunne Avenue, identified by Assessor Parcel Number(s) 728-02-002;

WHEREAS, the Zoning Amendment was reviewed and found to be consistent with the 2035 General Plan and Zoning Ordinance Findings. Further review at the project level will be required for future development;

WHEREAS, a program level Initial Study/Mitigated Negative Declaration was prepared for the project pursuant to the California Quality Act;

WHEREAS, such request was considered by the Planning Commission at its regular meeting of September 25, 2018, at which time the Planning Commission recommended approval of Zoning Amendment application, ZA2018-0001: East Dunne - Ross; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed Zoning Amendment is consistent with the General Plan and any specific plan as provided by Government Code Section 65860.

The project is consistent with the 2035 General Plan, specifically Policies, CNF-9.1, CNF-10.1, CNF-10.2, CNF-10.4, CNF-10.5, CNF-11.3 and SSI-2.1. The amendment would change the land use designation to the Residential Detached Low land use which would allow 12,000 square foot lots. The lot sizes to the south and west range from 3,500 square feet to 9,000 square feet. The proposed amendment is consistent with the General Plan and provides density feathering required by the General Plan.

SECTION 2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

The subject site has a zoning classification of RE 1. The lot sizes to the south and west range from 3,500 square feet to 9,000 square feet. The amendment would change the zoning classification to Residential Detached Low 12,000. This would provide the necessary density feathering by transitioning from the Residential Estate one acre lots to the north and Open Space to the east. The rezone would allow an opportunity for 12,000 square foot lots to be developed and provide an app

transition to the Residential Estate one-acre zoning to the north and Open Space to the east. The proposed zone change is compatible with the neighboring zones and therefore will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

SECTION 3. The affected site is physically suitable in terms of design, location, shape, size and other characteristics to ensure that the permitted land uses, and development will comply with the Zoning Code and General Plan and contribute to the health safety, and welfare of the property, surrounding properties and the community at large.

The project site is an 8.34-acre site and is large enough to create a new neighborhood that would complement the existing neighborhoods. Future development of the site will provide an opportunity to connect existing neighborhoods and enhance circulation. Future development would require additional right-of-way for future site access and circulation, and may include the following:

- Extend either Sorel Way or Saddleback Drive to the north;
- Connect dead ends of Sorel Way and Saddleback Drive to form a loop; and
- Widen right-of-way width of Sorel Way and/or Saddleback Drive to 60 feet to allow for detached sidewalk with a 5-foot landscape strip.

The zone change will provide an appropriate transition from the higher density neighborhoods located at the west and south side of the project site to the lower density ranges that are located at the north and west of the project site.

SECTION 4. The Planning Commission of the City of Morgan Hill hereby finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Initial Study and Mitigated Negative Declaration, and this finding reflects the Planning Commission's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 5. The Planning Commission hereby recommends approval of a Zoning Amendment, as described in the attached Exhibit "A", and by this reference incorporated herein.

PASSED AND ADOPTED THIS 25th DAY OF SEPTEMBER 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

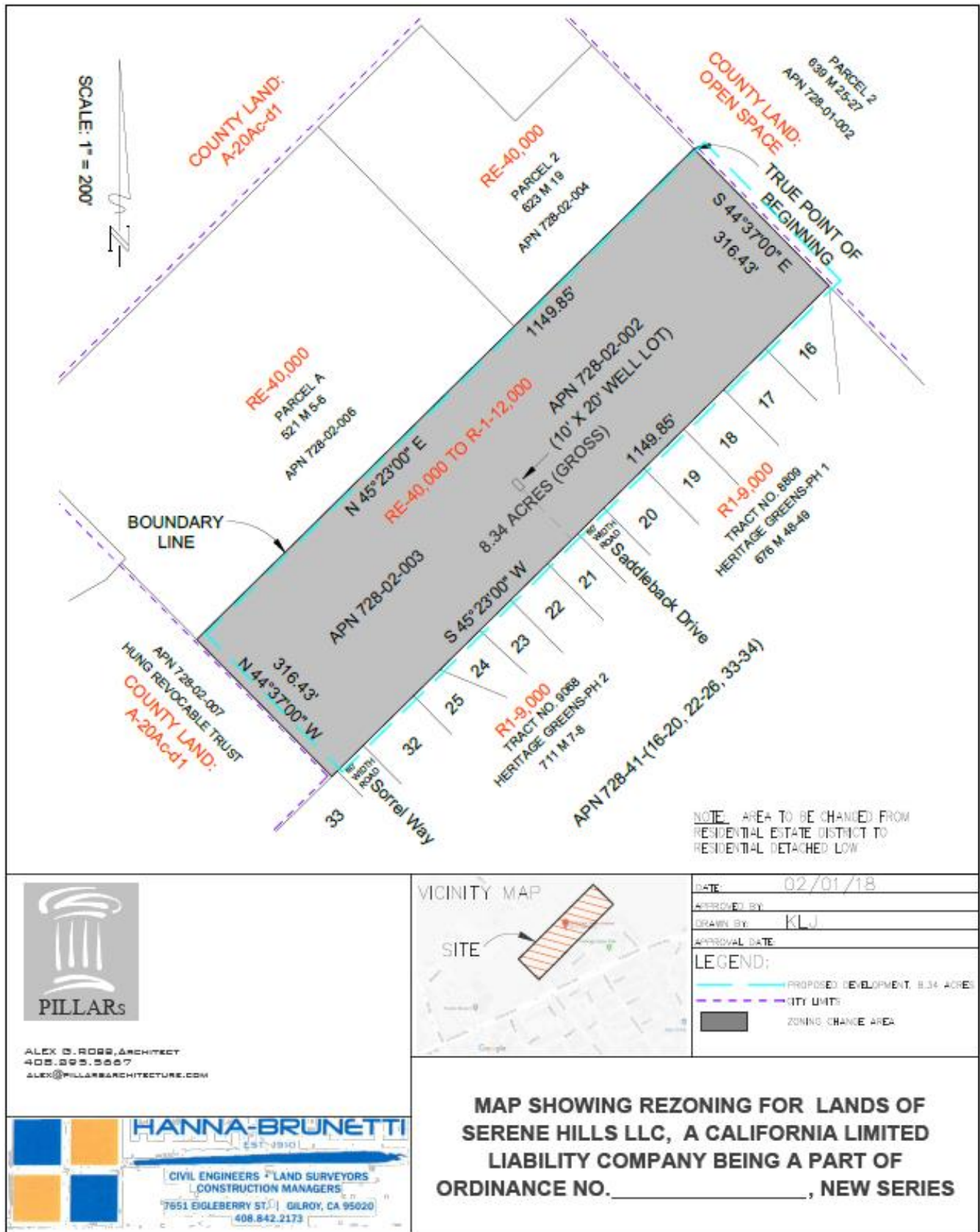
ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

EXHIBIT "A"



JAN 12 2018

CITY OF MORGAN HILL



PILLARS

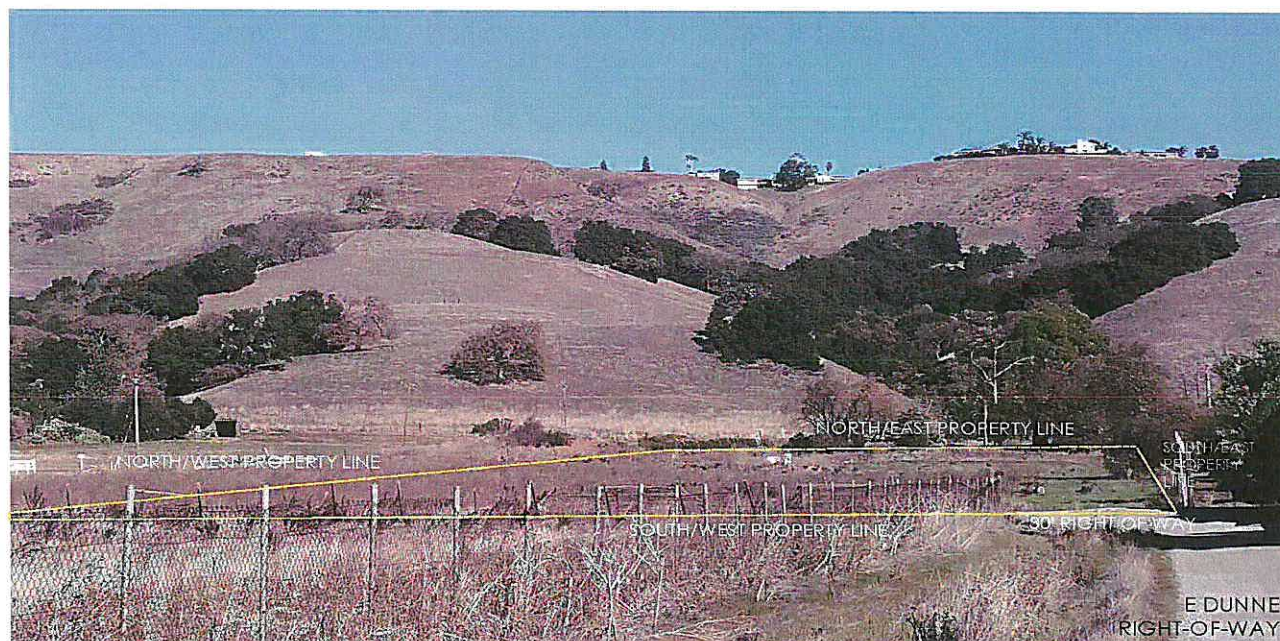
January 12, 2018

Re: **Statement of Justification:****General Plan Amendment and Zoning Classification Amendment**

Serene Hills LLC is requesting a change in the land use designation for the property located at 2275 E. Dunne Ave. This property is an 8.34 acre parcel, zoned RE-40,000. The Purpose of this Amendment is to request a Re-zone and General Plan Amendment to R-1-12,000. (See Exhibit A, attached).

The property is relatively flat and rising slightly to the base of the foothills to the east (see Picture A, below). The parcel is undeveloped, with non-native grasses, and is not located within any scenic vista corridors; nor is it visible from the freeway.

Picture A: Property at the base of the foothill (interested parcel starts where dirt road bends)



Attachment: Letter of Justification (1932 : GPA and ZA: E. Dunne - Ross)

A dirt road right-of-way crosses the South/West Boundary providing access to a home on the neighboring parcel (see Picture B). A 20' Easement for PGE crosses the South/East boundary (see Picture C).

Picture B: 30' Easement/Right of way at South/West edge of property (interested parcel to right of fence)



Picture C: 20' PG&E Right of Way at South/East boundary (shown between the two fences at the right of photo)



How does the proposed amendment propose the best plan use for the property?

1. It is a vacant parcel and is not in the Williamson Act.
2. It would not physically divide an established community.
3. This project is located and designed in a residential setting and separated from non-residential uses.
4. It contains no historical resources and is compatible with surrounding uses.
5. It would not conflict with existing zoning or involve other changes in the existing environment due to location in regards to having an impact on farm or forest land.
6. This project would have no impact nor degrade the existing visual character or quality of the site and its surroundings.
7. There are no special-status species or waterways nearby.

Access to this parcel is through an R-1-9,000 neighborhood, (See Exhibit B). The surrounding neighborhoods are zoned R-1-7,000, or higher in density. A dedicated, county open space lies to the east of the site. Residential zoning of a moderately low R-1-12,000 makes sense as the property is deeply embedded in a currently established residential community. The separation of the parcel from the main artery makes sense for a lower density than those directly adjacent to E. Dunne Avenue, (See Exhibit C).

Why is the proposed amendment in the best interests of the community?

1. Close to current schools and would not adversely or overly impact the schools in the neighborhood
2. No new neighborhoods in the area since 1997.
3. Easily accessible to main traffic arteries and has a low traffic impact
4. Developed land increases adjacent property values.
5. Abundant access to open space and recreational amenities and services
6. Close to emergency services; the City of Morgan Hill fire department is located across the street on E Dunne/Hill Rd (approximate 500 ft)
- 7.

Is there currently a public need for this amendment?

The Serene Hills development suits the lifestyle, size, and housing needs consistent in Morgan Hill. It is a medium density development that provides needed housing without over population/development.

The lack of housing in the Bay Area drives up the price of homes and without an infusion of inventory, the prices will not stabilize. The Serene Hills Development will add (+/-) 17 upper end/ premium homes to the housing inventory, necessary to keep the housing market aligned with its needs.

Cite specific General Plan policies and action statements that support the proposed application:)

The General Plan Amendment and Re-zone would allow +/- 17 homes that:

1. "encourage developments inside the city's urban service area"
2. "use acreage from the City's "vacant and unconstrained acres zoned for residential development"
3. "maintain Morgan Hill's family-friendly character" with a park and sidewalks
4. Is situated "(next) to open space and recreational amenities"

How is it in conformance with the General Plan?

As stated in the General Plan for MH, “(it) maintains a strong sense of community while the community grows and prospers... consistent with the residents’ shared values”. The development would be a small to medium size neighborhood, added to an area that has not seen any new developments in over 10 years.

Policy HE-1a “ensures that an adequate amount of land is available for new residential development, zoned for a range of residential densities”. With approximately 230 acres of undeveloped land in Morgan Hill, the potential for developing this parcel is consistent with the General Plan. The small community of Serene Hills will result in a high quality designed homes, in a highly desirable community, that will add to the housing stock of single-family homes that will be easily accessible to the major transit corridors for jobs in Silicon Valley.

Should you have any further questions or concerns, please do not hesitate to contact me.

Best regards,



PILLARS

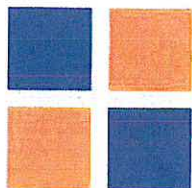
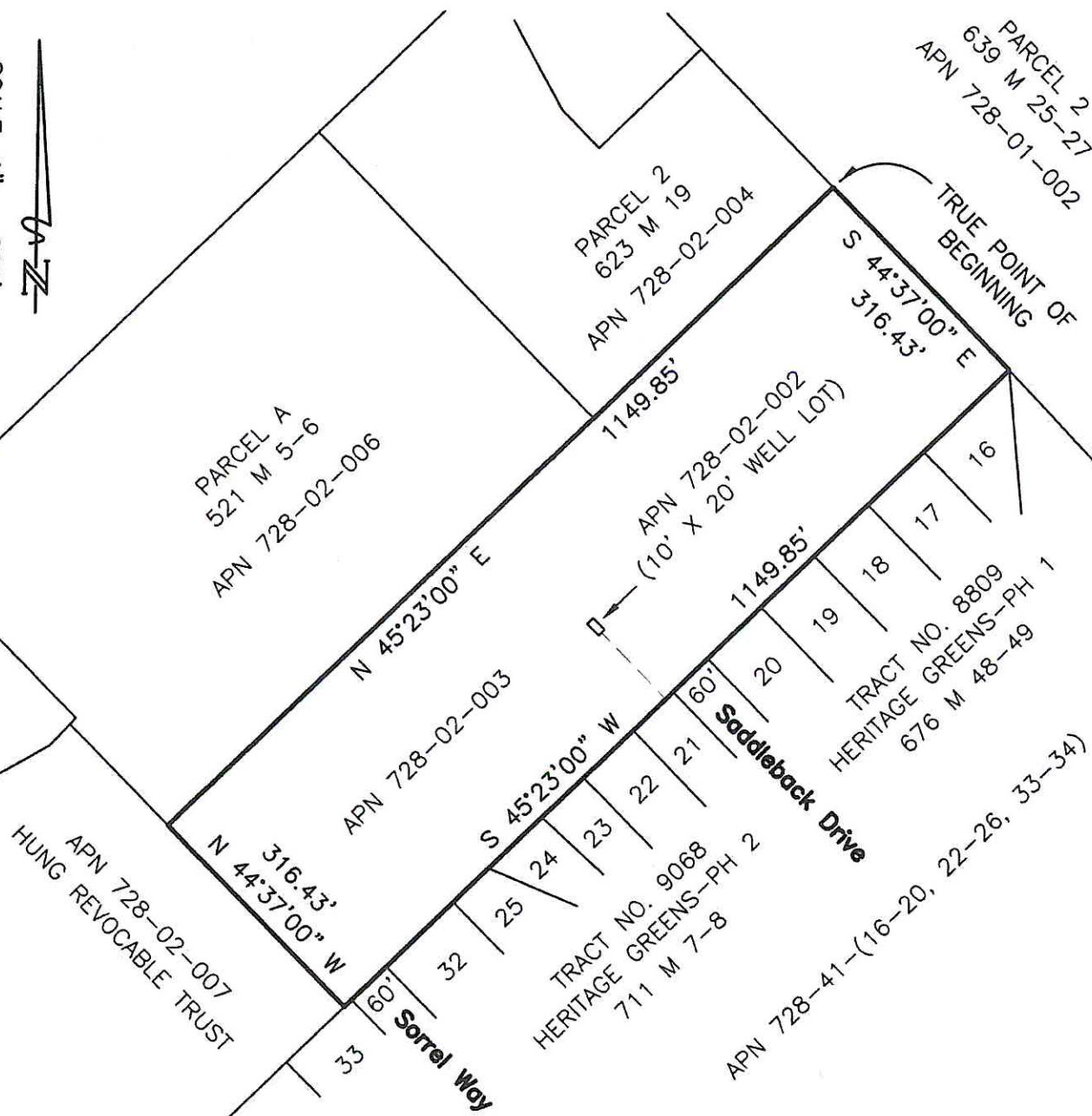
Alex G. Ross, Architect, Lic. #C-27341

Attachment: Letter of Justification (1932 : GPA and ZA: E. Dunne - Ross)

EXHIBIT A**MAP SHOWING REZONING**

**LANDS OF SERENE HILLS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
BEING A PART OF ORDINANCE NO. _____, NEW SERIES**

SCALE: 1" = 200'



HANNA-BRUNETTI

EST. 1910

CIVIL ENGINEERS • LAND SURVEYORS
CONSTRUCTION MANAGERS

7651 EIGLEBERRY ST. | GILROY, CA 95020
408.842.2173

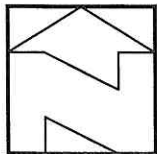
JN 17089

Attachment: Letter of Justification (1932 : GPA and ZA: E. Dunne - Ross)

EXHIBIT B

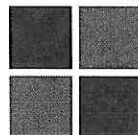


Attachment: Letter of Justification (1932 : GPA and ZA: E. Dunne - Ross)



Scale: 1"=500'

Vicinity Map


HANNA-BRUNETTI
EST. 1910

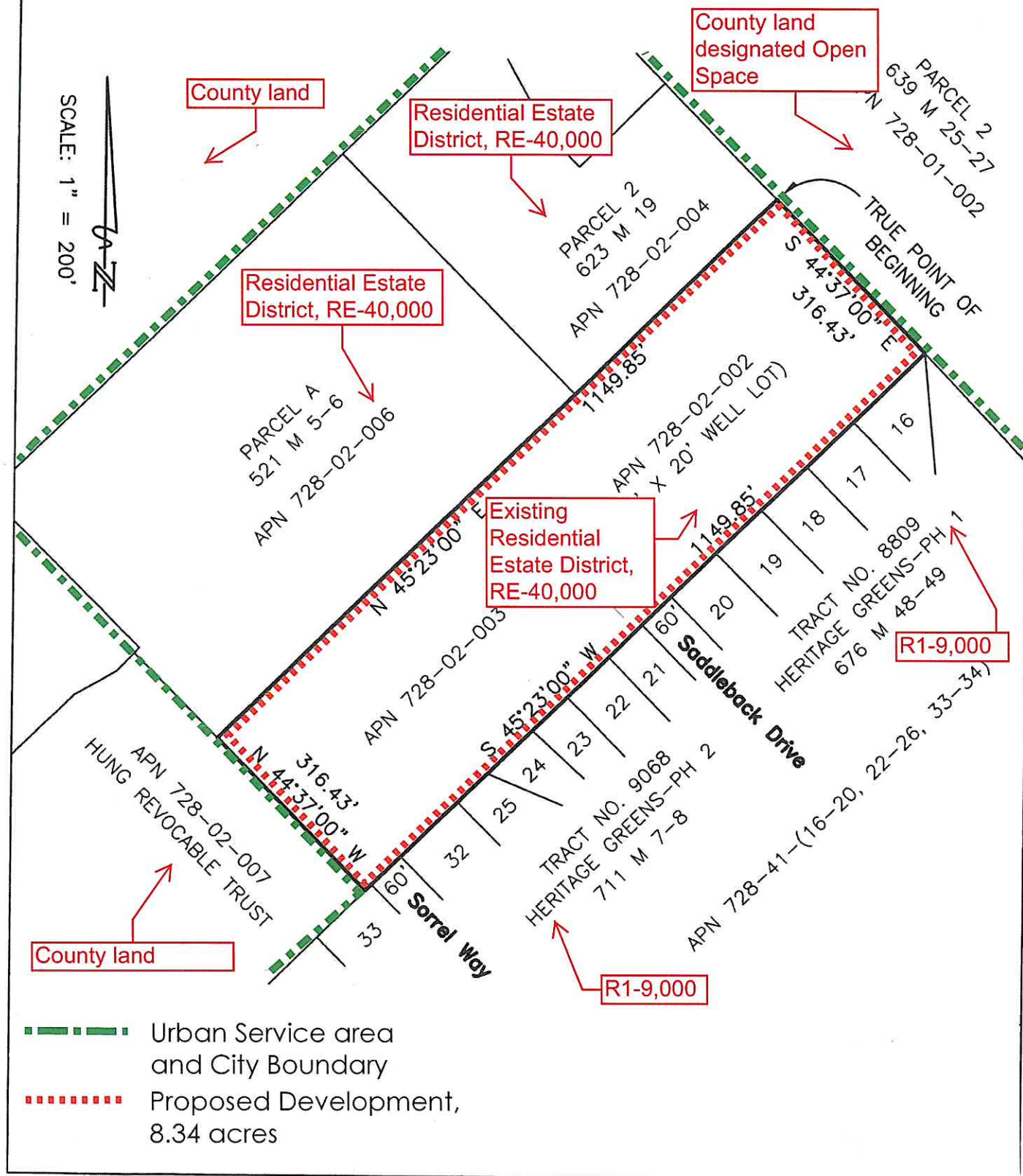
 CIVIL ENGINEERS • LAND SURVEYORS
 CONSTRUCTION MANAGERS

JN 17089

EXHIBIT D

MAP SHOWING REZONING

LANDS OF SERENE HILLS LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
BEING A PART OF ORDINANCE NO. _____, NEW SERIES





COMMUNITY DEVELOPMENT DEPARTMENT, PLANNING DIVISION

17575 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

DRAFT MITIGATED NEGATIVE DECLARATION

I. DESCRIPTION OF PROJECT:

Application #s: GPA2018-0001, ZA2018-0001, EA2018-0001

APN: 728-02-002 and -003

Project Title: 2275 East Dunne General Plan Amendment and Rezone

Project Location: The 8.34-acre project site is located at the base of the eastern foothills of Morgan Hill on 2275 E. Dunne Avenue, north of Sorrel Way, in the City of Morgan Hill.

Project Proponent: Pillars Architecture Design, Alex Ross, 12 South First Street, #808, San José, CA 95113

Project Description: The 8.34-acre project site is located on 2275 East Dunne Avenue, north of Sorrel Way in the City of Morgan Hill. The project proposes a General Plan Amendment (GPA) to change the land use designation from Residential Estate to Residential Detached Low, and a rezoning from Residential Estate one acre (RE-1) to Residential Detached Low Density 12,000-square foot lot (RDL-12,000) in order to allow future subdivision(s) and residential uses on minimum 12,000-square foot lots. The analysis of this GPA and rezone assumes future development of 22 residential dwelling units on this site.

II. DETERMINATION

In accordance with the City of Morgan Hill procedures for compliance with the California Environmental Quality Act (CEQA), the City has completed an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

- Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures are included in the project, and, therefore, this **MITIGATED NEGATIVE DECLARATION** has been prepared.

III. CONDITIONS (Mitigation and Standard Measures):

A. Air Quality

Standard Measure to be Considered at the Time of Future Development

SM AIR-1: The following *Basic Construction Mitigation Measures* listed in Table 8-2 of the *BAAQMD CEQA Air Quality Guidelines* will be implemented during construction to reduce dust and other particulate matter impacts:

- During any construction period ground disturbance, the project contractor shall implement the following Best Management Practices (BMPs):
 - Exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - Haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - Visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - Vehicle speeds on unpaved roads shall be limited to 15 mph.
 - Roadways, driveways, and sidewalks to be paved shall be completed as soon as possible after grading to minimize dirt and soil exposure. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - Construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - Post a publicly visible sign with the telephone numbers and contact information for the project construction manager and the Lead Agency regarding dust complaints. This construction manager shall respond and take corrective action within 48 hours.
 - The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.

B. Biological Resources

Standard Measures to be Considered at the Time of Future Development

SM BIO-1: If project staging and construction is anticipated to take place during the avian nesting season (February 1st – August 31st), a nesting bird preconstruction survey shall be conducted by a qualified biologist to insure that nesting birds are not located within or adjacent to the project site. This survey shall be completed not more than 14 days prior to the start of any staging or construction activity. If nesting activity is observed during the preconstruction survey, the qualified biologist will coordinate with the California Department of Fish and Wildlife (CDFW) to establish appropriate buffers, monitoring,

and/or construction n phasing measures to avoid any impacts to nesting birds. The results of the preconstruction survey should be valid for 14 days.

SM BIO-2: Future development onsite shall submit a SCVHP application form and retain a qualified biologist to field verify the project site's land cover type and potential watercourses or drainage features using the *Criteria to Verify or Identify a Watercourse as a Stream* method as outlined in the Habitat Plan.

SM BIO-3: As required by the City's Tree Removal Controls, a tree removal permit is required from the Community Development Director, which includes the description of the tree replacement program and identification of any conditions imposed by the City.

C. *Cultural Resources*

Standard Measure to be Considered at the Time of Future Development

SM CUL-1: The following standard permit condition would apply to future development of the project site to reduce and avoid impacts to unknown subsurface cultural resources.

- In the event any prehistoric or significant historic era cultural materials¹ are encountered during subsurface construction, all construction within a radius of 50 feet of the find shall be halted, the Director of the Community Development Department would be notified, and an archaeologist shall be retained to examine the find to make appropriate recommendations.
- If human remains are discovered, the Santa Clara County Coroner shall be notified. The Coroner shall determine whether or not the remains were Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who shall identify the Most Likely Descendant (MLD) of the deceased Native American.
- If the Director of the Community Development Department finds that the cultural resource find is not a significant resource, work shall resume only after the submittal of a preliminary report and after provisions for reburial and ongoing monitoring are accepted. Provisions for identifying descendants of a deceased Native American and for reburial shall follow the protocol set forth in the CEQA Guidelines. If the site is found to be a significant archaeological site, a mitigation program shall be prepared and submitted to the Director of the Community Development Department for consideration and approval, in conformance with the protocol set forth in the CEQA Guidelines. **(Less than Significant Impact)**

D. *Geology and Soils*

Standard Measures to be Considered at the Time of Future Development

SM GEO-1: As required pursuant to General Plan Policy SSI-1.1, SSI-1.2, and SSI-2.1, future residential development shall prepare a design-level geotechnical investigation which shall include trenching in order to locate the fault zone and establish a "no build" zone. The

¹ Significant cultural materials includes but are not limited to: aboriginal human remains, chipped stone; ground stone; shell and bone artifacts; concentrations of fire-cracked rock; ash and charcoal; shell; bone; and historic features such as privies or building foundations.

study shall be completed and submitted to the City for review as part of the tentative subdivision map review process. All recommendations in the design-level geotechnical investigation shall be implemented by the project, which shall include standard engineering and seismic safety design techniques. Future development shall also meet the requirements of applicable Building and Fire Code.

- SM GEO-2:** As part of the design-level geotechnical investigation required for future development onsite, the investigation shall include a debris flow analysis to evaluate the potential for debris flow. In the event debris flow hazard is identified, engineering measures would be implemented to reduce the hazard. Examples of engineering measures could include a combination of walls (deflection wall or catchment wall) and/or catchment basin and debris grate/catch basin.
- SM GEO-3:** Future development shall implement recommendations in the design-level geotechnical report prepared for the project, which shall include design and engineering measures to avoid and reduce adverse effects of expansive soils to future development onsite. Recommendations to address the undocumented fills shall also be implemented, which shall include removing all fills identified within the building areas and to a lateral distance of at least five feet beyond the building footprint or to a lateral distance equal to fill depth below the perimeter footing, whichever is greater.

E. Hazards and Hazardous Materials

Mitigation Measure to be Considered at the Time of Future Development

- Impact HAZ-1:** The surficial soil onsite may contain elevated levels of organochlorine pesticide. **(Significant Impact)**

Mitigation Measure: Implementation of the following mitigation measures to reduce impacts from contaminated soil (if present) would reduce potentially significant human health hazards to a less than significant level.

- MM HAZ-1:** As required by General Plan Policy SSI-4.16, during future environmental review when a development project is proposed, a Phase I Environmental Site Assessment (ESA) shall be prepared for the site in order to determine whether there are potential hazards associated with the historic agricultural use of the site. If the Phase I ESA recommends soil testing in order to define contamination, Phase II soil investigations shall be completed to document the concentrations of any hazardous contaminants in the soil. Recommendations of the Phase II for any required soil remediation shall be implemented by the project. **(Less Than Significant Impact with Mitigation)**

F. Hydrology and Water Quality

Standard Measure to be Considered at the Time of Future Development

SM HYD-1: In accordance with the City of Morgan Hill Standard Conditions of Approval and the General National Pollutant Discharge Elimination System (NPDES) Storm Water Permit for Construction Activities, future development projects will prepare a SWPPP and an ECP. The plans will be submitted to the Director of Public Works and Central Coast Regional Water Quality Control Board (RWQCB) for review and approval, prior to issuance of a building permit. The ECP and SWPPP will demonstrate how the project will eliminate or reduce non-stormwater discharges into the stormwater system, how discharges into the stormwater system will be monitored, and what BMPs will be implemented by the project to avoid

water quality impacts during construction (e.g., street sweeping, fiber rolls, temporary cover and/or permanent cover) and post-construction periods. In conformance with existing policies, programs, and with implementation of BMPs, the project will not result in significant impacts to water quality or water discharge requirements. **(Less Than Significant Impact)**

G. Noise

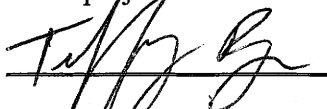
Standard Measure to be Considered at the Time of Future Development

SM NOI-1: The following standard construction noise suppression measures would be implemented during the construction activities to reduce noise levels:

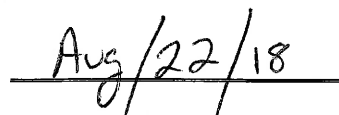
- Construction activities shall be limited to the hours between 7:00 a.m. and 8:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays. No construction activities should occur on Sundays or federal holidays (Consistent with Section 8.28.040 of the Morgan Hill Municipal Code).
- Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Locate stationary noise generating equipment (e.g. rock crushers, compressors) as far as possible from adjacent residential receptors.
- Acoustically shield stationary equipment located near residential receptors with temporary noise barriers or recycled demolition materials.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem.

III. FINDING

The City of Morgan Hill Community Development Services Department hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures summarized above and described in the initial study are included in the project.



Tiffany Brown, Associate Planner
Community Development Services
City of Morgan Hill



Date

MITIGATION MONITORING AND REPORTING PROGRAM

2275 East Dunne Avenue General Plan Amendment & Rezone

File Nos. GPA2018-0001, ZA2018-0001, EA2018-0001



September 2018

P R E F A C E

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

On _____, the City Council adopted the Mitigated Negative Declaration for the 2275 East Dunne General Plan Amendment & Rezone project (File Nos. GPA2018-0001, ZA2018-0001, EA2018-0001). The Initial Study concluded that the implementation of the project could result in significant impacts on the environment and mitigation measures will be incorporated into the proposed project at the time of future development. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Initial Study concluded that the impacts from implementation of the project would be less than significant.

**MITIGATION MONITORING AND REPORTING PROGRAM
2275 EAST DUNNE AVENUE GENERAL PLAN AMENDMENT & REZONE**

Impact	Mitigation and Avoidance Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
Hazardous Materials				
Impact HAZ-1: The surficial soil onsite may contain elevated levels of organochlorine pesticide.	MM HAZ – 1.1: As required by General Plan Policy SSI-4.16, during future environmental review when a development project is proposed, a Phase I Environmental Site Assessment (ESA) shall be prepared for the site in order to determine whether there are potential hazards associated with the historic agricultural use of the site. If the Phase I ESA recommends soil testing in order to define contamination, Phase II soil investigations shall be completed to document the concentrations of any hazardous contaminants in the soil. Recommendations of the Phase II for any required soil remediation shall be implemented by the project.	Community Development Director	Review and approval of Phase I Environmental Site Assessment and Phase II Soil Investigation (if necessary) by City staff.	During future environmental review when a development project is proposed, prior to issuance of a tentative map.

Attachment: 2275 East Dunne MMRP - 9.19.18 (1932 : GPA and ZA: E. Dunne - Ross)

STANDARD MEASURES
2275 EAST DUNNE AVENUE GENERAL PLAN AMENDMENT & REZONE

Standard Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
Air Quality			
SM AIR-1: The following <i>Basic Construction Mitigation Measures</i> listed in Table 8-2 of the <i>BAAQMD CEQA Air Quality Guidelines</i> will be implemented during construction to reduce dust and other particulate matter impacts: • During any construction period ground disturbance, the project contractor shall implement the following Best Management Practices (BMPs): ○ Exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. ○ Haul trucks transporting soil, sand, or other loose material off-site shall be covered. ○ Visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. ○ Vehicle speeds on unpaved roads shall be limited to 15 mph. ○ Roadways, driveways, and sidewalks to be paved shall be completed as soon as possible after grading to minimize dirt and soil exposure. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. ○ Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. ○ Construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper	Community Development Director	Incorporation of required measures on all project construction documents, contracts, and plans.	To be implemented during construction.

STANDARD MEASURES
2275 EAST DUNNE AVENUE GENERAL PLAN AMENDMENT & REZONE

Standard Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
condition prior to operation. ○ Post a publicly visible sign with the telephone numbers and contact information for the project construction manager and the Lead Agency regarding dust complaints. This construction manager shall respond and take corrective action within 48 hours. ○ The BAAQMD phone number shall also be visible to ensure compliance with applicable regulations.			
Biological Resources			
SM BIO-1: If project staging and construction is anticipated to take place during the avian nesting season (February 1st – August 31st), a nesting bird preconstruction survey shall be conducted by a qualified biologist to insure that nesting birds are not located within or adjacent to the project site. This survey shall be completed not more than 14 days prior to the start of any staging or construction activity. If nesting activity is observed during the preconstruction survey, the qualified biologist will coordinate with the California Department of Fish and Wildlife (CDFW) to establish appropriate buffers, monitoring, and/or construction phasing measures to avoid any impacts to nesting birds. The results of the preconstruction survey should be valid for 14 days.	Community Development Director	Incorporation of required measures on all project construction documents, contracts, and plans. If project construction activities, including tree removal, start during the nesting season, then a report prepared by a qualified biologist and summarizing the findings of the nesting bird survey(s) shall be submitted to the Community Development Director for review and approval.	Prior to issuance of a Grading Permit.

STANDARD MEASURES
2275 EAST DUNNE AVENUE GENERAL PLAN AMENDMENT & REZONE

Standard Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
SM BIO-2: Future development onsite shall submit a SCVHP application form and retain a qualified biologist to field verify the project site's land cover type and potential watercourses or drainage features using the <i>Criteria to Verify or Identify a Watercourse as a Stream</i> method as outlined in the Habitat Plan.	Santa Clara Valley Habitat Agency, and Community Development Director	Review and approval of SCVHP application form by Santa Clara Valley Habitat Agency and City staff.	Prior to issuance of a Grading Permit.
SM BIO-3: As required by the City's Tree Removal Controls, a tree removal permit is required from the Community Development Director, which includes the description of the tree replacement program and identification of any conditions imposed by the City.	Community Development Director	Review and approval of a tree survey by City staff. Incorporation of required measures on all project construction documents, contracts, and plans.	Prior to issuance of a Grading Permit.
Cultural Resources			
SM CUL-1: The following standard permit condition would apply to future development of the project site to reduce and avoid impacts to unknown subsurface cultural resources. - In the event any prehistoric or significant historic era cultural materials¹ are encountered during subsurface construction, all construction within a radius of 50 feet of the find shall be halted, the Director of the Community Development Department would be notified, and an archaeologist shall be retained to examine the find to make appropriate recommendations. - If human remains are discovered, the Santa Clara County Coroner shall be notified. The Coroner shall determine whether or not the remains were Native American. If the Coroner determines that the remains are not subject to his	Community Development Director	Incorporation of required measures on all project construction documents, contracts, and plans.	Prior to issuance of a Grading Permit.

¹ Significant cultural materials includes but are not limited to: aboriginal human remains, chipped stone; ground stone; shell and bone artifacts; concentrations of fire-cracked rock; ash and charcoal; shell; bone; and historic features such as privies or building foundations.

STANDARD MEASURES
2275 EAST DUNNE AVENUE GENERAL PLAN AMENDMENT & REZONE

Standard Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
authority, he shall notify the Native American Heritage Commission, who shall identify the Most Likely Descendant (MLD) of the deceased Native American. If the Director of the Community Development Department finds that the cultural resource find is not a significant resource, work shall resume only after the submittal of a preliminary report and after provisions for reburial and ongoing monitoring are accepted. Provisions for identifying descendants of a deceased Native American and for reburial shall follow the protocol set forth in the CEQA Guidelines. If the site is found to be a significant archaeological site, a mitigation program shall be prepared and submitted to the Director of the Community Development Department for consideration and approval, in conformance with the protocol set forth in the CEQA Guidelines.			
Geology and Soils			
SM GEO-1: As required pursuant to General Plan Policy SSI-1.1, SSI-1.2, and SSI-2.1, future residential development shall prepare a design-level geotechnical investigation which shall include trenching in order to locate the fault zone and establish a “no build” zone. The study shall be completed and submitted to the City for review as part of the tentative subdivision map review process. All recommendations in the design-level geotechnical investigation shall be implemented by the project, which shall include standard engineering and seismic safety design techniques. Future development shall also meet the requirements of applicable Building and Fire Code.	Public Works Director	Review and approval of design-level geotechnical investigation by City staff. Incorporation of required measures on all project construction documents, contracts, and plans.	During future environmental review when a development project is proposed, prior to issuance of a tentative map.
SM GEO-2: As part of the design-level geotechnical investigation required for future development onsite, the investigation shall include a debris flow analysis to evaluate the potential for debris flow. In the event debris flow hazard is identified, engineering measures would be implemented to reduce the hazard. Examples of engineering measures could include a combination of walls (deflection wall or catchment wall) and/or catchment basin and debris grate/catch basin.	Public Works Director	Review and approval of design-level geotechnical investigation by City staff. Incorporation of required measures on all project construction documents, contracts, and plans.	During future environmental review when a development project is proposed, prior to issuance of a tentative map.

Attachment: 2275 East Dunne MMRP - 9.19.18 (1932 : GPA and ZA: E. Dunne - Ross)

STANDARD MEASURES
2275 EAST DUNNE AVENUE GENERAL PLAN AMENDMENT & REZONE

Standard Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
SM GEO-3: Future development shall implement recommendations in the design-level geotechnical report prepared for the project, which shall include design and engineering measures to avoid and reduce adverse effects of expansive soils to future development onsite. Recommendations to address the undocumented fills shall also be implemented, which shall include removing all fills identified within the building areas and to a lateral distance of at least five feet beyond the building footprint or to a lateral distance equal to fill depth below the perimeter footing, whichever is greater.	Public Works Director	Review and approval of design-level geotechnical investigation by City staff. Incorporation of required measures on all project construction documents, contracts, and plans.	Prior to issuance of a Grading Permit.
Hydrology and Water Quality			
SM HYD-1: In accordance with the City of Morgan Hill Standard Conditions of Approval and the General National Pollutant Discharge Elimination System (NPDES) Storm Water Permit for Construction Activities, future development projects will prepare a SWPPP and an ECP. The plans will be submitted to the Director of Public Works and Central Coast Regional Water Quality Control Board (RWQCB) for review and approval, prior to issuance of a building permit. The ECP and SWPPP will demonstrate how the project will eliminate or reduce non-stormwater discharges into the stormwater system, how discharges into the stormwater system will be monitored, and what BMPs will be implemented by the project to avoid water quality impacts during construction (e.g., street sweeping, fiber rolls, temporary cover and/or permanent cover) and post-construction periods. In conformance with existing policies, programs, and with implementation of BMPs, the project will not result in significant impacts to water quality or water discharge requirements.	Community Development Director	Incorporation of required measures on all project construction documents, contracts, and plans.	Prior to issuance of a Grading Permit or a building permit.
Noise and Vibration			
SM NOI-1: The following standard construction noise suppression measures would be implemented during the construction activities to reduce noise levels: Construction activities shall be limited to the hours between 7:00 a.m. and 8:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m.	Community Development Director	Incorporation of required measures on all project construction documents, contracts, and plans.	To be implemented during the construction activities.

Attachment: 2275 East Dunne MMRP - 9.19.18 (1932 : GPA and ZA: E. Dunne - Ross)

STANDARD MEASURES
2275 EAST DUNNE AVENUE GENERAL PLAN AMENDMENT & REZONE

Standard Measures	Responsibility for Monitoring Compliance	Method of Compliance	Timing of Compliance
on Saturdays. No construction activities should occur on Sundays or federal holidays (Consistent with Section 8.28.040 of the Morgan Hill Municipal Code). • Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Locate stationary noise generating equipment (e.g. rock crushers, compressors) as far as possible from adjacent residential receptors. • Acoustically shield stationary equipment located near residential receptors with temporary noise barriers or recycled demolition materials. • Utilize "quiet" air compressors and other stationary noise sources where technology exists. • The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance. • Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem.			

SOURCE: City of Morgan Hill. *2275 East Dunne Avenue General Plan Amendment & Rezone*. June 2018.

Appendix A: Initial Study Comment Letters

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:21 PM
To: Amy Wang
Subject: FW comment on : NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION PROJECT TITLE 2275 E.DUNNE

Importance: High

1

Tiffany Brown
 Associate Planner



From: Jesus <racetax@pacbell.net>
Sent: Tuesday, June 26, 2018 4:42 PM
To: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Cc: ludovika@me.com; Alvarenga Law <info@alvarengalaw.com>
Subject: NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION PROJECT TITLE 2275 E.DUNNE
Importance: High

Ms. Tiffany Brown

Dear Ms. Brown:

This e-mail is to let you know our opinion about the Project Title 2275 E.Dunne General Plan Amendment and Rezone.

When we bought our secluded and peaceful property in 2006 at 2425 Magnolia Ct. Morgan Hill Ca 95037, we have been informed that the empty land behind our property in the future will be converted in larger properties according the City plans.

We think that you should keep the zoning at 8 houses and not change it to 22 houses.

We will appreciate that you take in consideration our opinion.

Respectfully your

Jesus J. Chao jesus@racetax.com
 Lidia Chao ludovika@me.com

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

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Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:22 PM
To: Amy Wang
Subject: comment 2: Opposition to Project Title: 2275 E. Dunne General Plan Amendment and Rezone

2

Tiffany Brown
 Associate Planner



CITY OF MORGAN HILL
 17575 Peak Ave
 Morgan Hill, CA 95037
 Tel: 408-310-4655

From: John Baty
Sent: Tuesday, July 10, 2018 1:34 PM
To: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>; Terry Linder <Terry.Linder@morganhill.ca.gov>
Subject: FW: Opposition to Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Neighbor comments on GPA2018-0001...

From: Jennifer Carman
Sent: Tuesday, July 10, 2018 1:05 PM
To: John Baty <John.Baty@morganhill.ca.gov>
Subject: Fwd: Opposition to Project Title: 2275 E. Dunne General Plan Amendment and Rezone

They got Eric's address. Fwd'ing a second one.

Jennifer Carman
 Community Development Director
 City of Morgan Hill

From: Eric Blomquist
Sent: Tuesday, July 10, 2018 12:44:51 PM
To: Jennifer Carman
Subject: FW: Opposition to Project Title: 2275 E. Dunne General Plan Amendment and Rezone

I am not sure who should get this.

From: Bill Freygang <Bill.Freygang@kp.org>
Sent: Tuesday, July 10, 2018 12:07 PM

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

To: Eric Blomquist <Eric.Blomquist@morganhill.ca.gov>

Subject: Opposition to Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate to Residential Detached Low* and the proposed rezoning from *Residential Estate one acre to Residential Detached Low Density 12,000 square foot lot*.

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,

Bill Freygang
2430 Magnolia Court
Morgan Hill, CA 95037

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Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:22 PM
To: Amy Wang
Subject: comment 3: 2275 E. Dunne - Rezone - APN:728-02-002/003

Tiffany Brown
 Associate Planner



From: John Baty
Sent: Tuesday, July 10, 2018 1:35 PM
To: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>; Terry Linder <Terry.Linder@morganhill.ca.gov>
Subject: FW: 2275 E. Dunne - Rezone - APN:728-02-002/003

Another neighbor comment on GPA2018-0001...

From: Jennifer Carman
Sent: Tuesday, July 10, 2018 1:05 PM
To: John Baty <John.Baty@morganhill.ca.gov>
Subject: Fwd: 2275 E. Dunne - Rezone - APN:728-02-002/003

Jennifer Carman
 Community Development Director
 City of Morgan Hill

From: Eric Blomquist
Sent: Tuesday, July 10, 2018 12:53:38 PM
To: Jennifer Carman
Subject: FW: 2275 E. Dunne - Rezone - APN:728-02-002/003

Another one? Why me?

From: Tony & Brenda Colaprete <uscolaprete@yahoo.com>
Sent: Tuesday, July 10, 2018 12:46 PM
To: Eric Blomquist <Eric.Blomquist@morganhill.ca.gov>
Subject: 2275 E. Dunne - Rezone - APN:728-02-002/003

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Mr. Blomquist:

I am writing in regards to the proposed rezoning of the 8.34 acre project site located on 2275 E. Dunne in Morgan Hill.

On behalf of the residents of 2415 Magnolia Court, we oppose this rezoning proposal and wish to make a formal comment during the comment period which ends July 19th. When we purchased our home in 2009, the #1 reason was because our home backs up into the open field which is planned for development. We purchased knowing that "someday" it would be developed to 1 acre estate homes. This seemed reasonable for this area, as the surrounding neighborhoods to the north sit on very large lots, at least 1 acre and many of them are ranch homes with horses, sheep, peacocks, etc. Adding 1 acre estates to this area would "fit in", nestled against the hills.

Something to keep in mind. There is a natural "pond" in the valley right above this area. This pond tends to flood, in fact 2 years ago an actual "river" came through from the pond all the way to Sorell and remained for a week!! I assume they plan to do something with that pond, but we also have many coyote packs, wild turkeys and other wildlife that live in the hills right above the development site. Any development is unfortunate, but I know it's unavoidable as it is zoned. Adding more homes to it is just unacceptable.

If this rezoning is approved, we will see triple the amount of homes. As per the norm these days, each home would likely have 2-3 cars. That would add at least 30 cars using Saddleback/Sorell to come and go into that neighborhood each day. (versus the 15-ish under the original zoning of 8 estate homes) Not to mention the increase in water and power needed for these additional homes.

This re-zoning has it's big-picture concerns for the community in general, however on a more personal level, those of us in the Heritage Green neighborhood plan to do anything we can to get our voices heard. We have an investment in these homes and purchased them knowing the zoning was for 1 acre estate homes. We are highly motivated to do anything possible for the city to reconsider this action, and many of us will be in attendance at the Sept 11th meeting.

Thank you for your time and consideration.

Brenda Colaprete
2415 Magnolia Court
Morgan Hill, CA 95037
408-429-9351

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:22 PM
To: Amy Wang
Subject: comment 4: 2275 E. Dunne General Plan Amendment and Rezone

Tiffany Brown
 Associate Planner



From: Eric Blomquist
Sent: Tuesday, July 10, 2018 3:28 PM
To: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>; Terry Linder <Terry.Linder@morganhill.ca.gov>
Subject: Fwd: 2275 E. Dunne General Plan Amendment and Rezone

Sent from my iPhone

Begin forwarded message:

From: K K <kkenyon1023@gmail.com>
Date: July 10, 2018 at 2:54:33 PM PDT
To: eric.blomquist@morganhill.ca.gov
Subject: 2275 E. Dunne General Plan Amendment and Rezone

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate to Residential Detached Low* and the proposed rezoning from *Residential Estate one acre to Residential Detached Low Density 12,000 square foot lot*.

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to please consider all this important, relevant data and deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,

Kimberly Kenyon
2495 Magnolia Way
Morgan Hill, CA 95037

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:22 PM
To: Amy Wang
Subject: comment 5: We Support 2275 E. Dunne General Plan Amendment and Rezone

Tiffany Brown
 Associate Planner



From: Eric Blomquist
Sent: Tuesday, July 10, 2018 3:29 PM
To: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>; Terry Linder <Terry.Linder@morganhill.ca.gov>
Subject: Fwd: We Support 2275 E. Dunne General Plan Amendment and Rezone

Sent from my iPhone

Begin forwarded message:

From: Andrew Jones <andrew.r.jones@gmail.com>
Date: July 10, 2018 at 2:50:25 PM PDT
To: eric.blomquist@morganhill.ca.gov
Subject: We Support 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I **SUPPORT** the proposed General Plan Amendment to change the land use designation from Residential Estate to Residential Detached Low and the proposed rezoning from Residential Estate one acre to Residential Detached Low Density 12,000 square foot lot.

We would welcome having a larger neighborhood and also believe efforts should not be put in place to further worsen the housing crisis in the Bay Area. The only stipulation would be closing off direct access of Magnolia Way to Dunne. This is already an accident waiting to happen with small children that live on both sides of the street and a larger development would increase traffic flow and the risk of a deadly accident (i.e. the turn is blind and cars drive very fast down Dunne).

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

I urge the Planning Commission to **APPROVE** the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,

Andrew Jones
2530 Magnolia Way
Morgan Hill, CA 95037

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:25 PM
To: Amy Wang
Subject: comment 10: 2275 E. Dunne General Plan Amendment and Rezone
Attachments: GeneralPlanAmendment.docx; ATT00001.htm

Tiffany Brown
 Associate Planner



CITY OF MORGAN HILL
 17575 Peak Ave
 Morgan Hill, CA 95037
 Tel: 408-310-4655

From: Eric Blomquist
Sent: Tuesday, July 10, 2018 9:27 PM
To: Terry Linder <Terry.Linder@morganhill.ca.gov>; Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Subject: Fwd: 2275 E. Dunne General Plan Amendment and Rezone

Sent from my iPhone

Begin forwarded message:

From: Joe Fabiny <joe.fabiny@yahoo.com>
Date: July 10, 2018 at 8:59:45 PM PDT
To: "eric.blomquist@morganhill.ca.gov" <eric.blomquist@morganhill.ca.gov>
Cc: Joe Fabiny <joe.fabiny@yahoo.com>
Subject: 2275 E. Dunne General Plan Amendment and Rezone

Hello Mr. Blomquist,

I oppose the above proposed amendment. Please see my attached letter . . .

Thank You,
 Joe Fabiny

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

DATE: July 11, 2018

TO: Community Development Department

FROM: Joe Fabiny

RE: Project Title – 2275 E. Dunne General Plan Amendment and Rezone

I live in the Heritage Greens development located in Morgan Hill, near the above-proposed project. As a concerned resident of Morgan Hill, I strongly oppose the proposed General Plan amendment to change the current land use and zoning.

Over the past several years, the city of Morgan Hill seems to have adopted a frenzied addiction for high density residential land use. I moved from Fremont to Morgan Hill about 9 years ago to get away from similar over development and the associated congestion and crowding that was rapidly over-taking Fremont. It's been disconcerting to watch and feel the same sense of claustrophobia that ruined Fremont, begin to erode the quality of life that belongs in Morgan Hill.

The most obvious consequence of this high density approach to growth is experienced by anyone who drives around town or, heaven forbid, dares to drive Highway 101 before 10am or after 2pm. The tension and angst that people feel is palpable and evident in their behavior and, I believe, is related at least in part to the shrinking amount of personal space that people sense is being "planned" out of their lives. It is contrary to the pastoral setting that is rapidly disappearing from Morgan Hill.

While growth and change are inevitable, not every decision made by city government should be made solely on the economics of a proposal. Best use of land should not be dictated primarily by the amount of revenue that can be generated for city coffers. Quality of life matters and those that govern must take time to pause, reflect deeply, and stop the madness . . . take a step back and just stop it Let's not lose the essence and character of what makes Morgan Hill a great place to live. Let's not become another Fremont.

Thank you for your consideration,

Joe Fabiny
2515 Magnolia Way
Morgan Hill 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*.

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,

Resident name
Resident street address
Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:26 PM
To: Amy Wang
Subject: Comment 13: Heritage Greens Property Owner
Attachments: Heritage Greens Property Owner.pdf; ATT00001.htm

Tiffany Brown
 Associate Planner



CITY OF MORGAN HILL
 17575 Peak Ave
 Morgan Hill, CA 95037
 Tel: 408-310-4655

From: Eric Blomquist
Sent: Tuesday, July 10, 2018 9:28 PM
To: Terry Linder <Terry.Linder@morganhill.ca.gov>; Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Subject: Fwd: Heritage Greens Property Owner

Sent from my iPhone

Begin forwarded message:

From: Jim Thompson <artisanbuildersjim@gmail.com>
Date: July 10, 2018 at 6:57:50 PM PDT
To: eric.blomquist@morganhill.ca.gov
Subject: Heritage Greens Property Owner

Hello Eric,

Here is my letter opposing the re zoning of the adjacent property. Thank you for your help.

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*.

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,

James & Alison Thompson
17005 Sorrel Way
Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:26 PM
To: Amy Wang
Subject: comment 12: Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Tiffany Brown
 Associate Planner



From: Eric Blomquist
Sent: Thursday, July 12, 2018 4:24 PM
To: Terry Linder <Terry.Linder@morganhill.ca.gov>; Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Subject: FW: Project Title: 2275 E. Dunne General Plan Amendment and Rezone

From: Mealea Khieu <mealea_2000@yahoo.com>
Sent: Thursday, July 12, 2018 1:29 PM
To: Eric Blomquist <Eric.Blomquist@morganhill.ca.gov>
Subject: Project Title: 2275 E. Dunne General Plan Amendment and Rezone

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*.

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,

Mealea Khieu
2395 Magnolia Ct.
Morgan Hill, CA 95037

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:26 PM
To: Amy Wang
Subject: Comment 14: 2275 E. Dunn General Plan Amendment and rezone:
Attachments: Letter to city.docx

Tiffany Brown
 Associate Planner



CITY OF MORGAN HILL
 17575 Peak Ave
 Morgan Hill, CA 95037
 Tel: 408-310-4655

From: Jennifer Carman
Sent: Monday, July 16, 2018 1:55 PM
To: Terry Linder <Terry.Linder@morganhill.ca.gov>; Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Subject: FW: 2275 E. Dunn General Plan Amendment and rezone:

FYI

Jennifer Carman
Community Development Director
 City of Morgan Hill
Jennifer.Carman@morgan-hill.ca.gov
 P. 408.310.4657
 17575 Peak Avenue, Morgan Hill, CA 95037-4128
www.morgan-hill.ca.gov

From: Allen Hines <eahines41@yahoo.com>
Sent: Monday, July 16, 2018 1:53 PM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: 2275 E. Dunn General Plan Amendment and rezone:

Hello Jennifer,
 I'm sending you this because I learned that you prefer to have letters emailed rather than mailed by the post office.

Another point I'd like to make is that anyone who is promoting more development in the west should read Mark Reisner's book, "The Cadillac Desert" subtitle "The American West and its Disappearing Water". If I had been fortunate enough to have read this book before I moved to the west, I would have stayed east of the continental divide. This is a sobering book.

Happy thoughts,
Edward A. Hines

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Edward A. and Suzanne P. Hines
2525 Magnolia Way
Morgan Hill, CA 95037

July 8, 2018

City of Morgan Hill Development Service Center
17575 Peak Avenue
Morgan Hill, CA 95037

Dear Sir or Madam,

Most people who have lived in Morgan Hill for a few years think it is growing too fast. We think the city is focused on economic development at the expense of everyone who has chosen to live here for what it is, a nice small town, rather than what it is becoming, a not so nice city.

Traffic in the afternoon becomes worse and worse. Highway 101, built for 65 mile per hour traffic, is running at 15 to 20 miles per hour much of the day and is sometimes stopped. The traffic jam starts at the sign that indicates Morgan Hill is 10 miles ahead. People get off 101 and go over to Monterey Road to avoid the traffic jam but Monterey Road is literally falling apart. The whole bay area is becoming unlivable. Economic growth for the sake of economic growth at the expense of quality of life is not what we citizens want. We're turning Morgan Hill into Morgan Hell.

My wife Suzanne and I oppose the 2275 E. Dunn General Plan Amendment and rezone. This development was approved for eight single family homes and that is a reasonable and acceptable use of this land. To rezone it for 25 homes on 12,000 ft. lots is not reasonable or acceptable. It means more traffic, more gas, more electricity, and more water used. Managing Morgan Hill for the benefit of Realtors and Developers is not in the Town's best interest.

This will put more strain on our limited water resources. We are constantly told we need to conserve water and three times as many homes in the same small area won't help. There are animals and wild life that will be displaced. The increased traffic will damage the roads further and cause more road rage. Hill Road between E. Dunn and E Main is a disgrace. Maybe you haven't noticed. Maybe you should look and see what's happening.

Sincerely Yours,

Edward A. Hines

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*.

Expanding the number of homes from 8 to around 25 will notably increase both traffic and safety issues throughout Sorrell and Saddleback, increase strain on resources and infrastructure, and in addition to this, further shift wildlife that is currently found in the area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be one acre estates, and to now have multiple homes built on that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you,
Gurpreet Singh
2420 Magnolia Ct.
Morgan Hill, CA 95037



JUL 16 2018

CITY OF MORGAN HILL

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I **strongly oppose** the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*.

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to please consider all this important, relevant data and deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely, -



Kimberly Kenyon
2495 Magnolia Way
Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

DEVELOPMENT
SERVICES

JUL 16 2018

CITY OF MORGAN HILL

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I **strongly oppose** the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*.

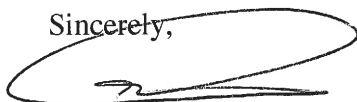
Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to please consider all this important, relevant data and deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,



Sanford Kenyon
Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

DEVELOPMENT
SERVICES

JUL 16 2018

CITY OF MORGAN HILL

DATE: July 11, 2018

TO: Community Development Department

FROM: Joe Fabiny RE: Project Title – 2275 E. Dunne General Plan Amendment and Rezone

I live in the Heritage Greens development located in Morgan Hill, near the above-proposed project. As a concerned resident of Morgan Hill, I strongly oppose the proposed General Plan amendment to change the current land use and zoning.

Over the past several years, the city of Morgan Hill seems to have adopted a frenzied addiction for high density residential land use. I moved from Fremont to Morgan Hill about 9 years ago to get away from similar over development and the associated congestion and crowding that was rapidly over-taking Fremont. It's been disconcerting to watch and feel the same sense of claustrophobia that ruined Fremont, begin to erode the quality of life that belongs in Morgan Hill.

The most obvious consequence of this high density approach to growth is experienced by anyone who drives around town or, heaven forbid, dares to drive Highway 101 before 10am or after 2pm. The tension and angst that people feel is palpable and evident in their behavior and, I believe, is related at least in part to the shrinking amount of personal space that people sense is being "planned" out of their lives. It is contrary to the pastoral setting that is rapidly disappearing from Morgan Hill.

While growth and change are inevitable, not every decision made by city government should be made solely on the economics of a proposal. Best use of land should not be dictated primarily by the amount of revenue that can be generated for city coffers. Quality of life matters and those that govern must take time to pause, reflect deeply, and stop the madness . . . take a step back and just stop it Let's not lose the essence and character of what makes Morgan Hill a great place to live. Let's not become another Fremont.

Thank you for your consideration,

Joe Fabiny
2515 Magnolia Way
Morgan Hill 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

JUL 16 2018

CITY OF MORGAN HILL

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*.

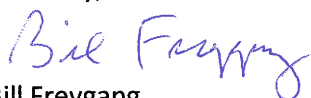
Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,



Bill Freygang
2430 Magnolia Court
Morgan Hill, CA 95037

July 10, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located near the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate to Residential Detached Low* and the proposed rezoning from *Residential Estate one acre to Residential Detached Low Density 12,000 square foot lot*.

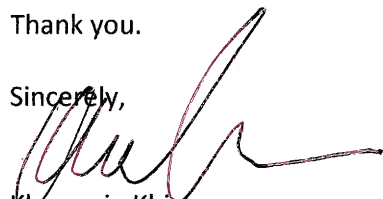
Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,



Khemarin Khieu
2395 Magnolia Ct.
Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Friday, July 20, 2018 4:28 PM
To: Amy Wang
Subject: Comment 15 - 26: Planned Development behind Heritage Greens
Attachments: Fw: Objection to 1-acre acre lots to about 25 house on 12000 sq ft lot lots off of Dunne; FW: Re-zoning Project Input; Opposition to 2275 E. Dunne General Plan Amendment and Rezone; Fw: Planned development and rezoning of plot off of E. Dunne; Fwd: 2275 E. Dunne General Plan Amendment and Rezone; FW: 2275 E. Dunne General Plan Amendment and Rezone; FW: Rezoning of 2275 E. Dunne Avenue; RE: 2275 E. Dunne General Plan Amendment and Rezone; RE: 2275 E. Dunne General Plan Amendment and Rezone; RE: 2275 E. Dunne General Plan Amendment and Rezone; FW: 2275 E. Dunne General Plan Amendment and Rezone; FW: Heritage Greens Re-zoning

Tiffany Brown
 Associate Planner



From: Jennifer Carman
Sent: Tuesday, July 17, 2018 10:21 AM
To: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>; Terry Linder <Terry.Linder@morganhill.ca.gov>
Subject: FW: Planned Development behind Heritage Greens

FYI

Jennifer Carman
Community Development Director
 City of Morgan Hill
Jennifer.Carman@morgan-hill.ca.gov
 P. 408.310.4657
 17575 Peak Avenue, Morgan Hill, CA 95037-4128
www.morgan-hill.ca.gov

From: Beth Adames <beth.adames@gmail.com>
Sent: Tuesday, July 17, 2018 10:13 AM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Fwd: Planned Development behind Heritage Greens

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Hi Jennifer,

I live in Heritage Greens on Magnolia Way. It was always my understanding that the field behind our development was zoned for 8 homes on 1 acre lots. I now hear that the city is considering changing that to 25 houses on 12,000 sq ft lots.

I am very concerned about this proposed re-zoning. Our small community is growing at an alarming rate and we do not have the infrastructure for this. As for this particular proposal, I am concerned about the increased traffic and danger to children who play in the area. I also understand that several large beautiful oak trees would need to be removed - way too many of these beautiful trees are disappearing and this needs to stop.

I moved here 22 years ago for the wide open spaces, wildlife and beauty of the area. Please help us to reduce the rampant growth of our Morgan Hill and keep the zoning for this area as originally planned.

Thank you for listening.

Beth Adames
2460 Magnolia Way
Morgan Hill, CA 95037

Amy Wang

From: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Sent: Friday, July 20, 2018 8:00 AM
To: Tiffany Brown; Terry Linder
Subject: Fw: Objection to 1-acre acre lots to about 25 house on 12000 sq ft lot lots off of Dunne

From: Kristi U <kristi_u@yahoo.com>
Sent: Friday, July 20, 2018 5:35 AM
To: Jennifer Carman
Subject: Objection to 1-acre acre lots to about 25 house on 12000 sq ft lot lots off of Dunne

Hi Jennifer,

I am opposed to the rezoning of the area behind my home off of East Dunne and Saddleback. We have enjoyed the the wild life(deer, turkey, possum, peacock and more) that will be displaced and we have relied on the tree nearby to shield us from the harsh sun. Our fear is that the tall beautiful tree will be cut down and will no longer shield us from the sun. Additionally there will be considerable increased traffic in our neighborhood on Magnolia Way. Dense housing behind our home will block the gorgeous views of the hills and ranch's we see and enjoy from home and will impact our value of our property.

Please do NOT place 25 houses on 12,000 sq ft lots.and keep it zoned as it was intended. Thank you for taking the time to hear me.

Sincerely,

Kristi Ulloa
 2485 Magnolia Way
 Morgan Hill CA 95037

408 375-4645

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Nick van der Zweep <nzweep@gmail.com>
Sent: Thursday, July 19, 2018 11:14 AM
To: Tiffany Brown
Subject: Opposition to 2275 E. Dunne General Plan Amendment and Rezone

July 19, 2018

RE: 2275 E. Dunne General Plan Amendment and Rezone

To: City of Morgan Hill Community Development Department c/o Tiffany.Brown@morganhill.ca.gov

We live adjacent to the area being assessed for plan amendment.

We strongly oppose the proposed General Plan Amendment to change the land use designation from Residential Estate to Residential Detached Low and the proposed rezoning from Residential Estate one acre to Residential Detached Low Density 12,000 square foot lot.

We believe this large increase in the number of homes will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and produce excessive dust, dirt, fumes, noise, etc for us both during and after the construction. We normally keep our windows open and do not use our A/C much which means excessive dirt and pollutants will make their way inside our home as well. Plus there is certainly wildlife that will be negatively affected. For instance we see lots deer, coyotes, hawks, peacocks and more on the property. There are also a fair number of frogs, toads, lizards, snakes, etc as well. We seasonally hear a LOT of frogs and all small ponds are always full of tadpoles each year.

When we purchased our home back in 1998 we did so knowing the land was designated for one acre lots and expected this to remain so moving forward.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Nick and Jacquie

Nick and Jacquie van der Zweep
 2505 Magnolia Way
 Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Sent: Wednesday, July 18, 2018 4:52 PM
To: Terry Linder; Tiffany Brown
Subject: FW: Rezoning of 2275 E. Dunne Avenue

Jennifer Carman
Community Development Director
 City of Morgan Hill
Jennifer.Carman@morgan-hill.ca.gov
 P. 408.310.4657
 17575 Peak Avenue, Morgan Hill, CA 95037-4128
www.morgan-hill.ca.gov

From: Sarah <oeskimo@hotmail.com>
Sent: Wednesday, July 18, 2018 4:51 PM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Rezoning of 2275 E. Dunne Avenue

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located adjacent to the above Project.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate to Residential Detached Low* and the proposed rezoning from *Residential Estate one acre to Residential Detached Low Density 12,000 square foot lot*.

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1-acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Thank you.

Sincerely,

Sarah Shearer

2435 Magnolia Ct

Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Tuesday, July 17, 2018 4:35 PM
To: Jennifer Carman
Subject: RE: 2275 E. Dunne General Plan Amendment and Rezone

I swear I put my contact info on the noticing. Maybe the legal ad is more general about Community Development Department. Sorry you keep getting these.

Tiffany Brown
 Associate Planner



CITY OF MORGAN HILL
 17575 Peak Ave
 Morgan Hill, CA 95037
 Tel: 408-310-4655

From: Jennifer Carman
Sent: Tuesday, July 17, 2018 3:42 PM
To: Terry Linder <Terry.Linder@morganhill.ca.gov>; Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Subject: FW: 2275 E. Dunne General Plan Amendment and Rezone

Jennifer Carman
Community Development Director
 City of Morgan Hill
Jennifer.Carman@morgan-hill.ca.gov
 P. 408.310.4657
 17575 Peak Avenue, Morgan Hill, CA 95037-4128
www.morgan-hill.ca.gov

From: Kelly personal <kellyfunk@charter.net>
Sent: Tuesday, July 17, 2018 3:42 PM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: 2275 E. Dunne General Plan Amendment and Rezone

July 17, 2018

Project Title: 2275 E. Dunne General Plan Amendment and Rezone

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Dear City of Morgan Hill Community Development Department,

I am a resident of Morgan Hill living in the Heritage Greens development that is located adjacent to the above Project. Our address is 2520 Magnolia Way. We have been owner/residents in our home for 15 yrs.

I strongly oppose the proposed General Plan Amendment to change the land use designation from *Residential Estate* to *Residential Detached Low* and the proposed rezoning from *Residential Estate one acre* to *Residential Detached Low Density 12,000 square foot lot*. This is a huge jump in the amount of stress for our neighborhood.

Tripling the number of homes from 8 to almost 25 will significantly increase traffic and safety issues that would flow through Sorrell and Saddleback, increase strain on resources and infrastructure, and further displace wildlife that roams in that area. As a resident in this neighborhood we already see wildlife such as peacocks, turkeys, deer, hawks, snakes, tarantula's and other wild life that reside in that property lot. Many of which roam our neighborhood in which we are respectful of. When rains fall the pond above that hill side pours into that property area and is a run off area for the hill side. There are several trees and oaks in that area as well that would be extremely disturbed. The current property on our daily walks is an area in which we can get a small taste of what Morgan Hill once was, rural. By taking up this space with even more housing will impact the visual restfulness of our beautiful neighborhood. As a parent of two daughters going through the Morgan Hill School district...the schools in this area are already full. Busing kids to further locations impacts the environment with smog from cars and busses. We are already in dire need of a stop light just with the amount of traffic coming from up the hill in Holiday Estates and beyond. We do not need any more stress on our crowded streets that already exist.

The residents of Heritage Greens all purchased our homes with the disclosure that the area would be 1 acre estates, and to now change the plan to pack homes into that area is unacceptable.

I urge the Planning Commission to deny the proposed General Plan Amendment at the public hearing tentatively scheduled for September 11, 2018.

Thank you.

Sincerely,

Kelly and Shawn Funk
2520 Magnolia Way
Morgan Hill, CA 95037

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Sent: Thursday, July 19, 2018 4:30 PM
To: Terry Linder; Tiffany Brown
Subject: FW: Re-zoning Project Input

Jennifer Carman
Community Development Director
 City of Morgan Hill
Jennifer.Carman@morgan-hill.ca.gov
 P. 408.310.4657
 17575 Peak Avenue, Morgan Hill, CA 95037-4128
www.morgan-hill.ca.gov

From: K K <kkenyon1023@gmail.com>
Sent: Thursday, July 19, 2018 4:15 PM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Re-zoning Project Input

Good afternoon,

I am a homeowner in the Heritage Greens Community off East Dunne Ave. in Morgan Hill. I am sending this email in response to the rezoning attempt of the property behind our development. Many in our neighborhood, including myself, strongly oppose this rezoning for several reasons.

The first of many concerns is the environmental impact this change would bring, not only Heritage Greens, but also for the residents south of us on Rosetta Drive, Shafer Avenue and Shafer Court. The increased traffic, noise and pollution would be quite significant and damaging to our immediate area. The re-zoning would also negatively impact wildlife, and removal of many large, beautiful trees. Additionally and very significantly, all the homeowners who have purchased their homes in this area were informed if developed, the zoning would be for one acre lots, not 12,000 sq. ft. lots.

Please consider all this relevant data and do not allow greed to further strain and deplete more natural resources in this beautiful area!

Thank you for your careful attention and consideration to this important matter.

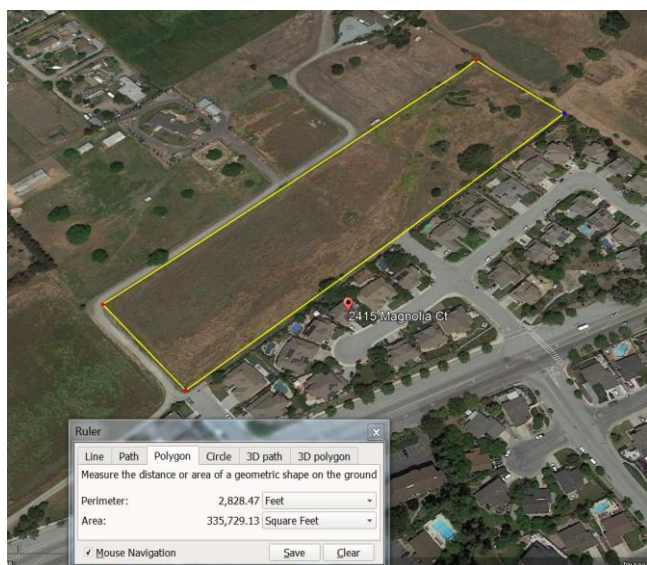
Kimberly Kenyon
 2495 Magnolia Way
 Morgan Hill

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

July 18, 2018

Dear Ms. Carman,

I am writing concerning the planned development of the field behind my home on Magnolia Ct. My understanding is that the developers wish to rezone the land from 8 estate houses on 1 acre lots to about 25 houses on 12,000 sq. ft. lots. The area under consideration (shown below by yellow rectangle in the image below) is approximately 335,000 sq ft. Dividing this into 12,000 sq ft lots results in approximately 26 lots. Clearly the developers are using every last foot. However, my estimate of 28 homes doesn't account for any land used for roads, sidewalks, easements, etc. I am worried that these homes will be so closely packed that our home's backyards will be looking directly into either a house wall or a street.



In addition I am concerned about the added traffic these ~25 homes will produce. As you can see in the image there are only two roads to the area, Saddleback Dr. and Sorrell Way. 25 new homes will produce between 50-100 new vehicles (assuming 2-4 cars per household) using these two roads, which already serve approximately 20+ homes, or about 60 vehicles. **With this much added traffic it is likely a new traffic light will need to be installed at Saddleback and E. Dunne, a primary thoroughway for traffic to Jackson Oaks and Jackson School.** E. Dunne is already a very busy street. These added home will further congest roads in this area beyond their limits. Furthermore, a light at Saddleback and E. Dunne will also greatly impact traffic

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

to/from Holiday Lakes Estates. A very thorough traffic study should be conducted before agreeing to more than the currently zoned 8 houses.

One final concern I will raise is the impact to the water shed/drainage basin above this property. The gulch/catchment that runs from the north of the properties drains into this property. In years with nominal or heavier rainfall this drainage basin spills into this property forming a creek that runs its length (north to south), through a drainage pipe below the dirt road on its southern border. The image below shows the catchment pond in the gulch that feeds this drainage. In the image you can see the channel cut by the seasonal water flow. My principal concerns are the impact to the wild life that populate the drainage basin, catchment and area around the area, including deer, coyote, opossum, cranes, red tail and white hawks, turkey, etc. The area just north of the property being discussed is zoned as open space. It isn't clear how: 1) the drainage will be redirected to avoid flooding, and 2) how this redirection of flow will impact the environment upstream (in the open space area) and surrounding areas. An environmental impact study should be conducted to understand these impacts.



My last point is more of a personal one. I moved with my wife to California in 2000 to work for NASA Ames Research Center in Mountain View. We moved from Colorado and the population density and prices were a shock. Over time, as our family grew, we sought more space and a closer sense of community. Despite the sometimes VERY long commute to Mountain View, I fell in love with Morgan Hill. I like to brag to my friends that I have "cows and coyotes" in my backyard...the field under question. Being from Colorado this is how I remember my childhood. Morgan Hill reminds me of that. I fear that with the building of these houses we continue to lose what makes Morgan Hill special.

I appreciate the opportunity to bring these concerns to your attention. At a minimum I believe a plan for how the area will be divided into the lots, the placement of roads, sidewalks, etc.,

need to be presented to the communities surrounding the property. Also, a traffic study for the area, including our neighborhood, but also the Jackson Oaks and Holiday Lakes Estates, should be conducted to understand the broad community impact. Finally, an environmental impact study should be conducted to understand the impact to the surround area by redirecting a seasonally significant drainage basin.

Thank you again for your attention to this matter.

Sincerely,

Dr. Anthony Colaprete

2415 Magnolia Ct.
Morgan Hill, CA 94035
Home 408-779-3400
Cell 408-644-3360
Anthony.colaprete-1@nasa.gov

Amy Wang

From: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Sent: Tuesday, July 17, 2018 3:24 PM
To: Terry Linder; Tiffany Brown
Subject: FW: Heritage Greens Re-zoning

Jennifer Carman
 Community Development Director
 City of Morgan Hill
 Jennifer.Carman@morgan-hill.ca.gov
 P. 408.310.4657
 17575 Peak Avenue, Morgan Hill, CA 95037-4128 www.morgan-hill.ca.gov

-----Original Message-----

From: Bryan's Email <baltknecht@gmail.com>
 Sent: Tuesday, July 17, 2018 3:20 PM
 To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
 Subject: Heritage Greens Re-zoning

Jennifer Carman and to those it may concern:

My wife and I and our two children currently reside in the Heritage Greens development on Saddleback Dr. It has come to our attention that there is an effort to re-zone the property adjacent to our community. When we purchased this property nearly 5 years ago we understood that development in this space was a possibility, but that the homes would be minimal in number (8-10) and the lots would be similar in size to those in the area now. We are both very opposed the developer's plan to re-zone in an attempt to place approximately 25 homes in the same space. One of the reasons we chose this community was its quiet nature and the extremely minimal amount of automobile traffic on our side of Saddleback Dr. Another reason we choose this area of Morgan Hill was the proximity of natural habitats and open spaces. The potential overdevelopment of this property would not only increase pollution but it would displace much more of the natural wildlife in the area and likely necessitate the removal of some beautiful oak trees in that location. We understand that an increase in homes has a direct correlation to tax revenue but please carefully consider the factors listed above in your decision on this important matter. The community, the environment, our city resources, and the wildlife in the area will all be negatively impacted if this re-zoning effort is approved. Thank you again for your consideration.

Sincerely,
 Bryan and Melissa Altknecht
 17030 Saddleback Dr
 Morgan Hill, CA 95037
 408-476-3627
 baltknecht@gmail.com

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

Amy Wang

From: Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Sent: Tuesday, July 24, 2018 11:47 AM
To: Amy Wang
Subject: FW: Oppose to Plan amendment
Attachments: Letter to Morgan Hill Community Development Dept.docx

One more. I think this was after the deadline though.

Tiffany Brown
 Associate Planner



CITY OF MORGAN HILL
 17575 Peak Ave
 Morgan Hill, CA 95037
 Tel: 408-310-4655

From: Jennifer Carman
Sent: Sunday, July 22, 2018 9:44 AM
To: Terry Linder <Terry.Linder@morganhill.ca.gov>; Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>
Subject: Fwd: Oppose to Plan amendment

Jennifer Carman
 Community Development Director
 City of Morgan Hill

From: Jaime Mendoza <jalymen3@yahoo.com>
Sent: Saturday, July 21, 2018 11:19:07 PM
To: Jennifer Carman
Subject: Oppose to Plan amendment

Mrs Jennifer Carman:

I very respectfully sent this e-mail to express my strong opposition to the plan amendment to change the land use from Residential Estate to Residential Detached. As a resident of Morgan Hill I believe that this would result in a very negative impacts in different aspects like environmental, wild life, more traffic, less neighborhood security etc.

Please Mrs Jennifer, help us to maintain Morgan Hill a City where it is very pleasant to live and not to turn our town in a overcrowded city with all the problems they bring. Attached is a letter where I express my concerns

Thank you

Jaime Mendoza
 (408)623-5811

Attachment: Combined Comments (1932 : GPA and ZA: E. Dunne - Ross)

David J. Powers & Associates, Inc.
 Environmental Consultants & Planners
 1871 The Alameda - Suite 200
 San Jose, California 95126

(408) 248-3500
 Fax (408) 248-9641

M E M O R A N D U M

TO: Tiffany Brown, Associate Planner, City of Morgan Hill

FROM: Akoni Daniels, Principal Project Manager

DATE: August 27, 2018

SUBJECT: 2275 East Dunne General Plan Amendment & Rezone,
 Responses to Public Comments on the Initial Study for adoption of a Mitigated
 Negative Declaration

I. Introduction

This memorandum addresses the issues raised in public comments received by the City of Morgan Hill on the Initial Study for a Draft Mitigated Negative Declaration (MND) prepared for the proposed “2275 East Dunne General Plan Amendment and Rezone” project.

II. Background

The City is considering a General Plan Amendment to change the land use designation and rezone of the 8.34-acre project site located on 2275 East Dunne Avenue in the City of Morgan Hill.

An Initial Study was prepared for the project pursuant to the California Environmental Quality (CEQA). The Initial Study included a program-level analysis and evaluated the reasonably foreseeable *indirect* environmental effects that would result from the General Plan Amendment and rezone, given that no specific development is proposed that would lead to *direct* physical changes to the environment. The Initial Study considered the anticipated effects of future residential development allowed by the General Plan amendment and rezone, and concluded that the proposed General Plan amendment and rezone would not result in any significant unavoidable environmental impacts, and only potential mitigation measures to be implemented by the future development was

identified. Since there is no proposed specific development at this time, future development shall be subject to project-specific environmental review.

The draft Initial Study was circulated for public review for 30 days, from June 20, 2018 through July 19, 2018. A total of 21 comment letters were received from 20 individuals, these letters are attached to this memorandum. This memo summarizes the environmental issues raised in the public comments and provides responses.

III. CEQA Requirements for Adoption of a Mitigated Negative Declaration

A Mitigated Negative Declaration (MND) is a statement by a public agency that a non-exempt project will not result in significant unavoidable environmental impacts. Adoption of an MND is appropriate when the lead agency determines that the administrative record contains no *substantial evidence* of a reasonable possibility of a significant unavoidable environmental impact. Conversely, if the lead agency identifies substantial evidence in support of a fair argument that a project may result in a significant environmental impact which cannot be mitigated or avoided, an EIR must be prepared. The lead agency is not allowed to weigh conflicting evidence or expert opinion, but must resolve all doubts in favor of preparation of an EIR if substantial evidence has been provided of a reasonable possibility of a significant effect.

Under CEQA, “substantial evidence” means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.

Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. (CEQA Guidelines §15384). Based on the findings presented in the Initial Study, it is concluded that all potential impacts identified in the Initial Study can be mitigated to a less than significant level and therefore, an EIR is not required, and the GPA and rezoning project qualifies for an MND.

IV. CEQA Requirements for Responding to Public Comments on a Negative Declaration

CEQA Guidelines Sections §15073, 15073.5, and 15074 provide direction on the public review of a draft MND, when a draft MND must be recirculated for additional public review, and the process for consideration and adoption of an MND, respectively. In contrast with the more exhaustive EIR public review process requirements (per CEQA Guidelines Section §15088) that mandate the lead agency must provide written responses to comments received involving environmental issues, written responses are not mandated for public comments received on a draft MND. No specific requirements are placed on a lead agency as to how to address issues raised in public comments received on the draft MND, other than to be vigilant for the presence of substantial evidence in support of a fair argument the project at issue may result in a significant impact, as discussed in the preceding section.

V. Responses to Issues Raised in Public Comments Received on Draft Negative Declaration

The 21 comment letters received by the City during the Initial Study public review period are attached. The comments fall into several categories or issue themes.

a. *Opposition to the Proposed General Plan Amendment and Rezone*

A number of comments expressed opposition to the proposed General Plan Amendment to change the land use designation onsite from *Residential Estate (one dwelling unit/acre)* to *Residential Detached Low (four dwelling units/acre)* and rezoning from *Residential Estate - one acre* to *Residential Detached Low Density 12,000-square foot* in order to allow up to 25 residential units onsite, and that the existing land use designation and zoning should remain as is. The opposition was reasoned with a range of environmental concerns to local neighborhoods at Heritage Greens, Jackson Oaks, Holiday Lakes Estates, and residents on Rosetta Drive, Shafter Avenue, and Shafer Court, touching on many of the issue topics presented in the Initial Study, such as: aesthetics, air quality, geology, biology, hydrology/water quality, public services, noise and vibration, traffic/transportation, utilities and service systems.

Discussion a: The comments state opinions that the City Council should not change the General Plan land use and zoning of the site. The comment also indicates the proposed General Plan amendment and rezone would allow 25 units. As described in *Section 3.5 Development Assumptions for the Environmental Review* of the Initial Study, a maximum of 30 residential units/lots (363,290-square foot site divided by 12,000-square foot lots) could theoretically be considered based on the site of the site. However, this density is unlikely due to the requirements for land to be devoted for roads, right-of-way, and setbacks, etc. For the purpose of the Initial Study, development of 75 percent of the maximum possible development was used to derive the reasonable foreseeable development potential of the proposed project site under the proposed General Plan designation. This would allow development of approximately 22 dwelling units onsite, based on site acreage, for the proposed General Plan amendment and rezone.

Topics of concern associated with the project's impact on the environment are further discussed below with references to the appropriate sections of the Initial Study.

b. *Change in Visual Character*

Comments expressed concerns that future development onsite would block adjacent residences' views of the Morgan Hill foothills, the visual character of the existing neighborhood, and the area's rural character.

Discussion b: As discussed in *Section 4.1 Aesthetics* of the Initial Study, the project site is surrounded by rural residential uses with large lots to the north, east and west, and a one- to two-story single-family subdivision to the south/southeast. Views from the project site are

limited to its surrounding area, and the site is not located near a scenic vista, nor along a state scenic highway. Future development of up to 22 single-family dwelling units would not obstruct public view of a scenic vista or designated scenic resources. The existing visual character of the area is suburban. Future development of up to 22 single-family dwelling units would be similar in character and mass/height to the existing development south/southeast of the site, and the design would be subject to review and approval by the City to ensure it meets local design and aesthetic standards.

For these reasons, the IS accurately discloses the likely visual change that will result from the future residential development, and the comments do not provide substantial evidence in support of a fair argument that the project would result in a significant visual impact.

c. *Air Quality and Noise During Construction and Operation*

A comment expressed concerns regarding air quality and noise impacts on to nearby residents during construction and operation of the future development allowed under the proposed General Plan amendment and rezone, producing excessive noise, dust, dirt, and fumes.

Discussion c: As discussed in *Section 4.3 Air Quality* of the Initial Study, the project site is adjacent to residential uses, which are categorized as sensitive receptors. As required by the City and Bay Area Air Quality Management District (BAAQMD), future development shall be required to implement all Basic Construction Mitigation Measures listed in Table 8-2 of the BAAQMD CEQA Air Quality Guidelines as part of the project design during construction period (see page 20 of the Initial Study for the complete measures), which would reduce dust and other particulate matter impacts to a less than significant level.

Construction of future development would require the use of diesel equipment (e.g., generators, excavators, dozers, grader, etc.). The exhaust from diesel equipment contains diesel particulate matter, which is a known toxic air contaminant. Since no specific development is proposed at this time, construction related impacts would be addressed during future project-level environmental review, along with effective mitigation measures (e.g., use of alternative fuel construction equipment), to reduce potential health risks to a less than significant level, if necessary.

Regarding noise, based on the General Plan land use compatibility guidelines for community noise environments, low density single-family residential development is allowed in areas with ambient noise levels up to 60 A-weighted decibel (dBA) community noise equivalent level (CNEL), and is conditionally allowed in areas with noise levels up to 70 dBA CNEL. Noise levels in the project area are expected to be at or below 60 dBA CNEL in year 2035. As discussed in *Section 4.12 Noise and Vibration* of the Initial Study, typically small residential, commercial, or office construction projects do not generate significant noise and vibration when standard construction noise control measures are enforced at the project site and when the duration of the noise generating construction period is limited to one

construction season (typically one year) or less. The Initial Study identified standard measure SM NOI-1 (see page 28 of the Initial Study) to be considered at the time future development is proposed, which requires implementation of standard construction noise suppression measures (to be reviewed and approved by the City) during construction activities to reduce noise levels to a less than significant level.

d. Impacts to Open Space, Wildlife Displacement and Tree Removal

Several comments were made that future development under the proposed General Plan amendment and rezone would displace wildlife in the area, including deer, coyote, opossum, cranes, red tailed hawk and white-tailed kites, turkeys, peacocks, frogs, toads, lizards, and snakes known to appear on the project site/area and populate around the drainage that passes from the hill to the east and through the site, and concerns that oak trees will be removed.

Discussion d: As discussed in *Section 4.4 Biological Resources* of the Initial Study, the proposed project site is located in the Santa Clara Valley Habitat Plan (SCVHP) study area. SCVHP is a habitat conservation program intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 500,000 acres of southern Santa Clara County. The Habitat Plan identifies and preserves land that provides important habitat for endangered and threatened species. The subject site is not identified for conservation as part of the SCVHP, nor are covered species likely to be present on the site.

The land preservation program is intended to provide mitigation for the environmental impacts of planned development, public infrastructure operations, and maintenance activities, as well as to enhance the long-term viability of endangered species. Projects covered by the SCVHP are required to submit an application to Santa Clara Habitat Agency to verify the land cover type of the site. The 8.34-acre site is mapped as Rural Residential land cover. No special status wildlife species are recorded in the project area. As discussed throughout the Initial Study, there is an existing drainage that passes through the site. The drainage does not appear to be a sensitive habitat, however the Initial Study identified standard measure SM BIO-1 that requires a land cover verification be conducted by a qualified biologist at the time a specific development (i.e. subdivision) is proposed and undergoing project-level CEQA review, to verify if the drainage is a Category 2 stream,¹ in which a wetland delineation would be required, and SM BIO-2 which requires a completion of a nesting bird preconstruction survey if construction takes place during the avian nesting season (see page 26 and 27 of Initial Study). Future development would also be subject to paying all applicable SCVHP fees to reduce its biological resources impacts to a less than significant

¹ Category 2 stream is a stream type that may not have sufficient flow to support covered and riparian habitat. These streams include all ephemeral streams and some intermittent stream reaches. These reaches provide minimum support of water-quality functions and primary breeding habitat for covered species. Source: Santa Clara Valley Habitat Agency. *Santa Clara Valley Habitat Plan*. August 2012.

level. The comment mentions a number of common wildlife species (e.g. deer, turkeys, coyote, lizards, etc.) that are seen in the vicinity of the site; these species would be displaced from the site upon future development, but would instead utilize abundantly available habitat nearby in the east foothills.

There are approximately six existing trees onsite, some of which appear to be Eucalyptus and Oak trees, and may be defined as “protected trees” pursuant to Section 12.32.020 (G) of the City’s Municipal Code. No special status plant species are recorded in the project area. As identified in the Initial Study, standard measure SM BIO-3 requires future development to submit a tree removal permit application and replace removed trees at the ratio determined by the trees species and size (see page 28 of the Initial Study). The precise number of trees to be removed will be determined at the time a specific subdivision project is filed with the City.

e. Environmental Impact Study on Existing Drainage Onsite Flooding from Existing Pond and Drainage Off-Site

Multiple comments raised concerns with the existing drainage on the project site, and the implications of developing the site and redirecting the drainage pattern, creating potential flooding. A comment requested that an “environmental impact study” be conducted to evaluate this issue.

Discussion e: As discussed in *Section 4.4 Biological Resources*, *4.6 Geology and Soils*, and *Section 4.9 Hydrology and Water Quality* of the Initial Study, there is an existing drainage feature that passes through the site from the northeast to the southwest of the site. As part of the Initial Study, an Initial Geotechnical Investigation was prepared to evaluate potential geologic hazards and impacts to the project site and its surrounding area with development of approximately 22 single-family dwelling units allowed under the proposed General Plan amendment and rezone. The Initial Study supplemented by the geotechnical investigation concluded that future development, with incorporation of standard measures SM HYD-1 to adequately reduce and convey stormwater runoff (see page 44 of the Initial Study) and SM GEO-2 to prepare a design-level geotechnical investigation to include a debris flow analysis (see page 35 of the Initial Study). Implementation of these standard measures would ensure future development would not result in off-site flooding through changing the drainage pattern onsite. Future project-level environmental review of a specific subdivision project will confirm that the proposed subdivision conforms with applicable hydrology and drainage requirements of the City and Santa Clara Valley Water District identified in the current Initial Study.

f. Increase in Traffic and Traffic Safety

Various comments were made related to increased traffic and safety concerns due to project cars using area streets, including Sorrel Way, Saddleback Drive, Magnolia Way, and Hill Road between East Dunne Avenue and East Main Avenue. Comments also requested that a traffic study be prepared

to look at impacts to the local neighborhoods at Heritage Greens, Jackson Oaks, and Holiday Lakes Estates, and closing off access to East Dunne Avenue from Magnolia Street.

Discussion: As discussed in Section 4.16 *Transportation/Traffic* of the Initial Study, the City of Morgan Hill and Santa Clara Valley Transportation Authority's Transportation Impact Analysis guidelines require a Transportation Impact Analysis (TIA) be prepared when a project generates 100 or more new peak hour (AM and/or PM peak hour) trips. The AM and PM peak hours are between 7 AM to 9AM and 4 to 6 PM, respectively. Based on the trip generation rates for single-family units, 22 dwelling units would generate approximately 17 AM peak hour trips (four inbound, 13 outbound) and 22 PM peak hour trips (14 inbound, eight outbound).² For these reasons, it is concluded future development onsite allowed under the proposed General Plan amendment and rezone would not result in significant traffic impacts at the local intersections, including those listed above. Therefore, a TIA is not warranted to study the need for traffic signals or roadway improvements at these nearby intersections. As discussed in *Section 3.0 Project Description* of the Initial Study, future development allowed under the proposed General Plan amendment and rezone would require additional right-of-way for future site access and circulation, including the following:

- Extend either Sorrel Way or Saddleback Drive to the north;
- Connect dead ends of Sorrel Way and Saddleback Drive to form a loop; and
- Widen right-of-way width of Sorrel Way and/or Saddleback Drive to 60 feet to allow for detached sidewalk with a five-foot landscape strip.

The design of these improvements would be reviewed by the City for consistency with the City's design standards during the subdivision phase, the design of which would also be reviewed by Morgan Hill Fire Department and Department of Public Works to ensure adequate emergency access.

Aside from when a project is proposed, the City typically looks at making improvements to roadway segments/intersections that is or is projected to perform below the City's level of service standard. A review of the Morgan Hill 2035 General Plan EIR shows the levels of service at intersections within the project area along East Dunne Avenue are estimated at LOS C under both existing conditions and under 2035 General Plan buildout condition. The project would generate a small amount of additional traffic and the local intersections would continue to meet the City's minimum acceptable level of service standard of LOS D for unsignalized intersections. The City also reviews accident reports at local intersections when determining the need for a traffic signal or stop sign. A review of reported crash incidents on East Dunne Avenue between Sorrel Way and Magnolia Way, provided by Morgan Hill Police Department, shows there were three accidents recorded in the past five years. Based on the City's review, it is determined that no new traffic signals or stop signs are warranted for the Sorrel Way/East Dunne, Saddleback Drive/East Dunne, and Magnolia Way/East Dunne intersections. In addition, future development allowed under the proposed General

² Institute of Transportation Engineers. *Trip Generation Manual, 10th Edition*. Land Use (210). September 2017.
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Plan amendment and rezone would not use Magnolia Way as a direct access point and therefore, would not be subject to making improvements to that intersection, including closing off Magnolia Way.

g. Strain on Resources and Infrastructure

Various comments were made with general concerns with increasing strain on existing resources and infrastructure, including utilities (i.e., water), and public services (i.e., school) demands.

Discussion: As discussed in *Section 4.13 Population and Housing* and *Section 4.17 Utilities and Service Systems* in the Initial Study, residential development within the City of Morgan Hill is controlled by the Residential Development Control System (RDCS). Morgan Hill's RDCS process meters the amount of residential development occurring within the City in any given year, typically up to 215 units annually, to ensure the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. By metering residential growth, the RDCS is a tool for the City to ensure infrastructure, including new water supply facilities have adequate capacity before development is approved. Future development allowed under the proposed General Plan amendment and rezone would require an award of RDCS allotments prior to processing entitlements for a project at the site. RDCS competition standards give points to projects that do not require off-site extension of utility lines and/or projects that do not require water improvements beyond minimum requirements. Future development of approximately 22 dwelling units onsite, if granted the allotments by RDCS, would not substantially increase water demand onsite, and would not result in significant impacts to water supplies, or other service systems such as the wastewater treatment facilities, or landfill serving the City.

As discussed in *Section 4.14 Public Services* of the Initial Study, future development allowed under the proposed General Plan amendment and rezone would incrementally increase demand on public services, including schools. Using the Morgan Hill Unified School District's student generation rates per unit for housing, the addition of 22 single-family residences would generate approximately 11 students.³ Future development onsite would be required to pay a school impact fee prior to issuance of a building permit, in accordance with the state law (California Government Code Section 65996). Fees are assessed based upon the square footage of the new development, therefore, would not substantially degrade existing school facilities nor result in the need for new permanent facilities to be constructed.

³ Morgan Hill Unified School District. Demographic Study 2014-2015. March 2015

The estimated student generation rate of 0.465 for new residences within the Morgan Hill Unified School District.

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City of Morgan Hill

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VI. Conclusion

Based on the foregoing, none of the comments received on the draft Initial Study warrants recirculation to provide for additional public review, nor do the comments introduce substantial evidence in support of a fair argument that the proposed General Plan Amendment and rezone may result in a significant impact to the environment. Therefore, the Initial Study/MND is eligible for consideration and adoption by the City Council as part of its deliberations involving the proposed General Plan amendment and rezone.



PLANNING COMMISSION STAFF REPORT

MEETING DATE: September 25, 2018

PREPARED BY: Rebecca Garcia, Housing Manager

APPROVED BY: Jennifer Carman, Community Development Director

PRESENTATION OF THE BELOW-MARKET-RATE (BMR) PROGRAM DEVELOPMENT STANDARDS

RECOMMENDATION(S)

Receive information and provide comments regarding the proposed BMR Program Development Standards.

POLICY CONSIDERATIONS:

Should the City Council consider adopting revised BMR Development Standards, consistent with the Inclusionary Housing Ordinance?

BACKGROUND:

The City's Below Market Rate (BMR) Development Standards were presented with a report titled "Housing Program Update" and approved by City Council Resolution No. 16-081 on May 18, 2016.

The BMR Development Standards establish criteria and requirements that the City will use to ensure that affordable residential units (rental and ownership), are planned and developed in accordance with City Council policies, and the Residential Development Control System (RDCS). The Development Standards are designed to guide the implementation and construction of the units, to ensure quality homes are built consistent with the character of the neighborhood, and providing guidance for the inclusion of materials and amenities within each unit.

On May 8, 2018, the Planning Commission was presented information regarding the City's "Strategy for Increasing the Supply of Affordable Housing". The most recent 2017 annual report indicates that the City is required to produce 193 more Very Low Income (VLI) affordable units to meet the goals for this Regional Housing Needs Allocation (RHNA) cycle (2015-2022).

The Planning Commission spent a significant amount of time on the Affordable Housing Criteria of the RDSCS Competition Manual and recommended the City Council require a 15 percent inclusionary public benefit requirement. To further the City's affordable housing production efforts, the City Council considered and approved an Inclusionary Housing Ordinance (IHO) on July 18, 2018. Staff recommended establishing a requirement for a minimum of 15 percent affordable housing units in all housing projects

outside of the Downtown and 10 percent within the Downtown, consistent with discussions with the City Council, Planning Commission, and the Development Community regarding the new and changing State housing legislation, including rules for performance and accountability (the Housing Accountability Act), the City's assigned Regional Housing Needs Allocation (RHNA) goals and the relationship to the intricacies of the RDCS (Measure S). At the July 18, 2018 meeting, staff indicated that as a follow up to the IHO action, new housing in-lieu fees would be presented to reflect the 15 percent and 10 percent affordable housing requirements.

DISCUSSION:

The new housing in-lieu fee will be presented to the City Council on September 26, 2018. With the fee update, a comprehensive update of the City of Morgan Hill's BMR Development Standards is to be considered (Attachment 1).

The City's affordable housing efforts have historically derived from, and been guided by, the RDCS Program, Morgan Hill's voter-approved growth management system that limits the total amount of new population as well as the pace of new residential construction and encourages high-quality development that enhances residents' quality of life. The RDCS was first established in 1977 and has been extended and modified multiple times by voters since then. It has continued to serve as a tool to respond to diverse housing needs by implementing various policies to improve, preserve, and create safe quality rental and ownership housing in Morgan Hill for residents at all income levels. In partnership with private and non-profit developers, combined with efforts of the former Morgan Hill Redevelopment Agency, the City, utilizing the RDCS, has achieved a per capita housing diversity legacy.

Although the City of Morgan Hill has proudly produced a significant amount of affordability per capita, it remains tasked with responding to changing legislation which requires deeper levels of affordability be produced in accordance with meeting all RHNA goals. This means that not only is the state setting goals for the number of units which represent the City's fair share of production but is requiring the City to produce those housing units with affordability to specific extremely low, very low, low, and moderate-income families within a set time-frame.

Unique opportunities may present themselves with partnerships between market rate and nonprofit developers, as such, the BMR Development Standards have been updated to facilitate high quality projects and to be used as a tool to achieve the RHNA goals.

The proposed BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project. These BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects. The City may consider instances where deviations from these standards may be

appropriate for the provision of inclusionary or affordable units that result in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council).

A provision has been added to provide the flexibility to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project provides more community benefit than a straight dispersal. Example: A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits and County Measure A funds to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's RHNA goals.

To assist in achieving the City's RHNA requirements, it is recommended that the revised BMR Development Standards be implemented for this next RDCS competition to encourage market rate and affordable housing developers to partner whenever possible to promote mixed income developments.

LINKS/ATTACHMENTS:

1. BMR Program Development Standards 9_20_2018

Below Market Rate (BMR) Program Development Standards

Below Market Rate (BMR) Program Development Standards

- A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood, and providing guidance for the inclusion of materials and amenities within each unit.
- B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.
- C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:
 - a. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.
 - b. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.
- D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

This provision has been added to provide Staff, Planning Commission, and the City Council with the flexibility to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project provides more community benefit than a standard dispersal. Example: A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits, County Measure A funds and other funding sources in order to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's Regional Housing Needs Allocation (RHNA) goals.

BMR units are subject to the following development standards:

1. Location. BMR units shall be distributed evenly throughout the project.

2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project;
3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project;
4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate
5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.
6. Minimum Interior standard finishes will be as follows
 - a. All closets shall have doors
 - b. Interior doors to be raised panel type or same as market rate
 - c. Door hardware to be brass/chrome/brush nickel finish or equivalent
 - d. Appliances shall be major brand name
 - e. Microwave with an exhaust vent shall be installed over the range
 - f. Kitchen counters shall be white ceramic tile ceramic tile; however, granite is preferred if it is standard in the market rate units
 - g. Kitchen cabinets shall be stained wood with white melamine interiors
 - h. If installation of an Air Conditioner is a standard feature for market rate units, then it is a standard for the BMR units.
 - i. If a basic alarm system is a standard feature in the market rate units, then it is a standard for the BMR units.
 - j. Carpet in bedrooms, hallways, family rooms
 - k. Linoleum or tile entry, bathroom kitchens
 - l. Laminate flooring may substitute for carpet or linoleum
 - m. Electric garage door opener
7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the Residential Development Control System (RDCS). For example, for a project with 24 units, with a 15% BMR ownership housing commitment, at least one BMR unit shall be constructed before or concurrently with every 6th market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The Community Development Director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units.