



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, October 9, 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

1. **AAE2018-0013 (DAA 09-05): COCHRANE – TOLL BROTHERS DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE 25, FISCAL YEAR 2019/2020 RESIDENTIAL BUILDING ALLOTMENTS AWARDED FROM THE 2017 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM FOR THE COCHRANE-BORELLO PROJECT (ALSO KNOWN AS BORELLO RANCH BY TOLL BROTHERS).**

Recommendation:

Adopt a Resolution approving an amendment to a Development Agreement (DA 09-05) to incorporate 25 residential building allotments for Fiscal Year 2019/2020.

2. **APPROVE THE APRIL 11, 2017 MEETING MINUTES**

Recommendation:

Approve Minutes.

3. **APPROVE THE APRIL 25, 2017 MEETING MINUTES**

Recommendation:

Approve Minutes.

4. **APPROVE THE SEPTEMBER 25, 2018 MEETING MINUTES**

Recommendation:

Approve Minutes.

OTHER BUSINESS

5. **MORGAN HILL 2018 ELECTION AND BALLOT MEASURE OVERVIEW**

Recommendation:

No action necessary.

PUBLIC HEARINGS

6. **ZA2018-0005: CITY OF MORGAN HILL - AN AMENDMENT TO TITLE 18, DIVISION I ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER 18.28 - OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE**

Recommendation:

1. Open/close the public hearing; and,
2. Adopt a Resolution recommending City Council approval of ZA2018-0005: City of Morgan Hill

DIRECTOR'S REPORT/ANNOUNCEMENTS

ADJOURNMENT

October 9, 2018

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: October 9, 2018

PREPARED BY: Terry Linder, Interim Planning Manager

APPROVED BY: Jennifer Carman, Community Development Director

AAE2018-0013 (DAA 09-05): COCHRANE – TOLL BROTHERS DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE 25, FISCAL YEAR 2019/2020 RESIDENTIAL BUILDING ALLOTMENTS AWARDED FROM THE 2017 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM FOR THE COCHRANE-BORELLO PROJECT (ALSO KNOWN AS BORELLO RANCH BY TOLL BROTHERS).

RECOMMENDATION(S)

Adopt a Resolution approving an amendment to a Development Agreement (DA 09-05) to incorporate 25 residential building allotments for Fiscal Year 2019/2020.

LOCATION MAP



PROJECT SUMMARY:

1. Location: Cochrane Road adjacent to Alicante Estates and Alicante Ranch bordered by Peet Road on the east and Cochrane/Coyote Road to the east and south. (APNs 728-34-029 and 026, 728-60-001 through 057)
2. Site Area: 122 Acres
3. General Plan: Residential Detached Low
4. Zoning: RDL 20,000 PD

BACKGROUND:

The 244-unit Borello Ranch project first received allotments in 2009. The project Environmental Impact Report (EIR), Precise Development Plan, Development Agreement and Subdivision approvals were granted in 2013. In July 2016, the project was acquired by Toll Brothers. Fifty-four units are currently under construction. In July 2018, an additional 25 lots were created by the recording of Final Maps. In June 2018, the project was awarded 25, ongoing residential building allotments for FY 2019/2020.

PROJECT DESCRIPTION:

On September 19, 2018, a Development Agreement Amendment request was filed by Toll Brothers requesting the incorporation of 25, 2019/2020 fiscal year residential building allotments into the project. This request can be processed with an Administrative Amendment approved by the Planning Commission.

ANALYSIS:

The proposed request was analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and 3) Residential Development Control System (RDCS)

1. General Plan

The City of Morgan Hill controls population growth through implementation of the RDCS. The 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.

The project is consistent with the General Plan land use designation and the provisions of the RDCS. The proposed Development Agreement Amendment request will not alter the project's consistency with the General Plan and through the public benefit commitments will further implement the provisions of the RDCS.

2. Zoning Ordinance

Chapter 18.116 (Development Agreements) of the Morgan Hill Municipal Code establishes procedures for processing Development Agreements in compliance with Government Code Sections 65864 through 65869.5. Any Development Agreement may be modified by mutual consent of the parties and compliance with the procedures specified in Municipal Code Section 18.116.040 (Consideration of Proposed Development Agreements).

Consistent with the Morgan Hill Municipal Code, Section 3.04 (Amendments) of the Development Agreement states that amendments or modifications to the Agreement or Project Approval are subject to applicable and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations.

For purposes of this Development Agreement Amendment, the RDCS Development Agreement processing provisions would apply.

3. Residential Development Control System

Chapter 18.156.100 of the Municipal Code requires the City Council to adopt and maintain an RDCS Competition Manual. Chapter IV of the RDCS Competition Manual incorporates the RDCS Implementation Policies. Pursuant to Policy H of the RDCS Competition Manual, the Planning Commission is authorized to approve minor amendments to an RDCS Development Agreement, such as time extensions and allotment adjustments for ongoing projects through approval of a Planning Commission Resolution.

The proposed amendment would modify the Development Agreement to incorporate 25, FY 2019/2020 residential building allotments into the project.

Conclusion

The proposed Development Agreement amendment is mutually agreed to by the City and the applicant, therefore, approval of the attached Resolution is recommended.

California Environmental Quality Act (CEQA):

An EIR was prepared and certified for the project site on February 27, 2013. No further environmental analysis is required.

LINKS/ATTACHMENTS:

1. PC Reso 2
2. Final Signed and Recorded DA
3. Amendment to Toll DA.10.09.18

RESOLUTION NO. 18-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT AMENDMENT DAA 09-05C: COCHRANE – TOLL BROTHERS (AAE2018-0013) FOR THE COCHRANE-BORELLO RANCH DEVELOPMENT TO INCORPORATE 25, FY 2019-2020 ALLOTMENTS AWARDED TO RDCS 2016-0015: COCHRANE-BORELLO (APNS 728-34-029 & 030, 728-60-001 through -057)

WHEREAS, the Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, has awarded building allotments to applications MC 11-03: Cochrane-Borello, 15 building allotments (FY 2013-2014), MC 13-21: Cochrane-Borello, 25 building allotments (FY 2015-2016), MC 14-12: Cochrane-Borello, 15 building allotments (FY 2016-2017), RDCS2016-0015: Cochrane-Borello, 16 building allotments (FY 2018-2019) and 25 building allotments (FY 2019-2020);

WHEREAS, on March 27, 2013, the City Council adopted ordinance No. 2065 which approved a Development Agreement for the 244-unit project;

WHEREAS, on September 2, 2015, the City Council adopted Ordinance No. 2161, N.S., which approved an amendment to the Development Agreement incorporating 15 building allotments;

WHEREAS, on June 1, 2016, the City Council adopted Ordinance No. 2201, N.S., which approved an amendment to the development schedule granting an extension to 15 building allotments (FY 2013-2014) and 25 building allotments (FY 2015-2016);

WHEREAS, on June 7, 2017, the City Council adopted Ordinance No. 2243, N.S., which approved an amendment to the development schedule, granting a six-month extension to 15 building allotments (FY 2016-2017) and incorporating 16, FY 2018-2019 allotments;

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, section IV.H of the Residential Control System manual adopted by City Council authorizes minor amendments to Development Agreements, such as time extensions and allotment adjustments for ongoing projects, to be approved by Planning Commission resolution;

WHEREAS, on September 19, 2018, Toll CA XX requested the incorporation of the 25 on-going FY 2019-2020 building allotments into the approved and recorded Development Agreement; and

WHEREAS, said Development Agreement Amendment request was considered by the Planning Commission at its regular meeting of October 9, 2018, at which time the Planning

Commission approved the requested Development Agreement Amendment for application AAE2018-0013 (DAA 09-05C):Cochrane-Borello.

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 of the City and Toll CA XX, LP as required by Morgan Hill Municipal Code Chapter 18.116.040.
- 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 244 single-family residential units. There have been no General Plan policy conflicts identified with the proposed project.
- SECTION 3.** The City Council of the City of Morgan Hill found that, on the basis of the whole record before it (including the EIR and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Environment Impact Report adopted by the City Council in February 2013 represents the City Council's independent judgment and analysis, and that the EIR was adopted prior to action taken to adopt the original project proposal. The addition of the remaining building allotments to the Development Agreement does not alter the environmental analysis. The custodian of the documents or other material which constitute the record shall be the Community Development Department.
- SECTION 4.** The Planning Commission approves an amendment to Section 3.03 Establishment and Extension of Residential Development Control System Building Allotments and Section 3.04 Amendments, of the recorded Development Agreement to incorporate the 25 on-going, FY 2019-2020 building allotments and to clarify the amendment process going forward.

PASSED AND ADOPTED THIS 9TH DAY OF OCTOBER 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Attachment: PC Reso 2 [Revision 1] (1975 : Toll DA amendment)

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

Attachment: PC Reso 2 [Revision 1] (1975 : Toll DA amendment)

23985458Regina Alcomendras
Santa Clara County - Clerk-Recorder

07/19/2018 08:58 AM

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:City of Morgan Hill
Community Development Department
17575 Peak Avenue
Morgan Hill, CA 95037

Titles: 1 Pages: 56

Fees: \$0.00
Taxes: \$0
Total: \$0.00RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT CODE SECTION 27383

127-04-18-041

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MORGAN HILL AND TOLL CA XX,
A CALIFORNIA LIMITED PARTNERSHIP
REGARDING THE
SAN SEBASTIAN RESIDENTIAL DEVELOPMENT PROJECT**

Attachment: Final Signed and Recorded DA (1975 : Toll DA amendment)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
TOLL CA XX, a CALIFORNIA LIMITED PARTNERSHIP

This Amended and Restated 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 Toll CA XX, a California Limited Partnership, 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**." This Amended and Restated Development Agreement replaces the Development Agreement approved by Ordinance 2065, as subsequently amended and restated by Ordinance 2161, and amended by Ordinance 2201.

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. RDCS Applications: MC 11-03/MC 13-21/MC 14-12/RDCS 2016-0015: Cochrane-Borello;
2. Environmental Assessment: EA 09-23: Cochrane-Borello;
3. Zoning Amendment Application: ZA 09-08: Cochrane-Borello; and,

4. Subdivision Application: SD 09-07: Cochrane-Borello.

The Existing Approvals are more particularly described in the EIR, 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 February 14, 2012, February 25, 2014, February 10, 2015 and January 10, 2017, the Morgan Hill Planning Commission approved allotments for the Project pursuant to Chapter 18.78 of the Morgan Hill Municipal Code ("**Residential Development Control System**", or "**RDCS**"). For purposes of this Agreement, references to Chapter 18.78 or RDCS shall reference the Chapter as it existed through February 28, 2017, unless otherwise specified herein. This Agreement serves to secure in a permanent and enforceable manner the public benefits set forth in Exhibit C, included in the Developer's application, as required pursuant to Section 18.78.060.A of Chapter 18.78 of the Code. The purpose of this amendment is to incorporate 16 fiscal year 2018-2019 allotments and approve an extension of 15 fiscal year 2016-2017 allotments due to rain delays.

G. On April 25, 2017, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**"), adopted a Resolution confirming CEQA compliance for this Agreement, finding that this Agreement is consistent with the City's General Plan and the Zoning Ordinance, and recommending that this amended Agreement be approved by the City Council.

H. On May 17, 2017, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("**City Council**") introduced Ordinance No. 2243 ("**Ordinance**"), accepting the recommendation of the planning commission, finding that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan, and approving this Agreement. The City adopted the Ordinance on June 7, 2017, and the Ordinance became effective thirty (30) days later.

I. The amended Development Agreement approved by Ordinance No. 2243 was not timely recorded, and subsequent changes have been made by action of City Council which affect the amended Development Agreement, as referenced herein. On November 15, 2017, the City Council introduced Ordinance No. 2264 and on December 6, 2017, City Council adopted Ordinance No. 2264, which allows allotments granted to a project under a previous Residential Development Control System (RDCS) (e.g., Measure C) to change when the allotments are considered exercised to be pursuant to Section 18.78.160.A of the RDCS Ordinance (Measure S). Under Measure S, an allotment is considered exercised with the recordation of a Final Map, issuance of a grading permit, or the commencement of construction if no Final Map or grading

permit is required. Therefore, Developer may exercise its allotments pursuant to Measure S provisions.

ARTICLE 1 ADMINISTRATION

1.01 Effective Date. 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 Recital D 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 as may have been modified through the date of recordation 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 and recordation of this Agreement, and that applies City wide.
- (10) **"Project"** shall mean the development containing 244 single family residential units as more particularly described in the Environmental Impact Report titled Cochrane-Borello, dated August 2012. Any reference in this Agreement to the "Project" shall mean and include the "Property" to which this Agreement applies, but may only be a phase of the complete development of the Property.
- (11) **"Project Approvals"** mean, collectively, all phases of the Project Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 122 acres located within the City, as more particularly described and shown on *Exhibit B* to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.78 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 the Subdivision Map Act and this Agreement, any tentative map, vesting tentative map, parcel map, final map, or Subdivision Improvements Agreement, 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, 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.

(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 development allotments for the Project pursuant

to 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 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) 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 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):

Attachment: Final Signed and Recorded DA (1975 : Toll DA amendment)

- 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; 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.

(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 according with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential building 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 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, 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 Residential Development Control System (RDCS) allotment approval program. These requirements are not considered 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 building 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 to providing a public benefit contribution in addition to those measures 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 building 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. No changes which would degrade the quality of the project, lower the value of commitments or lower the total point score in the RDCS evaluation, or 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 applications MC 11-03: Cochrane-Borello (allotments awarded February 14, 2012), MC 13-21 Cochrane-Borello (allotments awarded February 25, 2014), MC 14-12: Cochrane-Borello (allotments awarded February 10, 2015), RDCS 2016-0015 (allotments awarded January 10, 2017) 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 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, 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 18.78.160 (as adopted by Ordinance number 2229) of Chapter 18.78 of the Morgan Hill Municipal Code.

(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 off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance pursuant to said contracts, 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. 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 exceeds 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 pursuant to 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 service 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 concerning property located in a flood hazard zone (Government Code Section 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 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), 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) 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.

(c) 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 18.78.160 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 18.78.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Allotments must be exercised as follows:

FY 2013-2014-(15 units)	01-15-17
FY 2015-2016-(25 units)	06-30-18
FY 2016-2017-(15 units)	12-30-17
FY 2018-2019-(16 units)	06-30-19

On August 24, 2016, Phase 1 Final Map recorded for Tract No. 10176 exercising 21 allotments. On November 7, 2016, Phase 1B Final Map recorded for Tract No. 10330 exercising 33 allotments. Phase 2A Final Map for Tract 10451 will record no later than June 30, 2018 exercising 16 allotments.

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.

No amendment to this Development Agreement shall be necessary to extend the RDCS exercise of allotment date as provided in Section 3.03, nor to substitute an RDCS Commitment as provided in Section 2.04(b) of this Agreement.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, 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) 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 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.

(b) 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.

(c) 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.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once per year 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 war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, 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 attorney's 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 attorney's 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 attorney's fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorney's 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 reenact 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 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 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 Development Approvals and, as and when they are issued, the Subsequent Development Approvals; and 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 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 received five days after the date of mailing or upon date of personal delivery.

If to City:

City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Tel: (408) 779-7259
Fax: (408) 779-3117

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

If to Developer: Attn: Toll Brothers CA XX
Rick Nelson
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566-7053

(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:

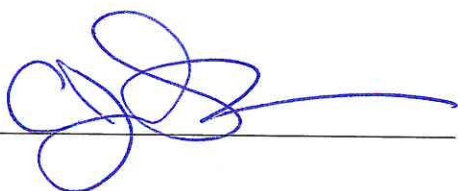
Exhibit A *Description of Project*

Exhibit B *Legal Description of Lot on Which Project is to be Located*

Exhibit C *RDCS Project Requirements and Commitments*

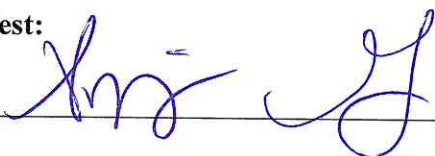
IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ 

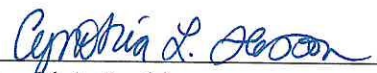
Christina J. Turner
City Manager

Date: 7/16/18

Attest:
s/ 

Angie Gonzalez
Deputy City Clerk

Approved as to Form:

s/ 
Donald A. Larkin
City Attorney

Date: 7-3-18

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

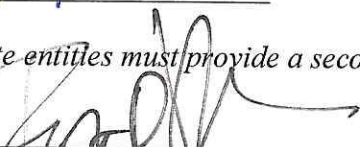
DEVELOPER:

TOLL CA XX, LP
s/ 

BOBO CALLAHAN / SENIOR VICE PRESIDENT
Name/Title [print]

Date: 5/23/18

Corporate entities must provide a second
signature:

s/ 
Robert D. Mone Group President
Name/Title [print]

Date: 5/23/18

Attachment: Final Signed and Recorded DA (1975 : Toll DA amendment)

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 Alameda

On May 23, 2018 before me, Allison, Sweeney, Notary Public
(insert name and title of the officer)

personally appeared Todd Callahan and Robert D. Moore,
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.

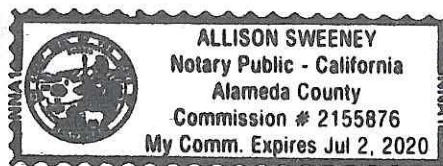
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Allison Sweeney

(Seal)



Attachment: Final Signed and Recorded DA (1975 : Toll DA amendment)

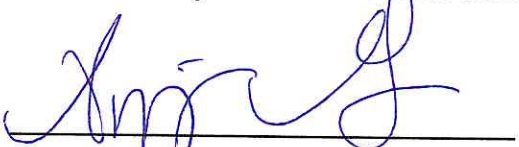
A notary or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On July 16, 2018, before me, Angelica Gonzalez, a Notary Public in and for said County and State, personally appeared Christina Turner, 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, 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)

Attachment: Final Signed and Recorded DA (1975 : Toll DA amendment)

EXHIBIT A**DESCRIPTION OF PROJECT:**

**AS FOUND IN APPLICATIONS MC 11-03/MC 13-21/MC 14-12/RDCS2016-0015:
COCHRANE-BORELLO AND AS DESCRIBED IN THE EIR FOR COCHRANE-
BORELLO DATED AUGUST 2012 AND FINAL EIR DATED JANUARY 2013**

Attachment: Final Signed and Recorded DA (1975 : Toll DA amendment)

EXHIBIT B**LEGAL DESCRIPTION****EXHIBIT "A"**

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:

Beginning at a point on the Southeasterly line of the Laguna Seca Rancho at the most Southerly corner of the 300 Acre Tract of Land described in the Deed from Jose Jesus Bernal and Susana Gulnac de Bernal to Alvora Cottle, dated November 8, 1862, and recorded November 10, 1862, in Book "Q" of Deeds, at Page 157, said Point of Beginning being marked by an Old stake "E"; thence running along the Southwesterly line of said 300 Acre Tract of Land and along the center line of Peet Road, N. 65 deg 09' W. 27.01 chains to a picket marked M.H.F. and 1 1/2 inch iron pipe five feet long driven along side at the most Southerly corner of the 112.68 Acre Tract of Land described in the Deed from Alvora Cottle, et ux, to Simon Mathews, dated August 13, 1867, and recorded August 20, 1867, in Book "Z" of Deeds, at Page 88; thence running N 15 deg 14' E. and along said line 46.84 chains to an old stake in mound of cobbles marked M.P.2 and from which a live oak 24" in diameter bears N 17 deg 34' W. 0.40 chains and sycamore 12" in diameter bears N 31 deg 30' W. 0.34 chains; thence N. 52 deg 46' W. 3.58 chains to a stake marked P.M. standing in the Northeasterly line of the 635.20 Acre Tract of Land conveyed by Cesar Piatti, et ux, to Jose Jesus Bernal by Deed dated January 31, 1861, and recorded February 4, 1861, in Book "O" of Deeds, at Page 35, records of said County of Santa Clara, and from which stake P.E. a sycamore 8" in diameter bears S 20 deg 35' E. 0.27 chains distant; thence along said line of said 635.20 Acre Tract, S. 68 deg 53' E. 14.087 chains to a point in said line that is distant S. 69 deg 07' W. 515.68 feet and N. 68 deg 53' W. 167.83 feet measured along the Northerly line of said 635.20 Acre Tract from the Northeasterly corner of the aforementioned 300 Acre Tract; thence S 15 deg 02' E. 176.88 feet to a 3/4" iron pipe, S 15 deg 05' W. 527.90 feet to a 3/4" iron pipe and S. 75 deg 43' E. 967.94 feet to a point in a line that is parallel with the Westerly line of the Coyote Road and distant Westerly at right angles 1.32 feet therefrom; thence along said parallel line S 11 deg 17' E. 24.04 chains to a point in the Southeasterly line of the Laguna Seca Rancho; thence along said line S. 46 deg 20' W. 22.94 chains to the Point of Beginning, and being a portion of the Rancho Laguna Seca and being a part of that 156.92 Acre Tract of Land as laid down, designated and delineated upon the Map of the Survey of the formerly Phegley Home Ranch in the Rancho Laguna Seca, and which said Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Book "F2" of Maps, at Page 28.

Excepting therefrom the Parcel of property bounded by a line beginning at an iron pipe set at the Point of Intersection of the Southwesterly line of Cochran Road, formerly Coyote Road, 40 feet wide, with the Southerly line of that certain 14.31 Acre Tract of Land described in the Deed from Katherine Garnett Rhoades, also known as Katherine G. Rhoades, to Harold E. Thomas, et ux, dated March 12, 1945; and recorded March 14, 1945, in Book 1249 of Official Records, Page 108; thence along said line of Cochran Road, formerly Coyote Road, S. 11 deg 17' E. 232.34 feet to an iron pipe; thence leaving said line of Cochran Road and running at right angles thereto, S. 78 deg 43' W. 170.0 feet to an iron pipe; thence at right angles, and parallel with said line of Cochran Road, N. 11 deg 17' W. 311.73 feet to an iron pipe set on the Southerly line of said 14.31 Acre Tract; thence along said Southerly line of said 14.31 Acre Tract, S. 76 deg 15' E. 187.63 feet to the Point of Beginning and being a portion of the Rancho Laguna Seca. Being designated upon the Map of the Record of Survey, which was filed for record on February 27, 1958, in Book 91 of Maps, at Page 13, Records of Santa Clara County, California.

Also excepting that portion of Said Land conveyed to the County of Santa Clara, instrument recorded March 23, 1954 in Book 2839, Page 377, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water Conservation District by Deed recorded March 23, 1960 in Book 4737, Page 109, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the United States of America, by Deed recorded December 28, 1984 in Book J145, Page 391, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the United States of America by Deed recorded February 15, 1985 in Book J251, Page 392, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water District by Deed recorded May 17, 1985 in Book J349, Page 325, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water District by Deed recorded May 17, 1985 in Book J349 Page 328, Official Records.

PARCEL TWO:

Together with those certain rights and interests reserved and described in that certain Deed executed by Katherine Garnett Rhoades, also known as Katherine G. Rhoades, in favor of Sebastian G. Borello and Luigia Borello, Husband and Wife, As Joint Tenants, recorded March 5, 1945 in Book 1250 Page 75, Official Records.

Also together with those certain rights to irrigation facilities and appurtenances thereto, which rights were reserved in that certain Deed executed by S. G. Borello & Sons, Inc., a Corporation, in favor of the Santa Clara Valley Water Conservation District, recorded March 23, 1960 in Book 4737, Page 109, Official Records.

Also together with those certain rights and interests reserved in that certain Deed executed by S. G. Borello & Sons, Inc., a Corporation, in favor of the United States of America, recorded December 28, 1984 in Book J145, Page 391, Official Records.

Also together with those certain rights reserved in that certain Deed executed by S. G. Borello & Sons, Inc., in favor of the Santa Clara Valley Water District, recorded May 17, 1985 in Book J349, Page 328, Official Records.

"Note: Parcel Two herein described is being included so as to avoid Chicago Title being the cause of excluding it from conveyances. Said parcel is not insured even though it may be included as part of the legal description of the land described in any policy."

Assessor's Parcel No. 728-34-027

Attachment: Final Signed and Recorded DA (1975 : Toll DA amendment)

EXHIBIT C SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to Phase 1 (15 FY 13-14 allotments/15 FY 2016-17 allotments), Phase 2, (25 FY 15-16 allotments), and Phase 3, 16 FY 18-19 allotments of the Development proposed in the following respective RDCS applications: MC 11-03: Cochran-Borello, MC 13-21: Cochran-Borello, MC 14-12: Cochran-Borello and RDCS 2016-0015: Cochran-Borello 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 (as it existed at the time of the applications) 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 pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

* Costs 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.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.		
B.4	Off-site pedestrian safety improvements	MC 11-03: Developer will provide off-site pedestrian safety improvements or traffic safety improvements near or on a	FY 2013-2014 allotments	\$4,125/unit

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		MHUSD school site valued at (\$825 X 5 = \$4,125) \$4,125 dollars per unit or pay an in-lieu fee equal to \$4,125 dollars per unit or develop any other improvements valued at \$4,125 dollars per unit to be determined by the MHUSD. MC 13-21 and MC 14-12: Will provide off-site pedestrian safety improvements or traffic safety improvements near or on a MHUSD school site valued at (\$825 X 5 = \$4,125) \$4,125 dollars per unit or pay an in-lieu fee equal to \$4,125 dollars per unit or develop any other improvements valued at \$4,125 dollars per unit to be determined by the MHUSD. RDCS 2016-0015: Will provide off-site pedestrian safety improvements or traffic safety improvements near or on MHSUD school valued at \$4,950 per unit or pay an in lieu fee equal to \$4950 dollars per unit.	FY 2015-2016 and FY 2016-2017 allotments FY 2018-2019 allotments	\$4,125/unit \$4,950/unit

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Open Space			
B.1.a	Open space buffer (freeway/arterials)	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer commits to providing a minimum 10-foot buffer in excess to the standard along Peet Road (arterial). Minimum setback for fence/wall on side yard is 15 feet (20 feet average). For front yard, minimum 30 feet.	Architectural and Site Review	
B.1.b	Common useable open space	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Private open space areas and amenities are to be maintained by a Homeowners Association.	Architectural and Site Review	
B.1.c	Convenient access to amenities	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer to provide a minimum 7-foot wide pedestrian/bicycle pathway in areas no less than 20 foot wide with an average of 30 foot wide. Cannot be redundant of public sidewalks and will provide convenient direct and safe access to the centrally	Architectural and Site Review	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		located park.		
B.1.d	Accessibility to parks/open space	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: For consistency with prior scoring of application, Developer will provide minimum 7-foot wide pathway in area no less than 20-foot wide. Pathway will provide access through SCVWD property to "The Ranch at Alicante" subdivision which has pathway that provides better access to Coyote Creek Park on north side of Cochrane Road.	Architectural and Site Review	
B.2	Ratio of Open Space Area	MC 11-03: Provides less than 25% building coverage. MC 13-21, MC 14-12 and RDCS2016-0015: Provides less than 25% building coverage	FY 2013-2014 allotments FY 2015-2016, FY 2016-2017 and FY2018-2019 allotments	
B.4.a	TDC for projects (<20% slope)	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer commits to purchase TDC's at a ratio of one TDC for every twenty units in project.	Paid prior to certificate of occupancy	
	Public Facilities			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.a	Grids water	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Project proposes to grid water in future phases Peet to Cochrane.	FY 2013-2014/FY 2015-2016/FY 2018-2019 allotments	
B.2.b	Drainage concept consistent with City's storm drain system	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Drainage concept will be consistent with City's Storm drain system (e.g., the City Storm Drainage Master Plan, local area storm drain system).	Improvement Plans	
B.2.c	Storm drain lines constructed within paved area of the street	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: All Storm drain lines will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works. Public Storm Drain Lines that are to be maintained by the City shall be constructed within a paved area or a location acceptable to the Director of Public Works.	Improvement Plans	
B.2.d	No on-site detention pond or open space retention areas required	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer will provide an oversized detention pond along Cochrane Road. Oversized detention ponds shall be provided	Improvement Plans	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		because the adjacent Alicante Ranch project cannot accept any additional flows. Additional storage capacity shall be provided at the direction of the Director of Public Works.		
B.2.f	Excess public improvements	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Will provide public facilities, off site storm drainage or pedestrian improvements from a City approved list or improvements on/or adjacent in excess of standard requirements (eg. sewer, traffic control) at a rate of \$4400/unit per stated requirements or pay an in-lieu fee equal to \$4,400/unit.	FY 2013-2014, FY 2015-2016, FY 2016/2017, and FY 2018-2019 allotments	\$4,400.00/unit
B.2.g	Contribution to RDCS Capital Improvements fund	MC 11-03: Developer will contribute \$1,100 per unit to the RDCS Capital Improvement Program Fund:	FY 2013-2014 allotments	\$1,100 per unit
	Parks and Paths			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2	On-site recreational amenities	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Swimming Pool Restroom Area Club house with kitchen area Tennis Court Recreation Hall Exercise Room Cabana/Shade Trellis 1/2 Court Basketball Court	Architectural and Site Review	
B.3	Bicycle/equestrian/pedestrian paths	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer commits to the criteria above and agrees to install 6.1 Miles of Class II Bike Lanes where required by the 2008 Bicycle Master Plan (244/10*0.25) = 6.1 Miles. (1 Mile = 5280 feet). Developer commits to a total of 32,208 Linear Feet of Class II bike lane improvements.	Prior to installation, the Project shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed.	
B.6	Additional park fees (in-lieu fee)	MC 11-03, MC 14-12 and RDCS2016-0015: Developer agrees to pay the lesser of double the required in-lieu park fees or \$1,100 per unit.	FY 2013-2014, FY 2016-2017 and FY2018-2019 allotments	\$1,100/unit
B.8	Dedication of land	MC 11-03, MC 13-21, MC 14-		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		12 and RDCS2016-0015: Project shall reserve and dedicate over 50% of the required park area of 2.4 Acres to private park activities.		
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: The developer to provide a minimum of 15 percent secondary units for the entire project.	Architectural and Site Review	
B.2.a	Standard Housing Fee	MC 11-03, RDCS2016-0015: Developer commits to pay Double the standard housing fee, and to provide a minimum of 20 percent of the overall dwellings with secondary dwelling units (244 lots with 49 secondary units = 20.08 percent of total project) MC 13-21 and MC 14-12: Developer commits to payment of the standard housing fee and to provide a minimum of 20 percent of the overall dwellings with secondary dwelling units.		
	Housing Types			

36

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	Diversity of housing	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer is committing to provide three housing types: single family detached units, secondary dwelling units and 15 percent of the units to be single-story.	Architectural and Site Review	
B.3.a	Housing variation- single-family	MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015: The project will provide for a variation of housing sizes within the project. The proposed project provides at least a fifty percent variation in house size from the smallest to largest floor plan and each house size represents at least ten percent of the total units.	For purposes of making the determination, there must be at least three (3) different floor plans and there must be a two hundred square foot difference between the size of each floor plan (less than two hundred square feet difference will be aggregated as one floor plan). Architectural and Site Review	
B.4	25% visitability accessible units	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: The project will provide at least 25 percent of the dwellings as visitability accessible units. Visitability units are accessible dwellings that have one zero step entrance on an accessible route; all main floor interiors, including bathrooms, with 32 inches of	Building Permit	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		clear passage space; and at least a half-bath on the main floor usable for a person in a wheelchair.		
	Quality of Construction Standards			
B.1	Natural and Environmental	MC 11-03: The following improvements shall be included in each home: •Recycling center built in to cabinet layout with pull out bins. •Noncombustible siding. •5/8 sheet rock in all interior bathroom walls. •Appliances shall be Energy Star rated. MC 13-21: The following improvements shall be included in each home: •Full exterior OSB/Plywood wrap with window/door flashing. •5/8" Type "X" sheetrock in all interior walls. •Mud room from garage into home in 30% of homes •Recycle center built in to cabinet layout with pull outs for bins. •Noncombustible Siding and	Building Permit	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		roofing Materials except for window, fascia and door trim on all homes. •Energy Star rated fresh air exhausts system in home. MC 14-12, RDCS2016-0015: The following improvements shall be included in each home: •Full exterior OSB/Plywood wrap with window/door flashing. •Installation of light weight wallboard for all walls excluding code requirement for fire walls. •Installation of one dedicated 3/4inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage. •Installation of 90% high efficiency fan forced heating. •Zoned heating and air condition for all one and two story homes. •Listed sound attenuated materials in wall that adjoin a bathroom and or bedroom walls. •Installation of high efficiency energy star water heater with		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		energy factor of 0.70. •Installation of ultra-high efficiency or dual flush toilet (only 2016-0015). •Install rain sensor monitor in irrigation system. •Foundations: 20% reduction of cement in the concrete mix design by use of ash, slag, silica fume or rice hull ash (only 2016-0015).		
	Lot Layout and Orientation			
B.1.b	Excess side yard setbacks	Side yard setbacks (majority) shall exceed city requirements by 20%.	Architectural and Site Review	
B.1.f	Transition of lot sizes	A sufficient transition in lot sizes shall be proposed in the site plan design to allow compatibility between existing and proposed neighborhoods.	Architectural and Site Review	
B.1.h	Project design	Each floor plan/elevation repeats less than 3.5 times.	Architectural and Site Review	
B.2.a	Continuous park/open space	Park/open space area shall be aggregated into a large meaningful area.	Architectural and Site Review	
B.2.b	Enhance neighborhood security	A Minimum 75 percent of the units' entrances shall be visible	Architectural and Site Review	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		from the public right of way or private circulation areas, and pedestrian walkways. A security gate is to be installed.		
B.3.a	Front setback variation	A minimum five-foot front setback variation is provided between adjoining units.	Architectural and Site Review	
B.3.b	Rear setback variation	A minimum five-foot rear setback variation is provided between single-family dwellings.	Architectural and Site Review	
B.3.c	Lot width variation	A four-foot variation in standard lot widths (excluding cul-de-sac lots) and each lot width represents at least 10 percent of the total lots.	Architectural and Site Review	
B.3.d	Garage placement variation (single family and multi-family)	At least 50% percent of units have side-loading, detached, rear garages, or two car garages with tandem parking space to accommodate a third vehicle inside the garage.	Architectural and Site Review	
B.4	Noise reduction	Project commits to: •Greater setbacks at project boundaries. •Sound insulation in units exposed to higher noise levels than average or on specific units as required by the Director of	Architectural and Site Review	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		Planning. • Locating AC units away from property lines.		
	Circulation Efficiency			
B.1.a	Discourage fast traffic	MC 11-03: Project shall have gated private streets	Architectural and Site Review/Improvement Plans	
B.1.a/B.1.b	Future street extensions	MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015: The project will provide the Peet Road/Hill Road realignment per the City's General Plan • Project will provide the following internal improvements: Privately maintained private streets. • Storm water bio-swales. • Project specific street sections will be utilized. • Roadway system that meets City Standard R-Values and allow for a looping pattern of circulation.	Improvement Plans	
B.1.c	Eliminates stub or substandard streets	MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015: Applicant commits to install street improvements along the length of the realigned section of Peet Road between Half Road and the	Improvement Plans	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		northwesterly boundary of the project.		
B.1.d	Looping pattern of circulation	MC 11-03 and MC 13-21: Interior streets and/or drive aisles are designed to meet all city safety and parking standards and allow for a looping pattern of circulation.	Improvement Plans	
B.1.e	Backout distance	MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015: The project will provide for a minimum 20-foot clear view back outdistance between enclosed garage space and roadway and/or drive aisle.	Architectural and Site Review/Improvement Plans	
B.1.i	Landscaped islands and entry monument	MC 11-03: Islands and entry statements will be provided at all project entries.	Architectural and Site Review/Improvement Plans	
B.2	Internal Circulation	MC 11-03 and MC 13-21: Internal project circulation is designed for use primarily by local residents.	Architectural and Site Review/Improvement Plans	
B.2.a/B.1.h	Two access points	MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015: All phases will have access from two separate streets.	Architectural and Site Review/Improvement Plans	
B.2.b	Avoids undesirable traffic situations	MC 11-03: No double frontage	Architectural and Site	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		lots. No utility easements in rear or side yards of private property. No landlocked property.	Review/Improvement Plans	
B.2.c	Detached sidewalks	MC 14-12: Project shall include detached sidewalks with a minimum five-foot street landscape strip.	FY 2016-2017 and FY 2018-2019 allotments Site and Architectural Review/Improvement Plans	
B.2.d/B.1.j	Facilitates emergency response	MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015: The proposed access points to the project will provide adequate circulation for emergency response and police patrol.	Site and Architectural Review/Improvement Plans	
B.3.a	Converts lighting	MC 14-12 and RDCS2016-0015: Converts existing city lighting to energy efficient LED lights at a ratio of one street light conversion per dwelling unit.	FY 2016-2017 and FY 2018-2019 allotments	The cost of the light conversion shall be at least equal to or greater than \$ 750.00 per unit.
B.4	General Community Benefit	MC 11-03 MC 14-12 and RDCS2016-0015: The project will install full street improvements on the realignment of Peet Road at a cost of \$2,200/unit or pay an in lieu-fee	FY 2013-2014, 20162017 and FY 2018-2019 allotments	\$2,200.00

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		equal to \$2,200 dollars per unit. Should the cost exceed \$2,200/unit for said Peet Road realignment, Developer will install offsite improvements from the City approved list. The project has committed to install full street improvements along the full length realigned section of Peet Road between Half Road and the northwesterly boundary of the project. MC 13-21: The project will install street improvements along the length of the re- aligned section of Peet Road between Half Road and the northwesterly boundary of the project. Developer has obtained letters from the affected property owners agreeing to the required dedication at a cost of \$1,100 dollars per unit or pay an in- lieu- fee equal to \$1,100 dollars per unit. Said fee shall not exceed \$1,100 dollars per unit.	FY 2015-2016 allotments Improvement Plans	\$1,100.00
	Safety and Security			
B.1.a	Fire proof safe	MC 11-03, MC 13-21, MC 14-	FY 2013-2014	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		12 and RDCS2016-0015: Units shall have a fireproof safe installed; the safe shall be bolted to the floor or other suitable location.	FY 2015-2016, FY 2016-2017, and FY 2018-2019 allotments Building Permit	
B.1.b	First aid kit	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer agrees to provide a first aid kit with a poison control document installed in the kitchen area of each dwelling unit.	Building Permit	
B.1.d	Outdoor lighting	MC 11-03: Project will provide: •Outdoor lighting to meet all police department specifications. •On-site lighting (or modified electrolier) to a minimum of 1.5-foot candles in all park and common areas	Building Permit	
B.1.e/B.1.f	Illuminated address numbers	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Developer will install illuminated address numbers for each unit. House identification number markers will be installed at the entrance of each cul-de-sac to be maintained by the homeowner's	Building Permit	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		association.		
B.1.g	Intrusion protection device	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Applicant commit to installation of intrusion protection entry gate at the entrance to project.	Building Permit	
B.1.h	Parks with lighting	MC 13-21, MC 14-12 and RDCS2016-0015: Applicant commits to providing On-site lighting in all large usable areas and parks to a minimum of 1.5 foot candles or modified electrolier.	Building Permit	
B.1.k	Illuminated pathways/walkways	MC 14-12 and RDCS2016-0015: Applicant commits to illuminating all pathways and pedestrian walkways with a minimum of 1 foot candle.	Building Permit	
B.2	Non-combustible siding	MC-11-03: Noncombustible siding will be used on 50% of units comprising of at least 75% of the siding on each unit.	Building Permit	
B.2	Crime Prevention through Environmental Design (CPTED)	MC 14-12 and RDCS2016-0015: Applicant commits to utilizing the design principles of CPTED of natural surveillance: 1. Project will include features	Building Permit	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		that maximize the visibility of people, parking and entrances 2. Features that include landscape plantings, paving designs, and gateway treatments that define property lines and distinguish private space from public space 3. Project shall include features that promotes natural access control by designing streets, walkways and entrances to clearly indicate public routes and discourage access to private areas		
B.3	Lockable hardware	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Applicant commits to installing lockable hardware on all side yard and patio gates.	Building Permit	
B.4	Central Monitoring	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Each unit shall have installed an intrusion alarm; fire alarm and heat detector system monitored by a central station or auto dialer which meets City ordinance. A	Building Permit	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		one-year monitoring contract shall be provided with home purchase and commits to deliver to the homeowner a City specific responsible listing card that the MH Police Dept. can keep on file.		
B.5	Neighborhood emergency preparedness	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Project commits to neighborhood Emergency Preparedness Program administered through a homeowner's association or central property management.	Building Permit	
B.6	Neighborhood "Watch Program"	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: The developer shall include provisions in the Covenants, Conditions and Restrictions (CC&R's) of the homeowner's association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development.	Building Permit	
	Landscaping, Screening and Color			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	Twenty-four inch box trees	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Provide twenty-four-inch box-size trees at a ratio of one box-size tree per ten trees.	Architectural and Site Review	
B.1.b	Planting around off-street parking	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Sufficient planting will be provided around the necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.	Architectural and Site Review	
B.1.c	Varied front yard landscaping	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Varied front yard landscaping plans will be installed by the developer.	Architectural and Site Review	
B.1.d	Street Tree Master Plan	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Project will conform to a Street Tree Master Plan	Architectural and Site Review	
B.2.a	Pervious hardscape cover	MC 11-03, MC 13-21, MC 14-12: Project will provide drought tolerant grasses and limit lawn areas. Landscape to be installed	Architectural and Site Review	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		will include pervious hardscape such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least twenty-five percent of the landscape area. RDCS2016-0015: Project will provide drought tolerant grasses and limit lawn areas. Landscape to be installed will include pervious hardscape such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area.		
B.2.b	Low to moderate water use	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Automatic irrigation with separate valve and circuits for trees; shrubs and groundcovers; and lawn areas will be provide per requirement.	Architectural and Site Review	
B.2.c	Existing water supply (off-site irrigation well)	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Project will provide a separate watershed for irrigation of all common open space areas that are maintained by a homeowner's	Architectural and Site Review	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		association.		
B.3	Overall Landscaping	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Landscaping shall be installed on all areas visible from public and private rights-of-way.	Architectural and Site Review	
B.4	Underground retention	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Project will install pervious pavement in all open parking lots, driveways and sidewalk areas to minimize drainage runoff.	Architectural and Site Review	
	Natural and Environmental Features			
B.1	Site Grading	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Foundation types will be designed to minimize grading of the site and road alignment follows and maintains existing ground elevation to the greatest extent possible. Minimal grading is considered a fill or excavation of less than two feet in depth (four feet is acceptable for detention ponds or required fill for flood protection), and restricts the amount of runoff caused by impervious surfaces and the	Building Permit	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		covering of land area suitable for percolation or bio-swales where applicable.		
B.1.b	Sustainable building ordinance	MC 11-03: Applicant will comply with the City's Sustainable Building Ordinance (70 BIG points)	Building Permit	
B.2.c	Solar photovoltaic panels (60%)	MC 13-21, MC 14-12 and RDCS2016-0015: Project Install solar photovoltaic panels to offset 60% of anticipated electrical energy demand of residential unit.	Building Permit	
B.2.h	Build It Green	MC 11-03: The project will add 50 BIG points beyond the commitments in the Quality of Construction category. MC 13-21, MC 14-12 and RDCS2016-0015: The project will add 40 BIG points beyond the 70-point commitment in the Quality of Construction category	Building Permit	
	Livable Communities			
B.2.a	Bus shelters, benches, street sections	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Applicant commits to install a bench, shelter, and pullout area	Improvement Plans	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		across the street from Live Oak High School. The existing bus pull out area, is pavement and lacks a shelter.		
B.6	Architectural variation	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Plans contain porches and/or balconies visible to the right of way. Applicant commits to criteria for at least 25% of the units. Provides a consistent level of architectural relief. Elevation plans show two different roof lines and two different pitches throughout the project.	Architectural and Site Review	
B.7	Maximizes privacy	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Applicant has used design and layout techniques to maximize privacy within and outside the homes.	Architectural and Site Review	

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 DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”) is entered into as of the ____ day of _____, 2018, by and among Toll CA XX, a California limited partnership (“**Toll**”) and CITY OF MORGAN HILL, a municipal corporation of the State of California (“**City**”).

RECITALS

A. San Sebastian MH General Partnership, Toll’s predecessor in interest, (Developer) entered into a Development Agreement (DA) with City on March 27, 2013 adopted by the City Council as Ordinance No. 2065, subsequently amended by Ordinance number 2161 adopted on September 2, 2015, and amended by Ordinance No. 2201 adopted June 1, 2106, 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**”). The DA was partially assigned to Toll on July 22, 2016, and was amended again by Ordinance No. 2243 adopted June 7, 2017. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Toll and City desire to enter into this Amendment to incorporate an additional 25 allotments received for this ongoing project.

AGREEMENT

NOW, THEREFORE, Toll and City hereby agree as follows:

1. Amendment to Development Agreement.

a. Section 3.03 of the Development Agreement is hereby amended to incorporate 25 additional allotments as follows:

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 as established by Ordinance Number 2229, and Section IV.H 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:

Attachment: Amendment to Toll DA.10.09.18 (1975 : Toll DA amendment)

FY 2013-2014-(15 units)	01-15-17
FY 2015-2016-(25 units)	06-30-18
FY 2016-2017-(15 units)	12-30-18
FY 2018-2019-(16 units)	06-30-19
FY 2019-2020-(25 units)	06-30-20

b. Section 3.04 of the Development Agreement is hereby amended to add the following sentence:

Future minor amendments, such as time extensions and allotment adjustments for ongoing projects, shall be approved by Planning Commission resolution.

2. 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 shall remain in full force and effect.

3. Recording. City shall cause this Amendment to be recorded in the Official Records of Santa Clara County.

4. Severability. Except as otherwise provided herein, if any provision(s) of this Amendment is (are) held invalid, the remainder of this Amendment 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.

5. Counterparts. This Amendment may be executed in one or more counterparts, 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 Amendment had executed the same counterpart.

6. Effective Date/Amendments. The Effective Date of this Amendment shall be the date upon which this Amendment is approved by the City of Morgan Hill Planning Commission. This Amendment 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: Amendment to Toll DA.10.09.18 (1975 : Toll DA amendment)

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

“CITY”

CITY OF MORGAN HILL

Christina J. Turner
City Manager

Approved as to form:

Donald A. Larkin
City Attorney

Date: _____

“DEVELOPER”

**TOLL CA XX, A CALIFORNIA LIMITED
PARTNERSHIP**

By _____
Name _____
Its _____

Date: _____

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

Attachment: Amendment to Toll DA.10.09.18 (1975 : Toll DA amendment)

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)

Attachment: Amendment to Toll DA.10.09.18 (1975 : Toll DA amendment)

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)

Attachment: Amendment to Toll DA.10.09.18 (1975 : Toll DA amendment)



PLANNING COMMISSION STAFF REPORT

MEETING DATE: October 9, 2018

PREPARED BY: Jenna Luna, Municipal Services Assistant

APPROVED BY: Jennifer Carman, Community Development Director

APPROVE THE APRIL 11, 2017 MEETING MINTUES

RECOMMENDATION(S)

Approve Minutes.

During the transition from the Legistar agenda management system and the Accela agenda management system, it was discovered during the auditing of the City's archival records that these minutes had not been officially adopted by the Planning Commission. The attached minutes are part of the archival record.

LINKS/ATTACHMENTS:

1. April 11, 2017 Minutes

DRAFT



Meeting Minutes Planning Commission

Wayne Tanda - *Chairman*
John McKay - *Planning Commissioner*
Michael Orosco - *Planning Commissioner*
Pat Toombs - *Planning Commissioner*
Liam Downey - *Planning Commissioner*
Joseph Muller - *Planning Commissioner*
Yvonne Martinez-Beltran - *Planning Commissioner*

Tuesday, April 11, 2017

Council Chamber
17555 Peak Avenue, Morgan Hill, CA
95037

CALL TO ORDER

Chair Tanda called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Attendee Name	Title	Status	Arrived
Wayne Tanda	Chairman	Present	
John McKay	Planning Commissioner	Present	
Michael Orosco	Planning Commissioner	Excused	
Pat Toombs	Planning Commissioner	Present	
Liam Downey	Planning Commissioner	Present	
Joseph Mueller	Planning Commissioner	Present	
Yvonne Martinez – Beltran	Planning Commissioner	Present	

DECLARATION OF POSTING AGENDA

Community Development Director Jennifer Carman declared the posting.

Attachment: April 11, 2017 Minutes (2001 : APRIL 11, 2017 MINUTES)

OPEN PUBLIC COMMENT PERIOD

Chair Tanda opened the public comment period.
 Peter Leroe-Munos was called to speak.
 Hearing no further requests to speak, the comment period was closed.

PLEDGE OF ALLEGIANCE

Planning Commissioner Pat Toombs led the Pledge of Allegiance.

ORDERS OF THE DAY

No changes made.

OTHER BUSINESS

1. ECONOMIC BLUEPRINT

Recommendation:

1. Provide feedback on Morgan Hill's Economic Blueprint.

Economic Development Direct, Edith Ramirez and Economic Development Coordinator, John Lang, presented the staff report.

Chair Tanda opened the Public Comment Period.
 Peter Leroe-Munos was called to speak.
 Kathy Sullivan was called to speak.
 Brian Sullivan was called to speak.
 Hearing no further requests to speak, the public hearing was closed.

RESULT:	NO ACTION TAKEN
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ANNOUNCEMENTS

The Planning Commission should expect an e-mail regarding updates with the VTA cuts in service. The Planning Commission will also receive the latest memo from Housing and Community Development (HCD) on Accessory Dwelling Units (ADU) regarding the new laws that have been passed that make the process more streamlined.

ADJOURNMENT

There being no further business, Chair Tanda adjourned the meeting at 9:18 p.m.

MINUTES PREPARED BY:

Jenna Luna, Minutes Clerk



PLANNING COMMISSION STAFF REPORT

MEETING DATE: October 9, 2018

PREPARED BY: Jenna Luna, Municipal Services Assistant

APPROVED BY: Jennifer Carman, Community Development Director

APPROVE THE APRIL 25, 2017 MEETING MINUTES

RECOMMENDATION(S)

Approve Minutes.

During the transition from the Legistar agenda management system and the Accela agenda management system, it was discovered during the auditing of the City's archival records that these minutes had not been officially adopted by the Planning Commission. The attached minutes are part of the archival record.

LINKS/ATTACHMENTS:

1. April 25, 2017 PC Meeting Minutes Final

DRAFT



Meeting Minutes Planning Commission

Wayne Tanda - *Chairman*
Michael Orosco - *Vice Chairman*
John McKay - *Planning Commissioner*
Joseph Mueller - *Planning Commissioner*
Liam Downey - *Planning Commissioner*
Patricia Toombs - *Planning Commissioner*
Yvonne Martinez Beltran - *Planning Commissioner*

Tuesday, April 25, 2017 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

Chair Tanda called the meeting to order at 6:00 p.m.

Attendee Name	Title	Status	Arrived
Wayne Tanda	Chairman	Present	
Michael Orosco	Vice Chairman	Present	
John McKay	Planning Commissioner	Present	
Joseph Mueller	Planning Commissioner	Present	
Liam Downey	Planning Commissioner	Present	
Patricia Toombs	Planning Commissioner	Present	
Yvonne Martinez Beltran	Planning Commissioner	Late	6:44 PM

DECLARATION OF POSTING AGENDA

Minutes Clerk Luna declared the posting for the agenda.

PLEDGE OF ALLEGIANCE

Pat Toombs led the Pledge of Allegiance.

Attachment: April 25, 2017 PC Meeting Minutes Final (2000 : APRIL 25, 2017 MINUTES)

ORDERS OF THE DAY

The Planning Commission reconsidered the orders of the day. Items 1 and 4 will be heard first followed by Item 2 and 3.

OPEN PUBLIC COMMENT PERIOD

City Attorney Don Larkin introduced the City's newest Assistant Attorney Cynthia Hasson from Monterey County.

Chair Tanda opened the public comment period. Hearing no requests to speak, the public comment period was closed.

PUBLIC HEARINGS

1. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0007: MONTEREY - DYNASTY

RESULT:	TABLED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	John McKay, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

2. PUBLIC HEARINGS: DEVELOPMENT AGREEMENT AMENDMENTS FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) APPLICATIONS

Recommendation:

- 1) Open/conduct public hearings on requests A through K;
- 2) Adopt Resolutions recommending City Council approval of the amended Development Agreements incorporating allotments from the 2016 RDSCS competition:
 - a. Resolution A
 - b. Resolution B
- 3) Adopt Resolutions recommending City Council approval of the amended Development Agreements incorporating allotments from the 2016 RDSCS competition and approving extension of allotments due to rain delays:
 - a. Resolution C
 - b. Resolution D
 - c. Resolution E
- 4) Adopt Resolutions approving extension of allotments due to rain delays:
 - a. Resolution F
 - b. Resolution G
 - c. Resolution H
- 5) Adopt Resolutions denying extension requests:
 - a. Resolution J
 - b. Resolution K

Interim Principle Planner Gina Paolini presented the staff report.

RESULT:	MOTION BELOW
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A. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0004: COCHRANE - CALATLANTIC

Request for a Development Agreement Amendment to add 12, Fiscal Year 2017-2018 and 52, Fiscal

Year 2018-2019 building allotments to an existing Development Agreement. The properties, identified by Assessor Parcel Numbers 728-59-001, 728-59-002, 728-59-013, 728-56-013, and 728-56-045, are located on the north corner of Cochrane Road and Mission View Drive (Cal Atlantic Homes, Owner). CEQA: Mitigated Negative Declaration completed.

Chair Tanda opened the Public Hearing at 6:28 p.m.

Ross Doyle was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	John McKay, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

B. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0009: CONDIT -MANA

Request for a Development Agreement Amendment to add 44, Fiscal Year 2018-19 and 30 Fiscal Year 2017-2018 building allotments to an existing Development Agreement. The property, identified by Assessor Parcel Number 817-12-009 is located on the north side of San Pedro Avenue between Condit Road and Murphy Avenue (Evergreen Investments Group 2: Kenneth Chung, Owner). CEQA: Addendum to approved EIR.

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

C. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0008: LAUREL - DEROSE

Request for a Development Agreement Amendment to add 13, Fiscal Year 2016-2017, one, Fiscal Year 2017-2018 and 11, Fiscal Year 2018-2019 building allotments to a previously approved Development Agreement. The request also includes a 6-month extension of the commencement of construction dates. The property, identified by Assessor Parcel Number 726-01-008, is located north of Laurel Road and east of Walnut Grove Drive (Denise DeRose, Owner). CEQA: Addendum to Mitigated Negative Declaration completed.

Chair Tanda opened the Public Hearing.

Rick Nelson was called to speak.

Hearing no further requests to speak. The Public Hearing was closed.

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs
EXCUSED:	Martinez Beltran

D. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0014: ALTIMARA – VENTURA/ALICANTE

Request for a Development Agreement Amendment to add 5, Fiscal Year 2017-2018 building allotments to an approved Development Agreement. The request also includes a request for a 6-month extension to the commencement of construction date. The property, identified by Assessor Parcel Number 728-55-017, is located on the south side of Altimira Circle, easterly of the intersection with Mission Avenida (Lupine Investors, LLC, Owner). CEQA: Addendum to Mitigated Negative Declaration.

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs
EXCUSED:	Martinez Beltran

E. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0017: COCHRANE – TOLL BROTHERS

Request for a Development Agreement Amendment for a 6-month extension to the commence of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 728-34-026, is located on Cochrane Road adjacent to Alicante Estates and Alicante Ranch bordered by Peet Road and Coyote Road (Toll Brothers, Owner). CEQA: Previously adopted Environmental Impact Report.

Chair Tanda opened the Public Hearing at 6:31 p.m.

Rick Nelson was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Patricia Toombs, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs
EXCUSED:	Martinez Beltran

F. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0006: MONTEREY - KB

Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The properties, identified by Assessor Parcel Numbers 726-53-001 thru 726-53-058, are located on Monterey Road, south east of the intersection of Monterey Road and Old Monterey (KB Homes, Owner). CEQA: Mitigated Negative completed.

Planning Commissioner Martinez-Beltran took the dias at 6:44 p.m.

Chair Tanda opened the Public Hearing.

Chris Warren was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

G. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0012: SAN PEDRO – PRESIDIO VAN DAELE MONTEREY

Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 817-01-001, is located on the northwest corner of San Pedro Avenue and Church Street (VanDaele Homes, Owner). CEQA: Mitigated Negative Declaration completed.

Chair Tanda opened the Public Hearing at 6:37 p.m.

Chris Warren was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

H. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0015: WATSONVILLE - DIVIDEND

Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 779-57-027 is located on the south side of Watsonville Road at the southerly terminus of La Alameda (Dividend Homes, Owner). CEQA: Mitigated Negative Declaration completed.

Chair Tanda opened the Public Hearing at 6:48 p.m.

Dick Oliver was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

I. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0016: MONTEREY - GUNTER

Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 726-23-008, is located on north of the intersection of Monterey Road and Main Street, on the east side of the road (Gunter Building, LLC., Owner). CEQA: Mitigated Negative Declaration completed.

MOTION

RESULT:	WITHDRAWN
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J. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0018: E. DUNNE - BUSK

Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 817-19-044, is located on the southeast corner of the intersection of East Dunne Avenue and Murphy Avenue (Betty Busk, Owner). CEQA: Mitigated Negative Declaration completed.

Chair Tanda opened the Public Hearing at 7:05 p.m.

Scott Murray was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council deny of the Development Agreement Amendment.

RESULT:	DEFEATED [3 TO 4]
MOVER:	Michael Orosco, Liam Downey
SECONDER:	Wayne Tanda, Joseph Mueller
AYES:	Tanda, Orosco, Downey
NAYS:	McKay, Mueller, Toombs, Martinez Beltran

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement Amendment to allow a 4 month extension.

RESULT: **WITHDRAWN**

MOTION:

Adopt a Resolution recommending City Council approve a Development Agreement Amendment to grant a 4 month extension based on the finding that the City was partially responsible for the delay.

RESULT: **ADOPTED [5 TO 2]**
MOVER: Liam Downey, Planning Commissioner
SECONDER: Joseph Mueller, Planning Commissioner
AYES: McKay, Mueller, Downey, Toombs, Martinez Beltran
NAYS: Tanda, Orosco

K. DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0019 MONTEREY – CENTRAL/ECA

Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 726-23-020, is located on the south west corner of Central Avenue and McLaughlin Avenue (EAC Partners, LLC., Owner). CEQA: Mitigated Negative Declaration completed.

Chair Tanda opened the Public Hearing. Hearing no requests to speak, the Public Hearing was closed.

MOTION:

Adopt a Resolution recommending City Council deny the Development Agreement Amendment to allow an extension.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Joseph Mueller, Planning Commissioner
SECONDER: Patricia Toombs, Planning Commissioner
AYES: Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

3. PLANNING COMMISSION TO CONSIDER ZONING AMENDMENT ZA2017-0003 TO INCLUDE THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION MANUAL

Recommendation:

Recommend the City Council adopt the Residential Development Control System (RDCS) Competition Manual.

Ben Noble with Placeworks presented the Staff Report.

Chair Tanda opened the Public Hearing at 8:52 p.m.

Kerry Williams was called to speak.

John Telfer was called to speak.

Dick Oliver was called to speak.

Vince Burgos was called to speak.

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

MOTION:

Modify chart 55 in the RDCS Manual under Onsite Parking from 25% to 10%.

RESULT:	ADOPTED [5 TO 1]
MOVER:	Wayne Tanda, Chairman
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, Orosco, Downey, Toombs, Martinez Beltran
NAYS:	Mueller
ABSTAIN:	McKay

MOTION:

Add a provision that the Community Development Director may deviate from the above standards based on the Unique Public Benefits of the project.

RESULT:	ADOPTED [4 TO 3]
MOVER:	Wayne Tanda, Chairman
SECONDER:	Liam Downey, Planning Commissioner
AYES:	Tanda, McKay, Mueller, Downey
NAYS:	Orosco, Toombs, Martinez Beltran

MOTION:

Add clarification to the Affordable Housing Section to only allow one Below Market Rate unit per structure.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Michael Orosco, Vice Chairman
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

MOTION:

Reduce the point values from 4 to 3 in Sections A, B, C, and D of the Competition Manual.

RESULT:	APPROVED [5 TO 2]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Patricia Toombs, Planning Commissioner
AYES:	Orosco, McKay, Mueller, Toombs, Martinez Beltran
NAYS:	Tanda, Downey

MOTION**MOTION:**

Add clarification to the affordable housing section to only allow one Below Market Rate unit per structure.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Joseph Mueller, Planning Commissioner
SECONDER: Michael Orosco, Vice Chairman
AYES: Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

MOTION:

Add clarification to page 64 of the Competition Manual stating no more than one 1-year extension for a project in a single competition year may be granted. A project that re-competes or is an on-going project is not limited by any prior extension.

RESULT: ADOPTED [6 TO 1]
MOVER: Wayne Tanda, Chairman
SECONDER: Liam Downey, Planning Commissioner
AYES: Tanda, McKay, Mueller, Downey, Toombs, Martinez Beltran
NAYS: Orosco

MOTION:

Adopt a Resolution recommending City Council adopt the Residential Development Control System Competition Manual.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Joseph Mueller, Planning Commissioner
SECONDER: Yvonne Martinez Beltran, Planning Commissioner
AYES: Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran

4. DEVELOPMENT AGREEMENT, DA2017-0002: BUTTERFIELD-MWEST: REQUEST FOR AN INDUSTRIAL DEVELOPMENT AGREEMENT FOR APPROXIMATELY 39 ACRES IN THE MORGAN HILL RANCH BUSINESS PARK. THE PROPERTIES, IDENTIFIED BY ASSESSOR'S PARCEL NUMBERS 726-25-046, -047, -059, -066, -067, -070, -073, -078 AND -079 ARE LOCATED ON THE WEST SIDE OF BUTTERFIELD BOULEVARD BETWEEN JARVIS DRIVE AND DIGITAL DRIVE (DIVCO WEST SVI, OWNER). CEQA: CERTIFIED EIR FOR THE MORGAN HILL RANCH BUSINESS PARK.

Recommendation:

1. Open/Close the public hearing; and,
2. Continue the project to the May 9, 2017 Planning Commission meeting.

Chair Tanda opened the public hearing. Hearing no requests to speak, the public hearing was closed.

RESULT:	CONTINUED [UNANIMOUS]	Next: 5/9/2017 7:00 PM
MOVER:	Joseph Mueller, Planning Commissioner	
SECONDER:	Patricia Toombs, Planning Commissioner	
AYES:	Tanda, Orosco, McKay, Mueller, Downey, Toombs, Martinez Beltran	

ANNOUNCEMENTS

None.

ADJOURNMENT

There being no further business, Chair Tanda adjourned the meeting at 10:54 p.m.

MINUTES PREPARED BY:

Jenna Luna, Minutes Clerk

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 25, 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	Present	
Yvonne Martinez Beltran	Vice Chair	Present	
Mohammad Habib	Planning Commissioner	Excused	
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.

PLEDGE OF ALLEGIANCE

Commissioner McKay led the Pledge of Allegiance.

OPEN PUBLIC COMMENT PERIOD

Chair Downey opened the Public Comment Period at 7:03 p.m. Hearing no requests to speak, the Public Comment Period was closed.

ORDERS OF THE DAY

No changes made.

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:	Joseph Mueller, Planning Commissioner
SECONDER:	Wayne Tanda, Planning Commissioner
AYES:	Downey, Martinez Beltran, Munoz Morris, Mueller, Tanda, McKay
EXCUSED:	Habib

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.

Chair Downey opened the Public Hearing at 7:06 p.m.

Brian Sullivan was called to speak.

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

RESULT:	CONTINUED [UNANIMOUS]	Next: 10/23/2018 7:00 PM
MOVER:	Joseph Mueller, Planning Commissioner	
SECONDER:	Juan Miguel Munoz Morris, Planning Commissioner	
AYES:	Downey, Martinez Beltran, Munoz Morris, Mueller, Tanda, McKay	
EXCUSED:	Habib	

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.

Associate Planner Tiffany Brown presented the Staff Report.

Chair Downey opened the Public Hearing at 7:21 p.m.

Kristen Hamilton was called to speak.

Paul Latala was called to speak.

Mike Sharpshire was called to speak.

Sharon Wood was called to speak.

John Moniz was called to speak.

Greg Farris was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council approve the Development Agreement with a modification to add a Class 15 exemption.

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

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.

Chair Downey opened the Public Hearing at 8:41 p.m.

E. Allen Hines was called to speak.

Anthony Coloprete was called to speak.

Bill Freygang was called to speak.

Toni Guerra was called to speak.

Kelly Funk was called to speak.

Gurpreet Singh was called to speak.

Viji Mani was called to speak.

Akoni Danielsen was called to speak.

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

MOTION:

Adopt a Resolution recommending City Council approve the Mitigated Negative Declaration and the Monitoring Reporting Program.

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

MOTION:

Adopt a Resolution recommending City Council deny the General Plan Amendment.

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

MOTION:

Adopt a Resolution recommend City Council deny the Zoning Amendment.

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

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.

Housing Manager Rebecca Garcia and Assistant City Manager for Community Development Leslie Little presented the Staff Report.

The Planning Commission provided comments regarding the proposed BMR Program Development Standards.

RESULT:	NO ACTION TAKEN
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DIRECTOR'S REPORT/ANNOUNCEMENTS

Assistant City Manager for Community Development Leslie Little reported that the Silicon Business Journal recognized our three parks downtown as apart of their structure awards in their Place Making and Public Projects.

Parking at the Grange on Third Street is public parking.

The next regular scheduled Planning Commission meeting will be held on October 9, 2018.

An application for the Catholic High School will be submitted to LAFCO for an Urban Service Area expansion and we expect it to be heard in December.

ADJOURNMENT

There being no further business, Chair Downey adjourned the meeting at 10:58 p.m.

MINUTES PREPARED BY:

Jenna Luna, Minutes Clerk



PLANNING COMMISSION STAFF REPORT

MEETING DATE: October 9, 2018

PREPARED BY: Chris Ghione, Public Services Director

APPROVED BY: Jennifer Carman, Community Development Director

MORGAN HILL 2018 ELECTION AND BALLOT MEASURE OVERVIEW

RECOMMENDATION(S)

No action necessary.

LINKS/ATTACHMENTS:

1. CMH 2018 Ballot Measure Presentation



Morgan Hill 2018 Election and Ballot Measure Overview



District Elections



Why?

- o May 2017, the City of Morgan hill received a letter from [letter from Goldstein, Borgen, Dardarian, & Ho](#) claiming that Morgan Hill's at-large election system violates the California Voting Rights Act (CVRA)
- o Threat of an expensive lawsuit claiming that the City's at-large election system was not representative
- o June 2017, the City Council voted to voluntarily move to a district-based elections system

District Elections (continued)



Why?

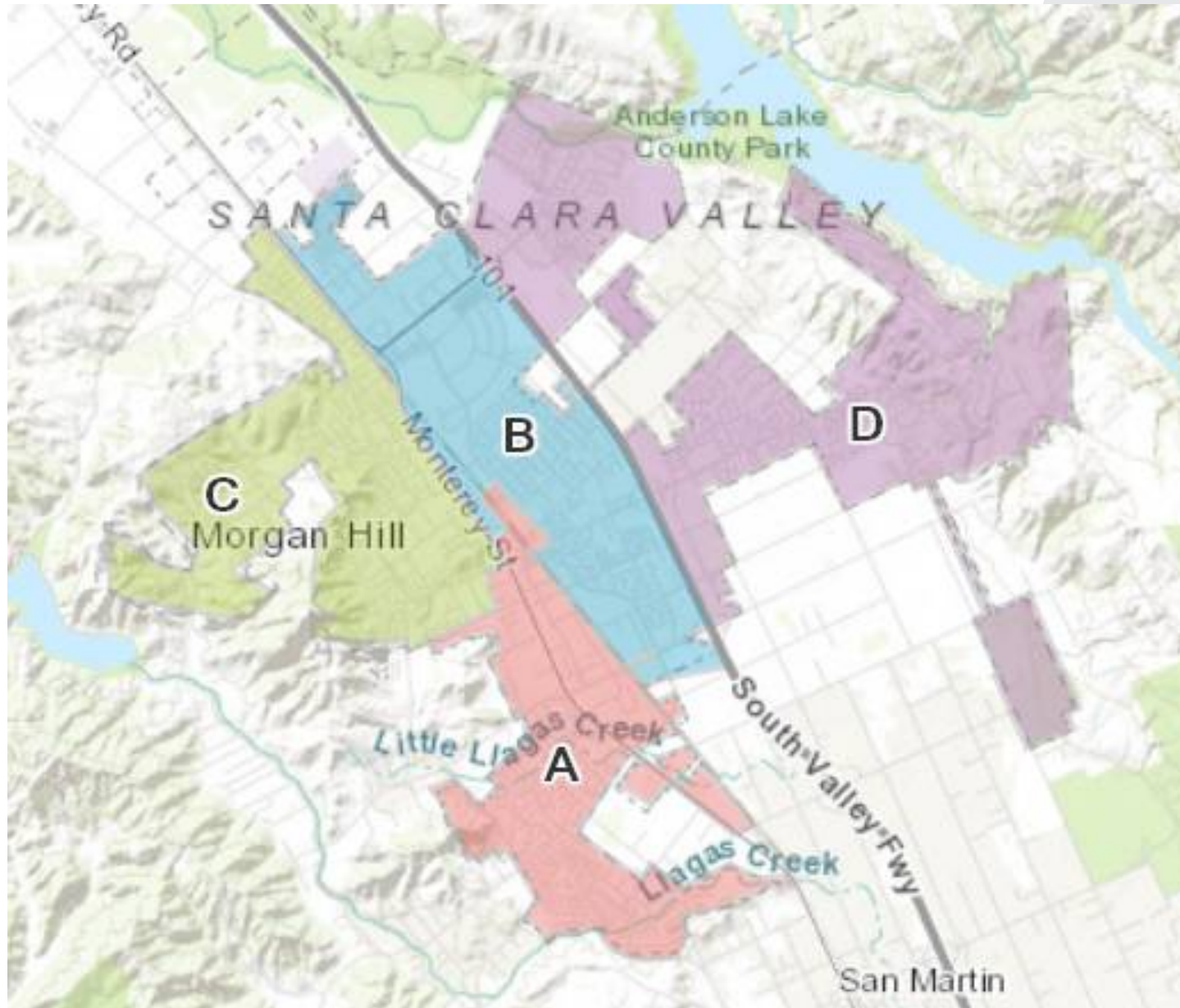
- o Summer of 2017, extensive community outreach
- o September 2017, the City Council adopted an Ordinance establishing and implementing the district-based elections system including the map setting the district boundaries
- o November 2018 Elections, first time electing council members by district

District Elections (continued)

- Council Members Only
- Mayor Still Elected at Large
- Districts B & D are the open seats for the November 2018 Election



District Map



Morgan Hill Ballot Measures



Measure H – Transient Occupancy Tax

1% Increase to Transient Occupancy Tax

- 10% to 11%
- Taxes visitors lodging in Morgan Hill

Estimated \$270,000 General Fund Revenue

- Road repair/improvements
- Maintaining Public Safety

Last increase in 1991 (9% to 10%)

Revenues **CANNOT** be taken by State

Morgan Hill Ballot Measures (continued)

Measure H – Transient Occupancy Tax

City	TOT RATE	TOT Measure on 11/18 ballot
Campbell	12.00%	
Cupertino	12.00%	
Gilroy	9.00%	
Los Altos	11.00%	14.00%
Los Altos Hills	10.50%	
Los Gatos	10.00%	
Milpitas	10.00%	14.00%
Monte Sereno	no TOT	
Morgan Hill	10.00%	11.00%
Mountain View	10.00%	
Palo Alto	14.00%	15.50%
San Jose	10.00%	
Santa Clara	9.50%	
Saratoga	10.00%	
Sunnyvale	10.50%	12.50%



Morgan Hill Ballot Measures (continued)



Measure I – Cannabis Tax

Tax on Medical and Non Medical Commercial Cannabis Activities

Does Not Allow for Commercial Cannabis activities in Morgan Hill

Estimated \$340K - \$750K General Fund Revenue

- Public Safety
- Drug Abuse Prevention

Revenues **CANNOT** be taken by State

Morgan Hill Ballot Measures (continued)



Measure I – Cannabis Tax

Commercial cultivation would be taxed based on the size of plants (square footage of canopy) at a maximum rate of up to **\$15 per square foot**

All other cannabis businesses could be taxed up to **10% of gross receipts**

Morgan Hill Ballot Measures (continued)



Measure J – Appointive City Clerk

Changes the position of City Clerk from elected to appointed

- Role has changed
- Allows for appointing qualified candidate
- Majority of responsibilities already handled by full-time City of Morgan Hill employee

Provides approximately \$30,000 in annual savings and up to \$15,000 every 4 years on election costs

Current City Clerk supports Measure J

California Proposition 6



Approval for Future Gas and Vehicle Taxes and 2017 Tax Repeal Initiative

- Repeals SB1, the gas and diesel tax increases and vehicle fees that were approved by California voters in 2016 and enacted in 2017
- Requires voter approval for fuel tax and vehicle fee increases in the future

California Proposition 6 (continued)



A YES vote supports this initiative to:

- Repeal fuel tax increases and vehicle fees that were enacted in 2017 (SB1)
- Require voter approval for the California State Legislature to impose, increase or extend fuel taxes or vehicle fees in future

California Proposition 6 (continued)



A NO vote opposes this initiative, thus:

- Keeping fuel tax increases and vehicle fees that were enacted in 2017 (SB1) in place and
- Allowing State Legislature to continue to impose, increase or extend fuel taxes or vehicle fees through 2/3 vote of each chamber and without voter approval

California Proposition 6 (continued)

Fiscal Impact to Morgan Hill

- Loss of \$800,000 to \$1 million annually for local roadway improvement projects



California Proposition 6 (continued)

Road Improvement Project Impacts

Fiscal Year 2018/19

- Sutter Blvd. (Butterfield to Cochrane)
- Monterey Rd. (Cochrane to Tilton)
- East Dunne Ave.
 - o Hill to Thomas Grade
 - o Condit Road to Walnut Grove
- Butterfield Blvd. (Cochrane to Main)
- Jackson Meadows neighborhood



California Proposition 6 (continued)



Road Improvement Project Impacts Fiscal Year 2019/20

- East Dunne Ave. (Thomas Grade to City Limits)
- Condit Road (Diana to Ford Store)
- LaCrosse area and associated neighborhood

MORE INFORMATION:

www.morgan-hill.ca.gov/2018BallotMeasures

www.ballotpedia.org

Maureen Tobin
Communications & Engagement Manager
Maureen.Tobin@morganhill.ca.gov
(408) 310-4706





PLANNING COMMISSION STAFF REPORT

MEETING DATE: October 9, 2018

PREPARED BY: John Baty, Principal Planner/Development Services

APPROVED BY: Jennifer Carman, Community Development Director

ZA2018-0005: CITY OF MORGAN HILL - AN AMENDMENT TO TITLE 18, DIVISION I ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER 18.28 - OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE

RECOMMENDATION(S)

1. Open/close the public hearing; and,
2. Adopt a Resolution recommending City Council approval of ZA2018-0005: City of Morgan Hill

POLICY CONSIDERATIONS

1. Are the proposed changes to Chapter 18.28 consistent with the Sports Recreation Leisure General Plan Land Use designation?
2. Is the Zoning Text Amendment consistent with the required findings?

BACKGROUND:

On November 5, 2014, the City Council adopted Resolution No. 7051 establishing the Sports Recreation and Leisure General Plan Land Use designation, which allows a wide range of private commercial, retail, and public/quasi-public sports-recreation leisure themed uses and supports local agriculture and sustainable economic development.

On August 5, 2015 the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B). These parcels, shown on the map below, remain pre-zoned SRL-B in anticipation of potential future annexation.

On September 5, 2018, during the City Council's review of an Urban Service Area (USA) expansion request for the South County Catholic High School (SCCHS) that includes three SRL-B pre-zoned parcels to the west of the proposed High School site, the City Council directed staff to return to the City Council prior to November 7, 2018 with a new pre-zoning for City Council consideration to replace the existing SRL-B pre-

zoning on parcels (APNs: 817-13-008, -011, and -037) such that the new zoning would not allow housing, hotels, or commercial uses.

PROJECT DESCRIPTION

Rather than create a new zoning district (text amendment) and apply that new zoning district to the three parcels listed above (map amendment), staff proposes to modify the uses allowed in the existing SRL-B Zoning District (text amendment) that would be applicable to all properties that are pre-zoned SRL-B.

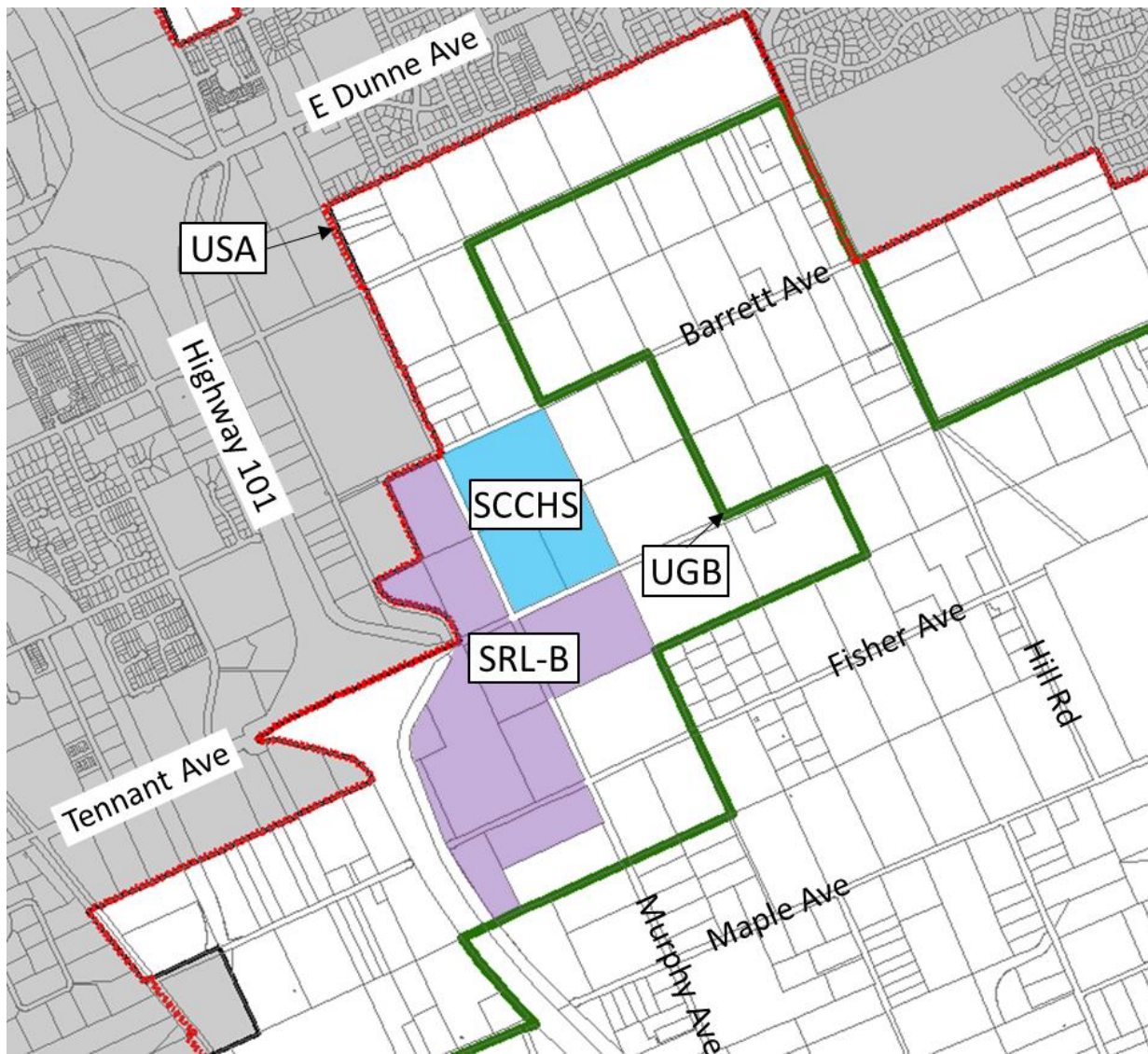
As requested by the City Council, the proposed modifications to the SRL-B district, as shown in Table 18.28-2, the following commercial uses would no longer be allowable:

- Drive-through establishments
- Gas and service stations
- Hotels and motels
- Restaurants
- Retail that is sports-themed or sports/recreation-serving
- Day spas, barbershops, and hair salons
- Health and fitness clubs and indoor recreation centers oriented to local residents
- Indoor swimming pools

The SRL-B district will not allow new residential land uses except the following:

- One single-family detached dwelling on a legal lot of record established in the County prior to August 1, 2014 is a permitted use

The proposed text modifications are shown in underline/~~strikethrough~~ in the revised Chapter 18.28 (Attachment 2).



ANALYSIS:

The proposed Zoning Text Amendment has been analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; 3) California Environmental Quality Act.

1. General Plan

The SRL-B Sports Recreation and Leisure Sub-zone B Zoning District remains consistent with the Sports Recreation Leisure General Plan Land Use designation, in that the district continues to allow a range of sports, recreation, and leisure, and agriculture and natural resource uses.

2. Zoning Ordinance

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 proposed amendment to the SRL-B Sports Recreation and Leisure Sub-zone B Zoning District would remain consistent with the Sports Recreation Leisure General Plan Land Use designation, in that the district would continue to allow a range of sports, recreation, and leisure, and agriculture and natural resource uses.

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

Consistent

The purpose of the SRL zoning district is to provide a location for a variety of private and public or quasi-public land sports, recreation, and leisure uses to serve the community. The proposed amendment would limit commercial, retail and residential uses within the district.

- c. The proposed amendment is internally consistent with other applicable provisions of the Zoning Code.

Consistent

The amendment would be internally consistent with the Zoning Code, as the allowed uses would continue to support lower and medium intensity sports, recreation, and leisure uses.

Conclusion

The amendment has been found to be consistent with the General Plan and internally consistent with the Zoning Code. Staff recommends that the Planning Commission recommend approval to the City Council of the Zoning Text Amendment.

3. California Environmental Quality Act (CEQA):

An Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074), was prepared for the Zoning Code Update adopted on June 6, 2018 and serves as the environmental review for the proposed Zoning Code Text Amendment. The Addendum for the Zoning Code Update was prepared pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164.

Community Engagement

The Morgan Hill community was informed about the proposed project through public notification including newspaper notice and direct mail to property owners effected by the change.

LINKS/ATTACHMENTS:

1. Planning Commission Reso. - DRAFT
2. Exhibit A - Chapter 18.28 Public Open Space Recreation
3. Addendum to Morgan Hill 2035 EIR (web link)

RESOLUTION NO. 18-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AN AMENDMENT TO TITLE 18, DIVISION I – ZONING CODE, PART 2 – ZONING DISTRICTS, CHAPTER 18.28 – OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE (FILE NO. ZA2018-0005: CITY OF MORGAN HILL).

WHEREAS, on November 5, 2014 the City Council adopted Resolution No. 7051 establishing the Sports Recreation Leisure General Plan Land Use designation, which allows a wide range of private commercial, retail, and public/quasi-public sports-recreation leisure themed uses and supports local agriculture and sustainable economic development; and

WHEREAS, on August 5, 2015 the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B); and

WHEREAS, these parcels remain pre-zoned SRL-B in anticipation of potential future annexation; and

WHEREAS, on September 5, 2018, during their review of an Urban Service Area (USA) expansion request for the South County Catholic High School (SCCHS) that includes three SRL-B pre-zoned parcels to the west of the proposed High School site, the City Council directed staff to return to the Council prior to November 7, 2018 with a new pre-zoning for Council consideration to replace the existing SRL-B pre-zoning on parcels (APNs: 817-13-008, -011, and -037) such that the new zoning would not allow housing, hotels, or commercial uses; and

WHEREAS, rather than create a new zoning district and apply that new zoning district to three specific existing SRL-B pre-zoned parcels, staff proposed modifications to the uses allowed in the existing SRL-B Zoning District that would be applicable to all properties currently pre-zoned SRL-B; and

WHEREAS, with the proposed modifications to the SRL-B district as shown in Table 18.28-2 in Exhibit A – Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts, the following commercial uses would no longer be allowable: drive-through establishments, gas and service stations, hotels and motels, restaurants, retail that is sports-themed or sports/recreation-serving, day spas, barbershops, hair salons, health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools; and

WHEREAS, the SRL-B district will continue to not allow new residential land uses with the exception that one single-family detached dwelling on a legal lot of record established in the County prior to August 1, 2014 remains a permitted use; and

WHEREAS, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074), was prepared for the Zoning Code Update adopted on June 6, 2018 and serves as the environmental review for the proposed Zoning Code Text Amendment. The Addendum for the Zoning Code Update was prepared pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164; and

WHEREAS, the Zoning Code Text Amendment complies with the City's Morgan Hill 2035 General Plan as required by Government Code Section 65860; 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; and

WHEREAS, the Zoning Code Text Amendment, was considered by the Planning Commission at its regular meeting of October 9, 2018 at which time the Planning Commission recommended approval of application ZA2018-0005: City of Morgan Hill; and

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

SECTION 1. The Planning Commission has evaluated and found the proposed changes to Zoning Code Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts (Exhibit A) to be consistent with the Morgan Hill 2035 General Plan; to not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and to be internally consistent with other applicable provisions of the Zoning Code as provided in Section 18.114.060.

SECTION 5. The Planning Commission recommends that the City Council consider the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) and approve ZA2018-0005: City of Morgan Hill.

PASSED AND ADOPTED THIS 9th DAY OF OCTOBER 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. XX
Page 3 of 4

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

Date: _____

F:\WP51\Zoning Amendment\2018\ZA2018-0005 City of Morgan Hill\DRAFT_PC_Reso.docx

Attachment: Planning Commission Reso. - DRAFT (1973 : ZA2018-0005: City of Morgan Hill)

EXHIBIT A

Chapter 18.28 – OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS

Sections:

18.28.010 – Purpose of the Open Space, Public, and Recreation Zoning Districts

18.28.020 – Land Use Regulations

18.28.030 – Development Standards

18.28.010 – Purpose of the Open Space, Public, and Recreation Zoning Districts

- A. Open Space.** The purpose of the Open Space (OS) zoning district is to preserve and enhance open space lands as a limited and valuable resource in Morgan Hill. The OS zoning district is intended to permit limited but reasonable use of open space lands while reducing exposure to geologic hazards, to preserve agricultural land, and to preserve the topographic features that contribute to Morgan Hill's unique identity.
- B. Public Facilities.** The purpose of the Public Facilities (PF) zoning district is to provide a location for schools, governmental offices, parks and recreational facilities, fire and police stations, utilities, and other public and quasi-public facilities to serve the community.
- C. Sports Recreation and Leisure (SRL).** The purpose of the SRL zoning district is to provide a location for a variety of private and public or quasi-public land sports, recreation, and leisure uses to serve the community. The SRL zoning district includes two sub-zones:
 - 1. The SRL-A sub-zone which supports lower intensity sports, recreation, and leisure uses that are compatible with nearby agricultural and open space activities; and
 - 2. The SRL-B sub-zone which supports lower and medium intensity sports, recreation, and leisure uses.

18.28.020 –Land Use Regulations

A. Open Space and Public Facility Zones.

- 1. **Permitted Land Uses – General.** Table 18.28-1 identifies land uses permitted in the Open Space (OS) and Public Facilities (PF) zoning districts.

TABLE 18.28-1: PERMITTED LAND USES IN THE OPEN SPACE AND PUBLIC FACILITIES ZONING DISTRICTS

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required - Use not allowed	Zoning District		Additional Regulations
	OS	PF	
Residential Uses			
Accessory Dwelling Units	P	-	Chapter 18.84
Agricultural Labor Accommodations	C	-	
Single-Family Detached Dwellings	P	-	
Public and Quasi-Public Uses		-	
Cemeteries	C	C	
Colleges and Trade Schools	-	C	
Community Assembly	-	C	
Cultural Institutions	-	P [1]	
Day Care Centers	-	C	
Emergency Shelters	-	P	
Government Offices	-	P	
Home Day Care, Small	P	-	
Hospitals	-	P	
Instructional Services	-	P [1]	
Parks and Recreational Facilities	P	P [1]	
Public Safety Facilities	C	P	
Schools, Public	-	P	
Schools, Private	-	C	
Commercial Uses			
Animal-Related Commercial Uses			
Animal Boarding	C	-	
Equestrian Centers	C	-	
Farmer's Markets	C	C	
Plant Nurseries	C [2]	-	
Transportation, Communication, and Utility Uses		-	
Parking Structures and Facilities	-	P [1]	
Utilities, Major	-	C	
Wireless Communications Facilities	See Chapter 18.96		
Agriculture and Natural Resource Uses			
Crop Cultivation	P	-	
Animal Raising and Production, Intensive	C	-	

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	OS	PF	
Animal Raising and Production, Limited	P	-	
Wildlife Refuges	P	-	
Other Uses			
Accessory Uses	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

Notes:

[1] A Conditional Use Permit is required if not owned or operated by a governmental agency.

[2] Sales are limited to horticultural products grown on site.

B. Design Permit for Residential Uses in the OS Zone. In addition to projects requiring Design Permits pursuant to 18.108.040 (Design Permits), the construction of new residential uses requires a Design Permit to verify conformance with Section 18.28.030.B (Performance Standards in OS Zone) and all other applicable requirements.

C. Sports Recreation and Leisure Zones. Table 18.28-2 identifies land uses permitted in the SRL-A and SRL-B sub-zones.

TABLE 18.28-2: PERMITTED LAND USES IN THE SPORTS RECREATION LEISURE ZONING DISTRICT

Key P Permitted use C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	SRL-A	SRL-B	
Residential Uses			
Single-family detached dwellings	P [1]	P [1]	
All other new residential land uses	-	-	
Commercial Uses			
Drive-through establishments	-	-	
Gas and service stations	-	-	
Hotel and motels	-	-	
Restaurants	-	-	
Retail that is sports-themed or sports/recreation-serving	-	-	
Sports, Recreation, and Leisure Uses			
Adventure sports facilities	P	P	
Arts and crafts studios	P	P	
Batting cages	P	P	
Bowling alleys	-	-	

Key P Permitted use C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	SRL-A	SRL-B	
Campgrounds	-	-	
Casinos, card clubs, and gambling facilities	-	-	
Cinemas and movie theaters	-	-	
Day spas, barbershops, and hair salons	C [2]	-	
Equestrian centers	P	P	
Golf courses	P [3]	P [3]	
Health and fitness clubs and indoor recreation centers oriented to local residents	C [4]	-	
Outdoor sports centers	P	P	
Outdoor race tracks for cars, go-karts, or similar use;	-	-	
Pool and billiards halls	-	-	
Recreational vehicle parks	-	-	
Sports Fields	P	P	
Stadiums	-	-	
Swimming pools, outdoor	P [5]	P [5]	
Agriculture and Natural Resource Uses			
Crop cultivation	P	P	
Farmer’s market	P	P	
Sales of agricultural products grown on site	P	P	
Wineries	P	P	
Transportation, Communication, and Utility Uses			
Wireless communications facilities	See Chapter 18.96		
Other Uses			
Accessory Uses and Structures	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

Notes:

[1] Permitted only on a legal lot of record established in the unincorporated area prior to August 1, 2014.

[2] May be permitted with a Conditional Use Permit if ancillary to hotel or motel use.

[3] Golf courses in excess of three holes are prohibited.

[4] Fitness and exercise facilities ancillary to a primary destination-oriented sports/recreation/leisure use are allowed with a Conditional Use Permit.

[5] Permitted if ancillary to hotel or motel use.

D. Additional Permits. In addition to permits identified in Tables 18.22-1 and 18.22-2, development projects in the open space, public, and recreation zoning districts may also require a Design Permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60. (Historic Resources).

- E. Hillside Combining District.** Development on site with an average slope of 10 percent or greater are subject to the requirements of Section 18.30.040 (Hillside Combining District).

18.28.030 Development Standards

- A. General.** Table 18.28-3 identifies development standards that apply in the public, open space, and recreation zoning districts.

TABLE 18.28-3: PUBLIC, OPEN SPACE, AND RECREATION DEVELOPMENT STANDARDS

	OS	PF	SRL-A	SRL-B	Additional Standards
Site Requirements					
Lot Area, Minimum	5 acres	None	1 acre	1 acre	
Lot Width, Minimum	100 feet		100 ft.	100 ft.	
Lot Depth, Minimum	None		150 ft.	150 ft.	
Impervious Coverage, Maximum	10% [1]	As required by review authority	None	None	
Building Coverage, Maximum	5% [2]		30%	50%	
Structure Requirements					
Setbacks, Minimum					18.56.030
Front	50 ft.	As required by review authority	30 ft.	20 ft.	
Rear	50 ft.		50 ft.	15 ft.	
Interior Side	50 ft.		20 ft.	15 ft.	
Street Side	25 ft.		30 ft.	20 ft.	
Height, Maximum	2 stories or 25 ft.		35 ft.	35 ft.	18.56.020

Notes:

[1] Planning Commission may allow greater impervious surface with a Conditional Use Permit.

[2] 30 percent for those existing lots less than 5 acres.

- B. Performance Standards in OS Zoning District.** The following standards apply to all development and land uses in the OS zoning district.

1. **Stormwater Runoff.** In addition to requirements in Chapter 18.140 (Post Construction Stormwater Pollution Prevention), development shall comply with the following standards:
 - a. Permanent vegetation and improvements capable of carrying stormwater runoff in a safe manner shall be installed to the extent possible before the vegetative cover is removed from the area.
 - b. Sediment basins, including debris basins, desilting basins and silt traps, shall be installed and maintained to reserve sediment from runoff waters of land undergoing development.

2. **Public Services and Infrastructure.** Construction of dwellings for which Conditional Use Permits are required are permitted only if the proposed dwelling units are served by public sewers, public water, , and ingress/egress that comply with minimum fire department standards. The City may grant exceptions to the public sewer and public water requirements for:
 - a. Areas that were annexed into the city outside the urban service area with approved private water and septic systems; and
 - b. Secondary dwellings where a private septic tank disposal system has been approved for the primary dwelling on the same parcel of land.
- C. **Outdoor Storage in the PF Zone.** Areas used for outdoor storage in the PF zoning district shall meet the minimum design standards applicable to off-street parking facilities as specified in Section 18.72.060 (Parking Design and Development Standards).

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