



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, November 27, 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

MINUTES APPROVAL

1. APPROVE THE OCTOBER 23, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARINGS

2. SD2018-0004/DA2018-0002/EA2018-0014: EAST DUNNE - YOUNG: SUBDIVISION, DEVELOPMENT AGREEMENT AND ENVIRONMENTAL ASSESSMENT FOR A 46-UNIT RESIDENTIAL DEVELOPMENT. THE PARCEL, IDENTIFIED BY ASSESSOR PARCEL NUMBER, 726-02-007, IS LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE, ADJACENT TO THE NORTH SIDE OF THE MORGAN HILL KINDER CARE LEARNING CENTER.

Recommendation:

1. Open/close Public Hearing;
2. Adopt a Resolution adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project;
3. Adopt a Resolution approving a Tentative Map; and,
4. Adopt a Resolution recommending the City Council approve a Development Agreement.

OTHER BUSINESS

DIRECTOR'S REPORT/ANNOUNCEMENTS

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

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, October 23, 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	Present	
Juan Miguel Munoz Morris	Planning Commissioner	Present	
Joseph Mueller	Planning Commissioner	Present	
Wayne Tanda	Planning Commissioner	Present	
John McKay	Planning Commissioner	Present	

DECLARATION OF POSTING AGENDA

Minutes Clerk Luna declared the posting of the agenda.

Minutes Acceptance: Minutes of Oct 23, 2018 7:00 PM (MINUTES APPROVAL)

PLEDGE OF ALLEGIANCE

Commissioner Habib led the Pledge of Allegiance.

OPEN PUBLIC COMMENT PERIOD

Chair Downey opened the Public Comment Period at 7:02 p.m. Hearing no requests to speak, the Public Comment Period was closed.

ORDERS OF THE DAY

No changes made.

MINUTES APPROVAL

1. APPROVE THE APRIL 25, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

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

PUBLIC HEARINGS

2. DA2018-0002/EA2018-0014: E. DUNNE-YOUNG: APPROVAL OF A DEVELOPMENT AGREEMENT FOR A 46-UNIT MULTI-FAMILY OWNER OCCUPIED DEVELOPMENT. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER, 726-02-007 IS LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE (TSAI YOUNG H AND SO M ET AL, OWNER).

Recommendation:

Open/close the public hearing and continue to the November 13, 2018 Planning Commission meeting.

RESULT:	CONTINUED [UNANIMOUS]	Next: 11/13/2018 8:00 PM
MOVER:	Joseph Mueller, Planning Commissioner	
SECONDER:	Juan Miguel Munoz Morris, Planning Commissioner	
AYES:	Downey, Martinez Beltran, Habib, Munoz Morris, Mueller, Tanda, McKay	

3. ZA2018-0006: HALF - TRUMARK: ZONING AMENDMENT TO AMEND THE ZONING MAP DESIGNATION FOR TWO PARCELS FROM R-2 3,500/PD TO RAL-3,500. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBER(S) 728-30-003 AND -004, ARE LOCATED ON THE NORTHERLY SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE (LLAGAS LLC, OWNER).

Recommendation:

Minutes Acceptance: Minutes of Oct 23, 2018 7:00 PM (MINUTES APPROVAL)

1. Open/close the public hearing; and,
2. Adopt Resolution recommending City Council approval of the Zoning Amendment.

Chair Downey opened the Public hearing at 7:25 p.m.

Chris Davenport was called to speak.

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

MOTION

Continue item to the next meeting with a recommendation to expand the noticing of property owners to 1000 feet.

RESULT:	MOTION BELOW [2 TO 5]
MOVER:	Yvonne Martinez Beltran, Vice Chair
SECONDER:	John McKay, Planning Commissioner
AYES:	Martinez Beltran, McKay
NAYS:	Downey, Habib, Munoz Morris, Mueller, Tanda

MOTION

Adopt a Resolution recommending City Council approve the Zoning Amendment with a recommendation to expand the noticing of property owners to 600 feet prior to the City Council meeting.

RESULT:	ADOPTED [6 TO 1]
MOVER:	Wayne Tanda, Planning Commissioner
SECONDER:	Juan Miguel Munoz Morris, Planning Commissioner
AYES:	Downey, Habib, Munoz Morris, Mueller, Tanda, McKay
NAYS:	Martinez Beltran

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

Recommendation:

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

8:20 p.m. Commissioner Habib recused himself from the dais.

Chair Downey opened the Public Hearing at 8:40p.m.

Joseph Samaha was called to speak.

Bill Poland was called to speak.

Brian Sullivan was called to speak.

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

MOTION

Approve the Conditional Use Permit with the added conditions that the applicant shall incorporate a focal point feature at the T-intersection and enhance the landscaping with trees within the 30-foot landscape buffer to minimize the visibility of cars on site.

RESULT:	ADOPTED [5 TO 1]
MOVER:	Juan Miguel Munoz Morris, Planning Commissioner
SECONDER:	Wayne Tanda, Planning Commissioner
AYES:	Downey, Munoz Morris, Mueller, Tanda, McKay
NAYS:	Martinez Beltran
RECUSED:	Habib

DIRECTOR'S REPORT/ANNOUNCEMENTS

The next regular scheduled Planning Commission meeting will be held on November 13, 2018. The Planning Commission will have an earlier start with Marilyn Manning for their individual interviews on Team Building.

The East Dunne - Young project is the only Public Hearing item scheduled for the November 13, 2018 meeting.

City Council will be holding a Workshop on October 24, 2018 at 5:30 p.m.

Assistant City Attorney Cynthia Hasson shared the City's E-mail Policy with the Planning Commission. Information Services will be showing the Planning Commission how to set up their new e-mail accounts at the next meeting.

The City has launched a new Economic Development Website: choosemorganhill.com which was introduced to City Council at their last meeting.

Interim Principal Planner Gina Paolini gave a report on the Residential Control System Competition Orientation last Monday.

ADJOURNMENT

There being no further business, Chair Downey adjourned the meeting at 9:44 p.m.

MINUTES PREPARED BY:

Jenna Luna, Minutes Clerk

Minutes Acceptance: Minutes of Oct 23, 2018 7:00 PM (MINUTES APPROVAL)



CITY OF MORGAN HILL

PLANNING COMMISSION STAFF REPORT

MEETING DATE: November 27, 2018

PREPARED BY: Terry Linder, Senior Planner

APPROVED BY: Jennifer Carman, Community Development Director

SD2018-0004/DA2018-0002/EA2018-0014: EAST DUNNE - YOUNG: SUBDIVISION, DEVELOPMENT AGREEMENT AND ENVIRONMENTAL ASSESSMENT FOR A 46-UNIT RESIDENTIAL DEVELOPMENT. THE PARCEL, IDENTIFIED BY ASSESSOR PARCEL NUMBER, 726-02-007, IS LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE, ADJACENT TO THE NORTH SIDE OF THE MORGAN HILL KINDER CARE LEARNING CENTER.

RECOMMENDATION(S)

1. Open/close Public Hearing;
2. Adopt a Resolution adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project;
3. Adopt a Resolution approving a Tentative Map; and,
4. Adopt a Resolution recommending the City Council approve a Development Agreement.

POLICY CONSIDERATIONS: Is the Development Agreement and Subdivision consistent with the required findings?

LOCATION MAP:



PROJECT SUMMARY:

1. Location: North side of East Dunne Avenue
APN: 726-02-007
2. Site Area: 3.48 Acres
3. General Plan: Residential Attached Medium (16-24 dwelling units per acre)
4. Zoning: Residential Attached Medium (RAM)

BACKGROUND

On January 17, 2018, the City Council adopted Ordinance No. 2266 amending the zoning designation on the property from R-2 3,500/RPD to R-3 to achieve consistency with the General Plan adopted in July of 2016. The City Council adopted Resolution No.18-050 on June 20, 2018, reaffirming the Planning Commission's award of 20, Fiscal Year 2019/2020 residential building allotments for RDCS2017-0012: E. Dunne-Young.

PROJECT DESCRIPTION:

Diana Dunne Investors, LLC proposes a three lot non-vesting Tentative Subdivision Map with 46- condominium units and a Development Agreement to incorporate awarded Residential Development Control System (RDCS) allotments and to memorialize the RDCS public benefit commitments for a first phase 20, Fiscal Year 2019/2020 allotments. The Development Agreement specifies the duration and permitted uses of the subject property; the general location and density or intensity of the uses. It also contains provisions concerning its transferability to any successor owners of the property. The Development Agreement clearly outlines the benefits provided to the City by entering into the Agreement for the first phase of 20 units.

The application included the following requests:

- Development Agreement to memorialize the RDCS public benefit commitments,
- Three lot Tentative Subdivision Map with 46 condominium units; and,
- Environmental Assessment to provide the California Environmental Quality Act (CEQA) determination to carry out the project

Site Description

The 3.48-acre project site is vacant and regularly maintained to prevent weed growth. A narrow dirt footpath extends diagonally from the southeast corner of the site to the northeast corner of the site. In addition, a small number of remnant orchard trees are scattered within the southern portion of the site.

Surrounding Zoning/Land Use

1. North: Residential Detached Medium, developed with single family detached homes
2. South: Residential Attached Medium, Morgan Hill KinderCare
3. East: Residential Attached Medium and Mixed-Use Flex, vacant-undeveloped
4. West: Residential Attached Medium, vacant-development approved for 32-units

ANALYSIS:

This request is submitted pursuant to the following:

- Chapter 17.08 Subdivision
- Chapter 18.116 Development Agreements

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

1. General Plan

The site has a land use designation of Residential Attached Medium. This designation allows attached housing types including townhomes, garden apartments, and stacked flats and accommodates 16 to 24 units per net acre.

The following General Plan goals and policies are applicable to the project:

City and Neighborhood Form Element

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

Policy CNF-2.2 A Balanced Community. Plan for the needs of all socioeconomic segments of the community, encouraging a balance and match in jobs and housing within the City.

Policy CNF-8.2 Design Features. Encourage design features and amenities in new development and redevelopment, including, but not limited to:

- Highly connected street layouts, supporting multiple paths of travel for all modes.
- Cluster buildings to create useable open space.
- Abundant landscaping.
- Attractive transitions between uses.
- Comfortable pedestrian facilities that promote a high level of pedestrian activity.
- Distinctiveness and variety in architectural design.

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

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

- Providing multiple points of entry into the project for motorists, bicyclists and

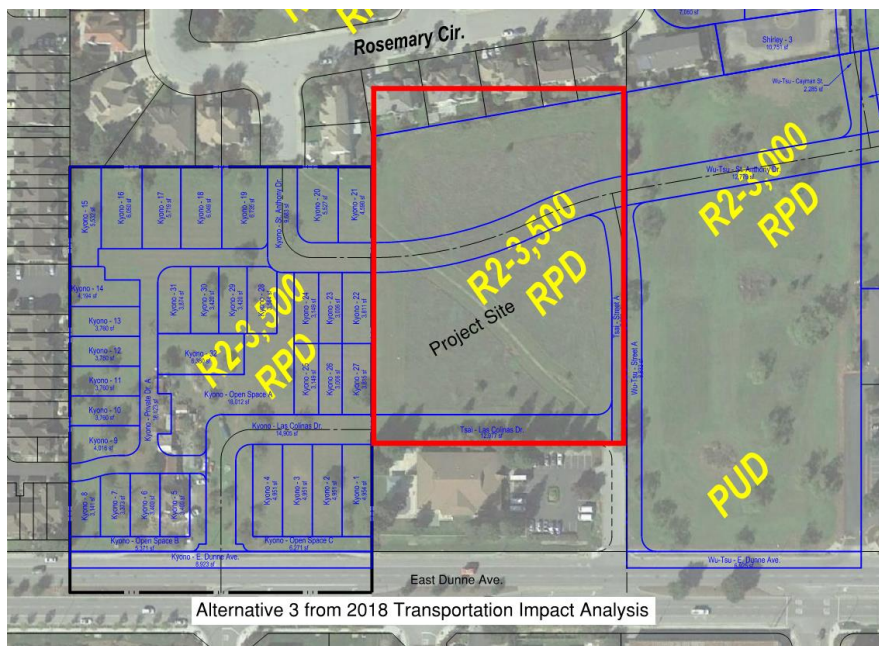
pedestrians.

- Planning for future connections to adjacent undeveloped property.

Consistency

The project proposes 46 units on 2.74 net acres which translates to 16.8 dwelling units per net acre. The proposed density complies with the Residential Attached Medium General Plan designation requiring 16-24 dwelling units per acre. The primary uses in the surrounding area include attached and detached single-family residences and a daycare facility. The project will introduce three story (39 feet) multi-family attached units. The units are clustered in groups of 3 units and 5 units and oriented perpendicular to the northern property boundary. The buildings are setback 16 to 32 feet from the existing single-family homes to the north. The adjacent single-family homes are two story and have rear yard depths of more than 20 feet. The proposed building orientations will minimize the visual impacts to the adjacent homes and provide a common area buffer that can be landscaped to provide additional screening and privacy. Available infrastructure is located adjacent to the project site, including wet and dry utilities. The proposed architecture, open space areas and amenities will be evaluated during the Design Review process.

The Transportation Impact Analysis (TIA) completed for the adjacent Las Colinas project to the south, included a review of three alternative circulation plans for the area between Diana Avenue, Dunne Avenue and west of Walnut Grove Drive. Alternative No. 3 (preferred plan) was adopted for the project. The circulation proposed within the Andalusia subdivision is consistent with the preferred TIA Alternative No. 3.



The Saint Anthony roadway extension will be 40 feet in width (curb to curb), connecting with a 30-foot wide half street extension of the existing street along the east side of the

KinderCare facility. All the public streets will have detached sidewalks except for the street proposed along the north side of the KinderCare facility which will have a 36-foot width (curb to curb) with an attached sidewalk configuration to allow for the retention of the mature trees along the north side of the KinderCare facility. The project off-site improvements include the installation of detached sidewalk along the south and east sides of the KinderCare property.

2. Zoning Code

A Tentative Map (Attachment 4) is required for the project and meets the requirements specified in Table 18.18-3 of the zoning code, as demonstrated in the following table:

RAM Zoning	Requirement	Proposed	Consistency
Lot Area, Minimum	6,000/4,500 square feet	0.58, 1.05 and 1.85 Acres	Yes
Lot Width, Minimum	60 feet	172-290 feet	Yes
Lot Depth, Minimum	85 feet	162-193 feet	Yes
Site Area per Dwelling Unit, Minimum	2,000 square feet	2,303-3,988 square feet per dwelling unit	Yes
Building Coverage, Maximum	60 percent	53.75 percent	Yes

Parking

The Municipal Code requires that multi-family units with two bedrooms provide two parking spaces, one covered and one uncovered. Units with three or more bedrooms must provide 2.5 parking spaces; two of the spaces must be covered. Guest parking is required at a ratio of one parking space for each three dwelling units. Fifteen guest parking spaces are required for the project. A total of 125 (74 covered) parking spaces must be provided. Each unit is provided with two covered parking spaces (92 spaces) and 26 guest spaces are provided. Additionally, 35 vehicles can be parked along the public streets. The proposed project exceeds the minimum parking required for multi-family development.

3. Residential Development Control System (RDCS)

The applicant is requesting a Development Agreement to memorialize the public benefit commitments for 20 allotments awarded to the project. The final Narrative was reviewed for consistency with the public benefit commitments provided within the draft Development Agreement.

4. Tentative Subdivision Map

The proposed project would include a Tentative Subdivision Map, subdividing the property into three parcels:

- a. Parcel 1- 1.83 acres
- b. Parcel 2- 1.06 acres
- c. Parcel 3- 0.58 acres

Parcel 1 would include 20 condominium units, common open space and associated parking improvements. Parcel 2 would include 15 condominium units and common open space. Parcel 3 would include 11 condominiums and associated parking improvements.

The project received 20 allotments in the 2017 RDCS competition for Fiscal Year 2019/20. Parcel 1 represents Phase 1 and the associated improvements. Phase I improvements include the completion of Andalusia Drive from East Dunne Avenue north to Saint Anthony Drive, the extension of Saint Anthony Drive west to east and the construction of two tot-lots and common area on the north side of Saint Anthony Drive.

The RDCS Competition Manual allows for the processing of a Tentative Map which exceeds the number of allotments currently assigned to a development if certain criteria are met:

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

Additional allotments would be needed to complete the project either in a competition or as a future ongoing project. The applicant intends to receive 15 ongoing allotments in the 2018 RDCS competition for Fiscal Year 2020/21.

5. Findings

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

Morgan Hill Municipal Code Section 18.116.040 (C), Consideration of proposed Development Agreement—Recommendation by Planning Commission, requires that the following findings be made by the City Council to adopt the Development Agreement:

The Development Agreement:

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

The project would provide 46 residential units which is consistent with the General Plan. There have been no General Plan policy conflicts identified with the proposed project.

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

The proposed residential use is permitted within the Residential Attached Medium zoning district and would be compatible with the surrounding residential and small business use.

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

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

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

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

E. Complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The project is subject to CEQA and an Initial Study/Mitigated Negative Declaration has been prepared for the project.

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

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

In accordance with Section 17.12.060, the Planning Commission is responsible for approving or conditionally approving the application for a Tentative Map. In accordance with Section 17.16.020, a Tentative Map is required for the project, as it would include five or more condominiums as defined in Section 783 of the State Civil Code.

Morgan Hill Municipal Code Section 17.20.090 (A) Approval Conditions-Consideration and approval of the Tentative Subdivision Map by the Planning Commission requires the following findings.

The Subdivision Map:

- A. **The proposed subdivision, together with its provisions for its design and improvements, is consistent with applicable general or specific plans adopted by the City.**

The project has been designed to comply with the City's Residential Attached Medium General Plan land use density requirements and associated land use policies. The site improvement design is consistent with TIA Alternative No. 3. The Saint Anthony roadway extension will be 40 feet in width (curb to curb), connecting with a 30-foot wide half street extension of the existing street along the east side of the KinderCare facility.

Conclusion

The project has been found to be consistent with the General Plan, Zoning Ordinance, Subdivision Ordinance and RDCS requirements. Staff recommends that the Planning Commission approve the Mitigated Negative Declaration, Tentative Map and recommend approval to the City Council of the Development Agreement incorporating the RDCS public benefit commitments.

6. **California Environmental Quality Act (CEQA):**

An Initial Study/Mitigated Negative Declaration (IS/MND) (Attachments 5 and 6) have been completed for the project in accordance with the requirements of CEQA. The IS/MND was circulated for 30-days from September 14 to October 15, 2018. The Initial Study is available for review on the City web site <http://www.morgan-hill.ca.gov/1728/East-Dunne-Young>. Some topics noteworthy of discussion include Air Quality, Biological Resources, Noise and Traffic. Of these topics, Biological Resources and Noise required mitigation measures to reduce potential significant impacts on the environment to a less than significant level.

a. Biological Resources - Trees

A Tree Inventory and Pre-Construction Report was prepared for the proposed project by Ray Morneau. The report indicated that the project site contains 14 existing trees. In addition, the drip line of one tree located outside the site's eastern boundary overhangs the project site. Of the 15 total trees, 11 trees are protected as "Ordinance Sized Trees" pursuant to Chapter 12.32 of the City's Municipal Code. Eight of the 11 protected trees would require removal as part of the proposed project (Trees #1, 2, 3, 4, 5, 5b, 7, and 8). Removal of such trees would require replacement plantings at a 1:1 ratio (15-gallon minimum).

Three protected trees (Trees #6, 11, and 12) would be preserved on-site along the south side of proposed Los Castanos Drive, north of KinderCare. These protected trees would require preservation and/or protection measures.

b. Noise

The proposed project would only cause elevated vibration levels during construction, as the proposed project would not involve any uses or operations that would generate substantial ground borne vibration. Although noise and vibration associated with the construction phases of the project would add to the noise environment in the immediate project vicinity, construction activities would be temporary in nature and are anticipated to occur during normal daytime working hours.

Use of vibratory compactors/rollers could be required during construction of the proposed on-site roadways, including Las Colinas Drive, which would be located directly adjacent to the Morgan Hill KinderCare northern property line. Operation of vibratory compactors/rollers used for construction of Las Colinas Drive could operate at a distance of approximately 25 feet from the north side of the Morgan Hill KinderCare structure; thus, ground borne vibrations at the structure could potentially exceed 0.2 in/sec PPV. Use of vibratory compactors/rollers could be required during construction of the proposed on-site roadways, including Las Colinas Drive, which would be located directly adjacent to the Morgan Hill KinderCare northern property line. Because the proposed project would not cause continuous, long-term vibrations, the project would not be expected to result in extended annoyance to the nearby sensitive receptors.

A Mitigation Monitoring and Reporting Program (MMRP) has been prepared (Attachment 7) for the project which includes all measures required to reduce potentially significant environmental impacts to a less-than-significant level. In addition, the MMRP identifies the timing of implementation; the agency responsible for implementing the mitigation; and the agency responsible for monitoring the mitigation. The project results in no significant environmental impacts with the inclusion of Mitigation Measures for Biological Resources (special status animal species - Burrowing owl, Raptors and Tree protection and replacement), and Noise to address short-term construction impacts.

Community Engagement

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

LINKS/ATTACHMENTS:

1. MND Resolution
2. DA Resolution
3. TM Resolution
4. Tentative Map
5. ISMND_w Appendix Revised
6. Mitigated Negative Declaration
7. MMRP

RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ADOPTING THE MITIGATED NEGATIVE DECLARATION THAT WAS PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE E. DUNNE AVENUE - YOUNG PROJECT (APN 726-02-007)

WHEREAS, prior to the adoption of this Resolution, the Planning Division of the City of Morgan Hill prepared an Initial Study and a Mitigated Negative Declaration for the E. Dunne-Young Project (Planning File No's. DA2018-0002, SD2018-0004, EA2018-0014) in accordance with the requirements of the California Environmental Quality Act of 1970, as amended ("CEQA"), and state and local guidelines implementing CEQA; and

WHEREAS, the E. Dunne-Young Project ("Project") analyzed under the Initial Study/Mitigated Negative Declaration consisted of the request to subdivide the property into 3 parcels and construct 46, three story, condominium units on property located on the north side of E. Dunne Avenue, behind the Morgan Hill KinderCare Learning Center located at 605 E. Dunne Ave. (APN: 726-02-007); and

WHEREAS, in connection with the approval of a project involving the preparation of an Initial Study/Mitigated Negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environment effects to a less-than-significant level; and

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

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

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

City of Morgan Hill
Resolution No.
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WHEREAS, the Initial Study/Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein; and

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

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

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

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

SECTION 2. THAT THE PLANNING COMMISSION does hereby adopt the Mitigation Monitoring and Reporting Program prepared for the Project. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Community Development Department, Planning Division, located at 17575 Peak Avenue, Morgan Hill CA 95037 and (2) available for inspection by any interested person.

PASSED AND ADOPTED THIS 27TH DAY OF NOVEMBER 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

Attachment: MND Resolution (2048 : E. Dunne Young-Andalusia)

City of Morgan Hill
 Resolution No.
 Page 3 of 3

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

A F F I D A V I T

We, _____, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

By: _____

Date: _____

Attachment: MND Resolution (2048 : E. Dunne Young-Andalusia)

RESOLUTION NO. 18-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT DA2018-0002: E. DUNNE-YOUNG FOR A 20-UNIT PORTION OF A 46-UNIT RESIDENTIAL DEVELOPMENT ON A 3.5-ACRE SITE LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE, DIRECTLY NORTH OF THE MORGAN HILL KINDERCARE FACILITY LOCATED AT 605 EAST DUNNE AVENUE (APN 726-02-007)

WHEREAS, the Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, awarded 20 building allotments for application RDCS 2017-0012: E. Dunne-Young for FY2019-2020; E. Dunne-Young and

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

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

WHEREAS, said Development Agreement request was considered by the Planning Commission at its regular meeting of October 23, 2018, November 13 and November 27, 2018, at which time the Planning Commission recommended City Council approval of Development Agreement application DA2018-0002: E. Dunne-Young; and

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

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

SECTION 1. The Planning Commission recommends that the City Council approve the Development Agreement based on the determination and supporting reasoning described below as required by Morgan Hill Municipal Code Section 18.116.040(C).

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

The project would provide 20 multi-family residential units in a variety of housing options. There have been no General Plan policy conflicts identified with the proposed project.

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

Attachment: DA Resolution (2048 : E. Dunne Young-Andalusia)

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

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

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

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

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

SECTION 6. The Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The project is subject to CEQA and an Initial Study/Mitigated Negative Declaration has been prepared and adopted for the project.

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

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

PASSED AND ADOPTED THIS 27th DAY OF NOVEMBER 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

Attachment: DA Resolution (2048 : E: Dunne Young-Andalusia)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

DIANA DUNNE INVESTORS LLC

REGARDING

ANDALUSIA RESIDENTIAL DEVELOPMENT PROJECT

Attachment: DA Resolution (2048 : E. Dunne Young-Andalusia)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
DIANA DUNNE INVESTORS LLC REGARDING THE ANDALUSIA RESIDENTIAL
DEVELOPMENT PROJECT

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

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

RECITALS

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

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

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

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

1. **RDCS Application:** RDCS 2017-0012: E. Dunne-Young, 20 FY 2019-20 allotments
2. **EA 2018-0014: E. Dunne-Young;**
3. **SD 2018-0004: E. Dunne-Young;**

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 June 20, 2018, the Morgan Hill City Council awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

G. On October 23, 2018, November 13 and November 27, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1 **ADMINISTRATION**

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

1.02 Definitions.

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

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) "**Director**" shall mean the Director of Community Development, and his or her designee.

- (5) “**Existing Approvals**” shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) “**Existing City Laws**” shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) “**Impact Fees**” shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.
- (8) “**Legal Effect**” shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) “**New City Laws**” shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "**Legal Effect**" after the Effective Date of this Agreement, and that applies City wide.
- (10) “**Project**” means the development containing 20, three story, condominium units and .83 acres of open space, as more particularly described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) “**Project Approvals**” mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) “**Property**” shall mean that certain real property consisting of approximately 3.5 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) “**RDCS**” means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) “**Second Notice**” shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (15) “**Subdivision Document**” means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.
- (16) “**Subsequent Approvals**” and "**Subsequent Approval**" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

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

1.03 **Term.**

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

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

ARTICLE 2 APPLICABLE LAW

2.01 **Applicable Law—Generally.**

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

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

- (5) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

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

2.02 Vested Right to Applicable Law.

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

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

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

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

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

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent

of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

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

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

2.04 RDCS and Other Specific Project-Specific Requirements.

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

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or

higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer's RDCS application – RDCS 2017 – 0012: E. Dunne-Young approved on June 20, 2018, by the City Council 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. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

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

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

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

2.07 Improvements.

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

2.08 Overcapacity, Oversizing.

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

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

2.09 New City Laws.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3 PROCESSING

3.01 Processing.

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

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

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

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

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

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the

ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

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

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

3.04 Amendments.

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

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

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

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

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute

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

4.04 Periodic Review.

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

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

4.05 Force Majeure Delay, Extension of Times of Performance.

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

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

4.06 Third Party Legal Actions.

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

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

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs) and shall indemnify and hold harmless

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

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

4.07 Estoppel Certificate.

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

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

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

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

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

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement

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

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

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

4.09 Encumbrances on the Property.

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

4.10 Obligations and Rights of Mortgage Lenders.

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

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

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

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

4.11 Termination.

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

ARTICLE 5 GENERAL PROVISIONS

5.01 Miscellaneous.

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

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

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

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

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

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

liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:
 Per Occurrence \$1,000,000
 Limit of Liability for Property Damage:
 Aggregate Liability for Loss \$1,000,000

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

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

(h) Notices.

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

If to City: City Clerk
 17575 Peak Avenue
 Morgan Hill, CA 95037
 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

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

If to Developer: Diana Dunne Investors LLC
 c/o Dick Oliver
 385 Woodview Ave, Suite 100
 Morgan Hill, CA 95037

(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.

Attachment: DA Resolution (2048 : E: Dunne Young-Andalusia)

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

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

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

Signatures of all parties are on the following page.

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

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney

Date: _____

DEVELOPER:

Diana Dunne Inv. LLC

s/ _____

Richard Oliver
President

Date: _____

*Corporate entities must provide a
second signature:*

s/ _____

Name/Title [print]

Date: _____

Adopted by Ordinance No. _____
by action of City Council on _____

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

Attachment: DA Resolution (2048 : E. Dunne Young-Andalusia)

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

LEGAL DESCRIPTION

Real property in the City of Morgan Hill , County of Santa Clara, State of California, described as follows:

PARCEL ONE:

PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP IN THE CITY OF MORGAN HILL OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PORTION OF LOT 71 MORGAN HILL RANCH, MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 21, 1986 IN BOOK 560 OF MAPS, AT PAGE 1.

PARCEL TWO:

AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER THE NORTHEAST 30 FEET OF PARCEL B, AS SHOWN ON PARCEL MAP ABOVE REFERRED TO.

APN: 726-02-007

Attachment: DA Resolution (2048 : E: Dunne Young-Andalusia)

EXHIBIT B**DESCRIPTION OF PROJECT**

PHASE 1 (20 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

Attachment: DA Resolution (2048 : E. Dunne Young-Andalusia)

EXHIBIT C

-1-

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to Phase 1 (20 units) of the Development proposed in RDCS application 2017-0012 E. Dunne -Young and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements 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)

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

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.	Schools			
4.	Student Transportation Improvements	\$5000 per unit to contribute to the City's Safe Access to Schools Fund	Prior to issuance of building permit	\$5000/Unit
2.	Location			
6.a	Water distribution lines	Local water distribution lines are of sufficient size to serve the proposed project. The project does not require replacing existing local water distribution lines with larger diameter pipes. New water mains to serve the site do not need to be installed.	NA	NA
6.b	Wastewater collection	The existing wastewater collection system is sufficient to serve the proposed project. The project does not require extending or replacing existing sewer pipes or lift stations outside of the project site.	NA	NA
6.c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the project.	NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.	Affordable Housing			
2.	Voluntary Contribution to Housing Fund	NA	NA	NA
3.	Development of Affordable Units	Developer committed to 4 BMR's - 3 at 80% AMI and 1 at 90% AMI. Phase 1 BMR's will be located in Bldg #2 - unit #7 and Bldg #4 - unit #15. Unit type for BMR's is AZ – approximately 1428 sq feet (the same size as Unit type A - Market Rate Units) The Project shall provide in Phase 1 at least 2 units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. Applicant commits as part of phase one, two (2), low income BMR(s): 3-bedroom, 2 bath and approximately 1428 sq. ft of living area. BMR sales price determination is based on median income and household size. All BMR units, including Moderate BMRs are deed restricted. Final BMR sales price is based on verification of property zoning and housing types. Low Income for this BMR commitment is defined as 80% Area Median Income and Moderate Income for this BMR commitment is defined as 90% Area Median Income (as determined and updated annually by the State HCD). Individual unit prices are dependent on unit sizes/bedroom counts and subject to the prices shown in the City of Morgan Hill's "New BMR Sales Pricing Index" table. BMRs are also subject to the requirements listed under "Additional Requirements" and as referenced per the Affordable Housing Agreement (AHA).	Prior to issuance of a building permit.	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		BMR units are subject to the following development standards: 1. Location. BMR units shall be distributed evenly throughout the project. 2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project; 3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project; 4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate 5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home. 6. Minimum Interior standard finishes will be as follows a. All closets shall have doors b. Interior doors to be raised panel type or same as market rate c. Door hardware to be brass finish or equivalent d. Appliances shall be major brand name e. Microwave with an exhaust vent shall be installed over the range f. Kitchen counters shall be white ceramic tile g. Kitchen cabinets shall be stained wood with white melamine interiors h. Units will be roughed in for AC including electrical and line set i. Basic alarm system to secure all accessible openings to the home j. Carpet in bedrooms, hallways, family rooms k. Linoleum or tile entry, bathroom kitchens		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		l. Laminate flooring may substitute for carpet or linoleum m. Electric garage door opener 7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the RDCS. At least one (1) BMR unit shall be constructed before or concurrently with every 11th market rate unit constructed. The last two (2) market rate units to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units		
4.	Housing Diversity			
1.	Accessory Dwelling Units	NA	NA	NA
2.	Diversity of Housing Types	Commits to two (2) different types of Housing - Triplex or Quadplex and Multi-Family	Design Permit approval	NA
3.	Variation in Housing Size	11 units will be 2 bedroom and approximately 1428 sq. ft. 4 units will be 3 bedroom and approximately 1850 sq. ft. 7 units will be 4 bedroom and approximately 1725-1845 sq. ft.	Design Permit approval	NA
4.	Small Units	NA	NA	NA
5.	Housing Stock Diversity	100% Owner Occupied Multi-Family Housing	NA	NA
6.	Single-Story Homes	NA	NA	NA
5.	Parks and Open Space			
1.	Park Fund Contribution	NA	NA	NA
2.	Excess Park Land	NA	NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.	Agricultural Conservation or Open Space Easement	NA	NA	NA
4.	Agricultural Buffer	NA	NA	NA
5.	Agricultural Preservation or Open Space Fund Contribution	The project contributes to the City's agriculture preservation or open space fund beyond the minimum requirement. The project shall pay \$3,899.09 per unit.	Paid prior to unit occupancy	\$3,899.09 per unit
6.	On-Site Recreational Amenities	As part of phase one (20 units) project shall provide one of the two tot lots each with a minimum of three age-appropriate activities.	Design Permit approval	NA
7.	Amenities for Age Group	Project provides an outdoor picnic/ barbeque area for adults. The second "gathering area" would be a space for grandparents to watch their grandchildren plan. Seniors could also use the first "gathering area."	Future Phases	NA
8.	Public Gathering Places	Gathering place #1 with seat wall, trellis, wind-break, adjacent to public street, visible to Plaza, for public, residents, senior, adults and guests. Gathering Place #2 also. Cost is at least \$1,000/unit.	Design Permit approval	\$1000/unit
9.	Proximity to Public Parks	Project is within 1/4 mile of Diana Park and Stone Creek Park.	NA	NA
10.	Open Space Design	Project will maintain appropriate open space size, edges of Plaza are the buildings and landscaping. A plaza visible from street & at least 6-units. 2nd tot lot (for toddlers) is provided which is viewable from units and away from streets for safety. Pedestrian walks are provided for access.	Future Phases	NA
6.	Environmental Protection			
1.	Energy Efficiency	Project will provide a 5% reduction in its energy budget compared to the standard design building, as calculated by Title 24, Part 6 Compliance Software certified by the California Energy Commission.	Prior to issuance of a building permit.	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
2.	On-site Solar Energy Generation	NA	NA	NA
3.	Indoor Water Use	projects that exceed the minimum indoor water efficiency and conservation requirements by 5%. Project shall demonstrate attainment of water efficiency standards utilizing methods consistent with Cal Green and industry standards.	Prior to issuance of a building permit.	NA
4.a	Natural Turf	Less than 50% of landscaped area contains natural turf.	Prior to issuance of a building permit.	NA
4.b	No Natural Turf Outside Common Areas	Project will contain no natural turf outside common areas used for active play	Prior to issuance of a building permit.	NA
4.c	Exceeds Outdoor Water Efficiency 10%	NA	NA	NA
4.d	Exceeds Outdoor Water Efficiency 20%	NA	NA	NA
4.e	Exceeds Outdoor Water Efficiency 30%	NA	NA	NA
4.f	Subsurface Irrigation	NA	NA	NA
5.	Sustainable Site and Building Design	Project agrees to a minimum of 94 BIG points, over the minimum required by Chapter 15.65 of the City of Morgan Hill Municipal Code.	Prior to issuance of a building permit.	NA
7.	Transportation			
1.	Bicycle and Pedestrian Improvements	NA	NA	NA
2.	Transit Improvements		NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		NA		
3.	Off-Site Street and Parking Improvements or Fund Contribution	NA	NA	NA
4.a	Transportation Demand Management fund	NA	NA	NA
4.b	Transportation Demand Management (rental projects)	NA	NA	NA
5.a	Aligns and connects streets	The project aligns and connects streets intersecting the project boundary with all adjoining streets.	Subdivision Map approval	NA
5.b	Extends Streets	The project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	Subdivision Map approval	NA
5.c	Off-street bicycle and pedestrian connections	The project provides off-street bicycle and pedestrian connections to adjacent destinations, including parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the general public.	Improvement Plan approval	NA
6.a	Complete Streets	The project incorporates “complete streets” that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities.	Design Permit approval	NA
6.b	Enhanced bicycle and pedestrian improvements	The project incorporates enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage.	Design Permit approval	NA
6.c	Direct pedestrian connections	The project provides direct pedestrian connections from units to common open space, recreational facilities, and other project amenities.	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.d	Neighborhood traffic management techniques	The project incorporates neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulb-outs, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	Design Permit approval	NA
7.	Electric Vehicle Charging Stations	Project will provide four publicly available charging stations	Design Permit approval	NA
8.	Municipal Infrastructure			
1.	Water Infrastructure	NA	NA	NA
2.	Wastewater Infrastructure	NA	NA	NA
3.a	Reduces off-site storm water flows	The project reduces the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques.	Building permit approval	NA
3.b	Off-site storm water improvements	The project provides off-site stormwater infrastructure improvements beyond minimum requirements.	Improvement Plan approval	\$1000/unit
4.	Infrastructure and Services Fund Contribution	Project will contribute to the City's infrastructure and Services Fund.	NA	NA
5.a	Installs broadband conduit in public right-of-way	The project installs broadband conduit in the public right-of way.	Improvement plan approval	NA
5.b	Installs broadband conduit to home/buildings	The project installs broadband conduit from the public right-of-way to each home or occupied building in the project.	Building permit approval	NA
5.c	Pre-installs indoor conduit	The project pre-installs indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit.	Building permit approval	NA
5.d	Provides primary broadband service	NA	NA	NA
9.	Project Quality			
1.a	Front Porches	A minimum of 50 percent of homes facing a street or common interior courtyard include a front porch. Porches must be part of the	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		home's primary entrance, connected to the front yard or common interior courtyard, a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard.		
1.b	Balconies Facing Street or Courtyard	A minimum of 25 percent of homes facing a street or common interior courtyard include a balcony overlooking a public space. Balconies must provide usable private outdoor space for residents, be in full view of a street or common interior courtyard, and face away from neighbors' yards to maintain privacy. 25 percent of upper floor units facing a street or common interior courtyard include a balcony.	Design Permit approval	NA
1.c	Balconies Facing Alleys	A minimum of 25 percent of homes abutting a shared alley include a balcony overlooking the alley, parking area, or drive aisle.	Design Permit approval	NA
1.d	Façade Articulation and Finishes	Front building facades feature quality façade articulation and finishes to break up blank, flat walls and provide visual interest.	Design Permit approval	NA
1.e	360-degree Architecture	The project features full and consistent articulation and design detail on all building facades.	Design Permit approval	NA
1.f	Corner Treatments	For projects where the side or rear of a home faces a street or common courtyard street, the project incorporates enhanced treatments of these side and rear facades to support a welcoming and visually interesting public realm.	Design Permit approval	NA
1.g	Colors and Materials	The project incorporates a mix of exterior finish materials and colors that is compatible with the architecture of the homes and enhances visual interest.	Design Permit approval	NA
1.h	Multi-family Ground Level Entrances	Project provides as many private, exterior ground-level entries to individual units as possible.	Design Permit approval	NA
1.i	Individual Residences-Attached Projects	Large buildings are architecturally subdivided so that they appear as individual residences or small groups of units. Buildings incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	Design Permit approval	NA
1.j	Residential-Scale Design	Buildings incorporate design details, including but not limited to	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
	Elements- Attached Projects	porches, projections, eaves, bay windows, and other similar architectural elements, that provide residential scale and help to break up the building mass.		
2.a	Entrance Orientation-Collector and Residential Streets	The primary entrance of homes face streets along the project perimeter	Design Permit approval	NA
2.b	Entrance Orientation-Single-Family Detached Projects/Arterial Streets	NA	NA	NA
2.c	Variation in Building Height	The project incorporates variation in building heights to minimize monotony and enhance visual interest.	Design Permit approval	NA
2.d	Variation in Building Placement	The project incorporates variation in building front setbacks and placement on lots to minimize monotony and enhance visual interest.	Design Permit approval	NA
2.e	Roof Line Variation	Variation in roof lines through changes in roof height and form break of building massing and create visual interest.	Design Permit approval	NA
2.f	Upper Floor Setback-Detached Homes	NA	NA	NA
2.g	Upper Floor Setback-Attached Homes	NA	NA	NA
2.h	Height and Project Edge-Attached Projects	NA	NA	NA
2.i	Separate Structures-Attached Projects	Divides units into multiple separate structures. Maximum 10 units maximum per structure	Design Permit approval	NA
2.j	Adjacent Building Types-Attached Projects	NA	NA	NA
3.a	Landscaping-Parkway Design	The project provides a landscape parkway along the street 50 percent wider than the minimum required for the street type. Street trees and pedestrian-scale lighting within or adjacent to the parkway exceed minimum requirements and help create a distinctive and	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		memorable design environment.		
3.b	Landscaping-Visual Relief	Landscaping is placed and designed to minimize the appearance of building bulk and mass and to emphasize building features that create visual interest and support a pedestrian-friendly environment.	Design Permit approval	NA
3.c	Exterior Lighting	Exterior lighting fixtures are architecturally integrated with the primary building's design, style, material, and colors	Design Permit approval	NA
3.d	Entrance Pathways	No more than 50 percent of multi-family homes feature an identical garage configuration. Garage configuration may include front loaded attached, front loaded detached, side loaded, and rear loaded garages.	Design Permit approval	NA
3.e	Public/Private Transitions	NA	NA	NA
3.f	Mechanical Equipment	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA
4.a	Garage Door Orientation	Garage doors do not face the front street. Garages are configured on the site such that garage doors face either the side or rear of the property.	Design Permit approval	NA
4.b	Garage Door Design-Minimizing Visual Dominance	NA	NA	NA
4.c	Garage Door Design-Detailing	Garage doors feature enhanced windows or architectural detailing consistent with the main dwelling.	Design Permit approval	NA
4.d	Garage Configuration	NA	NA	NA
4.e	Parking-Attached Projects	The project locates parking lots serving attached residential units at the rear or side of the site to allow a majority of dwelling units to front on the street or an internal courtyard. Parking is not located between a building and any public sidewalk or street.	Design Permit approval	NA
4.f	Screening	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.g	Landscaping-Attached Projects	The project incorporates landscaping to soften the appearance of off-street parking areas and private drive aisles in attached single family and multi-family projects	Design Permit approval	NA
4.h	Setback Areas	NA	NA	NA
4.i	Pavement Design	Areas for vehicle parking and circulation feature enhanced paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	Design Permit approval	NA
4.j	Cluster Units	NA	NA	NA
5.	Public Art	NA	NA	NA
6.a	Home Automation	The project installs home automation devices within units.	Prior to unit occupancy	\$2000/unit
6.b	Home Automation (reduce energy)	The project installs home automation devices within units that reduce energy consumptions, such as devices that automatically adjust lighting, heating, and air conditioning.	Prior to unit occupancy	\$1000/unit

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RESOLUTION NO.

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A TENTATIVE SUBDIVISION MAP FOR A 3-LOT, 46-UNIT RESIDENTIAL CONDOMINIUM SUBDIVISION ON A 3.7-ACRE SITE LOCATED AT NORTH SIDE OF E. DUNNE AVENUE, NORTH OF THE MORGAN HILL KINDERCARE LEARNING CENTER LOCATED AT 605 E. DUNNE AVE.
(APN 726-02-007)**

WHEREAS, such request was considered by the Planning Commission at its regular meeting of November 27, 2018, at which time the Planning Commission approved subdivision application, SD2018-0004: E. Dunne-Young; and

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

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

- SECTION 1.** The Tentative Subdivision Map, together with its provisions for its design and improvements, is consistent with the General Plan. The project has been designed to comply with the City's Residential Attached Medium General Plan land use density requirements and associated land use policies. The site improvement design is consistent with TIA Alternative No. 3. The Saint Anthony roadway extension will be 40 feet in width (curb to curb), connecting with a 30-foot wide half street extension of the existing street along the east side of the KinderCare facility.
- SECTION 2.** The approval of this subdivision is contingent upon the City Council approval of Development Agreement application, DA2018-0002: E. Dunne-Young
- SECTION 3.** The Planning Commission of the City of Morgan Hill hereby finds that, on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis, and that the Mitigated Negative Declaration was adopted prior to action taken to adopt the Resolution. The custodian of the documents or other material which constitute the record shall be the Community Development Department. The mitigation measures, including those from the Mitigation Monitoring and Reporting Program, are identified in the set of standard conditions as contained in Exhibit A.
- SECTION 4.** The proposed subdivision will not result in a violation of the requirements

City of Morgan Hill
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established by the Regional Water Quality Control Board.

SECTION 5. The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit A, and by this reference incorporated herein.

PASSED AND ADOPTED THIS 27th DAY OF NOVEMBER 2018, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

LIAM DOWNEY, Chair

A F F I D A V I T

We, _____, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

By: _____

Date: _____

EXHIBIT A

CONDITIONS OF APPROVAL THE FOLLOWING ARE STANDARD CONDITIONS OF APPROVAL THAT MUST BE MET PRIOR TO RECORDATION OF A FINAL MAP EXCEPT AS MAY BE SPECIFIED IN THE CONDITIONS. THE APPROVAL REQUIREMENTS INCLUDE THESE REQUIREMENTS AND ANY SPECIAL CONDITIONS THAT ARE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS. APPLICANTS ARE REQUIRED TO SIGN THE RESOLUTION FORM INDICATING THEY UNDERSTAND AND AGREE TO IMPLEMENT THESE STANDARD CONDITIONS AND ANY SPECIAL CONDITIONS APPLIED TO THEIR PERMIT APPROVAL.

ACRONYMS:

MHMC – Morgan Hill Municipal Code

MHARH – Morgan Hill Architectural Review Handbook

PLANNING DIVISION

I. TIME LIMITS

- A. Tentative Map approval granted under this Resolution shall remain in effect for two years to November 27, 2020. Failure to apply for Final Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Community Development Department prior to the expiration date. **(MHMC 17.20.170; 17.24.110)**

II. SITE DEVELOPMENT

- A. **TREE PROTECTION:** Unless tree removal has been previously approved, all trees located within the project shall be protected using the following minimum protection measures (these guidelines shall be included with all site development plans):
 1. Mark all trees to be saved with a survey flag or ribbon. Do not nail or staple directly to the tree.
 2. Erect a temporary fence enclosing an area equal to at least the dripline of the tree (or as far from the trunk as possible). This tree protection zone shall not be used for parking, storage of building materials, or other equipment or the placement of temporary or permanent fill. Signs should be posted identifying the restriction of uses in the tree protection zone.
 3. Locate structures, grade changes, and other ground or surface disturbances (e.g. concrete pours) as far as feasible from the “dripline” area of the tree.

4. Avoid root damage through grading, trenching, compaction, etc at least within an area 1.5 times the dripline area of the tree. Where root damage cannot be avoided, roots encountered over 1" in diameter should be exposed approximately 12" beyond the area to be disturbed (towards the tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw and immediately back-filled with soil. Avoid tearing or otherwise disturbing that portion of the roots to remain.
 5. The addition of plant or other landscaping materials shall remain outside of the dripline of all trees.
 6. Any tree subject to Chapter 12.32 Restrictions on Removal of Significant Trees of the Morgan Hill Municipal Code requires approval from the Planning Division. The applicant shall request approval prior to removing any significant trees.
- B. CC & RS: The applicant shall provide a set of Covenants, Conditions and Restrictions, Bylaws and Articles of Incorporation, for review and approval by the Community Development Department prior to final occupancy or recordation of the final map. All such CC&Rs shall include the following text:
1. Common Areas/Right of Ways:
 - a. The Owners recognize that the use, modification and proper maintenance of the Common Area and public right-of-way(s)* are for the benefit of all citizens of the City of Morgan Hill (City) and that the City is an intended third party beneficiary of these covenants, conditions and restrictions and may, upon notice of hearing as set forth below, exercise the same powers of enforcement as the Association.

*Public right-of-way: Exclusive of streets dedicated to and accepted by the City of Morgan Hill

 - b. The City may, by mail or personal delivery, give written notice of the breach of any maintenance obligation to the Association with a demand that such breach be remedied. If such breach is not remedied within thirty (30) days of the mailing or delivery of such notice, the City shall have standing and the right (but not the obligation) to bring a court action against the Association and Owners to enforce such provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.
 - c. The Notice may also contain a date for a hearing on the matter before a City employee designated by the City (which hearing shall be held no sooner than fifteen (15) days after mailing of such notice), and if after such hearing the City determines that there has been inadequate maintenance, the City shall have the right (but not the obligation) to undertake the maintenance of the Common Area or public right-of-way in question. Any and all costs incurred by the City in so maintaining the Common Area or public right-of-way shall be a lien against all

the properties included with the Project and shall be the personal responsibility of the Owners and the Association.

- d. The entire Project and all of the properties located thereon shall be subject to the conditions and restrictions of all subdivision and other Project approvals by the City, with respect to the Project. Any changes and/or modifications to the Project and/or any Unit, including but not limited to changes to the exterior of any Unit, may be subject to review and approval of the City of Morgan Hill as may be determined by review of the Project approvals by the City of Morgan Hill.
 - e. This section may not be amended without the prior written consent of the Director of Community Development for the City. Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.
 - f. For the purposes of this section, the question of whether there has been a breach of a maintenance obligation or adequate maintenance shall be determined by the provisions of the original Declaration as first recorded with the County Recorder for Santa Clara County and by any amendment thereto, but only to the extent that such maintenance obligation or duty of maintenance is increased by such amendment.
2. Tree and Landscape Preservation: The Owners of the Units and Association shall preserve and maintain all trees and landscape on the property originally required by the approved landscape plan and shall not remove or alter any such trees or landscape from the Property without the approval of the Director of Community Development of the City of Morgan Hill.
 3. Compliance with the City of Morgan Hill Conditions of Approval: It shall be the responsibility of each Owner and the Association to ensure that any changes or modifications to the Project or any Unit are in compliance with the original City conditions of approval of the Project, which are hereby incorporated herein as if set forth in full.
- C. FINAL SITE DEVELOPMENT PLANS: Final site development plans shall be reviewed for conformance with Morgan Hill Municipal Code Section 18.108.040 and approved by the Community Development Department prior to issuance of a building permit. All such plans shall include:
1. Detail depicting all concrete curbs as full formed.
 2. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.

3. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building.
- D. FINAL MAP: Recordation of a final map shall be in accordance with the number of building allotments granted through the Residential Development Control System (RDCS) for this project. Should a portion of the project's building allotment expire prior to final map approval, the number of lots on the final map shall be reduced to correspond to the remaining allotment.
- E. DUST, NOISE, VIBRATION, AND MATERIALS MANAGEMENT PLAN: A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties.

The plan must include the following "Basic Construction Mitigation Measures" per Bay Area Air Quality Management District's guidelines:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
8. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective

- action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
9. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
 10. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
 11. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
 12. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
 13. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
 14. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
 15. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel.
 16. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
 17. Minimizing the idling time of diesel-powered construction equipment to two minutes.
 18. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
 19. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).

20. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.

21. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy-duty diesel engines.

F. **STREET NAMES:** Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval. Proposed street names shall comply with the Street Naming Policy approved by City Council (Res No. 4601).

G. **TEXTURED PEDESTRIAN PATHWAYS:** Textured pedestrian pathways (such as permeable interlocking pavers) across on-site circulation aisles shall be provided at driveways connections to the public streets. Details of the pedestrian pathway shall be reviewed and approved by the Community Development Director prior to the issuance of a building permit.

III. LANDSCAPING

A. **PLANTING AND IRRIGATION WORKING DRAWINGS:** Detailed landscape planting and irrigation working drawings shall be submitted to the Community Development Department for approval prior to issuance of building permits as part of the master building site and improvement plans. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.

IV. HABITAT PLAN

- A. The approved project is covered under the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. Prior to issuance of building permits or grading permits the project shall complete and submit a Habitat Plan Application Package. All fees must be paid prior to issuance building permits or grading permits.
- C. Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt).

V. OTHER CONDITIONS

- A. This Tentative Map approval is limited to the plan set date stamped November 2, 2018, on file (File Number SD2018-0004) with the Community Development Department. These documents, as amended by Design Review approval, show the location and sizes of all lots in this development, the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas. The final

map shall be in substantial compliance with the approved tentative map as determined by the City Engineer and Community Development Director.

- B. **RECORDATION OF MAP:** The recordation of the final map shall not be completed until two (2) signed copies of Resolution No. _____ is submitted to the Planning Division.
- C. **RELATED APPLICATIONS:** The project shall comply with the conditions of approval of the related applications or planning division files (SR2018-0020 & DA 2018-0002).
- D. **DEFENSE AND INDEMNITY:** Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this parcel map approval. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- E. **MITIGATION FEE ACT:** Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun.
- F. **Signed development agreement:** Prior to approval of the final map (or issuance of a building permit where no map is required), the property owner shall submit to the Planning Division two (2) signed notarized copies of the Development Agreement for the proposed project.

VI. PROJECT MITIGATION MEASURES

The applicant shall be subject to compliance with the mitigation measures of the project environmental assessment and adopted Mitigated Negative Declaration as follows:

BIO-1: A pre-construction survey shall be conducted by a qualified **Burrowing Owl biologist** no more than 30 days prior to initiation of any ground disturbing (construction) activity to assure take avoidance of burrowing owls. The survey shall consist of a habitat assessment, burrow survey, owl survey, and completion of a written report. The written report shall be submitted to the Community Development Department. If owls are not determined to be present on-site, further mitigation is not required. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31).

BIO-2: Should burrowing owls be found on the site during the breeding season (February 1 through August 31), exclusion zones, with a 250-foot radius from occupied burrows, shall be established. All development-related activities shall occur outside of the exclusion area until the young have fledged. Establishment of the exclusion area shall be determined by a qualified biologist to the satisfaction of the Community Development Department.

BIO-3: If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site, the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of the 250-foot buffer shall be allowed. Construction activities within the non-disturbance buffer shall be allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites:

- A qualified biologist monitors the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
- The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
- If any change in owl foraging behavior occurs as a result of construction activities, such activities shall cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue. Monitoring shall continue as described above for the non-breeding season as long as the burrow remains active.

Passive relocation of owls shall not be permitted unless the positive growth trend described in Section 5.4.6 of the SCVHP is achieved and all passive relocation measures identified in the SCVHP are implemented. The project applicant may choose to obtain an exception that would allow for passive relocation, in which case an application shall be submitted to the Habitat Agency along with a passive relocation plan in accordance with Section 6.6.1, Condition 15, Exceptions to Passive Relocation Prohibition, of the SCVHP. The Habitat Agency shall have the final authority to grant or deny the requested exception.

BIO-4: No later than submittal of the first construction or grading permit for the proposed project the owner or designee shall pay the Santa Clara Valley Habitat Plan per-acre fee in effect for the appropriate fee zone of the project site, as determined by the Santa Clara Valley Habitat Agency, in compliance with Section 18.69.150 of the Morgan Hill Municipal Code.

BIO-5: If construction is proposed during breeding season (February 1 to August 31), a pre-construction nesting survey for **raptors and other protected migratory birds** shall be conducted by a qualified biologist and submitted to the City of Morgan Hill Community Development Department for review no more than 14 days prior to the start of construction. Pre-construction surveys during the non-breeding season (September 1 to January 31) are not necessary for birds, including roosting raptors, as they are expected to abandon their roosts during construction. If these species are deemed absent from the area, construction may occur within 14 days following the survey during the early nesting season (February to May) and within 30 days following the survey during the late nesting season (June to August).

If nesting raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (250-foot minimum for certain raptors) shall be determined by the qualified biologist at that time and may vary depending on location, topography, type of construction activity, and species. The buffer areas shall be enclosed with temporary fencing, and construction equipment and workers shall not enter the enclosed setback areas. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents.

BIO-6: The project applicant shall mitigate for the removal of any Ordinance Sized Trees, as defined in Section 12.32.020 of the City of Morgan Hill Municipal Code, by providing on-site replacement plantings at a 1:1 ratio with 15-gallon minimum size trees.

For all Ordinance Sized Trees to be preserved as part of the project, the project applicant shall retain a certified arborist to prepare a tree protection plan, subject to review and approval by the Community Development Department. The plan shall demonstrate how any retained trees are to be protected during and after construction. The tree protection plan may include, but not be limited to, the following:

- Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.
- Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over one inch in diameter) should be exposed approximately 12 inches beyond the area to be disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Tearing, or otherwise disturbing the portion of the root(s) to remain, shall be avoided.
- A temporary fence shall be constructed as far from the tree stem (trunk) as possible, completely surrounding the tree, and six to eight feet in height. 'No parking or storage' signs shall be posted outside/on the fencing. Postings shall not be attached to the main stem of the tree.

- Vehicles, equipment, pedestrian traffic, building materials, debris storage, and/or disposal of toxic or other materials shall not be permitted inside of the fenced off area.
- The project applicant shall avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least one to two years following completion of construction.
- Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than six pounds of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond.
- The 'rooting' area shall be mulched with an acidic, organic compost or mulch.
- The project applicant shall arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as such conditions occur, or as appropriate.
- Subject to the discretion of the Community Development Department, individual trees likely to suffer significant impacts may require specific, more extensive efforts and/or a more detailed specification than those contained within the above general guidelines.

Noise

NOI-1 During construction activities associated with the proposed project, any compaction required within 25 feet of existing structures adjacent to the project site shall be accomplished by using static drum rollers rather than vibratory compactors. The above requirement shall be included via notation on any grading plans approved for the project to the satisfaction of the Community Development Department.

NOI-2 During construction activities associated with the proposed project, all internal combustion engines used at the project site shall be equipped with a type of muffler recommended by the vehicle manufacturer. All equipment shall be in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train, and other components. In addition, the project applicant shall comply with the following:

- Noise-generating construction activities shall be limited to the daytime hours of 7:00 AM to 8:00 PM Monday through Friday and from 9:00 AM to 6:00 PM Saturday, consistent with Chapter 8.28 of the Morgan Hill Municipal Code;
- All diesel-powered equipment shall be located more than 200 feet from any noise-sensitive use if the equipment is to operate for more than several hours per day; and
- Mobile equipment (haul trucks, concrete trucks, etc.) shall avoid local streets near residences and other noise-sensitive uses to the maximum extent feasible.

Furthermore, subject to equipment availability and cost considerations, the project applicant shall implement the following recommendations:

- Earth Removal: Scrapers shall be used as much as possible for earth removal, rather than the noisier loaders and hauling trucks.
- Backfilling: Backhoes shall be used for backfilling, as such equipment is less costly and quieter than either dozers or loaders.
- Ground Preparation: Graders shall be used rather than bulldozers for final grading.
- Building Construction: Power saws shall be shielded or enclosed where practical to decrease noise emissions. Nail guns shall be used where possible as they are less noisy than manual hammering.
- Construction Phasing: Buildings and/or other significant structures at the site perimeter shall be constructed as early as feasible to help shield existing sensitive receptors from noise generated on the site.
- Generators, Compressors, and Other Stationary Equipment: The project applicant shall ensure that generators, compressors and other stationary equipment that are housed in acoustical enclosures are used rather than equipment housed in weather enclosures or not housed in enclosures at all. Acoustical enclosures are often available with rented equipment. The equipment shall be placed as far from sensitive receptors as feasible.
- The project applicant shall provide a noise disturbance coordinator with a phone line and voicemail/answering machine. Signs with the noise disturbance coordinators contact information shall be posted on the project site at a highly visible location.
- Vehicle paths within the project site shall be graded smooth, as rough roads and paths can cause significant noise and vibration from trucks (particularly empty trucks) rolling over rough surfaces.

The above requirements shall be included via notation on project grading plans, subject to review and approval by the Community Development Department.

FIRE DEPARTMENT SPECIFICATIONS:

1. Closure of Private Roadways, Driveways, Fire Apparatus Access Roadways. The installation of gates, or other barricades across required fire department access roads or driveways (EVA) shall comply with Standard 11-G. Open gates shall not obstruct any portion of the required access roadway or driveway width. If provided, all locks shall be City of Morgan Hill approved. Installations shall conform to the City of Morgan Hill Standard Details and Specifications 11-G. (CFC section 503 as amended by MHMC 15.44.130)
2. Fire Lane Marking Required. Provide marking for all roadways within the project. Markings shall be per fire department specifications. Installations shall also conform to Local Government Standards and the City of Morgan Hill Standard Details and Specifications 11-F. (CFC section 503)
3. Parking Along Roadways. The required width of fire access roadways shall not be obstructed in any manner. Parking shall not be allowed along roadways less than 28 feet

in width. Parking will be allowed along one side of the street for roadways 28-35 feet in width. For roadways equal to or greater than 36 feet, parking will be allowed on both sides of the roadway. Roadway widths shall be measured face to face of curb. Parking spaces are based on an 8-foot wide space. (CFC section 503)

ENGINEERING DIVISION

I. SPECIFICATIONS:

- A. Multiple Final Maps shall be filed to match each set of allocations.
- B. Provide corner cut off for standard accessible ramps at Andalusia Drive; adjust parcels as needed.
- C. No mid-block crossing shall be installed in the subdivisions.
- D. All curb return radius shall be 20 feet.
- E. Provide percolation test to verify infiltration rate noted on SCM table on sheet 3.
- F. Provide preliminary SWRMP calculations and include:
 - a. Under RDCS 8C: The project commits to reducing the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques. Provide this amount and include in calculations.
- G. Street trees along Dunne Avenue shall match existing street tree with Planning approval.
- H. SWRMP shall include the required inspections and worksheets of the BEST MANAGEMENT PRACTICES RAPID ASSESSMENT METHODOLOGY (BMP RAM) FIELD PROTOCOLS, which can be downloaded at:
http://2ndnaturellc.com/documents/BMPRAM_FieldProtocols.pdf

II. GENERAL CONDITIONS

The following conditions shall apply to the project/application.

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall have a Final Map prepared by a registered engineer (licensed prior to 01/01/1982: registration number 33,965 or lower) or licensed land surveyor delineating all parcels and easements created. There shall be concurrence in writing by PG & E, Telephone, Cable TV and any other affected agencies to all improvements and easements which are applicable to them. The number and locations of monuments shall be set as required by the Public Works Department. **(MHMC 17.20.200 A; 17.20.290; 17.24.010)**
- C. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the subdivision and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the Director of Public Works prior to submittal of Final Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**

- D. Obtain necessary encroachment permits from the City of Morgan Hill and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- E. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.
- F. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- G. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- H. Applicant shall file an application for assessment district reapportionment and pay the required fee prior to recordation of the final map. **(MHMC 17.20.350 I)**
- I. Pursuant to City Ordinance 982, the subject property will have reimbursement obligation to the City for lands acquired for street purposes and streets improved should those lands/street improvements abut or be included within subject property. **(MHMC 12.02.120 B)**
- J. **IMPACT FEE INCREASE**-The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City Public Works Department maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

III. STREET IMPROVEMENTS

- A. The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the Director of Public Works. All street improvements shall be constructed to the satisfaction of the Director of Public Works. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**

- C. Underground existing utilities: all existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

IV. SANITARY SEWER SYSTEM

- A. The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each lot. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

V. STORM DRAIN SYSTEM

- A. A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the Director of Public Works. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Site Review plans. All storm drain improvements shall be constructed to the satisfaction of the Director of Public Works. **(MHMC 17.32.020 A & B)**
- C. Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry a 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**

- D. Prior to final map approval or issuance of a grading permit the applicant shall complete the following to the satisfaction of the Director of Public Works:
1. Storm drain calculations to determine detention/retention pond sizing and operations.
 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.

(CMH Design Standards and Standard Details for Construction)

- E. BMP Tree protection shall be part of the SWPPP inspections.
- F. As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at:
<http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number will be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002).**

G. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:

1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE).**
2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in

compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors respectively.

6. Prior to rain events, BMPs* not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.

*BMPs maintenance/inspections shall include tree protection if applicable.

- H. Land use for the hydrology of the PL-566 channel improvement project for this site is single family. Land use of greater intensity, as proposed, will require mitigation of the increased runoff due to development. Mitigation measures, such as a detention facility, will need to remain in place indefinitely after the PL-566 channel improvements are completed, or until a regional detention facility or additional channel improvements are constructed. Calculations for the sizing of the proposed detention facility and an analysis of the impacts in the event of a one percent flood should be provided for review of the Santa Clara Valley Water District (SCVWD).

VI. WATER SYSTEM

- A. The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the Director of Public Works. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the Director of Public Works and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (SCVWD) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with the SCVWD and either be maintained or abandoned in accordance with SCVWD standards.
- C. Installation of water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**

- D. Provide separate water services and meters for each unit. These are to be installed by developer. **(MHMC 17.32.020 D, MHMC 13.04.130)**

VII. OTHER CONDITIONS

- A. The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the Director of Public Works. **(MHMC 17.32.020 E.1)**
- C. The final map on all major subdivision (5 or more lots) shall be approved by the City Council prior to issuance of a grading permit. For minor subdivision (4 lots or less), the final map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**
- D. Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by the Homeowner's Association.
- E. Final landscape plans shall be submitted with and included as part of the improvement plans for the subdivision. **(MHMC 17.08.090)**
- F. Prior to the approval of any Building Permit for grading activity, the developer shall schedule a preconstruction meeting with the Public Works Inspection Division with the following project team members:
1. Civil Engineer of record.
 2. Geotechnical Engineer of record.
 3. Third Party QSD/QSP SWPPP Inspector.
 4. General Contractor.
 5. Sub-Contractors.

VIII. NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS FOR ALL PROJECTS

- A. State Water Resources Control Board Post Construction Requirements (PCRs): Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Department of Public Works internet site. Project shall provide Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for

Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:

1. Performance Requirement 1: Site Design and Runoff Reduction
2. Performance Requirement 2: Water Quality Treatment
3. Performance Requirement 3: Runoff Retention
4. Performance Requirement 4: Peak Management

B. **Peak Storm Water Runoff Discharge Rates** - Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.

C. **Conserve Natural Areas** - If applicable, the following items are required and must be implemented in the site layout during the subdivision design and approval process, consistent with applicable General Plan and Local Area Plan policies:

1. Concentrate or cluster Development on portions of a site while leaving the remaining land in a natural undisturbed condition.
2. Limit clearing and grading of native vegetation at a site to the minimum amount needed to build lots, allow access, and provide fire protection.
3. Maximize trees and other vegetation at each site by planting additional vegetation, clustering tree areas, and promoting the use of native and/or drought tolerant plants.
4. Promote natural vegetation by using parking lot islands and other landscaped areas. Preserve riparian areas and wetlands.

D. **Minimize Storm Water Pollutants of Concern** - Storm water runoff from a site has the potential to contribute oil and grease, suspended solids, metals, gasoline, pesticides, and pathogens to the storm water conveyance system. The development must be designed so as to minimize, to the maximum extent practicable, the introduction of pollutants of concern that may result in significant impacts, generated from site runoff of directly connected impervious areas (DCIA), to the storm water conveyance system as approved by the building official. Pollutants of concern consist of any pollutants that exhibit one or more of the following characteristics: current loadings or historic deposits of the pollutant are impacting the beneficial uses of a receiving water, elevated levels of the pollutant are found in sediments of a receiving water and/or have the potential to bio-accumulate in organisms therein, or the detectable inputs of the pollutant are at concentrations or loads considered potentially toxic to humans and/or flora and fauna.

In meeting this specific requirement, “minimization of the pollutants of concern” will require the incorporation of a BMP or combination of BMPs best suited to maximize the reduction of pollutant loadings in that runoff to the Maximum Extent Practicable. Those BMPs best suited for that purpose are those listed in:

1. [California Stormwater Quality Association \(CASQA\) Handbook: BMPs for New Development and Redevelopment](#)
 2. [Bay Area Stormwater Management Agencies Association \(BASMAA\) Design Guidance Manual for Stormwater Quality Protection: Start at the Source 1999](#)
 3. [California Storm Water Best Management Practices Handbooks](#)
 4. [Caltrans Storm Water Quality Handbook: Planning and Design Staff Guide](#)
- E. **Protect Slopes and Channels** - Project plans must include BMPs per the [Santa Clara Valley Water Resource Protection Collaborative: Guidelines and Standards for Land Use Near Streams](#) to decrease the potential of slopes and/or channels from eroding and impacting storm water runoff; at a minimum the following shall be addressed:
1. Convey runoff safely from the tops of slopes and stabilize disturbed slopes.
 2. Utilize natural drainage systems to the maximum extent practicable.
 3. Stabilize permanent channel crossings.
 4. Vegetate slopes with native or drought tolerant vegetation, as appropriate.
 5. Install energy dissipaters, such as riprap, at the outlets of new storm drains, culverts, conduits, or channels that enter unlined channels in accordance with applicable specifications to minimize erosion, with the approval of all agencies with jurisdiction, e.g., Santa Clara Valley Water District, the U.S. Army Corps of Engineers, and the California Department of Fish and Game.
 6. Project shall not grade within 30 feet of a perennial or intermittent stream (top of bank) or within 30 feet of riparian habitat.
- F. **Provide Storm Drain System Stenciling and Signage** - Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: “NO DUMPING – DRAINS TO CREEK”) and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.
- G. **Properly Design Outdoor Material Storage Areas** - Outdoor material storage areas refer to storage areas or storage facilities solely for the storage of materials. Improper storage of materials outdoors may provide an opportunity for toxic compounds, oil and grease, heavy metals, nutrients, suspended solids, and other pollutants to enter the storm

water conveyance system. Where proposed project plans include outdoor areas for storage of materials that may contribute pollutants to the storm water conveyance system, the following Structural or Treatment BMPs are required:

1. Materials with the potential to contaminate storm water must be: (1) placed in an enclosure such as, but not limited to, a cabinet, shed, or similar structure that prevents contact with runoff or spillage to the storm water conveyance system; or (2) protected by secondary containment structures such as berms, dikes, or curbs.
2. The storage area must be paved and sufficiently impervious to contain leaks and spills.
3. The storage area must have a roof or awning to minimize collection of storm water within the secondary containment area.

H. Properly Design Trash Enclosure Areas - All trash enclosure areas must meet the following Structural or Treatment Control BMP requirements (individual single-family residences are exempt from these requirements):

1. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents.
2. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
3. Doors: Trash enclosure shall have door(s) which can be secured when closed.
4. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
5. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.

I. Design Standards for Structural or Treatment Control BMPs - The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

1. Volumetric Treatment Control BMP
 - a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
 - b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in

California Stormwater Best Management Practices Handbook – Industrial/Commercial, (2003); or

- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.
2. Flow Based Treatment Control BMP
 - a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.
- J. **Stormwater Runoff Management Plan (SWRMP) required** - The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.
1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
 2. The chief engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
 3. Each certifying civil engineer shall establish to the city's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
 4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.
- K. **Stormwater BMP operation, maintenance, and replacement responsibility**
1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' or homeowners' association or other legal entity approved by the city.
 2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.

3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

L. Stormwater BMP operation and Maintenance Agreement (SWBOMA) required -

Improper maintenance is one of the most common reasons why water quality controls will not function as designed or which may cause the system to fail entirely. It is important to consider who will be responsible for maintenance of a permanent BMP, and what equipment is required to perform the maintenance properly.

1. Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The city shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard STORMWATER BMP OPERATION AND MAINTENANCE AGREEMENT to be provided by Public Works Engineering).
2. The stormwater BMP operation and maintenance agreement shall require that the BMPs not be modified and BMP maintenance activities not alter the designed function of the facility from its original design unless approved by the city prior to the commencement of the proposed modification or maintenance activity.
3. The stormwater BMP operation and maintenance agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.

M. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
2. Unless otherwise required by the chief engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and

- g. As applicable, the need for site re-inspection.
- 3. Upon completion of each inspection, an inspection report shall be submitted to Public Works Engineering.
- N. **Records of maintenance and inspection activities** - On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the chief engineer or designee with records of all inspections, maintenance and repairs.
- O. **Annual Certification of SWRMP** – On or before September 30th of each year a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.
 - 1. conveyance system. Include in the project plans an area for washing/steam cleaning of vehicles and equipment. The area in the site design must be:
 - a. Self-contained and/ or covered, equipped with a clarifier, or other pretreatment facility, and
 - b. Properly connected to a sanitary sewer or other appropriately permitted disposal facility.

BUILDING DEPARTMENT

- 1. Morgan Hill Municipal Code Section 17.34.060 (I) requires sidewalks to be on both sides of a private street, driveway serving more than six homes.
- 2. Morgan Hill Municipal Code Section 17.34.060 (F) prohibits the use of rolled curbs.
- 3. California Building Code Section 11B-208 would require a minimum of one accessible parking stall by the park.

FIRE DEPARTMENT

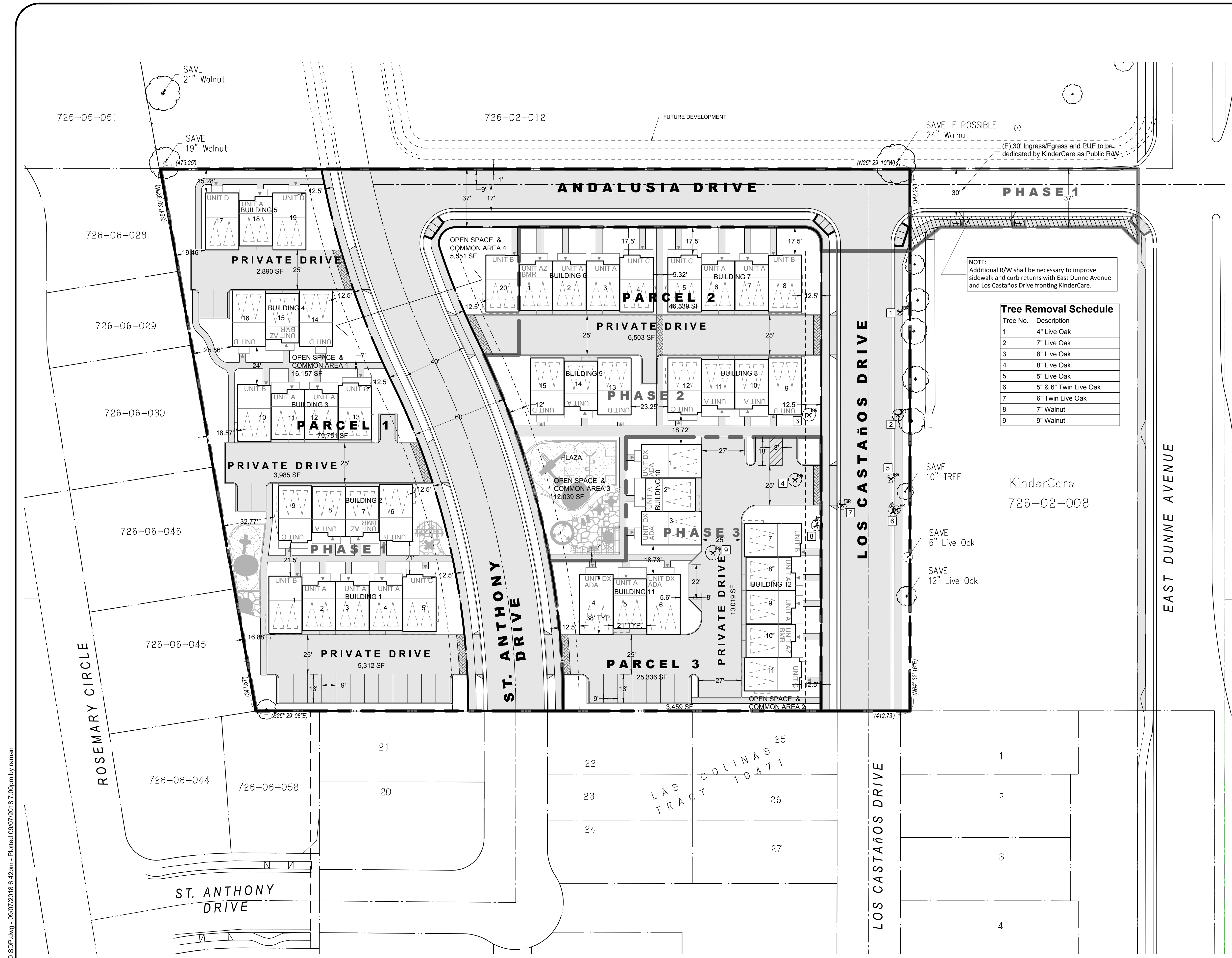
- 1. **Preliminary Review Only.** The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete plan submittal application that clearly shows all intended grading, demolition, construction or building modifications.
- 2. **Proposal limited.** Review of this Development proposal is limited to acceptability of site access as they pertain to fire department operations and shall not be construed as a

substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

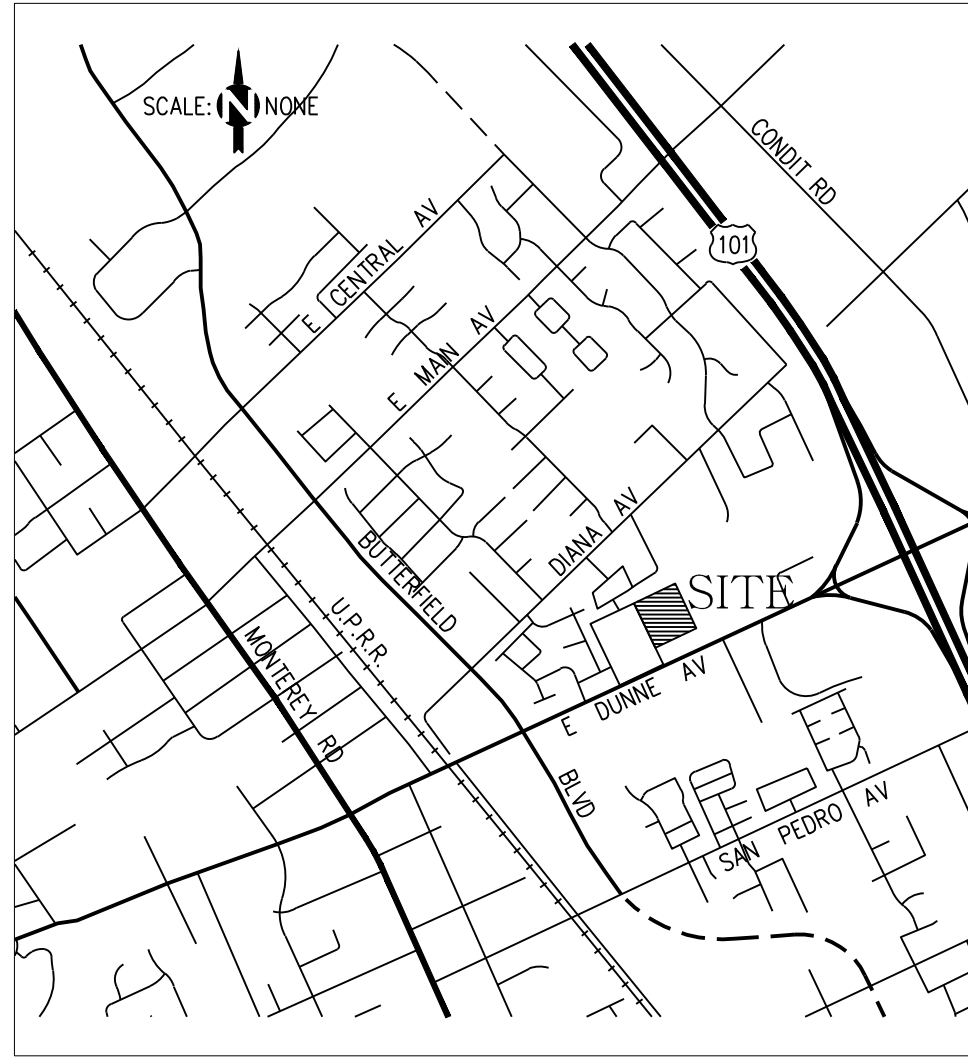
3. **Automatic Fire Sprinkler System Required (SFD).** New homes located within the hazardous fire area, and in the non-hazardous fire area homes shall be protected throughout by an approved, automatic fire sprinkler system, hydraulically designed per National Fire Protection Association (NFPA) Standard #13D (CFC Chapter 9 as amended by MHMC 15.44.170)
4. **Fire Apparatus (Engine) Access Roads Required.** Prior to the commencement of combustible construction, an access roadway with a paved all-weather surface and a minimum unobstructed width of 20 feet, vertical clearance of 13 feet, 6 inches shall be provided, with minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%, unless otherwise approved in writing by the Fire Marshal. Installations shall conform to the City of Morgan Hill Standard Details and Specifications 11-B. (CFC section 503 as amended by MHMC 15.44.130)
5. **Public Fire Hydrant(s) Required.** Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and the City of Morgan Hill Public Works Department. Maximum hydrant spacing shall be 500 feet and the minimum single flow hydrant shall be 1000 GPM at 20 psi residual pressure. If fire hydrants are already in place, include civil drawings showing location of all hydrants with the building permit submittal. (CFC 507)
6. **Fire Hydrant Location Identifier.** Prior to project final inspection, the general contractor shall ensure that an approved ("Blue Dot") fire hydrant location identifier has been placed in the roadway, as directed by the fire department.
7. **Timing of Required Roadway Installations.** Prior to the commencement of combustible construction, the required roadway installations, up through first lift of asphalt, shall be in place, inspected, and accepted by the City of Morgan Hill unless otherwise approved in writing by the Fire Marshal. Bulk combustible construction materials shall not be delivered to the construction site until installations are completed as stated above. During construction, emergency access roads shall be maintained clear and unimpeded. Issuance of building permits may be withheld until installations are completed. (CFC Chapter 14 as amended by MHMC 15.44.180)
8. **Timing of Required Water Supply Installations.** Prior to the commencement of combustible construction, the required Fire Hydrant and Water Supply installations shall be in place, inspected, tested, and accepted by the Fire Department and the City of Morgan Hill, unless otherwise approved in writing by the Fire Marshal. Bulk construction materials may not be delivered to the construction site until installations are completed as stated above. Clearance for building permits may be held until installations are completed. (CFC Chapter 14 as amended by MHMC 15.44.180)

City of Morgan Hill
Resolution No.
Page 27 of 27

9. **Fire Lane Marking Required.** Provide marking for all roadways within the project. Markings shall be per fire department specifications. Installations shall also conform to Local Government Standards and the City of Morgan Hill Standard Details and Specifications 11-F. (CFC section 503)



vicinity map:



building coverage calcs:

PROJECT NET AREA:	2.776 ACRES
DRIVEWAY AND PRIVATE STREET COVERAGE:	0.659 ACRES
INTERIOR STREET DEDICATION:	0.441 ACRES
BUILDING COVERAGE:	0.817 ACRES
SIDEWALK COVERAGE:	0.144 ACRES
% BUILDING COVERAGE:	53.75%

density calcs:

TOTAL PROJECT AREA:	3.481 ACRES
DEDICATED RIGHT OF WAY:	1.174 ACRES
PERIMETER STREET DEDICATION:	0.740 ACRES
PROJECT NET ACREAGE:	2.741 ACRES
MIN. NO. OF UNITS REQUIRED:	44 UNITS (16 PER ACRE)
NO. OF UNITS PROPOSED:	46 UNITS
OPEN SPACE AREA:	0.830 ACRES

setback notes:

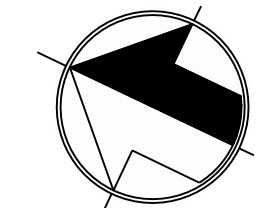
R3 (Table 18.29.040B)	
TYPICAL FRONT YARD SETBACK:	10'
TYPICAL REAR YARD SETBACK-SINGLE STORY:	10'
TYPICAL SIDE YARD SETBACK:	3'

notes:

ASSESSOR'S PARCEL NO:	726-02-007
PRESENT USE:	VACANT
PROPOSED USE:	RESIDENTIAL
PRESENT ZONING:	R3
PROPOSED ZONING:	R3
SANITARY SEWER:	CITY OF MORGAN HILL
GAS and ELECTRIC:	P&E
WATER:	CITY OF MORGAN HILL
TELEPHONE:	VERIZON
EXISTING IMPROVEMENTS:	AS SHOWN
GENERAL PLAN:	MULTI-FAMILY MEDIUM

parking count

COVERED PARKING	92
UNCOVERED PARKING	27
STREET PARKING	35



SCALE: 1"=30'

andalusia
site development plan

applicant: DIANA DUNNE INVESTORS LLC
385 WOODVIEW AVENUE
MORGAN HILL, CA 95037
(408) 779-5900

engineer: MH ENGINEERING
16075 VINEYARD BLVD.
MORGAN HILL, CA 95037
(408) 779-7381

planner: VINCE BURGOS
220 LIVE OAK DRIVE
DANVILLE, CA 94506
(408) 421-2695

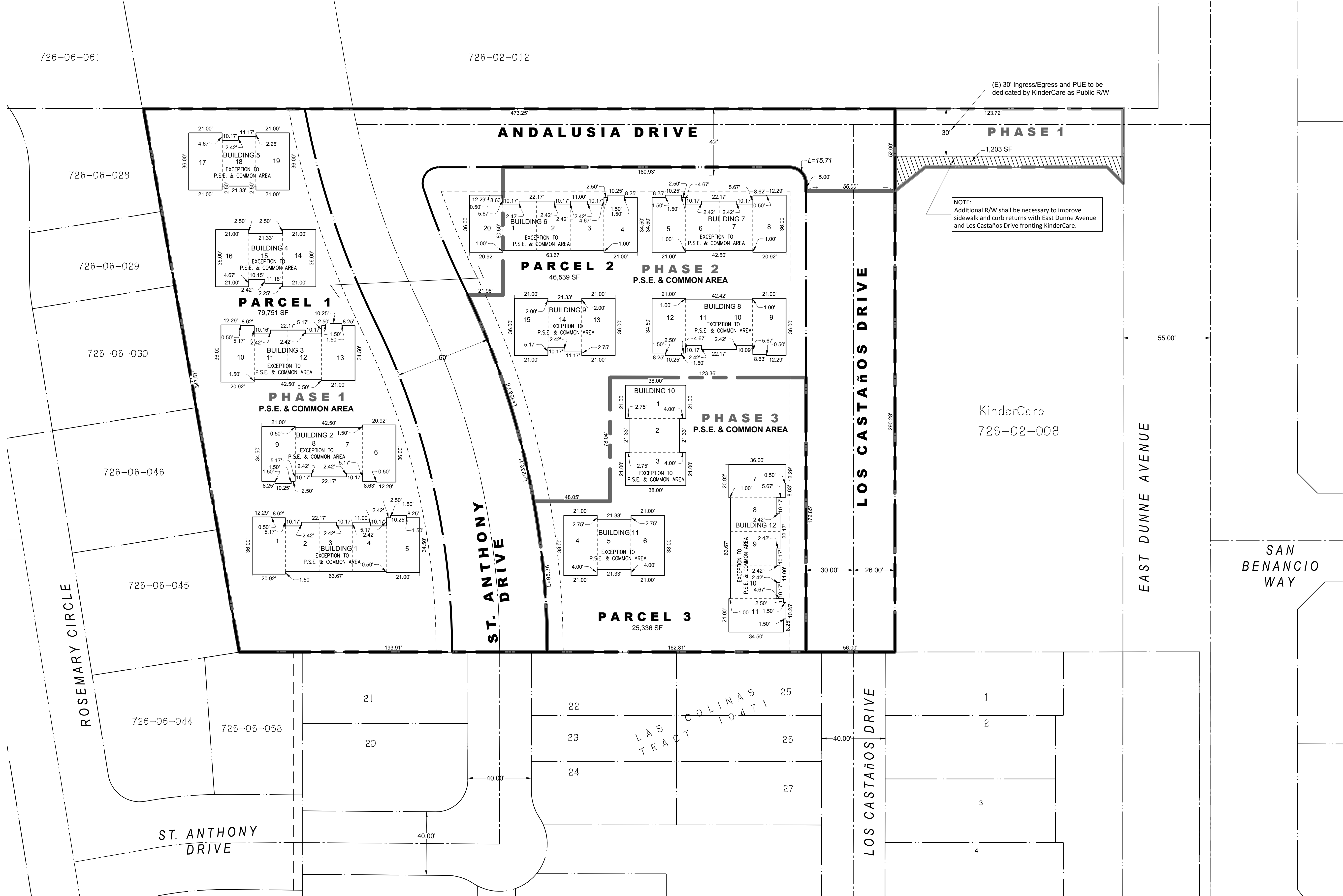
legend



MH engineering Co.
16075 Vineyard Boulevard Morgan Hill, CA 95037

notes:

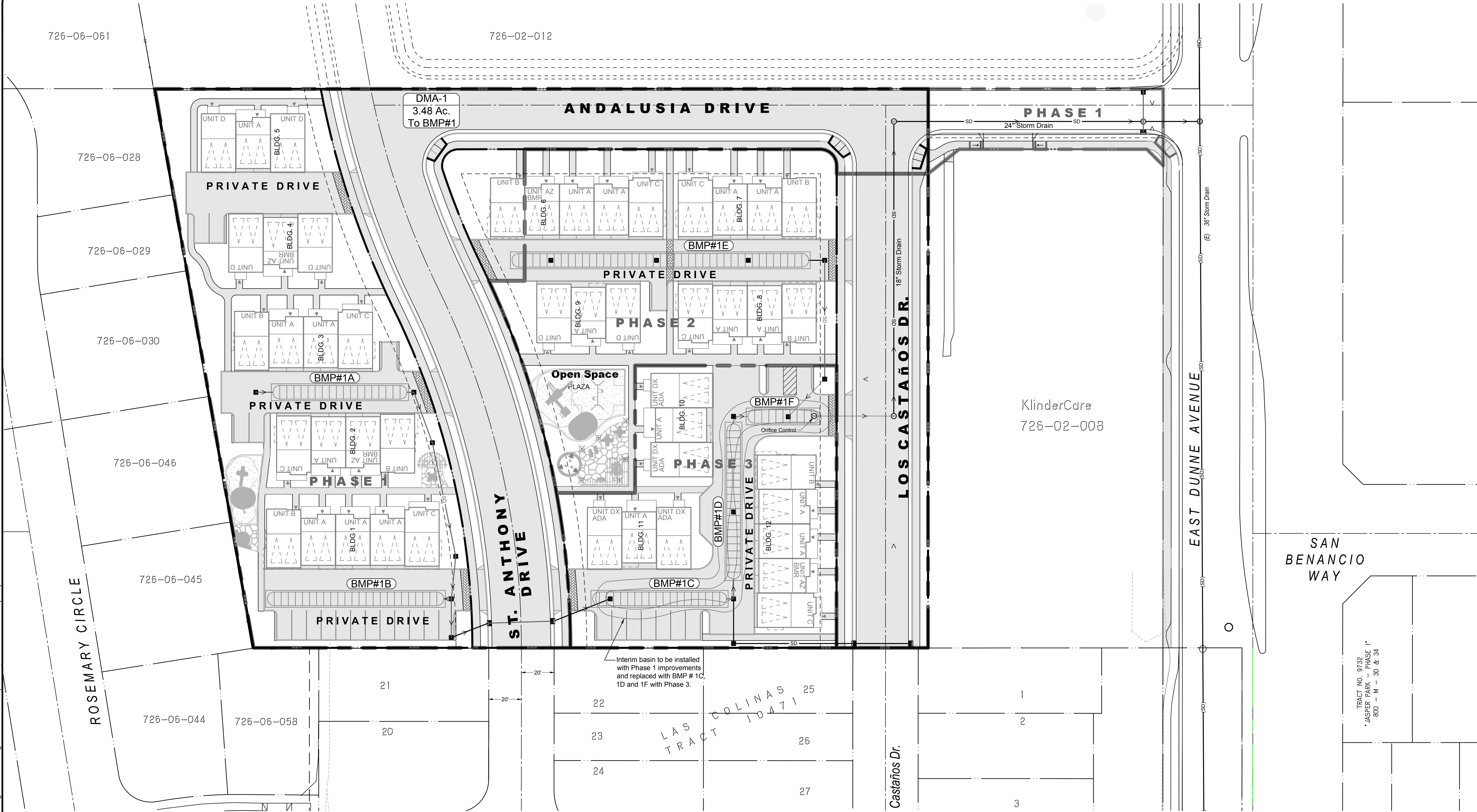
ASSESSOR'S PARCEL NO:	726-02-007
PRESENT USE:	VACANT
PROPOSED USE:	RESIDENTIAL
PRESENT ZONING:	R3
PROPOSED ZONING:	CITY OF MORGAN HILL
SANITARY SEWER:	PG&E
GAS and ELECTRIC:	CITY OF MORGAN HILL
WATER:	VERIZON
TELEPHONE:	AS SHOWN
EXISTING IMPROVEMENTS:	MULTI-FAMILY MEDIUM
GENERAL PLAN:	



andalusia
tentative map
for condominium purposes

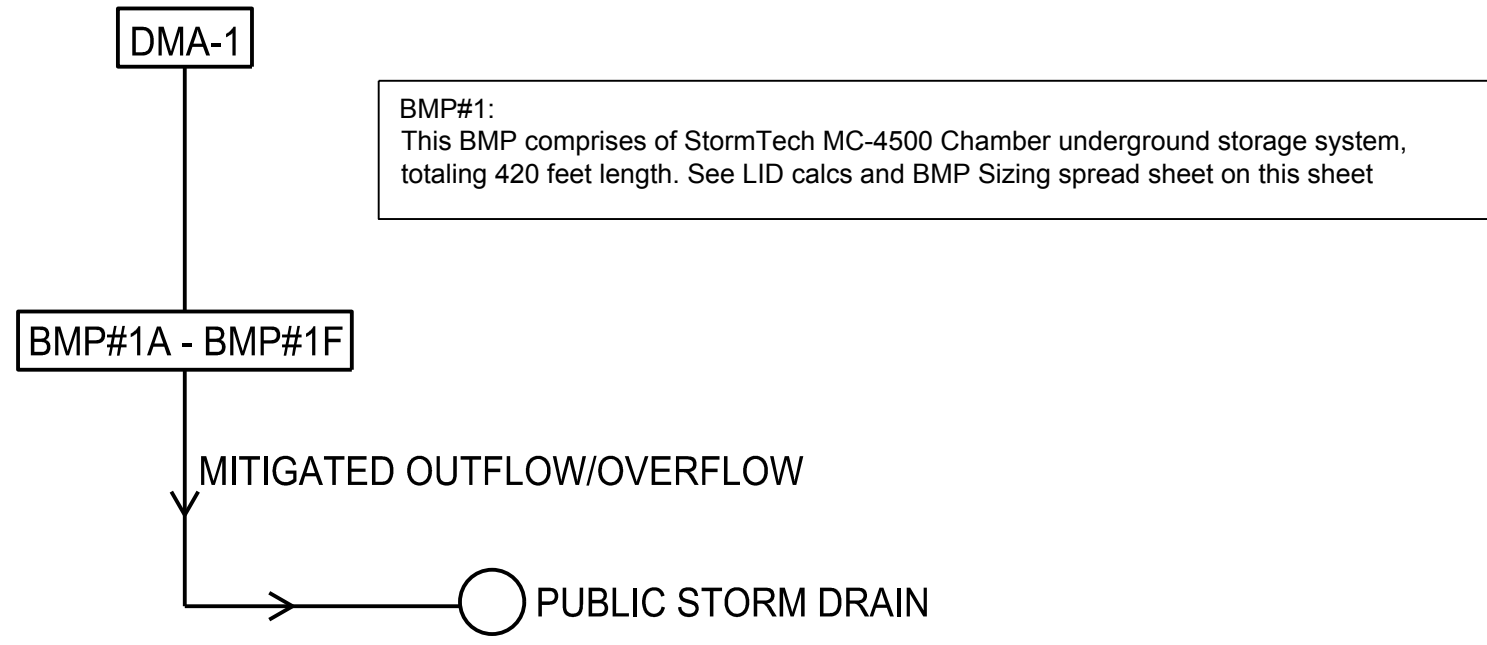
applicant:	engineer:	planner:
DIANA DUNNE INVESTORS LLC 385 WOODVIEW AVENUE MORGAN HILL, CA 95037 (408) 779-5900	MH ENGINEERING 16075 VINEYARD BLVD. MORGAN HILL, CA 95037 (408) 779-7381	VINCE BURGOS 220 LIVE OAK DRIVE DANVILLE, CA 94506 (408) 421-2695

L:\Projects\Harry\217110\TM-Dividend (Andalusia) E. Dunne Ave\DWG\217110 Storm Water Management Plan.dwg - 09/24/2018 5:31 pm - Plotted 09/24/2018 5:34 pm by raman

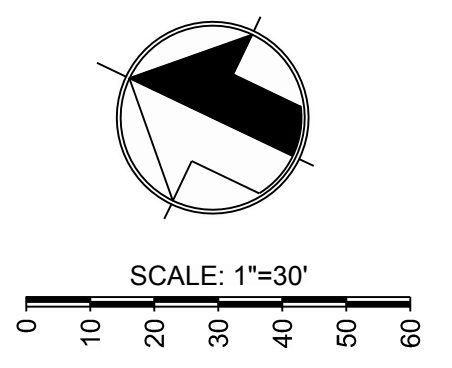


"Andalusia" - BMP (SCM) Sizing Calcs											
9/7/18											
DMA	DMA area (AC)	DMA Impervious Area		85th Percentile (1.1" Rain) First Flush Volume to Treat (C.F.)	95th Percentile (1.7" Rain) First Flush Volume to Treat (C.F.)	BMP#	Proposed BMP Surface Area (S.F.)	BMP Volume (C.F.)	Native Soil Infiltration Rate (In/Hr.)	BMP Loading Depth (Inches)	BMP Infiltration Duration (Hrs.) ≤ 48
1	3.48	Public Hardscape (S.F.)	Roof & Private Yard hardscape (S.F.)	10,114	16,551	1A-1F	5,364	21,625	408.00	81.00	0.20
Total Project Site Area					3.48 ac	BMP#1 - 25 year detention storage for DMA-1 is proposed above the LID volume between elev. 349.98 and 352.00.					
Total New Impervious Area					2.60 ac						
Total Replaced Impervious Area					0						
Total New Pervious Area					0.88 ac						
Net Impervious Area					2.60 ac						

LAS COLINAS TRACT 10471

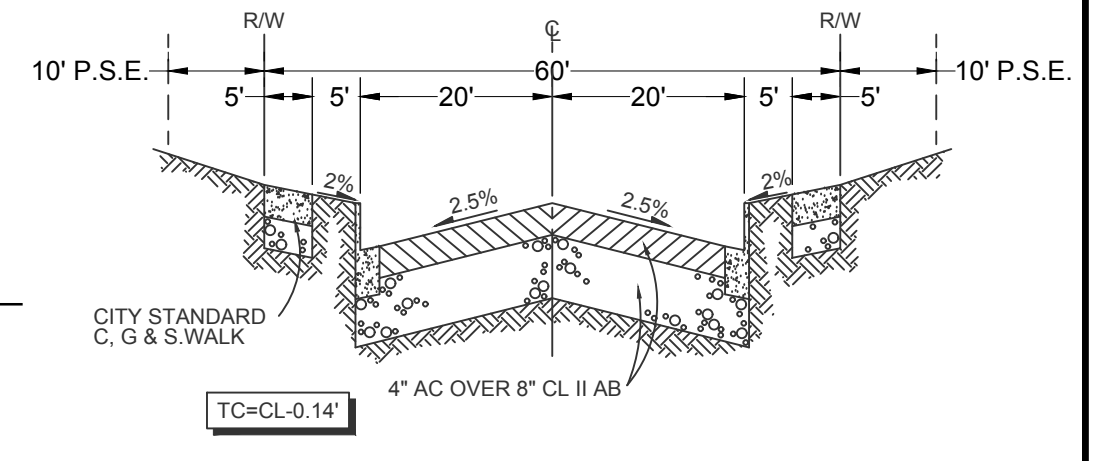
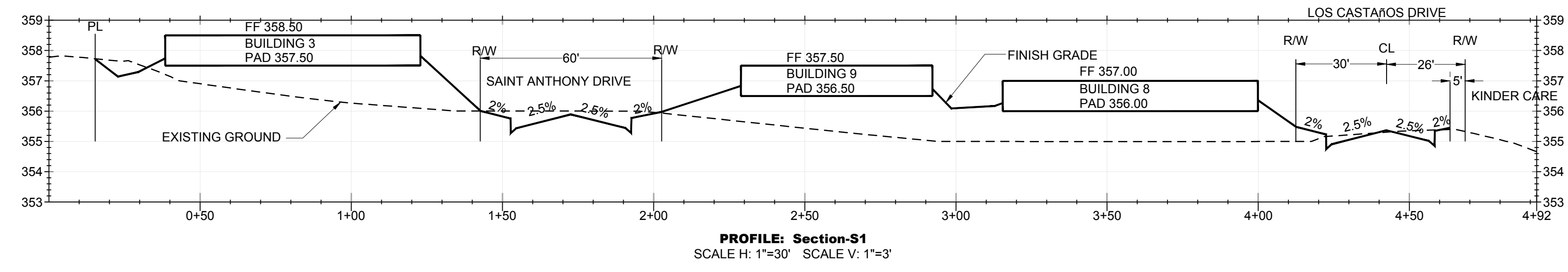
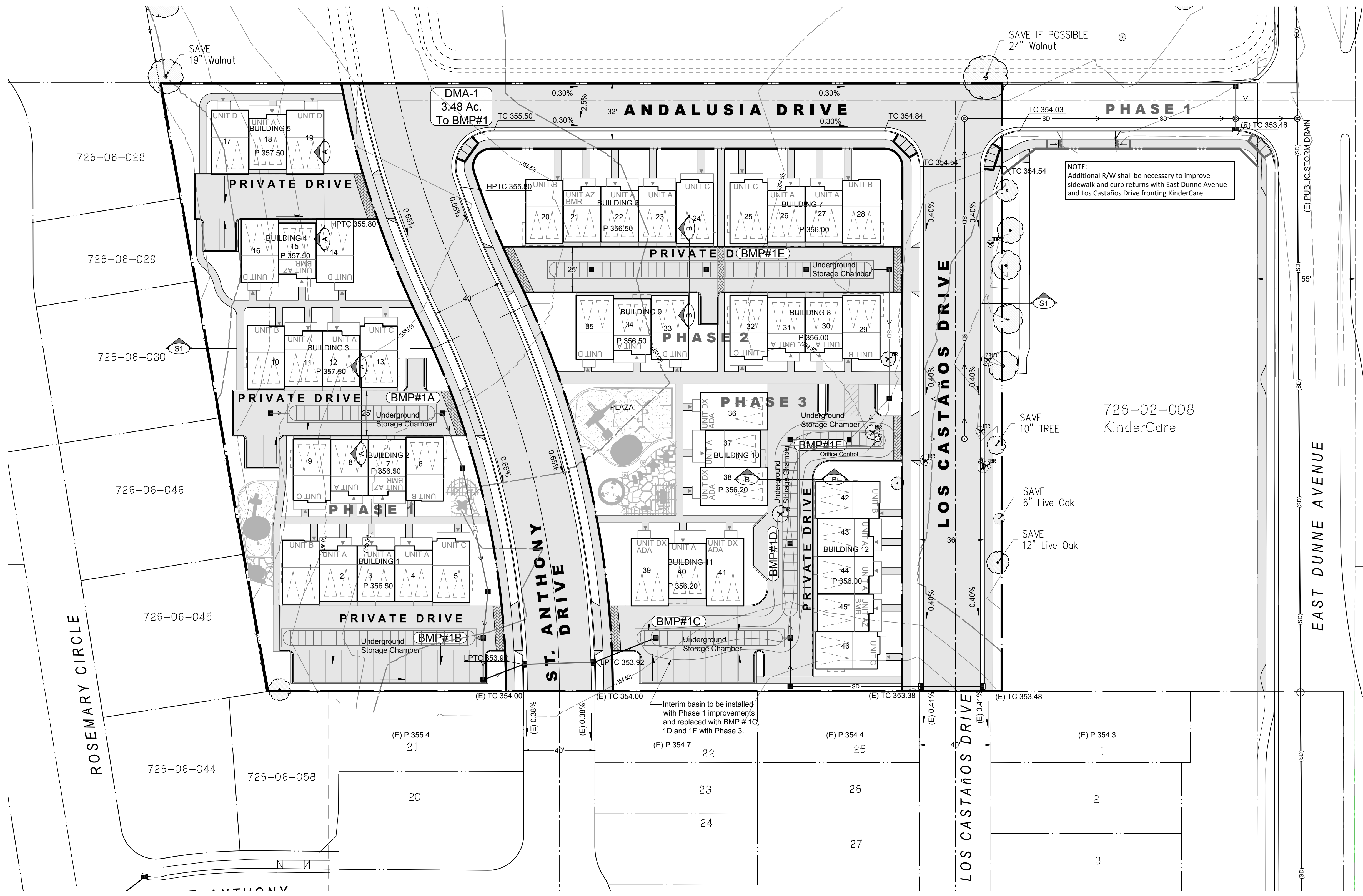


BMP#1: This BMP comprises of StormTech MC-4500 Chamber underground storage system, totaling 420 feet length. See LID calcs and BMP Sizing spread sheet on this sheet

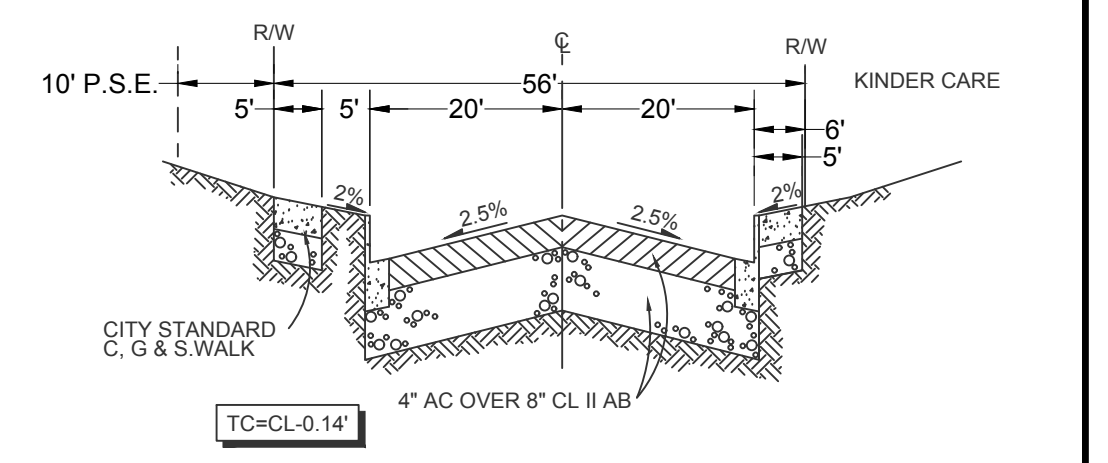


andalusia
stormwater management plan

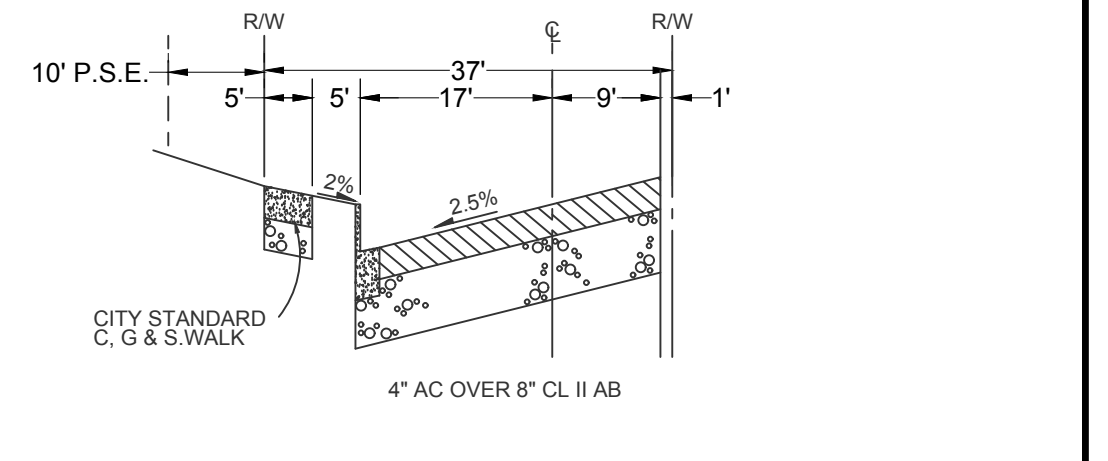
E:\Backup_AutoSave\AcPublish_9960217110 PGP.dwg - 09/07/2018 6:31 pm - Plotted 09/07/2018 6:40 pm by raman



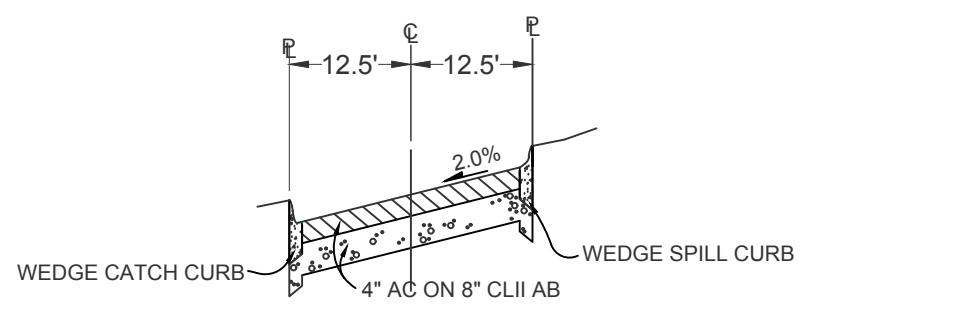
TYPICAL SECTION - SAINT ANTHONY DRIVE
SCALE: NONE



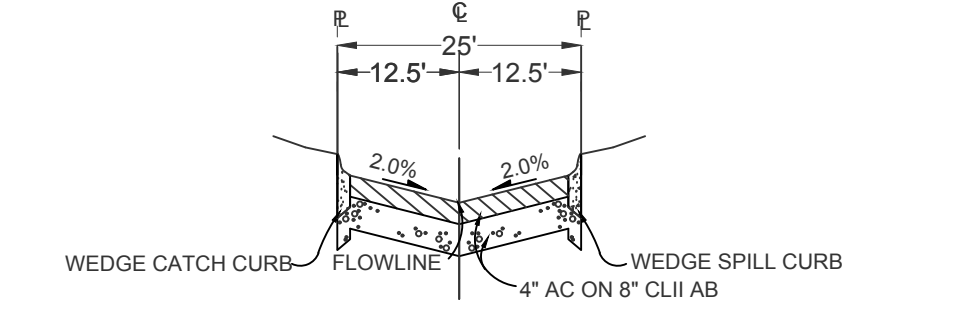
TYPICAL SECTION - LOS CASTAÑOS DRIVE
SCALE: NONE



TYPICAL SECTION - ANDALUSIA DRIVE
SCALE: NONE



TYPICAL DRIVEWAY SECTION - AA
SCALE: NONE



TYPICAL DRIVEWAY SECTION - BB
SCALE: NONE

grading quantities:

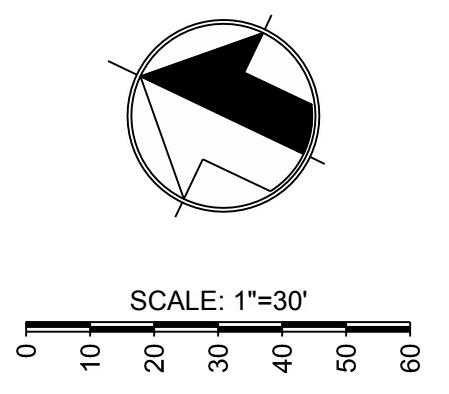
Cut	2,200 C.Y.
Fill	2,200 C.Y.
Net	0 C.Y.
Max. Cut	0.8'
Max. Fill	1.9'

andalusia
preliminary grading plan

applicant: DIANA DUNNE INVESTORS LLC
385 WOODVIEW AVENUE
MORGAN HILL, CA 95037
(408) 779-5900

engineer: MH ENGINEERING
16075 VINEYARD BLVD.
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planner: VINCE BURGOS
220 LIVE OAK DRIVE
DANVILLE, CA 94506
(408) 421-2695



MH engineering Co.
16075 Vineyard Boulevard
Morgan Hill, CA 95037

DATE: 9/18 DRAWN: RS CHECKED: HS

INITIAL STUDY

ANDALUSIA PROJECT

MORGAN HILL, CALIFORNIA

PREPARED FOR
CITY OF MORGAN HILL
DEVELOPMENT SERVICES DEPARTMENT
17575 PEAK AVENUE
MORGAN HILL, CA 95037

SEPTEMBER 2018

Revised November 2018

PREPARED BY



1501 Sports Drive, Suite A, Sacramento, CA 95834

Attachment: ISMND_w Appendix Revised (2048 : E. Dunne Young-Andalusia)

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APPENDIX

CalEEMod Modeling Results

SECTION 1. PROJECT INFORMATION

- | | |
|---|---|
| 1.1 Project Title: | Andalusia |
| 1.2 Lead Agency Contact: | Terry Linder
Senior Planner
Morgan Hill, CA
17575 Peak Avenue
Morgan Hill, CA 95037 |
| 1.3 Project Location: | North of East Dunne Avenue,
South of Rosemary Circle
Morgan Hill, CA
APN 726-02-007 |
| 1.4 Project Applicant: | Diana Dunne Investors, LLC
385 Woodview Avenue
Morgan Hill, CA 95037
(408) 779-5900 |
| 1.5 Existing Zoning: | Residential Attached Medium (RAM) |
| 1.6 Existing General Plan Designation: | Residential Attached Medium Density
16 to 24 du/ac (RAM) |
| 1.7 Required Approvals from
Other Public Agencies: | None |

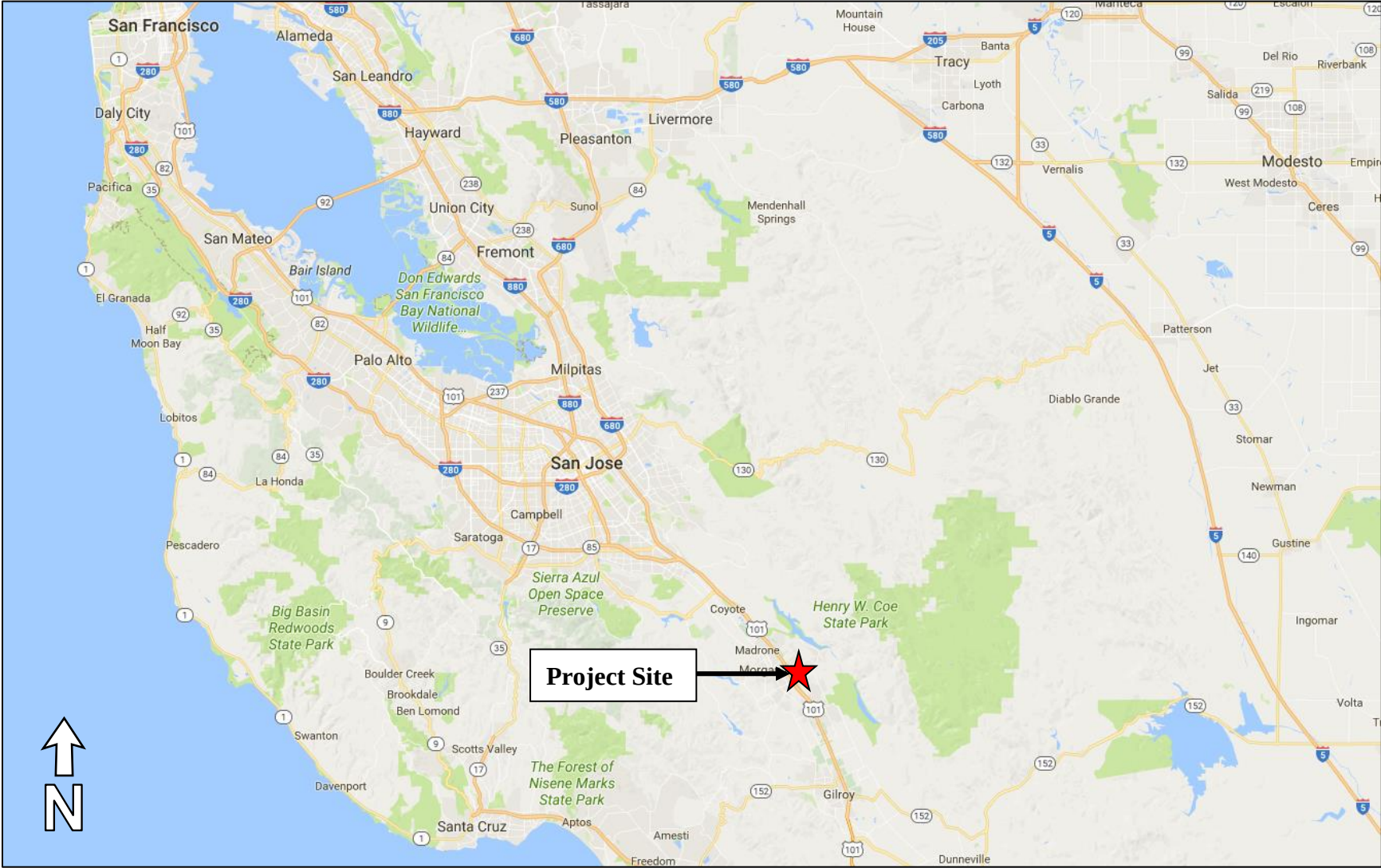
SECTION 2. PROJECT DESCRIPTION

2.1 Project Location and Setting

The Andalusia Project (proposed project) site consists of approximately 3.48 acres located directly north of an existing childcare facility (Morgan Hill KinderCare) at 605 East Dunne Avenue in the City of Morgan Hill, California (see Figure 1 and Figure 2). The site is identified by Assessor's Parcel Number (APN) 726-02-007. Currently, the project site is vacant and regularly disked. A narrow dirt footpath extends diagonally from the southeast corner of the site to the northeast corner of the site. In addition, a small number of remnant orchard trees are scattered within the southern portion of the site.

The project site is bound by the Morgan Hill KinderCare facility to the south, a single-family residential subdivision and an associated public park to the north, and vacant land to the east and west. Additional vacant land and a commercial development consisting of a Starbucks and a Walgreens store are located further east of the site, along Walnut Grove Drive.

Figure 1
Regional Project Location



Attachment: ISMND_w Appendix Revised (2048 : E. Dunne Young-Andalusia)

Figure 2
Project Vicinity Map



Attachment: ISMND_w Appendix Revised (2048 : E. Dunne Young-Andalusia)

It should be noted that although the land immediately to the east and west of the project site is currently vacant, a single-family residential development project has been approved for the adjacent site to the west (East Dunne-Kyono [Las Colinas] Project).

2.2 Project Components

The proposed project would include subdivision of the site into three parcels, and construction of ~~single-family~~ residences and associated improvements (see Figure 3 and Figure 4).

The proposed residences would consist of 46 ~~single-family, attached townhomes~~ **multi-family condos** ranging from 1,428 square feet (sf) to 1,835 sf with between two and four bedrooms. The 46 units would be clustered into groups of three to five with individual entries provided for each unit. Table 1 below provides a summary of the proposed unit mix.

Table 1 Proposed Unit Mix		
Number of Bedrooms	Living Space (sf)	Total Number of Units
2	1426	22
3	1656	7
4	1815	7
4	1725	6
4	1835	4
Notes:		
• Two Four of the two-bedroom units would be priced below market rate. • Four of the four-bedroom units would be American Disabilities Act (ADA)-compliant.		

The buildings comprising each unit cluster would be three stories and would be constructed with Spanish Farmhouse and Mediterranean Revival architectural styles (see Figure 5 and Figure 6). Per Section 18.74.050 **18.108.040** of the City's Municipal Code, landscaping would be provided throughout the site in accordance with the City's Standard Details for Construction. A 2,830-sf landscaped plaza and tot lot would be provided near the center of the site, to be used by future project residents. A 970-sf gathering area and a second tot lot would be located at the northwestern portion of the site. Lastly, a 240-sf gathering area would be provided along St. Anthony Drive within the western portion of the site.

The residential lots would be organized around an internal circulation system consisting of both public roadways and private streets. St. Anthony Drive and Las Colinas Drive, which are planned for the approved East Dunne-Kyono (Las Colinas) project located west of the project site, would be extended eastward through the site (see Figure 7). Of the two internal public roadways, St. Anthony Drive would be 40 feet wide and Los Castanos Drive (in order to add protection to KinderCare) would be 36 feet wide. A new 32-foot-wide roadway (Andalusia Drive) would extend northward along the eastern site boundary, providing a link between the new extensions of St. Anthony Drive and Las Colinas Drive. A detached pedestrian walkway would be provided on the west side of the roadway; the east side of the roadway would be improved as part of future development of the neighboring vacant parcel.

Figure 3
Site Development Plan

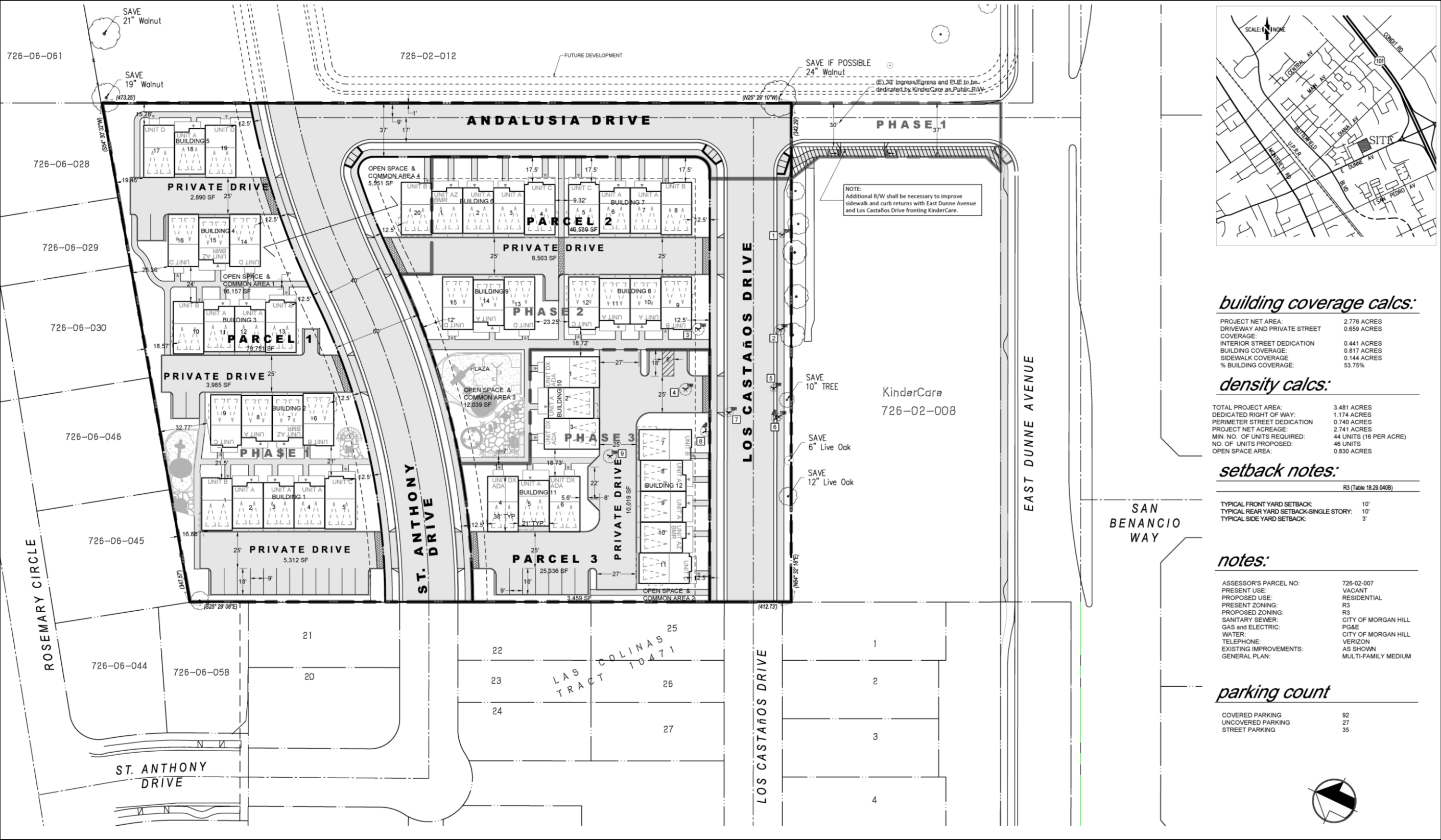


Figure 4
Tentative Parcel Map

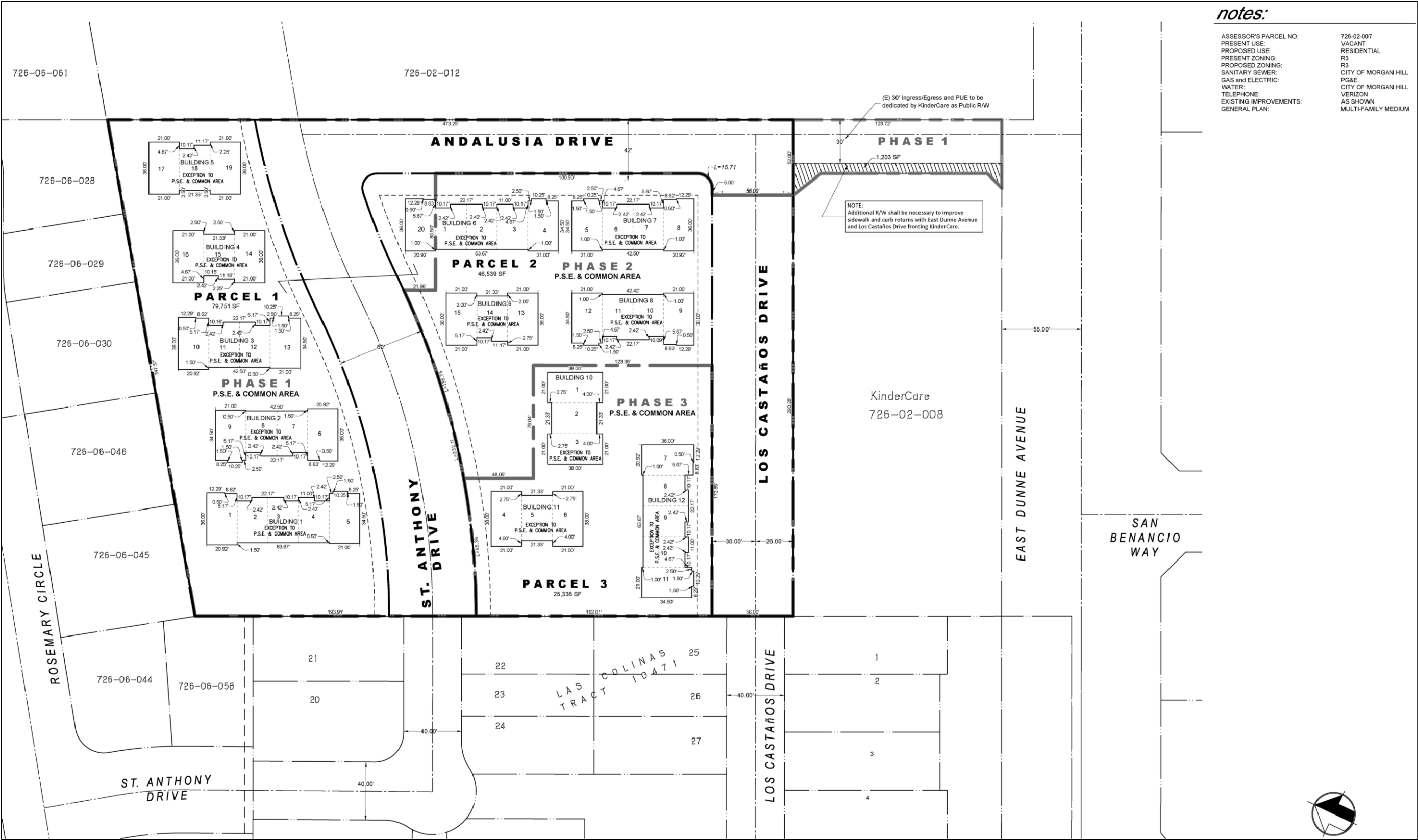


Figure 5
Front Elevation: Spanish Farmhouse Style



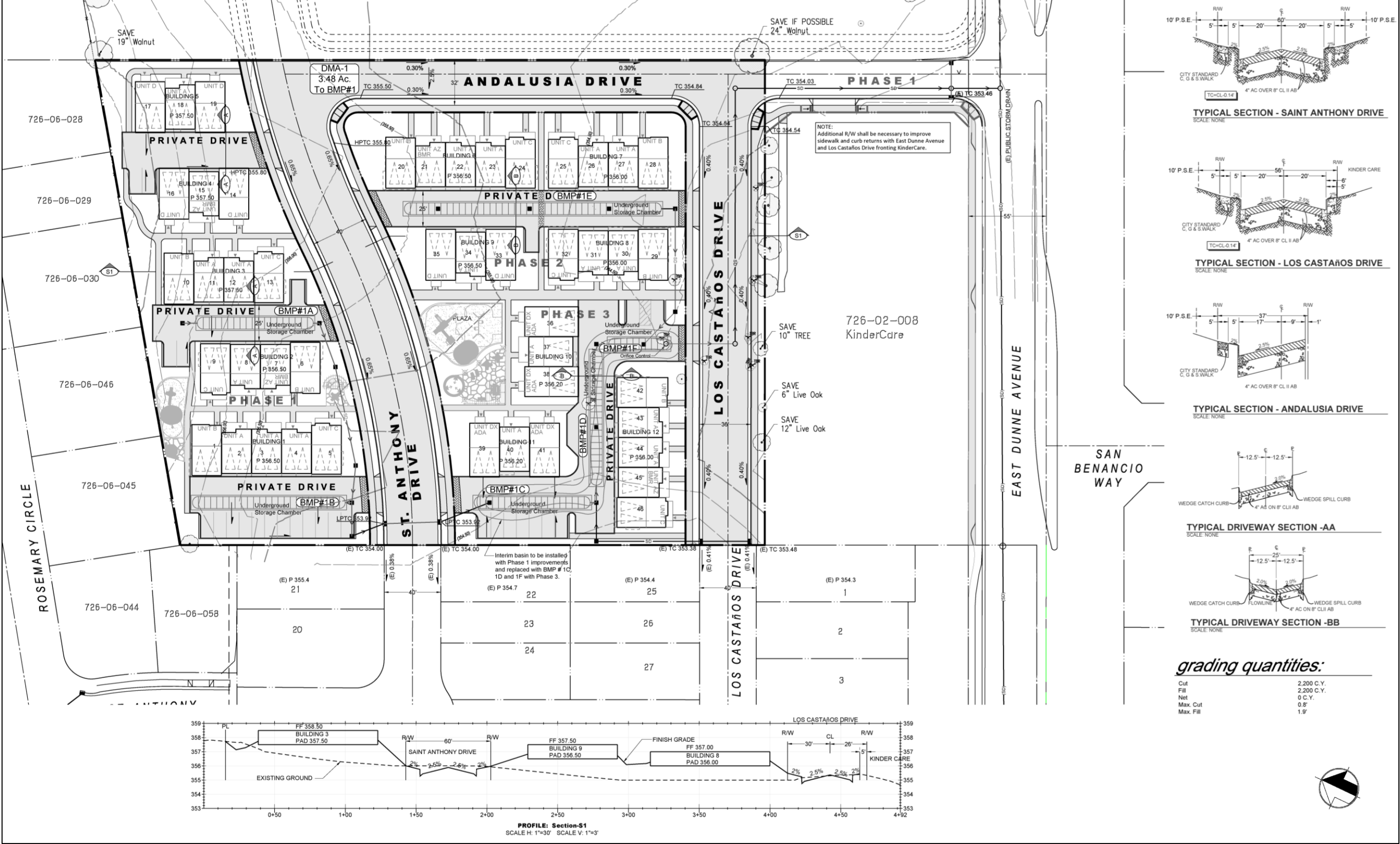
Attachment: ISMND_w Appendix Revised (2048 : E. Dunne Young-Andalusia)

Figure 6
Front Elevation: Mediterranean Revival Style



Attachment: ISMND_w Appendix Revised (2048 : E. Dunne Young-Andalusia)

Figure 7
Preliminary Grading Plan



Attachment: ISMND_w Appendix Revised (2048 : E. Dunne Young-Andalusia)

Andalusia Drive would continue through the existing 30-foot right-of-way (ROW) located east of the Morgan Hill KinderCare facility. As part of the project, the 30-foot ROW would be improved as agreed upon with the City's Public Works Department at the time of final map and final improvement drawings to the City. With completion of the aforementioned improvements, primary access to the site would be provided from East Dunne Avenue by way of Andalusia Drive, with secondary access provided through the East Dunne-Kyono (Las Colinas) project site by way of St. Anthony Drive and Las Colinas Drive.

New private streets extending from St. Anthony Drive and Las Colinas Drive would provide vehicular access to two-car garages at the rear of each residential unit. Each cluster of units would front private courtyards connected by a series of pedestrian walkways throughout the project site. A total of 35 street parking spaces would be provided along both sides of St. Anthony Drive and Las Colinas Drive. In addition, 27 uncovered parking stalls would be located along private streets throughout the site. Accounting for 92 parking spaces distributed between the proposed two-car garages, the proposed project would include a total of 154 vehicle parking spaces.

Water and sewer service for the proposed development would be provided by the City through connections to existing infrastructure located in the site vicinity. Stormwater would be collected by a series of drain inlets along the internal circulation system and transported, by way of underground storm drains, to six underground pipe manifold storage systems located underneath the on-site private streets. The pipe manifold storage systems would treat and detain all on-site runoff prior to discharging to the City's existing stormwater drain located in East Dunne Avenue.

Requested/Required Entitlements

The proposed project would require the City's approval of the following entitlements:

- Adoption of the Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program;
- Approval of a ~~Vesting~~ Tentative Parcel Map (~~VTM~~) for APN 726-02-007 to subdivide the 3.48-acre project site into three parcels for the development of 46 ~~single-family, attached residences~~ **multi-family condos**; and
- Approval of a Development Agreement.

Subsequent to the approval of the above entitlements, the applicant would be required to obtain a Design Review Permit for approval of a site plan, building elevations, and landscape plans.

2.3 Surrounding Land Uses

The immediate existing surrounding land uses and developments are as follows:

- North - Single-family residences.
- West - Vacant (planned for single-family residential site of East Dunne-Kyono [Las Colinas] Project).
- East - Vacant.
- South - Morgan Hill KinderCare.

SECTION 3. SOURCES

The following documents are referenced information sources utilized by this analysis:

1. Association of Bay Area Governments. *Dam Failure Inundation Hazard Map for Morgan Hill*. 1995. Available at: http://www.mhcert.com/prepare/dam_failure.shtml. Accessed July 2018.
2. Association of Bay Area Governments. *Resilience Program*. Available at: <http://gis.abag.ca.gov/website/Hazards/?hlyr=liqSusceptibility>. Accessed July 2018.
3. Bay Area Air Quality Management District. *Air Quality Standards and Attainment Status*. Available at: <http://www.baaqmd.gov/research-and-data/air-quality-standards-and-attainment-status>. Accessed July 2018.
4. Bay Area Air Quality Management District. *California Environmental Quality Act, Air Quality Guidelines*. May 2017.
5. California Air Pollution Control Officer's Association (CAPCOA). *California Emissions Estimator Model, User's Guide, Version 2016.3.2*. November 2017.
6. California Department of Conservation. *Santa Clara County Important Farmland Map 2014*. Published October 2016.
7. California Department of Resources Recycling and Recovery (CalRecycle). *Facility/Site Summary Details: Johnson Canyon Sanitary Landfill (27-AA-0005)*. Available at: <http://www.calrecycle.ca.gov/SWFacilities/Directory/27-AA-0005/Detail/>. Accessed July 2018.
8. California Environmental Protection Agency, California Air Resources Board. *Air Quality and Land Use Handbook: A Community Health Perspective*. April 2005.
9. California Historical Resources Information System. *Record search results for the proposed Andalusia project*. August 13, 2018.
10. City of Morgan Hill Public Works Department. *Schedule of Development Impact Fees*. January 15, 2018.
11. City of Morgan Hill. *2010 Urban Water Management Plan* [pg. 5-23 to 5-24]. 2010.
12. City of Morgan Hill. *2035 General Plan Draft EIR*. January, 2016.
13. City of Morgan Hill. *2035 General Plan, City of Morgan Hill*. Adopted July 2016.
14. City of Morgan Hill. *City of Morgan Hill Wildland Urban Interface Map*. March 2009.
15. City of Morgan Hill. *Emergency Operations Plan*. January 11, 2018.

16. City of Morgan Hill. *Housing Element*. Adopted February 18, 2015.
17. City of Morgan Hill. *Morgan Hill 2035 Final Environmental Impact Report*. Adopted July 2016.
18. City of Morgan Hill. *Municipal Code*. Available at: <http://www.morgan-hill.ca.gov/655/Municipal-Code>. Accessed July 2018.
19. City of Morgan Hill. *Revised Regional Stormwater Management Plan*. February 22, 2010.
20. County of Santa Clara, City of San José, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority. *Final Santa Clara Valley Habitat Plan, Santa Clara County, California*. January 29, 2013.
21. Department of Conservation. *State of California, Special Studies Zones, Mt. Madonna Quadrangle, Revised Official Map*. Effective January 1, 1976.
22. Fehr & Peers. *Kyono Residential Development, Draft Focused Transportation Impact Analysis*. February 2018.
23. Geologica, Inc. *Report, Phase I Environmental Site Assessment, Vacant Parcel APN 726-02-007, Morgan Hill, California*. November 3, 2017.
24. Geologica, Inc. *Report, Soil Quality Investigation, Proposed Development Property, Vacant Parcel APN 762-02-007, East Dunne Avenue, Morgan Hill, CA*. December 5, 2017.
25. Natural Resources Conservation Service. *Calculated Coefficients of Linear Extensibility*. Available at: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/survey/office/ssr10/tr/?cid=nrcs144p2_074840. Accessed July 2018.
26. Salinas Valley Solid Waste Authority. *2016-17 Annual Report*. 2018.
27. Santa Clara County. *Comprehensive Land Use Plan, Santa Clara County, South County Airport*. Amended November 16, 2016.
28. Santa Clara Valley Habitat Agency. Geobrowser. Available at: <http://www.hcpmaps.com/habitat/>. Accessed July 2018.
29. Santa Clara Valley Transportation Authority. *2015 Congestion Management Plan*. October 2015.
30. Santa Clara Valley Water District. *C1: Anderson Dam Seismic Retrofit**. Available at: <https://www.valleywater.org/project-updates/dam-reservoir-projects/anderson-dam-seismic-retrofit>. Accessed July 2018.
31. South County Regional Wastewater Authority. *Biennial Budget Transmittal – FY 14 & FY 15*. April 3, 2013.

SECTION 4. EVALUATION OF ENVIRONMENTAL IMPACTS

4.1 Background and Introduction

The mitigation measures prescribed for environmental effects described in this Initial Study/Mitigated Negative Declaration (IS/MND) would be implemented in conjunction with the project, as required by CEQA. The mitigation measures would be incorporated into the project through project conditions of approval. The City would adopt findings and a Mitigation Monitoring/Reporting Program for the project in conjunction with approval of the project.

July 2016, the City of Morgan Hill adopted the 2035 General Plan,¹ as well as an associated Environmental Impact Report (EIR) for the updated General Plan.² The General Plan EIR is a program EIR, prepared pursuant to Section 15168 of the CEQA Guidelines (Title 14, California Code of Regulations, Sections 15000 *et seq.*). The General Plan EIR analyzed full implementation of the General Plan and identified measures to mitigate the significant adverse impacts associated with the General Plan. Per the General Plan, the proposed project site is designated Residential Attached Medium Density (16 to 24 dwelling units/acre). Accounting for 0.74-acre of proposed perimeter street dedications, the net developable area of the site is 2.74 acres. Development of the project site with 46 ~~single-family~~ units would result in a density of 16.79 dwelling units/acre. Thus, the proposed project would be consistent with the General Plan.

Per Section 15152 of the CEQA Guidelines, a project which is consistent with the General Plan and zoning of the City may tier from the analysis contained in the General Plan EIR, incorporating by reference the general discussions from the broader EIR. Given that the proposed project would be consistent with the site's current General Plan land use designation of Residential Attached Medium Density, the environmental analysis contained in this IS/MND tiers, where applicable, from the General Plan EIR in accordance with CEQA Guidelines Section 15152.

The timing, type, and amount of residential growth in Morgan Hill is ultimately controlled by the Residential Development Control System (RDSCS), which was adopted for the purpose of managing growth in Morgan Hill. The RDSCS generally limits development allotments to 215 residential units per year according to a point system based on a variety of factors, including provision of public services, site planning, and architectural design considerations. The Andalusia project site has been awarded 20 building allotments for the 2019/2020 period through the City's RDSCS under file number RDSCS2017-0012. The 26 additional allotments required for the proposed project would be received ~~in the 2020/2021 competition period~~ either through (a) competition for the City's remaining allotments or (b) consideration as an on-going project, which would allow for automatic receipt of the 26 building allotments.

¹ City of Morgan Hill. *2035 General Plan, City of Morgan Hill*. Adopted July 2016.

² City of Morgan Hill. *Morgan Hill 2035 Final Environmental Impact Report*. Adopted July 2016.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is “Less Than Significant with Mitigation Incorporated” as indicated by the checklist on the following pages.

- | | | |
|---|---|--|
| ☐ Aesthetics | ☐ Agriculture and Forest Resources | ☐ Air Quality |
| ☒ Biological Resources | ☐ Cultural Resources | ☐ Geology and Soils |
| ☐ Greenhouse Gas Emissions | ☐ Hazards and Hazardous Materials | ☐ Hydrology and Water Quality |
| ☐ Land Use and Planning | ☐ Mineral Resources | ☒ Noise |
| ☐ Population and Housing | ☐ Public Services | ☐ Recreation |
| ☐ Transportation and Circulation | ☐ Tribal Cultural Resources | ☐ Utilities and Service Systems |
| ☐ Mandatory Findings of Significance | | |

DETERMINATION

On the basis of this initial study:

- ☐ I find that the Proposed Project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the applicant. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the Proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

Terry Linder, Senior Planner
Printed Name

Initial Study
Andalusia

Date

City of Morgan Hill
For

ENVIRONMENTAL CHECKLIST

The following Checklist contains the environmental checklist form presented in Appendix G of the CEQA Guidelines. The checklist form is used to describe the impacts of the proposed project. A discussion follows each environmental issue identified in the checklist. Included in each discussion are project-specific mitigation measures recommended, as appropriate, as part of the proposed project.

For this checklist, the following designations are used:

Potentially Significant Impact: An impact that could be significant, and for which no mitigation has been identified. If any potentially significant impacts are identified, an EIR must be prepared.

Less Than Significant with Mitigation Incorporated: An impact that requires mitigation to reduce the impact to a less-than-significant level.

Less-Than-Significant Impact: Any impact that would not be considered significant under CEQA relative to existing standards.

No Impact: The project would not have any impact.

I. AESTHETICS.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than- Significant Impact	No Impact
a. Have a substantial adverse effect on a scenic vista?	☐	☐	✗	☐
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway?	☐	☐	☐	✗
c. Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	✗	☐
d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	✗	☐
a. The Morgan Hill General Plan does not designate official scenic view corridors or vistas. However, according to the General Plan, the hillsides that surround the City to the east and west are considered scenic. The project site is located in a suburban neighborhood surrounded by existing development and is not located on a hillside or in the vicinity of a hillside. While distant views of eastern hills can be seen through the project site from public viewpoints, including East Dunne Avenue, most views of the hills are obscured by the Morgan Hill KinderCare facility located south of the project site, as well as intervening development and vegetation located beyond the project site to the north. ³ Based upon such considerations, and the fact that the General Plan does not designate any official scenic vistas within the City of Morgan Hill, the project would have a less-than-significant impact to a scenic vista.				
b. Scenic gateways to the City include Pacheco Pass, Hecker Pass, US 101 south of Gilroy, and the Coyote greenbelt area north of Morgan Hill. According to the California Department of Transportation (Caltrans) map of Santa Clara County prepared for the Scenic Highway Mapping System, officially designated State or County scenic highways do not occur in the project vicinity. Because the proposed project is not located in the vicinity of any State scenic highway or scenic gateway identified by the City, the proposed project would not damage any scenic resources within a State scenic highway. Therefore, no impact related to damaging scenic resources within a State scenic highway would occur.				

³ It is important to distinguish between public and private views. Private views are views seen from privately-owned land and are typically viewed by individual viewers, including views from private residences. Public views are experienced by the collective public. These include views of significant landscape features and along scenic roads. California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) case law has established that only public views, not private views, are protected under CEQA. For example, in *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720 [3 Cal. Rptr.2d 488] the court determined that “we must differentiate between adverse impacts upon particular persons and adverse impacts upon the environment of persons in general. As recognized by the court in *Topanga Beach Renters Assn. v. Department of General Services* (1976) 58 Cal.App.3d 188 [129 Cal.Rptr. 739]: “[A]ll government activity has some direct or indirect adverse effect on some persons. The issue is not whether [the project] will adversely affect particular persons but whether [the project] will adversely affect the environment of persons in general.” Therefore, it is appropriate to focus the aesthetic impact analysis on potential impacts to public views.

- c. Currently, the proposed project site is vacant and undeveloped. A small number of orchard trees are scattered near the southern portion of the site. An existing single-family residential subdivision is located north of the site, and the site is bound on the south by the Morgan Hill KinderCare facility. The site is bound to the east by a vacant lot zoned for residential uses. As noted previously, future single-family residential development has been approved by the City for the vacant parcels west of the project site.

Directly south of the project site, existing views of the site from East Dunne Avenue are blocked by the Morgan Hill KinderCare facility and associated mature landscaping (see Figure 8). Limited views of the site are available from East Dunne Avenue looking across the vacant properties east and west of the site; however, such views are partially obscured by intervening vegetation. In addition, because both adjacent properties are currently planned for development with residential uses, future views of the site from East Dunne Avenue will likely be further screened.

Due to the vacant nature of the project site, development of the site with ~~single~~ **multi**-family residences would change the character of the site from an undeveloped lot to a suburban residential neighborhood. The upper floors of the proposed three-story buildings would likely be visible to motorists, pedestrians, and bicyclists on East Dunne Avenue looking north at the site across the Morgan Hill KinderCare facility. Development of the site with ~~single-family residences~~ **residential uses**, however, would be consistent with the existing residential development to the north and the future residential uses planned to the east and west of the site. In addition, while the upper floors of the proposed three-story buildings may be visible, much of the site would continue to be screened from view by tall vegetation along the northern boundary of the Morgan Hill KinderCare property.

The project is also subject to design review in accordance with Morgan Hill Municipal Code Section ~~18.74.030~~ **18.108.040**, which would ensure that the proposed project is consistent with applicable design standards and guidelines in the City's Architectural Review Handbook for ~~Single~~ **Multi**-Family Residential development. The Handbook is intended to encourage sensitive site planning and well-designed neighborhoods. Furthermore, the project would be consistent with the project site's existing General Plan land use and zoning designations. Thus, the City has previously anticipated changes to the visual character associated with residential development of the project site, and such changes have been analyzed in the General Plan EIR. The City's General Plan EIR concluded that buildout of the General Plan, including the project site, would result in a less-than-significant impact related to visual character and quality.

Because the project would be consistent with the existing surrounding visual character and quality, would require a separate design review, and would be consistent with the site's current land use and zoning designations, a **less-than significant** impact would occur related to degradation of the existing visual character of the site and its surroundings.

Figure 8
Existing View of Site Looking North from East Dunne Avenue



- d. The proposed project site does not contain any existing sources of light or glare. As such, development of the proposed project would increase the amount of light including, but not limited to, headlights on cars using the on-site driveways, exterior light fixtures, and interior light spilling through windows. However, the existing residential development north of the site and the Morgan Hill KinderCare facility south of the site both currently generate light and glare in the area.

In addition, new sources of lighting would be required to comply with the standards set forth in Section F of the City's Architectural Review Handbook, which includes such requirements as cut-off lenses to direct light downward. Compliance with such would help to ensure that the light and glare created by the proposed project would be consistent with the levels of light and glare currently emitted in the surrounding developed environment. Therefore, the proposed project would not introduce new sources of substantial light or glare to the site which would adversely affect day or nighttime views in the area, and a ***less-than-significant*** impact would occur.

II. AGRICULTURE AND FOREST RESOURCES.

Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than- Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	✗
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	✗
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	✗
d. Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	✗
e. Involve other changes in the existing environment which, due to their location or nature, could individually or cumulatively result in loss of Farmland to non-agricultural use?	☐	☐	☐	✗
a,e. Per a Phase I Environmental Site Assessment (ESA) prepared for the proposed project, the proposed project site was planted with an active orchard from approximately 1939 to the mid-1960s, at which time the on-site orchard was replaced with a cultivated field. ⁴ While the project site historically contained an orchard, the site has not been used recently for agricultural production and is designated as “Urban and Built-Up Land” on the Santa Clara County Important Farmland map. ⁵ Furthermore, the site is not zoned or designated in the General Plan for agriculture uses. Given the designation of the site as Urban and Built-Up Land, development of the proposed project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to a non-agricultural use, or otherwise result in the loss of Farmland to non-agricultural use. Therefore, no impact would occur as a result of the proposed project.				
b. The proposed project site is not under a Williamson Act contract and is not designated or zoned for agricultural uses. Therefore, buildout of the proposed project would not conflict with existing zoning for agricultural use or a Williamson Act contract, and no impact would occur.				
c,d. The project site is not considered forest land (as defined in Public Resources Code section 12220[g]), timberland (as defined by Public Resources Code section 4526), and is not zoned Timberland Production (as defined by Government Code section 51104[g]). Therefore, the				

⁴ Geologica, Inc. *Report, Phase I Environmental Site Assessment, Vacant Parcel APN 726-02-007, Morgan Hill, California*. November 3, 2017.

⁵ California Department of Conservation. *Santa Clara County Important Farmland Map 2014*. Published October 2016.

proposed project would have ***no impact*** with regard to conversion of forest land or any potential conflict with forest land, timberland, or Timberland Production zoning.

III. AIR QUALITY.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	✗	☐
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	✗	☐
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	✗	☐
d. Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	✗	☐
e. Create objectionable odors affecting a substantial number of people?	☐	☐	✗	☐
a-c. The City of Morgan Hill is located in the San Francisco Bay Area Air Basin (SFBAAB), which is under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The SFBAAB area is currently designated as a nonattainment area for the State and federal ozone, State and federal fine particulate matter 2.5 microns in diameter (PM _{2.5}), and State respirable particulate matter 10 microns in diameter (PM ₁₀) ambient air quality standards (AAQS). The SFBAAB is designated attainment or unclassified for all other AAQS. It should be noted that on January 9, 2013, the U.S. Environmental Protection Agency (USEPA) issued a final rule to determine that the Bay Area has attained the 24-hour PM _{2.5} federal AAQS. Nonetheless, the Bay Area must continue to be designated as nonattainment for the federal PM _{2.5} AAQS until such time as the BAAQMD submits a redesignation request and a maintenance plan to the USEPA, and the USEPA approves the proposed redesignation. The USEPA has not yet approved a request for redesignation of the SFBAAB; therefore, the SFBAAB remains in nonattainment for 24-hour PM _{2.5} .				

In compliance with regulations, due to the nonattainment designations of the area, the BAAQMD periodically prepares and updates air quality plans that provide emission reduction strategies to achieve attainment of the AAQS, including control strategies to reduce air pollutant emissions through regulations, incentive programs, public education, and partnerships with other agencies. The current air quality plans are prepared in cooperation with the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG).

The most recent federal ozone plan is the 2001 Ozone Attainment Plan, which was adopted on October 24, 2001 and approved by the California Air Resources Board (CARB) on November 1, 2001. The plan was submitted to the USEPA on November 30, 2001 for review and approval. The most recent State ozone plan is the 2017 Clean Air Plan (CAP), adopted on April 19, 2017. The 2017 CAP was developed as a multi-pollutant plan that provides an integrated control strategy to reduce ozone, PM, toxic air contaminants (TACs), and greenhouse gases (GHGs). Although a plan for achieving the State PM₁₀

standard is not required, the BAAQMD has prioritized measures to reduce PM in developing the control strategy for the 2017 CAP. The control strategy serves as the backbone of the BAAQMD's current PM control program.

The aforementioned air quality plans contain mobile source controls, stationary source controls, and transportation control measures to be implemented in the region to attain the State and federal AAQS within the SFBAAB. Adopted BAAQMD rules and regulations, as well as the thresholds of significance, have been developed with the intent to ensure continued attainment of AAQS, or to work towards attainment of AAQS for which the area is currently designated nonattainment, consistent with applicable air quality plans. For development projects, BAAQMD establishes significance thresholds for emissions of the ozone precursors reactive organic gases (ROG) and oxides of nitrogen (NO_x), as well as for PM₁₀, and PM_{2.5}, expressed in pounds per day (lbs/day) and tons per year (tons/yr). The thresholds are listed in Table 2. Thus, by exceeding the BAAQMD's mass emission thresholds for operational emissions of ROG, NO_x, or PM₁₀, a project would be considered to conflict with or obstruct implementation of the BAAQMD's air quality planning efforts.

Table 2			
BAAQMD Thresholds of Significance			
Pollutant	Construction	Operational	
	Average Daily Emissions (lbs/day)	Average Daily Emissions (lbs/day)	Maximum Annual Emissions (tons/year)
ROG	54	54	10
NO _x	54	54	10
PM ₁₀ (exhaust)	82	82	15
PM _{2.5} (exhaust)	54	54	10

Source: BAAQMD, CEQA Guidelines, May 2017.

The proposed project's construction and operational emissions were quantified using the California Emissions Estimator Model (CalEEMod) software version 2016.3.2 - a Statewide model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify air quality emissions, including GHG emissions, from land use projects. The model applies inherent default values for various land uses, including construction data, vehicle mix, trip length, average speed, etc. Where project-specific information is available, such information should be applied in the model. Accordingly, the proposed project's modeling assumed the following:

- Construction would commence in July of 2019;
- Construction would occur over an approximately 13-month period;
- Approximately 3.58 acres would be disturbed during grading activities, including 0.10-acre of off-site roadway improvements at the existing roadway segment east of the Morgan Hill KinderCare facility.
- An average daily trip rate of 9.52 trips per unit was assumed;
- The project would exceed the most recent 2016 Title 24 Standards by 25 percent; and
- The project would include low-flow fixtures and would use water-efficient irrigation systems.

The proposed project's estimated emissions associated with construction and operations are presented and discussed in further detail below. A discussion of the proposed project's contribution to cumulative air quality conditions is provided below as well. All CalEEMod results are included in the appendix to this IS/MND.

Construction Emissions

According to the CalEEMod results, the proposed project would result in maximum construction criteria air pollutant emissions as shown in Table 3. As shown in the table, the proposed project's construction emissions would be below the applicable thresholds of significance.

Table 3			
Maximum Construction Emissions (lbs/day)			
Pollutant	Proposed Project Emissions	Threshold of Significance	Exceeds Threshold?
ROG	7.18	54	NO
NO _x	45.63	54	NO
PM ₁₀ (exhaust)	2.39	82	NO
PM ₁₀ (fugitive)	18.21	None	N/A
PM _{2.5} (exhaust)	2.20	54	NO
PM _{2.5} (fugitive)	9.97	None	N/A
<i>Source: CalEEMod, July 2018 (see appendix).</i>			

Although thresholds of significance for mass emissions of fugitive dust PM₁₀ and PM_{2.5} have not been identified by the City of Morgan Hill or BAAQMD, the proposed project's estimated fugitive dust emissions have been included for informational purposes. All projects within the jurisdiction of the BAAQMD are required to implement all of the BAAQMD's Basic Construction Mitigation Measures, which include the following:

1. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
2. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
3. All vehicle speeds on unpaved roads shall be limited to 15 mph.
4. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
5. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
6. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.

7. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

The proposed project's required implementation of the BAAQMD's Basic Construction Mitigation Measures listed above for the proposed project's construction activities, would help to further minimize construction-related emissions.

Because the proposed project would be below the applicable thresholds of significance for construction emissions, the proposed project would not be considered to result in a significant air quality impact during construction.

Operational Emissions

According to the CalEEMod results, the proposed project would result in maximum operational criteria air pollutant emissions as shown in Table 4. As shown in the table, the proposed project's operational emissions would be below the applicable thresholds of significance. As such, the proposed project would not result in a significant air quality impact during operations.

Table 4					
Unmitigated Maximum Operational Emissions					
Pollutant	Proposed Project Emissions		Threshold of Significance		Exceeds Threshold?
	lbs/day	tons/yr	lbs/day	tons/yr	
ROG	3.04	0.52	54	10	NO
NO _x	3.92	0.62	54	10	NO
PM ₁₀ (exhaust)	0.11	0.01	82	15	NO
PM ₁₀ (fugitive)	2.15	0.38	None	None	N/A
PM _{2.5} (exhaust)	0.11	0.01	54	10	NO
PM _{2.5} (fugitive)	0.58	0.10	None	None	N/A

Source: CalEEMod, July 2018 (see appendix).

Cumulative Emissions

Past, present and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By nature, air pollution is largely a cumulative impact. A single project is not sufficient in size to, by itself, result in nonattainment of AAQS. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality would be considered significant. In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. The thresholds of significance presented in Table 2 represent the levels at which a project's individual emissions of criteria air pollutants or precursors would result in a cumulatively considerable contribution to the SFBAAB's existing air quality conditions. If a project exceeds the significance thresholds presented in Table 2, the proposed project's emissions

would be cumulatively considerable, resulting in significant adverse cumulative air quality impacts to the region's existing air quality conditions. Because the proposed project would result in emissions below the applicable thresholds of significance, the project would not be expected to result in a cumulatively considerable contribution to the region's existing air quality conditions.

Conclusion

As stated previously, the applicable regional air quality plans include the 2001 Ozone Attainment Plan and the 2017 CAP. According to BAAQMD, if a project would not result in significant and unavoidable air quality impacts, after the application of all feasible mitigation, the project may be considered consistent with the air quality plans. Because the proposed project would result in emissions below the applicable thresholds of significance, the project would not be considered to conflict with or obstruct implementation of regional air quality plans.

Because the proposed project would not conflict with or obstruct implementation of the applicable air quality plans, violate any air quality standards or contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in any criteria air pollutant, impacts would be considered ***less than significant***.

- d. Some land uses are considered more sensitive to air pollution than others, due to the types of population groups or activities involved. Heightened sensitivity may be caused by health problems, proximity to the emissions source, and/or duration of exposure to air pollutants. Children, pregnant women, the elderly, and those with existing health problems are especially vulnerable to the effects of air pollution. Accordingly, land uses that are typically considered to be sensitive receptors include residences, schools, childcare centers, playgrounds, retirement homes, convalescent homes, hospitals, and medical clinics. The proposed project would involve construction of ~~single-family residences~~ **residential uses**, which would be considered sensitive receptors. The nearest existing sensitive receptor to the project site would be the Morgan Hill KinderCare facility located adjacent to the site's eastern boundary.

The major pollutant concentrations of concern are localized carbon monoxide (CO) emissions and Toxic Air Contaminants (TAC) emissions, which are addressed in further detail below.

Localized CO Emissions

Localized concentrations of CO are related to the levels of traffic and congestion along streets and at intersections. High levels of localized CO concentrations are only expected where background levels are high, and traffic volumes and congestion levels are high. Emissions of CO are of potential concern, as the pollutant is a toxic gas that results from the incomplete combustion of carbon-containing fuels such as gasoline or wood. CO emissions are particularly related to traffic levels.

In order to provide a conservative indication of whether a project would result in localized CO emissions that would exceed the applicable threshold of significance, the BAAQMD has established screening criteria for localized CO emissions. According to BAAQMD, a proposed project would result in a less-than-significant impact related to localized CO emission concentrations if all of the following conditions are true for the project:

- The project is consistent with an applicable congestion management program established by the county congestion management agency for designated roads or highways, regional transportation plan, and local congestion management agency plans;
- The project traffic would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour; and
- The project traffic would not increase traffic volumes at affected intersections to more than 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited (e.g., tunnel, parking garage, underpass, etc.).

As discussed in Section XVI, Transportation and Circulation, of this Initial Study, the proposed project would not conflict with the Santa Clara Valley Transportation Authority (VTA) Congestion Management Program (CMP).⁶ Additionally, traffic counts for the area completed as part of a Traffic Impact Analysis prepared for the East Dunne-Kyono (Las Colinas) Project, showed that all of the intersections in the project area experience traffic levels far below 44,000 vehicles during AM and PM peak hour periods,⁷ and traffic associated with the proposed 46-unit development would not increase traffic volumes at an affected intersection to more than 44,000 vehicles per hour. Furthermore, areas where vertical and/or horizontal mixing is limited due to tunnels, underpasses, or similar features do not exist in the project area. Therefore, based on the BAAQMD's screening criteria for localized CO emissions, the proposed project would not be expected to result in substantial levels of localized CO at surrounding intersections or generate localized concentrations of CO that would exceed standards or cause health hazards.

TAC Emissions

Another category of environmental concern is TACs. The CARB's *Air Quality and Land Use Handbook: A Community Health Perspective* (Handbook) provides recommended setback distances for sensitive land uses from major sources of TACs, including, but not limited to, freeways and high traffic roads, distribution centers, and rail yards. The CARB has identified diesel particulate matter (DPM) from diesel-fueled engines as a TAC; thus, high volume freeways, stationary diesel engines, and facilities attracting heavy and constant diesel vehicle traffic are identified as having the highest associated health risks from DPM. Health risks associated with TACs are a function of both the concentration of emissions and the duration of exposure, where the higher the concentration and/or the longer the period of time that a sensitive receptor is exposed to pollutant concentrations would correlate to a higher health risk.

⁶ Santa Clara Valley Transportation Authority. *2015 Congestion Management Plan*. October 2015.

⁷ Fehr & Peers. *Kyono Residential Development, Draft Focused Transportation Impact Analysis*. February 2018.

The proposed project would not involve any land uses or operations that would be considered major sources of TACs, including DPM. As such, the proposed project would not generate any substantial pollutant concentrations during operations. However, short-term, construction-related activities could result in the generation of TACs, specifically DPM, from on-road haul trucks and off-road equipment exhaust emissions. Construction is temporary and occurs over a relatively short duration in comparison to the operational lifetime of the proposed project. Specifically, as noted above, construction would occur over an approximately 13-month period. Mass grading of the project site, when emissions would be most intensive, would occur over the period of approximately nine days. The exposure period typically analyzed in health risk assessments is 30 years or greater, which is substantially longer than the 13-month construction period associated with the proposed project.

All construction equipment and operation thereof would be regulated per the In-Use Off-Road Diesel Vehicle Regulation, which is intended to help reduce emissions associated with off-road diesel vehicles and equipment, including DPM. In addition, the project applicant would be required to prepare, and include on all site development and grading plans, a management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project. Per Section 18.48.005 **18.76.040** of the City's Municipal Code, the management plan must include all applicable BAAQMD rules and regulations, as well as the City's standard conditions for construction activity, listed below:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
8. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

The City of Morgan Hill Community Development Department would ensure that the conditions listed above would be noted on project construction drawings prior to issuance of a building permit or approval of improvement plans.

During construction, only portions of the project site would be disturbed at a time. Operation of construction equipment would occur on such portions of the site intermittently throughout the course of a day over the overall construction period. In addition, Chapter 8.28 of the City's Municipal Code prohibits construction activities between 8:00 PM and 7:00 AM, Monday through Friday, and between 6:00 PM and 9:00 AM on Saturdays. Construction activities may not occur on Sundays or federal holidays. The Morgan Hill KinderCare facility is open between 6:15 AM and 6:15 PM and is closed Saturday and Sunday. Because construction equipment on-site would not operate for any long periods of time and would be used at varying locations within the site, associated emissions of DPM would not occur at the same location (or be evenly spread throughout the entire project site) for long periods of time. Equipment operating in close proximity to the Morgan Hill KinderCare facility would occur over an even smaller amount of time, as the facility is located adjacent to the southern site boundary. Due to the temporary nature of construction and the relatively short duration of potential exposure to associated emissions, sensitive receptors in the area would not be exposed to pollutants for a permanent or substantially extended period of time.

Due to the varying distances from working construction areas and equipment usage to any one nearby sensitive receptor, any one nearby sensitive receptor would be exposed to varying concentrations of DPM emissions throughout the construction period. According to BAAQMD, research conducted by CARB indicates that DPM is highly dispersive in the atmosphere. Thus, emissions at the project site would be substantially dispersed at the nearest sensitive receptor.

Considering the short-term nature of construction activities, the regulated and intermittent nature of the operation of construction equipment, and the highly dispersive nature of DPM, the likelihood that any one sensitive receptor would be exposed to high concentrations of DPM for any extended period of time would be low. For the aforementioned reasons, project construction would not be expected to expose sensitive receptors to substantial pollutant concentrations.

Conclusion

Based on the above discussion, the proposed project would not expose any sensitive receptors to substantial concentrations of localized CO or TACs from construction or operation. Therefore, the proposed project would result in a **less-than-significant** impact related to the exposure of sensitive receptors to substantial pollutant concentrations.

- e. Due to the subjective nature of odor impacts, the number of variables that can influence the potential for an odor impact, and the variety of odor sources, quantification of significant odor impacts is relatively difficult. Typical odor-generating land uses include, but are not limited to, wastewater treatment plants, landfills, and composting facilities. The

proposed project would not introduce any such land uses and is not located in the vicinity of any such existing or planned land uses.

Construction activities often include diesel-fueled equipment and heavy-duty diesel trucks, which can create odors associated with diesel fumes, which could be found to be objectionable. However, as discussed above, construction activities would be temporary, and operation of construction equipment would be regulated and intermittent. Project construction would also be required to comply with all applicable BAAQMD rules and regulations, particularly associated with permitting of air pollutant sources. The aforementioned regulations would help to minimize air pollutant emissions as well as any associated odors. Accordingly, substantial objectionable odors would not occur during construction activities or affect a substantial number of people.

It should be noted that BAAQMD regulates objectionable odors through Regulation 7, Odorous Substances, which does not become applicable until the Air Pollution Control Officer (APCO) receives odor complaints from ten or more complainants within a 90-day period. Once effective, Regulation 7 places general limitation on odorous substances and specific emission limitations on certain odorous compounds, which remain effective until such time that citizen complaints have been received by the APCO for one year. The limits of Regulation 7 become applicable again when the APCO receives odor complaints from five or more complainants within a 90-day period. Thus, although not anticipated, if odor complaints are made after the proposed project is developed, the BAAQMD would ensure that such odors are addressed and any potential odor effects reduced to less than significant.

For the aforementioned reasons, construction and operation of the proposed project would not create objectionable odors, and a ***less-than-significant*** impact related to objectionable odors would result.

IV. BIOLOGICAL RESOURCES.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	✗	☐	☐
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	✗	☐
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	✗	☐
d. Interfere substantially with the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors, or impede the use of wildlife nursery sites?	☐	☐	☐	✗
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	✗	☐	☐
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan?	☐	✗	☐	☐
a,f. The proposed project site is located within the boundaries of the Santa Clara Valley Habitat Plan (SCVHP). The SCVHP was developed through a partnership between Santa Clara County, the cities of San José, Morgan Hill, and Gilroy, the Santa Clara Valley Water District (SCVWD), the Santa Clara VTA, the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Wildlife (CDFW). The SCVHP is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 500,000 acres of southern Santa Clara County. The SCVHP provides take authorization for 18 listed and non-listed species (i.e. covered species). In addition, the SCVHP includes conservation measures to protect the species covered by the SCVHP, as well as a conservation strategy designed to mitigate impacts on covered species and contribute to the recovery of the species in the study area.				

Per the SCVHP, the proposed project site is designated as a “Grain, Row-crop, Hay and Pasture, Disked/Short-term Fallowed” land cover type. Fallow fields are defined in the

SCVHP to include ruderal areas that have been fallow for several growing seasons and are dominated by weeds such as black mustard or thistles.⁸ Covered species expected to be found in the land cover type are tricolored blackbird and western burrowing owl, which forage in grain crops and pastures. Tricolored blackbird and western burrowing owls may also breed in agricultural settings. San Joaquin kit fox may move through the Grain, Row-crop, Hay and Pasture, Disked/Short-term Fallowed land cover type if such land cover occurs near suitable grassland areas. California tiger salamander, California red-legged frog, and western pond turtle move through croplands to reach suitable breeding and aestivation habitat. Bay checkerspot butterfly migrate through such habitats between patches of serpentine grassland. However, per the Santa Clara Valley Habitat Agency Geobrowser program, the proposed project site is not located within a designated Plant or Wildlife Survey Area for any covered species.⁹

Only the western burrowing owl has the potential of inhabiting the proposed project site, according to habitat requirements listed in Appendix D of the SCVHP. Burrowing owls do not require a specific vegetation cover or soil type and typically use vacated burrows dug by small mammals as nesting habitat; however, burrowing owls are also known to use artificial burrows including pipes, culverts, and piles of concrete pieces in urban areas. While the project site is not located within a Burrowing Owl Fee Zone, potential impacts to burrowing owls could occur as a result of the proposed development.

Furthermore, migratory birds have the potential to nest within the small number of trees located on the project site. Birds and their nests are protected under the California Fish and Game Code (Sections 3503, 3503.5, 3513), and the Migratory Bird Treaty Act (MBTA). The proposed project would include removal of trees during construction, and, thus, could result in impacts to nesting raptors and migratory birds, potentially occurring in the trees.

Should the project not comply with the mitigation requirements of the SCVHP for burrowing owls or impact nesting migratory birds during construction, the proposed project could have a substantial adverse effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status in local or regional plans, policies, or regulations, or by the CDFW or USFWS. In addition, the project could conflict with the SCVHP. Thus, a **potentially significant** impact could occur.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above impact to a *less-than-significant* level.

- IV-1. A pre-construction survey shall be conducted by a qualified Burrowing Owl biologist no more than 30 days prior to initiation of any ground disturbing (construction) activity to assure take avoidance of burrowing owls. The*

⁸ County of Santa Clara, City of San José, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority. *Final Santa Clara Valley Habitat Plan, Santa Clara County, California* [pg. 3-97]. January 29, 2013.

⁹ Santa Clara Valley Habitat Agency. Geobrowser. Available at: <http://www.hcpmaps.com/habitat/>. Accessed July 2018.

survey shall consist of a habitat assessment, burrow survey, owl survey, and completion of a written report. The written report shall be submitted to the Community Development Department. If owls are not determined to be present on-site, further mitigation is not required. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31).

IV-2. Should burrowing owls be found on the site during the breeding season (February 1 through August 31), exclusion zones, with a 250-foot radius from occupied burrows, shall be established. All development-related activities shall occur outside of the exclusion area until the young have fledged. Establishment of the exclusion area shall be determined by a qualified biologist to the satisfaction of the Community Development Department.

IV-3. If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site, the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of the 250-foot buffer shall be allowed. Construction activities within the non-disturbance buffer shall be allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites:

- A qualified biologist monitors the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
- The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
- If any change in owl foraging behavior occurs as a result of construction activities, such activities shall cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue. Monitoring shall continue as described above for the non-breeding season as long as the burrow remains active.

Passive relocation of owls shall not be permitted unless the positive growth trend described in Section 5.4.6 of the SCVHP is achieved and all passive relocation measures identified in the SCVHP are implemented. The project applicant may choose to obtain an exception that would allow for passive relocation, in which case an application shall be submitted to the Habitat

Agency along with a passive relocation plan in accordance with Section 6.6.1, Condition 15, Exceptions to Passive Relocation Prohibition, of the SCVHP. The Habitat Agency shall have the final authority to grant or deny the requested exception.

*IV-4. No later than submittal of the first construction or grading permit for the proposed project the owner or designee shall pay the Santa Clara Valley Habitat Plan per-acre fee in effect for the appropriate fee zone of the project site, as determined by the Santa Clara Valley Habitat Agency, in compliance with Section ~~18.69.150~~ **18.136.140** of the Morgan Hill Municipal Code.*

IV-5 If construction is proposed during breeding season (February 1 to August 31), a pre-construction nesting survey for raptors and other protected migratory birds shall be conducted by a qualified biologist and submitted to the City of Morgan Hill Community Development Department for review no more than 14 days prior to the start of construction. Pre-construction surveys during the non-breeding season (September 1 to January 31) are not necessary for birds, including roosting raptors, as they are expected to abandon their roosts during construction. If these species are deemed absent from the area, construction may occur within 14 days following the survey during the early nesting season (February to May) and within 30 days following the survey during the late nesting season (June to August).

If nesting raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (250-foot minimum for certain raptors) shall be determined by the qualified biologist at that time and may vary depending on location, topography, type of construction activity, and species. The buffer areas shall be enclosed with temporary fencing, and construction equipment and workers shall not enter the enclosed setback areas. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents.

- b,c. The proposed project site consists primarily of disturbed ruderal vegetation and is bordered by existing development to the north and south. Although the site contains vegetation and some mature trees, water features do not exist on the project site or in the vicinity of the site. The site would, therefore, not be considered a riparian habitat, a wetland, or a sensitive natural community. Accordingly, the proposed project would not have a substantial adverse effect on any riparian habitat or other sensitive natural community, or on federally-protected wetlands, and a **less-than-significant** impact would occur.*
- d. The project site is located within a residential neighborhood. While vacant lands are located immediately to the west and east of the site, the broader project area is entirely surrounded by existing development. Thus, the project site and the adjoining vacant lands do not*

provide a continuous corridor for wildlife movement. As noted above, the project does not contain streams or other waterways that could be used by migratory fish or as a wildlife corridor for other wildlife species. As such, the project would not interfere substantially with the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors, or impede the use of wildlife nursery sites. Thus, **no impact** would occur.

- e. Section 12.32.030 of the City of Morgan Hill's Municipal Code requires the approval of a tree removal permit before the removal of any Ordinance Sized Trees, defined as a non-indigenous tree with a circumference greater than 40 inches or any indigenous tree with circumference greater than 18 inches. Indigenous tree means any tree native to the Morgan Hill region, such as oaks (all types), Sycamore, California Bay, Madrone, or Alder.

Per a Tree Inventory & Pre-Construction Report prepared for the proposed project by Ray Morneau, the proposed project site contains a total of 14 existing trees.¹⁰ In addition, the drip line of one tree located outside the site's eastern boundary overhangs the project site. Of the 15 total trees, 11 trees are protected as "Ordinance Sized Trees" per Chapter 12.32 of the City's Municipal Code. Eight of the 11 protected trees would require removal as part of the proposed project (Trees #1, 2, 3, 4, 5, 5b, 7, and 8). Removal of such trees would require replacement plantings at a 1:1 ratio, 15-gallon minimum size.

Three protected trees (Trees #6, 11, and 12) would be preserved on-site along the south side of proposed Los Castanos Drive, north of KinderCare. These protected trees would require preservation and/or protection measures.

Therefore, the proposed project could have a **potentially significant** impact related to conflicting with local policies or ordinances protecting biological resources, particularly related to Chapter 12.32 of the City's Municipal Code.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above impact to a *less-than-significant* level.

- IV-6. *The project applicant shall mitigate for the removal of any Ordinance Sized Trees, as defined in Section 12.32.020 of the City of Morgan Hill Municipal Code, by providing on-site replacement plantings at a 1:1 ratio with 15-gallon minimum size trees.*

For all Ordinance Sized Trees to be preserved as part of the project, the project applicant shall retain a certified arborist to prepare a tree protection plan, subject to review and approval by the Community Development Department. The plan shall demonstrate how any retained trees are to be protected during and after construction. The tree protection plan may include, but not be limited to, the following:

¹⁰ Ray Morneau. *Certified Arborist's Tree Inventory & Pre-Construction Report*. August 29, 2018.

- *Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.*
- *Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over one inch in diameter) should be exposed approximately 12 inches beyond the area to be disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Tearing, or otherwise disturbing the portion of the root(s) to remain, shall be avoided.*
- *A temporary fence shall be constructed as far from the tree stem (trunk) as possible, completely surrounding the tree, and six to eight feet in height. 'No parking or storage' signs shall be posted outside/on the fencing. Postings shall not be attached to the main stem of the tree.*
- *Vehicles, equipment, pedestrian traffic, building materials, debris storage, and/or disposal of toxic or other materials shall not be permitted inside of the fenced off area.*
- *The project applicant shall avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least one to two years following completion of construction.*
- *Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than six pounds of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond.*
- *The 'rooting' area shall be mulched with an acidic, organic compost or mulch.*
- *The project applicant shall arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as such conditions occur, or as appropriate.*
- *Subject to the discretion of the Community Development Department, individual trees likely to suffer significant impacts may require specific, more extensive efforts and/or a more detailed specification than those contained within the above general guidelines.*

V. CULTURAL RESOURCES.

Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?	☐	☐	✗	
b. Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5?	☐	☐	✗	☐
c. Directly or indirectly destroy a unique paleontological resource on site or unique geologic features?	☐	☐	✗	☐
d. Disturb any human remains, including those interred outside of dedicated cemeteries.	☐	☐	✗	☐
a. The proposed project site does not contain any permanent structures. Furthermore, per a records search of the California Historic Resources Information System (CHRIS) performed by the North Central Information Center (NWIC) for cultural resource site records and survey reports within the proposed project area, the State Office of Historic Preservation Directory (which includes listings of the California Register of Historical Resources, California State Historical Landmarks, California State Points of Historical Interest, and the National Register of Historic Places) does not list recorded buildings or structures in or adjacent to the project site. ¹¹ Therefore, the proposed project would not cause any adverse change in the significance of a historical resource, and a <i>less-than-significant</i> impact would occur.				
b-d. According to the CHRIS search, the site has not been subject to a previous cultural resource study and does not contain any recorded archaeological resources. In addition, based on the environmental setting of the site, the potential for unrecorded Native American resources to exist within the project site is relatively low. However, while unlikely, the possibility exists for previously unknown resources to be found on-site during grading and excavation associated with development of the proposed project. In the event that such resources are unearthed, the following City standard measures related to the protection of archaeological resources would be implemented:				
1. An archaeologist shall be present on-site to monitor all ground-disturbing activities. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below:				
a. Work at the location of the find will halt immediately within thirty feet of the find. If an archaeologist is not present at the time of the discovery, the applicant shall contact an archaeologist for evaluation of the find to determine whether it qualifies as a unique archaeological resource as defined by this chapter;				

¹¹ California Historical Resources Information System. *Record search results for the proposed Andalusia project*. August 13, 2018.

- b. If the find is determined not to be a Unique Archaeological Resource, construction can continue. The archaeologist will prepare a brief informal memo/letter that describes and assesses the significance of the resource, including a discussion of the methods used to determine significance for the find;
 - c. If the find appears significant and to qualify as a unique archaeological resource, the archaeologist will determine if the resource can be avoided and will detail avoidance procedures in a formal memo/letter; and
 - d. If the resource cannot be avoided, the archaeologist shall develop within forty-eight hours an action plan to avoid or minimize impacts. The field crew shall not proceed until the action plan is approved by the community development director. The action plan shall be in conformance with California Public Resources Code 21083.2.
- 2. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply. If human remains are discovered, it is probable they are the remains of Native Americans,
 - a. If human remains are encountered they shall be treated with dignity and respect as due to them. Discovery of Native American remains is a very sensitive issue and serious concern. Information about such a discovery shall be held in confidence by all project personnel on a need to know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.
 - b. Remains should not be held by human hands. Surgical gloves should be worn if remains need to be handled.
 - c. Surgical mask should also be worn to prevent exposure to pathogens that may be associated with the remains.
- 3. In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the exclusion zone as defined below.
- 4. An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the contractor foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on-site at the time of discovery, by the monitoring archaeologist (typically twenty-five to fifty feet for single burial or archaeological find).

5. The exclusion zone shall be secured (e.g., twenty-four-hour surveillance) as directed by the city or county if considered prudent to avoid further disturbances.
6. The contractor foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:
 - a. The city of Morgan Hill Community Development Director,
 - b. The contractor's point(s) of contact,
 - c. The coroner of the county of Santa Clara (if human remains found), and
 - d. The Native American Heritage Commission (NAHC) in Sacramento.
7. The coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has twenty-four hours to notify the NAHC.
8. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD). (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.).
9. Within twenty-hour hours of their notification by the NAHC, the MLD will be granted permission to inspect the discovery site if they so choose,
10. Within twenty-four hours of their notification by the NAHC, the MLD may recommend to the City's community development director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the appropriate tribe may be considered and carried out.
11. If the MLD recommendation is rejected by the City of Morgan Hill the parties will attempt to mediate the disagreement with the NAHC. If mediation fails, then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

Compliance with the above standard conditions of approval would ensure that construction of the proposed project would have a ***less-than-significant*** impact related to unique archeological, paleontological, and geological resources, as well as the disturbance of human remains.

VI. GEOLOGY AND SOILS.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area based on other substantial evidence of a known fault?	☐	☐	✗	☐
ii. Strong seismic ground shaking?	☐	☐	✗	☐
iii. Seismic-related ground failure, including liquefaction?	☐	☐	✗	☐
iv. Landslides?	☐	☐	✗	☐
b. Result in substantial soil erosion or the loss of topsoil?	☐	☐	✗	☐
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	✗	☐
d. Be located on expansive soil, as defined in Table 18-1B of the Uniform Building Code?	☐	☐	✗	☐
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	✗
ai-iv. Active faults do not cross the site, and the site is not mapped within an Alquist-Priolo Earthquake Fault Zone. ¹² Therefore, the proposed project would not be subject to risks related to fault rupture. Furthermore, the site is not located within the vicinity of any steep slopes that would be subject to landslide risk, nor within an area requiring special investigation for landslides or liquefaction hazards. According to the Association of Bay Area Governments (ABAG) Resilience Program's interactive Hazards Map, the project site is located in an area of relatively low liquefaction susceptibility. ¹³				

Due to the proximity of the site area to nearby active faults, including but not limited to the Hayward, Calaveras, and the San Andreas fault zones, strong ground shaking could occur at the site as a result of an earthquake on any one of the faults. However, the proposed residential development would be subject to all applicable regulations within the California Building Code (CBC) and Chapter 15.08 of the City's Municipal Code, which provide standards to protect property and public safety by regulating the design and construction

¹² Department of Conservation. *State of California, Special Studies Zones, Mt. Madonna Quadrangle, Revised Official Map*. Effective January 1, 1976.

¹³ Association of Bay Area Governments. *Resilience Program*. Available at: <http://gis.abag.ca.gov/website/Hazards/?hlyr=liqSusceptibility>. Accessed July 2018.

of foundations, building frames, and other building elements. Therefore, a ***less-than-significant*** impact would occur related to exposure of people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, strong seismic ground shaking, seismic-related ground failure, or landslides.

- b. The development of the proposed project site would cause ground disturbance of mostly top soil related to construction activity. The ground disturbance would be limited to the areas proposed for grading and excavation, including the residential building pads; curb, gutter, and sidewalk improvement areas; and drainage, sewer, and water infrastructure alignments. After grading and excavation and prior to overlaying the disturbed ground surfaces with impervious surfaces and structures, the potential exists for wind and water erosion to occur, which could adversely affect downstream storm drainage facilities.

Per the General Plan EIR, new development within the City that disturbs one or more acres of land is required to comply with the National Pollutant Discharge Elimination System (NPDES) General Construction Permit and prepare a Stormwater Pollution Prevention Plan (SWPPP) incorporating Best Management Practices (BMPs) to control sedimentation, erosion, and hazardous materials contamination of runoff during construction. Accounting for potential off-site roadway improvements to the ROW located east of the Morgan Hill KinderCare facility, the proposed project would disturb approximately 3.58 acres and, thus, would be subject to such requirements. In addition, per Chapter 13.30 of the City's Municipal Code, the project applicant would be required to submit a sediment and erosion control plan to the City of Morgan Hill, Public Works Department, prior to the approval of improvement plans and issuance of building permits. The plan(s) shall be acceptable and conform to City standards to prevent significant sediment and soil erosion during construction and include the standards and guidelines found in the California Stormwater Quality Association, Stormwater Best Management Practice Handbook. Based on the above, the proposed project would not result in substantial soil erosion or the loss of topsoil. Thus, a ***less-than-significant*** impact would occur.

- c-d. As noted previously, the proposed project site would not be subject to substantial landslide or liquefaction hazards. In addition, as noted in the General Plan EIR, the CBC and Chapter 15.08 of the City's Municipal Code provide standards to protect property and public safety by regulating the design and construction of excavations, foundations, building frames, and other building elements.

Per the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Web Soil Survey program, the mapped soils within the project site consist of Arbuckle gravelly loam, zero to two percent slopes, with a linear extensibility rating of 1.3 percent and approximately 16.1 percent clay content. Per the NRCS, soils with a linear extensibility rating of less than three percent and a clay content of less than 25 percent are characterized by a relatively low shrink-swell class (i.e., low expansive potential).¹⁴

¹⁴ Natural Resources Conservation Service. *Calculated Coefficients of Linear Extensibility*. Available at: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/survey/office/ssr10/tr/?cid=nrcs144p2_074840. Accessed July 2018.

Therefore, the proposed project would not be located on a geologic unit or soil that is unstable or be located on expansive soil as defined in Table 18-1B of the Uniform Building Code, and a ***less-than-significant*** impact would occur.

- e. The proposed development would connect to existing City-maintained sewer infrastructure and would not include the use of septic tanks. Accordingly, ***no impact*** would occur related to soils incapable of adequately supporting the use of septic tanks.

VII. GREENHOUSE GAS EMISSIONS.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	✗	☐
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gasses?	☐	☐	✗	☐

- a,b. Emissions of greenhouse gases (GHGs) contributing to global climate change are attributable in large part to human activities associated with the industrial/manufacturing, utility, transportation, residential, and agricultural sectors. Therefore, the cumulative global emissions of GHGs contributing to global climate change can be attributed to every nation, region, and city, and virtually every individual on earth. An individual project's GHG emissions are at a micro-scale level relative to global emissions and effects to global climate change; however, an individual project could result in a cumulatively considerable incremental contribution to a significant cumulative macro-scale impact. As such, impacts related to emissions of GHG are inherently considered cumulative impacts.

Implementation of the proposed project would cumulatively contribute to increases of GHG emissions. Estimated GHG emissions attributable to future development would be primarily associated with increases of carbon dioxide (CO₂) and, to a lesser extent, other GHG pollutants, such as methane (CH₄) and nitrous oxide (N₂O) associated with area sources, mobile sources or vehicles, utilities (electricity and natural gas), water usage, wastewater generation, and the generation of solid waste. The primary source of GHG emissions for the project would be mobile source emissions. The common unit of measurement for GHG is expressed in terms of annual metric tons of CO₂ equivalents (MTCO_{2e}/yr).

The proposed project is located within the jurisdictional boundaries of the Bay Area Air Quality Management District (BAAQMD). The BAAQMD threshold of significance for project-level operational GHG emissions is 1,100 MTCO_{2e}/yr. BAAQMD's approach to developing a threshold of significance for GHG emissions is to identify the emissions level for which a project would not be expected to substantially conflict with existing California legislation adopted to reduce statewide GHG emissions needed to move towards climate stabilization. If a project would generate GHG emissions above the threshold level, the project would be considered to generate significant GHG emissions and conflict with applicable GHG regulations.

The proposed project's GHG emissions were quantified with CalEEMod using the same assumptions as presented in the Air Quality section of this IS/MND, and compared to the 1,100 MTCO_{2e}/yr threshold of significance. The proposed project's required compliance with the current California Building Energy Efficiency Standards Code was assumed in the modeling. In addition, the CO₂ intensity factor within the model was adjusted to reflect the

Pacific Gas & Electric Company's anticipated CO₂ emissions factor for 2020. All CalEEMod results are included in the appendix to this IS/MND.

According to the CalEEMod results, the proposed project would result in unmitigated operational GHG emissions of 554.30 MTCO_{2e}/yr, which is below the 1,100 MTCO_{2e}/yr threshold of significance. Construction GHG emissions are a one-time release and are, therefore, not typically expected to generate a significant contribution to global climate change. Neither the City nor BAAQMD has adopted a threshold of significance for construction-related GHG emissions. Nevertheless, to provide a conservative estimate of emissions, the proposed project's total construction GHG emissions have been added to annual operational emissions. Construction would occur over approximately 13 months and result in total GHG emissions of 209.85 MTCO_{2e}. If the total construction emissions are added to the annual operational emissions, the project's total GHG emissions would equal 764.15 MTCO_{2e}/yr, which remains below BAAQMD's threshold of significance for operational emissions. Accordingly, the proposed project would not be expected to have a significant impact related to GHG emissions during construction.

Based on the above, the proposed project would not be considered to generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment, or conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs; and impacts would be considered ***less than significant***.

VIII. HAZARDS AND HAZARDOUS MATERIALS.

Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	✗	☐
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment?	☐	☐	✗	☐
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	✗
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	✗
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	✗
f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	✗
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	✗	☐
h. Expose people or structures to the risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	✗
a. Residential land uses are not typically associated with the routine transport, use, disposal, or generation of hazardous materials. Future residents may use common household cleaning products, fertilizers, and herbicides on-site, any of which could contain potentially hazardous chemicals; however, such products would be expected to be used in accordance with label instructions. Due to the regulations governing use of such products and the amount utilized on the site, occasional use of such products would not represent a substantial risk to public health or the environment. Therefore, the project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials, and a less-than-significant impact would occur.				

- b. Construction activities associated with the proposed project would involve the use of various products such as concrete, paints, and adhesives. In addition, heavy-duty construction equipment operating on the project site would contain hydraulic fluid, diesel fuel, and other petroleum products. Small quantities of such potentially toxic substances would be used at the project site and transported to and from the site during construction. However, the project contractor would be required to comply with all California Health and Safety Codes and local County ordinances regulating the handling, storage, and transportation of hazardous and toxic materials.

A Phase I ESA and a Soil Quality Investigation Report were prepared for the proposed project site by Geologica, Inc.¹⁵ The ESA included a survey of the site and a review of historical documentation, aerial photography, regulatory agency files, and environmental sites radius reports. According to the Phase I ESA, the proposed project site was planted with an active orchard from approximately 1939 to the mid-1960s, at which time the on-site orchard was replaced with a cultivated field. The site was never developed with any permanent structures.

Per the Phase I ESA, hazardous materials or hazardous wastes were not identified on the project site or adjacent to the site. In addition, evidence of underground storage tanks (USTs) or aboveground storage tanks (ASTs) was not observed at the site. Overall, the Phase I ESA did not note any recognized environmental conditions (RECs) associated with the project site. While the Phase I ESA did not recommend any Phase II subsurface investigations, given the past agricultural uses of the site, additional soil sampling was conducted on-site as a precautionary measure to assess potential subsurface impacts related to historic agricultural pesticide use at the property.

The soil sampling conducted on-site included collection of samples from eight four-foot deep soil borings across the property. A total of 11 samples were submitted to laboratory analysis for lead, arsenic, and organochlorine pesticides. Residual concentrations of 4,4 DDE, an organochlorine pesticide, were detected in shallow soil; however, concentrations did not exceed residential use Environmental Screening Levels (ESLs) for organochlorine pesticides and were found to decrease with depth. Lead and arsenic concentrations were indicative of natural background levels in the Bay Area. Thus, development of the proposed project site with residential uses would not result in risks related to contaminated soils.¹⁶

Based on the above, the project site is not associated with any historical RECs, including contaminated soils, that would pose a risk to the proposed project. Therefore, development of the proposed project would result in a **less-than-significant** impact related to the creation of a significant hazard to the public or the environment through reasonably foreseeable

¹⁵ Geologica, Inc. *Report, Phase I Environmental Site Assessment, Vacant Parcel APN 726-02-007, Morgan Hill, California*. November 3, 2017.

Geologica, Inc. *Report, Soil Quality Investigation, Proposed Development Property, Vacant Parcel APN 762-02-007, East Dunne Avenue, Morgan Hill, CA*. December 5, 2017.

¹⁶ Geologica, Inc. *Report, Soil Quality Investigation, Proposed Development Property, Vacant Parcel APN 762-02-007, East Dunne Avenue, Morgan Hill, CA*. December 5, 2017.

upset and accident conditions involving the likely release of hazardous materials into the environment.

- c. The nearest school relative to the project site is the El Toro Elementary School, located approximately 0.5-mile to the north of the site. In addition, the Morgan Hill KinderCare daycare facility is located immediately south of the site. Development of the project site with a ~~single-family~~ residential subdivision would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. Thus, **no impact** would result relating to the emission or handling of hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.
- d. Per the Phase I ESA, the proposed project site is not included on the list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Therefore, **no impact** would result from implementation of the proposed project.
- e,f. The public airport nearest to the project site is the San Martin Airport, which is located approximately 3.6 miles south of the project site at 13030 Murphy Avenue. The project site is located well outside of the Airport Influence Area (AIA) identified in the South County Airport Comprehensive Land Use Plan.¹⁷ In addition, the project site is not located within the vicinity of a private airstrip. Therefore, the proposed project would not result in an airport-related safety hazard for people residing or working in the project area, and **no impact** would occur.
- g. Implementation of the proposed project would not result in any substantial modifications to the City's existing roadway system and would not interfere with potential evacuation or response routes used by emergency response teams. In addition, the project would not conflict with the City's Emergency Operations Plan.¹⁸ The proposed project is consistent with the site's current General Plan land use and zoning designations; thus, development of the site and associated effects on emergency evacuation routes has been anticipated per the General Plan and analyzed in the General Plan EIR. Therefore, the project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan, and a **less-than-significant** impact would occur.
- h. Per the City's Wildland Urban Interface map, the proposed project site is not located in a High or Very High Fire Hazard Severity Zone.¹⁹ In addition, buildout of the site with residential uses has been previously considered by the City, and the site is situated within a developed area. Therefore, the proposed project would not expose people or structures to the risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands, and **no impact** would occur.

¹⁷ Santa Clara County. *Comprehensive Land Use Plan, Santa Clara County, South County Airport*. Amended November 16, 2016.

¹⁸ City of Morgan Hill. *Emergency Operations Plan*. January 11, 2018.

¹⁹ City of Morgan Hill. *City of Morgan Hill Wildland Urban Interface Map*. March 2009.

IX. HYDROLOGY AND WATER QUALITY.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than- Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements?	☐	☐	✗	☐
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (i.e., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	✗	☐
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	✗	☐
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	✗	☐
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	✗	☐
f. Otherwise substantially degrade water quality?	☐	☐	✗	☐
g. Place housing within a 100-year floodplain, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	✗	☐
h. Place within a 100-year floodplain structures which would impede or redirect flood flows?	☐	☐	✗	☐
i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.	☐	☐	✗	☐
j. Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	✗
a,f. The proposed project's potential to result in water quality impacts during construction and operations are discussed in further detail separately below.				

Construction

Construction would require grading, excavation, and other construction-related activities that could cause soil erosion at an accelerated rate during storm events. All such activities

have the potential to affect water quality and contribute to localized violations of water quality standards if storm water runoff from construction activities enters receiving waters.

Construction activities such as grading, excavation, and trenching for site improvements would result in the disturbance of on-site soils. The exposed soils have the potential to affect water quality in two ways: 1) suspended soil particles and sediments transported through runoff; or 2) sediments transported as dust that eventually reach local water bodies. Spills or leaks from heavy equipment and machinery, staging areas, or building sites also have the potential to enter runoff. Typical pollutants include, but are not limited to, petroleum and heavy metals from equipment and products such as paints, solvents, and cleaning agents, which could contain hazardous constituents. Sediment from erosion of graded or excavated surface materials, leaks or spills from equipment, or inadvertent releases of building products could result in water quality degradation if runoff containing the sediment or contaminants should enter receiving waters in sufficient quantities. Impacts from construction-related activities would generally be short-term and of limited duration.

Water quality degradation is regulated by the federal NPDES Program, established by the Clean Water Act, which controls and reduces pollutants to water bodies from point and non-point discharges. In California, the NPDES permitting program is administered by the State Water Resources Control Board (SWRCB) through nine Regional Water Quality Control Boards (RWQCBs). As discussed in Section VI, Geology and Soils, of this IS/MND, new development within the City that disturbs one or more acres of land is required to comply with the NPDES General Construction Permit and prepare a Stormwater Pollution Prevention Plan (SWPPP) incorporating Best Management Practices (BMPs) to control sedimentation, erosion, and hazardous materials contamination of runoff during construction. Accounting for off-site roadway improvements, the proposed project would disturb approximately 3.58 acres, and, thus, would be subject to the State NPDES General Permit conditions.

The proposed project would also be subject to all regional and local water quality regulations. In order to meet water quality objectives for the region, the City of Morgan Hill, City of Gilroy, and County of Santa Clara have prepared and are implementing a Revised Regional Storm Water Management Plan (SWMP). The SWMP incorporates the efforts of the City of Morgan Hill, the City of Gilroy, and the unincorporated portion of Santa Clara County, within the watershed of the Pajaro River and Monterey Bay, to meet the Phase II Storm Water Permit requirements for small municipal separate storm sewer systems (MS4s). The Upper Pajaro River Watershed is located within the jurisdiction of the Central Coast Regional Water Quality Control Board (CCRWQCB). The City of Morgan Hill implements the SWMP through an extensive program that entails: 1) the establishment of SWMP goals for the City; 2) public education and outreach; 3) public involvement and participation; 4) illicit discharge control; 5) construction site storm water runoff control; 6) post-construction storm water management in development; and 7) pollution prevention. For construction activities, the SWMP presents BMPs that are required for the control of storm water runoff quality during construction. The project's required compliance with the SWMP and NPDES would ensure that construction activities would not result in degradation of downstream water quality.

Operation

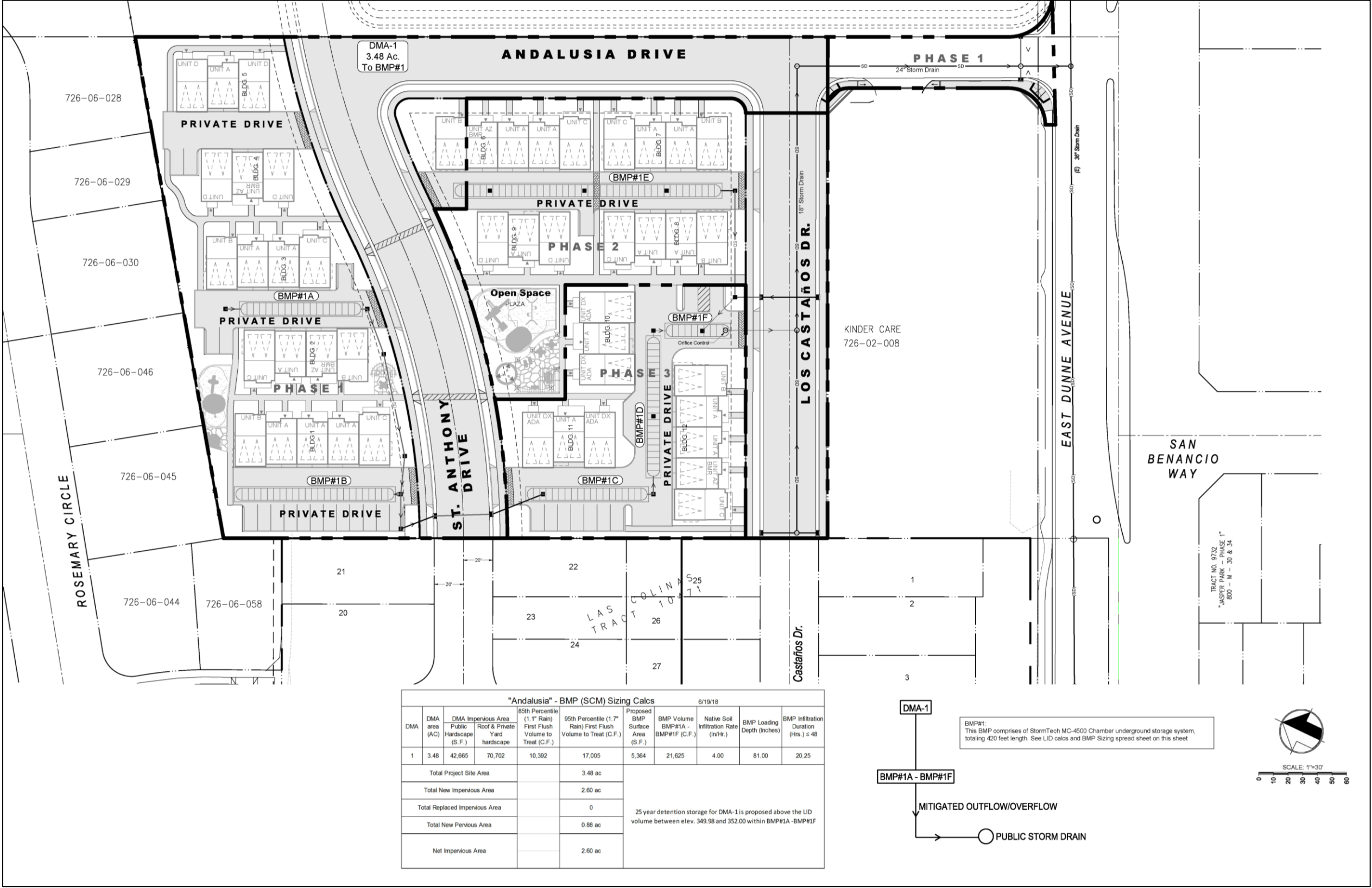
After project completion, impervious surfaces on the project site could contribute incrementally to the degradation of downstream water quality during storm events. During the dry season, vehicles and other urban activities may release contaminants onto the impervious surfaces, where they would accumulate until the first storm event. During the initial storm event, or first flush, the concentrated pollutants would be transported via stormwater runoff from the site to the stormwater drainage system and eventually a downstream waterway. Typical urban pollutants that would likely be associated with the proposed project include sediment, pesticides, oil and grease, nutrients, metals, bacteria, and trash. In addition, stormwater runoff could cause soil erosion if not properly addressed and provide a more lucrative means of transport for pollutants to enter the waterways.

The proposed project would be managed in accordance with Resolution R3-2013-0032 issued by the California Regional Water Quality Control Board, Central Coast Region. This resolution formally adopts post-construction stormwater management requirements for development projects in the Central Coast Region. The requirements identify 10 Watershed Management Zones (WMZs) in the covered area, and specify stormwater management requirements for each zone, depending on the size of the development project. Because the proposed project site is located in an area classified as WMZ-1, stormwater management at the project site must include site design and runoff features to limit the amount of runoff from the project site as well as on-site water quality treatment to reduce pollutant loads in the stormwater runoff using a Low Impact Development (LID) treatment system such as biofiltration. In WMZ-1, the treatment system must retain 95 percent of the runoff from the project site and also maintain peak runoff flows such that they do not exceed pre-project flows.

Per the Preliminary SWMP prepared for the proposed project, on-site stormwater runoff would be collected by a series of drain inlets along the internal street circulation system and transported, by way of underground storm drains, to six underground pipe manifold storage systems (BMPs #1A to #1F) located underneath the on-site private streets. The pipe manifold storage systems would treat and detain all on-site runoff prior to discharging to the City's existing public stormwater drain located in East Dunne Avenue (see Figure 9). As shown in Table 5 below, the proposed storage volume would exceed the 95th percentile first flush treatment volume requirement.

Table 5 Proposed BMP Sizing Calculations						
Impervious Area		95th Percentile First Flush Volume to Treat (cubic feet)	Proposed BMP Volume (cubic feet)	Native Soil Infiltration Rate (inches per hour)	BMP Loading Depth (inches)	BMP Infiltration Duration (hours) ≤ 72
Public Hardscape (sf)	Private Hardscape (sf)					
42,665	70,702	17,005	21,625	4.00	81.00	20.25
<i>Source: MH engineering Co., Preliminary Stormwater Control Plan, 2017.</i>						

Figure 9
Preliminary Stormwater Management Plan



The design, construction, operation, and maintenance of the system would be addressed in a final SWCP to be submitted to the City of Morgan Hill in accordance with the stormwater management requirements adopted by Resolution R3-2013-0032. The SWCP would demonstrate how the pipe manifold storage system would meet the specified water quality, runoff retention, and peak flow management requirements. Prior to occupancy of the project, the stormwater controls would be field verified by the City of Morgan Hill to confirm design of the controls in accordance with the specified standards, and the controls would be subject to later operation and maintenance inspections by the City.

Per Section ~~18.71.030A~~ **18.140.030** of the City's Municipal Code, the proposed project would be subject to the City's Post Construction Stormwater Pollution Prevention Ordinance. As such, the proposed project would be required to comply with the design standards set forth in Section ~~18.71.110~~ **18.140.040**, and select and implement BMPs to the satisfaction of the City in accordance with the requirements contained in the most recent versions of the following documents:

1. City of Morgan Hill Stormwater Post Construction Best Management Practices Development Standards for new development and redevelopment;
2. California Storm Water Quality Association Best Management Practice Handbooks;
3. City of Gilroy, City of Morgan Hill and County of Santa Clara Regional Stormwater Management Plan (SWMP), as approved by the Central Coast Regional Water Quality Control Board; and
4. City of Morgan Hill Hydro-modification Management Plan, as approved by the Central Coast Regional Water Quality Control Board.

The final design of the proposed drainage system would be reviewed and approved by the City of Morgan Hill Public Works Department, which would ensure that the proposed drainage system complies with the City's Post Construction Stormwater Pollution Prevention Ordinance with respect to incorporating sufficient permanent stormwater treatment control BMPs. Therefore, water quality standards or waste discharge requirements would not be violated and water quality would not be degraded as a result of the proposed project operations.

Conclusion

Based on the above discussions, the proposed project would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade water quality during construction or operations. Therefore, a ***less-than-significant*** impact would occur.

- b. Per the General Plan EIR, the City's water supplies currently consist entirely of groundwater. Approximately 25 percent of the City's supply is extracted from the Coyote Valley subarea of the Santa Clara Subbasin, and approximately 75 percent is extracted from the Llagas Subbasin. The proposed project site is located within the Llagas Subbasin. Neither of the subbasins are in a condition of overdraft, and groundwater levels are not

expected to drop.²⁰ It should be noted that water supply is discussed in Section XVIII, Utilities and Service Systems, of this IS/MND.

Major recharge facilities within the Llagas Subbasin include the Uvas and Chesbro Reservoirs, in-stream recharge in Llagas and Uvas Creeks, the Madrone Channel, the San Pedro and Main Avenue groundwater recharge ponds, and the Uvas-Llagas pipeline which is capable of diverting water from Uvas Reservoir to Llagas Creek. The proposed project site is not located within the vicinity of any of the aforementioned recharge areas.

Given that groundwater levels within the subbasin underlying the project site are currently stable, and that the proposed project site would not be located adjacent to a major groundwater recharge area, the proposed project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (i.e., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted). Thus, a ***less-than-significant*** impact would occur.

- c-e. As previously mentioned, the proposed project site consists primarily of vacant, undeveloped land with ruderal vegetation. The site is bordered by existing development to the north and south and does not include a stream or river on-site or in the immediate vicinity. Implementation of the proposed project would result in additional impervious surfaces. However, as discussed above, on-site stormwater runoff would be collected by a series of drain inlets along the internal circulation system and transported, by way of underground storm drains, to two on-site pipe manifold storage systems. The pipe manifold systems would allow stored runoff to infiltrate underlying soils in a manner similar to what currently occurs on-site. During large storm events, excess runoff would be discharged to the City's public storm drain system located in East Dunne Avenue. The pipe manifold storage system would treat and retain 95 percent of the runoff from the project site and also maintain peak runoff flows such that they do not exceed pre-project flows in accordance with the stormwater management requirements adopted by Resolution R3-2013-0032.

Furthermore, stormwater runoff associated with the site would be required to comply with the City's SWMP standards. As such, the project would not significantly increase stormwater flows into the existing system. The final drainage system design for the project will be subject to review and approval by the City of Morgan Hill Public Works Department, who will confirm that the proposed drainage system for the project is consistent with the City's Storm Drainage Master Plan and standard stormwater-related conditions of approval. Therefore, the proposed project would not substantially alter the existing drainage pattern of the site or area in a manner that would result in substantial erosion, siltation, or flooding on- or off-site, create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems, or provide substantial additional sources of polluted runoff. Thus, a ***less-than-significant*** impact would occur.

²⁰ City of Morgan Hill. *Morgan Hill 2035 Final Environmental Impact Report* [pg. 4.9-18]. Adopted July 2016.

- g,h. According to FEMA Flood Insurance Rate Map number 06085C0444H, the proposed project site is located within Zone X. Zone X is defined as the area between the limits of the 100-year floodplain and the 500-year floodplain (i.e. 0.2 percent annual chance flood hazard). As such, the proposed project would not be placing housing or structures within the 100-year floodplain and 100-year flood impacts to housing and flood flows would be considered ***less than significant***.
- i. The ABAG has compiled dam failure inundation hazard maps submitted to the State Office of Emergency Services by dam owners throughout the Bay Area. The map for the City of Morgan Hill shows that the project site is within the dam failure inundation hazard zone for Anderson Reservoir.²¹

The dams in Santa Clara County are managed by the Santa Clara Valley Water District (SCVWD). The dams are inspected twice each year and are continuously monitored for seepage and settling and inspected immediately following significant earthquakes. A seismic stability evaluation performed in 2007 on Anderson Dam indicated that the downstream and upstream embankments could become unstable during a very large magnitude earthquake and the rupture of faults underlying the dam may have adverse impact on the outlet pipes and intake structure. The SCVWD has initiated a capital project, the Anderson Dam Seismic Retrofit Project (ADSRP), to complete the planning, design, and construction of the seismic retrofit of the dam. Construction work for the ADSRP is planned to start in 2020.²²

In order to protect the public from potential effects until the ADSRP is complete, a storage restriction of approximately 45 feet below the dam crest has been put in place, with a reduced storage capacity of 61,810 acre-feet. The SCVWD and regulatory agencies (California Division of Safety of Dams and the Federal Energy Regulatory Commission) have approved the restriction and believe that the restriction would be sufficient to prevent the uncontrolled release of water in case of dam failure after a major earthquake.

Therefore, the proposed project would not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam, and impacts would be ***less than significant***.

- j. A seiche is defined as a wave generated by rapid displacement of water within a reservoir or lake, due to an earthquake that triggers land movement within the water body or land sliding into or beneath the water body. The project site is not located near a water body that is susceptible to seiche hazard. Furthermore, the distance to the nearest coastline does not subject the site to tsunami hazards, resulting in ***no impact***.

²¹ Association of Bay Area Governments. *Dam Failure Inundation Hazard Map for Morgan Hill*. 1995. Available at: http://www.mhcert.com/prepare/dam_failure.shtml. Accessed July 2018.

²² Santa Clara Valley Water District. *C1: Anderson Dam Seismic Retrofit**. Available at: <https://www.valleywater.org/project-updates/dam-reservoir-projects/anderson-dam-seismic-retrofit>. Accessed July 2018.

X. LAND USE AND PLANNING.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than- Significant Impact	No Impact
a. Physically divide an established community?	☐	☐	☐	✗
b. Conflict with any applicable land use plans, policies, or regulations of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	✗	☐
c. Conflict with any applicable habitat conservation plan or natural communities conservation plan?	☐	☐	✗	☐
a. The proposed project would essentially function as an extension of the existing surrounding residential neighborhood. In addition, the project would provide for roadway connections to the surrounding development. As such, the project would be consistent with surrounding residential land uses and would not physically divide an established community. Therefore, no impact would occur.				
b. The timing, type, and amount of residential growth in Morgan Hill is ultimately controlled by the RDCS, which was adopted for the purpose of managing growth in Morgan Hill. The RDCS generally limits development allotments to 215 residential units a year according to a point system based on a variety of factors including provision of public services, site planning, and architectural design considerations. As noted previously, the Andalusia project site has been awarded 20 building allotments for the 2019/2020 period through the City's RDCS under file number RDCS2017-1112. The 26 additional allotments required for the proposed project would be received in the 2020/2021 competition period either through (a) competition for the City's remaining allotments or (b) consideration as an on-going project, which would allow for automatic receipt of the 26 building allotments. As such, the proposed project would be consistent with the growth patterns anticipated for the City per the RDCS. Furthermore, the project would be consistent with the site's current General Plan land use and zoning designations of Residential Attached Medium Density. As such, the type and intensity of growth that would be induced by the proposed project has been anticipated per the General Plan and associated environmental effects have been analyzed in the General Plan EIR. Thus, the proposed project would result in a less-than-significant impact regarding any potential conflict with local or regional planning.				
c. The project site is located within the boundaries of the SCVHP. As discussed in detail in the Biological Resources section of this IS/MND (Question 'f'), the proposed project would comply with the SCVHP mitigation requirements. Therefore, the proposed project would have a less-than-significant impact regarding a conflict with an applicable habitat conservation plan or natural communities plan.				

XI. MINERAL RESOURCES.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	✗
b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	✗
a,b. The City's General Plan does not identify any regionally or locally important mineral resources within the City of Morgan Hill. The <i>Santa Clara County General Plan</i> does identify mineral resources of importance; however, the project site is not in proximity to the quarries currently in operation. Consequently, the proposed project would not result in the loss of a known mineral resource that would be of value to the region nor would the project result in the loss of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan. Therefore, no impact to mineral resources would occur as a result of the proposed project.				

XII. NOISE.*Would the project result in:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	✗	☐
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	✗		☐
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	✗	☐
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	✗	☐	☐
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	✗
f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	✗
a,c. The following section includes a discussion of noise standards and criteria applicable to the proposed project, predicted traffic noise level increases associated with the project, and predicted exterior and interior noise levels at the proposed single-family residential units and existing single-family development in the project area.				

Noise Standards and Criteria

Chapter 9, Safety, Service, and Infrastructure, of the City's General Plan contains the following policies pertaining to new residential developments such as the proposed project:

SSI-8.1 Exterior Noise Level Standards. Require new development projects to be designed and constructed to meet acceptable exterior noise level standards (see Table SSI-1 [of the General Plan]), as follows:

- Apply a maximum exterior noise level of 60 dBA L_{dn} in residential areas where outdoor use is a major consideration (e.g., backyards in single-family housing developments and recreation areas in multi-family housing projects). Where the City determines that providing an L_{dn} of 60 dBA or lower cannot be achieved after the application of reasonable and feasible mitigation, an L_{dn} of 65 dBA may be permitted.

- Indoor noise levels should not exceed an L_{dn} of 45 dBA in new residential housing units.
- Noise levels in new residential development exposed to an exterior L_{dn} 60 dBA or greater should be limited to a maximum instantaneous noise level (e.g., trucks on busy streets, train warning whistles) in bedrooms of 50 dBA. Maximum instantaneous noise levels in all other habitable rooms should not exceed 55 dBA. The maximum outdoor noise level for new residences near the railroad shall be 70 dBA L_{dn} , recognizing that train noise is characterized by relatively few loud events.

SSI-8.5 Traffic Noise Level Standards. Consider noise level increases resulting from traffic associated with new projects significant if: a) the noise level increase is 5 dBA L_{dn} or greater, with a future noise level of less than 60 dBA L_{dn} , or b) the noise level increase is 3 dBA L_{dn} or greater, with a future noise level of 60 dBA L_{dn} or greater.

Traffic Noise

As discussed in Chapter XVI, Transportation and Circulation, traffic generated by the proposed project would be limited to 35 trips during the AM peak hour and 46 trips during the PM peak hour. The Noise Assessment Study prepared for the East Dunne-Kyono (Las Colinas) Project by Edward L. Pack Associates, Inc., which analyzed a similar type and intensity of development as the proposed project, determined that traffic noise level increases associated with the East Dunne-Kyono (Las Colinas) Project would result in increases of 0.1 dB or less on area roadways.²³ Given the similar number of trips that would be generated by both projects, the results of the East Dunne-Kyono analysis are at least roughly equivalent to the project. Thus, the proposed project would not conflict with Policy SSI-8.5 in the General Plan related to traffic noise and would not cause a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.

Exterior and Interior Noise Levels

As noted above, the proposed project would not substantially increase traffic noise on area roadways. Given that traffic noise would be the primary noise source attributable to the proposed project, the project would not result in new exceedances of the City's exterior noise level thresholds at existing or planned residential developments in the project area.

With regard to exterior noise levels at the proposed ~~single-family~~ residences, the only area of the project where the City's exterior noise level thresholds would apply would be the common areas associated with each unit cluster. The Noise Assessment Study prepared for the East Dunne-Kyono (Las Colinas) Project concluded that noise levels at residences adjacent to East Dunne Avenue would be approximately 68 decibels (dB) (Day-Night Average Level [L_{dn}]) under future traffic conditions, not accounting for any noise

²³ Edward L. Pack Associates, Inc. *Noise Assessment Study for the Planned "Las Colinas" Single-Family Development, East Dunne Avenue, Morgan Hill*. December 15, 2017.

attenuation provided by noise control barriers. Compared to backyards of residences within the East Dunne-Kyono (Las Colinas) Project, the common areas associated with the proposed project would receive shielding from the surrounding three-story buildings. In addition, traffic noise associated with East Dunne Avenue to the south of the project site would be substantially reduced due to attenuation provided by the intervening Morgan Hill KinderCare facility. As such, traffic noise at the common areas of the proposed residential development would be substantially reduced compared to the East Dunne-Kyono (Las Colinas) Project. Thus, exterior noise levels at the proposed common areas are anticipated to comply with the 60 dB L_{dn} exterior noise level threshold specified by General Plan Policy SSI-8.1.

Standard residential construction (wood siding, STC-27 windows, door weather-stripping, exterior wall insulation, composition plywood roof) typically results in an exterior to interior noise reduction of about 25 dB with windows closed, and approximately 15 dB with windows open. Per the East Dunne-Kyono (Las Colinas) Project Noise Assessment Study, the interior noise levels at the living spaces included in the East Dunne-Kyono (Las Colinas) Project closest to East Dunne Avenue would be 41 and 42 dB L_{dn} under existing and future traffic conditions, respectively, while interior noise levels at the proposed residences closest to the Morgan Hill KinderCare facility would be 39 and 40 dB L_{dn} under existing and future traffic conditions, respectively. Such interior noise levels were determined to comply with the City's 45 dB L_{dn} interior noise level standard, provided mechanical equipment was included in the construction of the East Dunne-Kyono (Las Colinas) Project to allow occupants to close doors and windows as desired for additional acoustical isolation.

With regard to the proposed Andalusia Project, units located nearest to East Dunne Avenue would be separated from East Dunne Avenue by the intervening Morgan Hill KinderCare property and the proposed Las Colinas Drive extension along the southern site boundary. Therefore, interior noise levels would be substantially reduced relative to the noise levels anticipated for the East Dunne-Kyono (Las Colinas) Project, and standard residential construction is anticipated to be adequate to ensure that the interior maximum noise levels at the proposed residences comply with the City's 55 dBA daytime limit for living spaces and the 50 dBA nighttime limit for bedrooms. Traffic noise at the exteriors of the proposed residential units would be primarily limited to relatively low-volume vehicle traffic on internal project roadways (i.e., St. Anthony Drive, Andalusia Drive, Las Colinas Drive, and the proposed private streets).

Conclusion

Based on the above, the proposed project's traffic noise level increases on area roadways would likely be 0.1 dB or less, which is below the thresholds specified by General Plan Policy SSI8.5. In addition, the proposed project would comply with the City's exterior and interior noise level standards specified by General Plan Policy SSI-8.1. Thus, a ***less-than-significant*** impact would occur with respect to exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance,

or applicable standards of other agencies, or resulting in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.

- b. Similar to noise, vibration involves a source, a transmission path, and a receiver. However, noise is generally considered to be pressure waves transmitted through air, whereas vibration usually consists of the excitation of a structure or surface. As with noise, vibration consists of an amplitude and frequency. A person's perception to the vibration depends on their individual sensitivity to vibration, as well as the amplitude and frequency of the source and the response of the system which is vibrating.

Vibration is measured in terms of acceleration, velocity, or displacement. A common practice is to monitor vibration in terms of peak particle velocities (PPV) in inches per second (in/sec). Standards pertaining to perception as well as damage to structures have been developed for vibration levels defined in terms of peak particle velocities.

Human and structural response to different vibration levels is influenced by a number of factors, including ground type, distance between source and receptor, duration, and the number of perceived vibration events. Table 6, which was developed by Caltrans, shows the vibration levels which would normally be required to result in damage to structures. As shown in the table, the threshold for architectural damage to structures is 0.20 in/sec PPV and continuous vibrations of 0.10 in/sec PPV, or greater, would likely cause annoyance to sensitive receptors.

Table 6 Effects of Vibration on People and Buildings			
PPV		Human Reaction	Effect on Buildings
in/sec	mm/sec		
0.15 to 0.30	0.006 to 0.019	Threshold of perception; possibility of intrusion	Vibrations unlikely to cause damage of any type
2.0	0.08	Vibrations readily perceptible	Recommended upper level of the vibration to which ruins and ancient monuments should be subjected
2.5	0.10	Level at which continuous vibrations begin to annoy people	Virtually no risk of "architectural" damage to normal buildings
5.0	0.20	Vibrations annoying to people in buildings (this agrees with the levels established for people standing on bridges and subjected to relative short periods of vibrations)	Threshold at which there is a risk of "architectural" damage to normal dwelling - houses with plastered walls and ceilings. Special types of finish such as lining of walls, flexible ceiling treatment, etc., would minimize "architectural" damage
10 to 15	0.4 to 0.6	Vibrations considered unpleasant by people subjected to continuous vibrations and unacceptable to some people walking on bridges	Vibrations at a greater level than normally expected from traffic, but would cause "architectural" damage and possibly minor structural damage
Source: Caltrans. <i>Transportation Related Earthborne Vibrations</i> . TAV-02-01-R9601. February 20, 2002.			

The proposed project would only cause elevated vibration levels during construction, as the proposed project would not involve any uses or operations that would generate substantial groundborne vibration. Although noise and vibration associated with the construction phases of the project would add to the noise environment in the immediate project vicinity, construction activities would be temporary in nature and are anticipated to occur during normal daytime working hours. Because the proposed project would not cause continuous, long-term vibrations, the project would not be expected to result in extended annoyance to the nearby sensitive receptors.

The primary vibration-generating activities associated with the proposed project would occur during grading, placement of utilities, and construction of foundations. Table 7 shows the typical vibration levels produced by construction equipment at various distances. The most substantial source of groundborne vibrations associated with project construction would be the use of vibratory compactors.

Table 7 Vibration Levels for Various Construction Equipment		
Type of Equipment	PPV at 25 feet (in/sec)	PPV at 50 feet (in/sec)
Large Bulldozer	0.089	0.029
Loaded Trucks	0.076	0.025
Small Bulldozer	0.003	0.000
Auger/drill Rigs	0.089	0.029
Jackhammer	0.035	0.011
Vibratory Hammer	0.070	0.023
Vibratory Compactor/roller	0.210	0.070
<i>Source: Federal Transit Administration, Transit Noise and Vibration Impact Assessment Guidelines, May 2006.</i>		

Use of vibratory compactors/rollers could be required during construction of the proposed on-site roadways, including Las Colinas Drive, which would be located directly adjacent to the Morgan Hill KinderCare northern property line. Operation of vibratory compactors/rollers used for construction of Las Colinas Drive could operate at a distance of approximately 25 feet from the north side of the Morgan Hill KinderCare structure; thus, groundborne vibrations at the structure could potentially exceed 0.2 in/sec PPV. Use of vibratory compactors/rollers could be required during construction of the proposed on-site roadways, including Las Colinas Drive, which would be located directly adjacent to the Morgan Hill KinderCare northern property line.

It should be noted that paving activities associated with the proposed project would occur over approximately nine days and would occur at different portions of the site at different times. Thus, groundborne vibration at the facility would occur intermittently over a short period of time. Nonetheless, based on the above, the use of vibratory rollers during construction activities expose people to or generate excessive groundborne vibration or groundborne noise levels, and impacts could be ***potentially significant***.

Mitigation Measure(s)

Implementation of the following mitigation measure would reduce the above impact to a *less-than-significant* level.

- XII-1. During construction activities associated with the proposed project, any compaction required within 25 feet of existing structures adjacent to the project site shall be accomplished by using static drum rollers rather than vibratory compactors. The above requirement shall be included via notation on any grading plans approved for the project to the satisfaction of the Community Development Department.*
- d. Construction activities associated with development of the project site would result in temporarily increased noise levels from grading, paving, building construction activities, and trenching for utilities. However, Chapter 8.28 of the Morgan Hill Municipal Code prohibits construction activities between 8:00 PM and 7:00 AM, Monday through Friday, and between 6:00 PM and 9:00 AM on Saturdays. Construction activities may not occur on Sundays or federal holidays. The Morgan Hill Municipal Code does not specify any short-term construction noise level limits. Furthermore, construction activities related to the proposed project would include the use of sound-dampening equipment such as mufflers, air-inlet silencers, shrouds, shields, or other noise-reducing features where appropriate.

Enforcement of time restrictions specified in the Morgan Hill Noise Ordinance and the use of noise-dampened equipment would be required to ensure that the temporary or periodic increase in ambient noise levels in the project vicinity associated with construction of the proposed project would not be considered substantial. Therefore, in the absence of such measures, a ***potentially significant*** impact could occur.

Mitigation Measure(s)

Implementation of the following mitigation measure would reduce the above impact to a *less-than-significant* level.

- XII-2. During construction activities associated with the proposed project, all internal combustion engines used at the project site shall be equipped with a type of muffler recommended by the vehicle manufacturer. All equipment shall be in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train, and other components. In addition, the project applicant shall comply with the following:*

- *Noise-generating construction activities shall be limited to the daytime hours of 7:00 AM to 8:00 PM Monday through Friday and from 9:00 AM to 6:00 PM Saturday, consistent with Chapter 8.28 of the Morgan Hill Municipal Code;*
- *All diesel-powered equipment shall be located more than 200 feet from any noise-sensitive use if the equipment is to operate for more than several hours per day; and*

- *Mobile equipment (haul trucks, concrete trucks, etc.) shall avoid local streets near residences and other noise-sensitive uses to the maximum extent feasible.*

Furthermore, subject to equipment availability and cost considerations, the project applicant shall implement the following recommendations:

- *Earth Removal: Scrapers shall be used as much as possible for earth removal, rather than the noisier loaders and hauling trucks.*
- *Backfilling: Backhoes shall be used for backfilling, as such equipment is less costly and quieter than either dozers or loaders.*
- *Ground Preparation: Graders shall be used rather than bulldozers for final grading.*
- *Building Construction: Power saws shall be shielded or enclosed where practical to decrease noise emissions. Nail guns shall be used where possible as they are less noisy than manual hammering.*
- *Construction Phasing: Buildings and/or other significant structures at the site perimeter shall be constructed as early as feasible to help shield existing sensitive receptors from noise generated on the site.*
- *Generators, Compressors, and Other Stationary Equipment: The project applicant shall ensure that generators, compressors and other stationary equipment that are housed in acoustical enclosures are used rather than equipment housed in weather enclosures or not housed in enclosures at all. Acoustical enclosures are often available with rented equipment. The equipment shall be placed as far from sensitive receptors as feasible.*
- *The project applicant shall provide a noise disturbance coordinator with a phone line and voicemail/answering machine. Signs with the noise disturbance coordinators contact information shall be posted on the project site at a highly visible location.*
- *Vehicle paths within the project site shall be graded smooth, as rough roads and paths can cause significant noise and vibration from trucks (particularly empty trucks) rolling over rough surfaces.*

The above requirements shall be included via notation on project grading plans, subject to review and approval by the Community Development Department.

- e,f. The public airport nearest to the project site is the San Martin Airport, which is located approximately 3.6 miles south of the project site at 13030 Murphy Avenue. The project site is located well outside of the AIA identified in the South County Airport Comprehensive Land Use Plan.²⁴ In addition, the project site is not located within the vicinity of a private airstrip. Therefore, the proposed project would not expose people residing or working in

²⁴ Santa Clara County. *Comprehensive Land Use Plan, Santa Clara County, South County Airport*. Amended November 16, 2016.

the project area to excessive noise levels associated with air traffic, and ***no impact*** would occur.

XIII. POPULATION AND HOUSING.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than- Significant Impact	No Impact
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (e.g., through projects in an undeveloped area or extension of major infrastructure)?	☐	☐	✗	☐
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	✗	☐
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	✗	☐
a. As discussed previously, residential development within the City of Morgan Hill is controlled by the RDCS. By approving Measure S in 2016, Morgan Hill voters extended the City's RDCS to 2035 and established a population ceiling of 58,200. In addition, Measure S sets a maximum number of allotments available of 215 residential units per year. The RDCS was adopted for the purpose of controlling impacts from rapid growth in Morgan Hill. The RDCS generally limits the units to be built each year according to a competitive process involving a criteria and point system that addresses a variety of factors of a project, including provision of public services, site planning, and architectural design considerations.				
As discussed previously, the Andalusia project site has been awarded 20 building allotments for the 2019/2020 period through the City's RDCS under file number RDCS2017-1112. The 26 additional allotments required for the proposed project would be received in the 2020/2021 competition period either through (a) competition for the City's remaining allotments or (b) consideration as an on-going project, which would allow for automatic receipt of the 26 building allotments.				
Implementation of the RDCS was analyzed in the General Plan EIR. In addition, the proposed project is consistent with the project site's current General Plan land use and zoning designations. Therefore, assuming 46 building allotments are awarded to the project site, population growth associated with the proposed project has been previously anticipated by the City, and the project would not directly or indirectly induce substantial population growth in the area beyond what has been previously analyzed in the General Plan EIR. Therefore, a less-than-significant impact would occur.				
b,c. The proposed project site does not contain any existing residences. As such, the proposed project would not displace a substantial number of existing housing or people and would not necessitate the construction of replacement housing elsewhere. Therefore, a less-than-significant impact would occur.				

XIV. PUBLIC SERVICES.

Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Fire protection?	☐	☐	✖	☐
b. Police protection?	☐	☐	✖	☐
c. Schools?	☐	☐	✖	☐
d. Parks?	☐	☐	✖	☐
e. Other Public Facilities?	☐	☐	✖	☐

- a-c,e. The City of Morgan Hill contracts with CAL FIRE (State Department of Forestry and Fire Protection) for fire protection services. Three fire stations are located within the City boundaries: El Toro Station, located at 18300 Old Monterey Road; Dunne-Hill Station, located at 2100 Dunne Avenue; and the CAL FIRE station at 15670 Monterey Street. The nearest fire station (El Toro Station) is located approximately 1.9 miles to the northwest of the site by way of Butterfield Boulevard and Monterey Road. The incremental increase in demand associated with the proposed project would not necessitate new or physically altered facilities and would not be substantial enough that the current response times could not be maintained. Accordingly, the response time from the El Toro Station would be anticipated to be within the City's preferred response time of five minutes or less. The project site is also located within the Morgan Hill Police Department's normal patrol routes, and, thus, police response times would be comparable to nearby existing developments. Furthermore, given that the project is consistent with the site's current General Plan land use and zoning designations, impacts related to provision of new or physically altered fire and police protection facilities has been previously analyzed in the General Plan EIR. The General Plan EIR concluded that buildout of the City would have a less-than-significant impact related to the provision of such public services.

The Morgan Hill Unified School District (MHUSD) operates public education facilities that serve the project site and surrounding area. The City of Morgan Hill is served by eight elementary schools, two middle schools, two high schools, one continuation school, one K-8 home school program, and one community adult school. Utilizing the MHUSD student yield rate of 0.465 students per household, the total anticipated development potential for the project site (46 ~~single-family~~ residential units) would add approximately 21 new students to MHUSD schools.

The City collects development impact fees to help pay for public services that include public schools. Proposition 1A/SB 50 prohibits local agencies from using the inadequacy of school facilities as a basis for denying or conditioning approvals of any "legislative or adjudicative act involving the planning, use, or development of real property." (Government Code 65996(b).) Satisfaction of the Proposition 1A/SB 50 statutory requirements by a developer is deemed to be "full and complete mitigation." Therefore,

according to SB 50, the payment of the necessary school impact fees for the project would be full and satisfactory CEQA mitigation.

With regard to other public facilities, such as libraries, given the relatively small number of units included in the proposed project, the project would not be anticipated to result in a substantial increase in demand for library services, or other public facilities, such that expanded facilities would be required. Future residents of the proposed project would have access to the 28,000-sf Morgan Hill Library, which is operated by the Santa Clara County Library District. In addition, the General Plan EIR concluded that buildout of the City, including the project site, would have a less-than-significant impact related to libraries.

Based on the above, the project would have a **less-than-significant** impact with respect to creating adverse physical environmental impacts associated with the provision of new or physically altered governmental facilities in order to maintain acceptable service ratios, response times or other performance objectives for fire protection, police protection, and schools.

- d. The proposed project is anticipated to generate an estimated 142 additional residents (46 units X 3.08 persons per household = 142 residents) in the City of Morgan Hill.²⁵ The City of Morgan Hill has adopted a parkland ordinance (Municipal Code Chapter 17.28) that requires residential developers to dedicate public parkland or pay in-lieu fees, or both, to offset the demand for neighborhood parkland created by their housing developments. The acreage of parkland or amount of the in-lieu fee required is based upon criteria outlined in Chapter 17.28 of the City's Municipal Code. In addition, the proposed project would include a total of 0.83-acre of on-site open space/common area as an amenity for future residents. Given that the proposed project would be required to comply with the City's in-lieu fees for residential developments, the project would have a **less-than-significant** impact with respect to creating adverse physical environmental impacts associated with the provision of new or physically altered governmental facilities in order to maintain acceptable service ratios, response times or other performance objectives for parks.

²⁵ City of Morgan Hill. *Housing Element* [Table 1-1]. Adopted February 18, 2015.

XV.RECREATION.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	✗	☐
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	✗	☐
a,b. Considering the total of 46 residential units, the proposed project would generate approximately 142 additional residents (based on 3.08 persons per household) in the City of Morgan Hill. ²⁶ Given the City's parkland goal of five acres per 1,000 residents, the proposed project would create the need for a minor amount of additional parkland (0.5 acres). The City of Morgan Hill has adopted a parkland dedication/parkland in-lieu fee ordinance (Municipal Code Chapter 17.28) that requires residential developers to dedicate public parkland or pay in-lieu fees, or both, to offset the demand for neighborhood parkland created by their housing developments. The project is not proposing to construct or dedicate any land for recreational facilities; therefore, the project applicant would pay in-lieu fees. In addition to the in-lieu fees, new development within the City is required to pay park impact fees to the City at a rate of \$1,412 1,362 per single multi -family dwelling unit. ²⁷ The park impact fees imposed by the City generate revenue to fund park facilities needed to serve new development. In addition, while the proposed project would not provide any public parkland on-site, the project would include a total of 0.83-acre of on-site open space/common area as an amenity for future residents. Based on the above, a less-than-significant impact would occur with regard to recreational resources.				

²⁶ According to the persons per household demographic projection for Morgan Hill for the year 2015 (see Table 1-1 of City of Morgan Hill Housing Element, adopted February 18, 2015.

²⁷ City of Morgan Hill Public Works Department. *Schedule of Development Impact Fees*. January 15, 2018.

XVI. TRANSPORTATION/CIRCULATION.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☐	✗	☐
b. Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☐	✗	☐
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	✗
d. Substantially increase hazards due to design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	✗	☐
e. Result in inadequate emergency access?	☐	☐	✗	☐
f. Conflicts with adopted policies supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	✗	☐
a,b. The Transportation Impact Analysis prepared for the East Dunne-Kyono (Las Colinas) Project west of the proposed project site provided an analysis of cumulative traffic conditions (i.e., buildout of the Morgan Hill General Plan), including buildout of the subject 3.48-acre project site at the maximum allowable density of 84 single-family attached units. A total of three cumulative plus project scenarios were evaluated in the Transportation Impact Analysis, each of which included buildout of the Andalusia project site at the maximum allowable density of 84 single-family residences. ²⁸ The cumulative scenarios are defined in the Transportation Impact Analysis as follows:				
• Cumulative Plus Project Conditions: Access Alternative #1 – Cumulative Conditions plus traffic generated by the East Dunne-Kyono (Las Colinas) with site access to East Dunne Avenue only (without access to Diana Avenue). • Cumulative Plus Project Conditions: Access Alternative #2 – Cumulative Conditions plus traffic generated by the East Dunne-Kyono (Las Colinas) with site access to East Dunne Avenue and to Diana Avenue (by way of Rosemary Circle and St. Joseph Drive).				

²⁸ Fehr & Peers. *Kyono Residential Development, Draft Focused Transportation Impact Analysis*. February 2018.

- **Cumulative Plus Project Conditions: Access Alternative #3** – Cumulative Conditions with Walnut Grove Drive Extension plus traffic generated by the East Dunne-Kyono (Las Colinas) with access to East Dunne Avenue, to Diana Avenue via Rosemary Circle and St. Joseph Drive, and to Diana Avenue by way of the Walnut Grove Drive/St. Anthony Drive extension.

Consistent with the Institute of Transportation Engineers (ITE) Manual trip generation rates for single-family homes (Land Use Code 210), the proposed 46-unit ~~single-family~~ development was anticipated to generate approximately 9.52 trips per unit, or 438 daily vehicle trips, at full buildout. Thus, the project would generate approximately 362 fewer daily trips than was analyzed for the project site in the Transportation Impact Analysis. Of the 438 daily trips, an estimated 35 trips would occur during the AM peak hour (9 inbound and 26 outbound), and 46 trips would occur during the PM peak hour (29 inbound and 17 outbound) (see Table 8). The distribution of the traffic generated by the proposed project, the East Dunne-Kyono (Las Colinas) Project, and other pending development onto the roadway system was based on the locations of complementary land uses and prevailing travel patterns near the site.

Table 8							
Trip Generation Estimates							
Development Scenario	Size	Daily Trips		AM Peak Hour		PM Peak Hour	
		Rate	Total Trips	Rate	Total Trips	Rate	Total Trips
Proposed Project	46	9.52	438	0.75	35	1.00	46
84-Unit Development	84	9.52	800	0.75	63	1.00	84
Difference	-38		-362		-28		-38

The East Dunne-Kyono (Las Colinas) Transportation Impact Analysis evaluated three access alternatives for long-term cumulative scenarios. Under Cumulative Access Alternative #1, the East Dunne-Kyono (Las Colinas) project would have access to East Dunne Avenue only at three intersections, including East Dunne Avenue/San Simeon Drive, East Dunne Avenue and the existing KinderCare driveway, and East Dunne Avenue/Walnut Grove Drive. East Dunne Avenue and San Simeon Drive would remain as a stop-controlled intersection with right-turns in, right-turns out only entering and exiting the East Dunne-Kyono (Las Colinas) project site. The other two access intersections would retain existing geometries.

Under Cumulative Access Alternative #2, the East Dunne-Kyono (Las Colinas) project would have access to East Dunne Avenue at East Dunne Avenue/San Simeon Drive, as well as access to Diana Avenue by way of the Walnut Grove Drive extension. The intersection of Diana Avenue/Cayman Street would change from a three-legged intersection to a four-legged intersection with the Walnut Grove Drive extension. The northbound and southbound movements would be stop controlled. Geometries along East Dunne Avenue would be identical to geometries for Access Alternative #1.

Under Cumulative Access Alternative #3, the East Dunne-Kyono (Las Colinas) project would have access to East Dunne Avenue at East Dunne Avenue/San Simeon Drive, as well as access to Diana Avenue via the Walnut Grove Drive extension, Rosemary Circle, and St. Joseph Drive. Geometries along East Dunne Avenue and Diana Avenue would be identical to geometries for Access Alternative #2.

Per the East Dunne-Kyono (Las Colinas) Transportation Impact Analysis, all study intersections in the project area would continue to operate at acceptable service levels (Level of Service [LOS] D or better) during the AM and PM peak hours under cumulative conditions (see Table 9 and Table 10). Given that development of the proposed project and associated increases in vehicle traffic were analyzed in the East Dunne-Kyono (Las Colinas) Transportation Impact Analysis, and all study intersections in the project area are anticipated to operate acceptably under cumulative conditions, the proposed project would not conflict with an applicable plan, ordinance, policy or congestion management plan for the area related to traffic. Thus, a ***less-than-significant*** impact would occur.

- c. The proposed project would not involve any uses or operations that would cause any changes in air traffic patterns, including increases in traffic levels or changes in location that would result in any safety risks. Therefore, ***no impact*** related to air traffic patterns would occur as a result of the proposed project.
- d,e. The proposed on-site circulation system would be designed consistent with all applicable State and City roadway requirements and would provide adequate emergency access to the site. The project would include one direct access to East Dunne Avenue, with two additional access points connecting to the planned East Dunne-Kyono (Las Colinas) Project west of the site. In addition, the proposed project would not substantially modify the existing roadway system. Thus, the proposed project would not increase hazards due to a design feature, such as a sharp curve or dangerous intersection, or incompatible uses and would have a ***less-than-significant*** impact related to emergency access and hazardous design features.
- f. The proposed project's impact related to transit, bicycle, and pedestrian facilities is discussed below.

Transit Facilities

In the City of Morgan Hill, bus service is operated by the VTA, and passenger rail service is operated by Caltrain. Local buses include community Route 16, regular service Route 68, and express/limited stop Routes 121 and 168. In addition, Monterey-Salinas Transit (MST) provides bus service in the project area by way of Route 55. The nearest bus stops relative to the project site are located approximately 0.5-mile west of the site along Monterey Road. The nearest Caltrain station (Morgan Hill Caltrain) is also located approximately 0.5-mile west of the site. Three northbound trains serve the Morgan Hill Caltrain Station during the AM peak period, and three southbound trains serve the station during the PM peak period.

Table 9
Cumulative and Cumulative Plus Project Conditions: Access Alternative #1 Intersection LOS

Intersection	Control Type ⁴	LOS Standard	Peak Hour	Cumulative Conditions		Cumulative Plus Project Conditions: Access Alternative #1			
				Delay ¹	LOS	Delay ¹	LOS	Critical Change V/C ²	Average Critical Delay ³
1. East Dunne Ave./ Butterfield Blvd.	Signal	D	AM	42.5	D	42.9	D	+0.006	+0.7
			PM	39.5	D	39.7	D	+0.004	+0.3
2. East Dunne Ave./ San Simeon Dr.	TWSC	D	AM	12.9	B	12.9	B	+0.000	+0.1
			PM	14.3	B	14.4	B	+0.001	+0.0
3. East Dunne Ave./ Walnut Grove Dr.	Signal	D	AM	31.4	C	31.5	C	+0.003	+0.2
			PM	36.8	D+	36.8	D+	+0.000	+0.0
4. Diana Ave./ Butterfield Blvd.	Signal	D	AM	25.3	C	25.4	C	+0.002	+0.2
			PM	21.7	C+	21.7	C+	+0.003	+0.1
5. Diana Ave./ St. Joseph Dr.	AWSC	D	AM	7.9	A	7.9	A	+0.000	+0.0
			PM	7.9	A	7.9	A	+0.001	+0.0
6. Diana Ave./ St. Joseph Dr.	TWSC	D	AM	8.9	A	8.9	A	+0.000	+0.0
			PM	8.8	A	8.8	A	+0.000	+0.0

Notes:

- ¹ Whole intersection weighted average control delay expressed in seconds per vehicle for signalized and all-way stop control intersections. Total control delay for the worst movement is presented for side-street stop-controlled intersections.
- ² Change in critical volume to capacity ratio (V/C) between Existing Conditions and Existing Plus Project Conditions.
- ³ Change in critical movement delay between Existing Conditions and Existing Plus Project Conditions.
- ⁴ Signal = Signalized Intersection; TWSC = Two-Way Stop Controlled Intersection; AWSC = All-Way Stop Controlled Intersection.

Source: Fehr & Peers, December 2017.

Table 10
Cumulative and Cumulative Plus Project Conditions: Access Alternatives #2 and #3 Intersection LOS

Intersection	Control Type ⁴	LOS Standard	Peak Hour	Cumulative Conditions		Cumulative Plus Project Conditions: Access Alternative #2				Cumulative Plus Project Conditions: Access Alternative #3			
				Delay ¹	LOS	Delay ¹	LOS	Critical Change V/C ²	Average Critical Delay ³	Delay ¹	LOS	Critical Change V/C ²	Average Critical Delay ³
1. East Dunne Ave./ Butterfield Blvd.	Signal	D	AM	42.5	D	39.7	D	+0.005	+0.4	39.5	D	+0.001	+0.0
			PM	39.5	D	39.2	D	+0.002	+0.1	39.3	D	+0.004	+0.3
2. East Dunne Ave./ San Simeon Dr.	TWSC	D	AM	12.9	B	12.4	B	+0.000	+0.1	12.4	B	+0.000	+0.1
			PM	14.3	B	13.7	B	+0.001	+0.0	13.7	B	+0.001	+0.0
3. East Dunne Ave./ Walnut Grove Dr.	Signal	D	AM	31.4	C	35.3	D+	+0.011	+0.4	35.3	D+	+0.011	+0.4
			PM	36.8	D+	41.5	D	+0.008	+0.4	41.5	D	+0.008	+0.4
4. Diana Ave./ Butterfield Blvd.	Signal	D	AM	25.3	C	22.9	C+	+0.001	+0.0	22.7	C+	-0.003	-0.4
			PM	21.7	C+	20.4	C+	+0.002	+0.0	20.2	C+	-0.002	-0.3
5. Diana Ave./ St. Joseph Dr.	AWSC	D	AM	7.9	A	7.8	A	+0.000	+0.0	7.8	A	+0.000	+0.0
			PM	7.9	A	7.8	A	-0.001	+0.0	7.8	A	-0.002	+0.0
6. Diana Ave./ St. Joseph Dr.	TWSC	D	AM	8.9	A	10.7	B	+0.000	+0.0	10.7	B	+0.000	+0.0
			PM	8.8	A	11.0	B	+0.001	+0.0	11.0	B	+0.000	+0.0

Notes:

- ¹ Whole intersection weighted average control delay expressed in seconds per vehicle for signalized and all-way stop control intersections. Total control delay for the worst movement is presented for side-street stop-controlled intersections.
- ² Change in critical volume to capacity ratio (V/C) between Existing Conditions and Existing Plus Project Conditions.
- ³ Change in critical movement delay between Existing Conditions and Existing Plus Project Conditions.
- ⁴ Signal = Signalized Intersection; TWSC = Two-Way Stop Controlled Intersection; AWSC = All-Way Stop Controlled Intersection.

Source: Fehr & Peers, December 2017.

VTA's FY 18-19 Transit Service Plan, adopted in May of 2017, outlines the redesign of the VTA's transit network to increase ridership and to improve cost-effectiveness. As part of the FY 18-19 Transit Service Plan, route realignment and service frequency changes have been proposed for VTA bus routes in the project area. Changes include renumbering Route 16 as Route 87 and retaining the route on an interim basis until more effective service can be implemented. The FY 18-19 Transit Service Plan does not include any other relevant transit changes that would affect the proposed project.

The proposed project would not conflict with any existing or planned transit facilities. In addition, due to the relatively small size of the project (46 ~~single-family~~ residential units), the project would generate a relatively small number of transit trips, and, thus, would not substantially increase demand for transit services in the project area. Furthermore, because trips generated by the proposed project would not substantially increase the delay at nearby intersections, the project would not substantially affect transit vehicle delay for area bus routes. Overall, the proposed project would not have a substantial adverse effect on transit facilities in the project area.

Bicycle and Pedestrian Facilities

Currently, Class II bike lanes are provided along East Dunne Avenue in the project vicinity. In addition, a 0.8-mile multi-use trail is provided along Butterfield Road to the west of the project site.²⁹ The proposed project would provide adequate pedestrian and bicycle network connectivity to the surrounding area, with connections to existing sidewalks at East Dunne Avenue to the south and the planned St. Anthony Drive and Las Colinas Drive extensions to the west. In addition, a substantial portion of the proposed on-site pedestrian walkways would include landscaped buffers to separate pedestrians from the adjoining roadways. While the proposed project would not include bike lanes within the project site, residential neighborhood streets typically have low speeds that support mixed-flow traffic for both vehicles and bicyclists.

Given that the proposed project would not disrupt existing pedestrian and bicycle facilities, eliminate existing pedestrian and/or bicycle facilities, interfere with planned pedestrian and bicycle facilities, increase conflicts between drivers, pedestrians, and/or bicyclists, or create inconsistencies or conflicts with policies in the City's Bikeways, Trails, Parks, and Recreation Master Plan, the project would not have a substantial adverse effect on bicycle or pedestrian facilities in the project area.

Conclusion

Based on the above, the proposed project would not conflict with adopted policies supporting alternative transportation, and a ***less-than-significant*** impact would occur.

²⁹ City of Morgan Hill. *Bikeways, Trails, Parks and Recreation Master Plan* [Figure 2-8]. Adopted July 20, 2017.

XVII. TRIBAL CULTURAL RESOURCES.

Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is:

	Potentially Significant Impact	Less-Than- Significant with Mitigation Incorporated	Less- Than- Significant Impact	No Impact
a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)?	☐	☐	✗	☐
b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	☐	☐	✗	☐

Discussion

- a,b. As discussed in Section V, Cultural Resources, of this IS/MND, the proposed project site does not contain any existing permanent structures or any other known resources listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), and does not contain known resources that could be considered historic pursuant to the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. The records search of the CHRIS database for cultural resource site records and survey reports within the proposed project area indicated a relatively low potential for unrecorded tribal cultural resources within the project site.³⁰

Based on the above, the proposed project is not expected to adversely impact tribal cultural resources. In addition, the project applicant would be required to comply with the City's standard conditions of approval related to cultural resource discovery. Therefore, a ***less-than-significant*** impact to tribal cultural resources would occur.

³⁰ California Historical Resources Information System. *Record search results for the proposed Andalusia project.* August 13, 2018.

XVIII. UTILITIES AND SERVICE SYSTEMS.*Would the project:*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than- Significant Impact	No Impact
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	✗	☐
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	✗	☐
c. Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	✗	☐
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	✗	☐
e. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	✗	☐
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	✗	☐
g. Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	✗	☐

- a,b,d. As discussed previously, residential development within the City of Morgan Hill is controlled by the RDCS. By approving Measure S in 2016, Morgan Hill voters extended the City's RDCS to 2035 and established a population ceiling of 58,200. In addition, Measure S sets a maximum number of allotments available of 215 residential units per year. The RDCS was adopted for the purpose of controlling impacts from rapid growth in Morgan Hill. The RDCS generally limits the units to be built each year according to a competitive process involving a criteria and point system that addresses a variety of factors of a project, including impacts to the water supply system, sanitary sewer and treatment plant, drainage and runoff, and other municipal services. As noted previously, the proposed project site has already received 20 building allotments, and is anticipated to receive the remaining 26 allotments required as part of the 2020/2021 competition period. In addition, the project is consistent with the site's current General Plan land use and zoning designations.

Brief discussions of the wastewater and water systems that would serve the proposed project are included below.

Wastewater

The City of Morgan Hill sewer collection system consists of approximately 135 miles of 6-inch through 30-inch diameter sewers, and includes 15 sewage lift stations and associated force mains. The “backbone” of the system consists of the trunk sewers, generally 12-inches in diameter and larger, that convey the collected wastewater flows through an outfall that continues south to the Wastewater Treatment Facility (WWTF) in Gilroy. The WWTF is owned and operated by the South County Regional Wastewater Authority (SCRWA), under a Joint Powers Agreement with the cities of Morgan Hill and Gilroy. The City of Morgan Hill has an allocation of 3.56 million gallons per day (MGD) from the WWTF. The average dry weather flow from the City of Morgan Hill was approximately 2.7 MGD in 2015.³¹

The proposed project would connect to existing sewer lines located within the site vicinity. Based on population and water conservation projections for the City of Morgan Hill, the WWTP’s current allocated capacity of 3.56 MGD is anticipated to be reached in approximately 2023, with expansion planned for 2022.³² Based on the current and projected sewage flows associated with the WWTF, the incremental increase in wastewater generation associated with the development of up to 46 residential units would not require the construction of new or expansion of existing wastewater treatment facilities, as adequate capacity is already sufficient to serve the proposed project. Furthermore, given that the project is consistent with the site’s current General Plan land use and zoning designations, wastewater generation associated with development of the site has been anticipated per the General Plan and analyzed in the General Plan EIR. The General Plan EIR determined that impacts related to wastewater treatment capacity would be less than significant.

Water

The City of Morgan Hill provides potable water service to its residential, commercial, industrial, and institutional customers within the City limits. The City’s water system facilities include 14 groundwater wells, 10 potable water storage tanks, 10 booster stations, and over 160 miles of pressured pipes ranging from two to 14 inches in diameter. The City’s water distribution system meets the needs of existing customers. The City has planned and constructed water projects in conjunction with new street construction in anticipation of future growth and water needs.

According to the City’s Urban Water Management Plan, the City’s projected water supply far exceeds the water demand for normal, single-dry, and multiple-dry years until at least 2030.³³ For example, during a normal year in 2015, the anticipated supply exceeds the anticipated demand by 6,923 acre-feet per year. Furthermore, during a normal dry year in 2030, the anticipated supply exceeds the anticipated demand by 6,309 acre-feet per year. Based on the proposed land uses, the proposed project would result in an increase in

³¹ City of Morgan Hill. *2035 General Plan Draft EIR*. January, 2016.

³² South County Regional Wastewater Authority. *Biennial Budget Transmittal – FY 14 & FY 15*. April 3, 2013.

³³ City of Morgan Hill. *2010 Urban Water Management Plan* [pg. 5-23 to 5-24]. 2010.

demand for water supply from what has occurred at the site. However, based on information in the City's Urban Water Management Plan, the City has adequate water supply to serve the proposed project. In addition, the increase in water usage that would result from the construction of 46 residential units was already anticipated for the project site by the General Plan, and subsequently the City's Urban Water Management Plan, as the proposed project would be consistent with the site's existing land use designation. Therefore, the proposed project would not require or result in the construction of new water treatment facilities or expansion of existing facilities, and sufficient water supplies would be available to serve the project from existing entitlements and resources.

Conclusion

As discussed above, the increase in wastewater generation and water usage for the 46 anticipated residential units would not be considered substantial. Furthermore, the approval of the proposed project site through the RDCS process ensures consistency with the growth rate in the City's General Plan, and the project would not exceed the City's planned wastewater treatment or water demand projections. As a result, the project would have ***less-than-significant*** impacts to water and wastewater facilities.

- c,e. As discussed in Section IX, Hydrology and Water Quality, of this IS/MND on-site stormwater runoff would be collected by a series of drain inlets along the internal circulation system and transported, by way of underground storm drains, to two on-site pipe manifold storage systems. The pipe manifold storage systems would treat and detain all on-site runoff prior to discharging to the City's existing stormwater drain located in East Dunne Avenue. The design, construction, operation, and maintenance of the systems would be addressed in a final SWCP to be submitted to the City of Morgan Hill in accordance with the stormwater management requirements adopted by Resolution R3-2013-0032. The SWCP would demonstrate how the pipe manifold storage system would meet the specified water quality, runoff retention, and peak flow management requirements.

As such, the project would not significantly increase stormwater flows into the existing system. The final drainage system design for the project will be subject to review and approval by the City of Morgan Hill Public Works Department to confirm that the proposed drainage system for the project is consistent with the City's Storm Drainage Master Plan and standard stormwater-related conditions of approval. Therefore, the proposed project would not require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects, and the City would have adequate capacity to serve the project's projected demand in addition to the City's existing commitments. Thus, a ***less-than-significant*** impact would occur.

- f,g. Recology South Valley provides solid waste and recycling services to the businesses and residents of the cities of Morgan Hill and Gilroy. Recology South Valley has contracted through 2017 with the Salinas Valley Solid Waste Authority to dispose of municipal solid waste at Johnson Canyon Sanitary Landfill. Per the Landfill's proposed 2018 Solid Waste Facility (SWF) Permit, the Landfill has a maximum permitted tonnage limit of 1,574 tons

per day, a design capacity of 13,834,328 cubic yards, and an estimated closure date of 2055.³⁴ For fiscal year 2016/2017, 198,388 tons of waste were disposed of at the Landfill.³⁵ The proposed project would not produce enough solid waste for the landfill to exceed capacity. Therefore, sufficient permitted capacity exists at the Johnson Canyon Sanitary Landfill to accommodate the proposed project's incremental increase in solid waste disposal needs.

The proposed project would involve the generation of typical household solid waste and would not require specialized solid waste disposal needs. The proposed 46 units would each require a standard 48-gallon garbage cart for regularly-scheduled solid waste collection through Recology South Valley. Furthermore, per CBC Section 4.408, the proposed project would be required to submit a Waste Management Plan to the City detailing on-site sorting of construction debris. Implementation of the Waste Management Plan would ensure that the proposed project meets established diversion requirements for reused or recycled construction waste. As such, the proposed project would comply with applicable federal, State, and local statutes and regulations related to solid waste. Therefore, the proposed project would have a ***less-than-significant*** impact related to solid waste.

³⁴ California Department of Resources Recycling and Recovery (CalRecycle). *Facility/Site Summary Details: Johnson Canyon Sanitary Landfill (27-AA-0005)*. Available at: <http://www.calrecycle.ca.gov/SWFacilities/Directory/27-AA-0005/Detail/>. Accessed July 2018.

³⁵ Salinas Valley Solid Waste Authority. *2016-17 Annual Report*. 2018.

XIX. MANDATORY FINDINGS OF SIGNIFICANCE.	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	✗	☐
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	✗	☐
c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	✗	☐
a. As discussed in Section IV, Biological Resources, of this IS/MND, the proposed project would be required to implement mitigation measures to minimize impacts to burrowing owls and ensure consistency with the SCVHP. In addition, the site does not contain known historical or cultural resources. Although unlikely, the possibility exists that subsurface excavation of the site during grading and other construction activities could unearth deposits of cultural significance. However, this IS/MND explains how the City's Municipal Code requires standard measures for development projects that would ensure any impacts to archaeological resources would be less than significant. Therefore, the proposed project would have a less-than-significant impact related to degradation of the quality of the environment, reduction of habitat or plant and wildlife species, and elimination of important examples of California history or prehistory.				
b. As discussed in Section X, Land Use and Planning, of this IS/MND, the timing, type, and amount of residential growth in Morgan Hill is ultimately controlled by the RDCS, which was adopted for the purpose of managing growth in the City. As noted previously, the Andalusia project site has been awarded 20 building allotments for the 2019/2020 period through the City's RDCS under file number RDCS2017-1112. The applicant is anticipated to receive the 26 required building allotments during the upcoming 2020/2021 competition period. Therefore, cumulative growth impacts associated with the proposed project have been previously anticipated by the City and analyzed in the General Plan EIR. Furthermore, as demonstrated in this IS/MND, all potential environmental impacts that could occur as a result of project implementation would be reduced to a less-than-significant level with implementation of project-specific mitigation measures and compliance with applicable General Plan policies. When viewed in conjunction with other closely related past, present,				

or reasonably foreseeable future projects, development of the proposed project would not contribute to cumulative impacts in the City of Morgan Hill, and the project's cumulative impact would be ***less than significant***.

- c. The proposed project site would be developed in a generally urbanized and built-up area of the City of Morgan Hill. Development of the proposed project would not be expected to result in adverse impacts to human beings, either directly or indirectly. The potential for environmental effects on human beings is addressed within this IS/MND and all impacts have been identified as less-than-significant or less than significant with the incorporation of mitigation measures. As such, a ***less-than-significant*** impact would result.

Appendix

CalEEMod Modeling Results



PLANNING DIVISION

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

MITIGATED NEGATIVE DECLARATION

I. DESCRIPTION OF PROJECT:

Date: November 27, 2018 **Application #s:** SD 2018-0004, DA 2018-0002, EA2018-0014 – E. Dunne-Young

APN: 726-02-007

Project Title: E. Dunne – Young (Andalusia Project)

Project Location: East Dunne Avenue, behind (north) of the KinderCare facility located at 605 E. Dunne Ave.

Project Proponent: Terry Linder, Senior Planner
City of Morgan Hill
Community Development Department
17575 Peak Avenue
Morgan Hill, CA 95037
(408) 778-6480

Project Description: The Andalusia Project would include developing a 3.5-acre site into a total of 46 three-story, condominium units ranging in size from 1,428 to 1,850 square feet. The project includes the creation of a 12,087 square foot main park and open space area as well as two smaller playground areas for a total of .83 acres of common area/open space. The units are organized around an internal circulation system consisting of both public roadways and private streets. St. Anthony Drive and a second public street (Los Castanos Drive), would be extended eastward into the project site from the recently approved Las Colinas project located to the west. Access to the project would be through the extension of the existing half street located on the east side of the Morgan Hill KinderCare facility located at 605 E. Dunne Ave.

The buildings comprising each unit cluster would be three stories and would be constructed with Spanish Farmhouse and Mediterranean Revival architectural styles. Per Section 18.108.040 of the City's Municipal Code, landscaping would be provided throughout the site in accordance with the City's Standard Details for Construction. A 2,830-sf landscaped plaza and tot lot would be provided near the center of the site, to be used by future project residents. A 970-sf gathering area and a second tot lot would be located at the northwestern portion of the site. Lastly, a 240-sf gathering area would be provided along St. Anthony Drive within the western portion of the site.

Attachment: Mitigated Negative Declaration (2048 : E. Dunne Young-Andalusia)

Water and sewer service for the proposed development would be provided by the City through connections to existing infrastructure located in the site vicinity. Stormwater would be collected by a series of drain inlets along the internal circulation system and transported, by way of underground storm drains, to six underground pipe manifold storage systems located underneath the on-site private streets. The pipe manifold storage systems would treat and detain all on-site runoff prior to discharging to the City's existing stormwater drain located in East Dunne Avenue.

The proposed project would require the City's approval of the following entitlements:

- Adoption of the Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program;
- Approval of a Tentative Map (TM) for APN 726-02-007 to subdivide the 3.48-acre project site into three parcels for the development of 46 condominium units; and
- Approval of a Development Agreement.

In addition, subsequent to approval of the above entitlements, the project applicant would be required to obtain an Architectural and Site Review Permit for approval of a site plan, building elevations, and landscape plans.

II. DETERMINATION

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

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

III. MITIGATION AND AVOIDANCE MEASURES

A. Biological Resources

- IV-1. *A pre-construction survey shall be conducted by a qualified Burrowing Owl biologist no more than 30 days prior to initiation of any ground disturbing (construction) activity to assure take avoidance of burrowing owls. The survey shall consist of a habitat assessment, burrow survey, owl survey, and completion of a written report. The written report shall be submitted to the Community Development Department. If owls are not determined to be present on-site, further mitigation is not required. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31).*
- IV-2. *Should burrowing owls be found on the site during the breeding season (February 1 through August 31), exclusion zones, with a 250-foot radius from occupied burrows, shall be established. All development-related activities shall occur outside of the exclusion area until the young have fledged. Establishment of the exclusion area shall be determined by a qualified biologist to the satisfaction of the Community Development Department.*

IV-3. If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site, the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of the 250-foot buffer shall be allowed. Construction activities within the non-disturbance buffer shall be allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites:

- A qualified biologist monitors the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
- The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
- If any change in owl foraging behavior occurs as a result of construction activities, such activities shall cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue. Monitoring shall continue as described above for the non-breeding season as long as the burrow remains active.

Passive relocation of owls shall not be permitted unless the positive growth trend described in Section 5.4.6 of the SCVHP is achieved and all passive relocation measures identified in the SCVHP are implemented. The project applicant may choose to obtain an exception that would allow for passive relocation, in which case an application shall be submitted to the Habitat Agency along with a passive relocation plan in accordance with Section 6.6.1, Condition 15, Exceptions to Passive Relocation Prohibition, of the SCVHP. The Habitat Agency shall have the final authority to grant or deny the requested exception.

IV-4. No later than submittal of the first construction or grading permit for the proposed project the owner or designee shall pay the Santa Clara Valley Habitat Plan per-acre fee in effect for the appropriate fee zone of the project site, as determined by the Santa Clara Valley Habitat Agency, in compliance with Section 18.69.150 of the Morgan Hill Municipal Code.

IV-5. If construction is proposed during breeding season (February 1 to August 31), a pre-construction nesting survey for raptors and other protected migratory birds shall be conducted by a qualified biologist and submitted to the City of Morgan Hill Community Development Department for review no more than 14 days prior to the start of construction. Pre-construction surveys during the non-breeding season (September 1 to January 31) are not necessary for birds, including roosting raptors, as they are expected to abandon their roosts during construction. If these species are deemed absent from the area, construction may occur within 14 days following the survey during the early nesting season (February to May) and within 30 days following the survey during the late nesting season (June to August).

If nesting raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (250-foot minimum for certain raptors) shall be determined by the qualified biologist at that time and may vary depending on location,

topography, type of construction activity, and species. The buffer areas shall be enclosed with temporary fencing, and construction equipment and workers shall not enter the enclosed setback areas. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents.

IV-6. The project applicant shall mitigate for the removal of any Ordinance Sized Trees, as defined in Section 12.32.020 of the City of Morgan Hill Municipal Code, by providing on-site replacement plantings at a 1:1 ratio with 15-gallon minimum size trees.

For all Ordinance Sized Trees to be preserved as part of the project, the project applicant shall retain a certified arborist to prepare a tree protection plan, subject to review and approval by the Community Development Department. The plan shall demonstrate how any retained trees are to be protected during and after construction. The tree protection plan may include, but not be limited to, the following:

- Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.
- Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over one inch in diameter) should be exposed approximately 12 inches beyond the area to be disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Tearing, or otherwise disturbing the portion of the root(s) to remain, shall be avoided.
- A temporary fence shall be constructed as far from the tree stem (trunk) as possible, completely surrounding the tree, and six to eight feet in height. 'No parking or storage' signs shall be posted outside/on the fencing. Postings shall not be attached to the main stem of the tree.
- Vehicles, equipment, pedestrian traffic, building materials, debris storage, and/or disposal of toxic or other materials shall not be permitted inside of the fenced off area.
- The project applicant shall avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least one to two years following completion of construction.
- Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than six pounds of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond.
- The 'rooting' area shall be mulched with an acidic, organic compost or mulch.
- The project applicant shall arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as such conditions occur, or as appropriate.
- Subject to the discretion of the Community Development Department, individual trees likely to suffer significant impacts may require specific, more

extensive efforts and/or a more detailed specification than those contained within the above general guidelines.

B. Noise

XII-1. During construction activities associated with the proposed project, any compaction required within 25 feet of existing structures adjacent to the project site shall be accomplished by using static drum rollers rather than vibratory compactors. The above requirement shall be included via notation on any grading plans approved for the project to the satisfaction of the Community Development Department.

XII-2. During construction activities associated with the proposed project, all internal combustion engines used at the project site shall be equipped with a type of muffler recommended by the vehicle manufacturer. All equipment shall be in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train, and other components. In addition, the project applicant shall comply with the following:

- Noise-generating construction activities shall be limited to the daytime hours of 7:00 AM to 8:00 PM Monday through Friday and from 9:00 AM to 6:00 PM Saturday, consistent with Chapter 8.28 of the Morgan Hill Municipal Code;*
- All diesel-powered equipment shall be located more than 200 feet from any noise-sensitive use if the equipment is to operate for more than several hours per day; and*
- Mobile equipment (haul trucks, concrete trucks, etc.) shall avoid local streets near residences and other noise-sensitive uses to the maximum extent feasible.*

Furthermore, subject to equipment availability and cost considerations, the project applicant shall implement the following recommendations:

- Earth Removal: Scrapers shall be used as much as possible for earth removal, rather than the noisier loaders and hauling trucks.*
- Backfilling: Backhoes shall be used for backfilling, as such equipment is less costly and quieter than either dozers or loaders.*
- Ground Preparation: Graders shall be used rather than bulldozers for final grading.*
- Building Construction: Power saws shall be shielded or enclosed where practical to decrease noise emissions. Nail guns shall be used where possible as they are less noisy than manual hammering.*
- Construction Phasing: Buildings and/or other significant structures at the site perimeter shall be constructed as early as feasible to help shield existing sensitive receptors from noise generated on the site.*
- Generators, Compressors, and Other Stationary Equipment: The project applicant shall ensure that generators, compressors and other stationary equipment that are housed in acoustical enclosures are used rather than equipment housed in weather enclosures or not housed in enclosures at all. Acoustical enclosures are often available with rented equipment. The equipment shall be placed as far from sensitive receptors as feasible.*
- The project applicant shall provide a noise disturbance coordinator with a phone line and voicemail/answering machine. Signs with the noise*

disturbance coordinators contact information shall be posted on the project site at a highly visible location.

- *Vehicle paths within the project site shall be graded smooth, as rough roads and paths can cause significant noise and vibration from trucks (particularly empty trucks) rolling over rough surfaces.*

The above requirements shall be included via notation on project grading plans, subject to review and approval by the Community Development Department.

III. FINDING

The City of Morgan Hill hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures summarized above and described in the initial study will reduce the impacts to a less-than-significant level.

Terry Linder, Senior Planner

Date

**MITIGATION MONITORING AND REPORTING PROGRAM
E. DUNNE – YOUNG (ANDALUSIA PROJECT)
MORGAN HILL, CALIFORNIA**

Prepared for the:



Community Development Department
17575 Peak Avenue
Morgan Hill, CA 95037
408.778.6480

Prepared by:

Raney Planning & Management, Inc.
1501 Sports Drive, Suite A
Sacramento, CA 95834

October 2018

Attachment: MMRP (2048 : E. Dunne Young-Andalusia)

MITIGATION MONITORING AND REPORTING PROGRAM

INTRODUCTION

The City of Morgan Hill, as Lead Agency under the California Environmental Quality Act (CEQA) and State CEQA Guidelines, has prepared the Final Mitigated Negative Declaration (MND) for the Andalusia E. Dunne – Young (Andalusia Project). When a lead agency makes findings on significant effects identified in an MND, it must also adopt a program for reporting or monitoring mitigation measures that were adopted or made conditions of project approval (Public Resources Code [PRC] Section 21081.6[a]; State CEQA Guidelines Sections 15091[d], 15097).

This document represents the mitigation monitoring and reporting program (MMRP) prepared by the City of Morgan Hill for the Project. This MMRP includes all measures required to reduce potentially significant environmental impacts to a less-than-significant level. In addition, the MMRP identifies the timing of implementation; the agency responsible for implementing the mitigation; and the agency responsible for monitoring the mitigation. The mitigation measures, timing, and responsibility are summarized in Table 1, and the full text of the mitigation measures follows. The implementation and monitoring of the mitigation measures, in conjunction with the implementation of the City's Standard Measures required for such projects, will ensure the reduction of potentially significant environmental effects to less-than-significant levels.

This MMRP has been prepared by the City of Morgan Hill, with technical assistance from Raney Planning & Management, Inc., an environmental consulting firm. Questions should be directed to Terry Linder, Senior Planner, at the City of Morgan Hill.

Contact Information:

City of Morgan Hill
Community Development Department
17575 Peak Avenue
Morgan Hill, CA 95037
408.778.6480

Attachment: MMRP (2048 : E. Dunne Young-Andalusia)

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
Prior to Construction			
BIO-1: A pre-construction survey shall be conducted by a qualified Burrowing Owl biologist no more than 30 days prior to initiation of any ground disturbing (construction) activity to assure take avoidance of burrowing owls. The survey shall consist of a habitat assessment, burrow survey, owl survey, and completion of a written report. The written report shall be submitted to the Community Development Department. If owls are not determined to be present on-site, further mitigation is not required. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31).	Project Applicant with Construction Contractor and Qualified Biologist	City of Morgan Hill Community Development Department	No more than 30 days prior to initiation of any ground disturbing (construction) activity
BIO-4: No later than submittal of the first construction or grading permit for the proposed project the owner or designee shall pay the Santa Clara Valley Habitat Plan per-acre fee in effect for the appropriate fee zone of the project site, as determined by the Santa Clara Valley Habitat Agency, in compliance with Section 18.69.150 of the Morgan Hill Municipal Code.	Project Applicant	Santa Clara Valley Habitat Agency	No later than submittal of the first construction or grading permit
BIO-5: If construction is proposed during breeding season (February 1 to August 31), a pre-construction nesting survey for raptors and other protected migratory birds shall be conducted by a qualified biologist and submitted to the City of Morgan Hill Community Development Department for review no more than 14 days prior to the start of construction. Pre-construction surveys during the non-breeding season (September 1 to January 31) are not necessary for birds, including roosting raptors, as they are expected to abandon their roosts during construction. If these species are deemed absent from the area, construction may occur within 14 days following the survey during the early nesting season (February to	Project Applicant with Construction Contractor and Qualified Biologist	City of Morgan Hill Community Development Department	If construction is proposed during breeding season (February 1 to August 31). No more than 14 days prior to the start of construction

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
May) and within 30 days following the survey during the late nesting season (June to August).			
If nesting raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (250-foot minimum for certain raptors) shall be determined by the qualified biologist at that time and may vary depending on location, topography, type of construction activity, and species. The buffer areas shall be enclosed with temporary fencing, and construction equipment and workers shall not enter the enclosed setback areas. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents. BIO-6: The project applicant shall mitigate for the removal of any Ordinance Sized Trees, as defined in Section 12.32.020 of the City of Morgan Hill Municipal Code, by providing on-site replacement plantings at a 1:1 ratio with 15-gallon minimum size trees. For all Ordinance Sized Trees to be preserved as part of the project, the project applicant shall retain a certified arborist to prepare a tree protection plan, subject to review and approval by the Community Development Department. The plan shall demonstrate how any retained trees are to be protected during and after construction. The tree protection plan may include, but not be limited to, the following: • Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.	Project Applicant with Construction Contractor and Certified Arborist	City of Morgan Hill Community Development Department	Prior to and during construction

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
• Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over one inch in diameter) should be exposed approximately 12 inches beyond the area to be disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Tearing, or otherwise disturbing the portion of the root(s) to remain, shall be avoided. • A temporary fence shall be constructed as far from the tree stem (trunk) as possible, completely surrounding the tree, and six to eight feet in height. 'No parking or storage' signs shall be posted outside/on the fencing. Postings shall not be attached to the main stem of the tree. • Vehicles, equipment, pedestrian traffic, building materials, debris storage, and/or disposal of toxic or other materials shall not be permitted inside of the fenced off area. • The project applicant shall avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least one to two years following completion of construction. • Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than			

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
six pounds of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond. - The 'rooting' area shall be mulched with an acidic, organic compost or mulch. - The project applicant shall arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as such conditions occur, or as appropriate. - Subject to the discretion of the Community Development Department, individual trees likely to suffer significant impacts may require specific, more extensive efforts and/or a more detailed specification than those contained within the above general guidelines.			
During Construction			
BIO-2: Should burrowing owls be found on the site during the breeding season (February 1 through August 31), exclusion zones, with a 250-foot radius from occupied burrows, shall be established. All development-related activities shall occur outside of the exclusion area until the young have fledged. Establishment of the exclusion area shall be determined by a qualified biologist to the satisfaction of the Community Development Department.	Project Applicant with Construction Contractor and Qualified Biologist	City of Morgan Hill Community Development Department	If burrowing owls are found on the site during the breeding season (February 1 through August 31)
BIO-3: If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site, the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of the 250-foot buffer shall be allowed. Construction activities within the non-	Project Applicant with Construction Contractor and Qualified Biologist	City of Morgan Hill Community Development Department	If burrowing owls are found on the site during the non-breeding season (September 1 through January 31)

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
disturbance buffer shall be allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites: • A qualified biologist monitors the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction). • The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities. • If any change in owl foraging behavior occurs as a result of construction activities, such activities shall cease within the 250-foot buffer. • If the owls are gone for at least one week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue. Monitoring shall continue as described above for the non-breeding season as long as the burrow remains active. Passive relocation of owls shall not be permitted unless the positive growth trend described in Section 5.4.6 of the SCVHP is achieved and all passive relocation measures identified in the SCVHP are implemented. The project applicant may choose to obtain an exception that would allow for passive relocation, in which case an application shall be submitted to the Habitat Agency along with a passive relocation plan in accordance with Section 6.6.1, Condition 15,			

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
Exceptions to Passive Relocation Prohibition, of the SCVHP. The Habitat Agency shall have the final authority to grant or deny the requested exception.			
NOI-1 During construction activities associated with the proposed project, any compaction required within 25 feet of existing structures adjacent to the project site shall be accomplished by using static drum rollers rather than vibratory compactors. The above requirement shall be included via notation on any grading plans approved for the project to the satisfaction of the Community Development Department.	Project Applicant with Construction Contractor	City of Morgan Hill Community Development Department	Included on grading plans and during construction activities
NOI-2 During construction activities associated with the proposed project, all internal combustion engines used at the project site shall be equipped with a type of muffler recommended by the vehicle manufacturer. All equipment shall be in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train, and other components. In addition, the project applicant shall comply with the following:	Project Applicant with Construction Contractor	City of Morgan Hill Community Development Department	Included on grading plans and during construction activities
- Noise-generating construction activities shall be limited to the daytime hours of 7:00 AM to 8:00 PM Monday through Friday and from 9:00 AM to 6:00 PM Saturday, consistent with Chapter 8.28 of the Morgan Hill Municipal Code; - All diesel-powered equipment shall be located more than 200 feet from any noise-sensitive use if the equipment is to operate for more than several hours per day; and - Mobile equipment (haul trucks, concrete trucks, etc.) shall avoid local streets near			

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
residences and other noise-sensitive uses to the maximum extent feasible.			
Furthermore, subject to equipment availability and cost considerations, the project applicant shall implement the following recommendations: • Earth Removal: Scrapers shall be used as much as possible for earth removal, rather than the noisier loaders and hauling trucks. • Backfilling: Backhoes shall be used for backfilling, as such equipment is less costly and quieter than either dozers or loaders. • Ground Preparation: Graders shall be used rather than bulldozers for final grading. • Building Construction: Power saws shall be shielded or enclosed where practical to decrease noise emissions. Nail guns shall be used where possible as they are less noisy than manual hammering. • Construction Phasing: Buildings and/or other significant structures at the site perimeter shall be constructed as early as feasible to help shield existing sensitive receptors from noise generated on the site. • Generators, Compressors, and Other Stationary Equipment: The project applicant shall ensure that generators, compressors and other stationary equipment that are housed in acoustical enclosures are used rather than equipment housed in weather enclosures or not housed in enclosures at all. Acoustical enclosures are often available with rented			

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
equipment. The equipment shall be placed as far from sensitive receptors as feasible. • The project applicant shall provide a noise disturbance coordinator with a phone line and voicemail/answering machine. Signs with the noise disturbance coordinators contact information shall be posted on the project site at a highly visible location. • Vehicle paths within the project site shall be graded smooth, as rough roads and paths can cause significant noise and vibration from trucks (particularly empty trucks) rolling over rough surfaces. The above requirements shall be included via notation on project grading plans, subject to review and approval by the Community Development Department.			

BIOLOGICAL RESOURCES

The project's construction-related activities, including site preparation and grading, could have potentially significant effects on burrowing owls, raptors, and other migratory birds. Furthermore, the project includes the removal of on-site trees that are protected by the City's Municipal Code. Implementation of the following measures would reduce such potentially significant effects to less-than-significant levels.

- MM BIO-1:** A pre-construction survey shall be conducted by a qualified Burrowing Owl biologist no more than 30 days prior to initiation of any ground disturbing (construction) activity to assure take avoidance of burrowing owls. The survey shall consist of a habitat assessment, burrow survey, owl survey, and completion of a written report. The written report shall be submitted to the Community Development Department. If owls are not determined to be present on-site, further mitigation is not required. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31).
- MM BIO-2:** Should burrowing owls be found on the site during the breeding season (February 1 through August 31), exclusion zones, with a 250-foot radius from occupied burrows, shall be established. All development-related activities shall occur outside of the exclusion area until the young have fledged. Establishment of the exclusion area shall be determined by a qualified biologist to the satisfaction of the Community Development Department.
- MM BIO-3:** If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site, the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of the 250-foot buffer shall be allowed. Construction activities within the non-disturbance buffer shall be allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites:
- A qualified biologist monitors the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
 - The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
 - If any change in owl foraging behavior occurs as a result of construction activities, such activities shall cease within the 250-foot buffer.
 - If the owls are gone for at least one week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue. Monitoring shall continue as described above for the non-breeding season as long as the burrow remains active.

Passive relocation of owls shall not be permitted unless the positive growth trend described in Section 5.4.6 of the SCVHP is achieved and all passive relocation measures identified in the SCVHP are implemented. The project applicant may choose to obtain an exception that would allow for passive relocation, in which case an application shall be submitted to the Habitat Agency along with a passive relocation plan in accordance with Section 6.6.1, Condition 15, Exceptions to Passive Relocation Prohibition, of the SCVHP. The Habitat Agency shall have the final authority to grant or deny the requested exception.

MM BIO-4: No later than submittal of the first construction or grading permit for the proposed project the owner or designee shall pay the Santa Clara Valley Habitat Plan per-acre fee in effect for the appropriate fee zone of the project site, as determined by the Santa Clara Valley Habitat Agency, in compliance with Section 18.69.150 of the Morgan Hill Municipal Code.

MM BIO-5: If construction is proposed during breeding season (February 1 to August 31), a pre-construction nesting survey for raptors and other protected migratory birds shall be conducted by a qualified biologist and submitted to the City of Morgan Hill Community Development Department for review no more than 14 days prior to the start of construction. Pre-construction surveys during the non-breeding season (September 1 to January 31) are not necessary for birds, including roosting raptors, as they are expected to abandon their roosts during construction. If these species are deemed absent from the area, construction may occur within 14 days following the survey during the early nesting season (February to May) and within 30 days following the survey during the late nesting season (June to August).

If nesting raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (250-foot minimum for certain raptors) shall be determined by the qualified biologist at that time and may vary depending on location, topography, type of construction activity, and species. The buffer areas shall be enclosed with temporary fencing, and construction equipment and workers shall not enter the enclosed setback areas. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents

MM BIO-6: The project applicant shall mitigate for the removal of any Ordinance Sized Trees, as defined in Section 12.32.020 of the City of Morgan Hill Municipal Code, by providing on-site replacement plantings at a 1:1 ratio with 15-gallon minimum size trees.

For all Ordinance Sized Trees to be preserved as part of the project, the project applicant shall retain a certified arborist to prepare a tree protection plan, subject to review and approval by the Community Development Department. The plan shall demonstrate how any retained trees are to be protected during and after construction. The tree protection plan may include, but not be limited to, the following:

- Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.
- Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over one inch in diameter) should be exposed approximately 12 inches beyond the area to be disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Tearing, or otherwise disturbing the portion of the root(s) to remain, shall be avoided.
- A temporary fence shall be constructed as far from the tree stem (trunk) as possible, completely surrounding the tree, and six to eight feet in height. 'No parking or storage' signs shall be posted outside/on the fencing. Postings shall not be attached to the main stem of the tree.
- Vehicles, equipment, pedestrian traffic, building materials, debris storage, and/or disposal of toxic or other materials shall not be permitted inside of the fenced off area.
- The project applicant shall avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least one to two years following completion of construction.
- Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than six pounds of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond.
- The 'rooting' area shall be mulched with an acidic, organic compost or mulch.
- The project applicant shall arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as such conditions occur, or as appropriate.
- Subject to the discretion of the Community Development Department, individual trees likely to suffer significant impacts may require specific, more extensive efforts and/or a more detailed specification than those contained within the above general guidelines.

NOISE

The proposed project would result in a temporary or periodic increase in ambient noise levels in the project vicinity during construction. Implementation of the following mitigation measures would ensure potentially significant impacts related to such would be reduced to less-than-significant levels.

- MM NOI-1:** During construction activities associated with the proposed project, any compaction required within 25 feet of existing structures adjacent to the project site shall be accomplished by using static drum rollers rather than vibratory compactors. The above requirement shall be included via notation on any grading

plans approved for the project to the satisfaction of the Community Development Department.

MM NOI-2: During construction activities associated with the proposed project, all internal combustion engines used at the project site shall be equipped with a type of muffler recommended by the vehicle manufacturer. All equipment shall be in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train, and other components. In addition, the project applicant shall comply with the following:

- Noise-generating construction activities shall be limited to the daytime hours of 7:00 AM to 8:00 PM Monday through Friday and from 9:00 AM to 6:00 PM Saturday, consistent with Chapter 8.28 of the Morgan Hill Municipal Code;
- All diesel-powered equipment shall be located more than 200 feet from any noise-sensitive use if the equipment is to operate for more than several hours per day; and
- Mobile equipment (haul trucks, concrete trucks, etc.) shall avoid local streets near residences and other noise-sensitive uses to the maximum extent feasible.

Furthermore, subject to equipment availability and cost considerations, the project applicant shall implement the following:

- Earth Removal: Scrapers shall be used as much as possible for earth removal, rather than the noisier loaders and hauling trucks.
- Backfilling: Backhoes shall be used for backfilling, as such equipment is less costly and quieter than either dozers or loaders.
- Ground Preparation: Graders shall be used rather than dozers for final grading.
- Building Construction: Power saws shall be shielded or enclosed where practical to decrease noise emissions. Nail guns shall be used where possible as they are less noisy than manual hammering.
- Generators, Compressors, and Other Stationary Equipment: The project applicant shall ensure that generators, compressors and other stationary equipment that are housed in acoustical enclosures are used rather than equipment housed in weather enclosures or not housed in enclosures at all. Acoustical enclosures are often available with rented equipment. The equipment shall be placed as far from sensitive receptors as feasible.
- The project applicant shall provide a noise disturbance coordinator with a phone line and voicemail/answering machine. Signs with the noise disturbance coordinators contact information shall be posted on the project site at a highly visible location.
- Vehicle paths within the project site shall be graded smooth, as rough roads and paths can cause significant noise and vibration from trucks (particularly empty trucks) rolling over rough surfaces

The above requirements shall be included via notation on project grading plans, subject to review and approval by the Community Development Department.

FINDING

The City of Morgan Hill Community Development Director hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures summarized above and described in the MND are included in the project.

Terry Linder
Senior Planner

Date: _____

Attachment: MMRP (2048 : E. Dunne Young-Andalusia)