



Regular Meeting Agenda
Planning Commission

Juan Miguel Munoz-Morris - Chairman
Mohammad Habib - Vice Chairman
Joseph Mueller - Planning Commissioner
Wayne Tanda - Planning Commissioner
Laura Gonzalez-Escoto - Planning Commissioner
Malisha Kumar - Planning Commissioner
Liam Downey - Planning Commissioner

Tuesday, August 11, 2020 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

MEETING GUIDELINES

Meeting Guidelines

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways:

Members of the public may NOT physically attend meetings at the Morgan Hill City Council Chamber.

The Planning Commission meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/081120PlanningCommissionmtg> or by calling in to: (669) 900-9128, then enter the meeting id: 843 4032 4822.

Public comment for Planning Commission meetings will be accepted via email to pcpubliccomment@morganhill.ca.gov. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

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

CHAIR SELECTION

1. SELECTION OF PLANNING COMMISSION CHAIR AND VICE-CHAIR

Recommendation:

Select members to serve as Chair and Vice-Chair of the Planning Commission for a one-year term.

MINUTES APPROVAL

2. APPROVE THE JUNE 23, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARINGS

3. DAA09-05 D (AAE2020-0002): COCHRANE – BORELLO RANCH (TOLL BROTHERS): AMENDMENT TO A DEVELOPMENT AGREEMENT FOR THE 244-UNIT BORELLO RANCH PROJECT TO ADD THE FINAL 123 BUILDING ALLOTMENTS INTO THE DEVELOPMENT AGREEMENT. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBER(S) 728-34-029, -030 AND 728-60-056 ARE LOCATED ON THE NORTHSIDE OF HALF ROAD, WEST OF COCHRANE ROAD AND EAST OF PEET ROAD (TOLL BROTHERS, OWNER).

Recommendation:

1. Open/Close public hearing; and,
2. Approve Resolution incorporating 123 building allotments into project Development Agreement.

OTHER BUSINESS

4. SENATE BILL 743 (SB 743) LEVEL-OF-SERVICE (LOS) TO VEHICLE-MILES-TRAVELED (VMT) UPDATE

Recommendation:

Accept presentation by Staff and Nelson\Nygaard Consulting Associates, Inc. and provide recommendation/direction on adopting Screening Criteria and Thresholds of Significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to Vehicle-Miles-Traveled (VMT) metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects.

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 cityclerk@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 cityclerk@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.



PLANNING COMMISSION STAFF REPORT

MEETING DATE: August 11, 2020

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

SELECTION OF PLANNING COMMISSION CHAIR AND VICE-CHAIR

RECOMMENDATION(S)

Select members to serve as Chair and Vice-Chair of the Planning Commission for a one-year term.

PROJECT SUMMARY

Pursuant to City Council Policy CP-96-02, the Planning Commission must select a Chairperson and Vice Chair to serve one-year terms. City Council Policy CP-18-04 allows for the term of the Chairperson and Vice Chair to be extended for one year if there is a need to extend the term due to special circumstances. The term of service for these offices shall be one year, beginning at the first meeting in July of each year. No Planning Commissioner shall serve more than two consecutive full terms as Chairperson.

City Council Policy CP-96-02 provides that the member serving the longest on the Commission without having previously served as Chairperson within the prior 4 years will serve as the Chairperson. The member second in seniority who has not yet served during the previous four years as Chairperson will serve as Vice Chair. The policy further states that if the member serving as Vice Chair is on the Commission at the time the next Chairperson is selected, he or she will become Chairperson the following year. Prior to serving as Chairperson, a member must have been on the Commission at least one year.

Commission Member	Date of Appointment
Joseph Mueller	January 28, 1989
Wayne Tanda	April 25, 2007
Liam Downey	August 5, 2015
Mohammad Habib	May 3, 2017
Juan Miguel Munoz-Morris	June 21, 2017
Laura Gonzalez-Escoto	April 17, 2019
Malisha Kumar	April 17, 2019

Planning Commission Chair (prior 4 years)	
2016/17	Wayne Tanda
2017/18	John McKay
2018/19	Liam Downey

2019/20

Juan Miguel Munoz-Morris

A Commissioner will be eligible to serve another term as Chairperson and Vice Chair provided at least four years have transpired since having previously served as Chairperson or Vice Chair. The period may be reduced by one-year increments if no other Commissioner is eligible or declines the position.

Based on City Council policy, unless the Commission chooses to extend the term of Commissioner Munoz Morris, Commissioner Habib should be selected to serve as Chair being the most senior member of the Commission not having served in the prior years. Either Commissioner Gonzalez-Escoto or Kumar would serve as Vice Chair. The Chairperson and Vice Chair terms are for one-year, until July 1, 2021.

Because of this unusual time with the pandemic and conducting public meetings through Zoom, the Commission may want to consider extending the current term of the Chair.

LINKS/ATTACHMENTS:

1. CP-96-02
2. CP-18-04

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 96-02

SUBJECT: POLICY REGARDING TERM AND SELECTION OF CHAIR AND VICE CHAIR OF CITY BOARDS AND COMMISSIONS

DATE: APRIL 17, 1996

REVISION DATE: DECEMBER 15, 1999, REVIEWED JUNE 27, 2007; AMENDED APRIL 16, 2008

ORIGINATING DEPT: CITY CLERK

In order to provide an efficient method for the selection of Chair and Vice-Chair from the members of the Boards and Commissions, it shall be the policy of the City Council of Morgan Hill to have these officers serve a one (1) year term beginning the first regular meeting date when the Boards and Commissions reorganize; following City Council appointments. A rotation system shall be followed in the selection of the Chair and Vice-Chair. The member who has served the longest on the Board or Commission without serving as Chair during the previous four (4) years shall be selected for the position of Chair. The member second in seniority who has not yet served during the previous four (4) years as Chair shall become Vice-Chair. If the member selected as Vice-Chair is on the Board or Commission at the time the next Chair is selected he/she shall become Chair.

Prior to selection as Chair, a Board or Commission member must serve a minimum of twelve (12) months on the Board or Commission. Each member's seniority shall begin upon the effective date of that member's appointment to the Board or Commission. If two (2) or more members have equal seniority, the Board or Commission shall make the selection. In the event a member otherwise eligible for selection declines the position, the member next in seniority shall be selected. A Board or Commission member will be eligible to serve another term as Chair and Vice Chair provided at least four (4) years have transpired since having previously served as Chair or Vice Chair respectively. Such period may be reduced by one year increments if no other Board or Commission member is eligible to serve due to a recent appointment or because a member otherwise eligible for selection declines the position. If two or more members are eligible to serve another term as Chair, the member who has served the longest on the Board or Commission since having previously served as Chair shall be first in seniority to serve another term as Chair and Vice Chair.

This policy shall remain in effect until modified by the City Council.

APPROVED: _____

STEVE TATE, MAYOR

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-18-04

SUBJECT: Rules for the Conduct of Planning Commission Meetings
EFFECTIVE DATE: July 18, 2018
ORIGINATING DEPARTMENT: Community Development Department

SECTION 1. SCOPE

- 1.1 These rules shall establish the procedures for the conduct of all meetings of the Planning Commission of the City of Morgan Hill. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all Commissioners and contribute to the orderly conduct of City business.

SECTION 2. MEETINGS

- 2.1 Open to Public. All meetings of the Planning Commission, whether regular or special, shall be open to the public, unless a closed session is scheduled as authorized by law.
- 2.2 Regular Meetings. The Planning Commission shall conduct its regular meetings at the time and place established by ordinance or resolution if specified in the ordinance. Regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority vote of the Planning Commission pursuant to Section 5.2 of this policy.
- 2.3 Special Meetings. A special meeting may be called at any time by the Community Development Director or by four Commissioners. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be made in accordance with the law.
- 2.4 Quorum. Four (4) Commissioners shall constitute a quorum and shall be sufficient to transact business. If less than four Commissioners appear at a regular meeting, the Chair, Vice Chair in the absence of the Chair, any Commissioner, or in the absence of all Commissioners, the Minutes Clerk, shall adjourn the meeting to a stated day and hour.
- 2.5 Adjourned Meetings. The Planning Commission may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment and permitted by law.
- 2.6 Attendance. Any commissioner who will be absent from a meeting shall communicate to the Chair and to the Community Development Director in advance of the meeting the date(s) of the meeting(s) that will be missed.

SECTION 3. POSTING NOTICE AND AGENDA

- 3.1 Posting of Notice and Agenda. For every regular or special meeting, the Minutes Clerk or other authorized person, shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all items of business to be discussed at the meeting. This notice and agenda may be combined in a single document.
- 3.2 Location of Posting. The notice and agenda shall be posted on the City's website and in a place to which the public has unrestricted access during at least normal business hours and where the notice and agenda are not likely to be removed or obscured by other posted materials.
- 3.3 Posting for Regular Meetings. For any regular meeting of the Planning Commission, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting.
- 3.4 Posting for Special Meetings. For any special meeting of the Planning Commission, the notice and agenda shall be posted no later than twenty-four (24) hours prior to the time set for the meeting.

SECTION 4. AGENDA CONTENTS

- 4.1 Description of Matters. All items of business to be discussed at a meeting of the Planning Commission shall be briefly described on the agenda. The description of the item and the proposed action to be considered should be set forth as clearly as practical so that members of the public will know the nature of the action under review and consideration.
- 4.2 Availability of the Agenda to the Public. The agenda for any regular or special meeting shall be made available to the general public as soon as is practical after delivery to the Commissioners.
- 4.3 Limitation to Act on Only Items on the Agenda. No action shall be taken by the Planning Commission on any item not on the posted agenda.

SECTION 5. ORDER OF BUSINESS

- 5.1 The order of business at meetings of the Planning Commission shall be as follows:
 - A. CALL TO ORDER
 - B. ROLL CALL ATTENDANCE
 - C. DECLARATION OF POSTING AGENDA
 - D. WORKSHOP (as deemed appropriate)
 - E. PLEDGE OF ALLEGIANCE

F. PUBLIC COMMENT

This item refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the Planning Commission. Since the matter is not one on the agenda, no action by Commission can be taken. If a Commissioner so desires, the matter may be placed on the agenda of a future Commission meeting for review and consideration pursuant to Section 9.

G. CHANGE IN ORDER OF BUSINESS.

The Chair may entertain a motion by a majority request of Commissioners present to take matters listed on the agenda out of the prescribed order.

H. CONSENT CALENDAR

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

I. PUBLIC HEARINGS

These matters are ones that are duly noticed and published in a newspaper of general circulation and, where required by Law, written notice is given to the affected residents who have the opportunity to speak in favor or against a matter or ask questions about the matter. Public hearings shall be conducted pursuant to City Council Policy CP-03-01.

J. OTHER BUSINESS

These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Commission action and direction.

K. DIRECTOR'S REPORT/ANNOUNCEMENTS

These are communication items from the Director, including future agenda items. Director will take input from Commissioners on items of interest. Examples of a Director's report or announcement include notice of cancellation of meetings, reminders of scheduled workshops, report back to the Commission, and pending agenda items.

L. ADJOURNMENT

- 5.2 Review Status of Agenda at 11:00 p.m. If, at 11:00 p.m., the Planning Commission has not concluded its business, it shall review the status of the agenda and determine by majority vote whether to extend the meeting beyond 11:00 p.m., continue any remaining items, or adjourn the meeting to another date and time.

SECTION 6. PUBLIC COMMENT

- 6.1 Public Comment. Persons present at meetings of the Planning Commission may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda.
- 6.2 Limitations. The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City Council Policy 03-01. Consistent with this policy, the Chair or Presiding Officer may recall an applicant or appellant to address questions after the public comment is heard. The Chair or Presiding Officer may allow more time and/or allow speakers to concede their time to a designated speaker of a group unless a majority of the Planning Commission objects. Speakers that wish to designate a group speaker shall notify the Minutes Clerk before discussion on the item begins.
- 6.3 Procedure. To address the Planning Commission, each speaker is requested to fill out a Speaker Card and turn it in to the Minutes Clerk before discussion on the agenda item begins. The speaker is requested to provide their name and contact information and the subject or subjects upon which the speaker wishes to address the Planning Commission. Speakers who do not wish to provide their name should provide an alternative designation so that they can be recognized by the Minutes Clerk.

SECTION 7. APPOINTMENT OF OFFICERS

- 7.1 In June of each year, the selection of chair and vice chair shall be pursuant to City Council Policy CP 96-02, except that if a majority of the Commissioners see the need to extend the term due to special circumstances, the term of the Chair and Vice Chair may be extended for one year. The term of service for these offices shall be one year, beginning at the first meeting in July of each year. No commissioner shall serve more than two consecutive full terms as chairperson. The Chair may resign at any time during his or her role as chair, at which time the Vice Chair may serve the remaining term.

SECTION 8. PROCEDURES FOR THE CONDUCT OF MEETINGS

8.1 Role of the Chair/Presiding Officer

- A. The Presiding Officer of the Planning Commission, who shall be the Chair or in the Chair's absence shall be the Vice Chair, or in their absence any other designated Commissioner, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Commissioners and between the Commission, staff, and public.
- B. Communication with Commissioners
 1. Commissioners should request the floor from the Presiding Officer before speaking.

2. When one Commissioner has the floor and is speaking, other Commissioners shall not interrupt or otherwise disturb the speaker.
 3. With the concurrence of the Chair, a Commissioner holding the floor may address a question to another Commissioner. The Commissioner being questioned may or may not respond while the floor is still held by the Commissioner asking the question. The reply shall be limited to the question asked.
- C. The Chair/Presiding Officer may declare that an item within the meeting will be conducted in “workshop” format, which means that the procedures described in section 8.1B do not strictly apply. This is to allow for a more open discussion without strict formalities.
- D. Communication with Members of the Public Addressing the Commission
1. The Chair shall open the floor for public testimony (typically referred to as public comment) as appropriate.
 2. Commissioners may question a person addressing the Commission at the conclusion of the person's comments or upon expiration of the person's time to speak. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Commissioner permission to directly question the person.
 3. Staff shall be a resource to the Planning Commission to answer questions arising during discussions between Commissioners and between Commissioners and members of the public. Communications in this regard shall be through the Presiding Officer.
 4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 8.2 Rules of Order. The Planning Commission adopts no specific rules of order except those listed herein. The Planning Commission shall refer to *The Standard Code of Parliamentary Procedure* by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Chair has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the Commissioners present.
- 8.3 Motions. The Chair or any Commissioner may bring a matter of business on the agenda before the Commission by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to debate to the moving party and, thereafter, to any Commissioner recognized by the Chair or Presiding Officer. Debate shall be closed upon consent of a majority of the Commission.

- 8.4 Reconsideration. Immediately after a vote on a matter, any Commissioner may request to have his/her vote changed on a matter before the Commission moves on to the next item. Such a request will be granted by the Chair unless a majority of the Commission objects.

A matter may be reconsidered by the Planning Commission if a Commissioner on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Commission, however, nothing in this policy precludes the majority of Commissioners from requesting reconsideration of any item.

8.5 Debate.

- A. The discussions and deliberations at meetings of the Planning Commission are to secure the informed judgement of Commissioners on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every Commissioner a reasonable and equal opportunity to be heard.

- B. Obtaining the Floor for Debate.

As soon as a debatable motion has been stated to the Commission by the Chair, any Commissioner has a right to discuss it after obtaining the floor. The Commissioner obtains the floor by seeking recognition from the Chair. A Commissioner who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

- C. Speaking More Than Once.

To encourage the full participation of all of the Commissioners, no Commissioner or Commissioners shall be permitted to monopolize the discussion of the question. If a Commissioner has already spoken and other Commissioners wish to speak, the latter Commissioners should be recognized in preference to the Commissioner who has already spoken. However, if no other Commissioners seek recognition, the Chair may recognize the Commissioner who has already spoken.

- D. Relevancy of Debate.

All discussion must be relevant to the motion before the Planning Commission. A Commissioner is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Chair should then direct the speaker to limit discussion to the question before the Planning Commission.

A motion-its nature or consequences-may be attacked vigorously. But, it is never permissible to attack the motives, character, or personality of a Commissioner, City staff, or any member of the public either directly or by innuendo or implication. It is the duty of the Chair instantly to stop any Commissioner who engages in personal attacks. It is the motion, not its proposer, that is the subject of debate. Meetings must

discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Chair and must never be directed to any individual.

E. Chair's Duties During Debate.

The Chair has the responsibility of controlling and expediting debate. A Commissioner who has been recognized to speak on a question has a right to the undivided attention of the Commission.

It is the duty of the Chair to keep the subject clearly before the Commissioners, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 9. ITEMS TO BE PLACED ON THE AGENDA

- 9.1 Any Commissioner may at any time request to have any matter that can be legally agendized to be placed on the agenda of the Planning Commission by submitting a memo to the Community Development Director. The memo should be succinct, describe the issue, and the proposed referral, and include any background materials or information relating to the matter. The Community Development Director will transmit all of the documentation to the Deputy City Clerk for distribution to the Planning Commission and public as part of the agenda packets for the meeting.
- 9.2 The Community Development Director will place the item on the next available Planning Commission meeting agenda.
- 9.3 At the meeting at which the referral is agendized, the Planning Commission will consider the proposal and vote on its disposition. A majority of those present are necessary to formally refer an item to the City Staff. Staff will indicate if the referral is inappropriate or otherwise unattainable which shall be considered by the Planning Commission during its deliberation.

SECTION 10. DECORUM

- 10.1 Commissioners. Commissioners value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Commissioners shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the Planning Commission.
- 10.2 City Employees. City staff and consultants shall observe the same rules of order and decorum applicable to the Planning Commission. City staff shall act at all times in a business and professional manner towards Commissioners and members of the public.
- 10.3 Public. Members of the public attending Planning Commission meetings shall observe the same rules of order and decorum applicable to the Planning Commission.

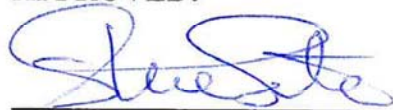
- 10.4 Noise in the Chambers. Noise emanating from the audience within the Commission Chambers or lobby area, which disrupts Planning Commission meetings, shall not be permitted.
- 10.5 Sergeant-at-Arms. The Chief of Police, or his/her designated representative, shall be ex-officio Sergeant-at-Arms of the Planning Commission.

SECTION 11. VIOLATIONS OF PROCEDURES

- 11.1 Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the Planning Commission in accordance with State Law.

This Policy Shall remain in effect until modified by the City Council.

APPROVED:



STEVE TATE, MAYOR

DRAFT



Meeting Minutes Planning Commission

<i>Juan Miguel Munoz-Morris</i>	-	<i>Chairman</i>
<i>Mohammad Habib</i>	-	<i>Vice Chairman</i>
<i>Joseph Mueller</i>	-	<i>Planning Commissioner</i>
<i>Wayne Tanda</i>	-	<i>Planning Commissioner</i>
<i>Laura Gonzalez-Escoto</i>	-	<i>Planning Commissioner</i>
<i>Malisha Kumar</i>	-	<i>Planning Commissioner</i>
<i>Liam Downey</i>	-	<i>Planning Commissioner</i>

Tuesday, June 23, 2020 7:00 pm

**Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037**

MEETING GUIDELINES

Meeting Guidelines

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways:

Members of the public may NOT physically attend meetings at the Morgan Hill City Council Chamber.

The Planning Commission meeting will be live-streamed on Channel 17 and on the City's website. Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/062320PlanningCommissionMeeting> or by calling in to: (669) 900-9128, then enter the meeting id: 815 8678 8013 <https://us02web.zoom.us/j/81586788013>.

Public comment for Planning Commission meetings will be accepted via email to pcpubliccomment@morganhill.ca.gov. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

CALL TO ORDER

Chair Munoz-Morris called the meeting to order.

Minutes Acceptance: Minutes of Jun 23, 2020 7:00 PM (MINUTES APPROVAL)

ROLL CALL ATTENDANCE

Attendee Name	Title	Status	Arrived
Juan Miguel Munoz-Morris	Chairman	Present	
Mohammad Habib	Vice Chairman	Present	
Joseph Mueller	Planning Commissioner	Present	
Wayne Tanda	Planning Commissioner	Present	
Laura Gonzalez-Escoto	Planning Commissioner	Present	
Malisha Kumar	Planning Commissioner	Present	
Liam Downey	Planning Commissioner	Excused	

DECLARATION OF POSTING AGENDA

Minutes Clerk Luna declared the posting of the agenda.

PLEDGE OF ALLEGIANCE

Planning Commission Kumar led the Pled of Allegiance.

OPEN PUBLIC COMMENT PERIOD

Chair Munoz-Morris opened the Public Comment Period at 7:05 p.m. The following individuals were called to speak:

- Joe Baranowski

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

ORDERS OF THE DAY

No changes.

MINUTES APPROVAL

1. APPROVE THE MAY 26, 2020 MEETING MINUTES

Recommendation:

Approve Minutes.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Joseph Mueller, Planning Commissioner
SECONDER:	Laura Gonzalez-Escoto, Planning Commissioner
AYES:	Munoz-Morris, Habib, Mueller, Tanda, Gonzalez-Escoto, Kumar
ABSENT:	Downey

OTHER BUSINESS

2. SENATE BILL 743 (SB 743) LEVEL-OF-SERVICE (LOS) TO VEHICLE-MILES-TRAVELED (VMT) PRESENTATION UPDATE

Recommendation:

Minutes Acceptance: Minutes of Jun 23, 2020 7:00 PM (MINUTES APPROVAL)

Accept presentation by Staff and Nelson\Nygaard Consulting Associates, Inc. and provide direction as needed regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to Vehicle-Miles-Traveled (VMT) metric for transportation analysis under the California Environmental Quality Act (CEQA).

Principal Planner Adam Paszkowski introduced Meghan Weir and Brian Manford from Nelson\Nygarrr Consulting Associates, Inc who gave a presentation.

Chair Munoz-Morris opened the Public Comment Period at 8:47 p.m. The following individuals addressed the Planning Commission:

- Joe Baranowski

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

No action Taken. The Planning Commission reviewed/provided feedback and accepted the presentation.

RESULT:	ACCEPTED
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DIRECTOR'S REPORT/ANNOUNCEMENTS

Community Development Department Jennifer Carman gave a report at 9:11 p.m.

ADJOURNMENT

There being no further business, Chair Munoz-Morris adjourned the meeting at 9:19 p.m.

MINUTES PREPARED BY:

Jenna Luna, Minutes Clerk

Minutes Acceptance: Minutes of Jun 23, 2020 7:00 PM (MINUTES APPROVAL)



PLANNING COMMISSION STAFF REPORT

MEETING DATE: August 11, 2020

PREPARED BY: Terry Linder, Senior Planner

APPROVED BY: Jennifer Carman, Community Development Director

DAA09-05 D (AAE2020-0002): COCHRANE – BORELLO RANCH (TOLL BROTHERS): AMENDMENT TO A DEVELOPMENT AGREEMENT FOR THE 244-UNIT BORELLO RANCH PROJECT TO ADD THE FINAL 123 BUILDING ALLOTMENTS INTO THE DEVELOPMENT AGREEMENT. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBER(S) 728-34-029, -030 AND 728-60-056 ARE LOCATED ON THE NORTHSIDE OF HALF ROAD, WEST OF COCHRANE ROAD AND EAST OF PEET ROAD (TOLL BROTHERS, OWNER).

RECOMMENDATION(S)

1. Open/Close public hearing; and,
2. Approve Resolution incorporating 123 building allotments into project Development Agreement.

LOCATION MAP



PROJECT SUMMARY:

1. Location: Cochrane Road adjacent to Alicante Estates and Alicante Ranch bordered by Peet Road on the east and Cochrane/Coyote Road to the east and south. (APNs 728-34-029 and 026, 728-60-001 through 057)

- 2. Site Area: 122 Acres
- 3. General Plan: Residential Detached Low
- 4. Zoning: RDL 20,000 PD

BACKGROUND:

The 244-unit Borello Ranch project first received allotments in 2009. The project Environmental Impact Report (EIR), Precise Development Plan, Development Agreement and Subdivision approvals were granted in 2013. In July 2016, the project was acquired by Toll Brothers. To date, the project has incorporated 121 allotments into the project Development Agreement.

PROJECT DESCRIPTION:

On June 25, 2020, a Development Agreement Amendment request was filed by Toll Brothers requesting the incorporation of 123 residential building allotments into the project Development Agreement. This request can be processed with an Administrative Amendment approved by the Planning Commission.

ANALYSIS:

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

1. General Plan

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

2. Zoning Ordinance

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

Consistent with the Morgan Hill Municipal Code, Section 3.04 (Amendments) of the Development Agreement states that amendments or modifications to the Agreement or

Project Approval are subject to applicable and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations.

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

3. Residential Development Control System

Section 18.156.100 of the Municipal Code requires the City Council to adopt and maintain an RDCS Competition Manual. Chapter IV of the RDCS Competition Manual incorporates the RDCS Implementation Policies. Pursuant to Policy H of the RDCS Competition Manual, the Planning Commission is authorized to approve minor amendments to an RDCS Development Agreement, such as time extensions and allotment adjustments for ongoing projects through approval of a Planning Commission Resolution. The Development Agreement's provides that the developer may elect to become subject to new laws so long as the new law would not relieve Developer from, or impede Developer's compliance with, Developer's obligations, 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. Due to the changes in State law that prohibit limiting the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the City, or acts as a cap on the number of housing units that can be approved or constructed annually, Toll is not limited to 25 allotments per year as provided in the RDCS manual.

The proposed amendment would modify the Development Agreement to incorporate 123, residential building allotments into the project and would not otherwise affect the Developer's obligations.

Conclusion

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

California Environmental Quality Act (CEQA):

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

LINKS/ATTACHMENTS:

1. AAE2020-0002 PC Resolution
2. 2018 Development Agreement
3. Letter of Request
4. Amendment to Toll DA 8-11-20 (Item 3 Supplement #1)
5. Staff Presentation for Toll Brothers (Item 3 Supplement #2)

RESOLUTION NO. 20-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT AMENDMENT DAA 09-05: COCHRANE – TOLL BROTHERS (AAE2020-0002) FOR THE COCHRANE-BORELLO RANCH DEVELOPMENT TO INCORPORATE 123, ALLOTMENTS.

WHEREAS, Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, has to date awarded 201 building allotments to applications MC-08-16: Peet-Borello, 23 building allotments (FY 2010-2011), MC 09-04: Cochrane-Borello, 37 building allotments (FY 2011-2012), MC 11-03: Cochrane-Borello, 15 building allotments (FY 2013-2014), MC 12-07: Cochrane-Borello, 20 building allotments (FY 2014-2015), MC 13-21: Cochrane-Borello, 25 building allotments (FY 2015-2016), MC 14-12: Cochrane-Borello, 15 building allotments (FY 2016-2017), RDCS2016-0015: Cochrane Borello, 16 building allotments (FY 2018-2019), 25 building allotments (FY2019-2020) and 25 building allotments (FY2020-2021); and

WHEREAS, on February 24, 2009, the Planning Commission pursuant to Chapter 18.78.380 (now Chapter 18. 156.120) of the Morgan Hill Municipal Code, awarded application MC 08-16: Cochrane Borello, 23 building allotments for FY 2010-2011; and

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

WHEREAS, on June 30, 2013, 23 building allotments (FY 2010-2011) expired because the project did not commence construction pursuant to the terms of the Development Agreement; and

WHEREAS, on February 10, 2015, the Planning Commission pursuant to Chapter 18.78.380 (now Chapter 18. 156.120) of the Morgan Hill Municipal Code, awarded application MC14-12: Cochrane Borello, 15 building allotments for FY 2016-2017; and

WHEREAS, on June 30, 2015, 37 building allotments (FY 2011-2012) and 20 building allotments (FY 2014-2015) expired because the project did not commence construction pursuant to the terms of the Development Agreement; and

WHEREAS, on September 2, 2015 the City Council adopted Ordinance No. 2161, N.S., which approved an amendment to the Development Agreement incorporating commitments and adding to exhibit D the development schedule for 15 building allotments for FY 2016-2017; and

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

WHEREAS, on January 10, 2017, the Planning Commission pursuant to Chapter 18.78.380

(now Chapter 18. 156.120) of the Morgan Hill Municipal Code, awarded application RDCS2016-0015: Cochrane-Borello, 16 building allotments for FY 2018-2019; and

WHEREAS, the City Council on February 15, 2017, pursuant to Chapter 18.78.380 (now Chapter 18. 156.120) of the Morgan Hill Municipal Code, reaffirmed the awarded RDCS2016-0015: Cochrane-Borello, 16 building allotments for FY 2018-2019; and

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

WHEREAS, the City Council on February 15, 2017, pursuant to Chapter 18.156.120 of the Morgan Hill Municipal Code, reaffirmed the awarded RDCS2016-0015: Cochrane-Borello, 25 on-going building allotments for FY 2019-2020; and

WHEREAS, on July 23, 2019, the Planning Commission pursuant to Chapter 18.156.120 of the Morgan Hill Municipal Code, awarded application RDCS2016-0015: Cochrane-Borello, 25 building allotments for FY 2020-2021; and

WHEREAS, on October 9, 2018, the Planning Commission adopted Resolution 18-25 incorporating, 25 building allotments for FY 2020-2021 into the project development agreement; and

WHEREAS, on November 12, 2019, the Planning Commission pursuant to Chapter 18.156.100 of the Morgan Hill Municipal Code and Chapter IV, Policy H of the RDCS Manual, adopted Resolution 19-22 incorporating, 25 building allotments for FY 2020-2021 into the project development agreement; and

WHEREAS, the implementation of SB330 effective January 1, 2020, suspended the RDCS growth control provisions pertaining to the population cap and competition requirement for building allotments; and

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

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

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

WHEREAS, the Development Agreement provides that the developer may elect to become subject to new laws so long as the new law would not relieve Developer from, or impede Developer's compliance with, Developer's obligations, 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.

WHEREAS, City and Toll CA XX desire to amend Section 3.03 Establishment and Extension of Residential Development Control System Building Allotments, of the recorded Development Agreement to incorporate the remainder of the allotments; and

WHEREAS, said Development Agreement Amendment request was considered by the Planning Commission at its regular meeting of August 11, 2020, for application AAE2020-0002 Cochrane-Borello Ranch (Toll Brothers); 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 approves the Development Agreement Amendment amending Section 3.03 "Establishment and Extension of Residential Development Control System Building Allotments" of the recorded Development Agreement, as previously amended, to incorporate the 123 building allotments, based on the determination and supporting reasoning described below as required by Chapter 18.116 of Morgan Hill Municipal Code.

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

The project would provide a total of 244 Single-family residential units. There have been no General Plan policy conflicts identified with the proposed project. This action is consistent with current State law as enacted by SB 330.

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

The proposed residential use is permitted within the Residential Detached Low (RAL) zoning district and would be compatible with the surrounding residential uses.

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

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

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

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

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

SECTION 7. The Development Agreement Amendment 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.

SECTION 8. The Development Agreement Amendment would not relieve Developer from, or impede Developer's compliance with, Developer's obligations described within the Development Agreement.

PASSED AND ADOPTED THIS 11TH DAY OF AUGUST 2020, 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

Juan Miguel Munoz-Morris, Chair

23985458

Regina Alcomendras
 Santa Clara County - Clerk-Recorder
 07/19/2018 08:58 AM

CONFORMED COPY

Copy of document recorded.
 Has not been compared with original.

RECORDING REQUESTED BY AND
 WHEN RECORDED MAIL TO:

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

RECORDING FEES EXEMPT
 PURSUANT TO GOVERNMENT CODE SECTION 27383

127-04-18-041

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

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

This Amended and Restated Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Toll CA XX, a California Limited Partnership, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**." This Amended and Restated Development Agreement replaces the Development Agreement approved by Ordinance 2065, as subsequently amended and restated by Ordinance 2161, and amended by Ordinance 2201.

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

RECITALS

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

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

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

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

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

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

The Existing Approvals are more particularly described in the EIR, and the resolutions adopting the Existing Approvals.

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

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

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

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

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

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

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

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

- (1) **"Allotments"** shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) **"Applicable Law"** shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) **"Commitments"** shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) **"Director"** shall mean the Director of Community Development, and his or her designee.
- (5) **"Existing Approvals"** shall have that meaning set forth in Recital D of this Agreement.
- (6) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement as may have been modified through the date of recordation of this Agreement.
- (7) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.
- (8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

- (9) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date and recordation of this Agreement, and that applies City wide.
- (10) **"Project"** shall mean the development containing 244 single family residential units as more particularly described in the Environmental Impact Report titled Cochrane-Borello, dated August 2012. Any reference in this Agreement to the "Project" shall mean and include the "Property" to which this Agreement applies, but may only be a phase of the complete development of the Property.
- (11) **"Project Approvals"** mean, collectively, all phases of the Project Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 122 acres located within the City, as more particularly described and shown on *Exhibit B* to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (15) **"Subdivision Document"** means, pursuant to the Subdivision Map Act and this Agreement, any tentative map, vesting tentative map, parcel map, final map, or Subdivision Improvements Agreement, any such new map or any amendment to any such map, or any resubdivision.
- (16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, a City Resolution of Application for Annexation and subdivision maps and any Subdivision Document.

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

1.03

Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all development allotments for the Project pursuant

to the RDCS, if applicable, (2) the issuance of a certification of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

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

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

ARTICLE 2 APPLICABLE LAW

2.01 Applicable Law—Generally.

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

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

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

2.02 Vested Right to Applicable Law.

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

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

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

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

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

2.03 Project Impacts and Costs.

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

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

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

percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

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

(b) Substitution of Commitments within the same objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. No changes which would degrade the quality of the project, lower the value of commitments or lower the total point score in the RDCS evaluation, or would subject the Project to further environmental review under CEQA, shall be approved. In circumstances in which substitution within the same Objective is not possible, substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer's RDCS applications MC 11-03: Cochrane-Borello (allotments awarded February 14, 2012), MC 13-21 Cochrane-Borello (allotments awarded February 25, 2014), MC 14-12: Cochrane-Borello (allotments awarded February 10, 2015), RDCS 2016-0015 (allotments awarded January 10, 2017) and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

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

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner, which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the RDCS, the RDCS allotment shall expire pursuant to Section 18.78.160 (as adopted by Ordinance number 2229) of Chapter 18.78 of the Morgan Hill Municipal Code.

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

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance pursuant to said contracts, Developer agrees to furnish such documents to the City.

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

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the

timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvements costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

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

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

2.09 New City Laws.

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

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

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

- (2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;
- (3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;
- (4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);
- (5) Limit the processing of Subsequent Approvals.

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

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

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

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

ARTICLE 3 **PROCESSING**

3.01 Processing.

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

discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

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

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

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

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

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

3.03 Establishment and Extension of Residential Development Control System Building Allotments

Allotments shall be exercised pursuant to Section 18.78.160 of the Morgan Hill Municipal Code as established by Ordinance Number 2229, and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.78.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Allotments must be exercised as follows:

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

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

3.04 Amendments.

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

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

3.05 Administrative Amendment

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

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

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

Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

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

4.02 Actions During Cure Period.

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

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

4.03 Resolution of Disputes.

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

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

(c) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other

injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

4.04 Periodic Review.

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

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

4.05 Force Majeure Delay, Extension of Times of Performance.

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

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

4.06 Third Party Legal Actions.

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

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

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

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

4.07 Estoppel Certificate.

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

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

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

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

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

4.08 Assignment/Covenants Run with the Land.

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

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

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

4.09 Encumbrances on the Property.

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

4.10 Obligations and Rights of Mortgage Lenders.

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

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

granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

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

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

4.11 Compliance with Government Code Section 65867.5.

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

4.12 Termination.

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

ARTICLE 5 **GENERAL PROVISIONS**

5.01 Miscellaneous.

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

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

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

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

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

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

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage: Aggregate

Liability for Loss \$1,000,000

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

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

(h) Notices.

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

If to City:

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

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

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

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

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

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

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

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

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

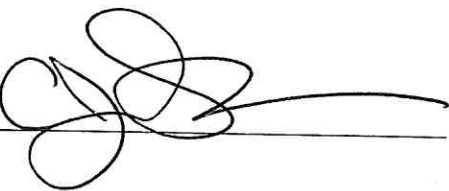
(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

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

- Exhibit A** *Description of Project*
Exhibit B *Legal Description of Lot on Which Project is to be Located*
Exhibit C *RDCS Project Requirements and Commitments*

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

CITY OF MORGAN HILL:

s/ 

Christina J. Turner
City Manager

Date: 7/16/18

Attest:
s/ 

Angie Gonzalez
Deputy City Clerk

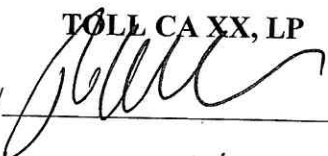
Approved as to Form:

s/ 
 Donald A. Larkin
City Attorney

Date: 7-3-18

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

DEVELOPER:

TOLL CA XX, LP
 s/ 
ROBERT D. MOORE / SENIOR VICE PRESIDENT
 Name/Title [print]

Date: 5/23/18

Corporate entities must provide a second
signature:

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

Date: 5/23/18

ACKNOWLEDGMENT

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

State of California
County of Alameda)

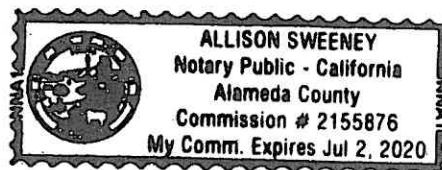
On May 23, 2018 before me, Allison, Sweeney, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Allison Sweeney (Seal)



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

State of California
County of Santa Clara

On July 16, 2018, before me, Angelica Gonzalez, a Notary Public in and for said County and State, personally appeared Christina Turner, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person, or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT A**DESCRIPTION OF PROJECT:**

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

EXHIBIT B

LEGAL DESCRIPTION

EXHIBIT "A"

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

PARCEL ONE:

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

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

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

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

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

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

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

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

PARCEL TWO:

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

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

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

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

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

Assessor's Parcel No. 728-34-027

EXHIBIT C SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to Phase 1 (15 FY 13-14 allotments/15 FY 2016-17 allotments), Phase 2, (25 FY 15-16 allotments), and Phase 3, 16 FY 18-19 allotments of the Development proposed in the following respective RDCS applications: MC 11-03: Cochran-Borello, MC 13-21: Cochran-Borello, MC 14-12: Cochran-Borello and RDCS 2016-0015: Cochran Borello and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code (as it existed at the time of the applications) to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are **IN ADDITION** to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

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

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

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

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

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

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		because the adjacent Alicante Ranch project cannot accept any additional flows. Additional storage capacity shall be provided at the direction of the Director of Public Works.		
B.2.f	Excess public improvements	MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015: Will provide public facilities, off site storm drainage or pedestrian improvements from a City approved list or improvements on/or adjacent in excess of standard requirements (eg. sewer, traffic control) at a rate of \$4400/unit per stated requirements or pay an in-lieu fee equal to \$4,400/unit.	FY 2013-2014, FY 2015-2016, FY 20162017, and FY 2018-2019 allotments	\$4,400.00/unit
B.2.g	Contribution to RDCS Capital Improvements fund	MC 11-03: Developer will contribute \$1,100 per unit to the RDCS Capital Improvement Program Fund:	FY 2013-2014 allotments	\$1,100 per unit
	Parks and Paths			

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



ENGINEERS • PLANNERS • SURVEYORS

June 24, 2020

Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: Development Agreement Amendment Request – *Borello Ranch Estates*

Dear Planning Staff,

On behalf of our client, Toll Brothers (the applicant), RJA is filing the attached Development Agreement Amendment application package to amend file number AAE2019009 (DAA 09-05).

Borello Ranch Estates is a 120-acre, 244-unit residential development project, located south of Cochrane Road between Peet and Half Roads. The previously-approved Borello Ranch Development Agreement, AAE2019009, authorized a total of 121 allocations from previous RDCS competitions. Subsequent to AAE2019009's approval, the State of California suspended growth control measures through December 31, 2024. The applicant acknowledges that a Development Agreement application is necessary to secure additional project allocations for the development of Borello Ranch during this time. The attached Development Agreement Amendment application requests that the City approve a Development Agreement Amendment vesting the development of the balance of the Borello Ranch project allocations (123) to achieve project build-out.

Thank you for your consideration.

Sincerely,

ROSS DOYLE

Ross Doyle
Senior Planning Project Manager
Ruggeri Jensen Azar

Attachment: Letter of Request (2831 : DAA09-05 D (AAE2020-0002) Cochrane-Borello Ranch (Toll Bros))

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

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”) is entered into as of the ____ day of _____, 2020, by and among Toll CA XX, a California limited partnership (“**Toll**”) and CITY OF MORGAN HILL, a municipal corporation of the State of California (“**City**”).

RECITALS

A. San Sebastian MH General Partnership, Toll’s predecessor in interest, (Developer) entered into a Development Agreement (DA) with City on March 27, 2013 adopted by the City Council as Ordinance No. 2065, subsequently amended by Ordinance number 2161 adopted on September 2, 2015, and amended by Ordinance No. 2201 adopted June 1, 2106, to facilitate the development of that certain real property owned by Developer within the City of Morgan Hill, State of California, which is legally described in Exhibit A to the Development Agreement (“**Property**”). The DA was partially assigned to Toll on July 22, 2016, was amended again by Ordinance No. 2243 adopted June 7, 2017, by Planning Commission Resolution Number 18-25 on October 9, 2018, and again by Planning Commission Resolution Number 19-22 on November 12, 2019. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Effective January 1, 2020, the Housing Crisis Act of 2019 (Act) through Government Code section 66300(b)(1)(D)(i) and (ii) prohibits limiting the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the City or acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period; therefore, during the term of the Act, Toll is not limited to 25 allotments per year.

C. Toll and City desire to enter into this Amendment to incorporate the remaining 123 allotments received for this ongoing project.

AGREEMENT

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

1. Amendment to Development Agreement.

a. Section 3.03 of the Development Agreement is hereby amended to incorporate 123 additional allotments as follows:

3.03 Establishment and Extension of Residential Development Control System Building Allotments

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

FY 2013-2014-(15 units)	01-15-17
FY 2015-2016-(25 units)	06-30-18
FY 2016-2017-(15 units)	12-30-18
FY 2018-2019-(16 units)	06-30-19
FY 2019-2020-(25 units)	06-30-20
FY 2020-2021-(25 units)	03-04-22
FY 2020-2021 (123 units)	No later than the expiration of the Development Agreement.

2. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement shall remain in full force and effect. City reserves its rights to implement the RDCS process upon the expiration of the Act, or upon a determination by a court of competent jurisdiction that the Act or its provisions are not enforceable.

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

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

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the Parties to this Amendment had executed the same counterpart.

6. Effective Date/Amendments. The Effective Date of this Amendment shall be the date upon which this Amendment is approved by the City of Morgan Hill Planning Commission. This Amendment shall not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

[Signature Page Follows]

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

“CITY”

CITY OF MORGAN HILL

Christina J. Turner
City Manager

Approved as to form:

Donald A. Larkin
City Attorney

Date: _____

“DEVELOPER”

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

By _____
Name _____
Its _____

Date: _____

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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

WITNESS my hand and official seal.

Packet Pg. 87

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

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

PARCEL ONE:

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

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

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

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

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

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

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

Exhibit A Cont.

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

PARCEL TWO:

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

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

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

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



AAE2020-0002 (DDA 09-05 D) Cochrane-Toll Brothers



August 11, 2020

Cochrane-Toll Brothers

Project:

244-unit Borrello Ranch project
121 exercised allotments

Request:

Development Agreement Amendment to incorporate 123
allotments



Cochrane-Toll Brothers

Project Location:



Cochrane-Toll Brothers



Planning Commission Authority

- Chapter IV of the RDCS Competition Manual incorporates the RDCS Implementation Policies
- Pursuant to Policy H of the RDCS Competition Manual, the Planning Commission is authorized to approve minor amendments to an RDCS Development Agreement
- An allotment adjustment is a minor amendment

Cochrane-Toll Brothers



Changes:

- State law prohibits limits on residential construction
- Incorporate 123 Residential Allotments into existing Development Agreement

Unchanged:

- Project commitments and obligations remain unchanged for the balance of the project.

Cochrane-Toll Brothers

Recommendation

1. Open/close public hearing
2. Adopt Resolution approving an amendment to a Development Agreement



Questions?



CITY OF MORGAN HILL



PLANNING COMMISSION STAFF REPORT

MEETING DATE: August 11, 2020

PREPARED BY: Adam Paszkowski, Principal Planner

APPROVED BY: Jennifer Carman, Community Development Director

SENATE BILL 743 (SB 743) LEVEL-OF-SERVICE (LOS) TO VEHICLE-MILES-TRAVELED (VMT) UPDATE

RECOMMENDATION(S)

Accept presentation by Staff and Nelson\Nygaard Consulting Associates, Inc. and provide recommendation/direction on adopting Screening Criteria and Thresholds of Significance regarding the City's implementation of State Senate Bill 743 (SB 743) transition from Level-of-Service (LOS) to Vehicle-Miles-Traveled (VMT) metric for transportation analysis under the California Environmental Quality Act (CEQA) for development projects.

BACKGROUND:

In September 2013, Governor Brown signed Senate Bill 743 (SB 743) into law, establishing new legislation which mandates a major change in the California Environmental Quality Act (CEQA) Guidelines. Effective July 1, 2020 the SB 743 legislation requires that local jurisdictions shift from use of level of service (LOS) for CEQA review of vehicle movement impacts (delay) to vehicle miles traveled (VMT), which measures the amount and distance of vehicle travel attributed to a project or use.

Although SB 743 requires VMT analysis to be utilized starting July 1, 2020, a Citywide VMT policy is not required to be in place by that date. Instead, land development projects may be evaluated on a case-by-case basis to meet these requirements.

During the March 10, 2020 Planning Commission meeting the City's consultant, Nelson\Nygaard Consulting Associates, Inc., provided an informational presentation regarding SB 743 and VMT. On April 28, 2020, the Nelson/Nygaard team provided an update on the review of existing policies, VMT tools, and case studies. On June 23, 2020, the Nelson/Nygaard team provided a presentation on Defining Goals, Objectives and VMT Thresholds of Significance.

ANALYSIS:

During the June 23, 2020 Planning Commission meeting, the Commissioners asked several questions to be responded to at a future meeting. Nelson\Nygaard and City staff have prepared the attached Addendum to Task 4 Memorandum and Response to Planning Commission memo (Attachment 1) which responds to the travel demand model inputs and results, VMT mitigations, examples of existing retail development

sizes, and Plan Bay Area questions raised by the Commissioners. The attached memo also provides a brief comparison of LOS vs. VMT analysis of sample projects which responds to the Commission request of providing examples of recent projects and how a VMT analysis would assess them.

During previous presentations with the Planning Commission, the Nelson/Nygaard team provided proposed VMT Project Screening and Thresholds of Significance, as well as the rationale, for land use development projects that can be presumed to have less-than-significant transportation impacts within the City of Morgan Hill. Therefore, City Staff requests the Planning Commission makes a recommendation to the City Council regarding VMT Screening Criteria and Thresholds of Significance for development projects.

VMT SCREENING CRITERIA:

As presented at the June 23, 2020 Planning Commission meeting, the Governor's Office of Planning and Research (OPR) recommends streamlining CEQA review of projects to identify areas where less detailed environmental review can be presumed. There are four types of screens proposed for the City of Morgan Hill:

- **Small projects.** Small projects can be considered less than a significant impact.
- **Low-VMT areas.** A map-based screen uses VMT maps to identify areas that are below the threshold for residential land uses.
- **Near transit stations.** CEQA Guideline Section 15064.3 (b)(1) allows a presumption of less than significant impact near major transit stops and high-quality transit corridors.
- **Affordable housing.** A large body of research supports the finding of lower VMT per capita from developments with a high percentage of affordable housing.

Screened projects must meet specific criteria for density, use, and other requirements to support the low VMT presumption shown in Figure 1.

Figure 1 Recommended Screening Criteria for CEQA Transportation Analysis for Development Projects

Screen Type	Recommended Screening Criteria
Small Projects	• Single-family detached housing of 15 units or less; OR • Single-family attached or multi-family housing of 25 units or less; OR • Office of 10,000 square feet of gross floor area or less; OR • Industrial project of 30,000 square feet of gross floor area; OR • Project generating 110 trips a day or less for other land use
Local Serving Retail	▪ 50,000 square feet of total gross floor area or less

Screen Type	Recommended Screening Criteria
Location-based screening for Residential Projects	▪ Location: In an area with low (below the threshold) VMT per capita (See Figure 2) ▪ Density: A density of 20 units per acre or greater; or the maximum allowed if zoned at a lower density than 20 units per acre ▪ Parking: No more than the minimum number of parking spaces required ▪ Displacement: Does not replace affordable residential units with a smaller number of moderate- or high-income residential units ▪ Consistent with Plan Bay Area, the applicable Sustainable Communities Strategy (as determined by the lead agency, with input from the Metropolitan Transportation Commission)
Transit proximate location screening for residential, employment, and retail	▪ Location: In an area within a half mile of a major transit stop or high-quality transit corridor (See Figure 3) ▪ Density: A residential land use minimum density of 20 units per acre or greater, or the maximum allowed if zoned at a lower density than 20 units per acre. Employment land use minimum gross floor area ratio (FAR) of .5 or greater, or the maximum allowed if zoned at a lower density than .5 FAR ▪ Parking: No more than the minimum number of parking spaces required ▪ Displacement: Does not replace affordable residential units with a smaller number of moderate- or high-income residential units ▪ Consistent with Plan Bay Area, the applicable Sustainable Communities Strategy (as determined by the lead agency, with input from the Metropolitan Transportation Commission)
Restricted Affordable Residential Projects or Components	▪ City-wide: 100% deed-restricted affordable housing (exception for the manager's unit(s)); affordability must extend for a minimum of 55 years for rental homes or 45 years for for-sale homes. Affordability for this purpose is restricted to households making 80% or less of the area's median income OR ▪ Below average VMT areas: Projects that are 80% affordable for very low income OR 50% affordable for extremely low income Additionally: ▪ On-site manager unit(s) and non-residential components exempted from affordability requirement ▪ Parking: no more than the minimum number of parking spaces required

Figure 2 Recommended Morgan Hill Low VMT Residential Land Use Screen

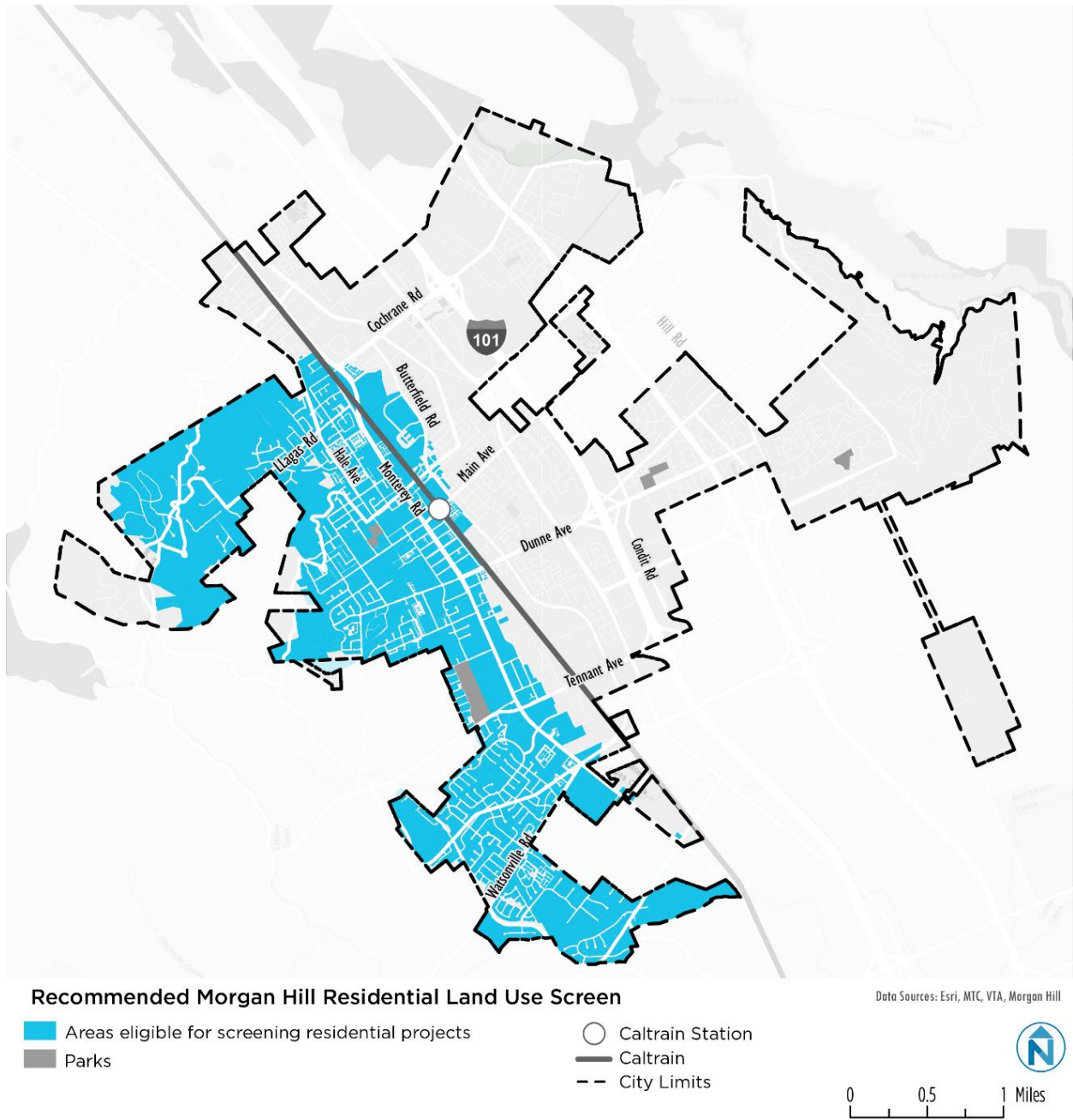
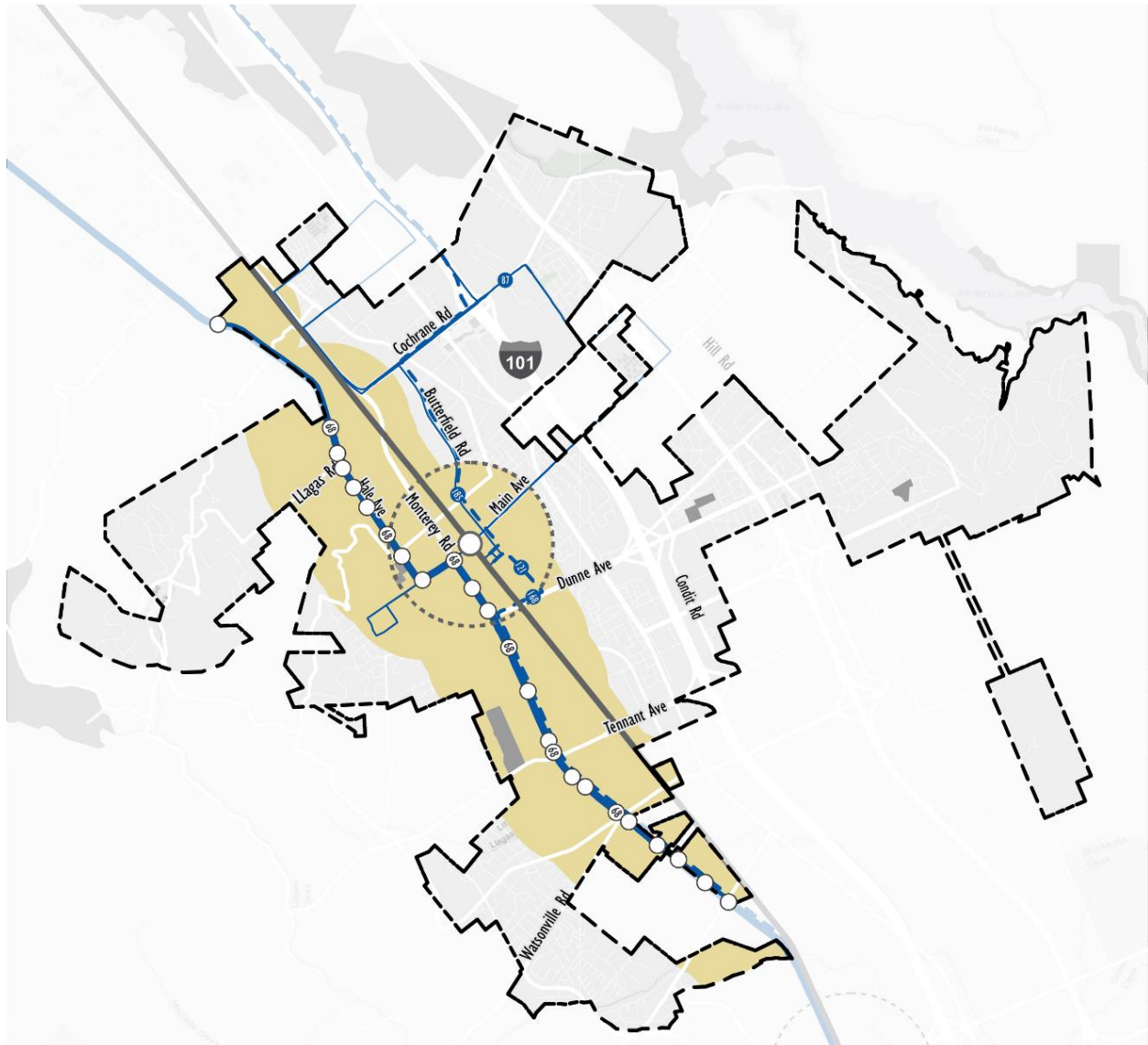


Figure 3 Recommended Transit Proximity Screen



Recommended Morgan Hill Transit Screen

Data Sources: Esri, MTC, VTA, Morgan Hill

- Areas eligible for transit screening
- Parks

- Caltrain Station
- Caltrain
- 0.5 mi Rail Buffer
- City Limits

- VTA Line 68
- VTA Express Routes
- VTA Local Route



0 0.5 1 Miles

VMT THRESHOLDS OF SIGNIFICANCE:

The City of Morgan Hill has the authority to set thresholds of significance, as the lead agency for land use projects within the City's boundaries. Figure 4 provides a summary of thresholds of significance for the City of Morgan Hill recommended by the Nelson\Nygaard team based on an assessment of state guidance, existing precedence, and a review of the City's General Plan and Economic Development Blueprint. Land uses not included in the table would be assessed on a case by case basis using a methodology approved by the Development Services Director.

Figure 4 Recommended Thresholds of Significance for Land Use Projects

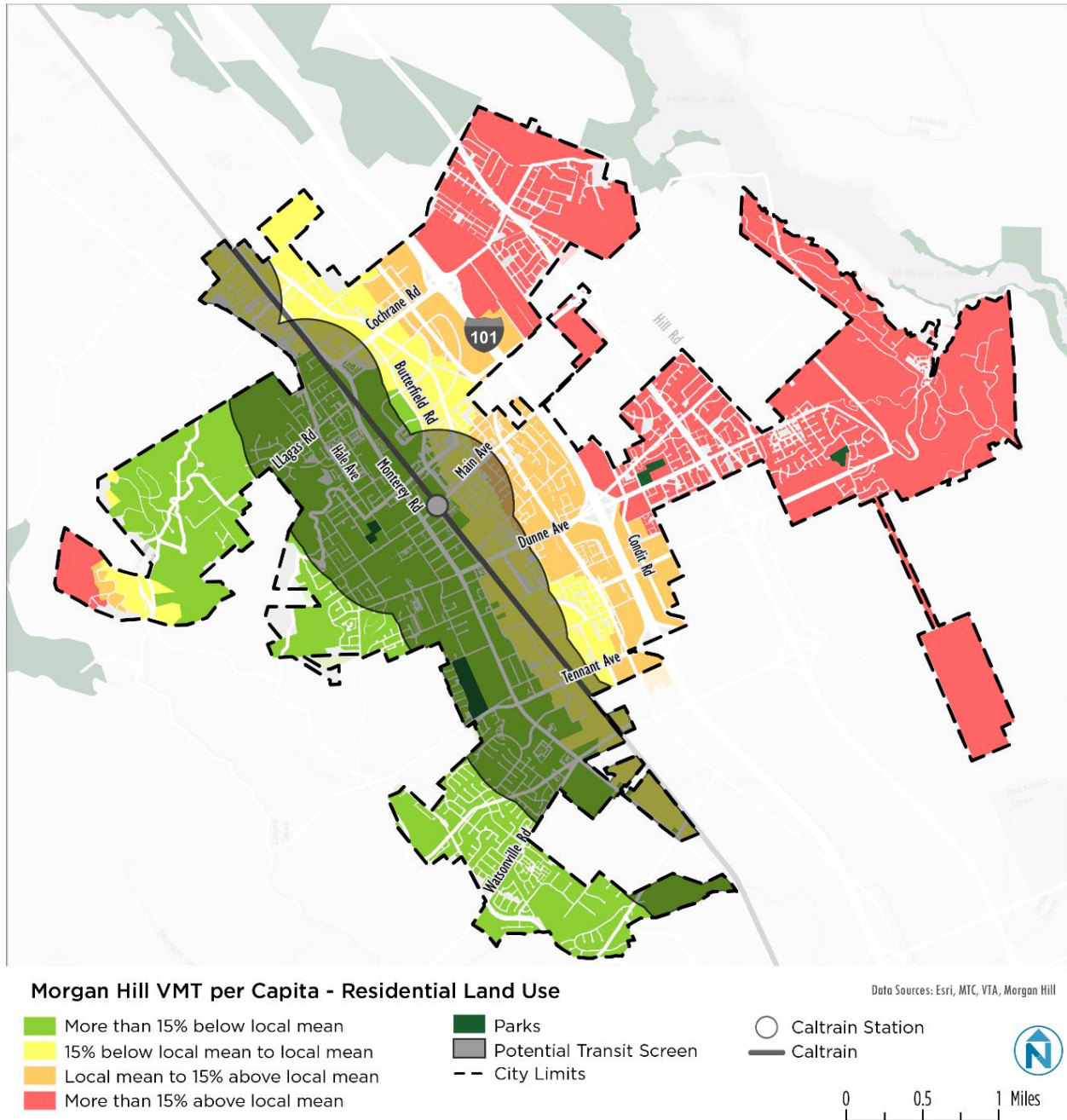
Land use	Recommended Thresholds of Significance
Residential	15% below existing average VMT per capita for the City of Morgan Hill
Employment – Office	15% below existing regional ¹ average VMT per employee
Employment – Industrial	Existing regional average VMT per employee
Retail – Regional	Net increase in total regional VMT
Hospitality/Tourism	Case by case depending on the type of hospitality project
Medical	Case by case depending on the type of facility
¹ <i>Santa Clara County is considered the region when analyzing employment land use in Morgan Hill</i>	

Adopting a threshold of significance for residential, office, or retail land use that deviates from the above recommendations would require substantial evidence that the alternative threshold is aligned with California's environmental goals and the CEQA Guidelines. Cities that have defined their own thresholds of significance separately from OPR's Technical Advisory have implemented SB 743 as part of a general plan update process. In these cases, the VMT and land use modeling done for the general plan process provides the substantial evidence to support the alternative thresholds. "Substantial evidence" refers to enough relevant information and reasonable inferences from that information that a fair argument can be made to support a conclusion. To deviate from the above recommended Thresholds of Significance alignment between the general plan, the sustainable communities strategy (*Plan Bay Area* for Morgan Hill), and statewide GHG reduction modeling is required. Therefore, if the Planning Commission wishes to deviate from the above thresholds a recommendation to update the Transportation Element of the General Plan and conduct VMT modeling will be required.

Residential:

Figure 5 shows VMT per capita compared to the citywide average using VMT data from the VTA Travel Demand Model (TDM). The green areas are below the recommended threshold of significance and eligible for screening (see VMT Screening Criteria above), the yellow sections are areas that should be straightforward to mitigate, orange shows areas that can be mitigated with a robust TDM plan, and the red shows areas that are challenging to mitigate.

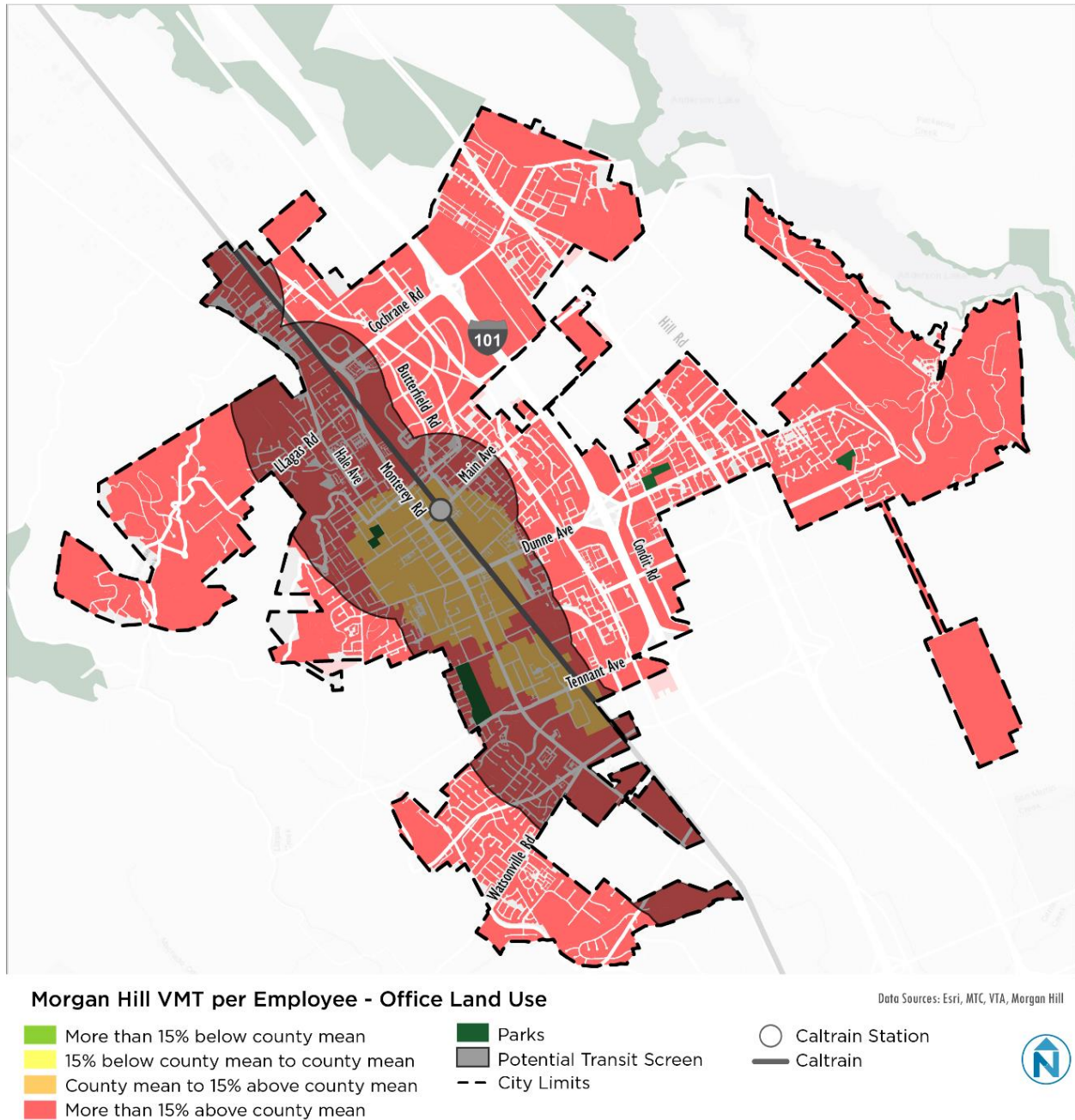
Figure 5 VMT Per Capita Compared to Local Mean



Employment – Office:

Figure 6 shows the VMT per employee compared to the County's average. Most of the City is red, meaning that the VMT impact would be challenging to mitigate. The orange areas can be mitigated using TDM and other investments in multimodal infrastructure.

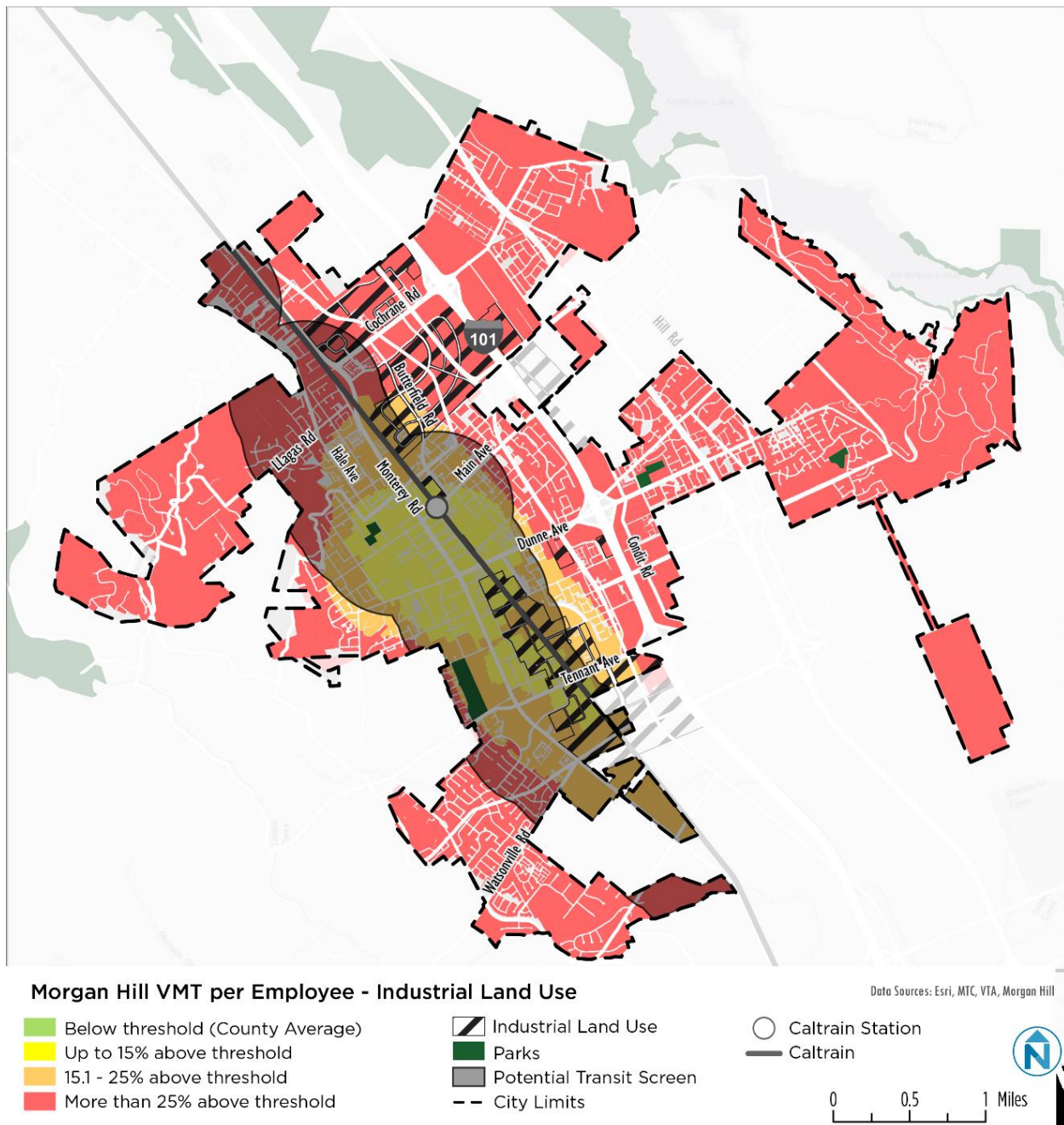
Figure 6 VMT per Employee for Office Land Use



Employment – Industrial:

Figure 7 shows VMT per employee compared to the County's average. There are no parts of the City with VMT per employee below the recommended threshold of significance, however, more of the areas zoned for industrial development have VMT per employee that can be mitigated. Areas with industrial or industrial/commercial land use designations in the General Plan are shown as hashed lines.

Figure 7 VMT per Employee for Industrial Land Use



LINKS/ATTACHMENTS:

1. Addendum to Task 4 Memorandum and Response to Planning Commission



MEMORANDUM

To: City of Morgan Hill Planning Commission

From: Nelson\Nygaard with contribution from City of Morgan Hill staff

Date: August 3, 2020

Subject: Addendum to Task 4 Memorandum and Response to Planning Commission

INTRODUCTION

Nelson\Nygaard has presented to the City of Morgan Hill Planning Commission on Senate Bill (SB) 743 three times: March 10, April 28, and June 23rd. This memorandum is a response by Nelson\Nygaard and City of Morgan Hill staff to requests from the Planning Commission for more information on the following:

- Travel Demand Model Inputs and Results
- VMT Mitigations
- Existing Retail Gross Leasable Areas
- Plan Bay Area
- VMT Analysis of Sample Projects

1 TRAVEL DEMAND MODEL INPUTS AND RESULTS

The Valley Transportation Authority (VTA) has built and maintains a travel demand model as required by state law. Referred to as the Countywide Travel Demand Model (the model), it is used for long range transportation and land use planning. In addition, the model has been configured to produce VMT estimates to support VTA member agency implementation of SB 743. VTA has also developed a VMT Evaluation Tool available to the public that produces parcel level estimates of VMT per capita and VMT per employee.

The base data used to calculate VMT estimates is derived from two sources: VTA's Countywide Travel Demand Model for a base year of 2015 (based on model runs, calibration, and validation in late 2019) and the San José Travel Demand Model for a base year of 2015. Travel demand models are used to calculate future travel and can therefore estimate VMT for future years, however, the base year is calibrated to past data and produces the most accurate VMT estimate.

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VMT is calculated by TAZ using the trips that are generated by running the model. Generally speaking, trip generation is estimated based on the broad land-use categories. VTA's model uses the following trip purposes¹:

- Home-based Work – trips from home to work
- Home-based Shop/Other – trips produced from the home to shop or personal business trips
- Home-based Social-Recreational – trips are produced from home for social and/or recreational purposes
- Home-based Grade School – trips from home to grade school
- Home-based High School – trips from home to high school
- Home-based College/University – trips from home to college or university
- Air-passenger to San Jose Mineta International Airport – trips to SJC airport
- Non-Home-based – these trips are not produced or attracted at the home-end. Examples of these types of trips include travel from work to a restaurant during the mid-day, or from shopping to the dry cleaners.

All of the home-based trips are included in the VMT per capita calculation and the home-based work trips are used to calculate VMT per employee.

SB 743 only requires an analysis of VMT from personal motorized vehicle travel that transports people rather than goods; however, inclusion of truck VMT is allowed for ease of estimation. The VTA Travel Demand Model's VMT calculations do not include truck trips and the model does not capture truck trips to residential land uses (e.g. packages or delivery). Truck trips are modeled by VTA for employment land uses as part of transportation infrastructure planning, but not as part of the VMT per employee calculation. Truck trips are non-home-based trips and therefore are not included in the VMT per capita and VMT per employee calculation.

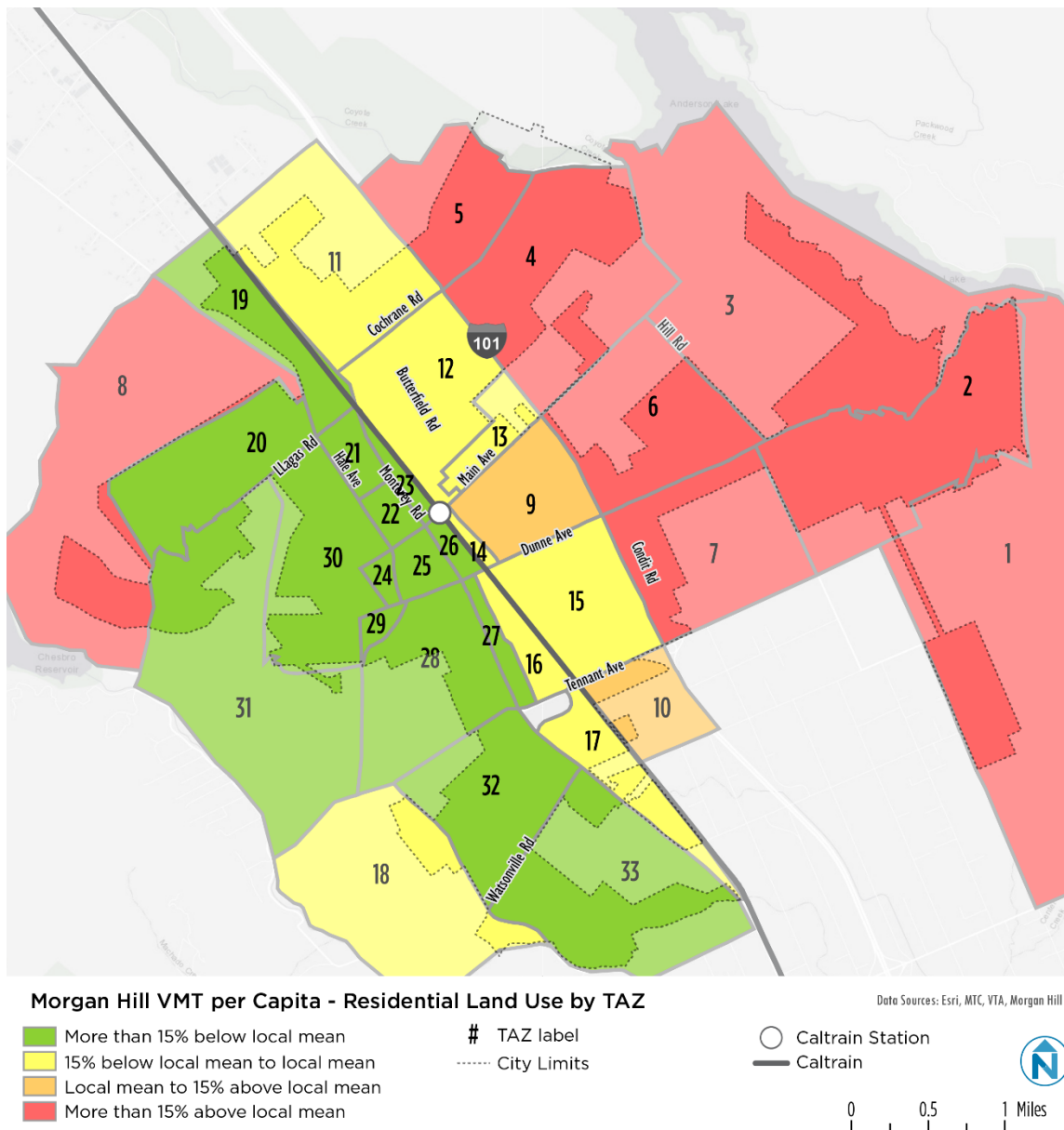
TAZ Size

VTA's Countywide Travel Demand Model for Santa Clara County uses land use and socioeconomic data, including population, households, employed residents, and jobs by category, to construct traffic analysis zones (TAZs). Based on VTA's Countywide Travel Demand Model, the City of Morgan Hill is comprised of 33 TAZs of varying sizes. The TAZs are mapped in Figure 1, where the relative VMT per capita of each TAZ is indicated by color. TAZ borders are shown in grey and a label number is included to distinguish between the TAZs. The average size TAZ for Santa Clara County is 0.87 square miles while the average size TAZ is nearly the same for Morgan Hill at 0.90 square miles. In Morgan Hill, smaller zones are concentrated in central areas while larger zones are located in less dense areas.

¹ Santa Clara County Transportation Authority Congestion Management Program, *Local Transportation Model Consistency Guidelines*, May 2009. Accessed via https://www.vta.org/sites/default/files/documents/local_model_consistency_guidelines.pdf

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Figure 1 Morgan Hill VMT per Capita – Residential Land Use TAZs



VMT at the Parcel Level

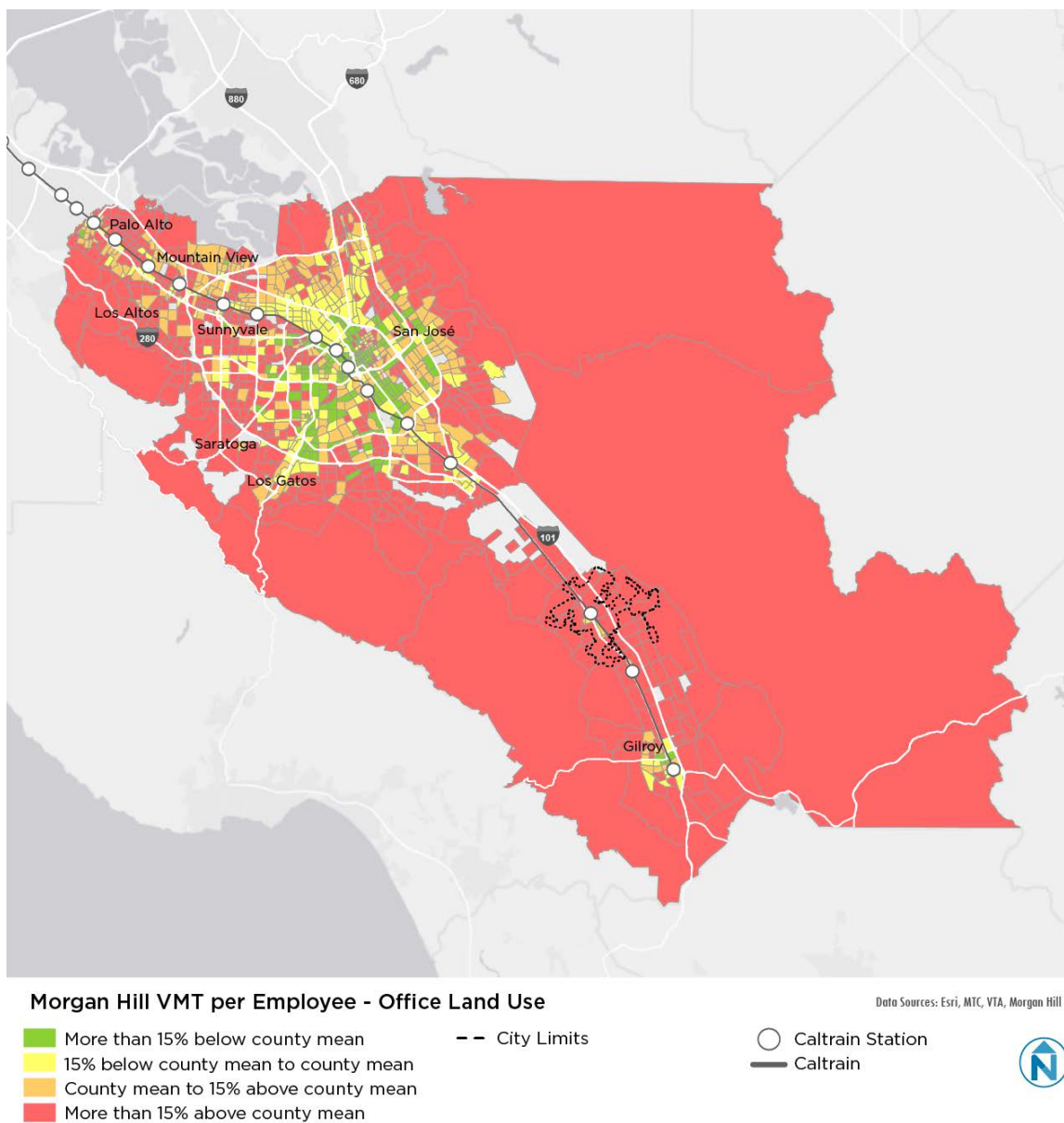
The map shown in Figure 1 shows VMT per capita at the TAZ level. VTA also offers this data at the parcel level through a “smoothing” process. The VMT is based on a TAZ average; however, the VMT of a specific parcel is based on its surrounding. The smoothing process calculates a weighted average of the VMT, population, and jobs within a half mile of a parcel to determine the VMT. This is intended to remove issues of parcels located at or near a border between TAZs, particularly ones with contrasting VMT values.

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Regional VMT per Employee

Figure 2 shows a map of VMT per employee for all of Santa Clara County using the Governor's Office of Planning and Research's (OPR) recommended office land use threshold of 15% below existing regional average. Morgan Hill is primarily comprised of TAZs where the model indicates that employment land uses would have a high VMT per employee, and many of its peer cities also share similar characteristics. Other residential and rural cities and towns in Santa Clara County such as Los Gatos, Saratoga, and Los Altos, are mostly red. Even employment land uses in TAZs adjacent to the Caltrain corridor in job-rich cities such as Palo Alto and Mountain View, for instance, are at or above the countywide average. These results suggest that office projects in major employment areas of the region will still require substantial mitigation.

Figure 2 Morgan Hill VMT per Employee Comparison to Santa Clara County– Office Land Use



2 VMT MITIGATIONS

Background

According to the 2019 CEQA Statute and Guidelines², mitigation measures should be identified for each significant environmental impact. In the case of transportation analysis, mitigation measures must address project VMT after July 2020. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments, and can be incorporated into the project design or plan.

To maintain consistency throughout the state, the best practice for selecting VMT mitigations calls for a clear connection between the mitigation measure and the desired mitigation outcome, and an estimate of the mitigation outcome based on best available research.

VTA's Countywide VMT Evaluation Tool

VTA developed the Santa Clara Countywide VMT Evaluation Tool (VMT Tool) for member agencies to calculate VMT of residential and employment land use projects. In addition to calculating a project's VMT per capita or VMT per employee, the tool also calculates VMT mitigations. VTA included 29 mitigations based on research from the City of San José and others. Member agencies such as the City of Morgan Hill can work with VTA to customize various functions of the tool, including defining local thresholds of significance and applicable VMT mitigation measures.

Neighborhood Type and VMT Reduction Maximums

The UC Davis Institute of Transportation Studies published *Quantifying the effect of local government actions on VMT* in 2014. The report provides a novel contribution to VMT research by categorizing neighborhood types for all of California and the relationship between neighborhood type and VMT. The neighborhood types were determined through a statewide assessment of census tracts using variables such as population density, job accessibility (distance weighted sum of jobs within 50 miles off census tract centroid), road density, percent of workers that commute by transit, housing unit median value, and other housing characteristics. The classification of neighborhood types into eight categories is presented in Figure 3; the study classified Morgan Hill's neighborhood type as *suburb with single-family homes*.

Figure 3 Neighborhood Types for VMT Analysis³

Neighborhood Type	Description
Central City Urban	Very high density, excellent accessibility, high public transit access, low single-family homes, older high-value housing stock (mostly downtown SF)

² https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2019_CEQA_Statutes_and_Guidelines.pdf

³ Salon, Deborah, Institute of Transportation Studies, University of California, Davis. "Quantifying the effect of local government actions on VMT" 2014.

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Neighborhood Type	Description
Urban High Transit Use	High density, good accessibility, high public transit access, low single-family homes, middle-aged and older housing stock (downtown LA, Berkeley, Oakland, San Francisco outside downtown area)
Urban Low Transit Use	Good accessibility, low vacancy, middle-aged housing stock (San Jose, Orange County, San Diego, LA outside downtown area)
Suburb with Multifamily Housing	Average on most indicators for the state, low single-family homes and low housing values
Suburb with Single-Family Homes (Morgan Hill's classification)	Low density and accessibility, low vacancy, high newer single-family homes and high housing values
Rural-In-Urban	These tracts have slightly better accessibility than the truly "rural" tracts, and are more likely to have multifamily housing (select tracts within urbanized areas that had been classified as "Rural")
Rural	Very low access, high vacancy, high newer single-family homes with lower housing values (mainly outside population centers of any kind)
Preserved Land	Preserved Land

VTAs VMT Tool uses neighborhood type to estimate VMT in two critical ways. First, neighborhood type is a factor in the calculation of VMT reduction effects for some mitigation measures where the results depend on the existing land use and transportation context. Second, the neighborhood type establishes maximum VMT reductions for each mitigation tier, and a global maximum VMT reduction.

VMT Reduction Maximums

VMT mitigation measures and the VMT reduction effects associated with them are not additive, but rather complementary and synergistic. Moreover, when additional measures are implemented, the marginal benefit of each new measure diminishes; this means that if a site implements 11 measures, with each estimated to reduce VMT by 10%, one would not expect a 110% overall reduction in trip-making. To prevent this kind of result, the VMT calculation methodology used by the VMT Calculator groups strategies into four tiers according to how the strategies are applied, and includes maximum reduction levels associated with each tier of strategies, based on existing research. Additional details about each mitigation tier are presented in the following section about individual VMT mitigations.

For Morgan Hill's neighborhood type the global maximum is 20%, representing the maximum reduction possible for a land use project using the VMT Tool. Maximum reductions achievable in the Suburb with Single-Family Homes neighborhood type for each mitigation tier are presented Figure 4.

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Figure 4 Maximum VMT Reduction by Mitigation Tier for Morgan Hill Neighborhood Type (Suburb with Single-Family Homes)

Tier Number	Mitigation Tier Name	Maximum Reduction by Tier	Cross Tier Maximums	Global Maximums
Tier 1	Project Characteristics	10%	15%	20%
Tier 2	Multimodal Infrastructure	15%		
Tier 3	Parking	20%		
Tier 4	TDM Programs	25%	25%	

Individual VMT Mitigations

Tier 1: Project Characteristics

Tier 1 mitigation measures represent project characteristics, and these mitigation measures are listed with a description and applicable land use type in Figure 5. These are the first mitigation measures applied to a project since they are part of a project description and a project developer can use the VMT Tool to iterate and adjust the project, for example, by including more affordable housing to reduce the VMT per capita. VMT mitigation from this tier does not require ongoing monitoring. The maximum reduction for Suburb with Single-Family Homes neighborhood type for this tier is a 10% reduction.

Figure 5 Tier I Mitigations: Project Characteristics

Mitigation	Description	Land Use Type
PC01: Increase residential density	Where allowed by zoning, a project that increases residential densities compared to existing conditions in the surrounding area (half mile) will affect the distances people travel and provide greater options for the mode of travel they choose.	Residential
PC02: Increase development diversity	Where allowed by zoning, a project that increases the amount of space dedicated to mixed employment and residential uses compared to existing conditions in the surrounding area (half mile) can reduce VMT by shortening trips between land use types and accommodate more trips by non-automotive mode of transport.	Residential Employment

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Mitigation	Description	Land Use Type
PC03: Affordable housing	Projects that include on-site deed-restricted affordable, below-market rate housing can reduce VMT. Households with incomes at or below 80% of the regional median income generally make fewer trips by automobile than households with higher incomes.	Residential
PC04: Increase employment density	Where allowed by zoning, a project that increases employment densities compared to existing conditions in the surrounding area (half mile) will affect the distances people travel and provide greater options for the mode of travel they choose.	Employment

Tier 2: Multimodal Infrastructure

Tier 2 mitigation measures cover multimodal infrastructure and these mitigation measures are listed with a description and applicable land use type in Figure 6. These measures reduce VMT by providing improvements to the transportation network around the site to make non-driving trips easier, safer, and more convenient. Infrastructure measures require coordination with the City to implement and VMT mitigation from this tier does not require ongoing monitoring once the infrastructure is built. The maximum reduction for Suburb with Single-Family Homes neighborhood type for this tier is a 15% reduction.

Figure 6 Tier 2 Mitigations: Multimodal Infrastructure

Mitigation	Description	Land Use Type
MI01: Increase bike access	Bicycle facilities that close gaps in the bicycle network and/or improve the existing network improve access to a project and promote biking as an alternative to driving, reducing VMT.	Residential Employment
MI02: Improve connectivity	A project that increases the number of intersections with a ¼ mile buffer and internal connections inside the project area by building new street connections and/or connecting cul-de-sacs to provide pedestrian and bicycle access. Intersection density enhances walkability, connectivity, and street accessibility.	Residential Employment
MI03: Increase transit accessibility	A project that enhances access to transit within a ½ mile of the site will facilitate the use of transit by people traveling to/from the project site. Calculated by decreasing the walking distance from the site to the project.	Residential Employment
MI04: Traffic calming	A project that provides traffic calming measures promotes walking and biking as an alternative to driving, reducing VMT	Residential Employment
MI05: Pedestrian network	A project that improves the pedestrian connections on-site and in the surrounding neighborhood encourages people to walk instead of drive, reducing VMT	Residential Employment

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Tier 3: Parking

Tier 3 mitigation measures cover parking and these mitigation measures are listed with a description and applicable land use type in Figure 7. Parking strategies only apply to employment land uses in the VMT Tool. Once built, parking measures for mitigation purposes do not require ongoing monitoring, however, some cities may opt to require monitoring of reduced parking supplies to ensure there are no spillover issues. The maximum reduction for Suburb with Single-Family Homes neighborhood type for this tier is a 20% reduction.

Figure 7 Tier 3 Mitigations: Parking

Mitigation	Description	Land Use Type
P01: Limit parking supply	Decreasing a project's parking supply compared to the ITE parking demand estimate or minimum parking required by zoning encourages employees to choose a non-driving mode of transportation to commute to work. This measure requires controlled parking nearby (permits, time limits, or meters).	Employment
P02: Provide bike facilities	Projects that provide facilities for active transportation users increases the use of active transportation modes. Examples include bike lockers, showers, personal lockers, and secure/indoor bike parking.	Employment

Tier 4: TDM Programs

Tier 4 mitigation measures consist of programs, incentives, information, and other elements that make up a TDM program, and these mitigation measures are listed with a description and applicable land use type in Figure 8. Many strategies in this tier overlap with other strategies and where there is overlap a project cannot double count the mitigating effects and should therefore select one of the overlapping strategies. This is noted in the VMT Tool as an overlap and once one overlapping strategy is selected the other overlapping strategies become greyed out. The maximum reduction for this tier is a 25% reduction, although the global maximum for Suburb with Single-Family Homes neighborhood type caps this reduction at 20%.

Unlike Tiers 1-3, most of the Tier 4 TDM programs mitigation measures require a long-term commitment from a developer and an ongoing monitoring program. Mitigation monitoring is already documented in the CEQA process and incorporated into the conditions of approval. Some cities have opted to require trip caps and annual trip counts to ensure the TDM program is effective and to allow the TDM program to be restructured as needed. Other cities require surveying to document effectiveness.

Figure 8 Tier 4 Mitigations: TDM Programs

Mitigation	Description	Land Use Type
TP01: School pool program	Project organizes a program that matches families in carpools for school pick-up and drop-off, reducing the number of driving trips.	Residential
TP02: Bike share program	Project dedicates land or provides subsidies for a bike share system, ideally one with a large footprint in the city or region. Only applies if bike share station is built on site.	Residential or Employment

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Mitigation	Description	Land Use Type
TP03: Car share program	Project provides dedicated parking spaces, subsidies, and promotions for car sharing services such as ZipCar, Car2Go, and GetAround. Car sharing supports the use of walking, biking, carpooling, and transit by providing another means for business/day trips or a guaranteed ride home option, allowing for overall reductions in auto use and VMT.	Residential or Employment
TP04: Commute trip reduction (CTR) Marketing	Project implements a marketing campaign targeting all project employees and visitors to encourage the use of transit, shared rides, and active modes. Marketing may include new employee orientation, event promotions, and publications.	Employment
TP05: Implement CTR Program	Project provides a comprehensive program to reduce the number of drive-alone commutes to the project and actively monitors and reacts to changes in mode share.	Employment
TP06: Employee parking cash-out	Requires project to offer employee parking "cash-out." Cash-out is a payment to employees who forgo use of subsidized/free parking, often set at the payment equivalent to the cost the employer would otherwise pay for the parking space.	Employment
TP07: Subsidized transit pass	Project provides either partially or fully subsidized transit passes for all project residents and/or employees.	Residential or Employment
TP08: Telecommuting and alternative work schedules	Project allows and encourages employees to telecommute (work from home) when possible or to shift work schedules to reduce commuting (e.g. compressed work week).	Employment
TP09: Free door-to-door transit (shuttle)	Project provides direct shuttle service to the Project site from areas with high concentrations of employees.	Employment
TP10: Price workplace parking	Project requires commuters to pay for parking on-site, providing a disincentive to driving and encouraging the use of other modes.	Employment

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Mitigation	Description	Land Use Type
TP11: Alternative transportation benefits	Project provides general commute benefits to employees, which may include financial subsidies or pre-tax deductions for transit, carpooling, and vanpooling activities.	Employment
TP12: Neighborhood schools	Project contributes to the development of a neighborhood school that would serve families living in the development. Neighborhood schools primarily serve the neighborhood immediately surrounding the school and allow students to walk or bike to school, reducing the use of automobiles for drop-off and pick-up trips.	Residential
TP13: Ride-sharing programs	Project organizes a program to match individuals interested in carpooling who have similar commute patterns.	Employment
TP14: Transit service expansion	Project subsidizes transit service through fees and contributions to the transit provider, thereby improving transit service to the projects, resulting in an increased use of transit and reduced VMT. Strategy must be negotiated with the City and VTA.	Residential or Employment
TP15: Targeted Behavioral intervention	Provide one-on-one counseling and encouragement, along with subsidies, to encourage individuals to use non-drive alone modes.	Residential or Employment
TP16: Unbundle parking costs	Project unbundles the cost of a parking space from the rental/sale price of the property. Residents must rent parking spaces separately from their residential space. Surrounding streets must have parking restrictions in place to enable this strategy.	Residential
TP17: Vanpool incentives	Project provides subsidies for individuals forming new vanpools for their commute.	Employment
TP18: Voluntary travel behavior change program	Project provides a program that targets individual attitudes towards travel and provides tools for individuals to analyze and alter their travel behavior. Measure includes mass communication campaigns and travel feedback programs such as travel diaries.	Residential or Employment

3 EXISTING RETAIL GROSS LEASABLE AREA

The City's Economic Development Division generated a report through CoStar to analyze the average square footage of existing retail real estate within Morgan Hill. CoStar is a research firm that offers analytics for a full inventory of properties and spaces searchable by market and submarket for office, retail, industrial and multi-family.

As stated in Nelson Nygaard's June 16th memo, OPR's recommendation of a VMT screening criteria for CEQA Transportation Analysis for local-serving retail is 50,000 square feet or less. The City of Morgan Hill has a few retail business above 50,000 square feet such as Home Depot and large grocery stores. Figure 9 lists an abbreviated analysis of the CoStar Retail Tenant Frequency Report for Morgan Hill.

Figure 9 Morgan Hill Retail Analysis

Retail Type	Average Store Gross Leasable Area
Ace Hardware	23,411 square feet
Bank of America	3,000 square feet
Big 5 Sporting Goods	12,000 square feet
CineLux Tennant Station	29,292 square feet
CVS	15,000 square feet
Hobby Lobby	77,165 square feet
Joann Fabric and Craft Store	14,720 square feet
McDonald's	3,000 square feet
Morgan Hill Bowl	35,678 square feet
Nob Hill Foods	37,000 square feet
Party City	14,704 square feet
PETCO	18,080 square feet
Rite Aid	13,000 square feet
Ross Dress For Less	23,967 square feet
Safeway	53,997 square feet
Staples	20,307 square feet
T.J. Maxx	29,559 square feet
Target	128,337 square feet
The Home Depot	103,362 square feet
ULTA	15,020 square feet
Walmart	80,000 square feet

4 PLAN BAY AREA

Plan Bay Area is a roadmap adopted by the Metropolitan Transportation Commission and the Association of Bay Area Governments to help Bay Area cities and counties preserve the character of our diverse communities while adapting to the challenges of future population growth. Plan Bay Area is a state-mandated, integrated long-range transportation and land use plan. As required by Senate Bill 375, all metropolitan regions in California must complete a Sustainable Communities Strategy (SCS) as part of a Regional Transportation Plan. In the Bay Area, the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) are jointly responsible for developing and adopting a SCS that integrates transportation, land use and housing to meet greenhouse gas reduction targets set by the California Air Resources Board (CARB).

Plan Bay Area 2040 was adopted on July 26th, 2017 and was a strategic update to Plan Bay Area (2013). The plan builds on earlier work to develop a more efficient transportation network, provide more housing choices, and grow in a financially and environmentally responsible way. Plan Bay Area 2040 describes where and how the region can accommodate 820,000 new projected households and 1.3 million new jobs through 2040; details a regional transportation investment strategy given \$303 billion in expected revenues from federal, state, regional and local sources; and complies with Senate Bill 375 which integrates land use and transportation planning and mandates both a reduction in greenhouse gas emissions from passenger vehicles and the provision of adequate housing for the region.

Plan Bay Area 2050 is currently in draft form and is not expected to be adopted until summer 2021. Plan Bay Area 2050 is a long-range plan charting the course for the future of the nine-county San Francisco Bay Area. Plan Bay Area 2050 will focus on four key issues – the economy, the environment, housing and transportation – and will identify a path to make the Bay Area more equitable for all residents and more resilient in the face of unexpected challenges. This new regional plan will outline strategies for growth and investment through the year 2050, while simultaneously striving to meet and exceed federal and state requirements.

As stated in the June 16th memo, for projects to be presumed to have a less than significant impact and be screened out of further VMT analysis, they must meet minimum criteria to support the presumption. One of the minimum criteria is that a project must be consistent with Plan Bay Area as determined by the lead agency. This is determined by the City with input from MTC/ABAG. The proposed land use should be compatible with the regional plan; an example of an incompatible project would be screening a development in an area that is identified as open space in Plan Bay Area.

Plan Bay Area 2040 calls to protect Open Space and Agriculture. The 2040 Plan meets or exceeds this because all non-agricultural development is directed within the existing urban footprint and Urban Growth Boundaries (UGB). A majority of Morgan Hill is within the UGB except for small pockets of the City in the Northwest and Northeast portion of the City. Potential map-based screens would be in compliance with Plan Bay Area.

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5 VMT ANALYSIS OF SAMPLE PROJECTS

Figure 10 uses the VMT analysis recommended by the Nelson\Nygaard team to provide a high-level overview of the likely transportation impact to a sample of past projects. Figure 11 shows the projects on a map of the City along with the proposed CEQA screens.

Figure 90 Transportation Impact Review for Sample Projects

No.	Project Name	Type	Past CEQA Analysis	Proposed VMT Analysis
1	Butterfield-Keenan	Residential	Full Environmental Impact Report (EIR)	Low VMT Screen – no VMT analysis required
2	Diana-Mana	Residential	Mitigation Non Declaration (MND) (non-transportation)	Residential orange zone – substantial mitigation required
3	East-Dunne Kyono (Las Colinas)	Residential	Initial Study (IS) (non-transportation)	Residential orange zone – substantial mitigation required
4	Monterey Voices Charter School	Public Facility	MND (TIA)	Local Serving Public Facility, no VMT analysis required and inside the Transit Proximity Screen
5	Madone Parkway Carpenters Training Center	Industrial	MND (& IS)	May be able to screen out as a retail-style (visitor VMT) project, otherwise an EIR is likely required as it is located in the office and industrial red zone
6	Cochrane-Monument Land Co (Techcon)	Industrial	MND (& IS)	Transit Proximity Screen – no VMT analysis required
7	Digital - Venture Professional Center	Small office	Full EIR	Industrial and office red zone – EIR with substantial mitigation
8	Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project	Capital Improvement	Full EIR	Phase 1 extension of Hale Avenue is a local street and not VMT inducing – no VMT analysis required Phase 2 widening of a road may be VMT inducing as an arterial – may require further study of the induced VMT demand.

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No.	Project Name	Type	Past CEQA Analysis	Proposed VMT Analysis
9	Southeast Quadrant Ball Fields	Public Facility	EIR Addendum (& IS)	Visitor VMT, recommended analysis as a retail land use. Food service uses can be screened out as local serving, fields may require an EIR to assess regional VMT impacts. Would likely have a less than significant impact but cannot be determined without further study.

Figure 11 Map of Sample Projects with Proposed Screens

