



Special - Regular Meeting Agenda
City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, April 3, 2019 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 p.m. for the purpose of conducting a closed session.

6:00 p.m. Closed Session

7:00 p.m. Regular Meeting

TELECONFERENCE

Council Member Spring will be participating in the regular meeting via teleconference as follows:

Crowne Plaza, Greater Noida
Institutional Green 1, Surajpur Chowk
Greater Noida, Uttar Pradesh -201306

Public comment from the teleconference location shall be allowed.

SPECIAL MEETING

6:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Michelle Clerk Bigelow

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION (CA Govt Code Section 54956.9(a)
Patton et al. v. City of Morgan Hill, et al. Case No. 16-CV-303044

RECONVENE

REGULAR MEETING

7:00 P.M.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council 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)

ADOPTION OF AGENDA

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE 2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

Recommendation:

Authorize the City Manager to execute a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

2. APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE MORGAN HILL TECHNOLOGY PARK & MIXED-USE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)

Recommendation:

Authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Morgan Hill Technology Park & Mixed-Use Residential Project Environmental Impact Report (EIR) for a total contract amount not to exceed \$252,828 for the term through December 31, 2019.

3. APPROVE SECOND AMENDMENT TO MORGAN HILL JET ELECTRIC ON-CALL MAINTENANCE SERVICE AGREEMENT

Recommendation:

Approve the Second Amendment to the on-call maintenance service agreement with Morgan Hill JET Electric, Inc. for an additional \$15,000 in services increasing the total contract amount to \$100,000 for the term through June 30, 2019.

4. RATIFY CITY POSITION ON PENDING LEGISLATION AB 1783 H-2A WORKER HOUSING: STATE FUNDING: STREAMLINED APPROVAL PROCESS FOR AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT

Recommendation:

1. Receive legislative correspondence in support of AB 1783 (R. Rivas) "H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development"; and
2. Ratify City's position.

5. RESOLUTION SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Recommendation:

Adopt resolution supporting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

6. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. APPROVE MEMORANDUM OF UNDERSTANDING ACCEPTING FAMILY JUSTICE CENTER GRANT FUNDS FROM COMMUNITY SOLUTIONS

Recommendation:

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with Community Solutions to accept grant funds as a sub-recipient of the California Office of Emergency Services grant for a total amount of \$50,000 over three fiscal years; and
2. Amending the City's adopted FY2018-19 and FY2019-20 biennial budget to recognize grant revenue of \$12,500 in FY2018-19 and \$25,000 in FY2019-20, in the General Fund (010).

8. APPROVE THE MARCH 20, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. PROVIDE DIRECTION REGARDING AGRICULTURAL CONSERVATION PROGRAM

Recommendation:

Provide direction to staff regarding next steps in the City's agricultural mitigation program.

Estimated Time: 45 Minutes

10. APPROVE DESIGN STANDARDS FOR SMALL CELL ANTENNA IN THE PUBLIC RIGHT OF WAY AND AUTHORIZE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR SMALL CELL FACILITIES

Recommendation:

1. Approve the Small Cell Design Standards related to pole mounted facilities located in the public right of way;
2. Approve the Small Cell License Agreement; and
3. Authorize the City Manager to negotiate, amend, and execute Small Cell License Agreements consistent with the Small Cell Design Standards for up to Forty-Four City owned street light poles for each telecommunication provider.

Estimated Time: 20 Minutes

PUBLIC HEARING

11. INTRODUCE ORDINANCE AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of Zoning Amendment ZA2019-0007: Wireless Communication Facilities; and
3. Introduce Zoning Amendment Ordinance ZA2019-0007: Wireless Communication Facilities.

Estimated Time: 10 Minutes

12. PUBLIC HEARING AND BALLOT TABULATION FOR PARSONS CORNER SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

Estimated Time: 15 Minutes

13. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services;
2. Open/close the public hearing; and
3. Adopt resolution updating the City's select Development Impact Fees.

Estimated Time: 30 Minutes

14. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK ONE (EAST SIDE OF MONTEREY ROAD NORTH OF BURNETT AVE) SR2019-0009

Recommendation:

1. Provide a determination on SR2019-0009 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block One; and
2. Provide feedback on SR2019-0009 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Estimated Time: 30 Minutes

15. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK FOUR (EAST SIDE OF MONTEREY ROAD SOUTH OF OLD MONTEREY ROAD) SR2019-0008

Recommendation:

1. Provide a determination on SR2019-0008 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block Four; and
2. Provide feedback on SR2019-0008 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council 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 Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council 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 Council, 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 City Council 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 City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council 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 City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, 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 City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



Vision:

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill:

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational
Culture · Preserving and Cultivating Public Trust · Preserving Our Community History ·
Enhancing Diversity and Inclusiveness · Advancing Regional Initiatives

2019-2020 STRATEGIC PRIORITIES

Agricultural Preservation
Cannabis Policy
Community Engagement and Messaging
Economic Development
Financial Stewardship
High Speed Rail
Homelessness
Housing Infrastructure
Telecommunications
Traffic/Transportation



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Lynette Kong, Associate Engineer
APPROVED BY: City Manager

APPROVE FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE 2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

RECOMMENDATION(S)

Authorize the City Manager to execute a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

REPORT NARRATIVE:

On November 8, 2016, a 30 year half-cent transportation sales tax measure commonly referred to as 2016 Measure B was approved by Santa Clara County voters. The implementation of the Measure was delayed due to a legal challenge by a county resident. On January 23, 2019, the last of the legal challenges to the Measure were exhausted, allowing the Santa Clara Valley Transportation Authority (VTA) to proceed with the implementation of the program.

In order to be eligible to receive 2016 Measure B Local Streets and Roads Program (LS&R) funding, the City must enter into a funding agreement with the VTA. Upon the execution of the agreement, the City will receive approximately \$800,000 annually in LS&R funds to use on road maintenance, repairs, and improvements. As part of the agreement, the City will need to submit to the VTA (no later than October 1st of each year) specific information that ensures that 2006 Measure B funds are expended on allowable LS&R category expenditures.

The first of the available LS&R funds will be utilized on the upcoming 2019 Pavement Resurfacing Project. The agreement is only for the LS&R program and is separate from the County Expressways program (which would fund the Hale Avenue Extension Project).

COMMUNITY ENGAGEMENT: Inform

Affected businesses and/or property owners will be notified of the pavement resurfacing work that is funded with this grant money.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On September 21, 2016, the Council directed staff to correspond appropriately in support of Measure B.
- On March 6, 2019, the Council received an update on the 2019 Pavement Improvement Plan.

FISCAL AND RESOURCE IMPACT:

The estimated \$800,000 in annual LS&R funds have been budgeted as a revenue source (GL# 308.37582) within the Street CIP Fund (308) beginning in Fiscal Year (FY) 2018-19 and will continue through the term of the agreement, which is March 31, 2047. The FY 2018-19 Fund 308 budget also includes the rollover of the unspent FY 2017-18 allocation.

CEQA (California Environmental Quality Act):

Categorical Exemption

The execution of this funding agreement will fund pavement project activities which are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Funding Agreement with VTA

FUNDING AGREEMENT
BETWEEN
THE CITY OF MORGAN HILL
AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

THIS AGREEMENT ("Agreement") is between the CITY OF MORGAN HILL, a "Member Agency," referred to herein as "RECIPIENT," and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA." Hereinafter, RECIPIENT and VTA may be individually referred to as "Party" or collectively referred to as "Parties."

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax ("2016 MEASURE B") for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program ("PROGRAM") and adopted the 2016 Measure B Program Category Guidelines; and
4. Whereas, the PROGRAM includes a "Local Streets and Roads" program category consisting of a return-to-source formula based on city populations and County of Santa Clara's road and expressway lane mileage; and
5. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
6. Whereas, VTA and RECIPIENT desire to specify herein the terms and conditions under which the Local Streets and Roads program category ("LS&R CATEGORY") 2016 MEASURE B revenues will be administered by VTA as directed by the VTA Board of Directors; and
7. Whereas, VTA has established a manual for purposes of documenting administrative requirements related to LS&R CATEGORY funds disbursement and expenditure ("VTA LS&R Program Manual").

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

II. AGREEMENT

1. LS&R CATEGORY PROGRAM DEFINITION

The LS&R CATEGORY covers the entirety of public right-of-way and infrastructure, including, but not limited to, pavement, sidewalk, signals, signage, drainage, and pedestrian and public transit amenities.

2. TERM OF AGREEMENT

The term of this Agreement will commence on the Effective Date (as defined in the signature block below) and continue through March 31, 2047, or until LS&R CATEGORY funds allocated to RECIPIENT have been expended entirely, whichever occurs later.

3. ELIGIBLE USE OF FUNDS

RECIPIENT is permitted to use RECIPIENT's allocated LS&R CATEGORY funds for any phase (including but not limited to planning, construction, etc.) and any cost of the maintenance, rehabilitation, reconstruction, minor improvements of, minor enhancements of, and preservation of multi-modal roadway infrastructure. This includes implementation of "Complete Streets" elements. See Attachment A for a definition of Complete Streets.

If RECIPIENT has achieved a jurisdictional average Pavement Condition Index ("PCI") of 70, RECIPIENT may use funds for other congestion relief projects as permitted by 2016 MEASURE B.

Only LS&R CATEGORY costs incurred on or after July 1, 2017, will be eligible for reimbursement.

4. DESIGN STANDARDS

RECIPIENT'S project(s) proposed hereunder must incorporate Complete Streets design, including, but not limited to, best practice design standards and guidelines, such as those published by VTA (e.g. Bicycle Technical Guidelines, Pedestrian Technical Guidelines, and Community, Design, and Transportation Manual), Institute of Transportation Engineers (e.g. Designing Walkable Urban Thoroughfares), American Association of State Highway and Transportation Officials (e.g. Guide for the Development of Bicycle Facilities), National Association of City Transportation Officials (e.g. Urban Street Design Guide, Urban Bikeway Design Guide, Transit Street Design Guide), and Caltrans (e.g. Class IV Bikeway Guidance (Separated Bikeways/Cycle Tracks)).

5. FUNDING ALLOCATIONS

- a. RECIPIENT'S funding allocation for each fiscal year, starting July 1, 2017, will be based upon RECIPIENT's percentage share of the population or road mileage, as applicable, applied to the VTA Board of Directors Adopted Biennial Budget for the LS&R CATEGORY.
- b. The LS&R CATEGORY annual fund distribution formula is calculated every two fiscal years (in line with VTA's budget cycle; a fiscal year begins July 1 and ends June 30) and is based on the following:

- i. First, at the same time that VTA plans and finalizes its budget for the two upcoming fiscal years, the VTA Board of Directors determines the allocation of 2016 MEASURE B funds for the two upcoming fiscal years.
 - ii. Second, the VTA Board of Directors determines the amount of 2016 MEASURE B funds to be allocated amongst the PROGRAM categories, including the LS&R CATEGORY.
 - iii. Third, the County of Santa Clara's percentage share of the total budgeted LS&R CATEGORY funds ("SC Percentage Share") is calculated by determining the percentage of the total road and expressway lane mileage recorded in Santa Clara County, California that the County of Santa Clara itself is responsible for maintaining (according to the then most current California Public Road Data report issued by Caltrans).
 - iv. Fourth, the SC Percentage Share is multiplied by the total budgeted LS&R CATEGORY funds to determine the dollar amount allocated to County of Santa Clara.
 - v. Fifth, the budgeted LS&R CATEGORY funds remaining after the allocation of the County of Santa Clara's share described above ("Remaining Funds") are distributed to eligible cities. Each city's percentage share of the Remaining Funds (each, a "City Percentage Share") is calculated by determining the percentage of the total Santa Clara County, California population (excluding unincorporated areas) attributed to each city (according to the then most current California Department of Finance's annual population estimates (Report E-1, or any successor report)).
 - vi. Sixth, each City Percentage Share is multiplied by the Remaining Funds to determine the dollar amount allocated to each city.
- c. RECIPIENT's allocations are subject to change based on variations in annual population or road mileage and actual 2016 MEASURE B receipts for prior fiscal years.
- d. RECIPIENT will receive a one-time advance equivalent to the RECIPIENT's percentage allocation of the LS&R CATEGORY's percentage share of 2016 MEASURE B revenue collections made from April 2017 through June 2017, upon (i) execution of this Agreement, (ii) RECIPIENT's submittal of an invoice for the one-time advance, and (iii) RECIPIENT's first submittal of 1) proposed projects in RECIPIENT's "Annual Program of Projects", 2) maintenance of effort certification (see Section 7.d.), and 3) Complete Streets checklist provided by VTA. Any interest earned or accrued from the one-time advance by RECIPIENT must be expended only on eligible costs as set forth above under ELIGIBLE USE OF FUNDS and DESIGN STANDARDS. RECIPIENT's Annual Program of Projects must contain, at a minimum, the following information:
- i. Brief description of project/s
 - ii. Location of project/s
- e. After the one-time advance, all remaining and future funds, if any, will be available only on a reimbursement basis.

- f. The one-time advance is in addition to RECIPIENT's FY18 and FY19 LS&R CATEGORY allocations.

6. VTA's OBLIGATIONS

VTA will:

- a. Annually update the LS&R CATEGORY formula to reflect the most current populations and road mileage using the California Department of Finance's annual population estimates (Report E-1, or any successor report) and the most current California Public Road Data report issued by Caltrans. VTA shall use the updated LS&R CATEGORY allocation formula in the allocations beginning July 1 immediately following each VTA budget cycle.
- b. Annually update the LS&R CATEGORY PCI for RECIPIENT based on the Metropolitan Transportation Commission release of the prior year's PCI.
- c. Annually report to the public the amount of LS&R CATEGORY revenues allocated and distributed to RECIPIENT.
- d. VTA shall remit the amount due to the RECIPIENT within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice.

7. RECIPIENT's OBLIGATIONS

RECIPIENT will:

- a. Ensure that all 2016 MEASURE B funds are expended on allowable LS&R CATEGORY expenditures as described above in ELIGIBLE USE OF FUNDS and DESIGN STANDARDS.
- b. Annually complete and submit to VTA, by October 1st of each year, RECIPIENT's Annual Program of Projects, in which RECIPIENT will set forth proposed projects, and develop all such projects which are approved as eligible (each a "PROJECT").
- c. Annually submit to VTA, by October 1st of each year, a summary of the prior fiscal year's completed PROJECT(S) and current fiscal year's program of PROJECTS.
- d. Annually submit to VTA, by October 1st of each year, a certification (which certification form will be provided by VTA to RECIPIENT) that RECIPIENT is sustaining a maintenance of effort ("MOE"), meaning that RECIPIENT will maintain a level of expenditures on LS&R CATEGORY eligible activities equivalent to RECIPIENT's expenditures submitted to the California Transportation Commission per 2017 California Senate Bill 1 ("SB1") MOE requirements for the Road Repair and Accountability Act Local Streets and Roads Program. RECIPIENT must submit to VTA an initial MOE base amount and certification of MOE for FY18 upon the execution of this Agreement.

- e. Comply with the VTA Board of Directors-approved Complete Streets requirements. RECIPIENT must submit to VTA a Complete Streets Resolution adopted by the RECIPIENT's governing body upon the execution of this Agreement.
- f. Annually complete and submit to VTA, by October 1st of each year, the VTA Complete Streets checklist and any accompanying reporting requirements for the LS&R CATEGORY Annual Program of Projects.
- g. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for expenditure of the one-time advance funds (which funds, including any and all interest earned or accrued therefrom, must be exhausted in their entirety prior to requesting funds for reimbursement).
- h. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- i. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this Agreement for five (5) years from the date on which the relevant cost(s) was/were incurred. RECIPIENT shall make such records available to VTA upon written request for review and audit purposes. Financial audits will be performed at VTA's discretion.
- j. Submit invoices to VTA, no more frequently than monthly, for reimbursement of work completed on PROJECTS. Invoices must be submitted within one year of the date posted on the contractor's invoice submitted as substantiation for RECIPIENT's invoice, if applicable.

8. GENERAL TERMS AND CONDITIONS

- a. **Indemnity.** Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to RECIPIENT's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction associated with this Agreement. RECIPIENT shall fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description brought on for or on account of injury (as defined by California Government Code §810.8) arising out of or relating to RECIPIENT's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction delegated to RECIPIENT under this Agreement. This provision will survive the termination or expiration of this Agreement.
- b. **Amendment.** No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the Parties hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the Parties hereto.
- c. **Incorporation of Documents; Entire Agreement.**
 - i. In addition to the terms set forth herein, this Agreement is subject to the provisions of (i) the 2016 Measure B Program Category Guidelines and (ii) the VTA

LS&R Program Manual, both of which are incorporated herein by this reference. VTA may, in its sole discretion, make changes to the 2016 Measure B Program Category Guidelines and/or LS&R Program Manual at any time. If VTA makes such changes, VTA will make reasonable efforts to provide RECIPIENT with advance notice of such changes. Copies of the 2016 Measure B Program Category Guidelines and the VTA LS&R Program Manual are available at the VTA website (www.vta.org) or upon request to VTA.

- ii. This Agreement, along with the 2016 Measure B Program Category Guidelines and VTA LS&R Program Manual, contains the entire understanding between VTA and RECIPIENT relating to the subject matter hereof. This Agreement supersedes any and all other agreements which may have existed between the Parties, whether oral or written. This Agreement, along with the 2016 Measure B Program Category Guidelines and VTA LS&R Program Manual, is binding upon each Party, their legal representatives, and successors for the duration of the Agreement.
- d. **Notices.** Any notice which may be required under this Agreement must be in writing, will be effective when received, and must be given by personal service or certified mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the Parties hereto.

VTA:
 Marcella Rensi
 Deputy Director, Programming and Grants
 Santa Clara Valley Transportation Authority
 3331 N First Street
 San Jose, CA 95134
 Email: marcella.rensi@vta.org

RECIPIENT:
 City Clerk
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
cityclerk@morganhill.ca.gov

Written notification to the other Party must be provided, in advance, for changes in the name or address of the individuals identified above.

The individual identified above for RECIPIENT is RECIPIENT's LS&R CATEGORY Liaison ("LIAISON"). The LIAISON shall be (i) the liaison to VTA pertaining to implementation of this Agreement and (ii) the contact for information about the LS&R CATEGORY and PROJECTS.

- e. **Representation of Authority.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement.

- f. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement will not be deemed a waiver of any right or remedy that either Party may have, and will not be deemed a waiver of either Party's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this Agreement or its performance, or (ii) the alleged failure of a Party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this Agreement (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and RECIPIENT shall negotiate an equitable adjustment in the provisions this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this Agreement, as well as any claim that might arise between RECIPIENT and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this Agreement must be commenced and prosecuted in the courts of Santa Clara County, California. RECIPIENT agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

Signatures of parties on following page.

IN WITNESS WHEREOF, VTA and RECIPIENT have executed this Agreement as of the last date set forth below ("Effective Date").

***Santa Clara Valley
Transportation Authority***

RECIPIENT

Nuria I. Fernandez
General Manager/CEO

Christina Turner
City Manager

Date

Date

Approved as to Form

Megan Gristch
Staff Attorney II

ATTACHMENT A
Definition of Complete Streets

Complete Streets are generally defined as streets:

- That are planned, designed, funded, constructed, operated and maintained for the safe travel of all users.
- Where designs are context sensitive and incorporate a balanced network approach.
- Which prioritize the safety, comfort, and convenience of pedestrians, bicyclists, transit riders (including access and operations), as appropriate for the local context, while still providing safe accommodations for motorists and other roadway users.
- Where capital projects, once completed, should not degrade the safety, comfort, or convenience of pedestrians, bicyclists, or access to transit, nor should they degrade the travel time of transit operations (recognizing that there may be situations where one of these modes may need to be prioritized over another).
- Where designs are developed with input from the community and support future conditions.

This definition was set forth in VTA Board Memo No. 6096, dated May 25, 2017, and presented at the VTA Board meeting held June 1, 2017 (“Measure B Complete Streets Reporting Requirements”).



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE MORGAN HILL TECHNOLOGY PARK & MIXED-USE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Morgan Hill Technology Park & Mixed-Use Residential Project Environmental Impact Report (EIR) for a total contract amount not to exceed \$252,828 for the term through December 31, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element

REPORT NARRATIVE:

The purpose of the proposed consultant agreement with David J. Powers & Associates, Inc. (DJPA) is to prepare an Environmental Impact Report (EIR) to evaluate the potential environmental impacts from future development on the commercial, industrial, and residential designated portions of the block bounded by Cochrane Road (north), Half Road (south), Mission View Drive (east), and Highway 101 (west).

On January 29, 2019, TC Morgan Hill Venture, LLC (applicant) submitted a General Plan Amendment application (File No. GPA2019-0002) and Zoning Amendment application (File No. ZA2019-0005) for the commercial and industrial portions of the site and on February 25, 2019 an Environmental Review application (EA2019-0009) for the preparation of the EIR for the entire site. The cost for preparation of the EIR has been paid in full by the applicant.

Although the City has had an existing master environmental consultant agreement with DJPA for general environmental review services associated with private development applications and capital projects since September 2010, preparation of the EIR for the

proposed project will extend beyond the allocated budget for the DJPA master agreement.

Attached for City Council's consideration is a consultant agreement with DJPA in an amount not to exceed \$252,828. The scope and schedule for the preparation of the EIR are attached as Exhibit A, to the consultant agreement.

COMMUNITY ENGAGEMENT: Inform

Throughout the EIR process there will be several opportunities for formal and informal community participation beginning with the Notice of Preparation (NOP) and EIR public Scoping Meeting (scheduled for April 23, 2019 with the Planning Commission); followed by posting of a Notice of Completion (NOC) and public circulation of the Draft EIR; and, concluding with noticed Planning Commission and City Council public hearings, and posting of a Notice of Determination (NOD).

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

The consultant agreement will be an expenditure of the Planning Division, within the Development Services Fund (206), for which the fees are collected directly from the project applicant.

CEQA (California Environmental Quality Act):

Not a Project.

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378, the selection of a consultant to prepare an EIR, which does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, does not qualify as a "project".

The following activities are specifically listed as not a project under Section 15378:

- (b)(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making;
- (b)(4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.
- (b)(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Consultant Agreement w/ David J. Powers & Associates

**CONSULTANT AGREEMENT
DAVID J. POWERS & ASSOCIATES, INC.**

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and DAVID J. POWERS & ASSOCIATES, INC. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2019 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be preparation of the Morgan Hill Technology Center EIR as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$252,828.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Fifty Two Thousand Eight Hundred Twenty Eight dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit A attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5. Professional Liability.
- 7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance

available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.2. **Endorsements.** CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. **General Liability.**

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 7.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.**

- 9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City’s Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

10. **Independent Contractor**. CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices**. All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San Jose, CA 95126

Address of CITY is as follows:

Development Svcs. Dir.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees**. CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **CONSULTANT'S Proposal**. If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Maintenance of Records**.

16.1. **Maintenance**. CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least

3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance

policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

21.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

22. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

23. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

24. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

26. Binding Agreement. Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

[Signatures on Next Page]

27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

DAVID J. POWERS & ASSOCIATES, INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: _____

Date: _____

By: _____

 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: _____



Trammell Crow Morgan Hill Technology Center and Mixed-Use Project Environmental Impact Report

Primary Contact

The primary David J. Powers & Associates, Inc. (DJP&A) contact for this project will be Kurt Schlyer. Kurt's contact information is provided below. Akoni Danielsen will serve as Principal, and be available as needed to support Kurt and stand in should Kurt be away from the office.

Kurt Schlyer Direct: (408) 454-3437

Email: kschlyer@davidjpowers.com

Project Understanding

It is our understanding that the project applicant, Trammell Crow, is proposing a Master Plan Planned Development to be designated as three main land use groupings of Industrial, Commercial and Low density attached residential development. The approximately 89-acre project site is planned to be parceled as Commercial/Industrial (approximately 57.5 acres), Commercial (approximately 3.5 acres), and Residential Attached Low Density (approximately 28 acres). The project includes roadway improvements to Mission View Drive, and an extension of DePaul Drive south to a new connection with Half Road. The EIR would also evaluate the potential impacts from extension of Avenida De Los Padres west from Mission View Drive to DePaul Drive, based on the level of detail available. Other offsite roadway improvements contemplated for this project include r.o.w. improvements to Half Road and a small portion of Condit Road where the two roads intersect.

Industrial Component

The industrial component of the project would include approximately 1 million square feet of industrial uses in three buildings. The Industrial development is planned to be accessible directly from the existing De Paul Drive off Cochrane Road and a proposed extension of De Paul Road connecting to Half Road, and a possible additional third access location that would extend Avenida De Los Padres west to the project site across Mission View Drive. Additionally, a 2.14 ac parcel that is depicted as 'Not a Part' on the conceptual site plan would be evaluated for potential future industrial/warehouse uses based on the proposed PD Combining District, assuming 45,000 square feet of industrial office.

Residential Component

The total number of housing units proposed for the residential portion of the project is assumed to not exceed 300 units, consisting of roughly 25% of the land area devoted to detached single-family residential units and roughly 75% of the land area devoted to attached residential units, to achieve an overall density range of up to 11 units/acre. The project's residential portion shall compete in the City of Morgan Hill's RDCS competition and once partially or fully allocated, shall pursue a Tentative Map for this portion of the project. It is not associated with the Trammell Crow Industrial development.

The residential development is planned to be accessible directly from Mission View Drive to the east, Half Road to the south, and a planned extension of De Paul Drive that is planned to bisect the site north to south connecting Cochrane Road to Half Road. The residential development would include walkways and crosswalks that would connect to off-site sidewalks along Cochrane Road, Mission View Drive & Half Road.

The Residential Project's proposed site improvements would include on- and off-street parking, small neighborhood park area, sidewalks, landscape areas, drive aisles, underground utilities, Low Impact Development (LID) drainage and water quality treatment structures, screen walls, lighting, and an optional fountain.

Commercial Component

The commercial component of the project would occupy 3.48 acres and will be assumed to be developed with approximately 74,000 square feet of commercial that could be general retail, auto dealer, hotel, medical or professional office uses, and two drive-through establishments.

Scope of Work

David J. Powers & Associates, Inc. (DJP&A) will prepare a Focused Environmental Impact Report (EIR) for the Trammell Crow Morgan Hill Technology Center and Mixed-Use project. Our scope includes: 1) preparation of the Administrative Draft EIR/Initial Study and Notice of Preparation (NOP); 2) preparation of the Draft EIR and Notice of Completion (NOC); 3) preparation of the Final EIR, Mitigation Monitoring and Reporting Program (MMRP), and other related items; and 4) meeting and hearing attendance and project management. These tasks are described below.

Task 1: Administrative Draft Focused EIR/Initial Study and Notice of Preparation

Kick-Off Meeting and EIR Initiation

DJP&A will attend one EIR kick-off meeting with the City and the project team to discuss the project, further refine the EIR scope as needed, identify alternatives, and coordinate the scheduling and preparation of the EIR.

Project Description and Notice of Preparation

DJP&A will draft a project description and provide it to the City to review for accuracy. The project description will be based on project information to be provided by the City and Trammell Crow. A preliminary list of project information needed is included on page 16 of this scope of work.

Once the project description is finalized, DJP&A will prepare the NOP for circulation by the City of Morgan Hill. The NOP will include a brief project description, project location map, and discussion of potential environmental effects of the project. This scope includes DJP&A attendance at one public EIR scoping meeting for the project, at which the DJP&A Principal and Project Manager will be available to present the EIR process and primary environmental issues to be covered in the EIR. The text of the EIR will incorporate relevant issues raised in the responses to the NOP received during the 30-day NOP circulation period.

Preparation of Administrative Draft Focused EIR

DJP&A will prepare a Focused EIR consistent with the requirements of the California Environmental Quality Act (CEQA) and the City of Morgan Hill. The EIR will include an introduction, summary, project description, environmental setting, discussion of environmental impacts, and mitigation measures to reduce significant impacts. An Initial Study (IS) will be prepared and included as Appendix A to the EIR. The IS will be used to identify those issues for which the project would have no impacts or less than significant impacts. Only those issues identified in the IS as having significant impacts would be discussed in depth in the main text EIR, so that it is focused on those issues that require mitigation or that are incapable of being mitigated to a less than significant level.

Upon completion of the Administrative Draft Focused EIR (ADEIR) and IS, DJP&A will submit up to 10 hard copies of the document to the City for review and comment.

The expected main sections of the Focused EIR are described below.

Introduction

The introduction to the EIR will describe the purpose of the EIR, provide a general overview of the CEQA process, and describe the public participation process and opportunities for input.

EIR Summary

A summary of the EIR will include a brief description of the proposed project and identify the impacts of the project and proposed mitigation measures in tabular format. The summary will also briefly describe the project alternatives and address any known areas of public controversy.

Project Description

The project description prepared in Task 2 will be included in the EIR. The project description will also include a list of project objectives, necessary discretionary actions, and decision-making agencies. Maps and graphics will be provided to illustrate the text.

Existing Environmental Setting, Impacts, and Mitigation Measures

The EIR, and Initial Study Appendix, will provide: 1) a detailed description of the existing environmental setting, based on the conditions that exist at the time the NOP is released; 2) impacts that may result from the proposed project; and 3) feasible mitigation measures to avoid or reduce impacts to a less than significant level. A discussion of the project's consistency with applicable plans and policies will be included with particular attention given to inconsistencies, if any are identified.

Based upon our current understanding of the project, we anticipate the key environmental issues for the project to be presented in the Focused EIR will include the following resources (while the remaining environmental topics covered in the 2019 CEQA Appendix G Checklist will be covered in the Initial Study):

- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Noise
- Traffic; and
- Utilities

Agricultural Resources

The project site is used for agricultural purposes. According to the Santa Clara County Important Farmland 2014 Map, the site is designated as *Prime Farmland*, *Farmland of Statewide Importance*, and *Unique Farmland*. In November 2014, the City adopted its Agricultural Lands Preservation Program (Preservation Program), which intends to preserve open space agricultural activity within the Morgan Hill Sphere of Influence. The EIR will discuss the project's compliance with the City's General Plan and the Preservation Program's mitigation measures as detailed in the Agricultural Mitigation Ordinance.

Air Quality

The project proposes up to 300 residential units, approximately 74,000 square feet of commercial space, and approximately 1.045 million square feet of industrial uses, which in combination exceeds the Operational- and Construction-Related BAAQMD Criteria Air Pollutant and Precursor Screening Level Sizes pursuant to the 2011 BAAQMD CEQA Guidelines. Project operations would generate an increase in air pollutant emissions, resulting in potential community risk impacts to existing nearby sensitive receptors as well as regional criteria pollutants during construction and operations.

The project site is adjacent to existing housing and a medical center to the east which could expose residents, and medical center patients and staff, to toxic air contaminants (TACs) during project construction. The EIR will provide an analysis of impacts resulting from Construction TAC emissions upon nearby sensitive receptors based on an air quality assessment to be prepared by *Illingworth & Rodkin, Inc.*, under contract to DJP&A, in accordance with the Bay Area Air Quality Management District's CEQA Guidelines. The air quality assessment will also evaluate potential toxic air contaminant and criteria pollutant health impacts to nearby sensitive receptors during project operations, e.g. trucking activity associated with the three industrial/warehouse buildings, which are shown with approximately 200 loading docks in combination. The EIR will also account for changes in roadway volumes on existing and proposed roadways and the potential for increased traffic to lead to localized air quality impacts.

While CEQA is primarily concerned with the impacts of a project on the environment and generally does not require agencies to analyze the impact of existing conditions on a project's future users or residents, the City has General Plan policies and regulations that address existing conditions affecting a proposed project, and therefore, the EIR will evaluate the potential exposure of future project residents to TACs sources in the vicinity by examining stationary and mobile TAC sources that may adversely impact residences.

For those portions of the project currently without sufficient detail to allow for detailed modeling of construction activity in the EIR (i.e. the 3.5 acre commercial site, the 2.14 acre Not a Part industrial parcel, and the 28 acre residential site), the EIR will identify future mitigation measures in the form of performance standards that must be met prior to issuance of grading permits for future phases of development, in accordance with BAAQMD health standards and CEQA Guidelines provisions regarding impermissibly deferred mitigation.

Biological Resources

The project site is currently used for agricultural purposes and contains few trees, other than boxed trees for sale, which are not biological resources. This scope assumes the applicant will provide to DJP&A an arborist report meeting the City's standards. The project site is designated *Orchard and*

Grain, Row-crop, Hay and Pasture, Disked/ Short-term Fallowed in the Santa Clara Valley Habitat Conservation Plan, designations for which no survey requirements apply at the environmental review stage to establish baseline conditions.

Cultural Resources

The project site contains several buildings that are more than 50 years in age, which are therefore required to be analyzed for historic significance under CEQA. Under contract to DJP&A, *Urban Programmers Historic Preservation and Urban Revitalization Consultants* will prepare a Historic Resource Evaluation Report for the project site to identify the historic significance or lack of significance for buildings and site improvements identified to be at least 50 years old. The report will also identify whether any documented historic resources are present in the vicinity and have the potential to be impacted, whether directly or indirectly, by the proposed new structures. Mitigation measures for significant historic resources will be identified, if necessary.

According to the City's archaeological sensitivity map (2000), the project is located in an area of archaeological sensitivity due to the past presence of three historic ranch locations in the vicinity. Therefore, as a subconsultant to DJP&A, an archaeological literature search and field review will be conducted by *Basin Research Associates*. *Basin Research Associates* will also prepare the Native American consultation letter on behalf of the City of Morgan Hill per AB52 standards. Impacts to significant cultural resources, if any, will be evaluated in the Focused EIR, and appropriate mitigation will be identified.

Energy

The EIR will discuss the amount of energy (i.e. electricity, natural gas, and gasoline use) the project would consume, based on the air quality and greenhouse gas emissions studies identified in this scope, and information concerning project construction and operations provided by the applicant's engineer and/or architect, and identify whether the project's consumption of energy would be wasteful, inefficient, or unnecessary in accordance with Appendix F of the CEQA Guidelines. Mitigation measures will be identified to reduce impacts, as appropriate.

Greenhouse Gas Emissions

The proposed project is expected to be operational after 2020, and therefore it is subject to the statewide 2030 GHG targets set by SB 32. GHG emissions resulting from the proposed project will be assessed based on a GHG analysis to be prepared by *Illingworth & Rodkin, Inc*, under contract to DJP&A. The GHG analysis would utilize the California Emission Estimator Model Version 2016.3.2 (CalEEMod) to model GHG emissions, and impact conclusions would be based on BAQQMD recommended thresholds. In the event the emissions exceed the 2030 targets, mitigation measures would be identified to attempt to reduce the project's GHG emissions to less than significant levels. The discussion of GHG emissions would be based to the extent possible on the City's General Plan

EIR and Climate Action Plan, as well as Plan Bay Area and the statewide Scoping Plan implementing SB32.

Noise

The proposed project site is located east of Highway 101 and south of Cochrane and is adjacent to a medical/health center and residential neighborhood to the east. Noise would be generated during the construction of the project, as a result of increased vehicle traffic along area roadways, and as a result of the operations of proposed land uses within the project area, in particular truck loading and other activity associated with the proposed industrial buildings. Under contract to DJP&A, *Illingworth & Rodkin, Inc.* will prepare a noise and vibration assessment to calculate future noise and vibration levels as a result of construction and operation of the project. The noise and land use compatibility of sensitive uses proposed as part the Project will be assessed by adjusting existing noise data based on future traffic noise level projections. Noise impacts resulting from cumulative development of the Project area will also be evaluated. Mitigation measures would be identified for any significant impacts, as needed.

For those portions of the project currently without sufficient detail to allow for detailed modeling of construction activity and operational noise in the EIR (i.e. the 3.5 acre commercial site, the 2.14 acre Not a Part industrial parcel, and the 28 acre residential site), the EIR will identify future mitigation measures in the form of performance standards that must be met prior to issuance of grading permits for future phases of development, in accordance with City noise policies and CEQA Guidelines provisions regarding impermissibly deferred mitigation.

Traffic

A traffic analysis will be prepared for the project by *Hexagon Transportation Consultants ,Inc.* under contract to DJP&A. The purpose of the traffic analysis is to satisfy the requirements of the City of Morgan Hill and the Congestion Management Program (CMP) of the Santa Clara Valley Transportation Authority (VTA). The study will be based on the City's current policy to evaluate new development according to level of service (LOS) to determine the traffic impacts of the proposed development on the key intersections and freeway segments in the vicinity of the site during the weekday AM and PM peak hours. At a minimum, the project would study 50 intersections and eight freeway segments listed below:

1. Monterey Road and Burnett Avenue
2. Monterey Road and Madrone Parkway
3. Monterey Road and Cochrane Road
4. Monterey Road and Old Monterey Road
5. Monterey Road and Wright Avenue
6. Monterey Road and Central Avenue
7. Monterey Road and Main Avenue
8. Monterey Road and Second Street
9. Monterey Road and Dunne Avenue

10. Church Street and Dunne Avenue
11. Butterfield Boulevard and Dunne Avenue
12. Walnut Grove Drive and Dunne Avenue
13. US 101 SB Ramps and Dunne Avenue
14. 101 NB Ramps and Dunne Avenue
15. Condit Road and Dunne Avenue
16. Murphy Avenue and Dunne Avenue
17. Butterfield Boulevard and Diana Ave
18. Butterfield Boulevard and Main Avenue
19. Butterfield Boulevard and Central Ave
20. Butterfield Boulevard and Jarvis Drive (South)
21. Butterfield Boulevard and Sutter Boulevard
22. Butterfield Boulevard and Cochrane Road
23. Cochrane Circle and Cochrane Road
24. Sutter Boulevard and Cochrane Road
25. Madrone Parkway/Cochrane Plaza and Cochrane Road
26. US 101 SB Ramps and Cochrane Road
27. US 101 NB Ramps and Cochrane Road
28. De Paul Drive and Cochrane Road
29. Mission View Drive and Cochrane Road
30. Mission View Drive and Avenida De Los Padres
31. Mission View Drive and Half Road
32. De Paul Drive Extension and Half Road (Future)
33. Condit Road and Main Avenue
34. Murphy Avenue and Main Avenue (Future)
35. Vista De Lomas and Burnett Avenue
36. Butterfield Boulevard and San Pedro Avenue
37. Monterey Road and Tennant Avenue
38. Church Street and Tennant Avenue
39. Vineyard Boulevard and Tennant Avenue
40. Butterfield Boulevard and Tennant Avenue
41. US 101 SB Ramps and Tennant Avenue
42. US 101 NB Ramps and Tennant Avenue
43. Condit Road and Tennant Avenue
44. Murphy Avenue and Tennant Avenue
45. Monterey Road and Vineyard Boulevard
46. Monterey Road and Watsonville Road
47. Monterey Road and Spring Avenue
48. Juan Hernandez Drive and Tennant Avenue
49. Butterfield Boulevard and Barrett Avenue
50. Monterey Road and Cosmo Avenue

Study Freeway Segments:

1. US 101 between SR-85 and Bailey Avenue
2. US 101 between Bailey Avenue and Coyote Creek Golf Drive

3. US 101 between Coyote Creek Golf Drive and Burnett Avenue
4. US 101 between Burnett Avenue and Cochrane Road
5. US 101 between Cochrane Road and Dunne Avenue
6. US 101 between Dunne Avenue and Tennant Avenue
7. US 101 between Tennant Avenue and San Martin Avenue
8. US 101 between San Martin Avenue and Masten Avenue

The level of service analysis will identify the current operating conditions of the intersections and will evaluate whether the project may have an adverse impact on intersection operations during existing plus project and background plus project conditions. Existing weekday AM and PM peak-hour traffic volumes at the study intersections will be obtained, where available, from recent traffic studies conducted in the area. New manual peak-hour turning movement counts will be conducted at intersections where current counts are either outdated or not available.

A qualitative analysis of the project's effect on transit service in the area and on bicycle and pedestrian circulation in the study area will be included in the traffic report. Proposed bicycle and pedestrian facilities will be evaluated for consistency with VTA's Livable Community design guidelines.

Hexagon will use the TDF model to calculate the projected 2015 baseline Citywide VMT and the change in VMT with the project under each of the future condition scenarios. The VMT will be calculated for internal and external trips and will be specified in absolute terms (by households and jobs) and per capita.

Portions of the proposed residential units and industrial space will require a General Plan Amendment analysis (GPA). The purpose of the GPA traffic analysis is to estimate the impacts of the proposed land use amendment on key intersections and freeway segments in the vicinity of the project area. The analysis will consist of a long-term evaluation of identified potential development levels on the project site due to the proposed land use amendment. The City of Morgan Hill travel demand model will be used to evaluate long-term effects on the transportation system of the identified development level of the project site.

The City will need to confirm the GPA analysis approach regarding the level of development on the project site in relation to GP Buildout conditions, i.e. whether the additional development proposed on the site is a net add to the ultimate development allowed under the General Plan (and evaluated in the GP EIR), or whether the additional development on the project site reflects a (zero sum) transfer/relocation of growth from elsewhere in the City, thereby holding constant the amount of development consistent with the GP Update and related EIR's analysis.

The traffic report will be incorporated into the EIR to identify potential significant impacts and mitigation measures, if any significant impacts are identified.

Hazards and Hazardous Materials

Phase I/II reports have been prepared for the Industrial portion of the property (approximately 58 acres). The reports indicated that there are no recognized environmental conditions on the site. The applicant's Phase I/II consultant will need to confirm their reports results are also applicable to the

land that would be dedicated to the City for the extension of DePaul Drive to Half Road. The remainder of the property that is planned to be commercial (3.48 acres), residential (28 acres), and the area designated as “Not A Part” (2.14 acres) would be analyzed in the EIR at a program-level and future developments on those sites would need to prepare Phase I/II. In addition, the future extension of Avenida de las Padres would also require Phase I/II be completed at the time of a project-level review.

Utilities

The EIR will discuss the project’s potential to impact utilities and assess water and wastewater demand and supply based upon a Water Supply Assessment (WSA) prepared by *Todd Groundwater* under contract to DJP&A. The WSA, which is required due to the General Plan Amendment and the projected water demand not already being covered by the WSA prepared for the General Plan EIR, will evaluate water supply and demand for the project during normal and drought conditions with five-year incremental projections to the year 2040. Water supply and demand will be compared to assess the sufficiency of water supply for the project.

The project site was previously used for agricultural uses and therefore the WSA includes evaluation of recent historical water demand to define the net change in water demand by the project. Existing water demand would be calculated for the site using data from the City (as available) and/or applying water demand factors, including estimates of agricultural water use, if needed. Any significant impacts will be identified, as necessary.

Cumulative Impacts

In conformance with CEQA Guidelines Section 15130, the EIR will include a discussion of cumulative impacts from the project in combination with other past, pending and reasonably probable future development in the area, based on projections for development according to General Plan buildout. The EIR will analyze and describe any significant cumulative impacts to which the project may contribute.

Alternatives

The EIR will evaluate possible alternatives to the proposed project based on the results of the environmental analysis. The alternatives discussion will focus on those alternatives that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant environment effects (CEQA Guidelines Section 15126.6). DJP&A will coordinate with the City staff to identify the alternatives to be analyzed in the EIR; however, it is currently anticipated that the alternatives to be evaluated in the EIR could include the following:

1. No Project Alternative;
2. Reduced Scale Alternative;
3. Location Alternative(s);
4. Design Alternative;
5. Environmentally superior alternative (to be chosen from one of the above).

This section will evaluate the impacts of each alternative as required by CEQA (Guidelines Section 15126.6) and based on the “rule of reason.” The alternatives discussion will describe the environmental impacts and benefits of the alternatives, and compare them with the proposed project’s impacts and their ability to achieve project objectives. In accordance with CEQA, the EIR will identify an environmentally superior alternative from the alternatives described, based on the number and degree of associated environmental impacts.

Other Required Sections

The above discussions identify and highlight the major issues to be addressed in the proposed EIR. In conformance with the CEQA Guidelines, the EIR will also contain other sections, including: 1) Significant Unavoidable Impacts; 2) Growth Inducing Impacts; 3) Significant Irreversible Environmental Changes; 4) EIR References and Organizations & Persons Consulted; and 5) EIR Authors.

Task 2: Draft Focused EIR and Notice of Completion

Revision of Administrative Draft EIR/Preparation of Draft EIR

Once the City provides DJP&A with comments on the ADEIR (and Initial Study appendix), DJP&A will revise the document and submit a second Administrative Draft for review and comment. DJP&A will revise the document and submit an electronic copy of the Screencheck Draft EIR to the City for final review and comment. DJP&A will make any final revisions to the Screencheck Draft EIR and prepare the Draft EIR for public circulation.

DJP&A will provide the City with up to 35 hard copies of the Draft EIR for public distribution, a PDF of the document for posting on the City’s website, as well as 15 hardcopies of the executive summary and 15CDs of the entire document for submittal to the State Clearinghouse.

Notice of Completion/Notice of Availability

DJP&A will prepare the Notice of Completion (NOC) and Notice of Availability (NOA), in accordance with the CEQA and City of Morgan Hill requirements. The NOC and NOA will include a brief description of the project, the project location, and will state where copies of the Draft EIR are available for review. DJP&A will submit an electronic draft of the NOC and NOA to the City for review and comment. DJP&A will revise and finalize the NOC and NOA based on City comments. This scope assumes the City will distribute the NOA locally, and DJP&A will transmit the NOC and copies of the EIR to the State Clearinghouse on behalf of the City.

Task 3: Final EIR, Mitigation Monitoring and Reporting Program, and Other Related Items

Preparation of Final EIR

Upon completion of the 45-day Draft EIR circulation period, DJP&A will prepare an Administrative Draft Final EIR. The Final EIR will contain the following:

- List of persons and agencies who commented on the Draft EIR;
- Responses to comments on the Draft EIR;
- Revisions to the EIR text, as necessary; and
- Copies of letters received on the Draft EIR.

This scope of work assumes approximately ten hours of Principal Project Manager time and 30 hours of Project Manager time to respond to comments. If additional effort is required to respond to the comments, it can be completed on a time and materials basis, in accordance with the fee schedule included with our on-call contract with the City. The participation of subconsultants in the preparation of the FEIR will require a supplemental scope based on the nature and extent of their support needed.

Up to 12 copies of the Administrative Draft Final EIR will be submitted to City Staff for review. The document will be revised per the comments received, and DJP&A will provide up to 25 copies of the Final EIR to the City for public distribution. DJP&A will also provide the City with a PDF of the document for posting on the City's website.

Preparation of Mitigation Monitoring and Reporting Program

DJP&A will prepare a draft MMRP for the project. The MMRP will summarize the mitigation measures identified, when mitigation measures will be implemented, who will be responsible for implementation, and who will provide oversight. DJP&A will submit a draft of the MMRP for the City's use prior to the project hearing.

Findings

Although we are not attorneys and do not prepare legal findings, DJP&A will assist City Staff and the City Attorney in compiling information from the EIR for findings required under CEQA Guidelines Section 15091, if requested to do so. This scope does not assume DJP&A's support in drafting a Statement of Overriding Considerations, should one be required.

Notice of Determination

If the project is approved, DJP&A will prepare a Notice of Determination (NOD), in accordance with CEQA and City of Morgan Hill requirements. The NOD will include a brief project description, date of project approval, determination of the project's environmental effects, mitigation measures and

conditions of approval, statement whether overriding considerations were adopted, and the location where the Final EIR and record of project approval may be examined.

DJP&A will submit an electronic copy of the draft NOD for the City's review. Based on comments received from the City, DJP&A will revise and finalize the NOD and file along with applicable CDFW filing fees at the County Clerk and SCH. An electronic copy of the finalized NOD will be submitted to the City.

Task 4: Meetings and Hearing Attendance, Project Management

Attendance of Meetings and Hearings

This scope of work includes DJP&A Principal and Project Manager attendance at up to two project/community meetings and two public hearings (e.g., one Planning Commission hearing and one City Council hearing). DJP&A can attend additional public hearings or meetings requested on a time and materials basis.

Project Management

DJP&A will provide general EIR project management, contract administration, and coordination with the City and project team throughout the EIR process. The DJP&A Project Manager will coordinate with the City on a regular basis using email and telephone communications.

Estimated Schedule

DJP&A proposes the following optimum schedule for preparation of the EIR. DJP&A can commit to maintain the schedule in the areas that are within our control. Completion of the EIR, as outlined in the schedule below, is based upon receipt of project information listed on the following page in accordance with the schedule. Delays in receiving requested information or responses by others will result in at least day-for-day delays in the overall schedule. The schedule is expected to take 40 weeks to have the project eligible for Planning Commission hearing (i.e. 10 days after release of FEIR), which if authorized by end of February, allows for public hearings in first week of December 2019.

Task	Duration of Task	Time Elapsed
1. DJP&A receives authorization to proceed and requested project information	---	1 day
2. DJP&A submits project description and NOP for City review	0.5 week	Week 0.5
3. City provides all comments on project description and NOP	0.5 weeks	Week 1
4. DJP&A revises NOP and provides to City for public circulation	0.5 week	Week 1.5
5. Circulation of NOP complete and responses provided to DJP&A (scoping meeting scheduled during 30-days)	4 weeks	Week 5.5
6. DJP&A receives technical reports*	14 weeks	Week 14
7. DJP&A submits Administrative Draft EIR (ADEIR)	2 weeks	Week 16
8. City staff review of ADEIR	3 weeks	Week 19
9. DJP&A revises ADEIR, prepared 2 nd ADEIR	2 weeks	Week 21
10. City staff review of 2 nd ADEIR complete	2 weeks	Week 23
11. DJP&A prepares Screencheck Draft EIR	1 week	Week 24
12. City staff review of Screencheck Draft EIR	0.5 week	Week 24.5
13. DJP&A makes final revisions and prints Draft EIR for circulation	0.5 week	Week 25

Trammell Crow Morgan Hill Technology Center and Mixed-Use Project
February 7, 2019

14. Draft EIR 45-day Public Review	6.5 weeks	Week 31.5
15. DJP&A prepares Administrative Draft Final EIR (ADFEIR)	2.5 weeks	Week 34
16. City staff reviews ADFEIR	2 weeks	Week 36
17. DJP&A revises ADFEIR and submits Screencheck Final EIR	1 weeks	Week 37
18. City staff reviews and approves Screencheck Final EIR	1 week	Week 38
19. DJP&A revises Screencheck FEIR and print Final EIR for circulation	0.5 week	Week 38.5
20. City circulates Final EIR for 10 days	1.5 weeks	Week 40
21. Public Hearings	TBD	TBD
Total		+/- 40 weeks

*The traffic report will take 14 weeks and drives the overall schedule. If the City were to rely solely on VMT to evaluate the project, per SB 743 amendments, the schedule could be reduced substantially. Should the City desire to begin reviewing the 1st ADEIR ahead of the TIA, a 1st ADEIR without Traffic section (and related discussions of Cumulative Traffic and Alternative(s) designed to avoid traffic impacts), could be provided 2-4 weeks earlier, based on completion of AQ/GHG and Noise technical reports. The Traffic section would be added to the EIR as part of the 2nd Admin Draft. This approach would not have an effect on the overall schedule.

Project Information Required from Trammell Crow

Our scope and schedule are based on the assumption that we will receive the below project information concurrent with the authorization to proceed.

Plans (in PDF)

- ☐ Project plans, including landscaping plan, stormwater control plan, utility plan, grading plan, and parking and circulation plan
- ☐ Building elevations/cross-sections
- ☐ Renderings (if available)
- ☐ Lighting plan

Project Details

- ☐ Written description of the project, including maximum development assumptions and discretionary approvals
- ☐ Construction details, including duration, maximum depth of excavation, and total amount of cut/fill
- ☐ Utility improvements (if any)
- ☐ Right of way improvements (if any)
- ☐ Green building measures, LEED or Greenpoint certification details
- ☐ List of Best Management Practices to conform to Provisions C.3 of the NPDES permit
- ☐ Project objectives

Technical Reports

- ☐ Phase I/II reports (received)
- ☐ Arborist Report
- ☐ Geotechnical Investigation (received)

Cost Estimate

Based on our understanding of the project and technical reports required, the cost for preparation of the EIR is estimated not to exceed **\$229,844**. Should the City prefer, a 10% contingency could be included in the contract to allow for unanticipated tasks, in which case the amount would be \$252,828. Use of funds from the contingency would only be as authorized by the City. Payment will be due on a monthly basis. A breakdown of the cost estimate is provided below. Costs will be charged on a time and materials basis, commensurate with work completed, in accordance with the charge rate schedule outlined on the following page. If DJP&A does not need all the time that has been budgeted, we will only bill for the time actually spent completing the work.

This scope is valid for 90 days and assumes that no issues that arise would require any additional technical analysis or documentation. In the event additional technical analysis is required, we can complete that work on a time and materials basis, upon your authorization. Project description changes after our notice to proceed is received may have schedule and budget implications.

David J. Powers & Associates, Inc.

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|--|----------|
| • Preparation of Environmental Impact Report | \$65,385 |
| • Reimbursables (travel, printing, etc.)* | \$3,272 |
| • CDFW Filing Fee and NOD Fee | \$3,321 |

Subconsultants*

- | | |
|---|----------|
| • Hexagon Transportation Consultants (Traffic) | \$88,550 |
| • Urban Programmers (Historic Resources Evaluation) | \$6,009 |
| • Todd Groundwater (WSA) | \$24,967 |
| • Illingworth & Rodkin (Noise) | \$14,030 |
| • Illingworth & Rodkin (AQ) | \$13,455 |
| • Illingworth & Rodkin (GHG) | \$3,795 |
| • Basin Research Associates (archaeology) | \$6,785 |

Total	\$229,844
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Total with 10% Contingency	\$252,828
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* Subconsultant and reimbursable expenses include our standard 15 percent administrative fee.

EXHIBIT B - SCHEDULE OF COMPENSATION RATES

CHARGE RATE SCHEDULE¹

SENIOR PRINCIPAL	\$ 250.00 PER HOUR
PRINCIPAL PROJECT MANAGER	\$ 220.00 PER HOUR
SENIOR ENVIRONMENTAL SPECIALIST	\$ 195.00 PER HOUR
SENIOR PROJECT MANAGER	\$ 175.00 PER HOUR
ENVIRONMENTAL SPECIALIST	\$ 160.00 PER HOUR
PROJECT MANAGER	\$ 150.00 PER HOUR
ASSOCIATE PROJECT MANAGER	\$ 135.00 PER HOUR
ASSISTANT PROJECT MANAGER	\$ 110.00 PER HOUR
RESEARCHER	\$ 95.00 PER HOUR
DRAFTSPERSON/GRAPHIC ARTIST	\$ 85.00 PER HOUR
DOCUMENT PROCESSOR/QUALITY CONTROL	\$ 85.00 PER HOUR
ADMINISTRATIVE MANAGER	\$ 85.00 PER HOUR
OFFICE SUPPORT	\$ 70.00 PER HOUR

MATERIALS, OUTSIDE SERVICES AND SUBCONSULTANTS INCLUDE A 15% ADMINISTRATION FEE.

MILEAGE WILL BE CHARGED PER THE CURRENT IRS STANDARD MILEAGE RATE AT THE TIME COSTS OCCUR.

SUBJECT TO REVISION JANUARY 2012

¹ David J. Powers & Associates, Inc. provides regular, clear and accurate invoices as the work on this project proceeds, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO MORGAN HILL JET ELECTRIC ON-CALL MAINTENANCE SERVICE AGREEMENT

RECOMMENDATION(S)

Approve the Second Amendment to the on-call maintenance service agreement with Morgan Hill JET Electric, Inc. for an additional \$15,000 in services increasing the total contract amount to \$100,000 for the term through June 30, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this item is to provide the Council with an opportunity to consider a second amendment to the City's on-call electrical maintenance service agreement with Morgan Hill JET Electric, Inc. The current not to exceed amount of the maintenance service agreement is \$85,000. This second amendment would bring the not to exceed amount to \$100,000, an increase of \$15,000. The additional \$15,000 is needed to cover maintenance related projects through the remainder of the term, June 30, 2019. These projects include tennis court lights, the corporation yard LED light project, various parks LED lighting projects, concert exit lights and additional electrical outlets at the Community and Cultural Center.

Morgan Hill JET Electric, Inc. has provided electrical maintenance services to the City of Morgan Hill for many years. Maintenance staff is very satisfied with the level of service provided by this electrician. Staff recommends increasing their maintenance service agreement by \$15,000 for a new total contract amount of \$100,000. While there are two other electricians on-call with the City, maintenance staff has found JET Electric to be the most responsive to work requests.

COMMUNITY ENGAGEMENT: Not Applicable

Electrical maintenance services are normally expected to be performed at City facilities, therefore no community engagement was completed for this contract.

ALTERNATIVE ACTIONS:

The Council could reject this Second Amendment and provide direction to staff to work with other on-call electricians until the new on-call electrical agreements are in place on July 1, 2019. The City has released a Request for Proposals (RFP) for on-call

electrician services. Staff anticipates returning to Council with the RFP results and a recommendation on June 5, 2019.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The First Amendment to JET Electric's Maintenance Service Agreement was approved by the City Council on May 16, 2018.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this maintenance service agreement will be \$100,000. Budgetary appropriations for the additional on-call electrical maintenance services are included in the adopted Fiscal Year 2018-19 Budget for the various city facilities and cost centers receiving services under this agreement. No additional appropriations are needed at this time.

CEQA (California Environmental Quality Act):

Categorical Exemption.

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Morgan Hill JET Electric Second Amendment

SECOND AMENDMENT TO AGREEMENT MORGAN HILL J.E.T. ELECTRIC, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MORGAN HILL J.E.T. ELECTRIC, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement made as of September 27, 2016, for services for a maximum compensation of FORTY-FIVE THOUSAND AND 00/100 DOLLARS (\$45,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of May 24, 2018, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$85,000.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Total compensation to SERVICE PROVIDER under this Agreement during the term set forth in Section 2 above shall not exceed ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00). Effective July 1, 2018, CITY shall be billed based on the rate and basis set forth in revised **Exhibit B** Schedule of Compensation Rates dated April 26, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement."

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or the FIRST AMENDMENT, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

MORGAN HILL J.E.T. ELECTRIC, INC

Donald A. Larkin, City Attorney

Date: _____

By: _____

Title: JAMES E. TARP - PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 3/21/19

Karen L. Tarp

By: _____

Title: Karen L. Tarp Secretary

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 3/21/19

12804-16-02

FIRST AMENDMENT TO AGREEMENT MORGAN HILL J.E.T. ELECTRIC, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on May 24, 18 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, MORGAN HILL J.E.T. ELECTRIC, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May 16, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 27, 2016, for services for a maximum compensation of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from September 27, 2016, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Total compensation to SERVICE PROVIDER under this Agreement during the term set forth in Section 2 above shall not exceed EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$85,000.00). Effective July 1, 2018, CITY shall be billed based on the rate and basis set forth in revised **Exhibit B** Schedule of Compensation Rates dated April 26, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"9. Compliance with Law.

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the

City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section."

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST

Deputy

City Clerk

Date:

5/30/18

CITY OF MORGAN HILL

City Manager

Date:

5/24/18

APPROVED AS TO FORM:

for

City Attorney

Date:

5-21-18

MORGAN HILL J.E.T. ELECTRIC, INC.

By:

Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

4/30/18

By:

Title:

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date:

4/30/18

JET Electric, Inc.
First Amendment to Agreement
Revised Exhibit "B" - Schedule of Compensation Rates

JET Electric
16230 Church St.
Morgan Hill, CA 95037
Lic. #342193
(408) 779-6695

April 26, 2018

City Of Morgan Hill
17575 Peak Ave.
Morgan Hill, Ca. 95037

Re: Exhibit B - New Schedule of Compensation Rates starting July 1, 2018

Normal Working Hours (8:00 a.m. to 4:30 p.m.) Monday through Friday: \$205.00 per hour. After Hours Charged at time and a half normal rates (1.5 times x \$205.00): \$307.50 per hour. Trip Charge (Truck Charges) are \$50.00 per invoice for normal working hours and after hours.

Jim Tarp
Owner
JET Electric

128-04-16-027

EXHIBIT "1"

MAINTENANCE SERVICE AGREEMENT
Morgan Hill J E T Electric, Inc.

THIS AGREEMENT is entered into and becomes effective on 9/27/14 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Morgan Hill J E T Electric, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call electrical maintenance and repair services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$45,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed forty-five thousand dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work

product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws: SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

8. **Insurance Requirements.** SERVICE PROVIDER shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of SERVICE PROVIDER, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. SERVICE PROVIDER further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to SERVICE PROVIDER, at any time as deemed necessary to protect the interests of the CITY.

8.1. **Insurance Types and Amounts.**

8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.1.2. Automobile Liability. SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. Professional Liability.
- 8.1.5.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 8.1.5.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware

engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.2. **Endorsements.** SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

8.2.1. **General Liability.**

8.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

8.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 8.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the SERVICE PROVIDER's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill

Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

9. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
10. **Compliance with Law.**
 - 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
 - 10.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
 - 10.3. DIR Registration. The City will not accept a Bid Proposal from or enter into a contract with a Contractor, without first receiving proof to the satisfaction of City that Contractor and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Morgan Hill J E T Electric, Inc.
16230 Church Street, Ste. A
Morgan Hill, CA 95037

Address of CITY is as follows:

Director of Community Services	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

16. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

16.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **No Assignment**. Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Attorney Fees**. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

22. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

26. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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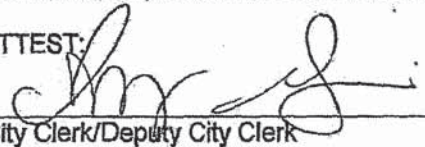
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

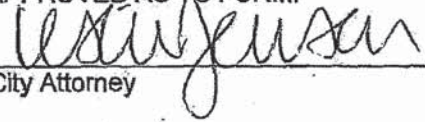
ATTEST:


City Clerk/Deputy City Clerk

for Michelle Wilson
Print Name

Date: 9/27/16

APPROVED AS TO FORM:


City Attorney

for Donald A. Larkin
Print Name

Date: 09/26/16

342193
Contractor's License Number(s) (if applicable)

Seal:

P:\Forms\Consultant Agreements\City Maintenance Service Agreement 10-5-15.Docx

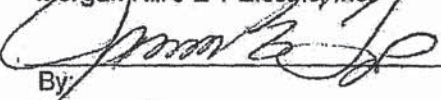
CITY OF MORGAN HILL


City Manager

Steve Rymer
Print Name

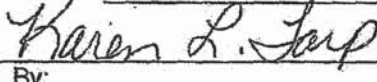
Date: 9/27/16

Morgan Hill JET Electric, Inc.


By:

Title: JAMES E. TARP - PRESIDENT
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date:


By:

Title: Karen L. Tarp - Secretary
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date:

Expiration Date(s)

EXHIBIT A SCOPE OF SERVICES

The State licensed Electrical Contractors will provide On-Call Electrical Maintenance and Repair Services at various City facilities. Contractor will provide full-service, on-call electrical maintenance and repair services and administer the duties and responsibilities, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call electrical maintenance and repair work at various City facilities including, but not limited to those listed in Section 2-4 of this Exhibit A.

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, wiring and testing electrical service and electrical wire systems and components used to provide heat, light, power, air conditioning, and refrigeration in municipal buildings and facilities. Services may also include installing and repairing conduit and other materials; connecting electrical machinery, equipment and controls and transmission systems and servicing other electrical related issues as they arise and services necessary to insure safe, well maintained electrical systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

It is the intent of the City of Morgan Hill to identify and establish long term partnerships with highly qualified contractors. To achieve the best level of service, the City believes that the relationship must be based on mutual trust and respect. Teamwork, flexibility, and cooperation will be essential characteristics of the successful Contractor.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call electrical maintenance and repair services to City Facilities as outlined in this document. Contractor shall retain professional personnel who have successfully and competently provided municipal facility electrical maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of electrical systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry,

skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility electrical maintenance and repair functions during hours of operation and for response after normal working hours. Proposer shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from October 1, 2016 through June 30, 2018. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2018. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Electrical Maintenance and Repair Services to the City.

Pricing entries in the Bid Proposal apply to the period of October 1, 2016 to June 30, 2018. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2018.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p.m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two (2) hour response time
NON-EMERGENCIES..... four (4) hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the contractor shall provide the ability to respond immediately to

situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call electrical maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-10 General Electrical license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state Journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS: including, but not limited to locations described in Section 2-4 above.

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining electrical systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing electrical systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of electrical systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 FINGERPRINTING (Live Scan State of California Criminal Records Check): All Contractor staff who will be working on City facilities must pass a State of California Department of Justice Criminal Records Check. Fingerprinting Appointments can be scheduled at the Morgan Hill Police Department (16200 Vineyard Boulevard, Morgan Hill) by calling 408-776-7300. Live Scan (Criminal Records Check Request) Forms are available at www.morganhill.ca.gov (Department Tab: Police Department Link) and the fingerprint fee is \$52.00 per person (payable at the time of the appointment). The Contractor is responsible for providing the City of Morgan Hill with updated records check information for their employees.

2-16 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Normal Working Hours (8:00 a.m. to 4:30 p.m.) Monday through Friday: \$185.00 per hour

After Hours Charged at time and a half normal rates (1.5 times X \$185): \$277.50 per hour

Trip Charge (Truck Charges) are \$40.00 per invoice for normal working hours and after hours.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

To be scheduled with City of Morgan Hill Maintenance Manager or other appropriate city staff.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Hilary Holeman, Administrative Analyst
APPROVED BY: City Manager

RATIFY CITY POSITION ON PENDING LEGISLATION AB 1783 H-2A WORKER HOUSING: STATE FUNDING: STREAMLINED APPROVAL PROCESS FOR AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT

RECOMMENDATION(S)

1. Receive legislative correspondence in support of AB 1783 (R. Rivas) "H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development"; and
2. Ratify City's position.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

Regional Initiatives
Homelessness
Housing

REPORT NARRATIVE:

Per Resolution No. 6851, the City Council recognizes occasional situations arise where communication indicating support or opposition on pending State legislation is timely and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position on pending legislation as long as the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy. When this occurs, a written report to the City Council for comment and acceptance is required at the next possible meeting.

On March 26, 2019, the office of State Assembly Member Robert Rivas requested the City's support of farmworker housing bill AB 1783 before the rollout of the bill on April 2, 2019. AB 1783 would continue to provide access to state resources and add a streamlined process to build dignified, quality housing for farmworkers and their families. By developing long-term, permanent housing on their own land, an agricultural

company would have the opportunity to retain and develop a more knowledgeable workforce. Through its focus on family housing, this bill also seeks to address the children's homelessness crisis in our community and improve continuity of education.

The City feels strongly about improving farmworker living conditions in South County and therefore submitted a letter of support (Attachment No. 3) electronically on March 28, 2019 via the California Legislature Advocates Portal, before the April 2, 2019 rollout as requested.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the letter that the City sent regarding AB 1783.

ALTERNATIVE ACTIONS:

Council could rescind position taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

No fiscal impact at this time. Tracking legislation is an activity included in the annual workplan of the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project - Proposals for legislation to be enacted by the State Legislature.

LINKS/ATTACHMENTS:

1. Resolution 6851
2. AB1783 Farmworkers Housing Bill Text
3. AB 1783 Farmworker Housing Letter of Support

RESOLUTION NO. 6851

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE LEGISLATION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report entitled "City Position on Pending State Legislation" submitted for City Council consideration at its meeting of April 16, 2014, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council prefers, whenever possible, that determinations on whether to take a position on pending State legislation be brought before

the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State legislation that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State legislation that may have impacts upon City when all of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending State legislation or the City has otherwise become aware of such pending State legislation; and
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending State legislation is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending State legislation; and
 - iii. The pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending State legislation.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending State legislation pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending State legislation and the comment or position transmitted.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 16th day of April, 2014 by the following vote:

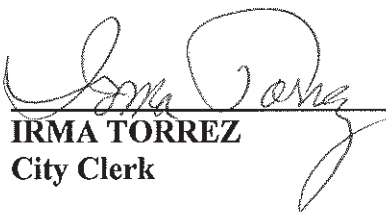
AYES: **COUNCIL MEMBERS:** Rich Constantine, Marilyn Librers, Gordon Siebert, Steve Tate

NOES: **COUNCIL MEMBERS:** None

ABSTAIN: **COUNCIL MEMBERS:** None

ABSENT: **COUNCIL MEMBERS:** Larry Carr

ATTEST:



IRMA TORREZ
City Clerk



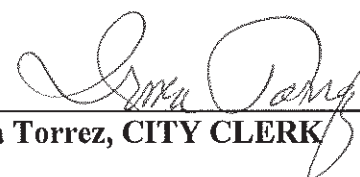
STEVE TATE, Mayor

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 6851, adopted by the City Council at the meeting held on April 16, 2014.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 4/21/2014



Irma Torrez, CITY CLERK

AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1783

Introduced by Assembly Member Robert Rivas

(Coauthors: Senators Durazo and Wiener)

February 22, 2019

An act to amend Sections 12745, 12760, 12767, 12787, and 65582.1 of, and to add Section 12788 to, the Government Code, *and* to amend Sections 17008, 17021, 17021.6, 17030, 17035, 17037, 17037.5, 50470, 50517.10, and 50715 of, and to add Sections 17021.8, 17030.10, and 50205 to, the Health and Safety Code, ~~and to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code,~~ relating to agricultural employee housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1783, as amended, Robert Rivas. H-2A worker housing: state funding: ~~tax credits~~: streamlined approval process for agricultural employee housing development.

(1) Existing federal law governing immigration authorizes the importation of an alien as a nonimmigrant agricultural worker, known as an H-2A worker, if specified requirements are met, including that the employer furnish housing, as provided.

~~(A) Existing~~

Existing state law establishes various housing programs administered by the Department of Housing and Community Development, including the Joe Serna, Jr. Farmworker Housing Grant Program, pursuant to which the department provides, subject to availability of funds, grants and loans to specified entities ~~or for~~ *for* the construction or rehabilitation of housing for agricultural employees and their families or for the

acquisition of manufactured housing, as provided. Existing state law, the California Community Services Block Grant Program, requires the ~~department~~ *Department of Community Services and Development* to administer the federal Community Services Block Grant funds to provide financial assistance for activities designed to have a measurable and potentially major impact on causes of poverty in a community or areas of a community where poverty is a particularly acute problem. Existing law authorizes this funding to assist programs that, among other things, meet the needs of migrant and seasonal farmworkers and their families, such as improved housing and sanitation, including the provision and maintenance of emergency and temporary housing and sanitation facilities.

This bill would prohibit the provision of state funding, as defined, for the purposes of planning, developing, or operating any housing used to comply with the federal law requirement to furnish housing to H-2A workers and would require an employer, as defined, or other recipient of state funding who utilizes state funding for these purposes to reimburse the state or state agency that provided the funding in an amount equal to the amount of that state funding expended for those purposes. The bill would exempt from these provisions any contract or other enforceable agreement pursuant to which the state or a state agency provides funding that was entered into prior to January 1, 2020. The bill would also make various conforming changes to other laws.

~~(B) Existing law establishes a low-income housing tax credit program pursuant to which the California Tax Credit Allocation Committee provides procedures and requirements for the allocation of state insurance, personal income, and corporation tax credit amounts among qualified low-income housing projects in modified conformity to federal law that have been allocated, or qualify for, a federal low-income housing tax credit, and for farmworker housing. Existing law allows a state credit, which is not dependent on receiving a federal low-income housing credit, of \$500,000 per calendar year for projects to provide farmworker housing. Existing law additionally allows an amount of any unallocated or returned credits, as specified, until fully exhausted for projects to provide farmworker housing. Existing law defines "farmworker housing" to mean housing for agricultural workers that is available to, and occupied by, only farmworkers and their households.~~

~~This bill, under the law governing the taxation of insurers, the Personal Income Tax Law, and the Corporation Tax Law, would prohibit the~~

~~above-described tax credits for any farmworker housing used to comply with the federal law requirement to furnish housing to H-2A workers.~~

(2) The Planning and Zoning Law requires that the housing element of a city's or county's general plan include, among other things, that the housing element of a city's or county's general plan include, among other things, an analysis of any special housing needs, including the needs of, among others, farmworkers. Existing law exempts certain housing developments from conditional use permits and requires those developments to be subject to certain streamlined approval processes, as specified.

Existing law, the Employee Housing Act, requires a person operating employee housing, as defined, to obtain a permit to operate that housing from the agency that enforces the act, which ~~can~~ *may* either be the Department of Housing and Community Development or a city, county, or city and county that assumes responsibility for enforcing the act. The act generally reserves local use zone requirements to local governments except as provided, including requiring a specified streamlined approval process for ~~the~~ certain improvements related to employee housing for agricultural employees. The act also deems ~~certain~~ *employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household to be* an agricultural land use and prohibits a local government from requiring a conditional use permit, zoning variance, or other zoning clearance for the employee housing, or from subjecting the employee housing to certain taxes or fees that are not required for other agricultural activity in that zone. A violation of the act is a misdemeanor.

This bill would expand the definition of employee housing under the act to include agricultural employee housing, as defined, and would require the department to be the enforcement agency for agricultural employee housing. The bill would provide that a tenant residing in agricultural employee housing has all rights applicable to a person residing in employee housing under existing provisions, including the California Fair Employment and Housing Act and specified provisions relating to tenant rights. The bill would require the department to establish and administer, as specified, an application and review process for certifying that a person is an affordable housing organization qualified to operate *specified* agricultural employee housing. The bill also would require the department to establish and maintain a roster of all certified affordable housing organizations. The bill would, as an exception to the provision reserving local use zone requirements to

local governments, authorize a development proponent to submit an application for an agricultural employee housing development that is subject to an unspecified streamlined, ministerial approval process and that is not subject to a conditional use permit if certain conditions are satisfied, including that the agricultural employee housing will be maintained and operated by a qualified affordable housing organization that has been certified by the department and has been issued a permit to operate the agricultural employee housing from the department. *The bill would provide that agricultural employee housing approved under this process is not subject to the density limitations otherwise required to be considered an agricultural land use and exempt from local approval, taxes, and fees, as described above.* The bill would also require, as a condition of that approval process, the qualified affordable housing organization and the landowner to obligate themselves and any successors in interest to maintain the affordability of the proposed agricultural employee housing, as specified, for not less than 55 years. If that organization does not continue to operate and maintain the housing for the time period agreed to satisfy that condition, the bill would require the landowner *who obtained approval of the housing* to select an alternative certified person within 90 days, and would subject the landowner to an unspecified administrative penalty if the landowner fails to do so. By increasing the duties of local officials with respect to the Employee Housing Act, and by expanding the scope of an existing crime with respect to violations of the Employee Housing Act, this bill would impose a state-mandated local program. The bill would make related findings and declarations, and would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities. The bill would make various conforming changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the

environment. CEQA does not apply to the approval of ministerial projects.

Because the approval process established by the bill is streamlined and ministerial in nature, the approval of projects subject to this process are exempt from CEQA.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

~~This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12745 of the Government Code is
- 2 amended to read:
- 3 12745. (a) Eligible activities for which financial assistance
- 4 may be obtained pursuant to this chapter shall be designed to have
- 5 a measurable and potentially major impact on causes of poverty
- 6 in the community or those areas of the community where poverty
- 7 is a particularly acute problem. These activities shall be designed
- 8 to assist low-income participants to do all the following:
- 9 (1) Secure and retain meaningful employment.
- 10 (2) Attain an adequate education.
- 11 (3) Make better use of available income.
- 12 (4) Obtain and maintain adequate housing and suitable living
- 13 environment subject to Section 12788.
- 14 (5) Obtain emergency assistance through loans or grants to meet
- 15 immediate and urgent individual and family needs, including the
- 16 need for health services, nutritious food, housing and
- 17 employment-related assistance subject to Section 12788.
- 18 (6) Remove obstacles and solve problems that block the
- 19 achievement of self-sufficiency.
- 20 (7) Achieve greater participation in the affairs of the community.
- 21 (8) Address the needs of youth in low-income communities.

1 (9) Make more effective use of other programs related to the
2 purposes of this chapter.

3 (b) Additionally, activities shall be designed to do all of the
4 following:

5 (1) Provide on an emergency basis for the provision of the
6 supplies and services, nutritious foodstuffs, and related services,
7 as may be necessary to counteract conditions of starvation and
8 malnutrition among the poor.

9 (2) Coordinate and establish linkages between governmental
10 and other social services programs to assure the effective delivery
11 of those services to low-income individuals.

12 (3) Encourage the use of entities in the private sector of the
13 community in efforts to ameliorate poverty in the community.

14 (c) Each eligible entity shall, through the local planning process,
15 select and propose for funding the programs or projects that, in its
16 judgment, will produce the maximum impact on its community.

17 (d) Entities eligible for funding under Article 9 (commencing
18 with Section 12775) are limited purpose agencies that need not
19 respond to the broad range of eligible activities but may provide
20 specialized training, technical assistance and support services to
21 enhance the effectiveness of community action programs, migrant
22 and seasonal farmworker programs, and American Indian programs.

23 (e) The department may prescribe statewide priorities among
24 eligible activities or strategies that shall be considered and
25 addressed in the local planning process and described in the
26 community action plan submitted to the state. Each eligible entity
27 shall be authorized to set its own program priorities in conformance
28 to its own determination of local needs.

29 (f) If no other entity in the community provides those services,
30 eligible entities under Article 6 (commencing with Section 12750),
31 Article 7 (commencing with Section 12765), or Article 8
32 (commencing with Section 12770) shall provide a minimum level
33 of services to help the poor receive the benefits for which they are
34 eligible under health, food, income, and housing assistance
35 programs designed to meet the basic survival needs of the poor
36 subject to Section 12788. These services shall include, but shall
37 not be limited to, all of the following:

38 (1) A service to help the poor complete the various required
39 application forms, and, when necessary and possible, to help them
40 gather verification of the contents of completed applications.

1 (2) A service to explain program requirements and client
2 responsibilities in programs serving the poor.

3 (3) A service to provide transportation, when necessary and
4 possible.

5 (4) A service that does all things necessary to make the programs
6 accessible to the poor, so that they may become self-sufficient.

7 (g) Standards of effectiveness to be addressed and attained in
8 setting goals and assessing accomplishments are:

9 (1) Strengthened community capabilities for planning and
10 coordinating so as to insure that available assistance related to the
11 elimination of poverty can be more responsive to local needs and
12 conditions.

13 (2) Better organization of services related to the needs of the
14 poor.

15 (3) Maximum feasible participation of the poor in the
16 development and implementation of all programs and projects
17 designed to serve the poor.

18 (4) Broadened resource base of programs directed to the
19 elimination of poverty so as to include all elements of the
20 community able to influence the quality and quantity of services
21 to the poor.

22 (5) Greater use of new types of services and innovative
23 approaches in attacking causes of poverty, so as to develop
24 increasingly effective methods of employing available resources.

25 (6) Maximum employment opportunity, including opportunity
26 for further occupational training and career development for
27 residents of the area and members of the groups served.

28 (7) Those programmatic and fiscal standards set by the
29 department through regulation that are necessary to enable the
30 department to demonstrate the assurances and certifications it
31 makes to the secretary in the state plan.

32 (h) In administering the California Community Services Block
33 Grant Program, the department shall enforce all the programmatic
34 and fiscal requirements and standards of effectiveness provided
35 by this chapter, except that no eligible entity shall be determined
36 to be out of compliance with programmatic or fiscal requirements
37 established by the department until those requirements and
38 standards are published for review and comment by the eligible
39 entities and until eligible entities are afforded a reasonable
40 opportunity to comply therewith.

1 SEC. 2. Section 12760 of the Government Code is amended
2 to read:

3 12760. Subject to Section 12788, community action agencies
4 funded under this article shall coordinate their plans and activities
5 with other eligible entities funded under Articles 7 (commencing
6 with Section 12765) and 8 (commencing with Section 12770) that
7 serve any part of their communities, so that funds are not used to
8 duplicate particular services to the same beneficiaries and plans
9 and policies affecting all grantees under this chapter are shaped,
10 to the extent possible, so as to be equitable and beneficial to all
11 community agencies and the populations they serve.

12 SEC. 3. Section 12767 of the Government Code is amended
13 to read:

14 12767. Subject to Section 12788, programs assisted under this
15 article may include projects or activities to do any of the following:

16 (a) Meet the immediate needs of migrant and seasonal
17 farmworkers and their families, such as ~~day care~~ *daycare* for
18 children and elderly persons, education, health services, improved
19 housing and sanitation, including the provision and maintenance
20 of emergency and temporary housing and sanitation facilities, legal
21 advice and representation, and consumer training and counseling,
22 and assistance in processing applications for legalization and
23 citizenship.

24 (b) Promote increased community acceptance of migrant and
25 seasonal farmworkers and their families.

26 (c) Equip unskilled migrant and seasonal farmworkers and
27 members of their families, as appropriate, through education,
28 training, and developmental programs to meet the changing
29 demands in agricultural employment brought about by
30 technological advancement and economic exigencies, and to take
31 advantage of opportunities available to improve their well-being
32 and self-sufficiency by gaining regular or permanent employment
33 or by participating in available federally assisted employment or
34 training programs.

35 (d) Provide such other services as are permissible under Section
36 12745 with specific focus on the needs of migrant and seasonal
37 farmworkers and their families.

38 SEC. 4. Section 12787 of the Government Code is amended
39 to read:

12787. Except as provided in Section 12788, this chapter shall not be construed to prohibit an eligible entity under Article 6 (commencing with Section 12750), Article 7 (commencing with Section 12765), or Article 8 (commencing with Section 12770), from applying for state discretionary funds, provided that no discretionary funding received by the eligible entity shall be used to duplicate services funded pursuant to other provisions of this chapter.

SEC. 5. Section 12788 is added to the Government Code, to read:

12788. On and after January 1, 2020, housing funded pursuant to this chapter shall not include housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers, as defined in Section 50205 of the Health and Safety Code. A person who receives funds made available pursuant to this chapter on or after January 1, 2020, and expends any of those funds for the purpose of planning, developing, or operating housing described in this article shall reimburse the department or other state agency that provided those funds, as provided in paragraph (2) of subdivision (b) of Section 50205 of the Health and Safety Code.

SEC. 6. Section 65582.1 of the Government Code is amended to read:

65582.1. The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:

(a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).

(b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).

(c) Restrictions on disapproval of housing developments (Section 65589.5).

(d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).

(e) Least cost zoning law (Section 65913.1).

(f) Density bonus law (Section 65915).

(g) Accessory dwelling units (Sections 65852.150 and 65852.2).

1 (h) By-right housing, in which certain multifamily housing ~~are~~
 2 is designated a permitted use (Section 65589.4).

3 (i) No-net-loss-in zoning density law limiting downzonings and
 4 density reductions (Section 65863).

5 (j) Requiring persons who sue to halt affordable housing to pay
 6 attorney fees (Section 65914) or post a bond (Section 529.2 of the
 7 Code of Civil Procedure).

8 (k) Reduced time for action on affordable housing applications
 9 under the approval of development permits process (Article 5
 10 (commencing with Section 65950) of Chapter 4.5).

11 (l) Limiting moratoriums on multifamily housing (Section
 12 65858).

13 (m) Prohibiting discrimination against affordable housing
 14 (Section 65008).

15 (n) California Fair Employment and Housing Act (Part 2.8
 16 (commencing with Section 12900) of Division 3).

17 (o) Community redevelopment law (Part 1 (commencing with
 18 Section 33000) of Division 24 of the Health and Safety Code, and
 19 in particular Sections 33334.2 and 33413).

20 (p) Streamlining housing approvals during a housing shortage
 21 (Section 65913.4).

22 (q) Housing sustainability districts (Chapter 11 (commencing
 23 with Section 66200)).

24 (r) Streamlining agricultural employee housing development
 25 approvals (Section 17021.8 of the Health and Safety Code).

26 SEC. 7. Section 17008 of the Health and Safety Code is
 27 amended to read:

28 17008. (a) “Employee housing,” as used in this part, means
 29 any portion of any housing accommodation, or property upon
 30 which a housing accommodation is located, if all of the following
 31 factors exist:

32 (1) The accommodations consist of any living quarters, dwelling,
 33 boardinghouse, tent, bunkhouse, maintenance-of-way car,
 34 mobilehome, manufactured home, recreational vehicle, travel
 35 trailer, or other housing accommodations, maintained in one or
 36 more buildings or one or more sites, and the premises upon which
 37 they are situated or the area set aside and provided for parking of
 38 mobilehomes or camping of five or more employees by the
 39 employer.

1 (2) The accommodations are maintained in connection with any
2 work or place where work is being performed, whether or not rent
3 is involved.

4 (b) (1) Except as provided in paragraphs (2) and (3), “employee
5 housing,” as used in this part, also includes any portion of any
6 housing accommodation or property upon which housing
7 accommodations are located, if all of the following factors exist:

8 (A) The housing accommodations or property are located in
9 any rural area, as defined by Section 50101.

10 (B) The housing accommodations or property are not maintained
11 in connection with any work or workplace.

12 (C) The housing accommodations or property are provided by
13 someone other than an agricultural employer, as defined in Section
14 1140.4 of the Labor Code.

15 (D) The housing accommodations or property are used by five
16 or more agricultural employees of any agricultural employer or
17 employers for any of the following:

18 (i) Temporary or seasonal residency.

19 (ii) Permanent residency, if the housing accommodation is a
20 mobilehome, manufactured home, travel trailer, or recreational
21 vehicle.

22 (iii) Permanent residency, if the housing accommodation is
23 subject to the State Housing Law and is more than 30 years old
24 and at least 51 percent of the structures in the housing
25 accommodation, or 51 percent of the accommodation if not
26 separated into units, are occupied by agricultural employees.

27 (2) “Employee housing” does not include a hotel, motel, inn,
28 tourist hotel, multifamily dwelling, or single-family house if all
29 of the following factors exist:

30 (A) The housing is offered and rented to nonagricultural
31 employees on the same terms that it is offered and rented to
32 agricultural employees.

33 (B) None of the occupants of the housing are employed by the
34 owner or property manager of the housing or any party with an
35 interest in the housing.

36 (C) None of the occupants of the housing have rent deducted
37 from their wages.

38 (D) The owner or property manager of the housing is not an
39 agricultural employer as defined in Section 1140.4 of the Labor

1 Code, or an agent, as it relates to the housing in question, of an
2 agricultural employer.

3 (E) Negotiation of the terms of occupancy of the housing is
4 conducted between each occupant and the owner of the housing
5 or between each occupant and a manager of the property who is
6 employed by the owner of the housing.

7 (F) The occupants are not required to live in the housing as a
8 condition of employment or of securing employment and the
9 occupants are not referred to live in the housing by the employer
10 of the occupants, the agent of the employer of the occupants, or
11 an agricultural employer as defined in Section 1140.4 of the Labor
12 Code.

13 (G) The housing accommodation was not at any time before
14 January 1, 1984, employee housing as defined in subdivision (a).

15 (3) "Employee housing," as defined by this subdivision, does
16 not include a hotel, motel, inn, tourist hotel, or permanent housing
17 as defined by subdivision (d) of Section 17010, that has not been
18 maintained, before January 1, 1984, or is not maintained on or
19 after that date, as employee housing, as defined in subdivision (a).

20 (c) If at any time before January 1, 1984, a housing
21 accommodation was employee housing, as defined in subdivision
22 (a), and on or after January 1, 1984, was employee housing, as
23 defined in subdivision (b), the owner and operator shall comply
24 with all requirements of this part. The owner and operator of any
25 other housing accommodation which is employee housing pursuant
26 to subdivision (b) shall be subject to the licensing and inspection
27 provisions of this part and shall comply with all other provisions
28 of this part, except that if any portion of the housing
29 accommodation is held out for rent or lease to the general public,
30 the construction and physical maintenance standards of the housing
31 accommodation shall be consistent with the applicable provisions
32 of the State Housing Law, Part 1.5 (commencing with Section
33 17910), the Manufactured Housing Act, Part 2 (commencing with
34 Section 18000); or the Mobilehome Parks Act, Part 2.1
35 (commencing with Section 18200). The owner or operator of the
36 employee housing shall designate all units or spaces which are
37 employee housing, as defined in this subdivision, for the purpose
38 of inspection and licensing by the enforcement agency, subject to
39 confirmation by the enforcement agency, based on all relevant
40 evidence.

(d) “Employee housing” does not include employee community housing, as defined by Section 17005.5, that has been granted an exemption pursuant to Section 17031.3; housing, and the premises upon which it is situated, owned by a public entity; or privately owned housing, including ownership by a nonprofit entity, and the premises upon which it is situated, financed with public funds equaling 50 percent or more of the original development or purchase cost.

(e) “Employee housing” means the same as “labor camp,” as that term may be used in this or other codes and, notwithstanding any local ordinance to the contrary in a general law or charter city, county, or city and county, shall be deemed a residential use if it exists in structures that are single-family houses or apartment houses as those terms are used in the State Housing Law (Part 1.5 (commencing with Section 17910)).

(f) (1) (A) “Employee housing,” as used in this part, also includes agricultural employee housing, as defined in paragraph (B).

(B) “Agricultural employee housing” means housing occupied by an employee of an agricultural employer, as defined in Section 1140.4 of the Labor Code, or by a farm labor contractor, as defined in Section 1682 of the Labor Code.

(2) A tenant residing in agricultural employee housing has all rights applicable to a person residing in employee housing, including the following:

(A) The right to file a verified complaint with the Department of Fair Employment and Housing alleging a violation of housing discrimination, or to assert any other right, under the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code).

(B) Any protections for tenants or lessees under the Civil Code or the Labor Code, except as otherwise provided in Section 17031.6.

(C) Any protection or right under the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code).

SEC. 8. Section 17021 of the Health and Safety Code is amended to read:

1 17021. (a) Except as provided in Sections 17021.5, 17021.6,
2 and 17021.8, local use zone requirements, local fire zones, property
3 line, source of water supply and method of sewage disposal
4 requirements are hereby specifically and entirely reserved to the
5 local jurisdictions.

6 (b) Notwithstanding any other law, with respect to a building
7 permit, grading permit, or other approval from a city or county
8 building department for the rehabilitation of real property
9 improvements that are or will be agricultural employee housing,
10 or from a city or county health department for the operation,
11 construction, or repair of a water system or waste disposal system
12 servicing agricultural employee housing, all of the following
13 processing requirements shall apply:

14 (1) The local building or health department shall have up to 60
15 calendar days to approve or deny a complete application or permit
16 request accompanied by applicable fees, or a shorter time period
17 if required by the Permit Streamlining Act (Chapter 4.5
18 (commencing with Section 65920) of Division 1 of Title 7 of the
19 Government Code). The local building or health department may
20 deny an application or permit request on procedural grounds only
21 if the denial occurs within 30 calendar days and the denial includes
22 an itemization of the procedural defects. The local building or
23 health department may deny an application or permit request on
24 substantive grounds if the denial includes an itemization of all
25 substantive defects.

26 (2) If the local building or health department does not approve
27 or deny the application or permit request within the period
28 prescribed by paragraph (1), then the Department of Housing and
29 Community Development may approve the application or permit
30 request if it determines that the plans are consistent with all
31 applicable building codes and health and safety requirements. At
32 that time, the applicant may initiate any work consistent with the
33 application or permit approved pursuant to this subdivision. Upon
34 completion of the work, any other state or local agency shall accept
35 the improvements as if the local building or health department had
36 approved them. However, if that other local agency identifies any
37 defects that would have resulted in that agency's disapproval of
38 the improvements or plans for improvement, the agency may
39 identify those defects and the applicant shall correct them. The
40 local building or health department shall inspect the plans and

1 improvements prior to and during rehabilitation and issue a
2 certificate of completion if the work is consistent with the plans
3 and all applicable building codes and health and safety
4 requirements.

5 (c) Nothing in this section shall be construed to exempt an
6 application or permit request from complying with the California
7 Environmental Quality Act (Division 13 (commencing with Section
8 21000) of the Public Resources Code).

9 (d) The Department of Housing and Community Development
10 may recover from a local building or health department costs
11 incurred to review an application or permit request in compliance
12 with paragraph (2) of subdivision (b). The amount recoverable
13 may not exceed the applicable plan check fee published by the
14 International Conference of Building Officials.

15 SEC. 9. Section 17021.6 of the Health and Safety Code is
16 amended to read:

17 17021.6. (a) The owner of any employee housing who has
18 qualified or intends to qualify for a permit to operate pursuant to
19 this part may invoke this section.

20 (b) Any employee housing consisting of no more than 36 beds
21 in a group quarters or 12 units or spaces designed for use by a
22 single family or ~~household~~ household, *or that is approved pursuant*
23 *to Section 17021.8*, shall be deemed an agricultural land use for
24 the purposes of this section. For the purpose of all local ordinances,
25 employee housing shall not be deemed a use that implies that the
26 employee housing is an activity that differs in any other way from
27 an agricultural use. No conditional use permit, zoning variance,
28 or other zoning clearance shall be required of this employee
29 housing that is not required of any other agricultural activity in
30 the same zone. The permitted occupancy in employee housing in
31 a zone allowing agricultural uses shall include agricultural
32 employees who do not work on the property where the employee
33 housing is located.

34 (c) Except as otherwise provided in this part, employee housing
35 consisting of no more than 36 beds in a group quarters or 12 units
36 or spaces designed for use by a single family or ~~household~~
37 *household, or that is approved pursuant to Section 17021.8*, shall
38 not be subject to any business taxes, local registration fees, use
39 permit fees, or other fees to which other agricultural activities in
40 the same zone are not likewise subject. This subdivision does not

1 forbid the imposition of local property taxes, fees for water services
 2 and garbage collection, fees for normal inspections, local bond
 3 assessments, and other fees, charges, and assessments to which
 4 other agricultural activities in the same zone are likewise subject.
 5 Neither the State Fire Marshal nor any local public entity shall
 6 charge any fee to the owner, operator, or any resident for enforcing
 7 fire inspection regulation pursuant to state law or regulations or
 8 local ordinance, with respect to employee housing consisting of
 9 no more than 36 beds in a group quarters or 12 units or spaces
 10 designed for use by a single family or household.

11 (d) For the purposes of any contract, deed, or covenant for the
 12 transfer of real property, employee housing consisting of no more
 13 than 36 beds in a group quarters or 12 units or spaces designed for
 14 use by a single family or ~~household~~ *household, or that is approved*
 15 *pursuant to Section 17021.8*, shall be considered an agricultural
 16 use of property, notwithstanding any disclaimers to the contrary.
 17 For purposes of this section, “employee housing” includes
 18 employee housing defined in subdivisions (b) and (c) of Section
 19 17008, even if the housing accommodations or property are not
 20 located in a rural area, as defined by Section 50101.

21 (e) The Legislature hereby declares that it is the policy of this
 22 state that each county and city shall permit and encourage the
 23 development and use of sufficient numbers and types of employee
 24 housing facilities as are commensurate with local need. This section
 25 shall apply equally to any charter city, general law city, county,
 26 city and county, district, and any other local public entity.

27 (f) If any owner who invokes the provisions of this section fails
 28 to maintain a permit to operate pursuant to this part throughout
 29 the first 10 consecutive years following the issuance of the original
 30 certificate of occupancy, both of the following shall occur:

31 (1) The enforcement agency shall notify the appropriate local
 32 government entity.

33 (2) The public agency that has waived any taxes, fees,
 34 assessments, or charges for employee housing pursuant to this
 35 section may recover the amount of those taxes, fees, assessments,
 36 or charges from the landowner, less 10 percent of that amount for
 37 each year that a valid permit has been maintained.

38 (g) Subdivision (f) shall not apply to an owner of any
 39 prospective, planned, or unfinished employee housing facility who
 40 has applied to the appropriate state and local public entities for a

1 permit to construct or operate pursuant to this part prior to January
2 1, 1996.

3 SEC. 10. Section 17021.8 is added to the Health and Safety
4 Code, to read:

5 17021.8. (a) A development proponent may submit an
6 application for a development that is subject to a streamlined,
7 ministerial approval process and is not subject to a conditional use
8 permit if all of the following is satisfied:

9 (1) The development is located on land zoned for agricultural
10 uses.

11 (2) The development is an agricultural employee housing
12 development that satisfies both of the following:

13 (A) The agricultural employee housing does not contain
14 dormitory style housing.

15 (B) ~~The~~ (i) *Except as otherwise provided in clause (ii), the*
16 *agricultural employee housing will be maintained and operated by*
17 *a qualified affordable housing organization that has been certified*
18 *pursuant to Section 17030.10 and that has been issued a permit*
19 *pursuant to Section 17030. The development proponent shall*
20 *submit proof of issuance of the qualified affordable housing*
21 *organization's permit.*

22 (ii) *In the case of agricultural employee housing that is*
23 *maintained and operated by a local public housing agency or a*
24 *multicounty, state, or multistate agency that has been certified as*
25 *a qualified affordable housing organization as required by this*
26 *subparagraph, that agency may either directly maintain and*
27 *operate the agricultural employee housing or contract with another*
28 *qualified affordable housing organization that has been certified*
29 *pursuant to Section 17030.10 and that has been issued a permit*
30 *pursuant to Section 17030 to maintain and operate the agricultural*
31 *employee housing.*

32 (3) The qualified affordable housing organization and the
33 landowner shall obligate themselves and any successors in interest
34 to maintain the affordability of the proposed agricultural employee
35 housing for agricultural employees for not less than 55 years.

36 (4) *The agricultural employee housing is not ineligible for state*
37 *funding pursuant to paragraph (1) of subdivision (b) of Section*
38 *50205.*

39 (b) *A development that is approved pursuant to this section shall*
40 *not be subject to the density limits specified in Section 17021.6 in*

1 *order to constitute an agricultural land use for purposes of that*
2 *section.*

3 ~~(b)~~

4 (c) The Legislature hereby declares that it is the policy of this
5 state that each county and city shall permit and encourage the
6 development and use of sufficient numbers and types of agricultural
7 employee housing as are commensurate with local need. The
8 Legislature further finds and declares that this section addresses
9 a matter of statewide concern rather than a municipal affair as that
10 term is used in Section 5 of Article XI of the California
11 Constitution. Therefore, this section applies to all cities, including
12 charter cities.

13 SEC. 11. Section 17030 of the Health and Safety Code is
14 amended to read:

15 17030. (a) A person operating employee housing shall obtain
16 a permit to operate that employee housing from the enforcement
17 agency, unless otherwise exempted by this part. It shall be unlawful
18 for a person to operate employee housing without a valid permit
19 to operate issued by the enforcement agency, as required by this
20 part. Permits to operate shall be issued annually by the enforcement
21 agency, except as provided in this section and Section 17030.5.

22 (b) Employee housing on a dairy farm which meets the
23 requirements of Section 32505 of the Food and Agricultural Code,
24 consisting only of permanent single-family employee housing,
25 may be exempted from the requirement of obtaining a permit to
26 operate employee housing, as provided in Section 17031. This
27 housing shall meet the requirements of the State Housing Law
28 before an exemption is granted.

29 (c) A permit to operate shall be valid from the date of issuance
30 through December 31 of the year of issuance, or December 31 of
31 the year designated by the enforcement agency for permanent
32 single-family employee housing. Permits to operate employee
33 housing may prescribe conditions on the use or occupancy of the
34 employee housing.

35 (d) The Department of Housing and Community Development
36 shall be the enforcement agency for employee housing owned or
37 operated by a railroad corporation.

38 (e) The Department of Housing and Community Development
39 shall be the enforcement agency for agricultural employee housing.

1 SEC. 12. Section 17030.10 is added to the Health and Safety
2 Code, to read:

3 17030.10. (a) The department shall establish an application
4 and review process for certifying that a person is an affordable
5 housing organization qualified to operate agricultural employee
6 ~~housing.~~ *housing that is approved pursuant to Section 17021.8.*

7 (b) A person desiring certification as a qualified affordable
8 housing organization may, in the form and manner prescribed by
9 the department, submit an application to the department. The
10 department shall review an application so submitted, and shall
11 certify the person as a qualified affordable housing organization
12 if the following requirements are satisfied:

13 (1) The applicant has demonstrated relevant prior experience
14 in California and current capacity, as capable of operating the
15 housing and related facilities for its remaining useful life, either
16 by itself or through a management agent.

17 (2) The applicant is one of the following:

18 (A) A not-for-profit corporation organized pursuant to Division
19 2 (commencing with Section 5000) of Title 1 of the Corporations
20 Code that satisfies both of the following:

21 (i) The not-for-profit corporation has as its principal purpose
22 the ownership, development, or management of housing or
23 community development projects for persons and families of low
24 or moderate income and very low income.

25 (ii) The not-for-profit corporation has a broadly representative
26 board, a majority of whose members are community based and
27 have a proven track record of local community service.

28 (B) A local public housing agency. For purposes of this
29 subdivision, "local public housing agency" means a housing
30 authority, redevelopment agency, or any other agency of a city,
31 county, or city and county, whether general law or chartered, that
32 is authorized to own, develop, or manage housing or community
33 development projects for persons and families of low or moderate
34 income and very low income.

35 (C) A not-for-profit, charitable corporation organized on a
36 multicounty, state, or multistate basis that satisfies both of the
37 following:

38 (i) The charitable corporation has as its principal purpose the
39 ownership, development, or management of housing or community

1 development projects for persons and families of low or moderate
2 income and very low income.

3 (ii) The charitable corporation owns or operates at least three
4 comparable rent- and income-restricted affordable rental properties
5 governed under a regulatory agreement with a department or
6 agency of the State of California or the United States, either directly
7 or by serving as the managing general partner of limited
8 partnerships or managing member of limited liability corporations.

9 (D) A multicounty, state, or multistate agency that satisfies both
10 of the following:

11 (i) The agency is authorized to own, develop, or manage housing
12 or community development projects for persons and families of
13 low or moderate income and very low income.

14 (ii) The agency owns and operates at least three comparable
15 rent- and income-restricted affordable rental properties governed
16 under a regulatory agreement with a department or agency of the
17 State of California or the United States, either directly or by serving
18 as the managing general partner of limited partnerships or
19 managing member of limited liability corporations.

20 (E) Any other *not-for-profit* organization ~~or entity~~ that the
21 department determines, by regulation, is sufficiently similar to any
22 of the organizations described in this paragraph.

23 (3) Except for local public housing agencies with elected
24 legislative bodies, the applicant does not have a member among
25 its officers or directorate with a financial interest in an agricultural
26 employer, as defined in Section 1140.4 of the Labor Code, or a
27 farm labor contractor, as defined in Section 1682 of the Labor
28 Code.

29 SEC. 13. Section 17035 of the Health and Safety Code is
30 amended to read:

31 17035. (a) The department shall establish and maintain a roster
32 of all employee housing having a valid permit to operate.

33 (b) The department shall establish and maintain a roster of all
34 affordable housing organizations certified pursuant to Section
35 17030.10.

36 SEC. 14. Section 17037 of the Health and Safety Code is
37 amended to read:

38 17037. A person, or the agent or officer thereof, constructing,
39 operating, or maintaining employee housing shall comply with the
40 requirements of this part, with building standards published in the

1 State Building Standards Code relating to employee housing, and
2 with the other regulations adopted pursuant to this part.

3 (a) A person operating or maintaining employee housing without
4 first having obtained a permit to operate from the enforcement
5 agency shall pay double the fees prescribed for the permit to
6 operate the employee housing.

7 (b) A person found for a second or subsequent time within a
8 five-year period to be operating or maintaining employee housing
9 without first having obtained a permit to operate from the
10 enforcement agency shall pay 10 times the fees prescribed for the
11 permit to operate the employee housing. The two or more violations
12 referenced in this paragraph may be with regard either to the same
13 enforcement agency or to two or more different enforcement
14 agencies.

15 (c) Notwithstanding Section 17061, a landowner *who obtained*
16 *approval of an agricultural employee housing development*
17 *pursuant to Section 17021.8* shall be subject to an administrative
18 penalty issued by the department if the landowner fails to select
19 an alternative certified person to operate and maintain the
20 agricultural employee housing development as required by
21 subdivision (c) of Section 17037.5.

22 SEC. 15. Section 17037.5 of the Health and Safety Code is
23 amended to read:

24 17037.5. (a) A person who ceases to operate or maintain
25 employee housing that is subject to the permit requirement pursuant
26 to this part shall complete and submit annually a Certificate of
27 Non-Operation to the enforcement agency. The Certificate of
28 Non-Operation shall be submitted for two years following the
29 discontinuation of the use of any area on the property as employee
30 housing. The Certificate of Non-Operation shall attest under
31 penalty of perjury that the employee housing has been destroyed,
32 or is no longer owned or operated, or has not been and shall not
33 be occupied by five or more employees during the calendar year.

34 (b) The Certificate of Non-Operation shall include the owner's
35 name and address, the operator's name and address, the employee
36 housing name and location, the maximum number of employees
37 who have occupied or shall occupy the employee housing during
38 the calendar year, and any other information considered relevant
39 by the enforcement agency. The Certificate of Non-Operation shall
40 be completed and submitted to the enforcement agency no later

1 than 30 calendar days after the enforcement agency provides the
2 form to the owner or operator.

3 (c) If a certified person's permit required by Section 17030
4 expires or the certified person is otherwise unable or unwilling to
5 continue to operate and maintain an agricultural employee housing
6 *that was approved pursuant to Section 17021.8* for the agreed time
7 period as required by Section 17021.8, ~~the landowner,~~ *landowner*
8 *who obtained that approval* within 90 days of the certified person's
9 ceasing operation and maintenance of the agricultural employee
10 housing, shall select an alternative certified affordable housing
11 organization to operate and maintain the agricultural employee
12 housing.

13 SEC. 16. Section 50205 is added to the Health and Safety Code,
14 to read:

15 50205. (a) As used in this section:

16 (1) "Employer" means a person who has petitioned, or will
17 petition, to import an H-2A worker pursuant to Section 1188 of
18 Title 8 of the United States Code to work on the employer's
19 agricultural land.

20 (2) "H-2A worker" means a nonimmigrant alien as described
21 in Section 1101(a)(15)(H)(ii)(a) of Title 8 of the United States
22 Code employed to work for an employer.

23 (3) "State funding" means any provision of moneys or other
24 financial assistance provided by the state or a state agency,
25 including, but not limited to, grants, loans, and write-downs of
26 land costs, but does not include any allocation of federal or state
27 low-income housing tax credits pursuant to Chapter 3.6
28 (commencing with Section 50199.4) of this part or Sections 12206,
29 17058, or 23610.5 of the Revenue and Taxation Code.

30 (b) (1) Notwithstanding any other law and subject to paragraph
31 (2), state funding shall not be provided for the purposes of
32 planning, developing, or operating any housing used to comply
33 with the requirement under Section 1188(c)(4) of Title 8 of the
34 United States Code to furnish housing to H-2A workers.

35 (2) Any employer or other recipient of state funding who utilizes
36 state funding for the purposes described in paragraph (1) shall
37 reimburse the state or state agency that provided the funding in an
38 amount equal to the amount of that state funding expended for
39 those purposes.

1 (3) This subdivision shall not apply to any contract or other
2 enforceable agreement pursuant to which the state or a state agency
3 provides state funding that was entered into prior to January 1,
4 2020.

5 SEC. 17. Section 50470 of the Health and Safety Code is
6 amended to read:

7 50470. (a) (1) There is hereby created in the State Treasury
8 the Building Homes and Jobs Trust Fund. All interest or other
9 increments resulting from the investment of moneys in the fund
10 shall be deposited in the fund, notwithstanding Section 16305.7
11 of the Government Code.

12 (2) Moneys in the Building Homes and Jobs Trust Fund shall
13 not be subject to transfer to any other fund pursuant to any
14 provision of Part 2 (commencing with Section 16300) of Division
15 4 of Title 2 of the Government Code, except to the Surplus Money
16 Investment Fund.

17 (b) Moneys in the Building Homes and Jobs Trust Fund shall
18 be appropriated either through the annual Budget Act, or as
19 provided in this subdivision, in accordance with the following:

20 (1) Moneys collected on and after January 1, 2018, and until
21 December 31, 2018, shall, upon appropriation by the Legislature,
22 be allocated as follows:

23 (A) Fifty percent of deposits into the fund shall be made
24 available for local governments to update planning documents and
25 zoning ordinances in order to streamline housing production,
26 including, but not limited to, general plans, community plans,
27 specific plans, sustainable communities strategies, and local coastal
28 programs. Eligible uses also include new environmental analyses
29 that eliminate the need for project-specific review and local process
30 updates that improve and expedite local permitting.

31 (i) Five percent of the funds specified by this subparagraph shall
32 be available for technical assistance to jurisdictions updating
33 specified planning documents. Technical assistance shall be
34 provided by the department and the Governor's Office of Planning
35 and Research.

36 (ii) The funds to be allocated pursuant to this subparagraph shall
37 be held by the department until a local government submits a
38 request for use. The request shall include a description of the
39 proposed use of the funds in the interest of accelerating housing
40 production. The proposed use of these funds shall be included in

1 the local government's funding plan and annual reports pursuant
2 to subclauses (II) and (III) of clause (ii) of subparagraph (B) of
3 paragraph (2). Any of these funds not allocated by the department
4 within the first two years that those funds are available shall be
5 made available by the department for the Multifamily Housing
6 Program (Chapter 6.7 (commencing with Section 50675)).

7 (B) Fifty percent of deposits into the fund shall be made
8 available to the department to assist persons experiencing or at
9 risk of homelessness, including, but not limited to, providing rapid
10 rehousing, rental assistance, navigation centers, and the new
11 construction, rehabilitation, and preservation of permanent and
12 transitional rental housing.

13 (C) The department shall ensure geographic equity in the
14 distribution and expenditure of funds allocated pursuant to this
15 paragraph.

16 (2) Moneys collected on and after January 1, 2019, shall be
17 allocated as follows:

18 (A) Twenty percent of all moneys in the fund shall, upon
19 appropriation by the Legislature, be expended for affordable
20 owner-occupied workforce housing.

21 (B) (i) Seventy percent of moneys deposited in the fund shall,
22 upon appropriation by the Legislature, be made available to local
23 governments as follows:

24 (I) Ninety percent of the moneys specified in this subparagraph
25 shall be allocated based on the formula specified in Section 5306
26 of Title 42 of the United States Code, in accordance with the
27 distribution of funds pursuant to that formula for the federal Fiscal
28 Year 2017, except that the portion allocated to nonentitlement
29 areas pursuant to that section shall be distributed through a
30 competitive grant program, administered by the department, as
31 follows:

32 (ia) The department shall award priority points to a county that
33 has a population of 200,000 or less within the unincorporated areas
34 of the county, to a local government that did not receive an award
35 based on the formula specified in Section 5306 of Title 42 of the
36 United States Code in 2016, and to a local government that pledges
37 to use the money awarded pursuant to a competitive grant under
38 this subclause to assist persons experiencing or at risk of
39 homelessness, including, but not limited to, providing rapid
40 rehousing, rental assistance, navigation centers, and the new

1 construction, rehabilitation, and preservation of permanent and
2 transitional rental housing.

3 (ib) Moneys awarded to a local government pursuant to the
4 competitive grant program shall be used for the purposes specified
5 in subparagraph (D).

6 (II) The remaining 10 percent of the moneys specified in this
7 subparagraph shall be allocated equitably among local jurisdictions
8 that are nonentitlement areas pursuant to the formula specified in
9 Section 5306 of Title 42 of the United States Code for federal
10 Fiscal Year 2017.

11 (ii) To receive moneys pursuant to this subparagraph, local
12 governments shall document minimum standards including the
13 following:

14 (I) Submit a plan to the department detailing the manner in
15 which allocated funds will be used by the local government in a
16 manner consistent with this paragraph and to meet the local
17 government's unmet share of the regional housing needs allocation.

18 (II) Have a compliant housing element with the state and submit
19 a current annual report pursuant to Section 65400 of the
20 Government Code.

21 (III) Submit an annual report to the department that provides
22 ongoing tracking of the uses and expenditures of any allocated
23 funds.

24 (IV) Funds may be expended for the uses listed in subparagraph
25 (D). Two or more local governments that receive an allocation
26 pursuant to this subparagraph may expend those moneys on a joint
27 project that is an authorized use under subparagraph (D).

28 (V) Prioritize investments that increase the supply of housing
29 to households that are at or below 60 percent of area median
30 income, adjusted for household size.

31 (VI) If a local government does not have a documented plan to
32 expend the moneys allocated to it pursuant to this subparagraph
33 within five years of that allocation, those moneys shall be exempt
34 from the allocation requirements in this paragraph and shall revert
35 to, and be paid and deposited in, the Housing Rehabilitation Loan
36 Fund established pursuant to Section 50661 to be used for the
37 Multifamily Housing Program (Chapter 6.7 (commencing with
38 Section 50675)) or for technical assistance for local governments.

39 (VII) A local government may petition the department to return
40 any moneys allocated to it pursuant to this subparagraph. Any

1 moneys returned pursuant to this clause shall be used for the
2 Multifamily Housing Program (Chapter 6.7 (commencing with
3 Section 50675)).

4 (C) Thirty percent of moneys deposited in the fund shall be
5 made available to the department for use as follows:

6 (i) Five percent of the moneys deposited in the fund shall, upon
7 appropriation by the Legislature, be used for state incentive
8 programs, including loans and grants administered by the
9 department. If the department receives insufficient funding
10 applications for incentive programs financed pursuant to this
11 clause, the department shall make those funds available for the
12 Multifamily Housing Program (Chapter 6.7 (commencing with
13 Section 50675)).

14 (ii) (I) Subject to subclause (II), 10 percent of the moneys
15 deposited in the fund shall, upon appropriation by the Legislature,
16 be used to address affordable homeownership and rental housing
17 opportunities for agricultural workers and their families.

18 (II) On and after January 1, 2020, housing funded pursuant to
19 this clause shall not include housing used to comply with the
20 requirement under Section 1188(c)(4) of Title 8 of the United
21 States Code to furnish housing to H-2A workers, as defined in
22 Section 50205. A person who receives funds made available
23 pursuant to this clause on or after January 1, 2020, and expends
24 any of those funds for the purpose of planning, developing, or
25 operating housing described in this subclause shall reimburse the
26 department or other state agency that provided those funds, as
27 provided in paragraph (2) of subdivision (b) of Section 50205.

28 (iii) Fifteen percent of the moneys deposited in the fund shall,
29 notwithstanding any other provision of this section or Section
30 13340 of the Government Code, be continuously appropriated to
31 the California Housing Finance Agency for the purpose of creating
32 mixed income multifamily residential housing for lower to
33 moderate income households pursuant to Chapter 6.7 (commencing
34 with Section 51325) of Part 3.

35 (D) The moneys in the fund allocated to local governments may
36 be expended for the following purposes:

37 (i) The predevelopment, development, acquisition, rehabilitation,
38 and preservation of multifamily, residential live-work, rental
39 housing that is affordable to extremely low, very low, low-, and

1 moderate-income households, including necessary operating
2 subsidies.

3 (ii) Affordable rental and ownership housing that meets the
4 needs of a growing workforce earning up to 120 percent of area
5 median income, or 150 percent of area median income in high-cost
6 areas.

7 (iii) Matching portions of funds placed into local or regional
8 housing trust funds.

9 (iv) Matching portions of funds available through the Low and
10 Moderate Income Housing Asset Fund pursuant to subdivision (d)
11 of Section 34176 of the Health and Safety Code.

12 (v) Capitalized reserves for services connected to the creation
13 of new permanent supportive housing, including, but not limited
14 to, developments funded through the Veterans Housing and
15 Homelessness Prevention Bond Act of 2014.

16 (vi) Assisting persons who are experiencing or at risk of
17 homelessness, including providing rapid rehousing, rental
18 assistance, navigation centers, emergency shelters, and the new
19 construction, rehabilitation, and preservation of permanent and
20 transitional housing.

21 (vii) Accessibility modifications.

22 (viii) Efforts to acquire and rehabilitate foreclosed or vacant
23 homes.

24 (ix) Homeownership opportunities, including, but not limited
25 to, downpayment assistance.

26 (x) Fiscal incentives or matching funds to local agencies that
27 approve new housing for extremely low, very low, low-, and
28 moderate-income households.

29 (3) A state or local entity that receives an appropriation or
30 allocation pursuant to this chapter shall use no more than 5 percent
31 of that appropriation or allocation for costs related to the
32 administration of the housing program for which the appropriation
33 or allocation was made.

34 (c) Both of the following shall be paid and deposited in the fund:

35 (1) Any moneys appropriated and made available by the
36 Legislature for purposes of the fund.

37 (2) Any other moneys that may be made available to the
38 department for the purposes of the fund from any other source or
39 sources.

(d) In consultation with stakeholders, the department may adopt guidelines to implement this section, including to determine allocation methodologies. Any guideline, rule, policy, or standard of general application employed by the department in implementing this chapter shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 18. Section 50517.10 of the Health and Safety Code is amended to read:

50517.10. (a) In addition to the purposes specified in subdivision (a) of Section 50517.5 and except as otherwise provided in subdivision (b), the department may make grants and loans under the Joe Serna, Jr. Farmworker Housing Grant Program to local public entities and nonprofit corporations in order to establish capitalized operating reserves for short-term occupancy housing for migrant farmworker households, purchase land for, and construct, housing structures for short-term occupancy by migrant farmworker households, lease or purchase existing structures for short-term occupancy by migrant farmworker households, and, where the department determines that extraordinary or emergency circumstances exist, directly rent or lease housing for short-term occupancy by migrant farmworker households.

(b) (1) Notwithstanding any other provision of this chapter, except as provided in paragraph (2), the department shall not make grants or loans under the Joe Serna, Jr. Farmworker Housing Grant Program on or after January 1, 2020, for the purpose of planning, developing, or operating housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers, as provided in subdivision (b) of Section 50205. A person who receives any grant or loan under the Joe Serna, Jr. Farmworker Housing Grant Program on or after January 1, 2020, and expends any of those funds for any purpose described in this subdivision shall reimburse the department as provided in paragraph (2) of subdivision (b) of Section 50205.

(2) This subdivision shall not apply to any contract entered into or any grant or loan provided pursuant to the Joe Serna, Jr. Farmworker Housing Grant Program prior to January 1, 2020.

1 SEC. 19. Section 50715 of the Health and Safety Code is
2 amended to read:

3 50715. (a) Housing operated pursuant to this chapter may be
4 used for the purposes set forth in Chapter 11.5 (commencing with
5 Section 50800), provided that no funds appropriated for the
6 purposes of this chapter shall be used for the operation or
7 administration of this housing as emergency shelter pursuant to
8 Chapter 11.5, and provided further that this housing may be made
9 available as emergency shelter pursuant to Chapter 11.5 only during
10 the months of November to March, inclusive.

11 (b) (1) Notwithstanding any other provision of this chapter,
12 except as provided in paragraph (2), housing operated pursuant to
13 this chapter shall not include any housing used to comply with the
14 requirement under Section 1188(c)(4) of Title 8 of the United
15 States Code to furnish housing to H-2A workers, as defined in
16 Section 50205. The department or a city, county, or other local
17 agency shall not enter into any contract pursuant to Section 50710
18 or 50712, respectively, or provide any financial assistance under
19 this chapter on or after January 1, 2020. A person who receives
20 financial assistance under this chapter on or after January 1, 2020,
21 and expends any of those funds for any purpose described in this
22 subdivision shall reimburse the department as provided in
23 paragraph (2) of subdivision (b) of Section 50205.

24 (2) This subdivision shall not apply to any contract entered into
25 or any financial assistance provided pursuant to this chapter prior
26 to January 1, 2020.

27 SEC. 20. ~~Section 12206 of the Revenue and Taxation Code is~~
28 ~~amended to read:~~

29 ~~12206. (a) (1) There shall be allowed as a credit against the~~
30 ~~“tax,” described by Section 12201, a state low-income housing~~
31 ~~tax credit in an amount equal to the amount determined in~~
32 ~~subdivision (c), computed in accordance with Section 42 of the~~
33 ~~Internal Revenue Code, relating to low-income housing credit,~~
34 ~~except as otherwise provided in this section.~~

35 ~~(2) “Taxpayer,” for purposes of this section, means the sole~~
36 ~~owner in the case of a “C” corporation, the partners in the case of~~
37 ~~a partnership, and the shareholders in the case of an “S”~~
38 ~~corporation.~~

39 ~~(3) “Housing sponsor,” for purposes of this section, means the~~
40 ~~sole owner in the case of a “C” corporation, the partnership in the~~

1 ease of a partnership, and the “S” corporation in the case of an “S”
2 corporation.

3 (b) (1) The amount of the credit allocated to any housing
4 sponsor shall be authorized by the California Tax Credit Allocation
5 Committee, or any successor thereof, based on a project’s need
6 for the credit for economic feasibility in accordance with the
7 requirements of this section.

8 (A) Except for projects to provide farmworker housing, as
9 defined in subdivision (h) of Section 50199.7 of the Health and
10 Safety Code, that are allocated credits solely under the set-aside
11 described in subdivision (c) of Section 50199.20 of the Health and
12 Safety Code, the low-income housing project shall be located in
13 California and shall meet either of the following requirements:

14 (i) The project’s housing sponsor has been allocated by the
15 California Tax Credit Allocation Committee a credit for federal
16 income tax purposes under Section 42 of the Internal Revenue
17 Code, relating to low-income housing credit.

18 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
19 Internal Revenue Code, relating to special rule where 50 percent
20 or more of building is financed with tax-exempt bonds subject to
21 volume cap.

22 (B) The California Tax Credit Allocation Committee shall not
23 require fees for the credit under this section in addition to those
24 fees required for applications for the tax credit pursuant to Section
25 42 of the Internal Revenue Code, relating to low-income housing
26 credit. The committee may require a fee if the application for the
27 credit under this section is submitted in a calendar year after the
28 year the application is submitted for the federal tax credit.

29 (C) (i) For a project that receives a preliminary reservation of
30 the state low-income housing tax credit, allowed pursuant to
31 subdivision (a), on or after January 1, 2009, and before January 1,
32 2020, the credit shall be allocated to the partners of a partnership
33 owning the project in accordance with the partnership agreement,
34 regardless of how the federal low-income housing tax credit with
35 respect to the project is allocated to the partners, or whether the
36 allocation of the credit under the terms of the agreement has
37 substantial economic effect, within the meaning of Section 704(b)
38 of the Internal Revenue Code, relating to determination of
39 distributive share.

~~(ii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code unless the project also receives a preliminary reservation of federal low-income housing tax credits.~~

~~(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.~~

~~(B) In the case of a partnership or an "S" corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.~~

~~(C) (1) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.~~

~~(2) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.~~

~~(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code, relating to low-income housing credit, shall apply to this section.~~

~~(E) (i) Except as described in clause (ii) or (iii), for buildings located in designated difficult development areas (DDAs) or qualified census tracts (QCTs), as defined in Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code, relating to low-income housing credit, is computed on 100 percent of the qualified basis of the building.~~

~~(ii) Notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit for buildings located in DDAs or QCTs that are restricted to having 50 percent of the building's occupants be special needs households, as defined in the California Code of Regulations by the California Tax Credit Allocation Committee, even if the taxpayer receives federal credits pursuant to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, provided that the credit allowed under this section shall not exceed 30 percent of the eligible basis of the building.~~

~~(iii) On and after January 1, 2018, notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit pursuant to paragraph (4) of subdivision (e) even if the taxpayer receives federal credits, pursuant to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas.~~

~~(F) (i) The California Tax Credit Allocation Committee may allocate a credit under this section in exchange for a credit allocated pursuant to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, in amounts up to 30 percent of the eligible basis of a building if the credits allowed under Section 42 of the Internal Revenue Code, relating to low-income housing credit, are reduced by an equivalent amount.~~

~~(ii) An equivalent amount shall be determined by the California Tax Credit Allocation Committee based upon the relative amount required to produce an equivalent state tax credit to the taxpayer.~~

~~(e) Section 42(b) of the Internal Revenue Code, relating to applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings, shall be modified as follows:~~

~~(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:~~

~~(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, relating to temporary minimum credit rate for nonfederally subsidized new buildings, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.~~

~~(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.~~

~~(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:~~

~~(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.~~

1 (B) For the fourth year, the difference between 13 percent and
 2 the sum of the applicable percentages for the first three years.

3 (3) For purposes of this section, the term “at risk of conversion,”
 4 with respect to an existing property means a property that satisfies
 5 all of the following criteria:

6 (A) The property is a multifamily rental housing development
 7 in which at least 50 percent of the units receive governmental
 8 assistance pursuant to any of the following:

9 (i) New construction, substantial rehabilitation, moderate
 10 rehabilitation, property disposition, and loan management set-aside
 11 programs, or any other program providing project-based assistance
 12 pursuant to Section 8 of the United States Housing Act of 1937,
 13 Section 1437f of Title 42 of the United States Code, as amended.

14 (ii) The Below-Market-Interest-Rate Program pursuant to
 15 Section 221(d)(3) of the National Housing Act, Sections
 16 1715l(d)(3) and (5) of Title 12 of the United States Code.

17 (iii) Section 236 of the National Housing Act, Section 1715z-1
 18 of Title 12 of the United States Code.

19 (iv) Programs for rent supplement assistance pursuant to Section
 20 101 of the Housing and Urban Development Act of 1965, Section
 21 1701s of Title 12 of the United States Code, as amended.

22 (v) Programs pursuant to Section 514 of the Housing Act of
 23 1949, Section 1484 of Title 42 of the United States Code, as
 24 amended, and Section 515 of the Housing Act of 1949, Section
 25 1485 of Title 42 of the United States Code, as amended.

26 (vi) The low-income housing credit program set forth in Section
 27 42 of the Internal Revenue Code, relating to low-income housing
 28 credit.

29 (vii) Programs for loans or grants administered by the
 30 Department of Housing and Community Development.

31 (B) The restrictions on rent and income levels will terminate or
 32 the federally insured mortgage or rent subsidy contract on the
 33 property is eligible for prepayment or termination any time within
 34 five years before or after the date of application to the California
 35 Tax Credit Allocation Committee.

36 (C) The entity acquiring the property enters into a regulatory
 37 agreement that requires the property to be operated in accordance
 38 with the requirements of this section for a period equal to the
 39 greater of 55 years or the life of the property.

~~(D) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code, relating to rehabilitation expenditures treated as separate new building, except that the provisions of Section 42(c)(3)(A)(ii)(I) shall not apply.~~

~~(4) On and after January 1, 2018, in the case of any qualified low-income building that is (A) farmworker housing, as defined by paragraph (2) of subdivision (h) of Section 50199.7 of the Health and Safety Code, and (B) is federally subsidized, the term “applicable percentage” means for each of the first three years, 20 percent of the qualified basis of the building, and for the fourth year, 15 percent of the qualified basis of the building.~~

~~(d) The term “qualified low-income housing project” as defined in Section 42(e)(2) of the Internal Revenue Code, relating to qualified low-income building, is modified by adding the following requirements:~~

~~(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, that, at the election of the taxpayer, is equal to:~~

~~(A) An amount not to exceed 8 percent of the lesser of:~~

~~(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.~~

~~(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.~~

~~(B) The amount of the cashflow from those units in the building that are not low-income units. For purposes of computing cashflow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code, relating to low-income housing credit.~~

~~(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.~~

~~(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an “S” corporation.~~

~~(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under~~

1 ~~paragraph (1) to reduce the rent on rent-restricted units or to~~
2 ~~increase the number of rent-restricted units subject to the tests of~~
3 ~~Section 42(g)(1) of the Internal Revenue Code, relating to in~~
4 ~~general.~~

5 ~~(e) The provisions of Section 42(f) of the Internal Revenue~~
6 ~~Code, relating to definition and special rules relating to credit~~
7 ~~period, shall be modified as follows:~~

8 ~~(1) The term “credit period” as defined in Section 42(f)(1) of~~
9 ~~the Internal Revenue Code, relating to credit period defined, is~~
10 ~~modified by substituting “four taxable years” for “10 taxable~~
11 ~~years.”~~

12 ~~(2) The special rule for the first taxable year of the credit period~~
13 ~~under Section 42(f)(2) of the Internal Revenue Code, relating to~~
14 ~~special rule for 1st year of credit period, shall not apply to the tax~~
15 ~~credit under this section.~~

16 ~~(3) Section 42(f)(3) of the Internal Revenue Code, relating to~~
17 ~~determination of applicable percentage with respect to increases~~
18 ~~in qualified basis after 1st year of credit period, is modified to~~
19 ~~read:~~

20 ~~If, as of the close of any taxable year in the compliance period,~~
21 ~~after the first year of the credit period, the qualified basis of any~~
22 ~~building exceeds the qualified basis of that building as of the close~~
23 ~~of the first year of the credit period, the housing sponsor, to the~~
24 ~~extent of its tax credit allocation, shall be eligible for a credit on~~
25 ~~the excess in an amount equal to the applicable percentage~~
26 ~~determined pursuant to subdivision (c) for the four-year period~~
27 ~~beginning with the later of the taxable years in which the increase~~
28 ~~in qualified basis occurs.~~

29 ~~(f) The provisions of Section 42(h) of the Internal Revenue~~
30 ~~Code, relating to limitation on aggregate credit allowable with~~
31 ~~respect to projects located in a state, shall be modified as follows:~~

32 ~~(1) Section 42(h)(2) of the Internal Revenue Code, relating to~~
33 ~~allocated credit amount to apply to all taxable years ending during~~
34 ~~or after credit allocation year, does not apply and instead the~~
35 ~~following provisions apply:~~

36 ~~The total amount for the four-year credit period of the housing~~
37 ~~credit dollars allocated in a calendar year to any building shall~~
38 ~~reduce the aggregate housing credit dollar amount of the California~~
39 ~~Tax Credit Allocation Committee for the calendar year in which~~
40 ~~the allocation is made.~~

~~(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code, relating to limitation on aggregate credit allowable with respect to projects located in a state, do not apply to this section.~~

~~(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of all the following:~~

~~(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor.~~

~~(2) The unused housing credit ceiling, if any, for the preceding calendar years.~~

~~(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.~~

~~(4) Except as provided in paragraph (6), five hundred thousand dollars (\$500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(5) Except as provided in paragraph (6), the amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(6) No amount shall be provided for projects to provide farmworker housing used to comply with the requirement under~~

1 Section 1188(c)(4) of Title 8 of the United States Code to furnish
2 housing to H-2A workers.

3 (h) The term “compliance period” as defined in Section 42(i)(1)
4 of the Internal Revenue Code, relating to compliance period, is
5 modified to mean, with respect to any building, the period of 30
6 consecutive taxable years beginning with the first taxable year of
7 the credit period with respect thereto.

8 (i) (1) Section 42(j) of the Internal Revenue Code, relating to
9 recapture of credit, shall not be applicable and the provisions in
10 paragraph (2) shall be substituted in its place.

11 (2) The requirements of this section shall be set forth in a
12 regulatory agreement between the California Tax Credit Allocation
13 Committee and the housing sponsor, and the regulatory agreement
14 shall be subordinated, when required, to any lien or encumbrance
15 of any banks or other institutional lenders to the project. The
16 regulatory agreement entered into pursuant to subdivision (f) of
17 Section 50199.14 of the Health and Safety Code, shall apply,
18 provided that the agreement includes all of the following
19 provisions:

20 (A) A term not less than the compliance period.

21 (B) A requirement that the agreement be recorded in the official
22 records of the county in which the qualified low-income housing
23 project is located.

24 (C) A provision stating which state and local agencies can
25 enforce the regulatory agreement in the event the housing sponsor
26 fails to satisfy any of the requirements of this section.

27 (D) A provision that the regulatory agreement shall be deemed
28 a contract enforceable by tenants as third-party beneficiaries thereto
29 and that allows individuals, whether prospective, present, or former
30 occupants of the building, who meet the income limitation
31 applicable to the building, the right to enforce the regulatory
32 agreement in any state court.

33 (E) A provision incorporating the requirements of Section 42
34 of the Internal Revenue Code, relating to low-income housing
35 credit, as modified by this section.

36 (F) A requirement that the housing sponsor notify the California
37 Tax Credit Allocation Committee or its designee and the local
38 agency that can enforce the regulatory agreement if there is a
39 determination by the Internal Revenue Service that the project is

1 not in compliance with Section 42(g) of the Internal Revenue Code,
 2 relating to qualified low-income housing project.

3 (G) A requirement that the housing sponsor, as security for the
 4 performance of the housing sponsor's obligations under the
 5 regulatory agreement, assign the housing sponsor's interest in rents
 6 that it receives from the project, provided that until there is a
 7 default under the regulatory agreement, the housing sponsor is
 8 entitled to collect and retain the rents.

9 (H) A provision that the remedies available in the event of a
 10 default under the regulatory agreement that is not cured within a
 11 reasonable cure period include, but are not limited to, allowing
 12 any of the parties designated to enforce the regulatory agreement
 13 to collect all rents with respect to the project; taking possession of
 14 the project and operating the project in accordance with the
 15 regulatory agreement until the enforcer determines the housing
 16 sponsor is in a position to operate the project in accordance with
 17 the regulatory agreement; applying to any court for specific
 18 performance; securing the appointment of a receiver to operate
 19 the project; or any other relief as may be appropriate.

20 (j) (1) The committee shall allocate the housing credit on a
 21 regular basis consisting of two or more periods in each calendar
 22 year during which applications may be filed and considered. The
 23 committee shall establish application filing deadlines, the maximum
 24 percentage of federal and state low-income housing tax credit
 25 ceiling that may be allocated by the committee in that period, and
 26 the approximate date on which allocations shall be made. If the
 27 enactment of federal or state law, the adoption of rules or
 28 regulations, or other similar events prevent the use of two allocation
 29 periods, the committee may reduce the number of periods and
 30 adjust the filing deadlines, maximum percentage of credit allocated,
 31 and the allocation dates.

32 (2) The committee shall adopt a qualified allocation plan, as
 33 provided in Section 42(m)(1) of the Internal Revenue Code, relating
 34 to plans for allocation of credit among projects. In adopting this
 35 plan, the committee shall comply with the provisions of Sections
 36 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
 37 relating to qualified allocation plan and relating to certain selection
 38 criteria must be used, respectively.

39 (3) Notwithstanding Section 42(m) of the Internal Revenue
 40 Code, relating to responsibilities of housing credit agencies, the

1 California Tax Credit Allocation Committee shall allocate housing
2 credits in accordance with the qualified allocation plan and
3 regulations, which shall include the following provisions:

4 (A) All housing sponsors, as defined by paragraph (3) of
5 subdivision (a), shall demonstrate at the time the application is
6 filed with the committee that the project meets the following
7 threshold requirements:

8 (i) The housing sponsor shall demonstrate there is a need and
9 demand for low-income housing in the community or region for
10 which it is proposed.

11 (ii) The project's proposed financing, including tax credit
12 proceeds, shall be sufficient to complete the project and that the
13 proposed operating income shall be adequate to operate the project
14 for the extended use period.

15 (iii) The project shall have enforceable financing commitments;
16 either construction or permanent financing, for at least 50 percent
17 of the total estimated financing of the project.

18 (iv) The housing sponsor shall have and maintain control of the
19 site for the project.

20 (v) The housing sponsor shall demonstrate that the project
21 complies with all applicable local land use and zoning ordinances.

22 (vi) The housing sponsor shall demonstrate that the project
23 development team has the experience and the financial capacity
24 to ensure project completion and operation for the extended use
25 period.

26 (vii) The housing sponsor shall demonstrate the amount of tax
27 credit that is necessary for the financial feasibility of the project
28 and its viability as a qualified low-income housing project
29 throughout the extended use period, taking into account operating
30 expenses, a supportable debt service, reserves, funds set aside for
31 rental subsidies and required equity, and a development fee that
32 does not exceed a specified percentage of the eligible basis of the
33 project prior to inclusion of the development fee in the eligible
34 basis, as determined by the committee.

35 (B) The committee shall give a preference to those projects
36 satisfying all of the threshold requirements of subparagraph (A)
37 if both of the following apply:

38 (i) The project serves the lowest income tenants at rents
39 affordable to those tenants.

~~(ii) The project is obligated to serve qualified tenants for the longest period.~~

~~(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:~~

~~(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three or more bedrooms.~~

~~(ii) Projects providing single-room occupancy units serving very low income tenants.~~

~~(iii) Existing projects that are "at risk of conversion," as defined by paragraph (3) of subdivision (c).~~

~~(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.~~

~~(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.~~

~~(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.~~

~~(k) Section 42(l) of the Internal Revenue Code, relating to certifications and other reports to secretary, shall be modified as follows:~~

~~The term "secretary" shall be replaced by the term "Franchise Tax Board."~~

~~(l) In the case in which the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.~~

~~(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, apply to calendar years after 1993.~~

~~(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.~~

~~(o) (1) For a project that receives a preliminary reservation under this section beginning on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an irrevocable election in~~

1 its application to the California Tax Credit Allocation Committee
2 to sell all or any portion of any credit allowed under this section
3 to one or more unrelated parties for each taxable year in which the
4 credit is allowed subject to both of the following conditions:

5 (A) The credit is sold for consideration that is not less than 80
6 percent of the amount of the credit.

7 (B) The unrelated party or parties purchasing any or all of the
8 credit pursuant to this subdivision is a taxpayer allowed the credit
9 under this section for the taxable year of the purchase or any prior
10 taxable year or is a taxpayer allowed the federal credit under
11 Section 42 of the Internal Revenue Code, relating to low-income
12 housing credit, for the taxable year of the purchase or any prior
13 taxable year in connection with any project located in this state.
14 For purposes of this subparagraph, “taxpayer allowed the credit
15 under this section” means a taxpayer that is allowed the credit
16 under this section without regard to the purchase of a credit
17 pursuant to this subdivision.

18 (2) (A) The taxpayer that originally received the credit shall
19 report to the California Tax Credit Allocation Committee within
20 10 days of the sale of the credit, in the form and manner specified
21 by the California Tax Credit Allocation Committee, all required
22 information regarding the purchase and sale of the credit, including
23 the social security or other taxpayer identification number of the
24 unrelated party or parties to whom the credit has been sold, the
25 face amount of the credit sold, and the amount of consideration
26 received by the taxpayer for the sale of the credit.

27 (B) The California Tax Credit Allocation Committee shall
28 provide an annual listing to the Franchise Tax Board, in a form
29 and manner agreed upon by the California Tax Credit Allocation
30 Committee and the Franchise Tax Board, of the taxpayers that
31 have sold or purchased a credit pursuant to this subdivision.

32 (3) (A) A credit may be sold pursuant to this subdivision to
33 more than one unrelated party.

34 (B) (i) Except as provided in clause (ii), a credit shall not be
35 resold by the unrelated party to another taxpayer or other party.

36 (ii) All or any portion of any credit allowed under this section
37 may be resold once by an original purchaser to one or more
38 unrelated parties, subject to all of the requirements of this
39 subdivision.

~~(4) Notwithstanding any other law, the taxpayer that originally received the credit that is sold pursuant to paragraph (1) shall remain solely liable for all obligations and liabilities imposed on the taxpayer by this section with respect to the credit, none of which shall apply to a party to whom the credit has been sold or subsequently transferred. Parties that purchase credits pursuant to paragraph (1) shall be entitled to utilize the purchased credits in the same manner in which the taxpayer that originally received the credit could utilize them.~~

~~(5) A taxpayer shall not sell a credit allowed by this section if the taxpayer was allowed the credit on any tax return of the taxpayer.~~

~~(6) Notwithstanding paragraph (1), the taxpayer, with the approval of the Executive Director of the California Tax Credit Allocation Committee, may rescind the election to sell all or any portion of the credit allowed under this section if the consideration for the credit falls below 80 percent of the amount of the credit after the California Tax Credit Allocation Committee reservation.~~

~~(p) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.~~

~~(q) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credit, remains in effect.~~

~~SEC. 21. Section 17058 of the Revenue and Taxation Code is amended to read:~~

~~17058. (a) (1) There shall be allowed as a credit against the "net tax," defined in Section 17039, a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, relating to low-income housing credit, except as otherwise provided in this section.~~

~~(2) "Taxpayer," for purposes of this section, means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an "S" corporation.~~

1 ~~(3) “Housing sponsor,” for purposes of this section, means the~~
 2 ~~sole owner in the case of an individual, the partnership in the case~~
 3 ~~of a partnership, and the “S” corporation in the case of an “S”~~
 4 ~~corporation.~~

5 ~~(b) (1) The amount of the credit allocated to any housing~~
 6 ~~sponsor shall be authorized by the California Tax Credit Allocation~~
 7 ~~Committee, or any successor thereof, based on a project’s need~~
 8 ~~for the credit for economic feasibility in accordance with the~~
 9 ~~requirements of this section.~~

10 ~~(A) The low-income housing project shall be located in~~
 11 ~~California and shall meet either of the following requirements:~~

12 ~~(i) Except for projects to provide farmworker housing, as defined~~
 13 ~~in subdivision (h) of Section 50199.7 of the Health and Safety~~
 14 ~~Code, that are allocated credits solely under the set-aside described~~
 15 ~~in subdivision (e) of Section 50199.20 of the Health and Safety~~
 16 ~~Code, the project’s housing sponsor has been allocated by the~~
 17 ~~California Tax Credit Allocation Committee a credit for federal~~
 18 ~~income tax purposes under Section 42 of the Internal Revenue~~
 19 ~~Code, relating to low-income housing credit.~~

20 ~~(ii) It qualifies for a credit under Section 42(h)(4)(B) of the~~
 21 ~~Internal Revenue Code, relating to special rule where 50 percent~~
 22 ~~or more of building is financed with tax-exempt bonds subject to~~
 23 ~~volume cap.~~

24 ~~(B) The California Tax Credit Allocation Committee shall not~~
 25 ~~require fees for the credit under this section in addition to those~~
 26 ~~fees required for applications for the tax credit pursuant to Section~~
 27 ~~42 of the Internal Revenue Code, relating to low-income housing~~
 28 ~~credit. The committee may require a fee if the application for the~~
 29 ~~credit under this section is submitted in a calendar year after the~~
 30 ~~year the application is submitted for the federal tax credit.~~

31 ~~(C) (i) For a project that receives a preliminary reservation of~~
 32 ~~the state low-income housing tax credit, allowed pursuant to~~
 33 ~~subdivision (a), on or after January 1, 2009, and before January 1,~~
 34 ~~2020, the credit shall be allocated to the partners of a partnership~~
 35 ~~owning the project in accordance with the partnership agreement,~~
 36 ~~regardless of how the federal low-income housing tax credit with~~
 37 ~~respect to the project is allocated to the partners, or whether the~~
 38 ~~allocation of the credit under the terms of the agreement has~~
 39 ~~substantial economic effect, within the meaning of Section 704(b)~~

1 of the Internal Revenue Code, relating to determination of
2 distributive share.

3 (ii) To the extent the allocation of the credit to a partner under
4 this section lacks substantial economic effect, any loss or deduction
5 otherwise allowable under this part that is attributable to the sale
6 or other disposition of that partner's partnership interest made prior
7 to the expiration of the federal credit shall not be allowed in the
8 taxable year in which the sale or other disposition occurs, but shall
9 instead be deferred until and treated as if it occurred in the first
10 taxable year immediately following the taxable year in which the
11 federal credit period expires for the project described in clause (i).

12 (iii) This subparagraph shall not apply to a project that receives
13 a preliminary reservation of state low-income housing tax credits
14 under the set-aside described in subdivision (c) of Section 50199.20
15 of the Health and Safety Code unless the project also receives a
16 preliminary reservation of federal low-income housing tax credits.

17 (2) (A) The California Tax Credit Allocation Committee shall
18 certify to the housing sponsor the amount of tax credit under this
19 section allocated to the housing sponsor for each credit period.

20 (B) In the case of a partnership or an "S" corporation, the
21 housing sponsor shall provide a copy of the California Tax Credit
22 Allocation Committee certification to the taxpayer.

23 (C) The taxpayer shall, upon request, provide a copy of the
24 certification to the Franchise Tax Board.

25 (D) All elections made by the taxpayer pursuant to Section 42
26 of the Internal Revenue Code, relating to low-income housing
27 credit, apply to this section.

28 (E) (i) Except as described in clause (ii) or (iii), for buildings
29 located in designated difficult development areas (DDAs) or
30 qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
31 of the Internal Revenue Code, relating to increase in credit for
32 buildings in high-cost areas, credits may be allocated under this
33 section in the amounts prescribed in subdivision (c), provided that
34 the amount of credit allocated under Section 42 of the Internal
35 Revenue Code, relating to low-income housing credit, is computed
36 on 100 percent of the qualified basis of the building.

37 (ii) Notwithstanding clause (i), the California Tax Credit
38 Allocation Committee may allocate the credit for buildings located
39 in DDAs or QCTs that are restricted to having 50 percent of the
40 building's occupants be special needs households, as defined in

1 the California Code of Regulations by the California Tax Credit
2 Allocation Committee, even if the taxpayer receives federal credits
3 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
4 relating to increase in credit for buildings in high-cost areas,
5 provided that the credit allowed under this section shall not exceed
6 30 percent of the eligible basis of the building.

7 (iii) On and after January 1, 2018, notwithstanding clause (i),
8 the California Tax Credit Allocation Committee may allocate the
9 credit pursuant to paragraph (5) of subdivision (e) even if the
10 taxpayer receives federal credits, pursuant to Section 42(d)(5)(B)
11 of the Internal Revenue Code, relating to increase in credit for
12 buildings in high-cost areas.

13 (F) (i) The California Tax Credit Allocation Committee may
14 allocate a credit under this section in exchange for a credit allocated
15 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
16 relating to increase in credit for buildings in high-cost areas, in
17 amounts up to 30 percent of the eligible basis of a building if the
18 credits allowed under Section 42 of the Internal Revenue Code,
19 relating to low-income housing credit, are reduced by an equivalent
20 amount.

21 (ii) An equivalent amount shall be determined by the California
22 Tax Credit Allocation Committee based upon the relative amount
23 required to produce an equivalent state tax credit to the taxpayer.

24 (e) Section 42(b) of the Internal Revenue Code, relating to
25 applicable percentage: 70 percent present value credit for certain
26 new buildings; 30 percent present value credit for certain other
27 buildings, shall be modified as follows:

28 (1) In the case of any qualified low-income building placed in
29 service by the housing sponsor during 1987, the term “applicable
30 percentage” means 9 percent for each of the first three years and
31 3 percent for the fourth year for new buildings (whether or not the
32 building is federally subsidized) and for existing buildings.

33 (2) In the case of any qualified low-income building that receives
34 an allocation after 1989 and is a new building not federally
35 subsidized, the term “applicable percentage” means the following:

36 (A) For each of the first three years, the percentage prescribed
37 by the Secretary of the Treasury for new buildings that are not
38 federally subsidized for the taxable year, determined in accordance
39 with the requirements of Section 42(b)(2) of the Internal Revenue
40 Code, relating to temporary minimum credit rate for nonfederally

1 subsidized new buildings, in lieu of the percentage prescribed in
2 Section 42(b)(1)(A) of the Internal Revenue Code.

3 (B) For the fourth year, the difference between 30 percent and
4 the sum of the applicable percentages for the first three years.

5 (3) In the case of any qualified low-income building that receives
6 an allocation after 1989 and that is a new building that is federally
7 subsidized or that is an existing building that is “at risk of
8 conversion,” the term “applicable percentage” means the following:

9 (A) For each of the first three years, the percentage prescribed
10 by the Secretary of the Treasury for new buildings that are federally
11 subsidized for the taxable year.

12 (B) For the fourth year, the difference between 13 percent and
13 the sum of the applicable percentages for the first three years.

14 (4) For purposes of this section, the term “at risk of conversion,”
15 with respect to an existing property means a property that satisfies
16 all of the following criteria:

17 (A) The property is a multifamily rental housing development
18 in which at least 50 percent of the units receive governmental
19 assistance pursuant to any of the following:

20 (i) New construction, substantial rehabilitation, moderate
21 rehabilitation, property disposition, and loan management set-aside
22 programs, or any other program providing project-based assistance
23 pursuant to Section 8 of the United States Housing Act of 1937,
24 Section 1437f of Title 42 of the United States Code, as amended.

25 (ii) The Below-Market-Interest-Rate Program pursuant to
26 Section 221(d)(3) of the National Housing Act, Sections
27 1715l(d)(3) and (5) of Title 12 of the United States Code.

28 (iii) Section 236 of the National Housing Act, Section 1715z-1
29 of Title 12 of the United States Code.

30 (iv) Programs for rent supplement assistance pursuant to Section
31 101 of the Housing and Urban Development Act of 1965, Section
32 1701s of Title 12 of the United States Code, as amended.

33 (v) Programs pursuant to Section 514 of the Housing Act of
34 1949, Section 1484 of Title 42 of the United States Code, as
35 amended, and Section 515 of the Housing Act of 1949, Section
36 1485 of Title 42 of the United States Code, as amended.

37 (vi) The low-income housing credit program set forth in Section
38 42 of the Internal Revenue Code, relating to low-income housing
39 credit.

~~(vii) Programs for loans or grants administered by the Department of Housing and Community Development.~~

~~(B) The restrictions on rent and income levels will terminate or the federally insured mortgage or rent subsidy contract on the property is eligible for prepayment or termination any time within five years before or after the date of application to the California Tax Credit Allocation Committee.~~

~~(C) The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the property.~~

~~(D) The property satisfies the requirements of Section 42(c) of the Internal Revenue Code, relating to rehabilitation expenditures treated as separate new building, except that the provisions of Section 42(c)(3)(A)(ii)(I) shall not apply.~~

~~(5) On and after January 1, 2018, in the case of any qualified low-income building that is (A) farmworker housing, as defined by paragraph (2) of subdivision (h) of Section 50199.7 of the Health and Safety Code, and (B) is federally subsidized, the term “applicable percentage” means for each of the first three years, 20 percent of the qualified basis of the building, and for the fourth year, 15 percent of the qualified basis of the building.~~

~~(d) The term “qualified low-income housing project” as defined in Section 42(c)(2) of the Internal Revenue Code, relating to qualified low-income building, is modified by adding the following requirements:~~

~~(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, that, at the election of the taxpayer, is equal to:~~

~~(A) An amount not to exceed 8 percent of the lesser of:~~

~~(i) The owner equity, which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.~~

~~(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.~~

~~(B) The amount of the cashflow from those units in the building that are not low-income units. For purposes of computing cashflow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in~~

1 Section 42 of the Internal Revenue Code, relating to low-income
2 housing credit.

3 (C) Any amount allowed to be distributed under subparagraph
4 (A) that is not available for distribution during the first five years
5 of the compliance period may be accumulated and distributed any
6 time during the first 15 years of the compliance period but not
7 thereafter.

8 (2) The limitation on return shall apply in the aggregate to the
9 partners if the housing sponsor is a partnership and in the aggregate
10 to the shareholders if the housing sponsor is an "S" corporation.

11 (3) The housing sponsor shall apply any cash available for
12 distribution in excess of the amount eligible to be distributed under
13 paragraph (1) to reduce the rent on rent-restricted units or to
14 increase the number of rent-restricted units subject to the tests of
15 Section 42(g)(1) of the Internal Revenue Code, relating to in
16 general.

17 (e) The provisions of Section 42(f) of the Internal Revenue
18 Code, relating to definition and special rules relating to credit
19 period, shall be modified as follows:

20 (1) The term "credit period" as defined in Section 42(f)(1) of
21 the Internal Revenue Code, relating to credit period defined, is
22 modified by substituting "four taxable years" for "10 taxable
23 years."

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code, relating to
26 special rules for 1st year of credit period, shall not apply to the tax
27 credit under this section.

28 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
29 determination of applicable percentage with respect to increases
30 in qualified basis after 1st year of credit period, is modified to
31 read:

32 If, as of the close of any taxable year in the compliance period,
33 after the first year of the credit period, the qualified basis of any
34 building exceeds the qualified basis of that building as of the close
35 of the first year of the credit period, the housing sponsor, to the
36 extent of its tax credit allocation, shall be eligible for a credit on
37 the excess in an amount equal to the applicable percentage
38 determined pursuant to subdivision (c) for the four-year period
39 beginning with the taxable year in which the increase in qualified
40 basis occurs.

1 ~~(f) The provisions of Section 42(h) of the Internal Revenue~~
 2 ~~Code, relating to limitation on aggregate credit allowable with~~
 3 ~~respect to projects located in a state, shall be modified as follows:~~

4 ~~(1) Section 42(h)(2) of the Internal Revenue Code, relating to~~
 5 ~~allocated credit amount to apply to all taxable years ending during~~
 6 ~~or after credit allocation year, does not apply and instead the~~
 7 ~~following provisions apply:~~

8 ~~The total amount for the four-year credit period of the housing~~
 9 ~~credit dollars allocated in a calendar year to any building shall~~
 10 ~~reduce the aggregate housing credit dollar amount of the California~~
 11 ~~Tax Credit Allocation Committee for the calendar year in which~~
 12 ~~the allocation is made.~~

13 ~~(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),~~
 14 ~~(7), and (8) of Section 42(h) of the Internal Revenue Code, relating~~
 15 ~~to limitation on aggregate credit allowable with respect to projects~~
 16 ~~located in a state, do not apply to this section.~~

17 ~~(g) The aggregate housing credit dollar amount that may be~~
 18 ~~allocated annually by the California Tax Credit Allocation~~
 19 ~~Committee pursuant to this section, Section 12206, and Section~~
 20 ~~23610.5 shall be an amount equal to the sum of all the following:~~

21 ~~(1) Seventy million dollars (\$70,000,000) for the 2001 calendar~~
 22 ~~year, and, for the 2002 calendar year and each calendar year~~
 23 ~~thereafter, seventy million dollars (\$70,000,000) increased by the~~
 24 ~~percentage, if any, by which the Consumer Price Index for the~~
 25 ~~preceeding calendar year exceeds the Consumer Price Index for the~~
 26 ~~2001 calendar year. For the purposes of this paragraph, the term~~
 27 ~~“Consumer Price Index” means the last Consumer Price Index for~~
 28 ~~All Urban Consumers published by the federal Department of~~
 29 ~~Labor.~~

30 ~~(2) The unused housing credit ceiling, if any, for the preceeding~~
 31 ~~calendar years.~~

32 ~~(3) The amount of housing credit ceiling returned in the calendar~~
 33 ~~year. For purposes of this paragraph, the amount of housing credit~~
 34 ~~dollar amount returned in the calendar year equals the housing~~
 35 ~~credit dollar amount previously allocated to any project that does~~
 36 ~~not become a qualified low-income housing project within the~~
 37 ~~period required by this section or to any project with respect to~~
 38 ~~which an allocation is canceled by mutual consent of the California~~
 39 ~~Tax Credit Allocation Committee and the allocation recipient.~~

~~(4) Except as provided in paragraph (6), five hundred thousand dollars (\$500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(5) Except as provided in paragraph (6), the amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(6) No amount shall be provided for projects to provide farmworker housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers.~~

~~(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code, relating to compliance period, is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.~~

~~(i) Section 42(j) of the Internal Revenue Code, relating to recapture of credit, shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and the regulatory agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, provided that the agreement includes all of the following provisions:~~

~~(1) A term not less than the compliance period.~~

~~(2) A requirement that the agreement be recorded in the official records of the county in which the qualified low-income housing project is located.~~

~~(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.~~

~~(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation~~

1 applicable to the building, the right to enforce the regulatory
2 agreement in any state court.

3 (5) A provision incorporating the requirements of Section 42
4 of the Internal Revenue Code, relating to low-income housing
5 credit, as modified by this section.

6 (6) A requirement that the housing sponsor notify the California
7 Tax Credit Allocation Committee or its designee if there is a
8 determination by the Internal Revenue Service that the project is
9 not in compliance with Section 42(g) of the Internal Revenue Code,
10 relating to qualified low-income housing project.

11 (7) A requirement that the housing sponsor, as security for the
12 performance of the housing sponsor's obligations under the
13 regulatory agreement, assign the housing sponsor's interest in rents
14 that it receives from the project, provided that until there is a
15 default under the regulatory agreement, the housing sponsor is
16 entitled to collect and retain the rents.

17 (8) A provision that the remedies available in the event of a
18 default under the regulatory agreement that is not cured within a
19 reasonable cure period include, but are not limited to, allowing
20 any of the parties designated to enforce the regulatory agreement
21 to collect all rents with respect to the project; taking possession of
22 the project and operating the project in accordance with the
23 regulatory agreement until the enforcer determines the housing
24 sponsor is in a position to operate the project in accordance with
25 the regulatory agreement; applying to any court for specific
26 performance; securing the appointment of a receiver to operate
27 the project; or any other relief as may be appropriate.

28 (j) (1) The committee shall allocate the housing credit on a
29 regular basis consisting of two or more periods in each calendar
30 year during which applications may be filed and considered. The
31 committee shall establish application filing deadlines, the maximum
32 percentage of federal and state low-income housing tax credit
33 ceiling that may be allocated by the committee in that period, and
34 the approximate date on which allocations shall be made. If the
35 enactment of federal or state law, the adoption of rules or
36 regulations, or other similar events prevent the use of two allocation
37 periods, the committee may reduce the number of periods and
38 adjust the filing deadlines, maximum percentage of credit allocated,
39 and the allocation dates.

~~(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code, relating to plans for allocation of credit among projects. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code, relating to qualified allocation plan and relating to certain selection criteria must be used, respectively.~~

~~(3) Notwithstanding Section 42(m) of the Internal Revenue Code, relating to responsibilities of housing credit agencies, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:~~

~~(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:~~

~~(i) The housing sponsor shall demonstrate that there is a need and demand for low-income housing in the community or region for which it is proposed.~~

~~(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.~~

~~(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.~~

~~(iv) The housing sponsor shall have and maintain control of the site for the project.~~

~~(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.~~

~~(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.~~

~~(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies and required equity, and a development fee that~~

1 does not exceed a specified percentage of the eligible basis of the
 2 project prior to inclusion of the development fee in the eligible
 3 basis, as determined by the committee.

4 (B) The committee shall give a preference to those projects
 5 satisfying all of the threshold requirements of subparagraph (A)
 6 if both of the following apply:

7 (i) The project serves the lowest income tenants at rents
 8 affordable to those tenants.

9 (ii) The project is obligated to serve qualified tenants for the
 10 longest period.

11 (C) In addition to the provisions of subparagraphs (A) and (B),
 12 the committee shall use the following criteria in allocating housing
 13 credits:

14 (i) Projects serving large families in which a substantial number,
 15 as defined by the committee, of all residential units are low-income
 16 units with three or more bedrooms.

17 (ii) Projects providing single-room occupancy units serving
 18 very low income tenants.

19 (iii) Existing projects that are “at risk of conversion,” as defined
 20 by paragraph (4) of subdivision (c):

21 (iv) Projects for which a public agency provides direct or indirect
 22 long-term financial support for at least 15 percent of the total
 23 project development costs or projects for which the owner’s equity
 24 constitutes at least 30 percent of the total project development
 25 costs.

26 (v) Projects that provide tenant amenities not generally available
 27 to residents of low-income housing projects.

28 (4) For purposes of allocating credits pursuant to this section,
 29 the committee shall not give preference to any project by virtue
 30 of the date of submission of its application.

31 (k) Section 42(l) of the Internal Revenue Code, relating to
 32 certifications and other reports to secretary, shall be modified as
 33 follows:

34 The term “secretary” shall be replaced by the term “Franchise
 35 Tax Board.”

36 (l) In the case in which the credit allowed under this section
 37 exceeds the net tax, the excess may be carried over to reduce the
 38 net tax in the following year, and succeeding years, if necessary,
 39 until the credit has been exhausted.

~~(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:~~

~~(1) The project was not placed in service prior to 1990.~~

~~(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.~~

~~(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).~~

~~(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.~~

~~(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, apply to calendar years after 1989.~~

~~(p) The provisions of Section 11407(e) of Public Law 101-508, relating to election to accelerate credit, shall not apply.~~

~~(q) (1) For a project that receives a preliminary reservation under this section beginning on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an irrevocable election in its application to the California Tax Credit Allocation Committee to sell all or any portion of any credit allowed under this section to one or more unrelated parties for each taxable year in which the credit is allowed subject to both of the following conditions:~~

~~(A) The credit is sold for consideration that is not less than 80 percent of the amount of the credit.~~

~~(B) The unrelated party or parties purchasing any or all of the credit pursuant to this subdivision is a taxpayer allowed the credit under this section for the taxable year of the purchase or any prior taxable year or is a taxpayer allowed the federal credit under Section 42 of the Internal Revenue Code, relating to low-income housing credit, for the taxable year of the purchase or any prior taxable year in connection with any project located in this state. For purposes of this subparagraph, "taxpayer allowed the credit under this section" means a taxpayer that is allowed the credit under this section without regard to the purchase of a credit pursuant to this subdivision.~~

1 ~~(2) (A) The taxpayer that originally received the credit shall~~
2 ~~report to the California Tax Credit Allocation Committee within~~
3 ~~10 days of the sale of the credit, in the form and manner specified~~
4 ~~by the California Tax Credit Allocation Committee, all required~~
5 ~~information regarding the purchase and sale of the credit, including~~
6 ~~the social security or other taxpayer identification number of the~~
7 ~~unrelated party or parties to whom the credit has been sold, the~~
8 ~~face amount of the credit sold, and the amount of consideration~~
9 ~~received by the taxpayer for the sale of the credit.~~

10 ~~(B) The California Tax Credit Allocation Committee shall~~
11 ~~provide an annual listing to the Franchise Tax Board, in a form~~
12 ~~and manner agreed upon by the California Tax Credit Allocation~~
13 ~~Committee and the Franchise Tax Board, of the taxpayers that~~
14 ~~have sold or purchased a credit pursuant to this subdivision.~~

15 ~~(3) (A) A credit may be sold pursuant to this subdivision to~~
16 ~~more than one unrelated party.~~

17 ~~(B) (i) Except as provided in clause (ii), a credit shall not be~~
18 ~~resold by the unrelated party to another taxpayer or other party.~~

19 ~~(ii) All or any portion of any credit allowed under this section~~
20 ~~may be resold once by an original purchaser to one or more~~
21 ~~unrelated parties, subject to all of the requirements of this~~
22 ~~subdivision.~~

23 ~~(4) Notwithstanding any other law, the taxpayer that originally~~
24 ~~received the credit that is sold pursuant to paragraph (1) shall~~
25 ~~remain solely liable for all obligations and liabilities imposed on~~
26 ~~the taxpayer by this section with respect to the credit, none of~~
27 ~~which shall apply to a party to whom the credit has been sold or~~
28 ~~subsequently transferred. Parties that purchase credits pursuant to~~
29 ~~paragraph (1) shall be entitled to utilize the purchased credits in~~
30 ~~the same manner in which the taxpayer that originally received~~
31 ~~the credit could utilize them.~~

32 ~~(5) A taxpayer shall not sell a credit allowed by this section if~~
33 ~~the taxpayer was allowed the credit on any tax return of the~~
34 ~~taxpayer.~~

35 ~~(6) Notwithstanding paragraph (1), the taxpayer, with the~~
36 ~~approval of the Executive Director of the California Tax Credit~~
37 ~~Allocation Committee, may rescind the election to sell all or any~~
38 ~~portion of the credit allowed under this section if the consideration~~
39 ~~for the credit falls below 80 percent of the amount of the credit~~
40 ~~after the California Tax Credit Allocation Committee reservation.~~

~~(r) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.~~

~~(s) The amendments to this section made by Chapter 1222 of the Statutes of 1993 apply only to taxable years beginning on or after January 1, 1994.~~

~~(t) This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credit, remains in effect. Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.~~

~~SEC. 22. Section 23610.5 of the Revenue and Taxation Code is amended to read:~~

~~23610.5. (a) (1) There shall be allowed as a credit against the "tax," defined in Section 23036, a state low-income housing tax credit in an amount equal to the amount determined in subdivision (e), computed in accordance with Section 42 of the Internal Revenue Code, relating to low-income housing credit, except as otherwise provided in this section.~~

~~(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a "C" corporation, the partners in the case of a partnership, and the shareholders in the case of an "S" corporation.~~

~~(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a "C" corporation, the partnership in the case of a partnership, and the "S" corporation in the case of an "S" corporation.~~

~~(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.~~

~~(A) The low-income housing project shall be located in California and shall meet either of the following requirements:~~

1 (i) Except for projects to provide farmworker housing, as defined
2 in subdivision (h) of Section 50199.7 of the Health and Safety
3 Code, that are allocated credits solely under the set-aside described
4 in subdivision (e) of Section 50199.20 of the Health and Safety
5 Code, the project's housing sponsor has been allocated by the
6 California Tax Credit Allocation Committee a credit for federal
7 income tax purposes under Section 42 of the Internal Revenue
8 Code, relating to low-income housing credit.

9 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
10 Internal Revenue Code, relating to special rule where 50 percent
11 or more of building is financed with tax-exempt bonds subject to
12 volume cap.

13 (B) The California Tax Credit Allocation Committee shall not
14 require fees for the credit under this section in addition to those
15 fees required for applications for the tax credit pursuant to Section
16 42 of the Internal Revenue Code, relating to low-income housing
17 credit. The committee may require a fee if the application for the
18 credit under this section is submitted in a calendar year after the
19 year the application is submitted for the federal tax credit.

20 (C) (i) For a project that receives a preliminary reservation of
21 the state low-income housing tax credit, allowed pursuant to
22 subdivision (a), on or after January 1, 2009, and before January 1,
23 2020, the credit shall be allocated to the partners of a partnership
24 owning the project in accordance with the partnership agreement,
25 regardless of how the federal low-income housing tax credit with
26 respect to the project is allocated to the partners, or whether the
27 allocation of the credit under the terms of the agreement has
28 substantial economic effect, within the meaning of Section 704(b)
29 of the Internal Revenue Code, relating to determination of
30 distributive share.

31 (ii) To the extent the allocation of the credit to a partner under
32 this section lacks substantial economic effect, any loss or deduction
33 otherwise allowable under this part that is attributable to the sale
34 or other disposition of that partner's partnership interest made prior
35 to the expiration of the federal credit shall not be allowed in the
36 taxable year in which the sale or other disposition occurs, but shall
37 instead be deferred until and treated as if it occurred in the first
38 taxable year immediately following the taxable year in which the
39 federal credit period expires for the project described in clause (i).

~~(iii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (e) of Section 50199.20 of the Health and Safety Code unless the project also receives a preliminary reservation of federal low-income housing tax credits.~~

~~(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.~~

~~(B) In the case of a partnership or an "S" corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.~~

~~(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.~~

~~(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code, relating to low-income housing credit, apply to this section.~~

~~(E) (i) Except as described in clause (ii) or (iii), for buildings located in designated difficult development areas (DDAs) or qualified census tracts (QCTs), as defined in Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code, relating to low-income housing credit, is computed on 100 percent of the qualified basis of the building.~~

~~(ii) Notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit for buildings located in DDAs or QCTs that are restricted to having 50 percent of the building's occupants be special needs households, as defined in the California Code of Regulations by the California Tax Credit Allocation Committee, even if the taxpayer receives federal credits pursuant to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, provided that the credit allowed under this section shall not exceed 30 percent of the eligible basis of the building.~~

~~(iii) On and after January 1, 2018, notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit pursuant to paragraph (5) of subdivision (c) even if the taxpayer receives federal credits, pursuant to Section 42(d)(5)(B)~~

1 of the Internal Revenue Code, relating to increase in credit for
2 buildings in high-cost areas:

3 (F) (i) The California Tax Credit Allocation Committee may
4 allocate a credit under this section in exchange for a credit allocated
5 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
6 relating to increase in credit for buildings in high-cost areas, in
7 amounts up to 30 percent of the eligible basis of a building if the
8 credits allowed under Section 42 of the Internal Revenue Code,
9 relating to low-income housing credit, are reduced by an equivalent
10 amount.

11 (ii) An equivalent amount shall be determined by the California
12 Tax Credit Allocation Committee based upon the relative amount
13 required to produce an equivalent state tax credit to the taxpayer.

14 (e) Section 42(b) of the Internal Revenue Code, relating to
15 applicable percentage: 70 percent present value credit for certain
16 new buildings; 30 percent present value credit for certain other
17 buildings, shall be modified as follows:

18 (1) In the case of any qualified low-income building placed in
19 service by the housing sponsor during 1987, the term “applicable
20 percentage” means 9 percent for each of the first three years and
21 3 percent for the fourth year for new buildings (whether or not the
22 building is federally subsidized) and for existing buildings.

23 (2) In the case of any qualified low-income building that receives
24 an allocation after 1989 and is a new building not federally
25 subsidized, the term “applicable percentage” means the following:

26 (A) For each of the first three years, the percentage prescribed
27 by the Secretary of the Treasury for new buildings that are not
28 federally subsidized for the taxable year, determined in accordance
29 with the requirements of Section 42(b)(2) of the Internal Revenue
30 Code, relating to temporary minimum credit rate for nonfederally
31 subsidized new buildings, in lieu of the percentage prescribed in
32 Section 42(b)(1)(A) of the Internal Revenue Code.

33 (B) For the fourth year, the difference between 30 percent and
34 the sum of the applicable percentages for the first three years.

35 (3) In the case of any qualified low-income building that receives
36 an allocation after 1989 and that is a new building that is federally
37 subsidized or that is an existing building that is “at risk of
38 conversion,” the term “applicable percentage” means the following:

1 (A) For each of the first three years, the percentage prescribed
 2 by the Secretary of the Treasury for new buildings that are federally
 3 subsidized for the taxable year.

4 (B) For the fourth year, the difference between 13 percent and
 5 the sum of the applicable percentages for the first three years.

6 (4) For purposes of this section, the term “at risk of conversion,”
 7 with respect to an existing property means a property that satisfies
 8 all of the following criteria:

9 (A) The property is a multifamily rental housing development
 10 in which at least 50 percent of the units receive governmental
 11 assistance pursuant to any of the following:

12 (i) New construction, substantial rehabilitation, moderate
 13 rehabilitation, property disposition, and loan management set-aside
 14 programs, or any other program providing project-based assistance
 15 pursuant to Section 8 of the United States Housing Act of 1937,
 16 Section 1437f of Title 42 of the United States Code, as amended.

17 (ii) The Below-Market-Interest-Rate Program pursuant to
 18 Section 221(d)(3) of the National Housing Act, Sections
 19 1715l(d)(3) and (5) of Title 12 of the United States Code.

20 (iii) Section 236 of the National Housing Act, Section 1715z-1
 21 of Title 12 of the United States Code.

22 (iv) Programs for rent supplement assistance pursuant to Section
 23 101 of the Housing and Urban Development Act of 1965, Section
 24 1701s of Title 12 of the United States Code, as amended.

25 (v) Programs pursuant to Section 514 of the Housing Act of
 26 1949, Section 1484 of Title 42 of the United States Code, as
 27 amended, and Section 515 of the Housing Act of 1949, Section
 28 1485 of Title 42 of the United States Code, as amended.

29 (vi) The low-income housing credit program set forth in Section
 30 42 of the Internal Revenue Code, relating to low-income housing
 31 credit.

32 (vii) Programs for loans or grants administered by the
 33 Department of Housing and Community Development.

34 (B) The restrictions on rent and income levels will terminate or
 35 the federally insured mortgage or rent subsidy contract on the
 36 property is eligible for prepayment or termination any time within
 37 five years before or after the date of application to the California
 38 Tax Credit Allocation Committee.

39 (C) The entity acquiring the property enters into a regulatory
 40 agreement that requires the property to be operated in accordance

1 with the requirements of this section for a period equal to the
 2 greater of 55 years or the life of the property.

3 (D) The property satisfies the requirements of Section 42(e) of
 4 the Internal Revenue Code, relating to rehabilitation expenditures
 5 treated as separate new building, except that the provisions of
 6 Section 42(e)(3)(A)(ii)(I) shall not apply.

7 (5) On and after January 1, 2018, in the case of any qualified
 8 low-income building that is (A) farmworker housing, as defined
 9 by paragraph (2) of subdivision (h) of Section 50199.7 of the
 10 Health and Safety Code, and (B) is federally subsidized, the term
 11 “applicable percentage” means for each of the first three years, 20
 12 percent of the qualified basis of the building, and for the fourth
 13 year, 15 percent of the qualified basis of the building.

14 (d) The term “qualified low-income housing project” as defined
 15 in Section 42(c)(2) of the Internal Revenue Code, relating to
 16 qualified low-income building, is modified by adding the following
 17 requirements:

18 (1) The taxpayer shall be entitled to receive a cash distribution
 19 from the operations of the project, after funding required reserves,
 20 that, at the election of the taxpayer, is equal to:

21 (A) An amount not to exceed 8 percent of the lesser of:

22 (i) The owner equity, which shall include the amount of the
 23 capital contributions actually paid to the housing sponsor and shall
 24 not include any amounts until they are paid on an investor note.

25 (ii) Twenty percent of the adjusted basis of the building as of
 26 the close of the first taxable year of the credit period.

27 (B) The amount of the cashflow from those units in the building
 28 that are not low-income units. For purposes of computing cashflow
 29 under this subparagraph, operating costs shall be allocated to the
 30 low-income units using the “floor space fraction,” as defined in
 31 Section 42 of the Internal Revenue Code, relating to low-income
 32 housing credit.

33 (C) Any amount allowed to be distributed under subparagraph
 34 (A) that is not available for distribution during the first five years
 35 of the compliance period may be accumulated and distributed any
 36 time during the first 15 years of the compliance period but not
 37 thereafter.

38 (2) The limitation on return shall apply in the aggregate to the
 39 partners if the housing sponsor is a partnership and in the aggregate
 40 to the shareholders if the housing sponsor is an “S” corporation.

~~(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code, relating to in general.~~

~~(e) The provisions of Section 42(f) of the Internal Revenue Code, relating to definition and special rules relating to credit period, shall be modified as follows:~~

~~(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code, relating to credit period defined, is modified by substituting "four taxable years" for "10 taxable years."~~

~~(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code, relating to special rule for 1st year of credit period, shall not apply to the tax credit under this section.~~

~~(3) Section 42(f)(3) of the Internal Revenue Code, relating to determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period, is modified to read:~~

~~If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.~~

~~(f) The provisions of Section 42(h) of the Internal Revenue Code, relating to limitation on aggregate credit allowable with respect to projects located in a state, shall be modified as follows:~~

~~(1) Section 42(h)(2) of the Internal Revenue Code, relating to allocated credit amount to apply to all taxable years ending during or after credit allocation year, shall not be applicable and instead the following provisions shall be applicable:~~

~~The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California~~

1 Tax Credit Allocation Committee for the calendar year in which
2 the allocation is made.

3 ~~(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),~~
4 ~~(7), and (8) of Section 42(h) of the Internal Revenue Code, relating~~
5 ~~to limitation on aggregate credit allowable with respect to projects~~
6 ~~located in a state, shall not be applicable.~~

7 ~~(g) The aggregate housing credit dollar amount that may be~~
8 ~~allocated annually by the California Tax Credit Allocation~~
9 ~~Committee pursuant to this section, Section 12206, and Section~~
10 ~~17058 shall be an amount equal to the sum of all the following:~~

11 ~~(1) Seventy million dollars (\$70,000,000) for the 2001 calendar~~
12 ~~year, and, for the 2002 calendar year and each calendar year~~
13 ~~thereafter, seventy million dollars (\$70,000,000) increased by the~~
14 ~~percentage, if any, by which the Consumer Price Index for the~~
15 ~~preceding calendar year exceeds the Consumer Price Index for the~~
16 ~~2001 calendar year. For the purposes of this paragraph, the term~~
17 ~~“Consumer Price Index” means the last Consumer Price Index for~~
18 ~~All Urban Consumers published by the federal Department of~~
19 ~~Labor.~~

20 ~~(2) The unused housing credit ceiling, if any, for the preceding~~
21 ~~calendar years.~~

22 ~~(3) The amount of housing credit ceiling returned in the calendar~~
23 ~~year. For purposes of this paragraph, the amount of housing credit~~
24 ~~dollar amount returned in the calendar year equals the housing~~
25 ~~credit dollar amount previously allocated to any project that does~~
26 ~~not become a qualified low-income housing project within the~~
27 ~~period required by this section or to any project with respect to~~
28 ~~which an allocation is canceled by mutual consent of the California~~
29 ~~Tax Credit Allocation Committee and the allocation recipient.~~

30 ~~(4) Except as provided in paragraph (6), five hundred thousand~~
31 ~~dollars (\$500,000) per calendar year for projects to provide~~
32 ~~farmworker housing, as defined in subdivision (h) of Section~~
33 ~~50199.7 of the Health and Safety Code.~~

34 ~~(5) Except as provided in paragraph (6), the amount of any~~
35 ~~unallocated or returned credits under former Sections 17053.14,~~
36 ~~23608.2, and 23608.3, as those sections read prior to January 1,~~
37 ~~2009, until fully exhausted for projects to provide farmworker~~
38 ~~housing, as defined in subdivision (h) of Section 50199.7 of the~~
39 ~~Health and Safety Code.~~

~~(6) No amount shall be provided for projects to provide farmworker housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers.~~

~~(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code, relating to compliance period, is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.~~

~~(i) Section 42(j) of the Internal Revenue Code, relating to recapture of credit, shall not be applicable and the following shall be substituted in its place:~~

~~The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and the regulatory agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, provided that the agreement includes all of the following provisions:~~

~~(1) A term not less than the compliance period.~~

~~(2) A requirement that the agreement be recorded in the official records of the county in which the qualified low-income housing project is located.~~

~~(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.~~

~~(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.~~

~~(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code, relating to low-income housing credit, as modified by this section.~~

~~(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is~~

1 not in compliance with Section 42(g) of the Internal Revenue Code,
2 relating to qualified low-income housing project.

3 ~~(7) A requirement that the housing sponsor, as security for the~~
4 ~~performance of the housing sponsor's obligations under the~~
5 ~~regulatory agreement, assign the housing sponsor's interest in rents~~
6 ~~that it receives from the project, provided that until there is a~~
7 ~~default under the regulatory agreement, the housing sponsor is~~
8 ~~entitled to collect and retain the rents.~~

9 ~~(8) A provision that the remedies available in the event of a~~
10 ~~default under the regulatory agreement that is not cured within a~~
11 ~~reasonable cure period include, but are not limited to, allowing~~
12 ~~any of the parties designated to enforce the regulatory agreement~~
13 ~~to collect all rents with respect to the project; taking possession of~~
14 ~~the project and operating the project in accordance with the~~
15 ~~regulatory agreement until the enforcer determines the housing~~
16 ~~sponsor is in a position to operate the project in accordance with~~
17 ~~the regulatory agreement; applying to any court for specific~~
18 ~~performance; securing the appointment of a receiver to operate~~
19 ~~the project; or any other relief as may be appropriate.~~

20 ~~(j) (1) The committee shall allocate the housing credit on a~~
21 ~~regular basis consisting of two or more periods in each calendar~~
22 ~~year during which applications may be filed and considered. The~~
23 ~~committee shall establish application filing deadlines, the maximum~~
24 ~~percentage of federal and state low-income housing tax credit~~
25 ~~ceiling that may be allocated by the committee in that period, and~~
26 ~~the approximate date on which allocations shall be made. If the~~
27 ~~enactment of federal or state law, the adoption of rules or~~
28 ~~regulations, or other similar events prevent the use of two allocation~~
29 ~~periods, the committee may reduce the number of periods and~~
30 ~~adjust the filing deadlines, maximum percentage of credit allocated,~~
31 ~~and allocation dates.~~

32 ~~(2) The committee shall adopt a qualified allocation plan, as~~
33 ~~provided in Section 42(m)(1) of the Internal Revenue Code, relating~~
34 ~~to plans for allocation of credit among projects. In adopting this~~
35 ~~plan, the committee shall comply with the provisions of Sections~~
36 ~~42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,~~
37 ~~relating to qualified allocation plan and relating to certain selection~~
38 ~~criteria must be used, respectively.~~

39 ~~(3) Notwithstanding Section 42(m) of the Internal Revenue~~
40 ~~Code, relating to responsibilities of housing credit agencies, the~~

~~California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:~~

~~(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:~~

~~(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.~~

~~(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.~~

~~(iii) The project shall have enforceable financing commitments; either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.~~

~~(iv) The housing sponsor shall have and maintain control of the site for the project.~~

~~(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.~~

~~(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.~~

~~(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.~~

~~(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:~~

~~(i) The project serves the lowest income tenants at rents affordable to those tenants.~~

~~(ii) The project is obligated to serve qualified tenants for the longest period.~~

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three or more bedrooms.

(ii) Projects providing single-room occupancy units serving very low income tenants.

(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(l) of the Internal Revenue Code, relating to certifications and other reports to secretary, shall be modified as follows:

The term “secretary” shall be replaced by the term “Franchise Tax Board.”

(l) In the case in which the credit allowed under this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years, if necessary, until the credit has been exhausted.

~~(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:~~

~~(1) The project was not placed in service prior to 1990.~~

~~(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.~~

~~(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).~~

~~(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.~~

~~(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, apply to calendar years after 1989.~~

~~(p) The provisions of Section 11407(e) of Public Law 101-508, relating to election to accelerate credit, shall not apply.~~

~~(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, "affiliated corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and "voting common stock" is substituted for "voting stock" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.~~

~~(2) The election provided in paragraph (1):~~

~~(A) May be based on any method selected by the corporation that originally receives the credit.~~

~~(B) Shall be irrevocable for the taxable year the credit is allowed, once made.~~

~~(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the~~

1 returns of the affiliated corporations that assign and receive the
2 credits.

3 (r) (1) For a project that receives a preliminary reservation
4 under this section beginning on or after January 1, 2016, and before
5 January 1, 2020, a taxpayer may make an irrevocable election in
6 its application to the California Tax Credit Allocation Committee
7 to sell all or any portion of any credit allowed under this section
8 to one or more unrelated parties for each taxable year in which the
9 credit is allowed subject to both of the following conditions:

10 (A) The credit is sold for consideration that is not less than 80
11 percent of the amount of the credit.

12 (B) (i) The unrelated party or parties purchasing any or all of
13 the credit pursuant to this subdivision is a taxpayer allowed the
14 credit under this section for the taxable year of the purchase or any
15 prior taxable year or is a taxpayer allowed the federal credit under
16 Section 42 of the Internal Revenue Code, relating to low-income
17 housing credit, for the taxable year of the purchase or any prior
18 taxable year in connection with any project located in this state.

19 (ii) For purposes of this subparagraph, "taxpayer allowed the
20 credit under this section" means a taxpayer that is allowed the
21 credit under this section without regard to the purchase of a credit
22 pursuant to this subdivision without regard to any of the following:

23 (I) The purchase of a credit under this section pursuant to this
24 subdivision.

25 (II) The assignment of a credit under this section pursuant to
26 subdivision (q).

27 (III) The assignment of a credit under this section pursuant to
28 Section 23363.

29 (2) (A) The taxpayer that originally received the credit shall
30 report to the California Tax Credit Allocation Committee within
31 10 days of the sale of the credit, in the form and manner specified
32 by the California Tax Credit Allocation Committee, all required
33 information regarding the purchase and sale of the credit, including
34 the social security or other taxpayer identification number of the
35 unrelated party or parties to whom the credit has been sold, the
36 face amount of the credit sold, and the amount of consideration
37 received by the taxpayer for the sale of the credit.

38 (B) The California Tax Credit Allocation Committee shall
39 provide an annual listing to the Franchise Tax Board, in a form
40 and manner agreed upon by the California Tax Credit Allocation

~~Committee and the Franchise Tax Board, of the taxpayers that have sold or purchased a credit pursuant to this subdivision.~~

~~(3) (A) A credit may be sold pursuant to this subdivision to more than one unrelated party.~~

~~(B) (i) Except as provided in clause (ii), a credit shall not be resold by the unrelated party to another taxpayer or other party.~~

~~(ii) All or any portion of any credit allowed under this section may be resold once by an original purchaser to one or more unrelated parties, subject to all of the requirements of this subdivision.~~

~~(4) Notwithstanding any other law, the taxpayer that originally received the credit that is sold pursuant to paragraph (1) shall remain solely liable for all obligations and liabilities imposed on the taxpayer by this section with respect to the credit, none of which shall apply to a party to whom the credit has been sold or subsequently transferred. Parties that purchase credits pursuant to paragraph (1) shall be entitled to utilize the purchased credits in the same manner in which the taxpayer that originally received the credit could utilize them.~~

~~(5) A taxpayer shall not sell a credit allowed by this section if the taxpayer was allowed the credit on any tax return of the taxpayer.~~

~~(6) Notwithstanding paragraph (1), the taxpayer, with the approval of the Executive Director of the California Tax Credit Allocation Committee, may rescind the election to sell all or any portion of the credit allowed under this section if the consideration for the credit falls below 80 percent of the amount of the credit after the California Tax Credit Allocation Committee reservation.~~

~~(s) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.~~

~~(t) Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.~~

1 ~~(u) This section shall remain in effect on and after December~~
2 ~~1, 1990, for as long as Section 42 of the Internal Revenue Code,~~
3 ~~relating to low-income housing credit, remains in effect.~~

4 ~~(v) The amendments to this section made by Chapter 1222 of~~
5 ~~the Statutes of 1993 shall apply only to taxable years beginning~~
6 ~~on or after January 1, 1994, except that paragraph (1) of subdivision~~
7 ~~(q), as amended, shall apply to taxable years beginning on or after~~
8 ~~January 1, 1993.~~

9 ~~SEC. 23.~~

10 ~~SEC. 20.~~ No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act or because costs that may be
15 incurred by a local agency or school district will be incurred
16 because this act creates a new crime or infraction, eliminates a
17 crime or infraction, or changes the penalty for a crime or infraction,
18 within the meaning of Section 17556 of the Government Code, or
19 changes the definition of a crime within the meaning of Section 6
20 of Article XIII B of the California Constitution.

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March 27, 2019

The Honorable David Chiu
Chair, Assembly Committee on Housing and Community Development
Sacramento, CA 95814

RE: AB 1783 (R. Rivas) – Letter of Support

Dear Mr. Chair:

The City of Morgan Hill is pleased to offer support of AB 1783, which creates a streamlined process in which farm owners and operators can dedicate agricultural land to quality employee housing, and the phasing out of state support of the federal H-2A program.

The state's housing shortage is not just an urban problem nor can a singular approach solve our housing crisis. The housing shortage affects rural areas as well, particularly those that depend on agriculture. Many farms have surplus land that could be used to build safe and secure housing for farmworkers, but in order to do that the land first needs to be rezoned. In fact, the City of Morgan Hill, County of Santa Clara, and local farmers have created the "South Santa Clara County Agricultural Worker Housing Focus Group" to brainstorm ideas to develop Farmworker housing. The City has learned that many of our local Farmers have had to let crops die because they have not been able to employ workers to pick their crops, have had to resort to competing with one another for workers (due to the affordable housing situation), and at times, have not even tried to farm their land because of the shortage of workers. Many of these Farmers expressed that they would be willing to build housing for workers on their land if they were permitted to do so.

Unfortunately, rezoning is often blocked by communities that don't want housing for farmworkers. This leads to farmworker housing stopgaps that are often substandard and unsafe. Without adequate housing, farmworkers and their families are left with no choice, but to sleep in their vehicles, illegally converted garages, and sometimes even the outdoors; living conditions that are not suitable under any circumstances.

The City of Morgan Hill is proud to support AB 1783 which encourages growers to supply quality housing in order to address one of many types of housing shortages in the state. California's failure to provide decent and affordable housing hurts our ability to attract workers to California's farms, and the federal H-2A program push makes a bad situation even worse. Under the visa program, a farmworker is disconnected from family and dependent on a single employer that controls daily meals, housing, and immigration status. This situation can be punitive for a farmworker.

The City of Morgan Hill commends Assemblymember Rivas' leadership in authoring AB 1783 to create a tool for agriculture growers to provide quality, dignified housing for their domestic workforce. The Farm Worker Housing Act of 2019 creates a streamlined process where agricultural employee housing located on

land zoned for agricultural uses shall be subject solely to a ministerial approval process and not subject to a conditional use permit, provided it meets certain objective quality standards, which include:

- No barrack-style housing or gender discrimination (all male dorms).
- Housing that does not promote family unity will not be eligible.
- No dual-role of employer and landlord. An employer of farm workers cannot also serve as a landlord.
- No for-profit management. Housing must be managed by a qualified affordable housing organization.

California's housing needs are diverse and require alternative solutions for different areas in the state. AB 1783 addresses a need in the rural parts of the state to establish opportunities for a grower to more easily offer housing for the workforce that drives California's multi-billion dollar industry. The City of Morgan Hill looks forward to continuing to support AB 1783 as it advances through the legislative process.

Sincerely,



Rich Constantine
Mayor

Cc: Morgan Hill City Council Members



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Harjot Sangha, Accounting Manager
APPROVED BY: City Manager

RESOLUTION SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

RECOMMENDATION(S)

Adopt resolution supporting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

Advancing Regional Initiatives

REPORT NARRATIVE:

On December 18, 1979, the United Nations General Assembly adopted CEDAW, a United Nations treaty for all women's equality. The CEDAW is a landmark international agreement that affirms principles of fundamental human rights and equality for women around the world (Attachment No. 1). It focuses on women's rights and provides a universal definition of discrimination against women and calls for action to eliminate discrimination in many areas including politics, law, employment, education, and health care. Thus far, 189 out of 193 United Nations member states have ratified CEDAW. The United States signed the CEDAW in 1980 but has not formally ratified it.

In 2013, Women's Intercultural Network (WIN), a Non-Governmental Organization (NGO) with Consultative Status to the UN Economic and Social Council (ECOSOC), and the San Francisco Department of the Status of Women (DOSW), jointly launched a *Cities for CEDAW* Campaign in 2013 (Attachment No. 2), to lead efforts that provide tools and leadership to empower local women's civil and human rights organizations and municipalities to effectively initiate CEDAW within their city, county, town or state by adopting resolutions or ordinances that support or implement three key components: a gender analysis of city departments and operations; an oversight body to monitor the implementation of a local CEDAW ordinance; and funding to support the implementation of the principles of CEDAW. In 2015, The Leadership Conference on Civil and Human Rights joined the campaign to help build capacity and provide educational resources to inform cities to take action in their local areas and promote adoption of CEDAW principles for the Cities for CEDAW campaign.

In 1998, San Francisco became the first city in the United States to adopt such an

ordinance, followed by Los Angeles in 2003. According to the Cities for CEDAW website, as of August 2018, 7 cities or counties have adopted ordinances (including County of Santa Clara), 31 cities or counties have adopted resolutions, and 31 additional cities and or counties have made commitments to use CEDAW principles in local law and policy by adopting resolutions and proclamations.

In January 2019, the City Council held its annual goal setting workshop at which it confirmed Morgan Hill's vision to sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community. Further, the City Council instituted fundamentals to its success by having 9 ongoing priorities, which include enhancing diversity and inclusiveness.

On March 20, 2019, at the request of the Mayor, the City Council received a report on CEDAW, discussed the initiative, and provided unanimous directive for staff to prepare a resolution in support of CEDAW (Attachment No. 3).

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of a position the City Council plans to take regarding CEDAW.

ALTERNATIVE ACTIONS:

Council could choose not to adopt the resolution.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 20, 2019, the City Council received a report on CEDAW and directed staff to prepare a resolution in support.

FISCAL AND RESOURCE IMPACT:

There were no significant fiscal or resource impacts in preparing this report as it was an activity accommodated within the existing workplan of the City Manager's office.

CEQA (California Environmental Quality Act):

Not a Project. This is an administrative activity of the government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Introduction to CEDAW and Full Text (web link)
2. Cities for CEDAW Campaign Website (web link)
3. CEDAW Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SUPPORTING THE UNITED NATIONS CONVENTION OF THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

WHEREAS, the Convention of the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on December 18, 1979, became an international treaty on September 3, 1981, and 189 United Nations member nations have agreed to be bound by CEDAW's provisions; and

WHEREAS, while women have made gains in the struggle for equality in many fields, there remains a need to fully eradicate gender-based discrimination and to provide one of the most basic human rights-equality to all; and

WHEREAS, Cities for CEDAW is a grass roots effort that provides tools and leadership to empower local women's organization and municipalities to effectively initiate CEDAW within their respective localities; and

WHEREAS, the City Council wishes to express its desire that women who live in Morgan Hill, California enjoy all the rights, privileges, and remedies that are bestowed on all people in the United States, no matter their race, national origin, gender or religious belief, and with a purpose to proclaim that Morgan Hill, California is a city that will not tolerate discrimination against women; and

WHEREAS, CEDAW provides a comprehensive framework for governments to examine their policies and practices in relation to women and to rectify discrimination based on gender; and

WHEREAS, the City Council adopted its 2019-2020 Sustainable Morgan Hill strategic priorities on February 6, 2019, including enhancing diversity and inclusiveness as an ongoing priority; and

WHEREAS, by adopting this CEDAW Resolution, the City Council pledge to continuing work to ensure safety, security, and equality for all, and fight discrimination and violence, in the City of Morgan Hill; and

NOW, THEREFORE, BE IT RESOLVED that the City Council do hereby commit to eliminating all forms of violence against females, promoting the health and safety of women and affording them equal education, economic, social and business opportunities in the City of Morgan Hill, California.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of April 2019.

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

RICH CONSTANTINE, Mayor∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: CEDAW Resolution (2257 : CEDAW Resolution)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2300, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Economic Development
Financial Stewardship
Housing
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

On March 20, 2019, the City Council introduced Ordinance No. 2300 New Series, by the following roll call vote: AYES: Carr, McKay, Constantine; NOES: Martinez Beltran; ABSTAIN: None; ABSENT: Spring.

Ordinance 2300 will approve a Development Agreement between the City of Morgan Hill and the Latala Group, LLC. This Development Agreement contains the Residential Development Control System (RDCS) public benefit commitments for 49 Downtown

RDCS, allotments. On March 20, 2019, City Council approved the payment of in-lieu fees rather than on-site construction of Inclusionary Housing units for the project and the Development Agreement has been modified to incorporate this change.

On October 3, 2018, the City Council approved a Disposition Development Agreement (DDA) memorializing the sale of .29 acres of Depot Street right-of-way, the realignment and construction of Depot Street to Church Street and East Dunne Avenue intersection, and the option to purchase a 3,116 square foot office within the mixed-use building of the proposed project. In conformance with the approved DDA, the applicant submitted preliminary and final RDCS applications and was awarded 49 building allotments at the January 22, 2019 Planning Commission meeting. The Planning Commission also recommended approval of the RDCS Development Agreement (DA) solidifying the project public benefit commitments.

The updated Development Agreement will be provided as a supplement before the April 3, 2019 City Council Meeting.

COMMUNITY ENGAGEMENT: Inform

All prior City Council actions were publicly noticed for the item including the Downtown Housing and Retail Capacity, Trends, and Opportunities workshop with the Planning Commission at the July 24, 2018 meeting.

In addition, the Developer met with:

- ☐ Jeff Dixon on June 15, 2018 representing the Freedom Fest event
- ☐ Downtown Restaurant Association on August 13, 2018
- ☐ Downtown Association on August 16, 2018
- ☐ Chamber of Commerce on August 28, 2018
- ☐ Sunday Minnich representing the Mardi Gras event on September 10, 2018
- ☐ Chamber of Commerce Economic Development Committee on September 13, 2018
- ☐ Cricket Rubino representing Bingo at the CCC on September 13, 2018.

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- April 18, 2018 – ENA was presented and approved by City Council.
- July 24, 2018 – Planning Commission Workshop on Downtown Housing and Retail Capacity, Trends, and Opportunities.

- August 21, 2018 – Presentation to the Parks and Recreation Commission for the opportunity to purchase the 3,000 square foot office space within the proposed development. Parks and Recreation Commission recommended approval to City Council.
- September 5, 2018 – Presented City Council the opportunity to purchase the 3,000-office building for non-profits, to be developed as part of the project.
- October 3, 2018 – Approved Disposition Development Agreement for the sale of .29-acres of former Depot Street right-of-way and realignment of Depot Street to Church Street in conjunction with the redevelopment of the Hale Lumber site.
- October 17, 2018 – City Council adopted Ordinance No. 2282 N.S., approving General Plan and Zoning Amendments for the Depot Street right-of-way as the first step towards realigning Depot Street.
- January 22, 2019 – Planning Commission awarded 49 Downtown allotments and recommended approval of the RDCS Development Agreement to memorialize the commitments for those units.
- February 20, 2019 – The Council received the presentation, opened public comment, and continued the item to a date certain for staff to report back with Downtown Set-a-Side Units as it relates to RDCS, tree replacement plan, current development, and construction Downtown, and Depot Street circulation as it relates to future grade separations and Quiet Zones.
- March 20, 2019 – The Council approved the Development Agreement with the understanding that the developer will pay the affordable housing in-lieu fee instead of building the units.

FISCAL AND RESOURCE IMPACT:

Depot Street Realignment with Parking Lot Enhancements

The estimated cost of construction for the realignment of Depot Street with CCC parking lot enhancements is a total of \$901,726. The resources to pay for the realignment of Depot Street and parking lot enhancements are outlined within the approved DDA.

Office Building

The project includes a 3,000 square foot office building that the City would like to purchase for non-profit services from the Recreation Center Impact Fund (360). An appraisal was completed for the proposed structure, assessing the price at \$800,000. On September 5, 2018, the Council was provided options for funding.

CEQA (California Environmental Quality Act):

The Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan was certified in November 2009 in conformance with California Environmental

Quality Act (CEQA) Guidelines Section 15175(a), identified the impacts of the Downtown Specific Plan in order to streamline the later environment review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan FEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from (in conformance with CEQA Guidelines Section 15176(d)).

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH #2015022074).

CEQA Guidelines § 15164 states that the lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in § 15162 calling for preparation of a subsequent EIR have occurred.

An Addendum was prepared to provide a program-level CEQA analysis of the proposed project, as part of the adopted 2009 Downtown Specific Plan EIR. The Addendum found no impacts that were not previously disclosed in the General Plan FEIR or the Downtown Specific Plan Master FEIR, nor would it result in a substantial increase in the magnitude of any significant environmental impacts previously identified.

LINKS/ATTACHMENTS:

1. 2300 Depot Latale RDCS DA

ORDINANCE NO. 2300, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2018-
0007: DEPOT-LATALA FOR A 49-UNIT MIXED USE
DEVELOPMENT LOCATED ON THE EASTERLY SIDE OF
DEPOT STREET NORTH OF EAST DUNNE AVENUE (APN
726-13-049)**

**THE CITY COUNCIL OF THE CITY MORGAN HILL DOES
ORDAIN AS FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code (MHMC), awarded 49 Downtown RDCS set-aside building allotments to application RDCS2018-0002 Depot-Latala. Additionally, pursuant to MHMC Chapter 18.116.040, the Planning Commission recommended approval of the Development Agreement.

SECTION 2. The City Council of the City of Morgan Hill adopted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the MHMC.

SECTION 3. 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.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby accepts the recommendation of the Planning Commission and further finds that the development proposal and Development Agreement approved by this Ordinance are consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and the Downtown Specific Plan. The project would provide 49, residential units in a mixed use development, as well as the realignment of Depot Street. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 6. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the proposed mixed-use development is permitted within the Mixed Use-Downtown Specific Plan area and would be compatible with the surrounding residential and small business uses.

SECTION 7. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 8. The City Council directed the payment for the affordable housing commitments by an in-lieu fee at the March 20, 2019 meeting. These commitments are described within Exhibit C of the Development Agreement. This Development Agreement satisfies the Inclusionary Housing Ordinance requirements.

SECTION 9. The City Council hereby finds that the project 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 because project construction would adhere to state, local and federal laws. The project is a mixed-use residential development that would include the same normal daily operations of other surrounding uses.

SECTION 10. The City Council of the City of Morgan Hill finds that the Development Agreement was analyzed pursuant to the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Initial Study/Addendum previously prepared for purposes of the Development Agreement and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 11. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because 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 12. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 13. Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the

applicability of this Ordinance to other situations.

SECTION 14. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF MARCH 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 3rd DAY OF APRIL 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: May 4, 2019

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2300, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3rd day of April 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

APPROVE MEMORANDUM OF UNDERSTANDING ACCEPTING FAMILY JUSTICE CENTER GRANT FUNDS FROM COMMUNITY SOLUTIONS

RECOMMENDATION(S)

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with Community Solutions to accept grant funds as a sub-recipient of the California Office of Emergency Services grant for a total amount of \$50,000 over three fiscal years; and
2. Amending the City's adopted FY2018-19 and FY2019-20 biennial budget to recognize grant revenue of \$12,500 in FY2018-19 and \$25,000 in FY2019-20, in the General Fund (010).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The Morgan Hill Police Department partnered with Community Solutions in 2015 to open a South County Family Justice Center (FJC) located at the Morgan Hill Community Solutions office. The FJC operates one-day a week and is staffed by a Victim Advocate, Immigration Attorney, Deputy District Attorney, and Domestic Violence Detective.

Community Solutions, a local community-based organization that provides an array of social services including advocacy services for domestic violence survivors, was recently awarded a grant from the California Office of Emergency Services for Family Justice Center Programs (Grant FJ 18 01 1043). This grant provides for reimbursement to agencies who provide services at a Family Justice Center (FJC).

As part of the grant award, Community Solutions would like to enter into a Memorandum of Understanding (MOU) to compensate the City of Morgan Hill for the staff time the Domestic Violence Detective dedicates to the FJC for a not to exceed amount of \$50,000 over three fiscal years, from January 1, 2019 to December 31, 2020.

Staff received this request on March 25, 2019 and needed to return the signed MOU by Friday, March 29, 2019. If Council chooses to not approve the receipt of funds, staff will void the MOU and not invoice Community Solutions for staff time at the FJC.

COMMUNITY ENGAGEMENT: Inform

This staff report informs the community about the receipt of the grant and reminds the community about the resources available through the Family Justice Center.

ALTERNATIVE ACTIONS:

Council could choose to not accept the grant and staff would not invoice Community Solutions for reimbursement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This is a new grant award and there have been no previous actions taken on this item.

FISCAL AND RESOURCE IMPACT:

The total amount of the grant award is \$50,000.

FY2018-19 = \$12,500

FY2019-20 = \$25,000

FY2020-21 = \$12,500

Notification of funds availability was received after the conclusion of the budget process and therefore this grant revenue was not included in the FY2018-20 biennial budget process. The Domestic Violence Detective's salary is fully appropriated from the General Fund (010) as part of the budget process. Staff recommends amending the adopted FY2018-20 biennial budget to accept grant revenue in the amount of \$37,500 for reimbursement for the Domestic Violence Detective time at the FJC in the General Fund (010). The Domestic Violence Detective will not incur additional responsibilities as a result of this grant. The final \$12,500 to be expended in the first six months of FY2020-21 will be included in the budget development process for that fiscal year.

CEQA (California Environmental Quality Act): Not a project

Not a Project.

The grant entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Resolution
2. Community Solutions MOU

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN MEMORANDUM OF UNDERSTANDING WITH COMMUNITY SOLUTIONS FOR THE CALIFORNIA OFFICE OF EMERGENCY SERVICES GRANT PROGRAM FOR FAMILY JUSTICE CENTERS AND AMENDING THE CITY'S FISCAL YEAR 2018-19 and 2019-20 BIENNIAL BUDGET IN THE GENERAL FUND (010) TO RECOGNIZE REVENUE OF \$37,500, THEREFORE

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve Memorandum of Understanding Accepting Family Justice Center Grant from Community Solutions" submitted for City Council consideration at its meeting of April 3, 2019 submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Biennial Budget for Fiscal Years 2018-19 and 2019-20, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the Memorandum of Understanding with Community Solutions substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the “Agreement”) is hereby approved; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit B; provided, specifically, that the total amounts to be received in grant funds by City under the Memorandum of Understanding shall in no event exceed thirty seven thousand five hundred dollars (\$37,500) in the first two fiscal years; and
- c. That the City’s previously adopted Fiscal Years 2018-19 and 2019-20 Biennial Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City’s Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Years 2018-19 and 2019-20 Biennial Budget of City.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 3rd day of April 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Richard Constantine, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (2262 : MOU - Community Solutions and MHPD)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

037

FUND:

010

General Fund

DEPARTMENT:

OBJECT:

37585

Domestic Violence Grant

AGENDA DATE:

04/03/19

AGENDA ITEM TITLE:

Family Justice Center Grant from Community Solution (\$25,000 FY 20)

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	595,353	994,986	(399,633)
RECOMMENDED ACTION	-	12,500	-	12,500
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,872,402</u>	<u>42,653,475</u>	<u>16,905,979</u>

Exhibit B

MEMORANDUM OF UNDERSTANDING

Between

**COMMUNITY SOLUTIONS,
9015 Murray Ave #100
Gilroy, CA 95020**

**Morgan Hill Police Department
16200 Vineyard Blvd.
Morgan Hill, CA 95037
Cal-OES Family Justice Center Program
Award No.FJ 18 01 1043**

This Operational Agreement ("Agreement") is entered into and becomes effective on January 1, 2019("Effective Date") by and between MORGAN HILL POLICE DEPARTMENT and COMMUNITY SOLUTIONS, a 501(c)(3) nonprofit corporation ("Community Solutions"), hereinafter referred to collectively as "Parties."

RECITALS

SECTION 1: Term of Agreement

The term of this Agreement is from January 1, 2019 through December 31, 2020.

SECTION 2: Services to be provided by Community Solutions

Community Solutions, as the lead agency for the partnership, agrees to provide the following services during the term of this Agreement:

- a) Serve as Fiscal Agent for the partnership;
- b) Identify roles and expectations of key partners;
- c) Ensure administrative coordination among partners, including the facilitation of all programmatic meetings;
- d) Ensure prompt and accurate invoicing to CalOES; and
- e) Maintain all financial records for the CalOES FJC Program contract in accordance with the standards and procedures prescribed by CalOES.

SECTION 3: Services to be provided by Subcontractor:

Sub-contractor agrees to the following:

The Morgan Hill Police Department provides a Domestic Violence Detective who is co-located at the Family Justice Center. As such, the listed employee is expected to adhere to and comply with all appropriate Morgan Hill Police Department Policies and Procedures. In addition, the Morgan Hill Police Department will:

1. Provide a Police Detective to service as the primary liaison between the Morgan Hill Police Department and the Participating Partners.

[DOCUMENT TITLE]

AIDA ZALDIVAR

Attachment: Community Solutions MOU (2262 : MOU - Community Solutions and MHPD)

2. The Detective will be responsible for investigating and providing follow up on misdemeanor and felony domestic violence related cases in Morgan Hill.
3. The Detective will be assigned to the SC FJC one day a week to meet with domestic violence victims as needed.
4. The Detective will address the safety needs of victims of domestic violence, dating violence or stalking using the training in the *Lethality Assessment for First Responders*.
5. The Detective will conduct the activities outlined below:
 - a. Follow up with victims, letting them know the status of the investigation.
 - b. Work closely with Victim Advocates to ensure that victims receive the services that they need.
 - c. Present domestic violence cases to the District Attorney's Office.

Provide relevant project training to law enforcement, human service providers and other community groups in partnership with Community Solutions on domestic violence issues, prosecution, restraining order violations, victim support and referrals and *Lethality Assessment for First Responders*

SECTION 4: Fiscal Provisions

Compensation - Community Solutions as lead agency will compensate Subcontractor for services provided under this agreement in accordance with units of services. Maximum compensation must not exceed **\$50,000**.

Monthly invoice— Contractor will invoice Community Solutions in accordance with monthly services rendered per the limited scope representation fee schedule. The invoice must be signed by the CEO/President or other authorized agency representative with authority to confirm the accuracy of unit of service. By signing the invoice this will verify that the information submitted is correct and in accordance with this Agreement. Invoice is due to Community Solutions ten (10) working days after the end of each month. The invoice must be accompanied with the outcome or deliverables based on this agreement. The invoice must be submitted to:

Jan Pham, Controller
Community Solutions
9015 Murray Ave #100
Gilroy, CA 95020

Community Solutions will review invoices and supporting documentation, verify adherence to agreement requirements and services, and authorize payment to Subcontractor based upon claims submitted pursuant to the agreed upon monthly amount, provided that the Subcontractor is not in default under any provisions of this agreement. Community Solutions will not pay for unauthorized services rendered by Subcontractors/Category Leads or the claimed services, which have not been provided as required by this agreement. All reimbursement will be paid upon reimbursement to Community Solutions from CalOES.

Monitoring – To ensure compliance with CalOES, Community Solutions will monitor the work performed and financial obligations incurred under this agreement to determine whether Subcontractor's operation conforms to state, federal statutes, and regulations.

Subcontractor agrees to cooperate with Community Solutions on the implementation monitoring and evaluation of the Program and to comply with any and all reporting, data collection and evaluation requirements as established by CalOES.

Evaluation – Subcontractor agrees to participate in research and evaluation studies designed by Community Solutions, and consistent with CalOES requirements, in order to show effectiveness of the services provided within South Santa Clara County.

SECTION 5: Compliance with Laws

The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

SECTION 6: Indemnification

Subcontractor and Community Solutions agree to mutually and reciprocally protect, defend, indemnify, and hold harmless each other's officers, directors, employees, and agents from any and all liability, loss, damage, suits, actions, or claims arising or resulting from any property damage or injury to, or death of, any person which is caused by the willful or negligent act (active or passive) or omission by either sub-contractor or Community Solutions, or their respective officers, employees, agents, or collaborators, or which arises or results from any dangerous or defective condition on the premises used by Subcontractor or Community Solutions, or their respective officers, employees, agents or collaborators in connection with performance of this Agreement.

SECTION 7: Costs and Attorney's Fees.

In any action instituted to enforce any term or condition of this Agreement, the prevailing party shall be entitled to receive from the other party all costs and fees, including reasonable attorney's fees, and the prevailing legal interest rate on all debts from the date of default.

SECTION 8: Disclosures

Recognizing that the parties will depend upon one another in order to successfully operate the Project, each agrees to notify the other in the event of an occurrence that would materially affect its ability to perform its obligations under this Agreement including, without limitation the following:

- Lapse of insurance coverage
- Lapse, denial, suspension, revocation, termination, restriction or voluntary relinquishment of its 501c3 status, business or professional license, etc.
- Other material adverse change in condition of the organization including, without limitation, loss of funding or incursion of unexpected liability that threatens the viability of the organization

SECTION 9: Confidentiality.

The parties agree that confidentiality is of the utmost importance to protect the privacy of the clients. Nevertheless, there will be some information that will be shared which must be held in the strictest confidence.

Disclosure of confidential client information such as personal history, diagnosis, treatment plans and results, etc. shall not be made without the express written permission of the client except, as needed, to legal counsel, accountants or financial advisors assisting Subcontractor or Community Solutions in the operation of the Projects or auditing Subcontractor.

Confidential information, which has been released with consent, shall be physically protected with appropriate safeguards to prevent unintended exposure.

Unauthorized disclosure of confidential information shall be considered a material breach of this Agreement subject to immediate termination of the Agreement.

SECTION 10: Assurance.

Each party represents and warrants that it has authority to enter into this Agreement.

SECTION 11: Entire Agreement.

This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this Agreement shall be valid or binding.

SECTION 12: Modification.

This Agreement may not be enlarged, modified, or altered, except in writing, signed by both parties and endorsed to this Agreement.

SECTION 13: Insurance.

Subcontractor shall secure and maintain at all times during the term of this Agreement, at its sole expense, liability, hazard, and worker's compensation insurance as well as professional/errors and omissions insurance relative to its provision of services. Subcontractor shall provide COMMUNITY SOLUTIONS with certificate(s) evidencing said coverage within 30 days of obtaining coverage. Said certificate(s) shall provide for at least 30 days notice of cancellation by the carrier.

COMMUNITY SOLUTIONS shall secure and maintain at all times during the term of this Agreement, at its sole expense, liability and worker's compensation insurance as well as professional/errors and omissions insurance relative to its provision of services. COMMUNITY SOLUTIONS shall provide Subcontractor with certificate(s) evidencing said coverage within 30 days of obtaining coverage. Said certificate shall provide for at least 30 days notice of cancellation by the carrier.

SECTION 14: Default.

Each of Subcontractor's obligations under this agreement shall be deemed material. If Subcontractor fails to perform any of its obligations under this Agreement, COMMUNITY

CS/Sub-Contractor MOU

Grant No. FJ 18 01 1043

SOLUTIONS may terminate this Agreement upon thirty (30) days advance written notice ("Notice Period") to Subcontractor with either the opportunity to cure the specified breach, or the opportunity to commence to cure the specified breach within the Notice Period. In the event Subcontractor fails to cure or to commence to cure the specified breach within the Notice Period, this Agreement shall immediately terminate.

Nothing in this Agreement shall be construed so as to deprive Subcontractor or COMMUNITY SOLUTIONS of any of their respective rights and remedies at law or in equity for any claims or causes of action either may have for any injury, damage, loss, or liability resulting from any cause arising at any time in connection with the performance of this Agreement.

SECTION 15: Assignment.

The expertise and experience of Subcontractor are material considerations for this Agreement. Subcontractor shall not assign or transfer the performance of this Agreement to any other party without prior written consent of COMMUNITY SOLUTIONS.

SECTION 16: Notices.

Any notice shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, to the respective parties addressed as follows:

Community Solutions
9015 Murray Ave #100
Gilroy, CA 95020

Morgan Hill Police Department
16200 Vineyard Blvd.
Morgan Hill, CA 95037

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

Community Solutions

A non-profit corporation

By: _____
Erin O'Brien President/CEO

Date: _____

Morgan Hill Police Department

A public agency

By: _____
Christina Turner – City Manager

Date: March 29, 2019

APPROVED AS TO FORM:

Cynthia Hasson
Cynthia Hasson, Assistant City Attorney

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, March 20, 2019 5:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:00 p.m. for the purpose of conducting Library, Culture, and Arts Commission Interviews.

SPECIAL MEETING

5:00 P.M.

CALL TO ORDER

Mayor Constantine called the meeting to order at 5:36 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Absent	
Yvonne Martinez Beltran	Council Member	Late	
Larry Carr	Council Member	Late	
John McKay	Council Member	Present	

Minutes Acceptance: Minutes of Mar 20, 2019 5:00 PM (CONSENT CALENDAR)

DECLARATION OF POSTING AGENDA

Deputy City Clerk Bigelow declared the posting of the agenda.

COMMISSION INTERVIEWS

1. INTERVIEWS TO FILL FOUR (4) VACANCIES ON THE LIBRARY, CULTURE, AND ARTS COMMISSION

Recommendation:

1. Discuss the characteristics/traits that successful applicants would possess;
2. Conduct Interviews;
3. Council Members identify top applicants and provide recommendations to the Mayor; and
4. Discuss and/or appoint applicants.

The City Council shared what qualities they are looking for in Library, Culture, and Arts Commissioners and started the interviews.

The following people were interviewed:

Eric West
Gabrielle Bates
Jake Thompson
Karen McNulty
Katie Khera
Poonam Chabra
Suman Ganapathy

The City Council re-appointed Katie Khera and Poonam Chabra and appointed Jake Thompson and Suman Ganapathy. All seats have a term expiring April 1, 2021.

The special meeting was adjourned at 7:04 p.m.

REGULAR MEETING

7:00 P.M.

The regular meeting was called to order at 7:10 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Constantine shared that he serves on the Policy Advisory Committee (PAC) for the Valley Transportation Authority (VTA), which advises policies up to the Board. At a recent meeting a member of the public brought up that our Measure B funds may be misappropriated. We are in the process of finding out what is going on with those funds. Measure B, which was a transportation measure that was voted on in 2016, raises tax dollars to complete specific transportation projects throughout the county, as well as, provides us with approximately \$800,000 for road improvements in Morgan Hill. A portion of the funds will also be used to provide a fourth train through CalTrain. CalTrain has stated that they will not be able to provide the fourth train until they overhaul their trains. The \$4.3 million being used for the overhaul comes from Measure B. The gentlemen who stated that the Measure B funds were being misappropriated, stated that the CalTrain overhaul was scheduled prior to the availability of the Measure B funds and therefore should not be used for the overhaul and/or maintenance. The PAC has approved the

appropriations of the Measure B dollars and the various projects being completed throughout the county, however, the PAC will be asking for an explanation as to why the Measure B funds are being used for maintenance. The PAC is and will continue to keep a close on eye on how the Measure B funds are being used.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She shared that she, Council Member Martinez Beltran, and Human Resources Director Michelle Katsuyoshi attended an event on Monday at Linked In which was sponsored by the League of California Cities and the International City Managers Association talent initiative. The audience was made up of both elected and appointed officials with a goal of bringing together people, primarily in Santa Clara County, to talk about how to attract, retain, and grow talent in local government. They learned that 10,000 baby boomers are leaving the workforce every day. As a service organization, our biggest and most important asset, is our team. This topic is very important to all of us. Linked In shared some interesting facts and advice about how to go about maintaining and growing talent, such as branding the organization and creating a culture of appreciation and recognition. This has spurred us to think about how we can continue to be a great organization to work for. She shared that she is proud to say that we have a great culture that is very family friendly, however, there is always room to improve and so we are looking at ways to continue investing in our team, such as offering more professional development opportunities and flexibility. She reminded the community to mark their calendars for the upcoming AMGEN race on May 14th. Morgan Hill will be hosting the stage 3 finish.

CITY ATTORNEY'S REPORT

None.

OTHER REPORTS

None.

PROCLAMATION

PROCLAIMING THE MONTH OF MARCH AS AMERICAN RED CROSS MONTH

PRESENTATION

YOUTH ACTION COUNCIL - ASSET #14 ADULT ROLE MODELS

PUBLIC COMMENT

The public comment was opened at 7:34 p.m.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 3, 4, 6 and 8 through 11.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

2. ITEM PULLED FOR DISCUSSION

3. APPROVE GENERAL PLAN AND HOUSING ELEMENT ANNUAL PROGRESS REPORT 2018

Recommendation:

Adopt resolution accepting the 2018 General Plan and Housing Element Annual Progress Report (APR) and directing staff to file the report with the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD).

4. ACCEPT JANUARY 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

5. ITEM PULLED FOR SEPARATE VOTE

6. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - SHADOW PINES – TRACT NO. 10258

Recommendation:

1. Accept the subdivision public improvements for Shadow Pines – Tract No. 10258;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

7. ITEM PULLED FOR DISCUSSION

8. APPROVE PURCHASE OF FIVE WATER AND SEWER VEHICLES

Recommendation:

1. Approve the purchase of five (5) water and sewer utility trucks in the amount of \$342,252.14;
2. Authorize City Manager to approve purchase order in the amount of \$342,252.14 with National Auto Fleet Group;
3. Declare vehicles W08170, W03167, W07104, W06169 and S07103 to be surplus; and
4. Authorize the disposal of the surplus vehicles in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

9. APPROVE LICENSE AGREEMENT WITH TOGLIATTI FARMS, INC.

Recommendation:

Authorize the City Manager to Execute a License Agreement with Togliatti Farms for 1469 Maple Ave.

10. ADOPT ORDINANCE 2299 AMENDING SECTIONS 14.04.020 PURPOSE AND 14.04.070 ALTERNATIVES OF CHAPTER 14.04, INCLUSIONARY HOUSING

Recommendation:

Waive the reading, adopt Ordinance No. 2299, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

11. APPROVE THE MARCH 6, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM PULLED FOR SEPARATE VOTE

5. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - BARLEY PLACE – TRACT NO. 10239

Recommendation:

1. Accept the subdivision public improvements for Barley Place – Tract No. 10239;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

MOTION:

Approving the recommended actions.

RESULT:	APPROVED [3 TO 0]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, McKay
ABSTAIN:	Carr
ABSENT:	Spring

ITEMS PULLED FOR DISCUSSION

2. CITY POSITION ON PENDING LEGISLATION AB 276 FIREARMS: STORAGE AND AB 1255 SURPLUS PUBLIC LAND: DATABASE

Recommendation:

1. Receive legislative correspondence in support of AB 276 (Friedman) Firearms: storage;
2. Consider supporting AB 1255 (Rivas) Surplus public land: database; and
3. Direct staff to submit letters in support of AB 1255 to the appropriate representatives.

The public comment was opened at 7:37 p.m.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended actions.

RESULT: DIRECTED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: John McKay, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

7. UPDATE ON THE CITY'S PILOT RODENTICIDE USE REDUCTION PROJECT

Recommendation:

Accept Report.

Council accepted the report.

RESULT: ACCEPT REPORT

OTHER BUSINESS

12. APPROVE PEACE POLE ART PROPOSAL

Recommendation:

Approve the updated design for the Peace Pole Project for installation at the civic center with specific City input to be included for the different and appropriate languages.

Communications and Engagement Manager Maureen Tobin presented the report.

The public comment was opened at 7:53 p.m.

There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT: APPROVED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

13. PROVIDE DIRECTION REGARDING ADOPTION OF A RESOLUTION OR ORDINANCE SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Recommendation:

1. Receive report; and
2. Provide direction.

City Manager Christina Turner presented the report.

The public comment was opened at 7:59 p.m.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Directing staff to bring a resolution to Council to adopt the principles of CEDAW.

RESULT:	DIRECTED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

The meeting was recessed at 8:11 p.m.

The meeting was reconvened at 8:17 p.m.

PUBLIC HEARING

14. ADOPT ORDINANCE APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

1. Open and close public hearing;
2. Waive first and second reading of Development Agreement Ordinance; and
3. Introduce Development Agreement Ordinance.

Community Development Director Jennifer Carman, along with City Engineer Scott Creer, Associate Planner Tiffany Brown, Economic Development Director Edith Ramirez, and Community Services Supervisor Mariah Dabel presented the report and answered questions.

The public hearing was opened at 8:42 p.m. The following people were called to speak:

Paul Latala
 Julia Wolfsmith
 Lesley Miles
 Suman Ganapathy
 Rosy Bergin
 David Dindak
 Brian Faircloth

There being no further requests to speak, the public hearing was closed.

A motion made by Council Member Martinez Beltran to deny the Development Agreement to confirm RDCS commitments, failed due to lack of a second.

Council provided direction to staff.

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [3 TO 1]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Carr, McKay
NAYS:	Martinez Beltran
ABSENT:	Spring

MOTION:

Introducing the ordinance.

RESULT:	INTRODUCED [3 TO 1]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Carr, McKay
NAYS:	Martinez Beltran
ABSENT:	Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:39 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING AGRICULTURAL CONSERVATION PROGRAM

RECOMMENDATION(S)

Provide direction to staff regarding next steps in the City's agricultural mitigation program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Advancing Regional Initiatives

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

In early Fall 2018, in preparation for the submission of an annual LAFCO (Local Agency Formation Commission) application for an Urban Service Area (USA) amendment for the proposed Catholic High School, the City Council requested an amendment to the Sports Recreation Leisure (SRL) sub-zone B Zoning District. During that discussion, some comments about the Urban Growth Boundary (UGB) and the City's long-term growth intentions ensued, so that subsequently, staff responded to City Council with an amended SRL-B district (reducing allowable uses) as well as a query as to whether the City Council would like to discuss modifications to the UGB.

The SRL-B Zoning District was amended, but the UGB discussion was referred to the City Council Annual Goal Setting Workshop for discussion. At the workshop, the UGB issue was not discussed and the City Council asked staff to present a more thorough discussion of the City's agricultural conservation/preservation program and priorities. The purpose of this item is to provide the Council with background information and an opportunity for a substantive discussion on the City's current agricultural conservation strategy and how activities contained in approved planning documents provide guidance for agricultural mitigation actions.

The City's principal guiding document for agricultural conservation is the Agricultural Lands Preservation Program (Program) and accompanying Zoning Code amendments which directly implemented these General Plan Policies and Actions of 2014 and 2016 respectively. These documents identify Priority Agricultural Lands Preservation Areas

and contain the Policy Framework for the ongoing preservation of agricultural lands through conservation easements.

The original Program was drafted based upon the recommendations of an agricultural land's preservation expert and a land use economist hired to act as consultants to the City. Specific details of the Program were further edited to reflect input from the Open Space Authority (OSA) and the Planning Commission. These policies also contain the framework of the City's adopted Agricultural Mitigation Program, the only agricultural mitigation program in Santa Clara County. The Agricultural Mitigation program provides:

1. A focus of preservation activity in priority conservation areas of the General Plan,
2. 1:1 mitigation for any conversion of ag land located inside of the City (land identified on State Land Soil Map with significant designation),
3. An Ag Mitigation in-lieu fee established via appraisal, and
4. The requirement to maintain a "stay ahead" conservation effort.

Working with counterparts from the County, LAFCO and OSA, the Program was further refined. OSA staff strongly encouraged the City to include a Transfer of Development Rights (TDR) system within the Program and to delay adoption of the Program until the TDR system was in place. City staff agreed that it could be helpful to include TDR in the Program and that this would be consistent with the General Plan. However, staff concluded that in order to develop a TDR program with adequate economic incentive to insure its implementation, it would be necessary to modify the City's Residential Development Control System (RDCS). Therefore, the program was adopted and subsequently the TDR provision added when Measure "S" was approved by the voters of Morgan Hill in 2016. This added a total of 300 exempt Ag Preservation set-aside allotments (35 per year maximum) to the Agricultural Mitigation program. The sale of these allotments could contribute significantly to the City's Agricultural Preservation and Open Space Fund which is dedicated to the purchase of land and conservation easements.

Additionally, the 2016 General Plan Update included conservation and agricultural preservation goals and policies within the City and Neighborhood Form (CNF) and Natural Resources and Environment (NRE) chapters, capturing an enriched conversation of the City's conservation goals. Utilizing additional planning tools such as the UGB, Priority Conservation Areas, identification of City greenbelt areas, the USA, and Sphere of Influence (SOI), with the Morgan Hill 2035 Update, collective policies and measures completed the City's comprehensive growth and preservation statements, culminating in Morgan Hill's Conservation Program (policies and maps attached).

There are several items that need direction which have bearing upon Morgan Hill's agricultural preservation efforts as well as residual issues that have been raised related to geographical territory impacted by decisions associated with conservation efforts. The Council may choose to review these and determine if action is necessary. These include:

1. Amendment of the UGB. Consistent with the General Plan policies providing guidance, if this is desired the City should enter into a community planning

process to explore amending the UGB, to be completed prior to submission of a new Housing Element in 2022.

2. Further acquisition of Agricultural Conservation Easements (ACEs) in the Priority Conservation areas.
3. Focused ACE acquisition to create large farmable concentrations of land and/or fulfillment of a greenbelt buffer at Maple Street along the southeastern perimeter of the City.
4. Suspension of the Agricultural Mitigation program “stay-ahead” ACE acquisition provisions until a UGB amendment and ACE priorities process concludes.
5. Reconsideration of the December 17, 2018 Agricultural TDR program discussion, establishing a formal process for implementation of the Agricultural TDR program, including an auction process.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- 2014 – Agricultural Lands Conservation Program (including Agricultural Mitigation Program) and related Zoning Amendments adopted
- 2016 – Morgan Hill 2035 General Plan Update/EIR adopted
- Approval of submission of Joint Morgan Hill, County, OSA grant application for a 70-acre ACE acquisition of Fountain Oaks Ranch lands and the subsequent approval of an easement purchase solely by the City
- Approval of 12-acre acquisition on Maple Ave

COMMUNITY ENGAGEMENT:

This report is intended to inform the City Council and community.

FISCAL AND RESOURCE IMPACT:

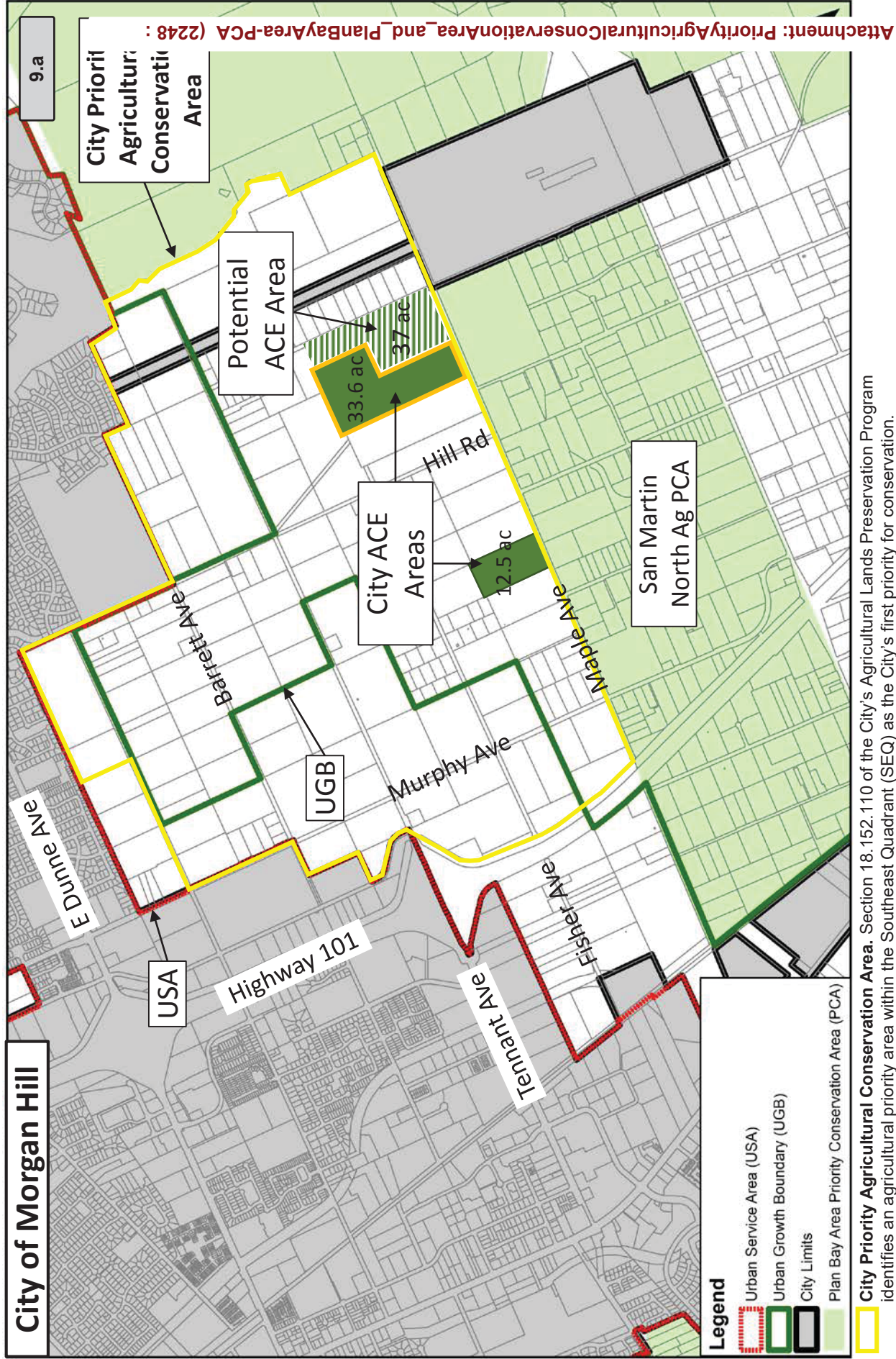
This item has no fiscal impact other than the staff time spent to prepare this report.

CEQA (California Environmental Quality Act):

This item is not a project under CEQA.

LINKS/ATTACHMENTS:

1. PriorityAgriculturalConservationArea_and_PlanBayArea-PCA
2. Conservation Strategy
3. ResponseLetter_11-14-18.pdf USA discussion 2018 LAFCO follow
4. ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity
5. Ag set asides staff report 12-19-18
6. AnnexationEIR-Map2
7. CityLimits_UGB_USA
8. GP-Map_with_Boundaries



Morgan Hill's Conservation Strategy



Introduction

Morgan Hill is located within the southern part of Santa Clara County, 10 miles south of San Jose and 10 miles north of Gilroy. Morgan Hill is nestled between the Diablo Mountain Range and the Santa Cruz Mountains, and has a rich history of farming and manufacturing. While Morgan Hill is a part of the Silicon Valley in its business mix, rich entrepreneurial spirit and thirst for innovation, the city's natural geography and open space make it a unique place. The City has made many thoughtful decisions on open space preservation, water and agricultural land conservation, and environmental stewardship.

This whitepaper on Morgan Hill's Conservation Strategy outlines the City's approach to ensuring future open space and agriculture lands remain in South Santa Clara County. The white paper is broken down into policy and plan adoptions, tools that support those policies and plans, and finally challenges and key considerations on environmental stewardship for Morgan Hill.

Policies and Plan Adoptions

A. Agriculture Preservation

As community interest in preserving the agricultural open space areas on the valley floor grew and national interest in farmland preservation increased, the City spent several years evaluating strategies for protecting the agricultural lands surrounding the community. The culmination of this work, the City's *Agricultural Lands Preservation Program* (Program), was adopted by the City Council on November 5, 2014 ([Exhibit 1](#)). In concert with the Morgan Hill 2035 General Plan Update ([Exhibit 2](#)), the City formally identified two Priority Conservation Areas (MHPCA) located adjacent to the City boundary, as the primary focus of future agricultural conservation easement acquisition. While located outside of City limits but within the City's Sphere of Influence, these lands had been the most significantly impacted by development pressure and conversion, and of growing concern to the preservation efforts.

In the years since the Program and General Plan update were adopted, the City has implemented the Program by engaging in the following tasks:

- Adopted an Agricultural Mitigation ordinance ([Exhibit 3](#)) that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;
- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and negotiate conservation easements;

Morgan Hill's Conservation Strategy

- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the MHPCA and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

To date, the outcomes from the Program have resulted in:

- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development; and
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal, and allocated over \$1 million in funding.

In the coming months, the City of Morgan Hill plans the following:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue; and
- Identify additional parcels in the MHPCA that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

Morgan Hill's Conservation Strategy

B. Conservation of Open Space

The City of Morgan Hill has a long history of preserving open space in the important hillside areas that surround the community. Using a combination of purchases, dedications, regulations, incentives, and open space easements, nearly all of the important hillside areas (totaling more than 595 acres) surrounding the community are restricted from further development.

The City first established a Transfer of Development Credit (TDC) program in the Municipal Code in 1981 ([Exhibit 4](#)). A Transferable Development Credit allows the transfer of development credits from areas where development is restricted such as hillsides to sites in other areas of the City more appropriate for development. TDCs were originally created to help implement the City's hillside preservation activities. TDC acquisition is tied to the City development process where development allotments are competitively awarded based upon a project's public benefit contribution, including pledges to purchase TDCs. In 2001, there were no TDCs available in the market. As a result, the City created a TDC in-lieu fee which allowed projects pledging acquisition of TDC's to incrementally pay an in-lieu fee for that pledge, collected at the final of the building permit.

Morgan Hill Program Implementation Tools

A. Morgan Hill Priority Conservation Area (MHPCA)

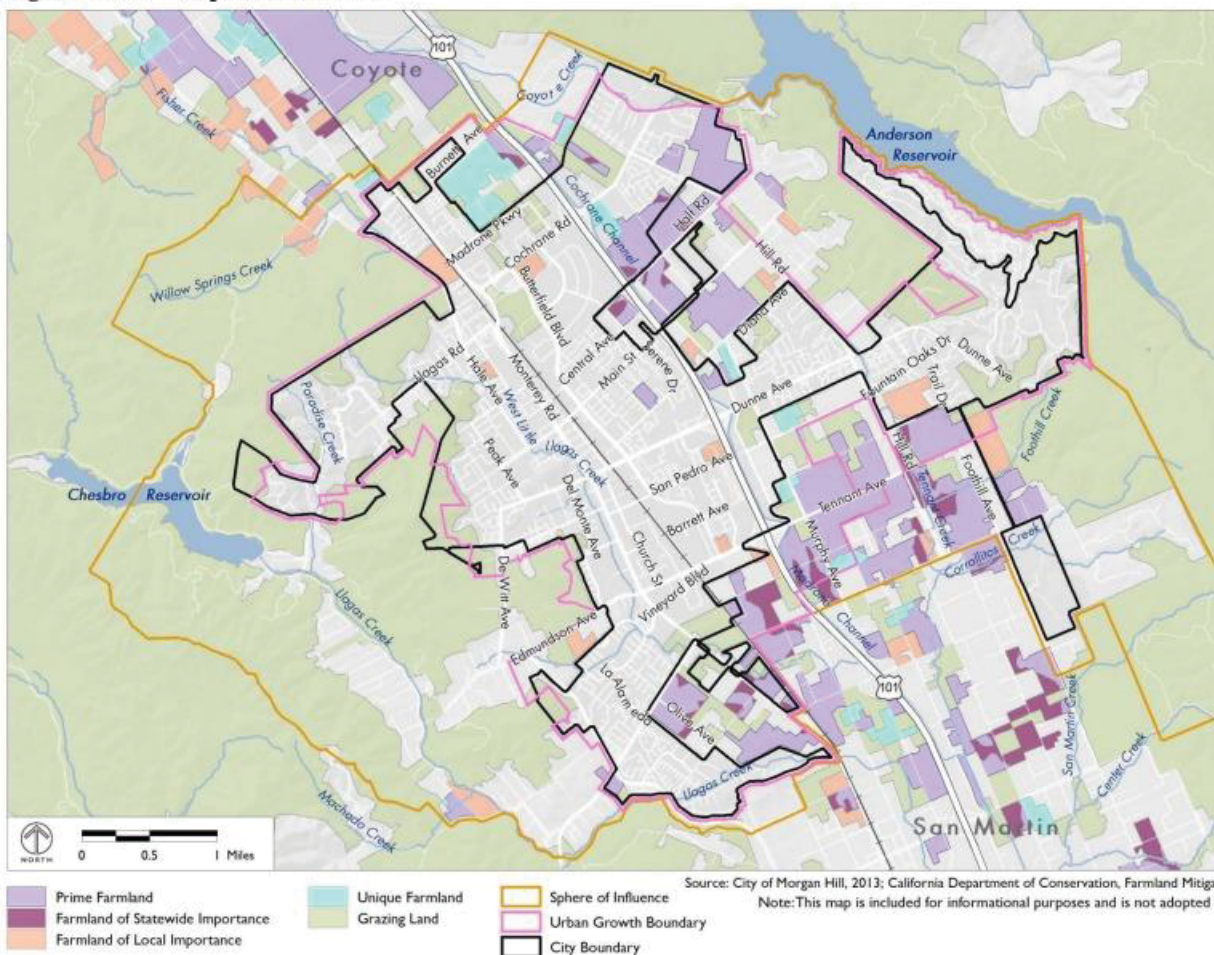
In Figure 1, the City's Priority Conservation Areas are focused in the areas shown in purple east of highway 101. These areas recognize the important farmland consistent with the subareas maps for Live Oak/Half Road and San Martin/Tennant in the recently adopted *Santa Clara Valley Agricultural Plan: Investing in our Working Lands for Regional Resilience* and the agriculture priority area shown in the City's Agricultural Mitigation Program. The MHPCA focuses on agri-hood development in the Live Oak/Half Road area that will benefit from Conservation Easements and larger agricultural land preservation in the areas south of Tennant.

Like most cities in Santa Clara County, Morgan Hill was developed on agricultural land. Agriculture is still an important asset to the region, as evident by surrounding vineyards, which boost the region's economy and tourism industry. However, local farmers continually describe constraints on the continued long-term viability of agriculture within the City's Urban Growth Boundary. Existing orchards and vineyards are experiencing urban encroachment that adversely affects the efficiency of farming operations due to restrictions on pesticide use, noise and dust complaints, trespass, vandalism, and theft. The goal of Morgan Hill's Priority Conservation Areas is to create larger areas of land permanently dedicated for agricultural uses.

Morgan Hill's Conservation Strategy

Figure 1: 9,848 acres of Agricultural Lands within Morgan Hill's Sphere of Influence

Figure NRE-2 Important Farmland



Designated farmlands within Morgan Hill Sphere of Influence

Farmland Classification	Within City Limit (Acres)	Total (Acres)
Prime Farmland	314	1,386
Farmland of Statewide Importance	22	196
Farmland of Local Importance	153	346
Unique Farmland	30	234
Grazing Land	1,265	7,686

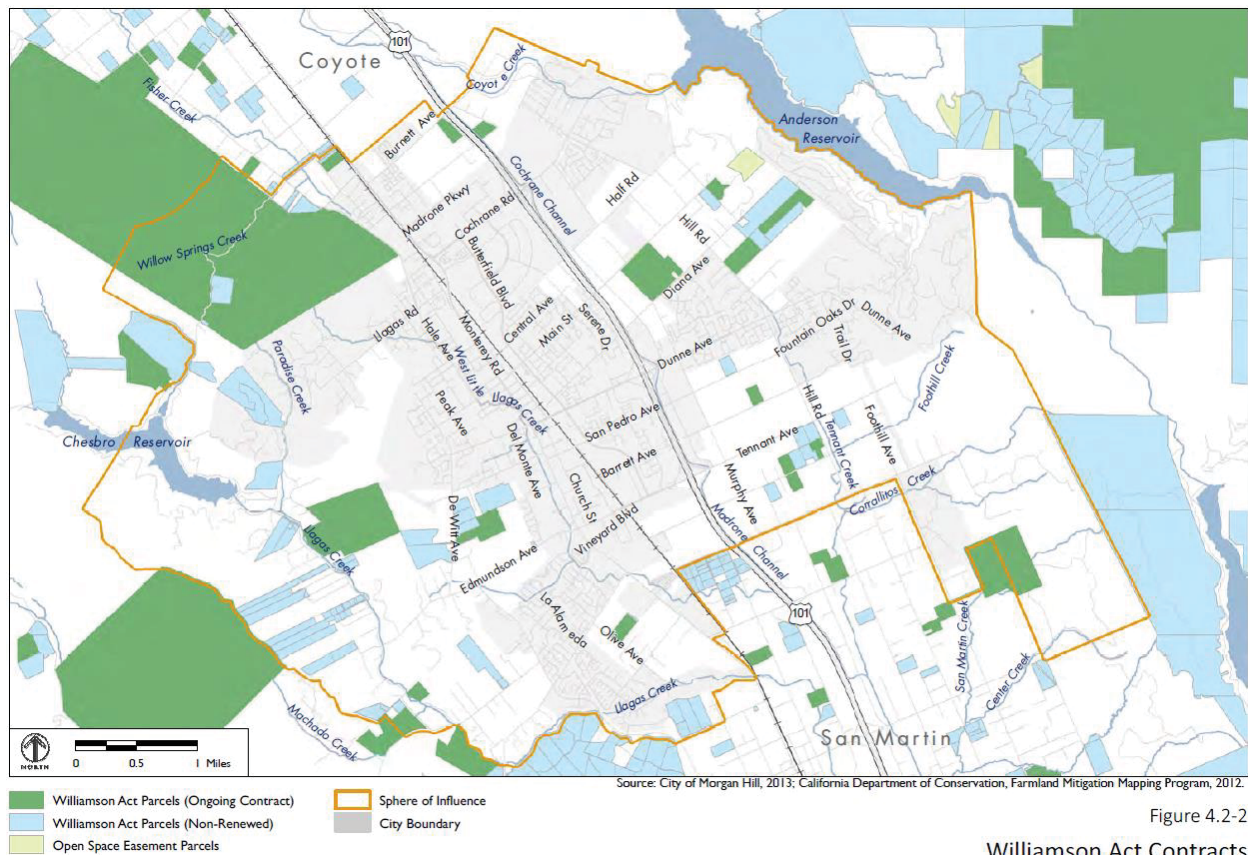
Source: Source: Department of Conservation, Farmland Mapping and Monitoring Program GIS data, 2012.

Morgan Hill's Conservation Strategy

B. Williamson Act Contracts

The Williamson Act is one of the most widely used agricultural easement programs in the City of Morgan Hill, Santa Clara County, and the state of California. These areas are shown in the Figure 2. There are 1,703 acres of land that are under on-going Williamson Act contracts that are within the Morgan Hill's Sphere of Influence.

Figure 2. 1,703 acres of Williamson Act parcels in Morgan Hill's Sphere of Influence.



C. Approval of Measure S

Through recommendations contained within the Morgan Hill 2035 General Plan update, City voters approved Measure S, a new residential growth measure, to guide the pacing and total population of the community to mirror General Plan aspirations. In that voter approved measure, the community approved 300 Agricultural Preservation set-aside allotments, at the rate of up to 35 per year, to encourage and promote agricultural preservation in the Morgan Hill Priority Conservation Areas (MHPCA). The set-a-sides translate into Transfers of Development Credit (TDC) ([Exhibit 4](#)), whereby a developer purchases the TDC from the City, and receives the right to build "out-side" of the City's Residential Development Control (RDCS) process. The dollars raised through the sale

Morgan Hill's Conservation Strategy

of the TDC's are added to the City's Open Space/Agricultural Conservation fund to be utilized for the purchase of permanent agricultural easements in one of two MHPCA's.

Other important components of Measure S.

1. A minimum one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land change to a non-agricultural use.
2. Stay ahead provision – conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands.
3. Public benefit financial contributions/pledges made through Residential Development Control System (RDCS) can be used to purchase conservation easements.

Challenges and Key Considerations on Environmental Stewardship

- The majority of remaining farmland in Santa Clara County, including in the MHPCA, is unincorporated and therefore limited land use control.
- The soil in the Morgan Hill area is not highly-valued by farmers for its agricultural productivity. Many of the soils found nearby are considered marginal at best.
- Santa Clara County A-20ac Ag. Zoning requires 20-acre minimum lots, but there are no 20-acre lots that exist in the MHPCA today. Figure 3, Catherine Dunne Ranch Map No. 7 approved in 1905 established 10-acre lots. These lots are small enough to be easily converted into ranchettes. This creates a situation where the "highest and best" economic use of the land is residential estates - not agriculture and farmers continue to face pressure to sell land for nonagricultural development.
- Farming land near nonagricultural uses (homes, schools) is and has become increasingly challenging (dust, noise, traffic, etc.).
- Existing County General Plan and Zoning regulations haven't stopped the patchwork conversion of agricultural lands in the Morgan Hill Priority Conservation Area.

MURPHY										SAN PEDRO AVE. (60' x 120')									
14	13	12	11	10	9	8	7	6	5	4	3	2	1	213	212	211	210	209	208
0 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	
J. ARRETT					AVE.					FOOTMILL									
25	26	27	28	29	30	31	32	33	34	35	36	37	38	200	199	198	197	196	195
0 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.
J. ARRETT					AVE.					FOOTMILL									
52	51	50	49	48	47	46	45	44	43	42	41	40	39	186	187	188	189	190	191
0 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.
J. ARRETT					AVE.					FOOTMILL									
51	52	53	54	55	56	57	58	59	60	61	62	63	64	185	184	183	182	181	180
0 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.
J. ARRETT					AVE.					FOOTMILL									
88	87	86	85	84	83	82	81	80	79	78	77	76	75	171	172	173	174	175	176
0 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.
J. ARRETT					AVE.					FOOTMILL									
96	97	98	99	100	101	102	103	104	105	106	107	108	109	170	169	168	167	166	165
0 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.
J. ARRETT					AVE.					FOOTMILL									
123	122	121	120	119	118	117	116	115	114	113	112	111	110	154	155	156	157	158	159
0 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.	10 Ac.
J. ARRETT					AVE.					FOOTMILL									

- Subsequent subdivision maps approved smaller lots, some as small as 1-acre. Many of these smaller lots are developed with single-family homes. Some undeveloped subdivisions are not apparent when looking at an aerial, but they include smaller legal lots of record that could be developed with uses that are not agricultural (typically single-family homes) (Figure 4)



Morgan Hill's Conservation Strategy

- In general, land in the County, including agricultural land is expensive, especially when compared with agricultural land outside of the County. Agricultural land in Morgan Hill's SOI, including the Morgan Hill Priority Conservation Area, is even more expensive (\$100,000 to ~\$1million/ac), which means Agricultural Conservation Easements in Morgan Hill's Sphere of Influence (SOI) are also expensive (\$50,000-\$100,000/ac).
- There aren't many available funding sources to support Agricultural Preservation. Where there is funding, it's difficult to compete with funding requests for larger/cheaper lands in other areas. According to a 2017 State Conservation Program funding report, the value of Agricultural Conservation Easements ranged from \$700/acre (Winters in Yolo Co.) to \$7,196/acre (Cotati in Sonoma Co.) to \$23,404/acre (Marina in Monterey Co.).
- For decades Morgan Hill has seen agricultural lands around its boundaries converted to nonagricultural uses¹. The adoption in 2015 of the City's Agricultural Preservation Program and subsequent adoption in 2016 of the Morgan Hill 2035 General Plan, provide a practical approach for how the City can help permanently preserve productive farmland in Santa Clara County, particularly within the City's SOI with a high priority placed on preservation of agricultural lands in the Morgan Hill Priority Conservation Area.

Conclusion

Through various policy mechanisms and tools, the City of Morgan Hill has taken a proactive role in establishing conservation efforts in South Santa Clara County. By adopting land use policies and funding mechanisms, Morgan Hill is working diligently to conserve agricultural land for open space, create opportunities for locally-grown food to be marketed and consumed locally, and preserve open areas that contribute to a unique cultural environment.

¹ 58% of farmland converted in Santa Clara County since 1994 was due to rural development in rural unincorporated areas. *Santa Clara Valley Agricultural Plan*, Page 26.

Exhibit 1: Agricultural Lands Preservation Program**City of Morgan Hill****Agricultural Lands Preservation Program****Adopted: November 5, 2014****Purpose**

The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill Sphere of Influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. To be effective for Morgan Hill, the agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.

The Morgan Hill Agricultural Lands Preservation Program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill Sphere of Influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting General Plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the City's Southeast Quadrant (SEQ) area, but also encourage preservation efforts throughout the City's SOI.

Definitions

Agricultural Land

For “Agricultural Land” that requires off-setting preservation/mitigation under this Agricultural Lands Preservation Program, Agricultural Land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that has not been subsequently developed for non-Agricultural Use prior to the adoption of this Program or subsequently developed per the provisions of this Program. Lands identified as Grazing Land are not subject to the offsetting preservation/mitigation requirements set forth in this Policy. The FMMP classifications reflect a finding by the California Department of Conservation of agricultural quality, which is based on a combination of soil quality as measured by the soil surveys of the United States Department of Agriculture (USDA) Natural Resource Conservation Service, together with recent agricultural-usage history.

Agricultural and grazing land definitions, as defined by the Department of Conservation mapping classifications include:

1. **Prime Farmland.** Prime farmland is land with “the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
2. **Unique Farmland.** Unique farmland is “farmland similar to prime farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
3. **Farmland of Statewide Importance.** Farmland of statewide importance is “farmland of lesser quality soils used for the production of the state’s leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.”
4. **Farmland of Local Importance.** Farmland of local importance is farmland identified as “land of importance to the local agricultural economy as determined by each county’s board of supervisors and a local advisory committee.”
5. **Grazing Land.** Grazing land, defined as “land on which the existing vegetation is suited to the grazing of livestock” is not included in this study’s use of the term Agricultural Land and is not considered as core to the proposed preservation program.

Agricultural Conservation Easement

An Agricultural Conservation Easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive Agricultural Use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting

development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.

Agricultural Mitigation Land

Agricultural Land (as defined above) that is encumbered by an Agricultural Conservation Easement or other farmland conservation mechanism acceptable to the City. If the Agricultural Land is also being used to meet Open Agricultural Land preservation goals, the easement or other mechanism must ensure that at least 90% of any property being used as Agricultural Mitigation Land remain as open space free of structures or other impervious surfaces so that it retains its value as Agricultural Land under the FMMP criteria. Uses allowed on Agricultural Mitigation Land shall be consistent with the Agricultural Use described below and pertaining land use regulations, and as further defined in the applicable Agricultural Conservation Easement or other farmland conservation mechanism.

Agricultural Priority Area

The Agricultural Priority Area is an area within the City's Southeast Quadrant (SEQ) that has been identified as the City's first priority for the acquisition of agricultural land conservation easements. This area was selected because it is the area within the Morgan Hill SOI where agriculture is considered to be the most viable over the long term. Conservation within this area will also contribute toward the City's goals of creating an open space buffer along its southern edge. Designating the Agricultural Priority Area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The Agricultural Priority Area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.

Agricultural Use

Agricultural Use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying Agricultural Use activities may include:

1. **Agricultural Processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
2. **Agriculturally Related Entertainment & Commercial Uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site Agricultural Uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
3. **Agricultural Research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.

4. Dairy: Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.
5. Feed Lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field Research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom Farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and Egg Farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife Refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to Type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the Type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.
12. Ancillary Uses: Uses conducted subordinate to the primary Agricultural Use being conducted upon a property and which do not occupy in total more than 10% of the property, including:
 - a) Direct sales of locally produced agricultural products.
 - b) One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c) Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d) Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

Agricultural Preservation In-lieu Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying

Entity and used by either agency solely for the purpose of acquiring Agricultural Conservation Easements. The Program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the City's ability to preserve open space Agricultural Lands within the Agricultural Priority Area.

Agricultural Lands Preservation Program Surcharge Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by either agency for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the easements. The Surcharge fee is either incorporated into the overall In-lieu Fee for projects that make use of this option, or charged directly to projects which independently establish an Agricultural Conservation Easement.

Open Agricultural Land

Open Agricultural Land is defined as Agricultural Land that is at least 90% free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other Agricultural Use. The City may make use of open space funding sources to acquire Agricultural Conservation Easements where that Easement specifies that the encumbered property be maintained as Open Agricultural Land. Because an Open Agricultural Land Conservation Easement would potentially reduce the economic potential for future agricultural uses, it would normally be more expensive to acquire than a standard Agricultural Conservation Easement. The City may however determine that at some locations an Open Agricultural Land Conservation Easement would better implement the City's land use objectives by preserving open space as well as agricultural activity.

Qualifying Entity

A government or nonprofit entity operating in Morgan Hill and/or the surrounding portions of Santa Clara County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The City favors the use of a local government or non-profit agricultural conservation entity, a statewide government or non-profit agricultural conservation entity or entities, or the regional branch of a nationally recognized non-profit agricultural conservation entity as the easement holder. The Qualifying Entity should have appropriate representation and/or participation from the farming community. The City will consider the following criteria when considering the non-profit agricultural conservation entity for these purposes, and when monitoring the performance of Qualifying Entities over time:

1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization whose principal purpose is holding and administering Agricultural Conservation Easements for the purposes of conserving and maintaining lands in agricultural production;
2. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
3. Whether the entity has a history of holding and administering easements in Santa Clara County for the foregoing purposes;
4. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards and Practices; and
5. Any other information that the City of Morgan Hill finds relevant under the circumstances.

Policies

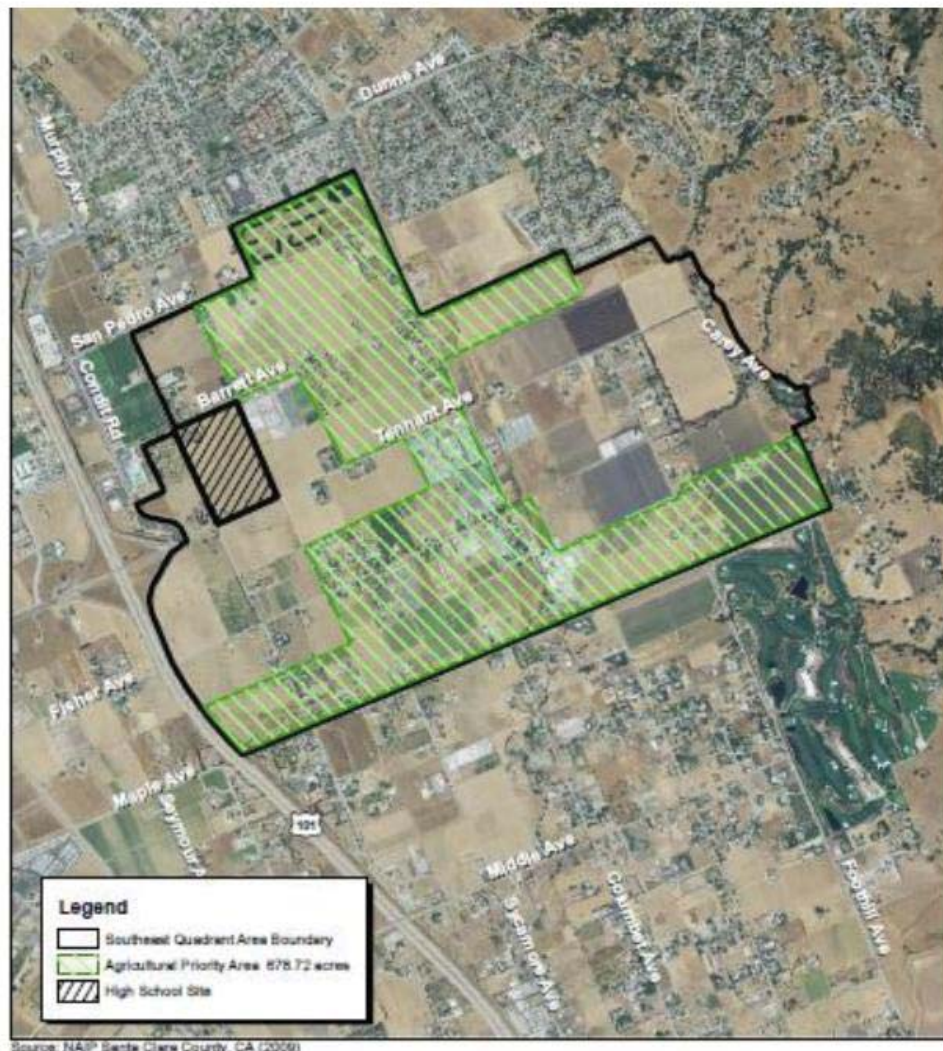
The City will implement the Program in accordance with the following policies:

1. **Agricultural Conservation Easements.** To achieve the Agricultural Lands Preservation Program objectives, activities converting Agricultural Land, such as new private or public development projects, are required to offset the conversion by directly preserving Agricultural Mitigation Land in perpetuity. Agricultural lands will be preserved through the recordation of permanent Agricultural Conservation Easements, which may be directly established by the land developer, obtained by the City or a Non-profit as an intermediary, or established through a developer-initiated transfer of development rights recorded within a development agreement. This offsetting preservation will serve as mitigation to satisfy the requirements for agricultural mitigation under the California Environmental Quality Act (CEQA) as well as to support the continuation of agriculture in and around the City of Morgan Hill consistent with community preferences and City policies.
2. **Alternate Mitigation.** The primary means of mitigation under this program are the direct recordation of conservation easements or the payment of in lieu fees which will be applied toward conservation easements. As an alternative, agricultural mitigation through Planned Development Zoning and/or a Development Agreement is allowed only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, such alternative mitigation shall still be required to achieve a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
3. **Applicability.** All new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of at least one acre of Agricultural Land (as defined above) will be required to mitigate loss of Agricultural Land per the provisions of this Policy. This includes projects within the existing City boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption of this Policy, including completion of the CEQA process, are not subject to this Policy unless specifically required as mitigation or a condition of project approval.
4. **Mitigation Ratio.** A minimum of one (1) acre of Agricultural Land (**1:1 mitigation ratio**) shall be preserved for each acre of Agricultural Land changed to a non-agricultural use. The required acreage of area to be protected through an Agricultural Conservation Easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.
5. **“Stay Ahead” Provision.** Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of Agricultural Lands. Development occurs with either the issuance of Grading Permit or Building Permits that would result in the loss of Agricultural Land. To meet this provision the City may utilize existing open space funding to establish Agricultural Conservation Easements, or individual projects may establish such easements in advance of development activity.

6. **Measurement of Affected Area.** Consistent with the Santa Clara Valley HCP/NCCP plan, the areas subject to agricultural mitigation requirements will be the developed footprint for properties with a General Plan land use designation of Open Space, Public Facilities, or SRL. These land use designations allow for and typically include a large portion of land reserved for “open space/open fields” that in the future could be put back into Agricultural Use. Areas proposed to be so reserved must have an aggregated area of at least 10 acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.
7. **Mitigation Mechanism.** Conversion of Agricultural Land will require off-setting acquisition and/or dedication of Agricultural Conservation Easements over approved Agricultural Mitigation Land, or payment to the City of the Agricultural Preservation In-lieu Fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the Agricultural Preservation In-lieu Fee, in either case developers are also required to pay an Agricultural Lands Preservation Program Surcharge Fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.
8. **Eligible Mitigation Lands.** In order to meet the goals of this Program, lands proposed to be used as agricultural mitigation shall conform to the above definitions for Agricultural Mitigation Land and/or Open Agricultural Land and shall meet the following criteria:
 - a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only;
 - b) The property is of adequate size, configuration and location to be viable for continued Agricultural Use;
 - c) The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing Agricultural Uses, and the water rights on the Agricultural Mitigation Land shall be protected in the Agricultural Conservation Easement;
 - d) Other considerations for appropriate conserved Agricultural Lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
 - e) The mitigation land shall be located within Santa Clara County; and
 - f) The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.
9. **Ineligible Mitigation Lands.** A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:
 - a) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or

- b) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the City or other public agency; or
- c) The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

10. **Agricultural Priority Area.** The Agricultural Priority Area within Morgan Hill's Southeast Quadrant, shown on the figure below, is the City's first priority geographic area for conservation. The Agricultural Priority Area encompasses approximately 650 acres of land. The City should use all available tools, including clustering of existing development rights within the SEQ, transfer of development rights (TDR) programs, collaborative land use planning with the County, partnering with local open space conservation agencies, and the use of available grant funding to achieve conservation within this area. Within the Agricultural Priority Area the City should focus on obtaining conservation easements first on land outside of the City's land use control, specifically focusing upon the sub-area located along the southern edge of the City's Sphere of Influence.



11. **Secondary Conservation Areas.** If it is not possible to obtain conservation easements within the Agricultural Priority Area, the City should obtain conservation easements within other areas within the Morgan Hill Sphere of Influence as the next priority. The City may also identify lands intended for conservation within these areas.
12. **Alternative Conservation Areas.** Only when conservation opportunities are not available within the Sphere of Influence will the City consider easements at other locations within the County. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'Eligible Mitigation Lands' above. Developers may independently establish an Agricultural Conservation Easement on Eligible Mitigation Lands within the County. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the Agricultural Lands Preservation Program Surcharge Fee .
13. **Agricultural Sustainability.** Prioritize acquisition of easements on land that is most viable for long-term agricultural use considering factors such as soil type, water supply and location. Promote agricultural uses within easement areas including the development of high-value crops which are compatible with an urban edge condition while also economically sustainable over the long-term.
14. **Responsibility for Easement Acquisition.** The City's preference is that developers pay the Agricultural Preservation In-lieu Fee so that conservation efforts will be focused within the Agricultural Priority Area and make use of funds from multiple sources. In such cases, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the In-lieu Fee and accompanying responsibility to a Qualifying Entity. However the City will need to be a party to easements obtained by the Qualifying Entity.
15. **Minimum Easement Size.** The minimum land area for an Agricultural Conservation Easement is 10 acres on a single parcel or on multiple adjoining parcels so that the easement area is contiguous. Developments providing less than 10 acres of agricultural mitigation land are thus required to pay the Agricultural Preservation In-lieu Fee on a per acre basis except that acquisition of Agricultural Conservation Easements of less than 10 acres may be allowed when located immediately adjacent to an existing Agricultural Conservation Easement area that when combined, exceeds 10 acres in size.
16. **Management and Monitoring Fee.** As with other agricultural mitigation/preservation programs, a number of responsibilities will come with holding the Agricultural Conservation Easements, including their management and monitoring. The developer will be required to pay a one-time per acre fee (Agricultural Lands Preservation Program Surcharge Fee) to cover the average cost of these activities along with administration of the program including any administrative costs of the Qualifying Entity. The City will establish the Surcharge Fee and monitor it periodically.
17. **Implementing Entity.** The City will hold the easements and collect management and monitoring fees until an alternative implementing entity (Qualifying Entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.
18. **Mitigation Timing and Implementation.** Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or

grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.

19. **Planned Developments / Development Agreements.** Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the City's SOI in which Agricultural Lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the Agricultural Priority Area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development agreement with the City specifying the terms of the agreement and the extraordinary benefits accruing to the City.
20. **Funding for Easements.** Given the City's policy objective of agricultural land preservation within the Morgan Hill Sphere of Influence and within the Southeast Quadrant in particular, it is anticipated that the City will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the City will use open space funds collected through administration of its Residential Development Control System (RDCS) to supplement the acquisition of conservation easements.
21. **Clustering of Development.** The City may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The City should allow such alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
22. **Educational Center.** Work with local property owners, non-profits, or other agencies to develop an agricultural educational center within the SEQ.

Implementation

Agricultural Conservation Easement Program

Agricultural conservation easements can be obtained via a number of different agricultural preservation tools through dedication, purchase, or donation. The City will focus its agricultural preservation efforts on in-perpetuity Agricultural Conservation Easements. These easements may be established by private developers either to directly off-set a specific project or as part of a transfer of development rights (provided that adequate restrictions are incorporated into the easement) or purchased by the City or Qualifying Entity as defined by this Policy (using either in-lieu fee monies or alternative revenue sources). The City has determined to focus its agricultural preservation efforts in the SEQ as the first priority area, then elsewhere within the Morgan Hill SOI as the second level of priority. This program will be implemented according to the following guidance:

6. Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management. Initially, the group responsible for managing mitigation funds and Agricultural Conservation Easements will be the City of Morgan Hill. However, it is the intent of the City to partner with an established organization or transfer the operational responsibilities for managing and maintaining the City's Agricultural Lands Preservation Program to a third party Qualifying Entity. The third party Qualifying Entity will need to include individuals with direct experience and knowledge of farming activities
7. Implementation of mitigation (whether via conservation easement or payment of fee) will be due prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.
8. The specific terms and acceptance of Agricultural Conservation Easements will be at the discretion of the City of Morgan Hill or Qualifying Entity.
9. Initially, the Agricultural Preservation In-Lieu Fee, including the Program Surcharge Fee, is anticipated to be approximately \$15,000 per acre (based upon the attached Nexus Study). The program will allow for annual adjustments to the fee based on an established index and changes in land values. The In-Lieu Fee should be based on the value of Agricultural Lands at the time of development and must be sufficient to ensure lands can be purchased to meet the City's adopted ratios.
10. The Agricultural Preservation In-Lieu Fee will only be used for the acquisition of Agricultural Conservation Easements. Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
11. The Agricultural Lands Preservation Program Surcharge Fee will be used for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of easements established through the Program.
12. The Agricultural Lands Preservation Program will allow for the use of the City's Open Space Fund for acquisition of Agricultural Conservation Easements. Agricultural Conservation Easements

acquired using Open Space funds must insure that the covered lands be protected as Open Agricultural Land.

13. It is the City's goal to acquire Agricultural Conservation Easements in the immediate future utilizing available Open Space Funds. Where possible, the City of Morgan Hill will partner with conservation entities for the acquisition of easement lands.
14. The following minimum requirements shall be incorporated into all Agricultural Conservation Easements or other instruments recorded to satisfy the requirements of the Agricultural Lands Preservation Program. Nothing in this section is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of the Agricultural Lands Preservation Program are achieved:
 - a) It is the intent of the City to transfer most, if not all, of the easements that are received from this program to a Qualifying Entity, as defined above, for the purpose of monitoring compliance with easement terms and taking any necessary enforcement and related actions.
 - b) All Agricultural Conservation Easements, or other farmland conservation mechanisms, shall be implemented through a legal instrument acceptable to City Council and the Qualifying Entity that will receive the easement, and signed by all owners with an interest in the mitigation land.
 - c) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land or that are otherwise inconsistent with the conservation purposes of this Agricultural Lands Preservation Program. The instrument shall protect the existing water rights and retain them with the Agricultural Mitigation Land; however, the instrument shall not preclude the limited transfer of water rights on a temporary basis (i.e., not to exceed two years in any ten-year period) to other Agricultural Uses within Santa Clara County, so long as sufficient water remains available to continue Agricultural Use of the mitigation land.
 - d) The instrument shall prohibit the presence of a residence, except an existing residence or construction of a comparable replacement for such a home or construction of a single new home of 3,000 square feet or less on a site that does not already include a residence provided that such residence is not located where it would interfere with agricultural activities. (Alternatively, a portion of the subject property of up to 1.5 acres in area may be excluded from the Agricultural Conservation Easement and developed with a single new home provided that no other home is located on the property).
 - e) Instruments that convey an interest in the mitigation land to a Qualifying Entity, shall name the City as a third party beneficiary with full enforcement rights.
 - f) Interests in Agricultural Mitigation Land shall be held in trust by a Qualifying Entity and/or the City in perpetuity. Except as provided below (g), the Qualifying Entity or the City shall not sell, lease, or convey any interest in Agricultural Mitigation Land which it acquires.

- g) The Agricultural Conservation Easement, or other conservation mechanism recorded pursuant to the Agricultural Lands Preservation Program, can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the Agricultural Mitigation Land is received and used or otherwise dedicated to acquire interests in other Agricultural Mitigation Land in Santa Clara County, as approved by the City and as provided for in this Program.
 - h) If any Qualifying Entity owning an interest in Agricultural Mitigation Land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City or other Qualifying Entity as acceptable and approved by the City.
 - i) The City may at its discretion terminate a relationship with a Qualifying Entity if that entity no longer satisfies the intent of this Program.
15. Utilize the City's Transfer Development Credit (TDC) program for agricultural preservation (Open Agriculture Land) in addition to the current goal of hillside preservation. The revenue comes from RDCS TDC In-Lieu fee paid by residential developers who do not purchase a TDC from a property owner.
16. Add Points to the Residential Development Control System (RDCS) scoring criteria that would be awarded to Projects that commit to support the Agriculture Preservation Program by paying a fee that could be used to pay for the residential development rights (TDR) or agriculture preservation easements for agricultural uses that could not meet the 90 percent open space requirement.

Clustering and Transfer of Development Rights

As opportunities arise, the City may utilize or develop additional methods of preserving agricultural lands through the land use entitlement process, including cooperatively working with property owners or developers to preserve agricultural lands through clustering or transfer of existing development rights. Such clustering or transferring can be implemented through the City's land use entitlement processes as described above. The City may also work with the County to develop a program that would allow transferring of development rights between the County and City in order to further preserve agricultural lands.

General Plan Policies

In addition to the preservation of Agricultural Land through Agricultural Conservation Easements and/or the clustering or transfer of development rights, a broader policy framework is important to support the Program's objectives. In particular, strengthening land use policies that define supporting land uses, limiting speculation associated with the conversion of Agricultural Land, and allowing for agriculture-supporting infrastructure will play an important role in the implementation of the Agricultural Lands Preservation Program. Accordingly, goals, policies, and actions that address the following objectives should be maintained within the General Plan:

- Continue Agricultural Land uses and production in and around the City of Morgan Hill to promote the City's identity and agricultural heritage.

- Support the development of urban agriculture, and the preservation of the existing Agricultural Lands within or adjacent to Morgan Hill to increase the supply of locally-grown, healthful foods.
- Strengthen the link between the community and local farms and farmers.
- Leverage Agricultural Lands to create and maintain a unique community character, provide open space, link to the region's history, support local agri-tourism, contribute to the local economy, and add to the quality of life.
- Identify potential sites within a centralized urban area of the City appropriate and suited for a community garden.

ATTACHMENT A – Background Information

The City engaged a consultant team to analyze the viability of agricultural activities in and around Morgan Hill and to make policy recommendations for how the City of Morgan Hill could best accomplish its goals of preserving viable agricultural lands. The consultant team, Economic & Planning Systems, Inc. and House Agricultural Consultants, submitted a report in December 2011 that provides background analysis and preliminary recommendations, much of which is incorporated into this Policy. Key findings from this Report are presented within the following Background information.

Agricultural Lands within Morgan Hill

As of 2010, the Morgan Hill SOI included approximately 9,894 acres of agricultural and grazing land, of which 7,739 acres was grazing land. The remaining 2,155 acres were irrigated or irrigable agricultural land uses, which are the focus of the Agricultural Lands Preservation Program (i.e., Farmland Mapping and Monitoring Program (FMMP) classifications of prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance). About two-thirds of this land, approximately 1,436 acres, was classified as prime farmland.

While the FMMP Map identified approximately 2,155 acres of irrigated or irrigable agricultural lands, some of this acreage had already been developed or committed for development at the time of this Policy's drafting.

The table below identifies the total acreage of agricultural and grazing land within the Morgan Hill SOI, City Limits, and unincorporated areas within the SOI based on the 2010 FMMP Map.

FMMP Classification	City Limits	Unincorporated Areas within SOI	Grand Total
Prime Farmland	320	1,116	1,436
Farmland of Statewide Importance	18	187	205
Farmland of Local Importance	153	184	337
Unique Farmland	25	152	177
Grazing Land	1,284	6,455	7,739
Grand Total	1,800	8,094	9,894

Long-term Viability of Agricultural Lands

A simple definition of *agricultural viability* is: agriculture that is economically feasible to maintain and continue. To be viable agricultural activity:

- Land continues to be farmed, returning a net profit, on a multi-year basis.
- Natural resources are stewarded for the long term.
- Agricultural operations are supported by the local community.

This definition makes no distinction as to the type or scale of viable agriculture, which may change along with national and international economic trends. Farmers can be either full-time or part-time. It does, however, exclude hobby farming, meaning farming that does not return a profit. “Supported by the local community” means that agricultural activities are accepted as part of the commerce of the area by the residents of the area, that housing is available to farm laborers and small farmers, that agriculture is integrated into the policies and regulations of the City, and that trade and commerce between the farming enterprises and the residents flourishes, through such means as local sales, including on-site direct sales, and farmers' markets.

Based on data provided by the United States Department of Agriculture (USDA) Economic Research Service (ERS) in 2008, approximately 43 percent of farmers nationally indicate that farming is their major occupation, while 42 percent state that work other than farming is their major occupation; 15 percent do not consider themselves to be in the workforce. In 2008, 88 percent of all farm household income nationally came from non-farm sources. USDA ERS data indicate a long-term trend toward increasing non-farm income and decreasing farm income among United States farmers.

According to a study by the University of California (UC) Davis Small Farm Center, an annual gross income level of approximately \$25,000 per farm business is a threshold for sustainability. A majority of California farm businesses grossing more than \$25,000 annually are profitable, based on data from the 2007 USDA Census of Agriculture. There is no implication that “a living” can be made if a farm grosses \$25,000. The study does imply, however, that since a profit can be expected in this situation, it is likely that small farming will continue to be an occupation, if perhaps only a part time one. Since small farming is profitable in a majority of cases if the gross revenues exceed \$25,000, it is implied that the small acreages in the Morgan Hill area will continue to be farmed.

Examples of small-scale agriculture are:

- Nursery and flowers.
- Farms emphasizing local sales and marketing.
- Community farms and education centers.

There are national trends supporting small farming:

- Urban peoples' interest in health, open space, and community encourages small farming.
- “Buy local” makes economic, social, and ecological sense.
- There is strong interest by college-age persons in farming.
- There is strong interest by government and nonprofits in small farms.
- Small organic farms have, for the most part, enjoyed economic success in recent years.

The Report indicated that while large-scale agriculture (agriculture generally conducted on 600+ acre farms with minimum lots of at least 40 acres and general separation from urban uses) is not viable in the Morgan Hill area, the outlook for small-scale agriculture is good.

The Report identified key threats to agricultural viability in the Morgan Hill SOI as:

1. High land market values difficult for strictly agricultural producers to afford.
2. Urban proximity conflicts with many farming operations.
3. The incompatibility of small parcel size with large-scale agribusiness.

Policy Context

The Report identified the following overarching contextual issues as important to the development of an agricultural program for the City of Morgan Hill:

- County and LAFCO Policies and Inter-agency Coordination.** For lands proposed to be annexed into the City of Morgan Hill, the successful preservation of agriculture in and around Morgan Hill will require collaboration and coordination with both the County and the Local Agency Formation Commission (LAFCO). Santa Clara County supports the continued agricultural use of lands in the unincorporated County through the use of large-lot agricultural zoning. Santa Clara LAFCO has developed a series of policies regarding agricultural mitigation and will play a critical role in the evolution of the Morgan Hill SOI in its review of boundary adjustment applications. It is important to note, though, that the City of Morgan Hill has the authority to enter into development agreements with property owners outside the Morgan Hill city limits for the purposes of preserving agricultural lands.
- Southeast Quadrant.** The SEQ of the City is of particular importance as the last major, contiguous area of agricultural land in the Morgan Hill SOI and due to its potential as a permanent “greenbelt” between Morgan Hill and the neighboring rural residential area of San Martin.
- Scale and Cost.** The City’s Agricultural Lands Preservation Program must recognize its unique circumstances, including: (1) the relatively small area in agricultural use in the Morgan Hill SOI; (2) the relatively high percentage of agricultural lands that are 10 acres or less in size; (3) the relatively high value of land relative to its potential for agricultural income due to rural-residential demand and speculative influences; and (4) the uncertainty in locating willing sellers of land for preservation purposes.
- Other Goals.** The City of Morgan Hill has multiple goals for its undeveloped land within its SOI in addition to agricultural preservation. Such goals include the establishment of a greenbelt, the development of sports, recreation and leisure (SRL) amenities and uses of public benefit within the SEQ, including a new high school, and the location of appropriate and consistent uses around the adjacent freeway interchange.

Agricultural Mitigation Costs

Agricultural mitigation requirements, whether through land dedications or mitigation fees, result in additional cost to any development that converts agricultural land. In combination with other agricultural land preservation policies, these mitigation requirements increase the costs to new development and could create feasibility challenges. Under a typical agricultural mitigation program, a project found to result in the loss of agricultural land must mitigate the loss through the preservation of agricultural land elsewhere. Preserving land for agriculture means acquiring land in fee title or purchasing a conservation easement that restricts uses on the property. The cost burden of the agricultural preservation required will primarily depend on the non-agricultural value component of the land being preserved.

Land sales for agricultural land in Santa Clara County and around Gilroy steadily averaged between \$15,000 and \$45,000 per acre based on a review of transactions and listings between 2006 and 2009.

Higher agricultural land values in and around Morgan Hill relative to other Santa Clara County areas indicate the greater development pressures in the Morgan Hill SOI than the other agricultural areas in the County. In addition, Morgan Hill's agricultural parcels tend to be smaller in size compared with other County locations.

A market analysis included within the 2011 Report estimated that the cost to preserve agricultural land through fee simple purchases would range from \$50,000 to \$80,000 per acre in Morgan Hill and that the unit cost of agricultural land preservation through easement acquisition would range from \$30,000 to \$48,000 per acre within Morgan Hill's SOI and from \$9,000 to \$27,000 per acre for land outside of the City's SOI. A quick survey of agricultural mitigation programs around the state indicated that most programs result in costs of less than \$30,000 per acre. The actual land costs that individual applicants will face could vary considerably depending on market conditions at the time of land purchase; the availability of willing sellers; and the size, location, and condition of land being preserved, etc. In addition, ongoing costs are incurred to manage and monitor the agricultural conservation easements.

Agricultural Mitigation Costs for Typical Projects:

- Preservation inside Morgan Hill SOI.** With mitigation required to take place within the Morgan Hill SOI, the mitigation cost associated with acquiring an easement was estimated to be \$30,000 to \$48,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$6,000 and \$9,600 per unit. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$2.30 and \$3.60 per building square foot.
- Preservation in Santa Clara County.** With mitigation allowed to occur anywhere in Santa Clara County, the mitigation cost associated with acquiring an easement was estimated to be \$9,000 to \$27,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$1,800 and \$5,400 per acre. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$0.70 and \$2.05 per building square foot.

ATTACHMENT B – Nexus Study

The Nexus Study supporting adoption of the Agricultural Preservation In-lieu fee is available at:
<http://www.morgan-hill.ca.gov/DocumentCenter/View/12622>

EXHIBIT – Draft Agricultural Preservation General Plan Policies for Consideration

The City of Morgan Hill will evaluate the current General Plan policies related to preservation of Agricultural Land and consider updates to those policies that address the following proposed policies and actions.

Policies and Actions

Agricultural Lands Preservation

- Preserve Agricultural Lands and prime soils in non-urban areas in order to provide local and regional fresh food supplies, reduce dependence on foreign products, conserve energy, and retain the aquifer recharge capacity of these lands. Give highest priority to the preservation of Agricultural Lands with the greatest long-term potential to support sustained Agricultural Use.
- Establish and/or maintain General Plan and Zoning land use designations to support Agricultural Uses.
- Encourage contractual protection for Agricultural Lands, such as Williamson Act contracts, Agricultural Conservation Easements, transfers of development rights, or other property tax relief measures as incentives for preservation of these lands.
- Implement the City's Agricultural Lands Preservation Program to preserve Agricultural Lands as part of new annexations or development projects.
- Offer landowners fair market value for their development rights on prime farmland.
- Allow alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
- Expand the City's Transfer Development Credit (TDC) program to include agricultural preservation as well as hillside preservation. Use the revenue from new purchases of TDCs, in part, to support the purchase of Agricultural Conservation Easements.
- Award points to projects that compete through the Residential Development Control System (RDCS) competition that commit to purchase TDCs for the purpose of agricultural preservation.
- Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management.
- Promote legislation to establish Countywide and Statewide agricultural preservation programs, including identifying sources of funding necessary for implementation of such programs.
- Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
- Amend existing General Plan Policy 2o in the Open Space and Conservation Element to be consistent with the provisions of this Program.

Sustainable Agricultural Industry

- Require ancillary non-Agricultural Land uses on Agricultural Lands to be ancillary and compatible with Agricultural Land uses, agricultural production, and the rural character of the area, and to enhance the economic viability of agricultural operations.
- Promote an agricultural support system including physical components (such as farm labor housing, retail sales, equipment supply and repair) and institutional components (such as agricultural education and training).
- Pursue additional funding available through State and federal grant programs sources for Agricultural Land preservation, educational/outreach programs, and other activities that support Agricultural Land use.
- Conduct outreach to farmers/landowners about Agricultural Conservation Easements and farming succession planning.
- Encourage Agricultural Uses which follow ecologically sound agricultural practices and minimize the use of chemicals and pesticides in order to promote healthy soils and ground water, provide healthful foods, reduce energy use, and reduce the resource demand attributed to local agricultural industry.
- Seek conservation program funding for farmers planning and implementing conservation practices that improve soil, water, plant, air and related resources on their land.
- Work with agricultural entities (e.g., farming industry, non-profits, land owners), the County, other Santa Clara County cities and the Local Agency Formation Commission and other stakeholders to promote public education to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

Local Agricultural – Economic Development

- Enhance viability and profitability of ongoing use of Agricultural Lands by supporting ancillary commercial uses such as produce stands, small-scale environmental and agricultural tourism, and the processing of agricultural products.
- Facilitate the long-term viability of farming within the City's SOI through educational, resource and mentoring programs, including partnerships with educational institutions (e.g. Gavilan College), industry organizations (e.g., California FarmLink), and financial institutions that provide business planning and mentoring for new farmers.
- Work with industry groups, business groups and other organizations to institute direct marketing programs, branding campaigns, and other incentives and programs that increase purchasing agreements between local farmers and local retailers, such as grocery stores, markets, restaurants and local institutional uses, and increase consumer awareness and purchases of local agriculture.
- Support partnerships between school districts and organizations to promote and implement farm to school programs.
- Incorporate agri-tourism destinations on City signage, e.g. farm stands and farms within the city's SOI.
- Encourage and support interested farmers to create public access opportunities through farming areas (e.g., school and public farm tours, roadside stands, and farm trails).

Urban Agriculture

- Maintain existing and support the development of new community gardens, farmer's markets and produce stands at suitable locations throughout Morgan Hill.
- Periodically review and amend the Zoning Code to streamline permit/use regulations to encourage and support the sale of agricultural products within the City.
- Support urban agriculture opportunities such as backyard gardens and edible landscapes that produce ecologically sound food for local consumption.
- Encourage developers of new development projects to incorporate food-producing areas within their project landscape plans.
- Encourage healthful food choices, exercise, and the production of locally grown agriculture for personal use by providing community garden facilities either on public lands or as part of new private developments.

Urban/Agriculture Interface

- Establish an agricultural buffer between urban and rural uses. The buffer's size, location and allowed uses must be sufficient to minimize urban edge conflicts, provide safety to urban residents, and allow the broadest possible farming practices on the urban edge boundary.
- Establish a minimum agricultural buffer requirement around new development adjacent to the City's Agricultural Priority Area and County land with an Agricultural land use designation.
- Restrict land uses within and adjacent to Agricultural Lands that would compromise the agricultural viability of these lands. Require new adjacent land uses to mitigate any impacts on the use of Agricultural Lands.
- When considering annexation applications involving land that is mapped or used for agricultural production, or is located adjacent to such land, implement land use designation(s) and pre-zoning(s) to minimize the potential conflict with surrounding Agricultural Uses in the area.
- Require new development projects to record an agricultural buffer easement on the land that will make up the buffer concurrently with the permitting of any development/grading.
- Strengthen zoning development standards, where necessary, to encourage development placement, scale, and design that are consistent with the preferred rural character adjacent to the City's edge.

Inter-agency Cooperation

- Cooperate with other jurisdictions to achieve agricultural preservation goals.
- Continue to identify opportunities to work with other jurisdictions and organizations in supporting Agricultural Land preservation and the agricultural industry in and around Morgan Hill. Work with the County as a critical partner in these efforts and outreach to other organizations where efforts and resources can be pooled to support agriculture.

Access to Healthy Foods

- Support an enhanced role for local Agricultural Land in providing community farms and local food sources.
- Promote broad access within the community to healthful food, as defined by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.
- Encourage and support the marketing, sale and consumption of locally-grown produce.

Exhibit 2: MH2035 General Plan Agriculture & Open Space Conservation Policies

Agriculture and Open Space Conservation Policies

Morgan Hill 2035 General Plan

Vision (pg. VIS-4)

The overall combination of actions envisioned by the General Plan will help Morgan Hill grow and prosper while balancing quality of life, economic development, tourism, fiscal sustainability, high-quality planned development, and preservation of habitat, the natural environment, and viable agriculture, without compromising its historic and enduring rural charm.

Urban Growth Boundary (pg. CNF-4)

In 1996, Morgan Hill and Santa Clara County jointly adopted a long-term Urban Growth Boundary (UGB) and associated policies. The UGB is encompassed within the Sphere of Influence (SOI) and is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur. It is designed to encourage compact, efficient infill development and discourage more costly development at the edge of the City. The UGB also helps to ensure that urban services provided by the City to existing neighborhoods will not be reduced by service demands of new urban development at the City's fringe.

Rural Designations (pg. CNF-9)

Rural County. This designation applies to land outside the City limit, but in the SOI. Lots with the Rural County designation are generally 5 to 20 acres in size with one single-family home and/or agricultural operation per parcel. The minimum acceptable lot size for new development is generally 5 acres.

Open Space. This designation applies to land in the City limits and SOI, and includes public parks, private golf courses, and large parcels of land generally 50 acres or more in size. Land designated Open Space is generally meant to remain unimproved and devoted to the preservation of natural resources, managed production of resources, or public health and safety, as well as to complement adjacent, higher density residential and commercial development. Allowed uses include agriculture, outdoor recreation, and a secondary dwelling unit. One single-family home per parcel is allowed, with appropriate permit.

Agriculture. The Agriculture designation identifies lands intended for long-term preservation for agricultural use and intended for a variety of agricultural uses, including grazing, dairying, raising of livestock, orchards, row crops, nursery stock, flower growing, ancillary residential uses, ancillary commercial uses such as fruit stands, agricultural research and the storage and processing of agricultural products. This designation supports open space uses such as preservation of natural resources, outdoor recreation and public health and safety, including infrastructure (such as infiltration ponds) that is similar to other open space uses. The designation also supports agricultural commercial uses such as

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roadside stands, wineries, farm-based tourism, u-pick, rodeos, farmers markets and crop-based seasonal events. Building intensity in this designation will be greatly limited. The minimum parcel size in areas designated as Agriculture is generally 20 acres; the designation however supports the clustering of existing development potential in order to preserve larger agricultural sites. Please note at the time of publication of this General Plan, the Agriculture designation had not been applied to any parcels.

Overlays and Areas of Special Consideration

East of 101 Area Plan Overlay. The East of 101 Area Plan Overlay applies to the area roughly between Half Road and Diana Avenue to the north and south and Condit Road and Hill Road to the west and east. The purpose of this overlay is to require the preparation of a comprehensive master plan when new residential development is proposed to create well-planned, cohesive neighborhoods. Development within the East of 101 Area Plan Overlay shall:

- Employ high-quality site planning, architecture, and design that reflects the rural and agricultural history of the area, following traditional town design principles, and support green building methods that reduce the environmental impact of new development.
- Seek to preserve the agricultural heritage of the area and integrate ongoing agricultural uses into future development, as indicated by the Agriculture/Open Space overlay symbol.
- Include a variety of residential housing types as permitted by the underlying General Plan land use designation.
- Include services and amenities to serve new residents so daily needs can be met close to home.
- Provide an easily accessible, fully connected street and trail network that encourages walking and biking and provides access to existing community amenities such as Live Oak High School and Nordstrom Elementary School.

Open Space/Agriculture: This symbol indicates that open space and agricultural uses should be integrated into future development in areas with a strong agricultural heritage.

Southeast Quadrant. The Southeast Quadrant (SEQ) is approximately 1,300 acres, generally bounded by Condit Road and Highway 101 to the west, San Pedro Avenue to the north, Carey Avenue to the east, and Maple Avenue to the south, as shown in Figure CNF-5. The City has adopted an Agricultural Lands Preservation Program to permanently preserve agricultural lands with the SEQ and Citywide.

Land Use Policies

CNF-3.14 Agricultural Preservation Set-Asides. Set aside at least 300 allotments for housing that may be applied anywhere in the City through 2035. Recipient projects must directly establish permanent agricultural conservation easements within the City Limits or within the City's Priority Agricultural Conservation Area.

CNF-4.1 Future Growth Areas. Use the current Urban Service Area and Urban Growth Boundary to identify future urban development areas based on adequacy and availability of municipal services.

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- CNF-4.2 Urban Growth Boundary.** Maintain a long-term Urban Growth Boundary that:
- a) provides greater stability of future land use patterns than is currently provided by the existing "short term" urban service area (USA) boundaries;
 - b) indicates the preferred extent and direction of the City's future urban expansion and capital improvements planning;
 - c) encourages compact and concentric urban growth and development;
 - d) promotes fiscal responsibility, cost-effective service delivery, and the City's ability to plan for and adequately maintain urban services over time;
 - e) provides for an adequate land supply necessary for sustainable economic growth;
 - f) compensates for the impacts of the City's historical patterns of urban growth;
 - g) achieves greater compatibility of land use planning and decision-making for lands of mutual interest to the City and County; and
 - h) provide additional certainty to rural landowners needed for purposes of planning investments and maintaining viable agricultural operations.
- CNF-4.3 Prerequisites for Urban Development.** Consider land adjacent to the City as available for urban development only when it is included within the Urban Service Area and Urban Growth Boundary, can be developed in a manner that will be cost-effective to the City, and will be served by adequate public services and facilities.
- CNF-4.7 Urban Growth Boundary Modification Criteria.** Significant modifications to the UGB are strongly discouraged in order to ensure the long term stability of the boundary by directing urban growth to areas of the city that are urbanized or planned for urbanization.
- a) Significant modifications to the UGB, or significant modifications to the General Plan text supporting the boundary, will only be considered in the context of a major, comprehensive update of the General Plan which fully considers all of the implications of expanding the limits of urbanization.
 - b) Minor modifications to the UGB may be considered during an annual General Plan review. To qualify as a minor modification a proposed modification of the UGB must meet the following criteria:
 - Be no larger than 5 acres in size; or
 - If the modification includes both areas of expansion and areas of contraction, the net expansion area is no larger than five acres in size; and

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- The expansion area must be located contiguous to lands with an urban land use designation on the City's General Plan Land Use Map.
- c) All proposed modifications must:
 - Demonstrate consistency with the applicable goals and policies in the General Plan and the surrounding General Plan Land Use designations.
 - Demonstrate a fiscally neutral effect on City finances at the time of development in the future.
 - Be adequately served by public services and infrastructure without decreasing City adopted level of service standards.
 - Demonstrate a public benefits such as the preservation of sensitive habitat or prime farmland, provision of affordable housing, provision of public park or open space land, or a public benefit established by the Morgan Hill City Council.

- CNF-4.8 Land Supply.** Include enough land within the Urban Service Area to provide for a rate, amount, and type of development consistent with the General Plan; review and modify the Urban Service Area boundaries as needed.
- CNF-4.9 Orderly Growth.** Urban growth should occur in an orderly and contiguous pattern, within the designated Urban Service Area, encouraging infill of vacant urban land. (South County Joint Area Plan 1.09 & 1.10)
- CNF-4.10 Urban Service Area Expansions.** Base expansion of urban service areas and annexations on the General Plan, consistent with the City's schedules for development and extension of services. (South County Joint Area Plan 1.11 & 1.12)
- CNF-4.11 Urban Service Area Expansions Within UGB.** Allow Urban Service Area expansions only within the long-term UGB and for lands with urban designations; the timing and extent of Urban Service Area expansion shall remain consistent with established Urban Service Area expansion policies and ordinances.
- CNF-6.1 Services to Serve Growth.** Manage and schedule urban growth consistent with the ability to provide a full array of urban services and facilities, such as sewer capacity, water, transportation, schools, public safety and other urban services. (South County Joint Area Plan 1.08)
- CNF-7.1 County General Plan Policies.** Promote the maintenance of current County General Plan policies encouraging low-density uses, including large lots and agriculture, for County projects adjacent to the UGB. Encourage the County to retain large minimum parcel sizes, and promote agricultural and open space uses on unincorporated lands.

Agriculture and Open Space Conservation

- CNF-7.2 Rural Landowner Home Occupation.** Support the County's effort to promote the use of expanded home occupations for rural landowners and agriculturists, within the parameters of the County's zoning ordinance.
- CNF-7.3 Rural Land Uses.** Land uses in rural areas should be low-intensity and limited in number, and public services to rural areas should be appropriately limited. (South County Joint Area Plan 1.07)
- CNF-7.4 Agricultural Land Use Conflicts.** Work with Santa Clara County to minimize potential land use conflicts between urban uses within the UGB and rural lands adjacent to the growth boundary.
- CNF-7.5 Inter-Jurisdictional Support for Agriculture.** Coordinate measures to enhance the economic viability of agriculture in conjunction with other inter-jurisdictional planning in the South County.
- CNF-20.3 East of 101 Area Design.** Require new residential development to be designed to minimize adverse impacts on adjacent residential and agricultural uses.
- CNF-20.4 East of 101 Area Integrated Agriculture.** Strongly encourage new development to preserve existing agricultural uses as feasible and integrate agricultural features into new development to reflect the history of this area.

Open Space (pg. NRE-1)

The abundance of open space within and around Morgan Hill is a key contributor to quality of life for City residents and visitors. Preserving open space, including in conjunction with new development, is essential to maintaining the uniqueness and quality of life of Morgan Hill.

Greenbelts (pg. NRE-2)

The Natural Resources and Environment Element identifies a Greenbelt, which is intended to physically define the City and separate it from San Jose and San Martin. The Greenbelt includes both public open space and private properties as shown on Figure NRE-1. Identification of areas as "Greenbelt" does not change the development potential or restrictions imposed under Santa Clara County development policies and regulations. Rather, it indicates that the City will work with the County to minimize off-site visual impacts of new development. In addition, the Greenbelt is intended to identify areas where a targeted program of acquisition of open space easements or fee title to land may occur.

Areas outside of the Urban Growth Boundary that have been substantially subdivided into parcels smaller than 10 acres generally are not included in the identified Greenbelt areas. Many of the parcels in these areas are developed or are eligible for construction of single-family homes. The existing and potential density of development in these areas minimizes their value as Greenbelt areas. However, the

Agriculture and Open Space Conservation

rural character of these areas does help to define and distinguish the urbanized City area from other urban and rural county areas.

Agricultural Resources (pg. NRE-2)

Agriculture has been important to the City throughout its history as an industry and employment generator, in addition to contributing to the City's rural character. The City's economy once depended on the cultivation of stone fruits, pears, apples, and nuts. Although the local economy diversified, agriculture is still an important asset to the region, as evident by the surrounding nurseries, orchards, and vineyards, which boost the region's economy and the local tourism industry.

Supporting agriculture requires finding innovative ways to help farming and ranching operations become and remain competitive in an increasingly global economic environment. Agricultural development policies intend to retain the historic agricultural character of lands surrounding Morgan Hill, and to minimize conflicts between urban development and agricultural uses.

Agricultural land can be found within the Morgan Hill City limit and within the Sphere of Influence (SOI). The Morgan Hill area includes prime farmland, farmland of statewide importance, farmland of local importance, unique farmland, and grazing land, as classified by the State Department of Conservation. As shown in Figure NRE-2, most of the prime farmland is located on the eastern side of the City, east of Highway 101. However, the Department of Conservation's data reflect conditions as of 2010. Since the time the State published the data, some limited pieces of land may have been developed or may now be under development review. Nevertheless, the data provide a broad picture of the agricultural resources within Morgan Hill today.

The California Land Conservation Act of 1965, also known as the Williamson Act, provides tax relief for landowners who preserve their agricultural and open space property under Williamson Act contracts. Under contract, the tax on a Williamson Act property is assessed at a rate consistent with its actual use, rather than the potential value. These contracts run for 10 years, are automatically renewable on an annual basis, and may be terminated by the initiative of either the property owner or the legislative body. There are a number of parcels under Williamson Act contracts in and around Morgan Hill.

Conservation Policies

- NRE-1.1 Natural Features.** Preserve outstanding natural features, such as the skyline of a prominent hill and rock outcroppings.
- NRE-1.2 Large Open Space Areas.** Work with the County, the Open Space Authority, appropriate conservancy organizations and land trusts, and property owners to preserve large open space areas, such as agricultural lands and outdoor recreation areas, to conserve natural resources and retain the City's unique identity.
- NRE-1.3 Designated Open Space.** Maintain land designated as "Open Space" on the Morgan Hill General Plan Land Use Map (Figure CNF-3).

Agriculture and Open Space Conservation

- NRE-1.4 South County Open Space.** Preserve and maintain the wide variety of open spaces in the South County; including greenbelt areas, parks, and agricultural uses. (South County Joint Area Plan 16.00)
- NRE-1.5 Coordinated Action.** Continue to coordinate with Gilroy and Santa Clara County to implement South County open space goals and objectives and participate in the development of regional open space preservation programs. (South County Joint Area Plan 16.19 & 16.20)
- NRE-1.6 Open Space Preservation Tools.** Use a variety of open space preservation tools to protect open space, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development. (South County Joint Area Plan 16.17)
- NRE-1.7 Priority Areas for Preservation.** The South County includes a variety of open space areas, including the valley floor, stream corridors, lands around reservoirs, foothills, inter-mountain valleys, and mountain areas beyond the foothills. Of these geographic areas, stream corridors, lands around the reservoirs, lands which provide greenbelts, and significant hillside features should receive highest priority for preservation as open space and future regional park location. (South County Joint Area Plan 16.01 & 16.02)
- NRE-1.8 County Parks and Open Space Programs.** Support County programs to:
- a) acquire and develop regional parks in the South County, providing just compensation for the taking of private lands;
 - b) protect open space resources by prohibiting the introduction of uses incompatible with open space resource preservation, and preserve open space through planning, regulation, acquisition and/or development rights transfer programs;
 - c) plan and regulate land use to avoid hazardous areas and protect critical natural resources; and
 - d) continue to provide property tax relief via the Williamson Act to land owners who agree to maintain their lands in open space uses. (South County Joint Area Plan 16.21)
- NRE-2.1 Hillside and Ridgeline Views.** Protect views of hillsides, ridgelines, and prominent natural features surrounding the City. These features help define the City's historic rural character, sense of place, image and identity.
- NRE-2.2 El Toro Mountain as Landmark Feature.** Retain the City's unique identity by preserving its landmark natural feature, El Toro Mountain.

Agriculture and Open Space Conservation

- NRE-2.3 Scenic Hillside Preservation.** Preserve scenic hillsides around the City in an undeveloped state, wherever feasible. Provide for retention of hillside areas as open space through the dedication and/or purchase of scenic easements and/or open space easements, transfer of development rights and other appropriate measures.
- NRE-2.4 Building Distance below Ridgelines.** Limit all building pads located within the hillside areas to an elevation at or below the 80-foot vertical drop from the ridgeline.
- NRE-3.1 Greenbelt as a Community Separator.** Maintain a greenbelt to separate the northern and southern boundaries of the City from surrounding rural lands and the urbanized areas of San Jose and San Martin.
- NRE-3.2 San Jose Coyote Valley Greenbelt.** Work with the City of San Jose and Santa Clara County to ensure that the San Jose Coyote Valley Greenbelt, which includes the area south of Palm Avenue and north of the Morgan Hill City limits and is located within the San Jose Sphere of Influence, shall continue to provide the non-urban buffer for the north side of Morgan Hill.
- NRE-3.3 Greenbelt Easements.** Acquire easements on properties using an approach that would maintain some appropriate development potential, maximize the use of available funds for greenbelt and open space protection, and minimize land management and maintenance costs.
- NRE-3.4 Land in Fee Title for Greenbelts.** Acquire land in fee title when the City's objectives include allowing public access to the site for recreational or related activities.
- NRE-3.5 "Willing Seller" Greenbelt Acquisition.** Acquire properties and easements on a "willing seller" basis.
- NRE-3.6 No Commercial/Industrial Uses within Greenbelts.** Support County policies prohibiting commercial and industrial uses (excluding agricultural industry) in the unincorporated and greenbelt areas surrounding the City.
- NRE-3.7 Appropriate Greenbelt Land Uses.** Encourage land uses appropriate within a greenbelt, which might include: a) low-density residential development on lots 10 acres or more in size; b) public parks and recreational areas; c) privately operated recreation areas (e.g., golf courses and riding stables); and, d) agriculture. (South County Joint Area Plan 16.16)
- NRE-3.8 Appropriate Greenbelt Land Uses.** Require appropriate uses within Greenbelt areas such as parks and other designated open spaces, scenic/open space easements, golf courses, low intensity public facilities involving minimal permanent improvements and agricultural activities are appropriate uses. Existing residential may remain and new residential uses should be located and designed to have minimal visual and other environmental impacts.

Agriculture and Open Space Conservation

- NRE-3.9 Greenbelt Areas on Private Land.** Greenbelt areas which are privately owned are not intended for public recreational use.
- NRE-3.A Tools to Create a Greenbelt.** Use a variety of tools to create a greenbelt, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development.
- NRE-3.B Greenbelt Acquisition Program.** Pursue a targeted program for acquisition of Greenbelt land in fee title or conservation easements. Prioritize undeveloped properties that are most threatened with development which, if acquired, would provide significant public benefit.
- NRE-4.1 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.2 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.3 Agriculture in the Sphere of Influence.** Support significant agricultural activity within the Sphere of Influence by providing a market for agricultural products (e.g., farmers' markets) and decreasing the costs associated with agriculture by allowing such uses to occur in the Sphere of Influence.
- NRE-4.4 Farming Cooperatives in Buffer Areas.** Support use of farming cooperatives within agricultural buffer areas.
- NRE-4.5 Local Agricultural Products.** Purchase locally-produced agricultural products for City functions and encourage Morgan Hill Unified School District and other local agencies to do the same, whenever feasible.
- NRE-4.6 Agricultural Education.** Support programs to foster agricultural education.
- NRE-4.7 Long-Term Maintenance of Agriculture.** Continue to support the long-term maintenance of agricultural land uses and agriculture, including vineyards and wineries, as an economic enterprise in South County. (South County Joint Area Plan 14.00)
- NRE-4.8 Policy Support for Agriculture.** Take positive action to encourage agriculture by supporting local, county, and State policies favorable to agriculture. (South County Joint Area Plan 14.01)

Agriculture and Open Space Conservation

- NRE-4.9 **Urban Encroachment.**** Require new urban development adjacent to an existing agricultural operation to create an appropriate buffer area, on land within the proposed development, between urban uses and agricultural activities.
- NRE-4.10 **Land Use to Support Agricultural Viability.**** Maintain the economic viability of agriculture using a variety of methods, such as:
- Designating land outside urban areas as agricultural;
 - Requiring minimum lot sizes in agricultural areas;
 - Requiring land uses that support agricultural activities;
 - Marketing the benefits of agricultural uses to the public. (South County Joint Area Plan 14.02)
- NRE-4.11 **Agricultural Mitigation.**** Enforce the agricultural mitigation requirement of requiring the preservation of a minimum of 1 acre of agricultural land for each acre of agricultural land changed to a non-agricultural use, consistent with the City's Agricultural Lands Preservation Program.
- NRE-4.12 **Permanent Preservation of Agriculture.**** Establish areas for the permanent preservation of agricultural lands and programs to accomplish that objective, such as exclusive agricultural zoning, transfer of development rights (TDR) programs, and right-to-farm legislation. (South County Joint Area Plan 14.03)
- NRE-4.13 **Urban Growth.**** Wherever existing development patterns and existing and planned roads and other public facilities permit, concentrate urban development adjacent to existing developed areas in order to minimize the impact of development on agricultural land. Plan for further urban growth to occur in areas which will avoid encroachment into those agricultural lands with the greatest long-term potential to remain economically viable. (South County Joint Area Plan 14.07)
- NRE-4.14 **LAFCO Policies.**** Support policies of the Local Agency Formation Commission (LAFCO) which would guide urban development away from those agricultural areas with the greatest potential for long-term economic viability. Use policies for Urban Service Area extensions and utility extensions to guide urban growth away from long-term agricultural areas. (South County Joint Area Plan 14.09 & 14.10)
- NRE-4.15 **Conversion to Urban Use.**** Convert agricultural land that has been designated for urban growth in an orderly manner to retain the stability and viability of remaining agricultural lands as long as possible. (South County Joint Area Plan 14.08)
- NRE-4.16 **Prioritization of Agricultural Land.**** Prioritize protection of existing agriculture lands in the Sphere of Influence, outside the Urban Growth Boundary.
- NRE-4.17 **Williamson Act Contracts.**** Support the preservation of land under Williamson Act contracts within the Morgan Hill Sphere of Influence.

Agriculture and Open Space Conservation

- NRE-4.18** **Agricultural Operations Disclosure.** In areas where residential development is adjacent to agricultural operations, require a disclosure to residents that agricultural operations happen nearby and that they will be exposed to impacts from such operations, such as dust, noise, and odors.
- NRE-4.19** **Agricultural Lands Preservation Program.** Use a wide variety of funding sources to support the Agricultural Lands Preservation Program, including land use regulation, urban development policy, conservation easements (with matching grant funds from appropriate agencies, where possible), transfer or purchase of development rights, increased transfer fees, Residential Development Control funds, or Homeowners Association fees for new development.
- NRE-15.4** **Sustainable Land Use.** Promote land use patterns that reduce the number and length of motor vehicle trips.

Exhibit 3: Municipal Code Chapter 18.152 Agricultural Mitigation

Chapter 18.152 – AGRICULTURAL MITIGATION

Sections:

- 18.152.010 – Agricultural Lands Preservation Program
- 18.152.020 – Purpose
- 18.152.030 – Definitions
- 18.152.040 – Applicability
- 18.152.050 – Mitigation Ratio
- 18.152.060 – "Stay Ahead" Provision
- 18.152.070 – Measurement of Affected Area
- 18.152.080 – Mitigation Mechanism
- 18.152.090 – Eligible Mitigation Lands
- 18.152.100 – Ineligible Mitigation Lands
- 18.152.110 – Agricultural Priority Area
- 18.152.120 – Responsibility for Easement Acquisition
- 18.152.130 – Management and Monitoring Fee
- 18.152.140 – Implementing Entity
- 18.152.150 – Mitigation Timing and Implementation
- 18.152.160 – Planned Developments/Development Agreements
- 18.152.170 – Funding for Easements
- 18.152.180 – Clustering of Development

18.152.010 – Agricultural Lands Preservation Program

The ordinance codified in this chapter shall be known and may be cited as the "Agricultural Lands Preservation Program" of the City of Morgan Hill.

18.152.020 – Purpose

- A. The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill sphere of influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. For Morgan Hill, an effective agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.
- B. The Morgan Hill agricultural lands preservation program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a

comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill sphere of influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting general plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the city's southeast quadrant

18.152.030 – Definitions

The following terms when used in this chapter shall have the following respective meanings:

- A. **Agricultural Land.** For "agricultural land" that requires off-setting preservation/mitigation under this agricultural lands preservation program, agricultural land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that was not subsequently developed for non-agricultural use prior to August 1, 2014 or subsequently developed per the provisions of this ordinance. Lands identified as grazing land are not subject to the offsetting preservation/mitigation requirements set forth in this policy.
- B. **Agricultural Conservation Easement.** An agricultural conservation easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive agricultural use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.
- C. **Agricultural Mitigation Land.** Agricultural land (as defined above) that is encumbered by an agricultural conservation easement or other farmland conservation mechanism acceptable to the city. If the agricultural land is also being used to meet open agricultural land preservation goals, the easement or other mechanism must ensure that at least ninety percent of any property being used as agricultural mitigation land remain as open space free of structures or other impervious surfaces so that it retains its value as agricultural

land under the FMMP criteria. Uses allowed on agricultural mitigation land shall be consistent with the agricultural use described below and pertaining land use regulations, and as further defined in the applicable agricultural conservation easement or other farmland conservation mechanism.

- D. **Agricultural Priority Area.** The agricultural priority area is an area within the SEQ that has been identified within the Agricultural Lands Preservation Program as a priority location to preserve and encourage the long-term viability of agriculture and open agricultural lands, recognizing both the vital contributions agriculture makes to the economy and quality of life within the county and the community preference for maintenance of open space areas. By designating this area, the program identifies those lands within the Morgan Hill SOI most suitable for agricultural production and related uses. Designating the agricultural priority area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The agricultural priority area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.
- E. **Agricultural Use.** Agricultural use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying agricultural use activities may include:
 - 1. **Agricultural processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
 - 2. **Agriculturally related entertainment and commercial uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site agricultural uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
 - 3. **Agricultural research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.
 - 4. **Dairy:** Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.

5. Feed lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and egg farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food paring, local agriculture and local history is also permitted.
12. Ancillary uses: Uses conducted subordinate to the primary agricultural use being conducted upon a property and which do not occupy in total more than ten percent of the property, including:
 - a. Direct sales of locally produced agricultural products.
 - b. One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c. Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d. Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

- F. **Agricultural Preservation In-lieu Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency solely for the purpose of acquiring agricultural conservation easements. The program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the city's ability to preserve open space agricultural lands within the agricultural priority area.
- G. **Agricultural Lands Preservation Program Surcharge Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency for the purpose of administering the agricultural lands preservation program and/or to cover ongoing management and monitoring of the easements. The surcharge fee is either incorporated into the overall in-lieu fee for projects that make use of this option, or charged directly to projects which independently establish an agricultural conservation easement.
- H. **Open Agricultural Land.** Open agricultural land is defined as agricultural land that is at least ninety percent free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other agricultural use. The city may make use of open space funding sources to acquire agricultural conservation easements where that easement specifies that the encumbered property be maintained as open agricultural land.

18.152.040 – Applicability

The provisions of this chapter shall apply to all new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of agricultural land (as defined above) will be required to mitigate loss of agricultural land per the provisions of this policy. This includes projects within the existing city boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption August 1, 2014, including completion of the CEQA process, are not subject to this policy unless specifically required as mitigation or a condition of project approval.

18.152.050 – Mitigation Ratio

A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.

18.152.060 – "Stay Ahead" Provision

Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands. Development occurs with either the issuance of grading permit or building permits that would result in the loss of agricultural land. To meet this provision the city may utilize existing open space funding to establish agricultural conservation easements, or individual projects may establish such easements in advance of development activity.

18.152.070 – Measurement of Affected Area

Areas subject to agricultural mitigation requirements will be the developed footprint for properties with a general plan land use designation of open space, public facilities, or sports recreation/leisure. Areas proposed to be so reserved shall have an aggregated area of at least ten acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.

18.152.080 – Mitigation Mechanism

Conversion of agricultural land will require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the city of the agricultural preservation in-lieu fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the agricultural preservation in-lieu fee, in either case developers are also required to pay an agricultural lands preservation program surcharge fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.

18.152.090 – Eligible Mitigation Lands

In order to meet the goals of this chapter, lands proposed to be used as agricultural mitigation shall conform to the above definitions for agricultural mitigation land and/or open agricultural land and shall meet the following criteria:

- A. Agricultural conservation easements resulting from this program shall be acquired from willing sellers only; eminent domain will not be used to acquire lands for conservation;
- B. The property is of adequate size, configuration and location to be viable for continued agricultural use;
- C. The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing agricultural uses, and

the water rights on the agricultural mitigation land shall be protected in the agricultural conservation easement;

- D. Other considerations for appropriate conserved agricultural lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
- E. The mitigation land shall be located within Santa Clara County; and
- F. The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.

18.152.100 – Ineligible Mitigation Lands

A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

- A. The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or
- B. The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the city or other public agency; or
- C. The property is subject to conditions that practicably prevent utilizing the property for a viable agricultural use.

18.152.110 – Agricultural Priority Area

Dedications inside the Morgan Hill sphere of influence (SOI) will be strongly encouraged within the southeast quadrant (SEQ) as the first priority. The city has identified an agricultural priority area within the SEQ as the city's first priority for conservation. The city's secondary priority is the preservation of other rural county agricultural lands within the Morgan Hill SOI. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'eligible mitigation lands' above. The agricultural priority area encompasses approximately six hundred fifty acres of land.

18.152.120 – Responsibility for Easement Acquisition

- A. In cases where the mitigation fee is paid, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the in-lieu fee and accompanying responsibility to a qualifying entity.

- B. Developments requiring less than ten acres of agricultural mitigation are required to pay the agricultural preservation in-lieu fee on a per acre basis except that acquisition of agricultural conservation easements of less than ten acres may be allowed when located immediately adjacent to an existing agricultural conservation easement area that when combined, exceeds ten acres in size.
- C. Developers may independently establish an agricultural conservation easement on eligible mitigation lands within the county. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the agricultural lands preservation program surcharge fee.

18.152.130 – Management and Monitoring Fee

The developer shall pay a one-time per acre fee (agricultural lands preservation program surcharge fee) to cover the average cost administration of the program.

18.152.140 – Implementing Entity

The city will hold the easements and collect management and monitoring fees until an alternative implementing entity (qualifying entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.

18.152.150 – Mitigation Timing and Implementation

Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of agricultural lands, whichever occurs first.

18.152.160 – Planned Developments/Development Agreements

Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the city's SOI in which agricultural lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the agricultural priority area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development

agreement with the city specifying the terms of the agreement and the extraordinary benefits accruing to the city.

18.152.170 – Funding for Easements

Given the city's policy objective of agricultural land preservation within the Morgan Hill sphere of influence and within the southeast quadrant in particular, it is anticipated that the city will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the city will use open space funds collected through administration of its residential development control system (RDCS) to supplement the acquisition of conservation easements.

18.152.180 – Clustering of Development

The city may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The city should allow such alternate methods of agricultural mitigation through planned development zoning and/or a development agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an agricultural conservation easement shall be recorded over the agricultural mitigation lands subject to the planned development zoning and/or development agreement.

**Exhibit 4: Municipal Code Section 18.30.040 Hillside Combining District
and Transfer of Development Credits Program**

18.30.030 – Downtown Specific Plan Overlay Zone

- A. Purpose.** The Downtown Specific Plan (DTSP) overlay zone identifies areas where the requirements of the Downtown Specific Plan apply.
- B. Applicability.** The DTSP overlay zone applies to parcels within the boundary of the Downtown Specific Plan as shown on the Zoning Map.
- C. Effect of Downtown Specific Plan Overlay.**
 - 1. All proposed land uses and development within the DTSP overlay shall comply with the requirements of the Downtown Specific Plan.
 - 2. In the case of conflict between the Downtown Specific Plan and the requirements of the Zoning Code, the Downtown Specific Plan shall govern.

18.30.040 – Hillside Combining District

- A. Purpose of Hillside Combining District.** The purpose of the Hillside (H) combining district is to allow for the orderly development of hillside areas while preserving significant environmental features and protecting public safety in geologically unstable areas.
- B. Applicability.**
 - 1. The H combining district applies to all areas within the City having an average slope of ten percent or greater.
 - 2. A planned development overlay zoning district shall be required for all subdivisions in with an H combining district where five or more lots are proposed.
- C. Development Standards.**
 - 1. Building Restrictions on Steep Slopes.**
 - a. Buildings, private streets, and driveways may not be constructed on slopes greater than 20 percent except as allowed by subparagraph b below.
 - b. Minor encroachments onto slopes greater than 20 percent may be allowed when the review authority finds that the proposed encroachment will not conflict with the purpose and intent of the H combining district.
 - 2. Minimum Lot Area.**
 - a. The minimum lot size in the H combining district shall not be less than "A" as determined by the formula:

$$A = S \times 2,000$$

Where "S" is the average slope of the lot to be created in terms of percent.
 - b. For lots with an average slope greater than 50 percent, the minimum lot size is 5 acres.

- c. Lots with an average slope of ten percent or greater may be created in exception to the slope/area formula above if the lots to be created contain an area of slope less than ten percent which is equal to or greater than the minimum lot size required by the underlying zone. In such a case, a deed restriction must be recorded for such lots which restrict building to the area in which the average slope is ten percent or less.

3. **Calculating Ground Slope.**

- a. The average ground slope shall be calculated using the following formula:

$$S=0.00229IL/A$$

Where:

S= Average ground slope in percent

I=Contour interval in feet

L=Combined length of the contour lines in feet

A=The gross area in acres of the parcel or lot

- b. Measurements along contours shall be made at contour intervals not to exceed ten feet, and a horizontal map scale of one inch equals two hundred feet or larger.

4. **Land Modification Restrictions.**

- a. Areas on a lot with a slope exceeding 20 percent may not be altered by grading, altering natural features, removing natural vegetation, or by any activity related to the preparation of the lot for development.
- b. The Planning Commission may allow exceptions to the land modification restrictions above to protect the public health, safety, and welfare. Exceptions may be granted to:
 - (1) Install fire trails;
 - (2) Remove of poisonous or noxious vegetation;
 - (3) Remove or thin vegetation as part of a fire-protection program approved by the Fire Chief;
 - (4) Abate geologic or seismic hazard; or
 - (5) Protect public safety through other methods as approved by the Planning Commission.

- 5. **Open Space Requirements.** Table 18.30-1 identifies the minimum percentage of lot area to remain in open space with no grading or terrain alteration.

TABLE 18.30-1: OPEN SPACE REQUIREMENTS

Average Ground Slope (Percent)	Minimum Percent of Lot Area to Remain in Open Space
12.5 to 14.9	32.5%
15.0 to 17.4	40.0%
17.5 to 19.9	47.5%
20.0 to 22.4	55.0%
22.5 to 24.9	62.5%
25.0 to 27.4	70.0%
27.5 to 29.9	77.5%
30.0 and above	85.0%

6. One Dwelling Unit Allowed Per Lot.

- a. If no portion of a lot contains slopes of less than twenty percent, and the lot is a legally-established lot of record, one dwelling unit may be constructed on the lot.
- b. Development when allowed by this section shall conform with the recommendations in the engineering geologic or geotechnical report prepared by a qualified engineer geologist as required by the provisions of Chapter 18.70 (Geologic Hazards) and any other conditions of approval or mitigation measures adopted for the proposed project.

7. Ridgeline Development. Buildings are prohibited within 80 feet of a ridgeline unless the review authority for the proposed project finds that:

- a. There are no other feasible locations on the lot other than the proposed ridgeline building site which can accommodate the building;
- b. The proposed development is consistent with all other requirements of the applicable zone;
- c. The applicant has attempted a transfer of development credits (TDC) in accordance with Subsection F (Transfer of Development Credits) as an alternative to building on the proposed ridgeline site; and
- d. The applicant has exhausted all possible avenues to accommodate development in area away from the proposed ridgeline building site.

8. Cut-and-Fill Slopes. Cut-and-fill slopes shall not be steeper than two horizontal to one vertical (2:1) unless stabilized by a retaining wall or cribbing, as approved by the Building Official.

9. **Erosion-Control Plan.** The City shall approve an erosion-control plan prior to any physical development within the H combining district. The plan shall meet the standards contained in Municipal Code Chapter 13.30 – Urban Storm Water Quality Management & Discharge Control.

D. El Toro Mountain Open Space Preservation

1. The following hillside areas of El Toro Mountain shall be preserved as open space to the maximum extent possible:
 - a. Areas above the 600-foot elevation in Llagas Valley and Paradise Valley; and
 - b. Areas above the 500-foot elevation in all other areas.
2. Subdivisions proposed in areas specified above shall include open-space easement dedications to guarantee the permanent preservation of open space.
3. Prior to approving development in the areas specified above, the review authority shall find that the applicant made every reasonable effort to avoid the development in these areas, including a transfer of development credits (TDC) and/or the establishing of a Planned Development (PD) overlay.

E. Transfer of Development Credits. This section allows for the transfer development credits (TDCs) from "transferor sites" in areas where development is restricted by the H combining district to "recipient sites" in other areas of the city authorized to receive TDCs. The City Council may from time to time authorize by resolution a TDC from one lot to another lot, where such authorization is found to be consistent with the General Plan and this section.

1. **General Standards.**
 - a. **Permitted Recipient Sites.** Zones in which an increase in the number of dwelling units are permitted are restricted to the residential zones listed in Chapter 18.16 (Residential Detached Zoning Districts).
 - b. **Number of Units on a Site.** The number of dwelling units permitted on a site may not exceed ten percent of the maximum residential development credits transfer, exclusive of density bonuses provided by other sections of this title.
 - c. **Maximum Density Bonus.** The maximum density bonus on any site shall not exceed 25 percent, including affordable housing and TDC density bonuses.
 - d. **Environmental Study.** An environmental study shall be prepared to determine the carrying capacity of the property from which development credits are being transferred. If environmental findings determine that the site, or a portion thereof, is unbuildable due to environmental constraints, the development credits to be transferred shall be reduced accordingly, prior to determining the number of units permissible under the slope-density formula.
 - e. **Minimum Area.** The site to which the TDC is proposed shall be no less than one acre.

- f. **Setback Requirements.** All setback requirements of the more restrictive district found along the perimeter of the site shall apply to perimeter yards on the site to which the transfer of development credits is proposed, unless the site is zoned for PD zoning.
 - g. **Calculation of TDC Credits.** TDCs shall be calculated in accordance with the slope-density regulations of this section, base district minimum lot sizes and this section.
 - (1) In all hillside areas of the City, with the exception of El Toro Mountain, the number of TDCs shall be determined as provided in Section 18.30.040.D (El Toro Mountain Open Space Preservation).
 - (2) On El Toro Mountain, the number of TDCs available to property within the city limits shall be twice that determined as provided in Section 18.30.040.C.2 (Minimum Lot Area). The number of transferable development credits available to property on El Toro Mountain which is outside the city limits shall be twice that allowed by the Zoning Ordinance of Santa Clara County. The calculation of transferable development credits for El Toro Mountain shall be as follows:

$$(\text{Number of Acres/Minimum Lot Size}) \times 2 = \text{Number of transferable development credits}$$
 - (3) The number of TDCs available to properties on El Toro Mountain above that allowed to other hillside areas of the city may only be used for transfer to other properties of slopes less than twenty percent and may not be used to increase on-site development potential.
 - (4) In the calculation of TDCs, a fraction occurring at the end of a calculation which is 0.5 or larger shall be considered a full development credit. The City Council may also exclude from calculation any existing dwelling and appurtenant structures on the site to be preserved.
2. **Application.** An applicant for a TDC shall contain the following information and materials:
- a. A title report and any other documentation disclosing all existing interests or obligations against the transferor site property to be affected by the open space easement. If other interests exist, a subordination agreement (in a recordable form) acknowledging the reservation of the City of Morgan Hill's open space easement claim shall be submitted with the title report.
 - b. When known, the location and land area of the recipient site to which such credits are to be transferred, the projected total number of dwelling units that would result on the recipient site from such a transfer, and a statement of the character of the projected housing development.

- c. A legal description of the open space to be preserved on the transferor site by the transfer, accompanied by an open space (scenic) easement suitable for recordation and the applicable open-space policy to be implemented by the transfer.
 - d. The location, site area, and related residential development credits of the transferor site which the applicant proposes to transfer.
 - e. Where applicable, the number of building allotments granted to the recipient site under the Residential Development Control System (RDSCS).
3. **City Action.** Upon approval of the Planning Commission and the City Council of a TDC application, the City Clerk shall issue a TDC certificate to the applicant in a form approved by the City Manager. The following actions must be taken prior to these development credits being effectively conveyed to and utilized by the recipient property:
- a. Approval by the Planning Commission of a detailed site plan of the recipient site to which the development credits are to be transferred;
 - b. Where recipient site is known, execution and recordation with the County Recorder's Office of an instrument legally sufficient both in form and content to effect conveyance of the TDC from the transferor to the recipient site. Such instrument shall specifically set forth the credits to be conveyed and the resultant total residential development credits assignable to the recipient site;
 - c. Execution and recordation with the County Recorder's office of an instrument legally sufficient in form and content to effect conveyance of a permanent open space easement in the transferor site dedicated to the City. Such open space easement shall be unencumbered by any prior interests or, if so encumbered, shall be accompanied by and recorded together with subordination agreement with evidence that all persons or entities having any interest in the transferor site have acknowledged the creation and transfer of development credits, consented to the terms and conditions of the open space easement, and waived the priority of any rights or claims they may have in the transferor site. Recordation of the executed open space easement and accompanying subordination agreement shall serve as notice of the dedication of open space in the transferor site and shall be incorporated in the deeds of the transferor site; and
 - d. Other requirements as established by the City Council.

18.30.050 – Planned Development Combining District

- A. Purpose of the Planned Development Combining District.** The purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD



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November 14, 2018

Neelima Palacherla, Executive Officer
LAFCO of Santa Clara County
 777 N. First Street, Suite 410
 San Jose, CA 95112

Subject: Morgan Hill Urban Service Area Amendment 2018 - Additional Information Request

Dear Neelima:

Thank you for our call on Monday, November 12th regarding additional information requested to support your review of the City of Morgan Hill's Urban Service Area Amendment 2018.

Information/Clarification Requested

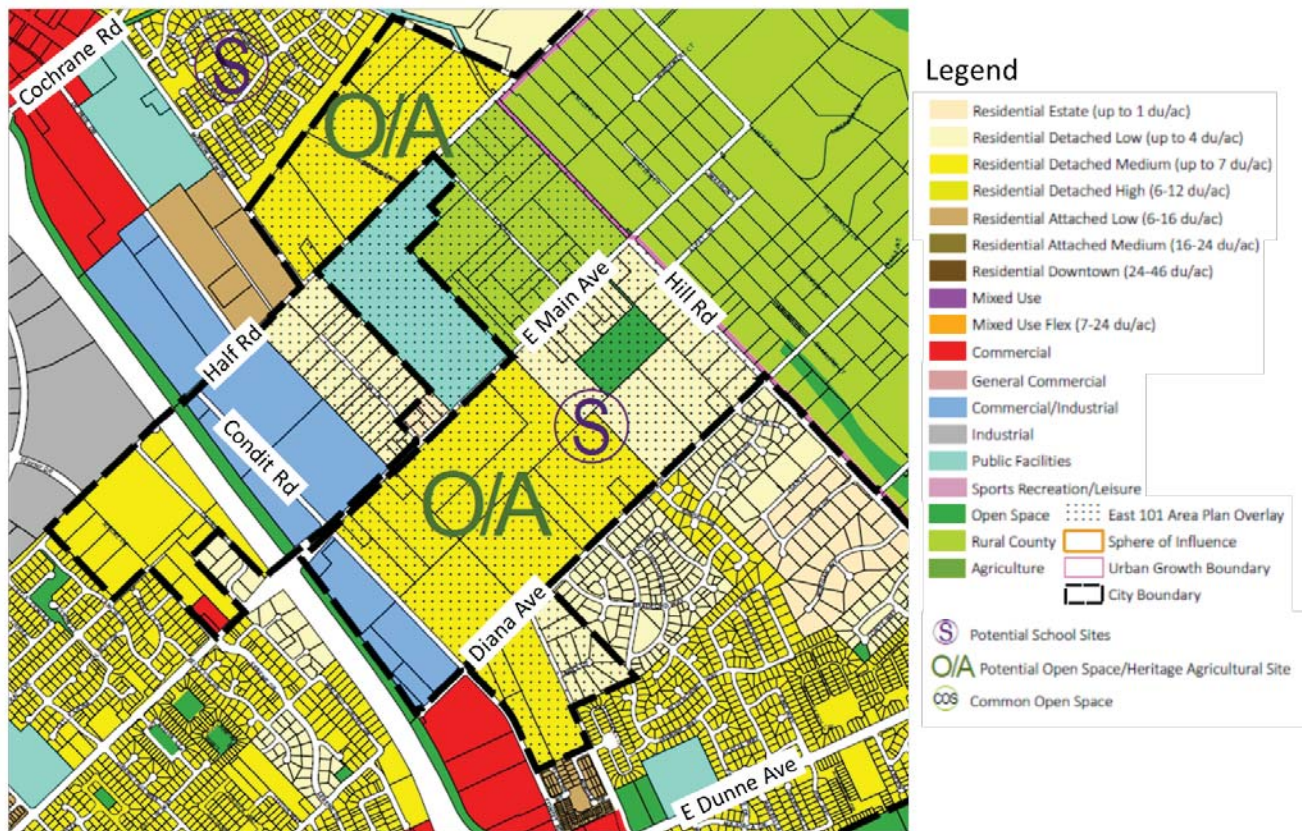
1. Clarify Morgan Hill Priority Conservation Areas Described in Conservation Strategy

Consistent with the City's Agricultural Preservation Program (Ordinance) the area within the Southeast Quadrant (SEQ) is the City's first/primary priority conservation area for agricultural preservation. The East of 101 Area, identified in the City's General Plan as an overlay area, is a secondary priority conservation area for agricultural preservation.

The purpose of the East of 101 Overlay is to require the preparation of a comprehensive master plan that, among other goals, seeks to preserve the agricultural heritage of the East of 101 area by integrating agricultural uses into future development. Those agricultural uses could be preserved in perpetuity through the acquisition of conservation easements.

The following is an excerpt from the City's Morgan Hill 2035 General Plan Land Use Map showing the East of 101 Area Plan Overlay (dotted hatch pattern). The "O/A" Open Space/Heritage Agricultural symbol indicates general areas with a strong agricultural heritage where open space and agricultural uses should be integrated into future development.

Attachment: ResponseLetter_11-14-18.pdf USA discussion 2018 LAFCO follow (2248 : Agricultural Conservation Program)



2. Provide Background Information for Future Commercial and Industrial Absorption

As requested, the following table provides commercial and industrial square footage that was issued building permits from fiscal year 2015/16 through 2017/18.

Fiscal Year	Commercial (sf)	Industrial (sf)
2015/16	60,171	47,130
2016/17	103,574	121,585
2017/18	74,829	-
Total	238,574	168,715

As we discussed during our most recent phone conversation, the square footage of new commercial and particularly new industrial constructed in recent history is probably not the best indicator of future absorption. Historical job growth, on the other hand, may be a better predictor of absorption given that job growth captures both the occupying of existing buildings and new construction.

Over the years leading out of the recession, the City has consistently grown its numbers of commercial and industrial jobs, with most of that growth being accommodated in existing buildings.

	Jobs Added						
	2013	2014	2015	2016	2017	Total	
Commercial	14	195	554	275	300	1,338	268
Industrial	(62)	365	338	351	440	1,432	286
Other	113	(10)	187	62	87	439	88

Source: Morgan Hill QCEW, Aggregated data by year. CA Employment Development Dept.

Other includes Public/Government, Agricultural, and unclassified jobs.

Average commercial and industrial job growth can be translated into average square footage numbers that can then be used to better approximate future absorption.

For example:

- 268 commercial jobs/year x 350sf commercial/commercial job = 93,800sf commercial/year
- 286 industrial jobs/year x 550sf industrial/industrial job = 157,300sf industrial/year

The square footage (sf) / job numbers are an average based on different types of commercial and industrial uses anticipated in Morgan Hill.

With commercial and industrial vacancies low, businesses that want to relocate to or expand in Morgan Hill are choosing new construction. There are several commercial and industrial projects in the pipeline that are close to or have already completed their Planning entitlement process(es) but have not yet been issued Building permits. The City expects Building permits to be issued for these projects this fiscal year 2018/19.

Fiscal Year	Commercial (sf)	Industrial (sf)
2015/16	60,171	47,130
2016/17	103,574	121,585
2017/18	74,829	-
Pipeline	41,662	647,284
Total	280,236	815,999

Note: The commercial pipeline square footage number does not include the recently approved precise development plan for a new 195,500 square foot retail center. The components of this project will still need design review approval from Planning before building permits can be issued.

3. Follow-up on Plan for Services Questions

a. Water

Who pays for capital improvement project NH-P8 (new 10-inch water main in Tennant Avenue) referenced in the Plan for Services and the City's [Water System Master Plan](#)?

Water System Master Plan Table ES.3 Capital Improvement Program indicates that the suggested cost allocation for project NH-P8 is 0% existing users (\$0) and 100% future users (\$1,700,426). The term "future users" includes the proposed South County Catholic High School (SCCHS) and other new users throughout the City. All future users, including the SCCHS, pay development impact fees that are collected and used to pay for capital improvements in general.

Because there are no water lines that currently serve their site, the SCCHS will be responsible for constructing a new water main or mains connecting from existing water line(s) to their frontage. This could include constructing a portion of project NH-P8.

To the extent that improvements constructed by the SCCHS exceed the need directly attributable to and reasonably related to their project, the SCCHS can request reimbursement for actual construction costs for that portion of the improvement that exceeds their project's need.

b. Sewer

Are the existing sewer pipes located in Barrett Avenue referenced in the Plan for Services and the City's [Sewer System Master Plan](#) sized to handle the proposed SCCHS?

I confirmed with Scott Creer, Deputy Director for Engineering in the City's Engineering and Utilities Department that the existing pipes in Barrett Avenue from Condit Road to Hill Road are adequately sized to accommodate the proposed SCCHS project. In order to serve their project, if the SCCHS is required to construct a new main and/or other infrastructure to tie-in to the existing system, they will be required to fund/construct that improvement.

Should you have any questions or require additional information, please do not hesitate to contact me via phone (408) 310-4635 or email John.Baty@MorganHill.ca.gov or Jennifer Carman, Community Development Director at (408) 310-4657 or Jennifer.Carman@MorganHill.ca.gov.

Best Regards,

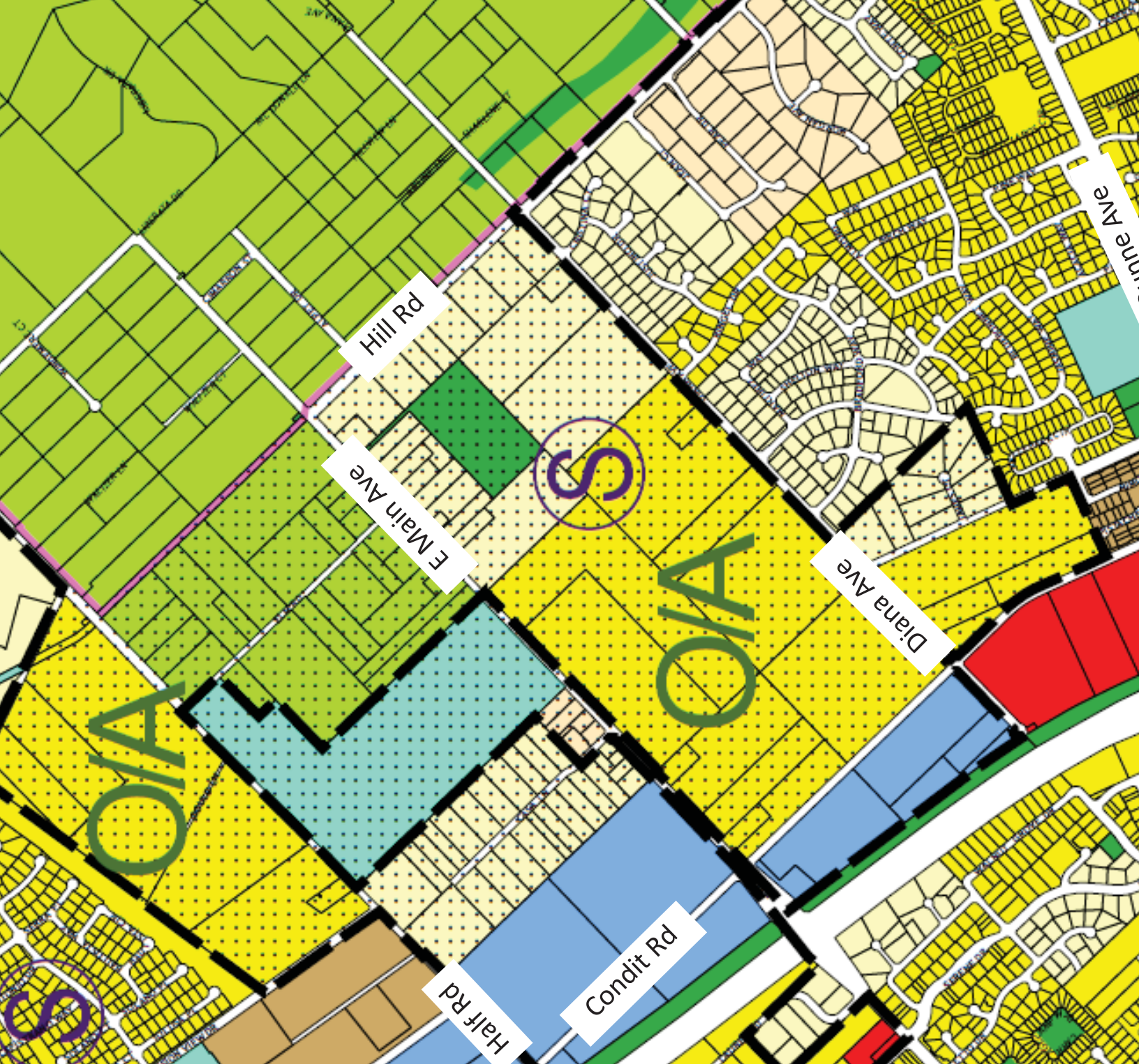


John W. Baty, Principal Planner
Development Services Department

Attachments:

1. Morgan Hill 2035 General Plan – East of 101 Area Plan Overlay
2. [Water System Master Plan](#) (web link)
3. [Sewer System Master Plan](#) (web link)

Legend





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November 2, 2018

Neelima Palacherla, Executive Officer
LAFCO of Santa Clara County
 777 N. First Street, Suite 410
 San Jose, CA 95112

Subject: Morgan Hill Urban Service Area Amendment 2018 - Additional Information Request

Dear Neelima:

Thank you again for the phone conversation on Tuesday, October 23rd and your follow-up email on Tuesday, October 30th regarding additional information requested to support your review of the City of Morgan Hill's Urban Service Area Amendment 2018.

Information Requested

1. Provide Copy of Recorded Agricultural Conservation Easement (ACE)

- The developers of the San Sebastian subdivision off Cochrane Road in Morgan Hill were required to secure a 100-acre Agricultural Conservation Easement (ACE) as a condition of their development. The developers recorded a Grant Deed (see attached) securing an ACE on approximately 109.74 acres of farmland in San Joaquin County. This mitigation requirement and specific ACE requirements preceded the City's Agricultural Preservation Program Ordinance.
- The City has recently purchased a 12-acre parcel on Maple Avenue in the City's Priority Conservation Area for the purposes of agricultural lands preservation. The process of recording an ACE on this property is underway.
- The City has planned the purchase of a 20-acre parcel on Hill Road, completing an ACE appraisal and allocating over \$1,000,000 in funding.
- Now that State grant funding has been lost, the City has committed to purchasing one-half of the 71-acre Fountain Oaks Ranch ACE on its own using the \$3,000,000 that the City has dedicated to this preservation effort. The City will continue collaborating with the County and Open Space Authority to preserve the entire 71-acre site if additional funding can be secured.
- As soon as one is available, the City will provide a copy of an ACE recorded per the requirements of the City's Agricultural Preservation Program. In the meantime, attached is a copy of the City's ACE template.

2. Provide Details for Proposed SRL-B Sports Recreation and Leisure District Zoning Amendment

- On October 24, 2018 the City Council introduced Ordinance No. 2290 n.s. to modify the uses allowed in the SRL-B Sports Recreation and Leisure Sub-zone B Zoning District. Please see attached staff report and Ordinance No. 2290 n.s., which is scheduled for adoption on November 7, 2018.

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

- The Ordinance lessens the intensity of potential uses that would be allowed in the SRL-B district by dis-allowing several commercial uses that are currently allowable.

3. Provide Number of Residential Units Issued Building Permits for 2015, 2016, 2017 (calendar year)

Year Units*

2015: 533

2016: 277

2017: 281

2018: 245 (to date)

* Includes Accessory Dwelling Units

4. Explanation for the USA Expansion Given the City has 5 or More Years of Vacant Land Availability within its City Limits.

- Santa Clara County LAFCO Urban Service Area Policy B.5 reads, “When a city with a substantial supply of vacant land within its Urban Service Area applies for an Urban Service Area expansion, LAFCO will require an explanation of why the expansion is necessary, why infill development is not undertaken first, and how an orderly, efficient growth pattern, consistent with LAFCO mandates, will be maintained.”
 - The City does not have a substantial supply of vacant Public Facilities or Sports Recreation and Leisure designated and/or zoned lands within the City’s existing Urban Service Area. In fact, there are zero (0) acres of such lands. Note: Public Facilities includes a variety of uses associated with public or quasi-public agencies and organizations, including private schools.
 - The City has limited vacant land available within its current Urban Service Area to accommodate future development in a manner that is consistent with the City’s 2035 General Plan. Much of the vacant land that is available is jobs lands (commercial and mostly industrial) that is critical to the City’s future fiscal health and desire to be a balanced, sustainable community. Any loss of job generating lands will only exacerbate the City’s current jobs-housing imbalance and contribute to the region’s existing commute imbalance. It is also important for the City to maintain a healthy supply of diverse types of vacant industrial land with a variety of attributes (location, visibility, access, etc.) that would be attractive to a wide variety of job-generating uses.
 - There are no infill opportunities within the City’s existing Urban Service Area that could accommodate the proposed approximately 38-acre South County Catholic High School on a vacant commercial or industrial designated and/or zoned site or contiguous sites. The location of outdoor sports and recreation uses also require substantial parcel sizes that would be better accommodated on the sites directly adjacent to the City’s existing Outdoor Sports Complex and Aquatics Center. Please see attached letter from Colliers International dated May 11, 2016.
 - The area proposed to be included in the City’s Urban Service Area (USA) boundary is located directly adjacent to land within the existing Morgan Hill City Limits and USA and is within the City’s long-term Urban Growth Boundary.

5. Provide a Copy of the City's Plan for Growth/Preservation

- Please see attached October 17, 2018 City Council Staff Report with Conservation Strategy.

6. Provide Summary of Recent City Council Discussion on UGB Modifications and ACE Acquisitions

- The following summary is from the City Manager's October 24, 2018 verbal report to City Council regarding their October 17, 2018 discussion regarding whether the City should consider contracting its Urban Growth Boundary (UGB):
 - o While a vote was not taken, or specific direction provided at the October 17, 2018 meeting, the general consensus from the City Council on whether the City should consider contracting the City's UGB was to bring the discussion back in the future. In addition:
 - The conversation regarding contracting the UGB should begin with a discussion of the concept, perhaps at the City Council's January 2019 goal setting workshop as suggested by councilmembers. As with any potential staff workplan item, the discussion would involve a staff presentation on the history of establishing the current UGB, timelines and resources required for any modification of the UGB, as well as pros/cons.
 - The Council noted that the process that established the location of the current Urban Growth Boundary (UGB) was very deliberate and extensive. In fact, it occurred between the 2001 General Plan Update and adoption of the Morgan Hill 2035 General Plan in 2016.
 - Should the Council decide at the goal setting (or another meeting) to add the UGB contraction to the workplan, staff would bring forward options for a process and budget to consider.
 - During the discussion of this item, the Council reinforced the importance of continuing the City's agricultural preservation efforts.

We hope you find this submittal includes all information you need to process the Morgan Hill Urban Service Area Amendment 2018 application. Should you have any questions or require additional information, please do not hesitate to contact me via phone (408) 310-4635 or email John.Baty@MorganHill.ca.gov or Jennifer Carman, Community Development Director at (408) 310-4657 or Jennifer.Carman@MorganHill.ca.gov.

Best Regards,



John W. Baty, Principal Planner
Development Services Department

Attachments:

1. San Sebastian Recorded ACE
2. ACE Template
3. SRL-B Zoning Amendment
 - a. October 24, 2018 City Council Staff Report
 - b. Ordinance No. 2290 n.s.
4. May 11, 2016 Letter from Colliers International re: Vacant Industrial/Commercial in Morgan Hill
5. October 17, 2018 City Council Staff Report and Conservation Strategy

Chicago Title

Recording requested by and when
recorded please return to:

Central Valley Farmland Trust
8788 Elk Grove Blvd., Bldg. 1, Suite I
Elk Grove, CA 95624

Certified Copy of Original
May 11, 2017,
Inst. # 2017-053520

Chicago Title
Gina Belletto

(Space above this line reserved for Recorder's use)

APNs: 131-030-11 (portion) and 131-030-10 (portion)

Documentary Transfer Tax: \$ 00.00 **
**R&T 11930

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Grant Deed of Agricultural Conservation Easement ("Easement") is made on this 24th day of April, 2017, by **BF COCHRANE, LP**, a California limited partnership ("Grantor"), to the **CENTRAL VALLEY FARMLAND TRUST**, a California nonprofit public benefit corporation, having an address at 8788 Elk Grove Blvd., Bldg. 1, Suite I, Elk Grove, CA 95624 ("Grantee"), for the purpose of forever conserving the agricultural productive capacity and open space character of the subject property.

RECITALS

A. Grantor is the sole owner in fee simple of that certain farm property located in San Joaquin County, California, legally described in **Exhibit A** attached hereto ("Property"), consisting of approximately 125 acres of land and commonly known as the "Roberts Island Farm," also identified as a portion of assessor parcel number 131-030-11 and a portion of assessor parcel number 131-030-10. Currently there are no buildings or substantial improvements on the Property. Future agricultural and residential buildings and improvements allowed by this Easement must be constructed within a 2.46 acre farmstead area ("Farmstead Area") as depicted in **Exhibit B** attached hereto. The Property consists of open farmland, of which at least 100 acres have been classified as prime farmland by the Natural Resources Conservation Service, U.S. Department of Agriculture, and by the California Department of Conservation ("Department"), Farmland Mapping and Monitoring Program, because this land has a soil quality, growing season, and water supply needed for sustained agricultural production.

B. The agricultural and other characteristics of the Property, its current use and state of improvement, are documented and described in a baseline documentation report, dated as of March 10, 2017 ("Baseline Report"), prepared by Grantee with the cooperation of Grantor and incorporated herein by reference. Grantor and Grantee acknowledge, as set forth in **Exhibit C** attached hereto, that each has received and will retain a duplicate original of the Baseline Report

and that the Baseline Report is complete and accurate as of the date of this Easement. The Baseline Report may be used to establish whether or not a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement.

C. Grantor and Grantee acknowledge that the purpose of this Easement is to satisfy the Agricultural Mitigation requirements of the City of Morgan Hill ("City") that are summarized in the City's Mitigation Monitoring and Reporting Program ("MMRP"), for Cochrane-Borello Residential Development Project (State Clearinghouse #2011082039) dated January 2013, and found at AG MM-2 at page 1 of the MMRP ("Project"). Grantor is required to provide 100 acres of agricultural mitigation for the Project. This Easement has identified an agricultural mitigation area on the Property, consisting of 109.74 +/- acres, located as shown on **Exhibit B** ("Agricultural Mitigation Area"). Grantor shall be solely responsible for ensuring that the conveyance of this Easement satisfies Grantor's Agricultural Mitigation requirement. City shall be a third party beneficiary of this Easement.

D. Grantor grants this Easement to Grantee for the purpose of assuring that, under Grantee's perpetual stewardship, the agricultural productive capacity, including its prime soils, and open space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree that the current agricultural use of, and improvements to, the Property are consistent with the conservation purpose of this Easement.

E. The conservation purpose of this Easement is recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

Section 815.1 of the California Civil Code, which defines perpetual conservation easements;

California Constitution Article XIII, section 8, California Revenue and Taxation Code, sections 421.5 and 422.5, and California Civil Code section 815.1, under which this Easement is an enforceable restriction, requiring that the Property's tax valuation be consistent with restriction of its use for purposes of food and fiber production and conservation of natural resources;

Section 10200 et seq. of the California Public Resources Code, which creates the California Farmland Conservancy Program;

Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands; and

The California General Plan law, section 65300 et seq., and section 65400 et seq. of the California Government Code, and the San Joaquin County General Plan, as amended in 2005, which includes as one of its objectives to protect agricultural lands needed for the continuation of commercial agricultural enterprises, small-scale farming operations and the preservation of open space.

F. Grantee is a California publicly supported nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3, and is a tax exempt and “qualified organization” within the meaning of section 170(h)(3) and 170(b)(1)(A)(iv) as defined by the United States Internal Revenue Code. Grantee’s primary purpose is the preservation and protection of land in its agricultural and/or open space condition.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual conservation easement, pursuant to the laws of the State of California and in particular California Civil Code sections 815 *et seq.*, of the nature and character described in this Easement for the purpose described below, and agree as follows:

1. *Conservation Purpose.*

The conservation purpose (“Conservation Purpose” or “Purpose”) of this Easement, pursuant to the governmental policies detailed in the Recitals hereto, and in order to yield a significant public benefit, is to enable the Property to remain in productive agricultural use in perpetuity by preventing and correcting uses of the Property prohibited by the provisions of this Easement, including those uses that will diminish, impair or interfere with the Property’s agricultural productive capacity, its soils, and its agricultural character, values, and utility (the “Conservation Values” of the Property). To the extent that the preservation of the open space character values of the Property is consistent with such use, it is within the Conservation Purpose of this Easement to protect those values (and such values are part of the Conservation Values of the Property).

2. *Right to Use Property for Agricultural Purposes.*

Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law, as long as the Conservation Values of the Property are not thereby significantly impaired. The term “significantly impaired” (or any derivation thereof, as applicable) shall mean a material, adverse effect on the quantity, quality, viability or character of the Property that is intended to be protected. Nothing contained in this Easement is intended to limit or restrict the acreage on the Property planted with row crops or permanent plantings or otherwise restrict agricultural husbandry practices, so long as the Conservation Values of the Property are not thereby significantly impaired. “Husbandry practices” means agricultural activities, such as those specified in section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

3. *Prohibited Uses.*

Grantor shall not perform, or knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Easement. Any use or activity that would diminish or impair the agricultural productive capacity and open space character of the Property or that

would cause significant soil degradation or erosion is prohibited. This Easement authorizes Grantee to enforce these covenants in the manner described herein. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from fire, flood, storm, extreme temperatures, unavailability of water, and earth movement or other natural occurrences, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to any person, property, or the Property resulting from such causes.

4. *Written Advisement; Grantee Approval.*

(a) *Written Advisement.* As described in this sub-section, below, and as set forth elsewhere in this Easement, certain actions by Grantor will require written notice to Grantee. Grantor shall give at least sixty (60) days' advance notice to Grantee in writing ("Written Advisement") in accordance with Section 19: (i) where expressly required in this Easement; (ii) prior to seeking any or carrying out any activity requiring a building, grading, or zoning permit or environmental regulatory review or permit for an activity or improvement on the Property; and (iii) prior to exercising any reserved right on the Property that may significantly impair the Conservation Values. The Written Advisement must provide Grantee with adequate information, documents and plans so as to enable Grantee to confirm compliance with this Easement and to keep its records current.

(b) *Grantee Approval.* Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (i) shall not be unreasonably withheld, conditioned or delayed by Grantee, (ii) shall be sought at least sixty (60) days' in advance and given in writing, and (iii) shall in all cases be obtained by Grantor prior to taking the proposed action. In seeking approval, Grantor will provide Grantee with adequate information, documents and plans, so as to enable Grantee to confirm compliance with this Easement and to keep its records current. Grantee may grant permission or approval to Grantor only where Grantee, acting in Grantee's reasonable discretion and in good faith, determines that the proposed action will not significantly diminish or impair the agricultural productive capacity and open space character of the Property and would not cause significant soil degradation or erosion. If, in the judgment of Grantee, the proposed use or activity should not be permitted in the form proposed, but could be permitted if modified, then Grantee's response may propose to Grantor suggested modification(s) and/or conditions that would permit the use or activity. If Grantor disagrees with the Grantee's decision, the parties may agree to mediate the disagreement in accordance with Section 13(d).

5. *Permitted Uses and Actions; Actions Permitted without Prior Approval of Grantee as long as Conducted in Manner Consistent with this Conservation Easement.*

The following uses and actions are permitted without the prior approval of Grantee as long as they are conducted in a manner consistent with this Easement. Grantor shall give Grantee Written Advisement where expressly required and as otherwise set forth in Section 4(a).

Except as permitted in this Easement, all other construction, erection, installation or placement of buildings, structures, or other improvements on the Property is prohibited. For purposes of this Section, "improvements" shall not refer to, and specifically excludes: (i) crops, plants, trees,

vines, or other living improvements planted for agricultural or residential landscaping purposes; (ii) to agricultural and irrigation improvements necessary or desirable to produce agricultural crops on the Property; and (iii) temporary shade structures and temporary sanitary facilities to support agricultural employees, all of which may be made without the consent of Grantee and without advising Grantee.

(a) *Fences.* Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock, wildlife and farm produce, and the reasonable and customary security of farm produce and the residences and other improvements upon the Property.

(b) *Agricultural Structures and Improvements.* Existing agricultural structures and improvements, as shown in **Exhibit B** and/or as described in the Baseline Report, may be repaired, reasonably enlarged, and replaced at their current locations in the Farmstead Area for agricultural purposes without further permission from Grantee. New buildings and other structures and improvements to be used solely for agricultural production on the Property, including barns, equipment sheds, and improvements to be used for agricultural production purposes or sale of farm products predominantly grown or raised on the Property may be built on the Property within the Farmstead Area.

Minor agricultural structures, such as pump houses, small solar facilities to power specific pieces of agricultural equipment, and other structures used for the direct growing or support of growing agricultural crops, are allowed outside of the Farmstead Area. Each individual minor agricultural structure that is to be located outside of the Farmstead Area may not exceed two hundred (200) square feet and the aggregate area of all of such minor structures shall not exceed eight hundred (800) square feet.

(c) *Single-Family Dwelling.* There is no existing single family dwelling on the Property. One (1) new single-family residential dwelling, with customary ancillary uses, including, but not limited to, swimming pool, tennis court, gazebo and garage may be built or placed entirely within the Farmstead Area. No other residential dwelling may be constructed or placed on the Property (except for agricultural employee housing per Section 5(d)). The total living area of the new single-family dwelling shall not exceed three thousand five hundred (3,500) square feet of living area (exclusive of garage area).

(d) *Agricultural Employee Housing.* There is no existing agricultural employee housing on the Property. New dwellings or structures to be used primarily to house farm tenants, farm employees or others engaged in agricultural production may be built on the Property, provided they are located entirely within the Farmstead Area. The total aggregate living area of agricultural employee housing shall not exceed two thousand five hundred (2,500) square feet.

(e) *Utilities and Septic Systems.* Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to and serving the improvements permitted herein, or to transmit power generated on the Property, may be installed, maintained, repaired, removed, relocated and replaced. The granting of any rights-of-way over and under the Property for such purposes is subject to Grantee's prior approval. Septic or other underground sanitary systems serving the improvements permitted

herein may be installed, maintained, repaired, replaced, relocated or improved, and shall be placed with the Farmstead Area, where possible.

(f) *Renewable Power Generation; Solar.* Except as provided in Section 5(b) above (respecting minor agricultural structures), solar or other renewable power generation and transmission facilities to be used primarily for agricultural and other permitted uses on the Property may be constructed or installed in the Farmstead Area. Incidental, non-commercial power generated in excess of requirements on the Property may be sold or traded to appropriate public utilities.

(g) *Use and Storage of Agricultural Products and Equipment.* The use and storage of the following is permitted as long as they are for use on the Property and carried out in accordance with applicable law and labeling requirements: agricultural products, agricultural chemicals, agricultural byproducts and agricultural equipment. "Agricultural chemicals" includes herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations even though they may be "Hazardous Materials" as defined in Section 20.

(h) *Paving and Road Construction.* Construction and maintenance of unpaved farm roads that are reasonably necessary and incidental to carrying out the uses permitted on the Property by this Easement are permitted, provided that, to the extent reasonable, with respect to agricultural efficiency, productivity and cost, such unpaved farm roads shall not significantly diminish or impair the agricultural productive capacity of the Property. Paving within the Farmstead Area is permitted without prior written approval from Grantee. Grantor may pave a single road/driveway leading to the Farmstead Area with Written Advisement to Grantee.

(i) *Recreational Improvements and Uses.* Private recreational improvements (e.g. swimming pool, tennis court) for the personal, non-commercial use of Grantor and Grantor's family and guests are permitted within the Farmstead Area. Passive, recreational and educational activities such as hiking and bird-watching are permitted. Grantor expressly reserves the right for themselves and their family and guests to hunt on the Property.

(j) *Customary Rural Enterprises.* Customary rural enterprises, such as home and agricultural management offices, are permitted on the Property and in the permitted buildings constructed and maintained in the Farmstead Area for residential and agricultural use of the Property. Customary rural enterprises that require their own buildings are prohibited.

(k) *Agri-tourism Activities.* Low impact agri-tourism activities, such as farm tours, work experiences, and field trips are permitted. The uses and activities set forth herein are permitted, provided that: (i) all parking related to such uses and activities is located within the Farmstead Area; (ii) all such uses and activities are incidental or ancillary to the primary agricultural activities permitted on the Property; and (iii) no land is taken out of its customary agricultural production for any agri-tourism activities.

(l) *Subsequent Liens or Encumbrances on Property.* Grantor may use the Property as collateral for a subsequent borrowing, provided any subsequent obligations secured by the Property are subordinate to this Easement, generally, and all of the beneficiary's rights, interests, claims, remedies and privileges under any security instrument (including, but not limited to, any right of the beneficiary to insurance proceeds or proceeds in a condemnation proceeding), specifically,

are, and at all times shall continue to be, subject and subordinate in all respects to the Easement and the interest of Grantee, with the same force and effect as if the Easement had been executed, delivered and recorded prior to the execution and delivery of the security instrument.

(m) *Emergencies and Construction of Temporary Improvements.* In an emergency, Grantor may take such limited and temporary actions as are reasonably necessary to protect physical safety of persons and property on the Property and the Property itself, including residential and agricultural improvements and agricultural products and only to the limited extent necessary for such protection and provided such actions are in compliance with applicable laws. The construction, placement, or use of limited, temporary living quarters, or construction of temporary farm management quarters or mobile homes on the Property during limited periods of any permitted dwelling construction or during or immediately following an emergency rendering permitted dwellings uninhabitable, is permitted, provided such construction or use is in compliance with applicable laws and such trailers or temporary improvements are removed immediately after the period of emergency is over or construction is completed, as determined by Grantee. Grantor shall give Grantee prompt notice of any emergency actions taken under this sub-section. If emergency actions taken in accordance with this subsection continue for more than sixty (60) days, Grantor will seek Grantee's approval pursuant to Section 4 of this Easement and such approval shall not be unreasonably withheld.

(n) *Hunting and Seasonal Habitat Improvements for Water Fowl.* Hunting by Grantor and guests of Grantor is permitted, including, though not limited to, non-commercial water fowl hunting. Seasonal improvements to enhance water fowl habitat, including construction of low berms to allow flooding, is permitted, though limited to the months of October through January. Construction of such habitats and such water fowl hunting shall not impair or interfere with the agricultural productive capacity of the Property or its agricultural operations.

6. *Uses and Actions Permitted with Prior Approval of Grantee.*

The following uses and practices may be consistent with this Easement, depending on the manner in which they are carried out. Prior written notice to and approval of Grantee is required before Grantor begins these uses and practices. Prior written approval shall be sought by Grantor in accordance with Section 4.

(a) *New Agricultural Enterprise Structures.* New structures and improvements to be used for "Agricultural Enterprises" (as defined below) may be permitted if the structures are located solely within the Farmstead Area. "Agricultural Enterprises" means otherwise lawful and customary agricultural rural enterprises owned and operated by Grantor or Grantor's lessees, such as, but not limited to, marketing of farm products predominantly grown, raised or produced on the Property or on other real property owned by Grantor that is located in San Joaquin County and businesses principally providing agricultural-related goods and services to other farms and farmers in the vicinity of the Property. All such structures individually and collectively must be consistent with this Easement and approved under local zoning and building codes. A single "roadside stand" in accordance with the County Zoning Ordinance in effect as of the date of this Easement and located within the Farmstead Area may be constructed. "Roadside stand" is defined as an area of an agricultural property set aside for the sale of processed and unprocessed

crops that are grown on and off the Property. Crops that have been grown or produced off the Property may only be sold in conjunction with the sale of crops grown on the Property.

(b) *Signs for Agricultural Use.* Signs may be placed on the Property only for the purpose of identifying the Property or to advertise agricultural enterprises or a roadside stand operating on the Property in accordance with this Easement. However, the total surface area of all the signs shall not exceed three hundred sixty (360) square feet and the top of each sign shall be no more than twenty (20) feet from the ground. A maximum of two (2) signs may be erected with no single sign exceeding a surface area of one hundred eighty (180) square feet.

(c) *Utility Easements.* The granting of rights-of-way over and under the Property for the purposes set forth in Section 5(e), i.e. the installation of wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to and serving the improvements permitted herein, or to transmit power generated on the Property, may be permitted with the prior approval of Grantee.

Utility easements requested by commercial utility providers may be permitted but only upon the express written approval of Grantor and Grantee. Any such easement shall: (i) be consistent with the Conservation Purpose of this Easement; (ii) comply with all applicable laws, including section 170(h) of the Internal Revenue Code, and any regulations promulgated in accordance with that section, and with section 815 et seq. of the California Civil Code; (iii) have only a net beneficial, neutral or insignificant effect on the Conservation Purpose and Conservation Values protected by the Easement; (iv) be located and of the nature and extent intended to minimize or mitigate any effects on the Conservation Values; (v) not confer a private benefit on Grantor or the commercial utility provider; (vi) be granted only upon the payment of consideration to Grantor and Grantee as appropriate to their interests in the Property as set forth in Section 18; (vii) be granted only upon the payment of all costs pertaining to the easement, including the costs of Grantee for reviewing and approving any such proposed easements. Copies of any proposed easements shall be provided to Grantee. Grantee's approval may be granted, granted with conditions or denied in Grantee's sole and exclusive discretion.

(d) *Other Activities, Uses and Structures and Improvements.* Grantor and Grantee acknowledge that, in view of the perpetual duration of this Easement, they are unable to foresee all potential future land uses, technologies, and natural changes to the land and its Conservation Values over time. If it is reasonably debatable as to whether an activity, use, or structure or improvement that is not expressly addressed in this Easement is consistent with the terms of this Easement or might impair or interfere with the Conservation Values of the Property, then Grantor shall notify and seek prior approval from Grantee in the manner described in Section 4(b).

(e) *Oil and Gas Exploration and Development.* The manner of exploration for, and extraction of any oil or gas or other hydrocarbons or minerals by the "Third Party Mineral Rights Holders" (as described in Section 21) and/or any other party, including Grantor and Grantor's successors and assigns, shall comply with all of the following: (i) be only by a subsurface method; (ii) as to "Third Party Mineral Rights A" (as described in Section 21(c)), be located only within the two (2) "Extraction Areas" delineated in **Exhibit B** or, as to "Third Party Mineral Rights B" (as described in Section 21(d)), be located only within the limited area of ownership of Third Party Mineral Rights B, as shown in the Baseline Report; (iii) not damage, impair or endanger the

Conservation Values of the Property; (iv) not impair the availability, quantity or quality of water resources of the Property for the agricultural and residential uses allowed under this Easement; (v) be in accordance with applicable law; and (vi) be approved by Grantee, in its sole and absolute discretion, prior to its execution. Any approval by Grantee may be subject to additional conditions and requirements, including written plans, baseline testing of water supplies, monitoring cost coverage, insurance and indemnification. Any damage, impairment or endangerment of the Conservation Values would violate the terms of this Easement and the enforcement provisions set forth in Section 13 will apply. Upon termination of any oil and gas or mineral exploration or extraction activities, Grantor shall immediately notify Grantee, and the Property shall be restored to its pre-existing condition within ninety (90) days. The indemnity set forth in Section 21(f) shall apply whether the Third Party Mineral Rights are held and exercised by third parties or acquired, held and exercised by Grantor and Grantor's successors and assigns. Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal or extraction of soil, sand, gravel, rock, or any other mineral substance.

7. Prohibited Uses.

All activities and uses that are not consistent with the Conservation Purpose of this Easement are prohibited. The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are inconsistent with this Easement, and are prohibited on the Property, except as specifically permitted in Sections 5 or 6 or elsewhere in this Easement:

(a) *Buildings and Improvements.* Except as permitted in Sections 5 or 6 above, the construction or placement of any buildings, residential dwellings, camping accommodations, temporary living quarters of any sort, mobile homes, signs, billboards or other advertising materials, utility towers, or other structures is prohibited.

(b) *Dumping and Trash.* No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste or "Hazardous Materials," as defined in Section 20, shall be placed, stored, dumped, buried or permitted to remain on the Property. However, temporary storage of residential and agricultural waste generated on the Property for periodic removal off-site is permitted, as is the use and storage of agricultural products, agricultural chemicals, agricultural byproducts and agricultural equipment as provided in Section 5(g). Composting of organic materials from the Property is also permitted provided that the Conservation Values of the Property are not significantly impaired.

(c) *Industrial and Commercial Uses.* Industrial and commercial uses are prohibited unless expressly permitted for agricultural purposes.

(d) *Mining and Surface Alteration.* Except as may be permitted in accordance with Sections 5(h) (paving and road construction) and 6(c) (oil and gas exploration and development), and 21 (Grantor's Title Warranty; No Prior Conservation Easements; Third Party Mineral Rights), the mining, excavation, removal or extraction of oil, natural gas, fuel, soil, sand, gravel, rock, or any other mineral substance by any method is prohibited. Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal, extraction or sale of soil, sand, gravel, rock, or any

other mineral substance of or from the Property.

(e) *Commercial Recreational Structures.* Resort structures, golf courses, non-residential swimming pools, non-residential tennis courts, commercial equestrian facilities, playing fields, airstrips, helicopter pads, or any other commercial recreational structure are strictly prohibited on the Property. Operation of a public stable and the commercial raising, training and boarding of horses are prohibited.

(f) *No Subsequent Easements Impairing Agricultural Productive Capacity.* The grant of any subsequent easements (including conservation easements), other interests in land, or use restrictions that might interfere with the Conservation Purpose, diminish or impair the Conservation Values or be otherwise inconsistent with this Easement is prohibited.

(g) *No Subsequent Easements for Utilities and Roads.* Except for permitted uses specified in Section 5, with Written Advisement to Grantee, or as may be permitted for utilities with express written approval as specified in Section 6 (e), the granting of easements for utilities and roads is prohibited.

(h) *Subdivision and Common Ownership of the Property.* The division, subdivision, de facto subdivision or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process, is prohibited. The Property is currently comprised and is described in **Exhibit A** as one (1) legal parcel. Grantor asserts that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance or conditional certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent deed or easement conveyances, subdivisions, leases or surveys of any kind. Grantor will not apply for or otherwise seek recognition of additional legal parcels with the Property based on certificates of compliance, conditional certificates of compliance or any other authority. Grantor will not sell, exchange, convert, transfer, assign, mortgage or otherwise encumber, alienate or convey any portion of the Property separately or apart from the Property as a whole, and Grantor and its successors in interest will at all times treat the Property as a single integrated economic unit of property, provided, however, that a lease of a portion of the Property for agricultural or other permitted uses (subject to this Easement) shall not be prohibited by this sub-section.

(i) *Road Paving and Construction.* Except as may be permitted in or to the Farmstead Area under Section 5(h), or unless such measures are required by air quality laws or regulations applicable to the Property (Grantee to give Grantor Written Advisement of said requirements), no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

(j) *Off-road Motorized Vehicle Use.* The use of motorized vehicles on the Property off roadways and outside the Farmstead Area is prohibited except as necessary to conduct farming operations, for residential access and use, for property maintenance and security, or to monitor this Easement. Motorized vehicle use off roadways shall be carried out in a manner which does not diminish or impair the agricultural productive capacity and open space character of the Property or cause significant soil degradation or erosion.

(k) *Commercial Signs.* Commercial signs, including billboards, unrelated to permitted activities conducted on the Property are prohibited.

(l) *Commercial Power Generation and Collection.* Except as may be permitted in Section 5(f) (renewable power generation), commercial power generation, collection or transmission facilities, including solar or wind farms or facilities, are prohibited.

8. *Extinguishment of Development Rights.*

Except as specifically reserved in this Easement, Grantor hereby grants to Grantee all development rights that are now or shall hereafter be allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred by either party to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

9. *Water Rights and Uses.*

Grantor shall retain and reserve all ground water, and all appropriative, prescriptive, contractual or other water rights appurtenant to the Property as of the date of this Easement. Grantor shall not permanently transfer, encumber, lease, sell, or otherwise separate water or water rights from title to the Property itself. No permanent separation of water or water rights shall be permitted. All water shall be retained in San Joaquin County for agricultural production and used in conjunction with improvements and uses permitted by this Easement. Water may be distributed to a contiguous property or other property owned or leased by Grantor on an annual basis for agricultural production only. Any temporary distribution of water shall not impair the long-term agricultural productive capacity or open space character of the Property.

Grantor retains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural management potential of the Property.

10. *Rights Retained by Grantor.*

Subject to Section 8 and to interpretation under Section 22(a), as owner of the Property, Grantor reserves all interests in the Property not transferred, conveyed, restricted, extinguished or prohibited by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, devise or otherwise transfer the Property to anyone Grantor chooses, as well as the right to privacy, the right to exclude any member of the public from trespassing on the Property, and any other rights consistent with the Conservation Purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.

11. *Responsibilities of Grantor and Grantee Not Affected.*

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

(a) *Taxes.* Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee ever pays any taxes or assessments on the Property, or if Grantee pays levies on Grantor's interest in order to protect Grantee's interest in the Property, Grantor will reimburse Grantee for the same. It is intended that this Easement constitute an enforceable restriction within the meaning of Article XIII, section 8 of the California Constitution and that this Easement qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code sections 402.1(a)(8) and 423.

(b) *Upkeep and Maintenance.* Grantor will maintain the Property in a safe condition consistent with the terms of this Easement and applicable laws and take reasonable precautions to prevent trespass, encroachment or unpermitted use or occupancy of the Property. Grantor shall be solely responsible for the upkeep and maintenance of the Property. Grantee shall have no obligation for the upkeep or maintenance of the Property. If Grantee acts to maintain the Property in order to protect Grantee's interest in the Property, Grantor will reimburse Grantee for any such costs.

(c) *Compliance with Law.* Grantor shall comply with all applicable laws with respect to the uses and improvements of and to the Property. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by applicable laws. As used in this Easement, the term "applicable law(s)" shall mean all laws, ordinances, regulations, rules, orders, or permit requirements applicable to the Property or this Easement, whether currently existing or hereafter enacted or otherwise promulgated by any federal, state, county, municipal, or other governmental body (whether legislative, administrative, or judicial), or by any competent official of any of the foregoing. In no event shall this Easement be construed as granting any landowner rights not permitted by local building, land use and/or zoning regulations at the time of construction, demolition, occupation or other regulated use.

(d) *Liability and Indemnification.* In view of Grantee's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, Grantor shall indemnify, protect, defend and hold harmless Grantee, and its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively, "Agents and Assigns") from and against any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, orders, liens, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Property, except to the extent resulting from the gross negligence or intentional misconduct of Grantee and/or its Agents and Assigns. Grantor shall indemnify and hold harmless Grantee and its Agents and Assigns for the breach of any and all representations, warranties, covenants, and agreements contained in this Easement, or violations of any applicable laws, including all Environmental Laws.

As between Grantor and Grantee, Grantor shall be liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, violation of the law or of this Easement or other matter related to or occurring on or about the Property, regardless of cause, unless and to the extent due to the gross negligence or intentional misconduct of Grantee and/or its Agents and Assigns.

Neither Grantee, nor its Agents and Assigns shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, neither Grantee, nor its Agents and Assigns shall be liable to Grantor or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against Grantor or any other person or entity, unless and to the extent the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of Grantee and/or its respective Agents and Assigns.

(e) *Liability Insurance.* Grantee shall be named as an additional insured on Grantor's general liability insurance policy. Grantor shall provide Grantee with a certificate of insurance on an annual basis evidencing compliance with the terms of this paragraph.

12. *Monitoring Reports.*

Grantee shall manage its responsibilities as holder of this Easement so as to uphold the Conservation Purpose of this Easement. Grantee's responsibilities include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement, for the purpose of preserving the Property's agricultural productive capacity and open space character in perpetuity. Failure to do so shall not impair the validity of this Easement or limit its enforceability in any way.

13. *Monitoring and Enforcement.*

With reasonable advance written notice (except in the event of an emergency or suspected emergency), Grantee shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.

(a) *Monitoring.* Monitoring visits shall be subject to the following conditions:

(i) Grantee shall give at least forty-eight (48) hours written notice to Grantor before entering upon the Property, except in the event of an emergency or suspected emergency, in which case reasonable oral notice shall be given. The notice shall indicate the purpose of the entry and shall provide the timeframe during which Grantee shall be upon the Property;

(ii) Entry shall take place during normal business hours unless otherwise required due to exigent circumstances; and

(iii) Grantee shall indemnify, defend with counsel of Grantor's choice, and hold Grantor harmless from, all expense, loss, liability, damages and claims, including Grantor's reasonable attorneys' fees, if necessary, arising out of Grantee's entry on the Property, unless caused by a violation of this Easement by Grantor or by Grantor's negligence or willful misconduct.

(b) *Disputes and Remedies.* Grantee may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants and Conservation Purpose of this Easement. Grantee shall have the right to prevent and correct violations of the terms, conditions, covenants and Conservation Purpose of this Easement. Grantor shall indemnify, protect, defend and hold harmless Grantee and its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of the violation of the terms of this Easement. If Grantee determines that Grantor or any occupant of the Property is conducting or allowing a use, activity, or condition on the Property which is prohibited by the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and, where the violation involves damage to the Property resulting from any use or activity inconsistent with the Conservation Purpose of this Easement, to restore the portion of the Property so damaged to the condition in which it existed prior to the damage.

(c) *Consultations Regarding Interpretation and Enforcement of Easement.* When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to this Easement, each party shall first consult with the other party in good faith and attempt to resolve the issue without resorting to mediation or legal action. Consultation is not a condition precedent to actions to enforce this Easement under exigent circumstances.

(d) *Mediation.* Grantor and Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation. Mediation is therefore the parties' preferred dispute resolution procedure when circumstances do not require Grantor or Grantee to seek immediate injunctive relief from the courts. In the event of any dispute between Grantor and Grantee over the meaning, requirements, interpretation, or implementation of the Easement, Grantor or Grantee may refer the dispute to mediation by written request served upon the other party. The non-requesting party shall have ten (10) days after receipt of a mediation request to consent thereto or refuse to mediate the dispute.

(i) *Procedure.* Within ten (10) days after Grantor and Grantee agree to mediation of a dispute, the parties shall mutually select a mediator. Mediation hearings shall remain informal, with each party being permitted to present such facts and evidence as it may reasonably believe supports that party's position. Costs and expenses of mediation shall be divided equally between Grantor and Grantee; provided, however, that each party shall pay its own attorneys' fees.

(ii) *Limitations.* Notwithstanding any provision to the contrary, the mediation procedure set forth herein shall in no way be construed to deprive Grantor or Grantee of any judicial remedy provided at law or in equity, or by agreement herein, and is intended solely as an informal dispute resolution mechanism. Neither Grantor nor Grantee shall have the right to compel performance of mediated solutions, unless such solutions are reduced to a binding

written agreement between Grantor and Grantee at the conclusion of the mediation process. The parties hereto intend that each conflict and dispute submitted to mediation shall be unique, with facts, circumstances, and recommended resolutions to be determined on a case-by-case basis, without reference to prior conflicts, disputes, or the resolutions thereto.

(e) *Grantee's Other Remedies.* If Grantee finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants and Conservation Purpose of this Easement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, Grantee shall give Grantor written notice of the violation or potential violation and thirty (30) days to correct it, before filing any legal action. If the violation will reasonably take longer to correct than thirty (30) days, it is sufficient that Grantor has taken reasonable steps to correct the violation within the thirty (30) days period and continues to use reasonable efforts to completely correct the violation as soon as reasonably possible.

(f) If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, Grantee may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the Conservation Values protected by this Easement; (ii) restoration of the Property to its condition existing prior to such violation; and (iii) an award for all Grantee's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. Grantee's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(g) Without limiting Grantor's liability therefor, Grantee shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, Grantee shall apply any and all damages recovered to furthering Grantee's mission, with primary emphasis on agricultural conservation easement acquisition and enforcement.

(h) Grantor hereby waives any defense of laches, estoppel, prescription, unclean hands or the doctrine of changed circumstances in any action or proceeding, including but not limited to any mediation brought by Grantee to enforce or to interpret the provisions of this Easement.

14. *Transfer of Easement; Executory Limitation.*

This Easement may only be assigned or transferred to a private nonprofit organization that, at the time of transfer, is a "qualified organization" under section 170(h) of the U.S. Internal Revenue Code and meets the requirements of section 815.3(a) of the California Civil Code and has similar purposes to preserve agricultural lands and open space. If no such private nonprofit organization exists or is willing to assume the responsibilities imposed by this Easement, then this Easement may be transferred to a public agency authorized to hold interests in real property as provided in section 815.3(b) of the California Civil Code. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the

Conservation Purpose for which it was created. All assignment and assumption agreements transferring the Easement shall be duly recorded in the county in which the Property is located.

If Grantee ceases (a) to exist for any reason, (b) to be a qualified organization under section 170(h)(3) of the U.S. Internal Revenue Code, or (c) to be authorized to acquire and hold conservation easements under California law, then, after consulting with Grantor or its successor, Grantor's right, title, and interest in this Easement shall be transferred to a "qualified organization," within the meaning of section 170(h)(3) of the Code or any successor provision, which is authorized to acquire and hold conservation easements under California law and has similar purposes to preserve agricultural lands and open space, and which expressly agrees to assume the responsibilities imposed by this Easement.

15. *Transfer of Property Interest.*

Subject to the terms of this Easement, Grantor may transfer the Property or an interest therein, but each transfer shall be subject to, and be bound by, the terms and provisions of this Easement. Grantor shall notify Grantee in writing at least thirty (30) days prior to the transfer of the Property or an interest therein and shall provide Grantee with a copy of the proposed document of conveyance. The document of conveyance, including any lease, shall expressly incorporate this Easement by reference. Failure of Grantor to comply with the terms of this section shall not impair the validity of this Easement or limit its enforceability in any way.

Grantor shall deliver to the buyer as part of the escrow for the sale of the Property Grantor's copy of the Baseline Report, or request Grantee provide a copy of the Baseline Report at Grantor's cost and expense. As part of the escrow for the sale of the Property, Grantor shall obtain from the buyer and deliver to Grantee, an acknowledgement to be signed by the buyer in substantially the same form as Exhibit C attached hereto, wherein the buyer acknowledges receipt of the Baseline Report and certifies that the Baseline Report is an accurate representation of the condition of the Property as of the date of the acknowledgement (subject to any changes of condition as may be specified by the buyer).

16. *Transfer Fee.*

(a) Grantor and Grantee recognize and agree that any transfer of the Property and any division of ownership will result in an additional burden on the monitoring and enforcement responsibilities of Grantee. Therefore, there shall arise, by virtue of any transfer for consideration of all or a portion of the Property, or interest therein (other than a lease for a total term, including any options to renew or extend, not exceeding thirty-five (35) years) a fee which is referred to herein as the "Transfer Fee." The Transfer Fee shall be the obligation of the seller of the Property and shall be payable to Grantee or subsequent holder of this Easement. The Transfer Fee shall be equal to one percent (1%) of the consideration paid in connection with the transfer of any interest in the Property and shall be paid to Grantee concurrently with the close of escrow or other consummation of the sale of the Property. For example, if the Property has a purchase price/consideration paid of two hundred fifty thousand dollars (\$250,000.00), the Transfer Fee would be two thousand five hundred dollars (\$2,500.00); if the Property has a purchase price/consideration paid of five hundred thousand dollars (\$500,000.00), the Transfer Fee would be five thousand dollars (\$5,000.00); and if the Property has a purchase

price/consideration of seven hundred fifty thousand dollars (\$750,000.00), the Transfer Fee would be seven thousand five hundred dollars (\$7,500.00). The Transfer Fee shall be paid to Grantee at the address for giving notices to Grantee as set forth hereinbelow. Grantor and Grantee agree to execute and record along with this Easement a "NOTICE OF PAYMENT OF TRANSFER FEE REQUIRED" in accordance with California Civil Code section 1098.5 respecting the Transfer Fee.

(b) Grantor or any subsequent purchaser shall provide reasonable written proof of the sales price of the Property, including but not limited to executed closing statements, contracts of sale, copies of deeds or other similar evidence satisfactory to Grantee. An exchange of properties pursuant to Internal Revenue Code section 1031, or similar statute, shall be deemed to be for consideration based on the appraised market value of the Property at the time of the exchange. Market value shall be determined by agreement of Grantor and Grantee, or in the absence of such agreement, by an appraiser selected by Grantee that is State certified, designated, and qualified to value the real property, whose appraisal fee shall be paid by Grantee.

(c) Any of the following transfers, subsequent to the conveyance of this Easement, shall be exempt from the assessment of such Transfer Fee: (i) a transfer without consideration (e.g. an inter vivos gift or testamentary conveyance); and (ii) any transfer of any portion of the Property made as a result of condemnation or eminent domain proceedings, including any negotiated transfer made to an entity with condemning authority in response to actual or threatened condemnation proceedings by that entity and (iii) a sale or other conveyance or exchange from one or more of the partners of the original Grantor or the partners' issue to any other one or more of the partners of the original Grantor or their issue; or (iv) a sale or other conveyance or exchange to the issue of any of the partners of the original Grantor or any trust established for the exclusive benefit of the issue of any of the partners of the original Grantor.

(d) In the event of non-payment of the Transfer Fee in accordance with this Section, Grantee shall have the right to record a lien against the Property in the amount equal to the unpaid Transfer Fee plus any and all reasonable costs and attorney's fees necessary to prepare and enforce the lien of the Transfer Fee. The lien shall be recorded in accordance with California Civil Code sections 2872 et seq. The lien shall be subordinate to this Conservation Easement and any other prior liens, encumbrances, mortgages and deeds of trust of record and any subsequent mortgages or deeds of trust. A copy of the lien shall be mailed via certified mail, return receipt requested, to the purchaser at his last known address upon recordation of the lien. After the expiration of thirty (30) days following the mailing of a copy of the lien, the lien may be enforced in any manner permitted by law, including without limitation a sale by the court or sale by the trustee designated by Grantee in the lien, in the sole exercise of its discretion, in accordance with the provisions of section 2924 of the California Civil Code.

17. *Amendment of Easement.*

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Conservation Purpose of this Easement and with Grantee's easement amendment policies and shall comply with all applicable laws, including section 170(h) of the Internal Revenue Code, and any regulations promulgated in accordance with that section, and with section 815 et seq. of the California Civil Code. Any amendment

shall have a net beneficial or neutral effect on the Conservation Values protected by the Easement. No amendment shall: (a) diminish or affect the perpetual duration or the Conservation Purpose of this Easement nor the status or rights of Grantee under the terms of this Easement; (b) confer a private benefit to Grantor or any other individual greater than the benefit to the general public; (c) result in private inurement for a board member, staff or contract employee of Grantee or violate Grantee's conflict of interest policy; or (d) jeopardize Grantee's tax-exempt status or status as a charitable organization under federal or state law.

18. *Termination of Easement.*

(a) It is the intention of the parties that the Conservation Purposes of this Easement shall be carried out in perpetuity as provided in section 815.2(b) of the California Civil Code. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity, notwithstanding conditions or hardship of any kind that may provide a basis for termination of this Easement at law or in equity. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(b) This Easement shall not be terminated unless it meets the criteria for termination including, California Constitution Article XIII, section 8, Revenue and Taxation Code sections 421.5 and 422.5, and other applicable laws, rules and regulations. Grantee shall be notified at least thirty (30) days prior to initiation of any proceedings to terminate this Easement. No inaction or silence by Grantee shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use is not reason for termination of this Easement. Other than pursuant to eminent domain or purchase in lieu of eminent domain, no other voluntary or involuntary sale, exchange, conversion or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate the provisions of this Easement.

(c) In the event of the exercise of the power of eminent domain against all or any part of the Property, Grantor and Grantee acknowledge that Grantee is entitled to certain rights of notice and comment and Grantee is entitled to compensation as provided in section 1240.055 of the California Code of Civil Procedure. Termination of the Easement through condemnation is subject the eminent domain laws of the State of California, federal law, and this Easement. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven (7) years in the future (California Code of Civil Procedure section 1240.220). Grantee shall be paid by the condemnor the value of the Easement at the time of condemnation, as determined by an appraisal conforming to the Uniform Standards of Professional Appraisal Practice and any proceeds received from the condemning party shall be distributed as set forth in Section 18(d) below. Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of Grantee and San Joaquin County. Grantee shall have an opportunity to accompany the appraiser for the condemning agency when the appraiser goes on the Property with Grantor.

If Grantor or Grantee is notified that the Property may be acquired for public use by eminent domain, the party receiving such notice shall notify the other party of the potential acquisition no

later than fifteen (15) days after first receiving such notice. Prior to the inspection of the Property by the appraiser pursuant to section 7267.1 of the California Government Code or any other provision of law, Grantor shall notify Grantee that it or its designated representative may accompany the appraiser during his or her inspection. Within seven (7) days of receiving any notice of the hearing on the resolution of necessity pursuant to section 1245.235 of the California Code of Civil Procedure, Grantor shall provide Grantee a copy of the notice of the hearing. As provided in sections 1250.220 and 1250.230 of the California Code of Civil Procedure, in any eminent domain proceeding to acquire all or a portion of the Property, Grantee shall be named as a defendant and may appear in the proceedings.

Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement. In this event, all relevant related documents shall be updated and re-recorded by Grantee to reflect the modified easement area and encumbrances junior to this Easement shall remain subordinate to the Easement as amended.

(d) The grant of this Easement gives rise to a property right, immediately vested in Grantee. For the purpose of determining the amount to be paid by Grantor in a termination pursuant to judicial proceedings, and for the purpose of allocating proceeds from a sale or other disposition of the Property at the time of termination, the Easement and Grantee's property right therein shall have a value equal to the difference between the current fair market value of the Property unencumbered by this Easement and the current fair market value of the Property encumbered by this Easement, each as determined on or about the date of termination. The values shall be determined by an appraisal performed by an appraiser jointly selected by Grantor and Grantee. The cost of the appraisal shall be paid by Grantor. The appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. Nothing herein shall prevent Grantor or Grantee from having an appraisal prepared at its own expense.

Upon approval of termination of this Easement or any portion thereof, Grantor shall pay Grantee the value of the Easement, or portion thereof. This Easement shall not be deemed terminated until such payment is received by Grantee. Grantee shall use the net proceeds from the condemnation or termination of the Easement for the purchase of property that replaces the natural resource characteristics the original mitigation was intended to protect, or as near as reasonably feasible and in a manner consistent with the Conservation Purposes of this Easement.

(e) If Grantee obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be used in a manner consistent with the Conservation Purposes of this Easement.

19. *Notices.*

Any notices to Grantor and Grantee required by this Easement shall be in writing and shall be personally delivered or sent by First Class Mail, to the following addresses, unless a party has been notified by the other of a change of address:

To Grantor:

BF Cochran, LP
Attn: Robert C. Borello
PO BOX 2107
Morgan Hill, CA 95038

To Grantee:

Central Valley Farmland Trust
8788 Elk Grove Blvd., Bldg. 1, Suite I
Elk Grove, CA 95624

20. *Grantor's Environmental Warranty.*

(a) Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of the Grantor's activities on the Property, or otherwise to become an "owner" or "operator" or "generator" or "arranger" with respect to the Property as those words are defined and used in "Environmental Laws" (as defined below), including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any corresponding state and local statute or ordinance.

(b) Grantor warrants that, to the best of its knowledge, it is in compliance with, and Grantor and its successors and assigns and the Third Party Mineral Rights Holders shall be in compliance with, all applicable Environmental Laws. Grantor warrants that, to the best of its knowledge, there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no knowledge of a release or threatened release of "Hazardous Materials," as defined below on, at, beneath or from the Property.

(c) Grantor hereby promises to defend, hold harmless and indemnify Grantee against all litigation, claims, administrative actions, testing, investigation, remediation, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws on the Property by Grantor or any other prior owner of the Property or any Third Party Mineral Rights Holder. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

(d) "Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous

Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

(e) "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal sources, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, asbestos-containing materials, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or any other material defined and regulated by Environmental Laws.

(f) If at any time after the effective date of this Easement there occurs a release, discharge or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take any steps that are required of Grantor with respect thereto under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

21. Grantor's Title Warranty; No Prior Conservation Easements; Third Party Mineral Rights.

(a) Grantor represents and warrants that it owns the entire fee simple interest in the Property, including the mineral estate, except as set forth in below (respecting third party mineral rights), free from any and all liens or encumbrances, except those set forth in Exhibit D ("Prior Encumbrances") attached hereto and made a part hereof by this reference, and hereby promises to defend the same against all claims that may be made against it. Any and all financial liens or financial encumbrances with priority over this Easement existing as of the date of the recording of this Easement (excepting liens for property taxes which are not yet due and payable) have been subordinated to this Easement. Grantor represents and warrants that the Property is not subject to any other conservation easement whatsoever.

(b) If Grantor discovers at any time that any outstanding interest in the Property exists that is not disclosed herein, Grantor shall immediately notify Grantee of the discovery, and shall take all necessary steps to ensure that the interest is made subject to this Easement and that the existence of the interest or the exercise of any rights under it does not interfere with the Conservation Purpose of this Easement.

(c) Grantor and Grantee acknowledge that the ownership of the surface estate of that portion of the Property consisting of Assessor Parcel No. 131-030-11 (portion, as shown in the Baseline Report) and all petroleum, gas, asphaltum, and other hydrocarbons, and other minerals, whether similar to those specified or not, within or underlying, or that may be produced from the Property ("Third Party Mineral Rights A") is separated. Said Third Party Mineral Rights A were granted by

Mortimer Fleishhacker et ux to Standard Oil Company of California, a corporation, by deed dated May 25, 1945 and recorded May 31, 1945, in Vol. 931, page 249 San Joaquin County Records. The aforesaid owners of the Third Party Mineral Rights A are not in any way related to Grantor. If the exercise of Third Party Mineral Rights A is expected to be exercised, Grantor shall notify Grantee and shall do one or more of the following: (i) cause the rights to be exercised only within the two (2) designated Extraction Areas on the Property, as shown in Exhibit B, and in accordance with the provisions of Section 6(e); (ii) cause the surface rights to be subordinated to this Easement; (iii) acquire the Third Party Mineral Rights A, and exercise the mineral rights only within the two (2) designated Extraction Areas on the Property and in accordance with the limitations and requirements of Section 6(e); or, as a last, and least desired action, (iv) place a new conservation easement over 99 acres of equivalent or better quality agricultural land as the Property, with prior approval of Grantee and the City of Morgan Hill. Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal, extraction or sale of soil, sand, gravel, rock, or any other mineral substance of or from the Property.

(d) Grantor and Grantee further acknowledge that the ownership of the surface estate of that portion of the Property consisting of Assessor Parcel No. 131-030-10 (portion, as shown in the Baseline Report) and all oil, gas and minerals in or under the Property ("Third Party Mineral Rights B") is separated. Said Third Party Mineral Rights B were reserved by Mortimer Fleishhacker et ux, by deed dated July 7, 1942 and recorded August 17, 1942, in Vol. 787, page 93, San Joaquin County Records. The aforesaid owners of the Third Party Mineral Rights B are not in any way related to Grantor. If the exercise of Third Party Mineral Rights B is expected to be exercised, Grantor shall notify Grantee and shall do one or more of the following: (i) cause the rights to be exercised only within the limited area of ownership of Third Party Mineral Rights B, as shown in the Baseline Report and exercised in accordance with the provisions of Section 6(e); (ii) cause the surface rights to be subordinated to this Easement; (iii) acquire the Third Party Mineral Rights B, and exercise the mineral rights only in accordance with the limitations and requirements of Section 6(e). Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal, extraction or sale of soil, sand, gravel, rock, or any other mineral substance of or from the Property.

(e) The Third Party Mineral Rights A and Third Party Mineral Rights B may be referred to herein jointly as "Third Party Mineral Rights." The holders or owners of Third Party Mineral Rights A and the holders or owners of Third Party Mineral Rights B may be referred to herein jointly as "Third Party Mineral Rights Holders."

(f) Grantor hereby agrees that Grantor will not exercise any of their mineral rights and interests in the Property now owned or hereafter acquired (if any), or cooperate with any Third Party Mineral Rights Holders, in any manner which would unreasonably interfere with the Conservation Purpose of this Easement. Grantor hereby promises to defend, hold harmless and indemnify Grantee against: (i) any damage to the Conservation Values of the Property which is caused by, connected with, or arises from the exercise of any Third Party Mineral Rights not in conformance with this Section 21 and Section 6(e) or as otherwise provided in this Easement; and (ii) any and all costs, expenses, litigation, claims, administrative actions, testing, investigation, remediation, restoration, demands, penalties and damages, including reasonable

attorneys' fees, caused by, connected with, or arises from the exercise of any Third Party Mineral Rights. This indemnity shall apply whether the Third Party Mineral Rights are held and exercised by third parties or acquired, held and exercised by Grantor or Grantor's successors and assigns.

(g) With respect to that certain Permit Agreement between Reclamation District No. 684 ("District") and Linda Heisig and Reeves Sand & Gravel, Inc. ("Permittee") for the excavation of sand material as part of an agricultural excavation bearing Application No. PA-1000095 at the southwest corner of Boulton Road and McDonald Road, Stockton, California, APN 131-030-11, recorded September 21, 2010 in the San Joaquin Recorder's Office as Instrument No. 2010-124435 (the "Permit"), Grantor warrants and represents that all excavation activities authorized under the Permit and any other related County, State or Federal permit have been completed in full compliance with all applicable permits and laws and expressly renounces and waives forever any right to carry out any further excavation activities on the Property under the Permit and any other related County, State, or Federal permit and shall defend, hold harmless and indemnify CVFT against any and all costs, expenses, liability, litigation, claims, administrative actions, testing, investigation, remediation, restoration, demands, penalties and damages, including reasonable attorneys' fees, caused by, connected with, or arising from the Permit and any other related County, State, or Federal permit or any activities authorized thereby or carried out thereunder.

22. General Provisions.

(a) *Interpretation.* This Easement shall be interpreted under the laws of the State of California resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. References to authorities in this Easement shall be to the statute, rule, regulation, ordinance or other legal provision that is in effect at the time this Easement becomes effective. No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

(b) *Successors; Termination of Rights and Obligations.* The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property. A party's rights and obligations under this Easement terminate upon transfer of that party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(c) *Severability.* If any term, provision, covenant, condition or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of the Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(d) *Perpetual Duration; No Merger or Forfeiture.* Pursuant to California Civil Code at Part 2, Chapter 4 (commencing with section 815), this Easement shall run with the land in perpetuity. No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion

thereof, to Grantee, or its successors or assigns. It is the express intent of the parties that this Easement not be extinguished by, or merged into, or modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by Grantee or its successors or assigns. In the event that Grantee shall ever acquire the fee simple title to the Property, Grantee will assign and convey its interest under this Easement to a third party in accordance with Section 14.

(e) *No Waiver.* Enforcement of the terms of this Easement is at the discretion of Grantee. Any forbearance by Grantee to exercise its rights under this Easement or any failure of Grantee to discover a violation or potential violation or to take immediate legal action to prevent or correct a violation or potential violation known to Grantee, shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement, nor bar Grantee from taking subsequent legal action. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. No forbearance or waiver by Grantee of any default or breach, whether intentional or not, shall be deemed to extend to any prior or subsequent defaults or breaches, nor shall it affect in any way any rights arising by virtue of any prior or subsequent occurrence.

(f) *Joint Obligation.* If and when Grantor consists of more than one party, the obligations imposed by this Easement upon Grantor shall be joint and several.

(g) *Recording.* This Easement and any amendments hereto shall be recorded in the Official Records of the County of San Joaquin, State of California.

(h) *Entire Agreement.* This Easement is the final and complete expression of the agreement between the parties with respect to the subject matter contained herein. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superseded by this written instrument.

(i) *Exhibits and Recitals.* All of the exhibits attached to this Easement are hereby incorporated into this Easement by this reference. All recitals in this Easement are accurate and shall constitute an integral part of this Easement, and this Easement shall be construed in light of those recitals.

(j) *Administrative Costs.* The administration of this Easement by Grantee requires considerable time and expense. Grantee shall bear all routine administrative expenses related to the Easement including, but not limited to the following activities: routine easement monitoring and reporting, and notices of permitted activities, and routine staff work related to Grantor's refinancing and or sale of the Property. Grantor agrees to pay the reasonable expenses of Grantee for non-routine administration of the Easement including, but not limited to actions requiring Grantee's prior approval, any actions of Grantee resulting from a violation of the terms of this Easement and any Easement amendment requests of Grantor.

(k) *Counterparts.* The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(l) *Attorney's Fees.* If any party commences an action to enforce or interpret this Easement or any provision hereof or to assert a claim or cause of action arising of this Easement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

(m) *Authority.* Each party executing this Easement represents to the other party that the person or persons signing this Easement on behalf of said party, has full power and authority to sign for and to bind said party to this Easement.

(n) *Third Party Beneficiary.* The City of Morgan Hill shall be a third party beneficiary of this Easement. In the event Grantee fails to enforce any term, condition, covenant or restriction of this Easement, the City of Morgan Hill shall have the right, but not the obligation, to enforce this Easement after giving notice to Grantee and Grantor and providing a reasonable opportunity under the circumstances for Grantee to enforce any term, condition, covenant, or restriction of the Easement.

23. *Acceptance.*

As attested by the signature of its Executive Director affixed hereto, as authorized by Grantee's Board of Directors, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Grant Deed of Agricultural Conservation Easement.

To Have and To Hold, this Grant Deed of Agricultural Conservation Easement unto Grantee, its successors and assigns, forever.

In Witness Whereof, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

BF COCHRANE, LP
a California limited partnership

By its General Partner:

BF Cochrane, LLC
a California limited liability company,

By: Robert Cosmo Borello
Robert Cosmo Borello, Manager

GRANTEE:

CENTRAL VALLEY FARMLAND TRUST,
a California nonprofit public benefit corporation,

By: _____
Charlotte Mitchell, Executive Director

(l) *Attorney's Fees.* If any party commences an action to enforce or interpret this Easement or any provision hereof or to assert a claim or cause of action arising of this Easement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

(m) *Authority.* Each party executing this Easement represents to the other party that the person or persons signing this Easement on behalf of said party, has full power and authority to sign for and to bind said party to this Easement.

(n) *Third Party Beneficiary.* The City of Morgan Hill shall be a third party beneficiary of this Easement. In the event Grantee fails to enforce any term, condition, covenant or restriction of this Easement, the City of Morgan Hill shall have the right, but not the obligation, to enforce this Easement after giving notice to Grantee and Grantor and providing a reasonable opportunity under the circumstances for Grantee to enforce any term, condition, covenant, or restriction of the Easement.

23. *Acceptance.*

As attested by the signature of its Executive Director affixed hereto, as authorized by Grantee's Board of Directors, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Grant Deed of Agricultural Conservation Easement.

To Have and To Hold, this Grant Deed of Agricultural Conservation Easement unto Grantee, its successors and assigns, forever.

In Witness Whereof, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

BF COCHRANE, LP
a California limited partnership

By its General Partner:

BF Cochrane, LLC
a California limited liability company,

By: _____
Robert Cosmo Borello, Manager

GRANTEE:

CENTRAL VALLEY FARMLAND TRUST,
a California nonprofit public benefit corporation,

By: 
Charlotte Mitchell, Executive Director

ACKNOWLEDGMENTS

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 Butte)

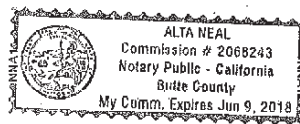
On May 4, 2017, before me, ALTA NEAL, a Notary Public in and for said State, personally appeared Robert Cosmo Borello who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the 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

Alta Neal



(Seal)

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

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, 20__, before me, _____, a Notary Public in and for said State, 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)

ACKNOWLEDGMENTS

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.

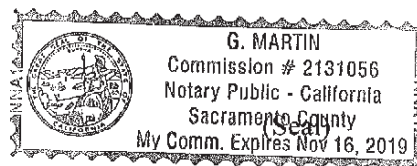
COUNTY OF Sacramento)

On 6-26, 2017, before me, G. Martin, a Notary Public in and for said State, personally appeared Charlotte Mitchell, 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 G. Martin



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 _____, 20____, before me, _____, a Notary Public in and for said State, 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)

List of Attachments:

Exhibit A (Property Legal Description)

Exhibit B (Sketch Map of Farmstead Area, Agricultural Mitigation Area and Extraction Areas)

Exhibit C (Acknowledgement of Condition and Receipt of Baseline Report)

Exhibit D (Prior Encumbrances)

EXHIBIT A

Property Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

All that certain real property identified as "Legal Description of Parcel "3" per PA-1500268" as shown on Notice of Lot Line Adjustment recorded April 22, 2016, Instrument No. 2016-045805, San Joaquin County Records.

A portion of Section 6 Township 1 North, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California and being more particularly described as follows:

A single parcel of land comprised of the following three descriptions:

Description One:

Parcel 1 as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records.

Description Two:

Parcel 2 as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records.

Description Three:

Parcel 3 as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records.

Except from the above Three descriptions the following described parcel:

A portion of Section 6 Township 1 North, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California and being more particularly described as follows:

Commencing at a 2" iron pipe located at the Northwest corner of the Northeast Quarter of said Section 6 as shown on that certain Map of Survey filed for record on the 14th day of February, 1968 in Book 17 of Surveys, at Page 37, San Joaquin County Records, said 2" iron pipe is tagged with a washer stamped LS 4450 set on top, also being a point on the Northerly line of Parcel 3, as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records; thence along the Northerly line of said Section 6 and along the Northerly line of said Parcel 3, East, a distance of 1867.56 feet to the most Easterly corner of said Parcel 3 and being a point in the centerline of Reclamation District No. 684 drainage canal, as shown on said Survey; thence along said centerline and the Southeasterly line of said Parcel 3, South 45°40'00" West, a distance of 205.47 feet to the beginning of a non-tangent curve concaved Southwesterly having a radius of 499.06 feet and to which beginning a radial line bears, North 41°01'50" East, and being a point on the centerline of McDonald Road (an 80-foot wide road) and being the TRUE POINT OF BEGINNING; thence continuing along said centerline of drainage canal and said Southeasterly line of the following 2 courses:

1. South 45°40'00" West, a distance of 696.19 feet;
2. South 42°47'00" West, a distance of 474.00 feet; thence along the Southerly line of said Parcel 3, North 82°10'00" West, a distance of 161.50 feet to the Northeasterly corner of Parcel 2 as described in said Heisig Quitclaim Deed; thence along the Easterly line of said Parcel 2 and Parcel 1, as described in said Heisig Quitclaim Deed, South, a distance of 210.39 feet to the right bank of Whiskey Slough, thence meandering along said right bank downstream on the following 5 courses:

EXHIBIT A**Property Legal Description (continued)**

1. North 69°28'18" West, a distance of 32.63 feet;
2. North 78°41'52" West, a distance of 112.36 feet;
3. South 81°02'01" West, a distance of 86.51 feet;
4. South 64°22'56" West, a distance of 81.85 feet;
5. South 45°51'00" West, a distance of 70.07 feet; thence North 49°53'03" West, a distance of 181.12 feet; thence North 20°01'55" East, a distance of 228.20 feet to a point on the Northerly line of said Parcel 2 from which the said Northeasterly corner of Parcel 2 bears, South 82°10'00" East, a distance of 575.99 feet; thence along said Northerly line, South 82°10'00" East, a distance of 29.47 feet; thence North 20°01'55" East, a distance of 94.48 feet; thence South 89°26'43" East, a distance of 511.15 feet to a point being 106.00 feet Northwesterly at right angles with that certain said courses which bears, South 42°47'00" West, a distance of 474.00 feet; thence North 45°11'38" East, a distance of 917.80 feet to a radial line from said curve which bears, North 24°52'18" East, thence along said radial line, North 24°52'18" East, a distance of 116.41 feet to said curve; thence Southeasterly 140.75 feet along said curve through a central angle of 16°09'32" to the true point of beginning.

Subject to McDonald Road along the Northeasterly boundary.

Also Except from the above Three descriptions the following described parcel:

A portion of Section 6 Township 1 North, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California and being more particularly described as follows:

Commencing at a 2" iron pipe located at the Northwest corner of the Northeast Quarter of said Section 6 as shown on that certain Map of Survey filed for record on the 14th day of February, 1968 in Book 17 of Surveys, at Page 37, San Joaquin County Records, said 2" iron pipe is tagged with a washer stamped LS 4450 set on top, also being a point on the Northerly line of Parcel 3 as described in that certain individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records; thence along the Northerly line of said Section 6 and along the Northerly line of said Parcel 3, East, a distance of 1867.56 feet to the most Easterly corner of said Parcel 3 and being a point in the centerline of Reclamation District No. 684 drainage canal as shown on said survey; thence along said centerline and the Southeasterly line of said Parcel 3 on the following 2 courses:

1. South 45°40'00" West, a distance of 901.66 feet to an angle point;
2. South 42°47'00" West, a distance of 474.00 feet; thence along the Southerly line of said Parcel 3, North 82°10'00" West, a distance of 161.50 feet to the Northeasterly corner of Parcel 2 of Heisig Quitclaim Deed; thence continuing along said Southerly line, being also the Northerly line of said Parcel 2, North 82°10'00" West, a distance of 575.99 feet to the TRUE POINT OF BEGINNING; thence South 20°01'55" West, a distance of 228.20 feet; thence South 49°53'03" East, a distance of 181.12 feet to the right bank of Whiskey Slough; thence meandering along said right bank of Whiskey Slough downstream on the following Four courses:

1. South 45°51'00" West, a distance of 76.23 feet;
2. South 33°14'00" West, a distance of 184.00 feet;
3. South 34°45'00" West, a distance of 190.00 feet;
4. South 36°08'00" West, a distance of 157.61 feet; thence North 51°41'32" West, a distance of 39.16 feet; thence North, a distance of 842.24 feet to a point on the Northerly line of said Parcel 2; thence along said Northerly line, South 82°10'00" East, a distance of 330.24 feet to the true point of beginning.

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Unable to open <http://annotationevo.smartviewonline.net:8080/ViewONE_Server/streamer?originalDocURL=http%3A%2F%2Fannotationevo.smartviewonline.net%2FDefaultViewer%2FDocuments.ashx%3FDocumentAnnotation_GUID%3D2d6491d3%2Dfa93%2D4b5a%2D96f0%2D...>
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9.d

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

EXHIBIT C
Acknowledgement of Condition
and Receipt of Baseline Report

Robert Cosmo Borello, Manager, representing BF Cochrane, LLC, a California limited liability company, General Partner of BF Cochrane, LP, a California limited partnership, certifies as Grantor, and Charlotte Mitchell, Executive Director, representing Central Valley Farmland Trust, certifies as Grantee of the Easement, as follows:

- a) Each is familiar with the condition of the Property, and
- b) Each does hereby acknowledge and certify that the Baseline Report, dated March 10, 2017, and all of its inclusions, is an inventory of the natural resources of the Property and an accurate representation of the condition of the Property as of the date of the Easement.

Duplicate originals of the Baseline Report were signed and delivered by each of Grantor and Grantee, and each received a duplicate original of the Baseline Report.

GRANTOR:

BF COCHRANE, LP
a California limited partnership

By its General Partner:

BF Cochrane, LLC
a California limited liability company,

By: _____
Robert Cosmo Borello, Manager

Date: _____

GRANTEE:

CENTRAL VALLEY FARMLAND TRUST,
a California nonprofit public benefit corporation,

By: 
Charlotte Mitchell, Executive Director

Date: 4/26/17

EXHIBIT D
Prior Encumbrances

1. A lien for real property taxes and assessments of San Joaquin County, and for taxes and assessments levied by Reclamation District No. 684 and the Sacramento-San Joaquin Drainage District, not yet due and payable.

2. - 12. Intentionally Omitted.

13. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
Purpose: Electrical transmission lines
Recording Date: January 9, 1913
Recording No.: Book "A" of Deeds, Volume 228, at Page 44

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document:

Reserved by: Pacific Coast Lands Co.
Purpose: Roadway
Recording Date: July 7, 1917
Recording No.: Book "A" of Deeds, Volume 303, at Page 371

15. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The County of San Joaquin
Purpose: Roadway
Recording Date: November 21, 1921
Recording No.: Book "A" of Deeds, Volume 262, at Page 207

16. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The County of San Joaquin
Purpose: Public road
Recording Date: December 14, 1927
Recording No.: Book 221, at Page 200

17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
Purpose: Electrical transmission lines
Recording Date: August 14, 1930
Recording No.: Book 337, at Page 6

18. Intentionally Omitted.

19. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
 Purpose: Electrical transmission lines
 Recording Date: October 23, 1937
 Recording No.: Book 594, at Page 189

20. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
 Purpose: Electrical transmission lines
 Recording Date: October 23, 1937
 Recording No.: Book 594, at Page 190

21. Intentionally Omitted.

22. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The Pacific Telephone & Telegraph Company, a corporation
 Purpose: Public utilities and incidental purposes
 Recording Date: June 16, 1953
 Recording No.: Book 1533, at Page 183

23. - 24. Intentionally Omitted.

25. Matters contained in that certain document

Entitled: Permit Agreement
 Executed by: Reclamation District No. 684, Linda Beers Heisig and Reeves Sand & Gravel
 Recording Date: September 21, 2010
 Recording No.: 2010-124435

Reference is hereby made to said document for full particulars.

An agreement to modify the terms and provisions of the said document, as therein provided

Executed by: Linda Heisig, aka Linda Beers Heisig, Reclamation District No. 684, BF Cochrane, LP, a California limited partnership, and Central Valley Farmland Trust, a California nonprofit public benefit corporation
 Recording Date: (recorded herewith)

26. Intentionally Omitted.

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as shown in a document:

Purpose: Ingress Egress and Public Utilities
Recording Date: January 23, 2017
Recording No.: 2017-009798
Affects: A Portion

Corrective quitclaim deed to correct and clarify that the ingress egress easement in grant deed recorded January 23, 2017 as instrument no. 2017-009798 is reserved by Linda Beers Heisig (grantor) and not granted to BF Cochrane, LP, a California limited partnership (grantee).

Executed by: Linda Beers Heisig
Recording Date: (recorded herewith)

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as shown in a document:

Purpose: Ingress Egress and Public Utilities
Recording Date: January 23, 2017
Recording No.: 2017-009798
Affects: A Portion

Corrective quitclaim deed to correct and clarify that the ingress egress easement in grant deed recorded January 23, 2017 as instrument no. 2017-009798 is reserved by Linda Beers Heisig (grantor) and not granted to BF Cochrane, LP, a California limited partnership (grantee).

Executed by: Linda Beers Heisig
Recording Date: (recorded herewith)

Recording requested by and when
recorded please return to:

(Space above this line reserved for Recorder's use)

DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement is granted on this ____ of ____ 2018, by _____, having an address at _____ ("Landowner"), to the _____ having an address at _____ ("Grantee"), for the purpose of forever conserving the agricultural productive capacity and open space character of the subject property.

RECITALS

- A. The Landowner is the sole owner in fee simple of the agricultural property ("Property") legally described in **Exhibit A** ("Legal Description") and generally depicted in **Exhibit B** ("Vicinity Map"), attached to and made a part of this Agricultural Conservation Easement ("Easement"). The Property consists of approximately _____ acres of land and is commonly known as "_____", together with agricultural improvements, is located in Santa Clara County, California, and is identified as a portion of assessor's parcel number XXX-XX-XXX. The existing buildings and improvements on the Property are shown within an agricultural building envelope ("Agricultural Building Envelope.") The Agricultural Building Envelope is depicted in **Exhibit C** ("Building Envelope and Existing Improvements"), also attached to and made a part of this Easement. Except as shown in Exhibit C, the Property is open farmland, whose majority of soils have been classified as prime farmland by the U.S. Department of Agriculture's Natural Resources Conservation Service, because this land has the soil quality, growing season, and water supply needed for sustained agricultural production.
- B. The agricultural and other characteristics of the Property, its current use and state of improvement, are documented and described in a Baseline Documentation Report ("Baseline Report"), prepared by the Grantee with the cooperation of the Landowner and incorporated herein by this reference. The Landowner and the Grantee warrant that the Baseline Report is complete and accurate as of the date of this Easement. Both the Landowner and the Grantee shall retain duplicate original copies of the Baseline Report. The Baseline Report may be used to establish whether a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement.

- C. Grantor and Grantee acknowledge that the funding of this Easement is provided through the Agricultural Lands Preservation Program of the City of Morgan Hill (“City”).
- D. The Landowner grants this Easement for valuable consideration to the Grantee for the purpose of assuring that, under the Grantee’s perpetual stewardship, the agricultural productive capacity and open space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property, as represented in the Baseline Report completed at the time of this Easement’s recordation, are consistent with the conservation purposes of this Easement.
- E. The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation and environmental policies:

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. section 4201 et seq., whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland;”

The California Environmental Quality Act (PRC §§21000 et seq.) which requires that significant impacts to the environment resulting from a project be mitigated to the extent feasible;

California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements;

California Government Code Section 65966 (a), which states that “any conservation easement created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration”;

California Constitution Article XIII, section 8, California Revenue and Taxation Code sections 421.5 and 422.5, and California Civil Code section 815.1, under which this Agricultural Conservation Easement is an enforceable restriction, requiring that the Property’s tax valuation be consistent with restriction of its use for purposes of food and fiber production and conservation of natural resources;

Section 10200 et seq. of the California Public Resources Code, which creates the California Farmland Conservancy Program within the Department;

Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands, by providing that "agricultural lands have a definitive public value as open space" and "that the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest";

California Food and Agriculture Code Section 821 states that one of the major principles of the State's agricultural policy is "to sustain the long-term productivity of the State's farms by conserving and protecting the soil, water, and air, which are agriculture's basic resources;"

The California General Plan law section 65300 et seq. and Section 65400 et seq. of the California Government Code, and the Santa Clara County General Plan, as a updated on November 19, 2015, which includes as one of its strategies to enhance the long term economic viability of agriculture; and,

- F. The Grantee is a California nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3 and is a tax exempt and "qualified conservation organization" within the meaning of Sections 501(c)(3) and 170(b)(1)(A)(iv) as defined by the United States Internal Revenue Code. Grantee, as certified by a resolution of Grantee's Board of Directors, accepts the responsibility of enforcing the terms of this Easement and upholding its conservation purposes forever.

GRANT OF AGRICULTURAL CONSERVATION EASEMENT

Now, therefore, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Landowner voluntarily grants and conveys to the Grantee, and the Grantee voluntarily accepts, a perpetual conservation easement, as defined by Sections 815.1 and 815.2 of the California Civil Code and Section 10211 of the California Public Resources Code, and of the nature and character described in this Easement for the purpose described below, and agree as follows:

1. *Conservation Purpose.*

The conservation purpose ("Purpose") of this Easement is to enable the Property to remain in productive agricultural use in perpetuity by preventing and correcting

uses of the Property prohibited by the provisions of this Easement. To the extent that the preservation of the open space character of the Property are consistent with such use, it is within the Purpose of this Easement to protect those values.

2. *Right to Use Property for Agricultural Purposes.*

The Landowner retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law and this Easement.

3. *Prohibited Uses.*

The Landowner shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Easement. Any use or activity that would diminish or impair the agricultural productive capacity of the Property and open space character protected by this Easement, or that would cause significant soil degradation or erosion, restrict agricultural husbandry practices, or that is otherwise inconsistent with the Conservation Purpose is prohibited (“Prohibited Use”).

“Husbandry practices” means agricultural activities, such as those specified in Section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

This Easement authorizes the Grantee to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Easement shall require the Landowner to take any action to restore the condition of the Property after any Act of God or other similar event over which the Landowner had no control. The Landowner understands that nothing in this Easement relieves it of any obligation or restriction on the use of the Property imposed by law.

4. *Permission of the Grantee.*

Where the Landowner is expressly required to obtain the Grantee’s permission for a proposed use hereunder, said permission (a) shall not be unreasonably delayed or withheld by the Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by the Landowner prior to the Landowner's undertaking of the proposed use. The Grantee shall grant permission to the Landowner only where the Grantee, acting in the Grantee's sole reasonable discretion and in good faith, determines that the proposed use is not a “Prohibited Use” as defined in Section 3.

5. *Construction or Placement of Buildings and Other Improvements.*

The Landowner may undertake construction, erection, installation, or placement of buildings, structures, or other improvements on the Property only as provided in subsections (a) through (c) below. All other construction, erection, installation, or placement of buildings, structures, or other improvements on the Property is prohibited. Before undertaking any construction, erection, installation or placement that requires permission, the Landowner shall notify the Grantee and obtain prior written permission from the Grantee.

For purposes of this section, the term “improvements” shall not refer to, and specifically excludes, crops, plants, trees, vines, or other living improvements planted for agricultural purposes, nor shall it refer to irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes, all of which may be made without permission of the Grantee.

- (a) Fences – Existing fences may be repaired and replaced without permission of the Grantee. New fences may be built anywhere on the Property for purposes of reasonable and customary agricultural management, and for security of farm produce, livestock, equipment, and improvements on the Property, without permission of the Grantee.
- (b) Agricultural Structures and Improvements – Existing agricultural structures and improvements as shown in Exhibit C and more fully described in the Baseline Report, may be repaired, reasonably enlarged, and replaced at their current locations. New buildings and other structures and improvements to be used solely for agricultural production on the Property or sale of farm products predominantly grown or raised on the Property, including barns, equipment sheds, hoop houses and other non-permanent greenhouse structures that do not have solid foundations or concrete flooring, but not including any dwelling or farm labor housing, may be built, repaired, reasonably enlarged, and replaced on the Property only and entirely within the Agricultural Building Envelope. Any other agricultural production or marketing-related structures may be constructed only with permission of the Grantee pursuant to Section 4, and then only and entirely within the Agricultural Building Envelope.
- (c) Utilities – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to serve the improvements permitted herein or to transmit power generated on the Property may be installed, maintained, repaired, removed, relocated and replaced.

6. *No Subdivision.*

The division, subdivision, defacto subdivision, or partition of the Property,

including transfer of development rights, whether by physical, legal, or any other process, is prohibited.

The Landowner and Grantee acknowledge and understand that the Property consists of a portion of one legal parcel, and that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance or conditional certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. The Landowner will not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. The Landowner shall continue to maintain the legal parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel.

Lot line adjustment may be permitted only with the written approval of the Grantee pursuant to Section 4, in conjunction with the approval of the local jurisdiction, and for purposes of maintaining, enhancing or expanding agricultural practices or productivity on the Property.

7. *Extinguishment of Development Rights.*

The Landowner hereby grants to the Grantee all development rights except as specifically reserved in this Easement, that were previously, are now or hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred by either party to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

8. *General Prohibition on Surface Mining.*

Except as specifically authorized herein, the mining, removal or extraction on or from the area subject to this Easement of soil, sand, gravel, aggregate, rock, oil, natural gas, fuel, or any other mineral substance, through a surface mining, removal or extraction method or from above a depth of 150 feet below the surface of the Property is prohibited. This prohibition includes the installation of roads or pipelines for transportation of the aforesaid resources.

This section is not intended to interfere with Landowners' right to remove cobble and hardpan from farm areas in order to prepare the land for agricultural purposes.

9. *Paving and Road Construction.*

Other than existing roads identified in the Baseline Report, no portion of the

Property presently unpaved shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, unless such measures are required by air quality laws or regulations applicable to the Property. Except as otherwise permitted herein, no road for access or other purposes shall be constructed without the permission of the Grantee pursuant to Section 4. Notwithstanding the foregoing, construction of unpaved farm roads, as necessary or desirable by agricultural operations, is permitted without permission from the Grantee. The Landowner shall notify the Grantee of any significant relocation or net addition of unpaved farm roads.

10. *Trash and Storage.*

The dumping or accumulation on the Property of any kind of trash, refuse, vehicle bodies or parts, or "Hazardous Materials," as defined in Section 25 is prohibited. Farm-related trash and refuse produced on the Property may be temporarily stored on the Property subject to all applicable laws. The storage of agricultural products and byproducts produced on the Property and materials reasonably required for agricultural production on the Property, including Hazardous Materials, is permitted as long as it is done in accordance with all applicable government laws and regulations.

11. *Commercial Signs.*

Commercial signs (including billboards) unrelated to permitted activities conducted on the Property are prohibited.

12. *Recreational Uses; Motorized Vehicle Use Off Roadways*

Resort structures, athletic fields, golf courses, swimming pools, public or commercial airstrips, commercial equestrian facilities, public or commercial helicopter pads, and any other non-agricultural recreational structures or facilities are prohibited on the Property. The use of motorized vehicles off roadways and outside of the Agricultural Building Envelope is prohibited except where used for agricultural production, property maintenance and security, or for the purpose of monitoring this Easement.

13. *Water Rights.*

The Landowner shall retain and reserve all ground water, and all appropriative, prescriptive, contractual or other water rights appurtenant to the Property at the time this Easement becomes effective. The Landowner shall not permanently transfer, encumber, lease, sell, or otherwise separate such quantity of water or water rights from title to the Property itself. Permanent separation of water or water rights is prohibited. All water shall be retained in Santa Clara County for agricultural production and used in conjunction with the improvements permitted by Section 5 of this Easement only.

Water may be distributed to a contiguous property or other property owned or leased by the Landowner on an annual basis for agricultural production only. Any temporary distribution of water shall not impair the long-term agricultural productive capacity or open space character of the Property.

14. *Rights Retained by the Landowner.*

Subject to Section 7 and to interpretation under Section 23, as owner of the Property, the Landowner reserves all interests in the Property not transferred, conveyed, restricted, prohibited or extinguished by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, or otherwise transfer the Property to anyone the Landowner chooses, as well as the right to privacy, the right to exclude any member of the public from trespassing on the Property, and any other rights consistent with the Purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.

Nothing in this Easement relieves the Landowner of any obligation or restriction on the use of the Property imposed by law.

15. *Responsibilities of the Landowner and the Grantee Not Affected.*

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Landowner as owner of the Property. Among other things, this shall apply to:

- (a) Taxes – The Landowner shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee ever pays any taxes or assessments on the Property, or if the Grantee pays levies on the Landowner's interest in order to protect Grantee's interests in the Property, the Landowner will reimburse the Grantee for the same. It is intended that this Easement constitute an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that this Easement qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code Sections 402.1(a)(8) and 423.
- (b) Upkeep and Maintenance – The Landowner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property. If the Grantee acts to maintain the Property in order to protect the Grantee's interest in the Property, the Landowner will reimburse the Grantee for any such costs.
- (c) Liability and Indemnification – In view of the Grantee's negative rights, limited access to the land, and lack of active involvement in the day-to-day

management activities on the Property, the Landowner shall indemnify, protect, defend and holds harmless the Grantee and Grantee's officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively, "Agents and Assigns") from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of or in any way connected with or relating to the Property or the Easement. The Landowner shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of the Grantee and/or their respective Agents and Assigns. The Grantee shall be named as an additional insured on Landowner's general liability insurance policy.

Neither the Grantee nor their Agents and Assigns shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of the Landowner, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, neither the Grantee nor their respective Agents and Assigns shall be liable to the Landowner or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Landowner or any other person or entity, except as the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of the Grantee and/or their respective Agents and Assigns.

16. *Monitoring.*

- (a) The Grantee shall manage its responsibilities as holder of this Easement in order to uphold the Purpose of this Easement. The Grantee's responsibilities include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement of this Easement, for the purpose of preserving the Property's agricultural productive capacity and open space character in perpetuity. Failure of the Grantee to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability in any way. With reasonable advance notice (except in the event of an emergency circumstance or prevention of a threatened breach), Grantee shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.
- (b) Grantee shall indemnify, defend with counsel of Landowner's choice, and hold Landowner harmless from, all expense, loss, liability, damages and

claims, including Landowner's attorneys' fees, if necessary, arising out of Grantee's entry on the Property, unless caused by a violation of this Easement by Landowner or by Landowner's negligence or willful misconduct.

17. *Enforcement.*

- (a) The Grantee may take all actions, including legal actions, that it deems necessary to ensure compliance with the terms, conditions, covenants, and purposes of this Easement. The Grantee shall have the right to prevent and correct violations of the terms, conditions, covenants, and purposes of this Easement. If the Grantee finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants, and purposes of this Easement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, the Grantee shall give the Landowner written notice of the violation or potential violation, and thirty (30) days to correct it, before filing any legal action.
- (b) If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, the Grantee may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the agricultural conservation values protected by this Easement, (ii) restoration of the Property to its condition existing prior to such violation, and (iii) an award for all of the Grantee's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or potential violation, or to take immediate legal action to prevent or correct a violation or potential violation known to the Grantee, shall not bar the Grantee from taking subsequent legal action. The Grantee's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- (c) Without limiting the Landowner's liability, the Grantee shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, the Grantee shall apply any and all damages recovered to furthering the Purpose of this Easement.
- (d) Failure or refusal to exercise any rights under the terms of this Easement by the Grantee in the event of a violation by the Landowner of any term herein shall not constitute a waiver or forfeiture of the Grantee's right to enforce any term, condition, covenant, or purpose of this Easement.

18. *Transfer Fee.*

- (a) Grantor and Grantee recognize and agree that any transfer of the Property and any division of ownership will result in an additional burden on the monitoring and enforcement responsibilities of Grantee. Therefore, there shall arise, by virtue of any transfer for consideration of all or a portion of the Property, or interest therein (other than a lease for a total term, including any options to renew or extend, not exceeding thirty-five (35) years) a fee which is referred to herein as the "Transfer Fee." The Transfer Fee shall be the obligation of the seller of the Property and shall be payable to Grantee or subsequent holder of this Easement. The Transfer Fee shall be equal to one percent (1%) of the consideration paid in connection with the transfer of any interest in the Property and shall be paid to Grantee concurrently with the close of escrow or other consummation of the sale of the Property. For example, if the Property has a purchase price/consideration paid of two hundred fifty thousand dollars (\$250,000.00), the Transfer Fee would be two thousand five hundred dollars (\$2,500.00). The Transfer Fee shall be paid to Grantee at the address for giving notices to Grantee as set forth hereinbelow. Grantor and Grantee agree to execute and record along with this Easement a "NOTICE OF PAYMENT OF TRANSFER FEE REQUIRED" in accordance with California Civil Code section 1098.5 respecting the Transfer Fee.
- (b) Grantor or any subsequent purchaser shall provide reasonable written proof of the sales price of the Property, including but not limited to executed closing statements, contracts of sale, copies of deeds or other similar evidence satisfactory to Grantee. An exchange of properties pursuant to Internal Revenue Code section 1031, or similar statute, shall be deemed to be for consideration based on the appraised market value of the Property at the time of the exchange. Market value shall be determined by agreement of Grantor and Grantee, or in the absence of such agreement, by an appraiser selected by Grantee that is State certified, designated, and qualified to value the real property, whose appraisal fee shall be paid by Grantee.
- (c) Any of the following transfers, subsequent to the conveyance of this Easement, shall be exempt from the assessment of such Transfer Fee: (i) a transfer without consideration (e.g. an inter vivos gift, testamentary, inheritance or joint tenancy conveyance); (ii) any transfer of any portion of the Property made as a result of condemnation or eminent domain proceedings, including any negotiated transfer made to an entity with condemning authority in response to actual or threatened condemnation proceedings by that entity; (iii) a sale or other conveyance or exchange from one or more of the original Grantors or their issue to any other one or more of the original Grantors or their issue; or (iv) a sale or other conveyance or exchange to the issue of any Grantor or any trust established for the exclusive benefit of the issue of any Grantor.

- (d) In the event of non-payment of the Transfer Fee in accordance with this Section, Grantee shall have the right to record a lien against the Property in the amount equal to the unpaid Transfer Fee plus any and all reasonable costs and attorney's fees necessary to prepare and enforce the lien of the Transfer Fee. The lien shall be recorded in accordance with California Civil Code sections 2872 et seq. The lien shall be subordinate to this Conservation Easement and any other prior liens, encumbrances, mortgages and deeds of trust of record and any subsequent mortgages or deeds of trust. A copy of the lien shall be mailed via certified mail, return receipt requested, to the purchaser at his last known address upon recordation of the lien. After the expiration of thirty (30) days following the mailing of a copy of the lien, the lien may be enforced in any manner permitted by law, including without limitation a sale by the court or sale by the trustee designated by Grantee in the lien, in the sole exercise of its discretion, in accordance with the provisions of section 2924 of the California Civil Code.

19. *Transfer of Easement.*

- (a) This Easement may only be assigned or transferred to an entity authorized to hold such Easement as specified under Section 10211 of the Public Resources Code and has similar purposes to preserve, is capable of managing the Easement, and protecting the mitigation of the impacts to agricultural lands and open space. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on the Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the Purpose for which it was created. All assignment and assumption agreements transferring the Easement shall be recorded in Santa Clara County within thirty (30) days.
- (b) If the Grantee should desire to assign or transfer this Easement, the Grantee must obtain written permission from the Landowner, which permission shall not be unreasonably withheld.
- (c) If the Grantee or its successors ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, the City, in consultation with the Landowner, shall identify and select an appropriate private or public entity to whom this Easement shall be transferred.

20. *Perpetual Duration and No Merger of Title.*

- (a) Pursuant to California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements, and California Government Code Section 65966 (a) that requires conservation easements to be perpetual when created to satisfy a local or state mitigation requirement; this Easement shall run with the land in perpetuity. Every

provision of this Easement that applies to the Landowner or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

- (b) No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to the Grantee, or its successors or assigns. It is the express intent of the parties that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by the Grantee or its successors or assigns.

21. *Transfer of Property Interest.*

- (a) Any time the Property itself, or any interest in it, is transferred by the Landowner to any third party, the Landowner shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Property or interest, and the document of conveyance shall expressly incorporate by reference this Easement. Any document conveying a lease of the Property shall expressly incorporate by reference this Easement. Failure of the Landowner to do so shall not impair the validity of this Easement or limit its enforceability in any way.
- (b) Prior to any sale, lease, license or other transfer of any interest in the Property, the Landowner shall inform the prospective transferee of this Easement and its terms and provide them with a copy of this Easement. Any such subsequent owners, lessees, licensees, or transferees shall succeed to and be bound by the terms of the Easement.

22. *Amendment of Easement.*

- (a) This Easement may be amended only with the written consent of the Landowner, the Grantee and the City of Morgan Hill. Any such amendment shall be consistent with the Purpose of this Easement and with the Grantee's easement amendment policies, and shall comply with all applicable laws, including Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with Section 815 et seq. of the California Civil Code, and the California Farmland Conservancy Program Act as codified in Section 10200 et seq. of the California Public Resources Code, and any regulations promulgated thereunder. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement, nor the status or rights of the Grantee under the terms of this Easement.
- (b) This Easement and any amendment to it shall be recorded in Santa Clara County.

23. *Termination of Easement and Eminent Domain.*

(a) Termination.

- (i) It is the intention of the parties that the Conservation Purpose of this Easement shall be carried out forever as provided in the Section 10211 of the California Public Resources Code, Section 815 et seq. of the California Civil Code and California Government Code Section 65966 (a). Pursuant to California Government Code Section 65966 (a), this Easement is established to satisfy a local or state mitigation requirement, and cannot be terminated pursuant to the administrative termination provision defined in Public Resources Code sections 10270 et seq.

Accordingly, Landowner expressly waives on behalf of Landowner and Landowner's successors and assigns all rights to terminate or extinguish this Easement, or request that this Easement be terminated or extinguished pursuant to the administrative termination provisions set forth in sections 10270 et. seq. of the Public Resources Code.

- (ii) If circumstances arise in the future that render all of the Purposes of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, on the initiative of the Grantee or the Landowner, but only by judicial proceedings in a court of competent jurisdiction. The Grantee shall give notice to the City of any prospective termination or extinguishment of this Easement not less than 60 business days before initiating such proceedings. The City may intervene in any such judicial proceedings to protect or retain this Easement.
- (iii) No inaction or silence by the Grantee shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use, or that agricultural use is no longer possible, is not reason for termination or extinguishment of this Easement so long as any of the Purposes of this Easement remains possible to accomplish. Other than pursuant to eminent domain or an involuntary acquisition for a necessary public use by public agency, corporation, or other entity or individual with the power of eminent domain (Acquiring Entity), no other voluntary or involuntary sale, exchange, conversion, transfer, assignment, lease, mortgage or other encumbrance, alienation or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate or extinguish the provisions of this Easement.
- (iv) Should all or part of the Property or any interest in it be proposed for acquisition for a necessary public use by an Acquiring Entity, the Landowner and the Grantee shall join in appropriate actions to recover the full value of the proposed acquisition and all incidental or direct damages

resulting from the proposed acquisition as well as all other payments to which they may be entitled by law (Compensation). The Acquiring Entity shall pay Compensation directly to the Landowner and the Grantee. The Compensation of such proceeding of the Landowner and the Grantee shall be divided in accordance with the proportionate values of the Landowner's and the Grantee's interests as specified in this Section 22(b), unless otherwise provided by applicable law.

- (v) If the Landowner receives notice, formal or informal, that any Acquiring Entity intends to exercise its power of eminent domain as to the Property or any portion thereof or any interest therein, Landowner shall promptly, and in any event in not less than fifteen (10) business days after receipt of such notice, give written notice to the Grantee, and the City of such receipt together with a copy of any and all communications related to such prospective eminent domain proceedings. The Landowner shall thereafter promptly provide to the Grantee and the City copies of all further communications related to such proceedings and cooperate with the Grantee and the City in responding to such proceedings.
- (vi) Acquisition of the Easement through the power of eminent domain is subject to the requirements of Section 10261 of the California Public Resources Code, the eminent domain laws of the State of California, including Section 1240.510 or Section 1240.610 of the Code of Civil Procedure, federal law, and this Easement. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven (7) years in the future (California Code of Civil Procedure section 1240.220). Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of the Grantee and the City. The Grantee shall have an opportunity to accompany the appraiser for the Acquiring Entity when the appraiser goes on the Property with Landowner.
- (vii) Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement and reimbursement shall be pro-rated. In this event, all relevant related documents shall be updated and re-recorded by the Grantee to reflect the modified easement area. Encumbrances junior to this Easement shall remain subordinate to the Easement as amended.

(b) Compensation.

- (i) The grant of this Easement gives rise to a property right immediately vested in Grantee.

- (ii) Compensation of the Grantee shall proceed as follows. The Easement and Grantee's property right therein shall have a value equal to the difference between the current fair market value of the Property unencumbered by this Easement and the current fair market value of the Property encumbered by this Easement, each as determined on or about the date of termination. The values shall be determined by an appraisal performed by an appraiser jointly selected by Grantor and Grantee. The cost of the appraisal shall be paid by Grantor. The appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. Nothing herein shall prevent Grantor or Grantee from having an appraisal prepared at its own expense.
- (iii) If the Grantee obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be distributed as set forth this Section 22(b).

24. Interpretation.

- (a) This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.
- (b) References to specific authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective.
- (c) No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

25. Notices.

Any notices to the Landowner and the Grantee required by this Easement shall be in writing and shall be personally delivered or sent by First-Class Mail to the following addresses, unless a party has been notified by the other of a change of address:

To the Landowner:

To the Grantee:

26. *The Landowner's Environmental Warranty.*

- (a) Nothing in this Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of the Landowner's activities on the Property, or otherwise to become an "owner" or "operator" with respect to the Property as those words are defined and used in environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any corresponding state and local statute or ordinance.
- (b) The Landowner warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property. Moreover, the Landowner hereby promises to defend and indemnify the Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws. The Landowner's indemnification obligation shall not be affected by any authorizations provided by the Grantee to the Landowner with respect to the Property or any restoration activities carried out by the Grantee at the Property; provided, however, that the Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by the Grantee.
- (c) "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or any other material defined and regulated by Environmental Laws.
- (d) The Landowner warrants that it shall remain in compliance with, all applicable Environmental Laws. The Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.
- (e) "Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct

(including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

- (f) If at any time after the effective date of this Easement there occurs a release, discharge or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Landowner agrees to take any steps that are required of the Landowner with respect thereto under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

27. The Landowner's Title Warranty; No Prior Conservation Easements.

The Landowner represents and warrants that it owns the entire fee simple interest in the Property, including the entire mineral estate except as otherwise expressly identified in this Easement, and hereby promises to defend this Easement against all claims that may be made against it.

Any and all financial liens or financial encumbrances with priority over this Easement existing as of the date of the recording of this Easement have been subordinated. Exhibit D (Prior Encumbrances) sets forth all prior encumbrances.

The Landowner represents and warrants that the Property is not subject to any other conservation easement whatsoever.

28. Granting Subsequent Easements, Interests in Land, or Use Restrictions.

- (a) With permission of the Grantee pursuant to Section 4, the Landowner may grant subsequent easements, including conservation easements, interests in land, or use restrictions on the Property. Under no circumstances shall the Grantee approve the granting of subsequent easements, interests in land, or use restrictions that might diminish or impair the agricultural productive capacity or open space character of the Property.
- (b) The Grantee's written approval shall be obtained at least thirty (30) days in advance of the Landowner's execution of any proposed subsequent easement, interests in land, or use restriction on the Property, and such subsequent easements, interests in land, and use restrictions shall make reference to and be subordinate to this Easement.

29. Severability.

If any term, provision, covenant, condition, or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of this Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

30. Entire Agreement.

This Easement, including the attached exhibits and the Baseline Report, is the final and complete expression of the agreement between the parties with respect to the subject matter contained herein. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superseded by this written instrument.

The exhibits attached to and included in this Easement are:

- Exhibit A - Legal Description
- Exhibit B - Vicinity Map
- Exhibit C - Agricultural Building Envelope and Existing Improvements
- Exhibit D - Prior Encumbrances

31. Acceptance.

As attested by the signature of its General Manager affixed hereto, as authorized by Grantee's Board of Directors, in exchange for consideration, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Agricultural Conservation Easement.

To Have and To Hold, this Deed of Agricultural Conservation Easement unto the Grantee, its successors and assigns, forever.

In Witness Whereof, the Landowner and the Grantee, intending to legally bind themselves, have set their hands on the date first written above.

LANDOWNER

[Landowner's Name].

By: _____

Name: _____

Title: _____

GRANTEE

By: _____

Name: _____

Title: _____

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 _____)

On _____ before me, _____, 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 _____

ACKNOWLEDGEMENT

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 _____)

On _____ before me, _____, 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 _____

Exhibit A
(Legal Description)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Exhibit B
(Vicinity Map)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Exhibit C
(Agricultural Building Envelope and Existing Improvements)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Exhibit D
(Prior Encumbrances)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: John Baty, Principal Planner/Development Services

APPROVED BY: City Manager

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

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive the first and second reading of Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance; and
3. Introduce Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Background/Purpose

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

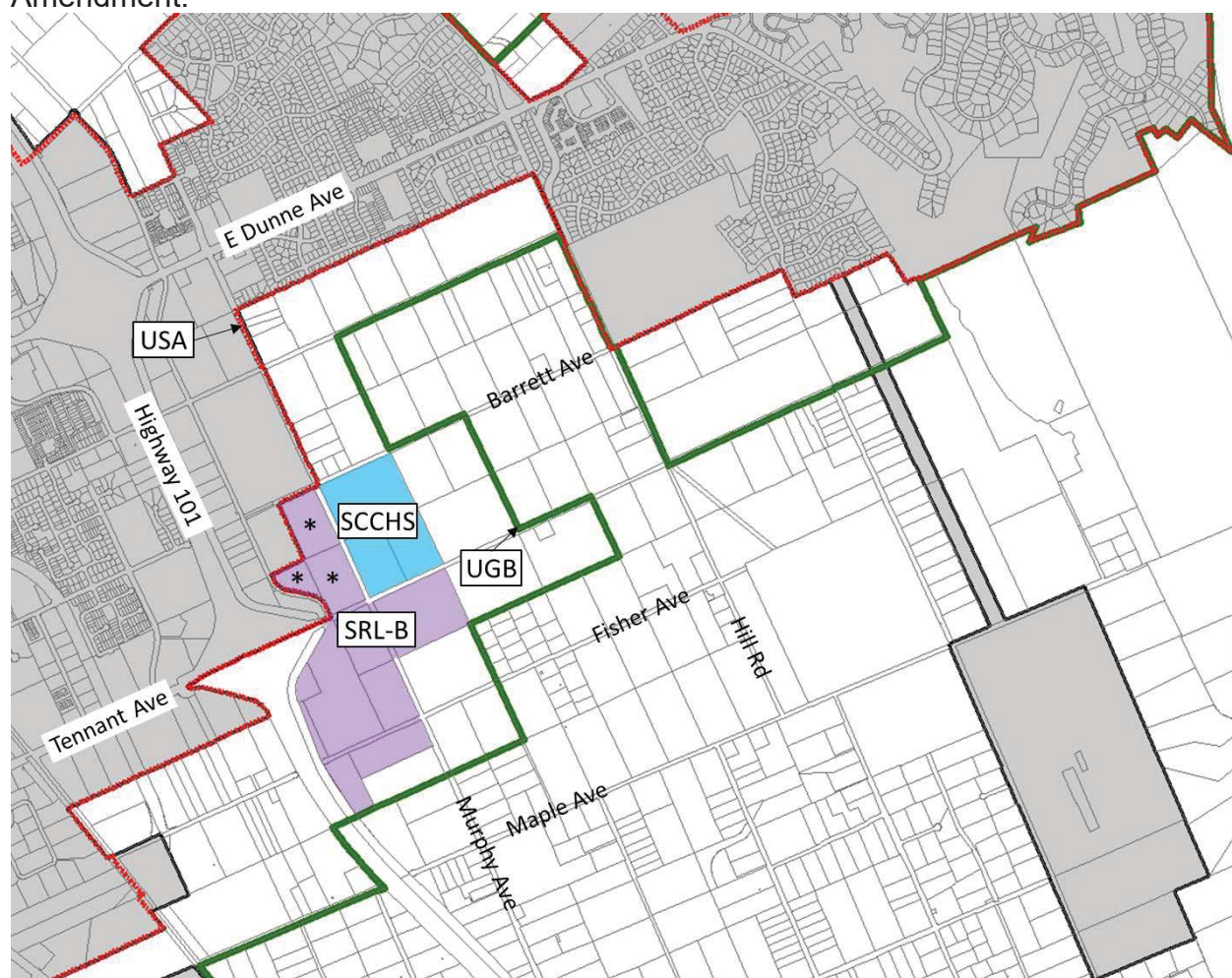
On August 5, 2015, the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B). These parcels,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

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

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

Rather than create a new zoning district (text amendment) and apply that new zoning district to the three specific parcels described above and shown on the map below (map amendment), staff recommends modifying the uses allowed in the existing SRL-B Zoning District (text amendment) that would then be applicable to all properties that are pre-zoned SRL-B. All properties, including the three specific parcels, that are pre-zoned SRL-B are currently located in the same general area (on both sides of Tennant Avenue east of Highway 101).

As described in the prior commission actions section below, at their October 9, 2018 meeting, the Planning Commission did not recommend approval of the proposed Zoning Amendment.



* = APNs 817-13-008, -011, and -037 / UGB = Urban Growth Boundary / USA = Urban Service Area

Project Description

The proposed Zoning Amendment consists of modifications to the uses allowed in the existing SRL-B Zoning District as shown in Exhibit A to the attached Draft Ordinance.

The following commercial uses would no longer be allowable:

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

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

Analysis

The City may approve Zoning Amendments only after finding that the proposed amendment is: consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and is internally consistent with other applicable provisions of the Zoning Code.

The amendment is consistent with the City of Morgan Hill's General Plan in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses that are allowed within the SRL General Plan Land Use designation. The proposed change would not create any non-conforming uses on the parcels within the existing zoning district.

The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City.

The proposed changes to the uses allowed within the SRL-B District do not affect internal consistency with other provisions of the Zoning Code.

COMMUNITY ENGAGEMENT: Inform

Notice of this hearing and the prior Planning Commission hearing was published in the newspaper and mailed notices were sent to potentially affected property owners.

ALTERNATIVE ACTIONS:

Direct staff to return with a Zoning Text Amendment to establish a new SRL Sports Recreation and Leisure Sub-zone (e.g., SRL-C) and a Zoning Map Amendment to apply that pre-zoning to APNs 817-13-008, -011, and -037. Like the existing SRL-B District, the SRL-C District would allow a range of lower intensity sports, recreation, leisure, agricultural and natural resources uses, but would not allow certain intensive commercial uses including: drive-through establishments; gas and service stations; hotels and motels; restaurants; retail that is sports-themed or sports/recreation serving;

day spas, barbershops, and hair salons; health and fitness clubs and indoor recreation centers oriented to local residents; and, indoor swimming pools.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The proposed Zoning Amendment was considered by the Planning Commission at their regular meeting held on October 9, 2018. The Planning Commission, on a 5-2 vote, did not recommend City Council approval of the proposed Zoning Amendment with the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant (SEQ) should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district (or a Planned Development (PD) Combining District) that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.
- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area

FISCAL AND RESOURCE IMPACT:

Not applicable.

CEQA (California Environmental Quality Act):

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

ORDINANCE NO. 2290, NEW SERIES

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

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

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

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

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

WHEREAS, rather than create a new zoning district and apply that new zoning district to three specific existing SRL-B pre-zoned parcels, staff advised that the desired modifications to the uses allowed in the existing SRL-B Zoning District be applicable to all properties currently pre-zoned SRL-B, which all exist in the same general area as the three specific parcels; and

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

WHEREAS, the SRL-B district will continue to not allow new residential land uses with the exception that one single-family detached dwelling on a legal lot of record established in the

County prior to August 1, 2014 remains a permitted use; and

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

WHEREAS, the City may approve Zoning Amendments only after finding that the proposed amendment is consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and, is internally consistent with other applicable provisions of the Zoning Code; and

WHEREAS, the Zoning Code Text Amendment complies with the City's Morgan Hill 2035 General Plan as required by Government Code Section 65860, in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses allowed within the SRL General Plan Land Use designation; and

WHEREAS, the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City; and

WHEREAS, the Zoning Amendment, was considered by the Planning Commission at their regular meeting of October 9, 2018 at which time the Planning Commission on a 5-2 vote did not recommended City Council approval of application ZA2018-0005: City of Morgan Hill for the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district or a Planned Development (PD) Combining District that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.

- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area.; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The Zoning Amendment is consistent with the Morgan Hill 2035 General Plan.

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

SECTION 3 The Zoning Amendment will be internally consistent with other applicable provisions of the Zoning Code as provided in Section 18.114.060.

SECTION 4. The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).

SECTION 5. The City Council hereby amends Title 18 – Zoning, Division I Zoning Code, Part 2 Zoning Districts, Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts to modify the uses allowed in the SRL-B – Sports Recreation and Leisure Sub-zone B Zoning District, of the Morgan Hill Municipal Code (File No. ZA2018-0005: City of Morgan Hill) as shown in the attached Exhibit A, incorporated herein by reference.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 24th DAY OF OCTOBER 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF NOVEMBER 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2290, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 7th day of November 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

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

Sections:

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

18.28.020 – Land Use Regulations

18.28.030 – Development Standards

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

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

18.28.020 –Land Use Regulations

A. Open Space and Public Facility Zones.

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

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

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

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

Notes:

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

- D. Additional Permits.** In addition to permits identified in Tables 18.28-1 and 18.28-2, development projects in the open space, public, and recreation zoning districts may also require a Design Permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60. (Historic Resources).
- E. Hillside Combining District.** Development on site with an average slope of 10 percent or greater are subject to the requirements of Section 18.30.040 (Hillside Combining District).

18.28.030 Development Standards

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

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

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

Notes:

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

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

- B. Performance Standards in OS Zoning District.** The following standards apply to all development and land uses in the OS zoning district.
- Stormwater Runoff.** In addition to requirements in Chapter 18.140 (Post Construction Stormwater Pollution Prevention), development shall comply with the following standards:
 - Permanent vegetation and improvements capable of carrying stormwater runoff in a safe manner shall be installed to the extent possible before the vegetative cover is removed from the area.

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

May 11, 2016

To Whom It May Concern:

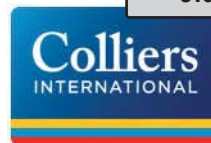
RE: Vacant Industrial/Commercial Properties in Morgan Hill

It is my understanding that the LAFCO Commission and staff, at their March 2016 hearing, encouraged the City of Morgan Hill to change their land use strategy on some of their vacant industrial and commercial sites. I understand further that the Commission specifically denied an “option” to approve a proposed 38-acre Catholic High School because the Commission felt the high school should be located on a site within the City’s vacant commercial or industrial properties.

For the past 25 years I (working for Colliers International) have been one of the most active real estate brokers of industrial and commercial property in south Santa Clara County. I represent currently large, multi-parcel business parks as well as large-to-small individual parcels and industrial buildings in Morgan Hill and Gilroy.

As a professional who is active in this South County market, I think it is short-sighted and impractical to redirect these vacant sites to future uses as schools or baseball fields. The current vacant supply of industrial and commercially-zoned properties is part of the normal business cycle. In the early-to-mid 1990’s Morgan Hill started to realize its goal of having a balanced community with both jobs and housing. It did so with the creation of several attractive business parks. The new business parks were successful in attracting a number of new companies. In so doing, Morgan Hill began to balance its housing supply, which in prior years primarily served central and north Santa Clara County employment. The period between 1995 to about 2001 accounted for much of its new employment, on roughly 200 acres. Shortly thereafter all of Silicon Valley went through two significant economic downturns and Morgan Hill experienced little new industrial/office building. Finally, the overall market started to turn and the vacant sites are positioned for expansions or new companies.

Some of the current vacant parcels are being held specifically for expansion of the adjoining companies. A number of the vacant parcels are within special assessment finance districts, whose property-owners support the bonds used for the public improvements. These current property owners are relying on similar industrial or office neighbors for financial stability. They will resist potential conflicts from adjacent schools or playfields and unexpected safety or environmental regulations normally associated with such public uses.



May 11, 2016

Page 2 of 2

There are no remaining vacant 40-acre industrial/commercial sites in Morgan Hill – whether as individual or consolidated parcels. I represent two of Morgan Hill’s largest consolidated sites, both of which are located in Morgan Hill Ranch, a business park I have been associated with for over 20 years. Neither of these two sites is large enough for a high school nor are they well suited for such a use. The largest site (33-net acre/36.5 gross acres) is located at the southwest corner of Butterfield Boulevard and Jarvis Drive and is being actively marketed by the property owner for industrial development. The site’s current configuration is a result of a 2015 rezoning of an additional 19.5 gross acres from industrial to residential. This recent rezoning was opposed by some of the current business park companies. In making this rezoning, both the property owner and the Morgan Hill City Council committed that there would be no further industrial parcel reductions on the site.

The second Morgan Hill Ranch site I represent is a 20-acre commercial site and too small for a 40-acre high school. This site (3 contiguous parcels) is located at Cochrane Road and Butterfield and it now has a purchase contract of sale pending. Therefore, it is no longer available.

In summary, I can envision no circumstances under which either of these two larger sites would be available for a high school. (Of course, the various smaller (less than 5-10 acres) vacant industrial/commercial sites scattered throughout the City do not lend themselves for larger-scaled uses such as schools or playfields.) Therefore, the LAFCo proposal would be unworkable.

I would be pleased to provide additional information should it be helpful.

Sincerely,

COLLIERS INTERNATIONAL

A handwritten signature in black ink, appearing to read "Jeff Barnes", written over a white background.

Jeff Barnes
Executive Vice President
+ 1 408 842 7000
jeff.barnes@colliers.com
CA License No. 00862186

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Anthony Eulo, Program Administrator

APPROVED BY: City Manager

UPDATE ON AGRICULTURAL PRESERVATION STRATEGY AND POTENTIAL RELATED LAND USE CONSIDERATIONS

RECOMMENDATION(S)

1. Accept report on the City's Conservation Strategy; and
2. Provide policy direction to staff.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

POLICY CONSIDERATIONS:

1. Should the City consider contracting the City's current Urban Growth Boundary?
2. Should the City convert the property purchased for ballfields on Tennant Avenue from a recreational use to an agricultural use?

REPORT NARRATIVE:

The City of Morgan Hill has a long, successful history of preserving open space in the general Morgan Hill environs. With much of the hillside areas preserved via ownership, easements, or regulation, the City has been steadily shifting toward the preservation of key agricultural properties since the turn of the century. The purpose of this report is to provide the Council and the community with an update on the City's current agricultural protection strategy and to get the Council's direction on some key policy questions.

Agricultural Strategy

With the Council's adoption of the City's *Agricultural Lands Preservation Program* in 2014, the City was officially in the business of actively preserving agricultural lands in the Morgan Hill Priority Conservation Area (MHPCA) – not just on the surrounding hills and open space areas. This seminal program remains on the forefront of agricultural discussions in the County and the City's follow-up implementation actions have placed it at the head of the pack amongst Santa Clara County cities. Actions taken since 2014 include:

- Adopted an Agricultural Mitigation ordinance that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;

- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and identify potential and negotiate conservation easements;
- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development;
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal and allocated over \$1 million in funding;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the City's Agricultural Conservation Priority Areas and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

As described in the attached Conservation Strategy, the City plans the following activities in the coming months:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue;
- Collect mitigation fees or accompanying preservation easements for projects developed on agricultural lands;
- Begin to implement a Transfer of Development Credit program, as enacted by Measure S, to raise additional funding for agricultural preservation; and

- Identify additional parcels in the City's Priority Area that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

With all of the above planned activities, the City can expand its preserved acreage substantially in the coming years. However, some members of the community and others in Santa Clara County argue that the City can do more to preserve agriculture.

Policy Questions

Should the Urban Growth Boundary be contracted?

The City's current Urban Growth Boundary (UGB) is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur and includes land that is currently in agricultural production. By contracting the UGB, the City could signal that urban development in those agricultural production areas is not part of the City's long-term growth plans, which could reduce property values and increase the chance that the land will remain in agricultural production. If the Council wants to consider such a contraction, further direction on the size of the contraction and its associated timing is needed in order to enable staff to move forward.

This is a multifaceted policy question without a clear "science-based" answer. While it would seem that contracting the UGB could only help, not hurt, agricultural preservation efforts, it is also true that 58% of the agricultural land lost in the past two decades has been due to rural development in the County – not urban expansion. Given this statistic, one could argue, as the City unsuccessfully did in the past, that annexing the land into the City could be the best approach to preserving the majority of the land for agricultural purposes as the City could strategically allow some land to develop in order to permanently protect remaining lands. In the absence of the placement of a permanent conservation easement on a property, it remains at risk for development as a rural estate or other allowed use that is consistent with County zoning. In addition, the State's current housing crisis and the threat of "forced urbanization" through legislation only adds to the risk of agricultural land conversion on land that is not permanently preserved with an easement. Nonetheless, it is undeniable that contracting the UGB will reduce the potential for agricultural lands to be lost as a result of the urban expansion within the City.

If the Council is interested in contracting the UGB, staff will perform the necessary analyses and bring back an item for Council consideration detailing optional approaches.

Should the City consider placing an agricultural preservation easement on the ballfield property?

The 26-acre property that the City purchased on the southwest corner of Condit and Tennant is within the area of the UGB that would be considered for contraction. Since the City has long been working on a site for ballfields and both the baseball and softball

community are looking forward to the development of a ballfield site, vacating plans for the existing site only makes sense if an alternate site can be identified. Staff has reviewed opportunities within the City and it is highly unlikely that a site within the City will be available and within a price range near what was paid for the current site. A scenario may be possible where a smaller land acquisition tied with a shared-use agreement with the Saint John XXIII College Preparatory High School involving lands currently proposed to be annexed to the City could meet the needs of the community for ball fields. It should also be noted that the existing Ball Field site provides buy back rights to the former property owner for a small portion of the site for future commercial use if eventually annexed, which would need to be addressed. The freeway adjacency for this commercial along with the sports tourism benefits of another large recreation facility could provide future economic development benefits that may not be obtained if the site is converted.

If this property is retracted from the UGB, it is no longer appropriate or legal for the park impact funding to remain on the property and the park impact fund would need to be reimbursed for the purchase. One solution would be to place an agricultural easement on the property and then resell the land to a farmer or other entity interested in owning agricultural land. Since the City paid \$238,000 per acre for the land, this would be a very expensive agricultural conservation easement. The actual costs of the easement would not be known until the land is resold. In this scenario, the City would also solicit funding from the Santa Clara Valley Water District to use the land as a special “stormwater infiltration basin” that could accept local rainwater and hold it until it percolates into the groundwater aquifer.

If the Council is interested in repurposing the ballfield property, staff will perform the necessary analyses and bring back an item for Council consideration.

COMMUNITY ENGAGEMENT: Inform

As this report is requesting direction from the Council on potential future actions, an extensive community engagement effort was not implemented in advance. However, the City directly informed landowners in the area, via a letter, indicating that the Council may be considering changes to the land use policies affecting their property during tonight’s meeting.

ALTERNATIVE ACTIONS:

Not Applicable – this report involves accepting a report on current activities and providing policy direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On November 5, 2014, the City’s Agricultural Lands Preservation Program was adopted.
- On August 5, 2015, Agricultural Lands Mitigation Ordinance was adopted.
- On July 27, 2016, the current UGB was adopted as part of the City’s General Plan Update process.

FISCAL AND RESOURCE IMPACT:

None at this time, though actions potentially taken as a result of Council direction will have fiscal impacts. These actions will return to the Council and the fiscal impacts will be analyzed and presented at that time.

CEQA (California Environmental Quality Act):

Not a Project

Both the acceptance of a status report on an existing program and directing staff to conduct analyses and bring back reports for future Council action do not constitute projects under the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Ag Conservation Strategy
2. 22 Supplement 1

Morgan Hill's Conservation Strategy



Introduction

Morgan Hill is located within the southern part of Santa Clara County, 10 miles south of San Jose and 10 miles north of Gilroy. Morgan Hill is nestled between the Diablo Mountain Range and the Santa Cruz Mountains, and has a rich history of farming and manufacturing. While Morgan Hill is a part of the Silicon Valley in its business mix, rich entrepreneurial spirit and thirst for innovation, the city's natural geography and open space make it a unique place. The City has made many thoughtful decisions on open space preservation, water and agricultural land conservation, and environmental stewardship.

This whitepaper on Morgan Hill's Conservation Strategy outlines the City's approach to ensuring future open space and agriculture lands remain in South Santa Clara County. The white paper is broken down into policy and plan adoptions, tools that support those policies and plans, and finally challenges and key considerations on environmental stewardship for Morgan Hill.

Policies and Plan Adoptions

A. Agriculture Preservation

As community interest in preserving the agricultural open space areas on the valley floor grew and national interest in farmland preservation increased, the City spent several years evaluating strategies for protecting the agricultural lands surrounding the community. The culmination of this work, the City's *Agricultural Lands Preservation Program* (Program), was adopted by the City Council on November 5, 2014 ([Exhibit 1](#)). In concert with the Morgan Hill [2035 General Plan Update](#) ([Exhibit 2](#)), the City formally identified two Priority Conservation Areas (MHPCA) located adjacent to the City boundary, as the primary focus of future agricultural conservation easement acquisition. While located outside of City limits but within the City's Sphere of Influence, these lands had been the most significantly impacted by development pressure and conversion, and of growing concern to the preservation efforts.

In the years since the Program and General Plan update were adopted, the City has implemented the Program by engaging in the following tasks:

- Adopted an Agricultural Mitigation ordinance ([Exhibit 3](#)) that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;
- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and negotiate conservation easements;

Morgan Hill's Conservation Strategy

- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the MHPCA and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

To date, the outcomes from the Program have resulted in:

- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development; and
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal, and allocated over \$1 million in funding.

In the coming months, the City of Morgan Hill plans the following:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue; and
- Identify additional parcels in the MHPCA that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

Morgan Hill's Conservation Strategy

B. Conservation of Open Space

The City of Morgan Hill has a long history of preserving open space in the important hillside areas that surround the community. Using a combination of purchases, dedications, regulations, incentives, and open space easements, nearly all of the important hillside areas (totaling more than 595 acres) surrounding the community are restricted from further development.

The City first established a Transfer of Development Credit (TDC) program in the Municipal Code in 1981 ([Exhibit 4](#)). A Transferable Development Credit allows the transfer of development credits from areas where development is restricted such as hillsides to sites in other areas of the City more appropriate for development. TDCs were originally created to help implement the City's hillside preservation activities. TDC acquisition is tied to the City development process where development allotments are competitively awarded based upon a project's public benefit contribution, including pledges to purchase TDCs. In 2001, there were no TDCs available in the market. As a result, the City created a TDC in-lieu fee which allowed projects pledging acquisition of TDC's to incrementally pay an in-lieu fee for that pledge, collected at the final of the building permit.

Morgan Hill Program Implementation Tools

A. Morgan Hill Priority Conservation Area (MHPCA)

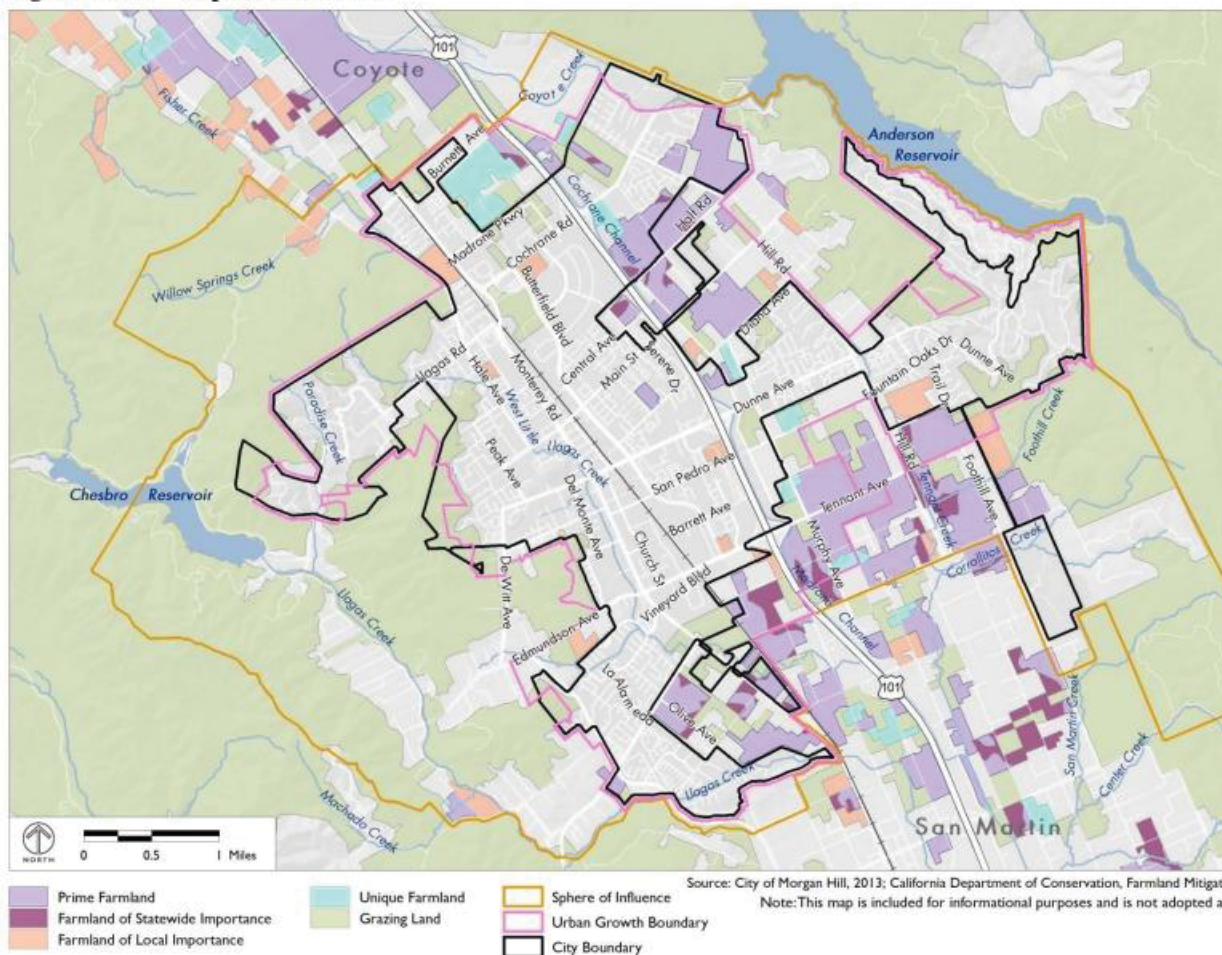
In Figure 1, the City's Priority Conservation Areas are focused in the areas shown in purple east of highway 101. These areas recognize the important farmland consistent with the subareas maps for Live Oak/Half Road and San Martin/Tennant in the recently adopted *Santa Clara Valley Agricultural Plan: Investing in our Working Lands for Regional Resilience* and the agriculture priority area shown in the City's Agricultural Mitigation Program. The MHPCA focuses on agri-hood development in the Live Oak/Half Road area that will benefit from Conservation Easements and larger agricultural land preservation in the areas south of Tennant.

Like most cities in Santa Clara County, Morgan Hill was developed on agricultural land. Agriculture is still an important asset to the region, as evident by surrounding vineyards, which boost the region's economy and tourism industry. However, local farmers continually describe constraints on the continued long-term viability of agriculture within the City's Urban Growth Boundary. Existing orchards and vineyards are experiencing urban encroachment that adversely affects the efficiency of farming operations due to restrictions on pesticide use, noise and dust complaints, trespass, vandalism, and theft. The goal of Morgan Hill's Priority Conservation Areas is to create larger areas of land permanently dedicated for agricultural uses.

Morgan Hill's Conservation Strategy

Figure 1: 9,848 acres of Agricultural Lands within Morgan Hill's Sphere of Influence

Figure NRE-2 Important Farmland



Designated farmlands within Morgan Hill Sphere of Influence

Farmland Classification	Within City Limit (Acres)	Total (Acres)
Prime Farmland	314	1,386
Farmland of Statewide Importance	22	196
Farmland of Local Importance	153	346
Unique Farmland	30	234
Grazing Land	1,265	7,686

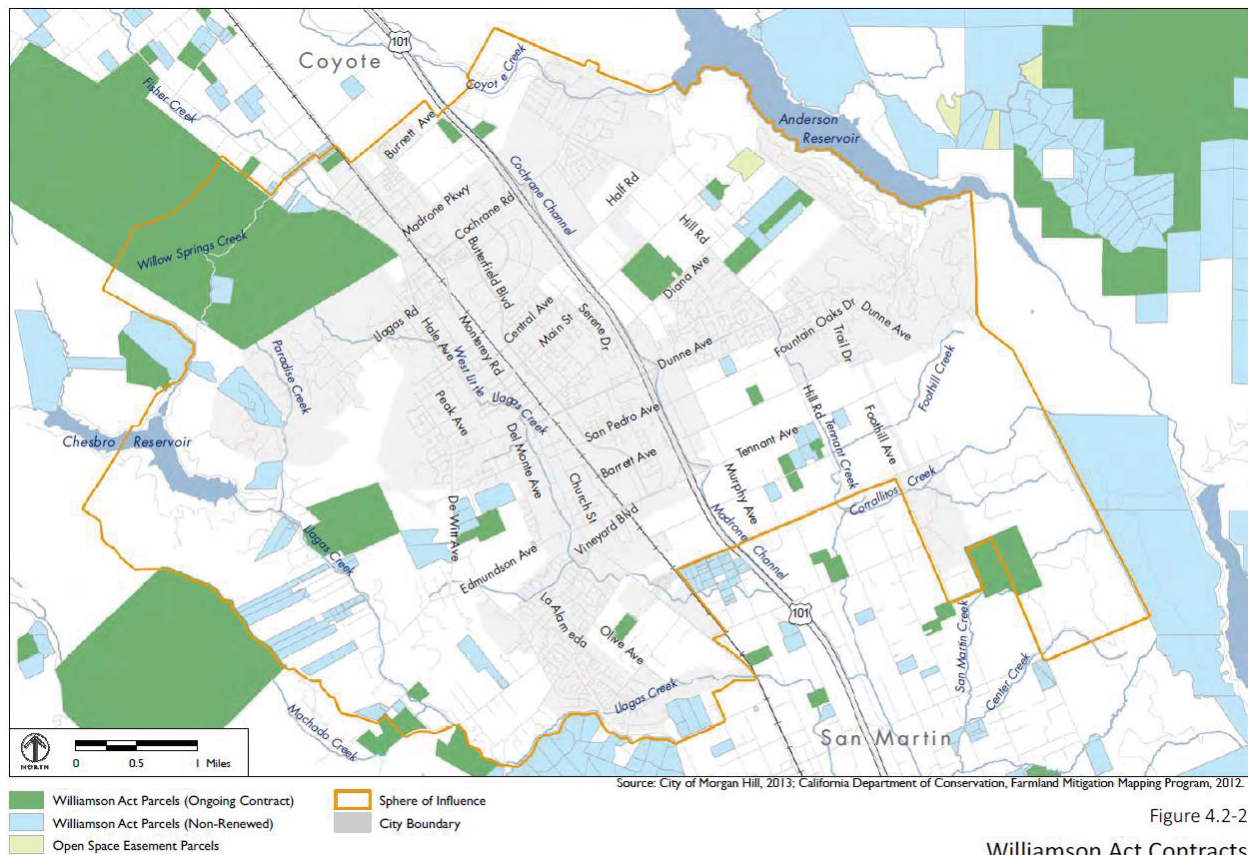
Source: Source: Department of Conservation, Farmland Mapping and Monitoring Program GIS data, 2012.

Morgan Hill's Conservation Strategy

B. Williamson Act Contracts

The Williamson Act is one of the most widely used agricultural easement programs in the City of Morgan Hill, Santa Clara County, and the state of California. These areas are shown in the Figure 2. There are 1,703 acres of land that are under on-going Williamson Act contracts that are within the Morgan Hill's Sphere of Influence.

Figure 2. 1,703 acres of Williamson Act parcels in Morgan Hill's Sphere of Influence.



C. Approval of Measure S

Through recommendations contained within the Morgan Hill 2035 General Plan update, City voters approved Measure S, a new residential growth measure, to guide the pacing and total population of the community to mirror General Plan aspirations. In that voter approved measure, the community approved 300 Agricultural Preservation set-aside allotments, at the rate of up to 35 per year, to encourage and promote agricultural preservation in the Morgan Hill Priority Conservation Areas (MHPCA). The set-a-sides translate into Transfers of Development Credit (TDC) ([Exhibit 4](#)), whereby a developer purchases the TDC from the City, and receives the right to build "out-side" of the City's Residential Development Control (RDCS) process. The dollars raised through the sale

Morgan Hill's Conservation Strategy

of the TDC's are added to the City's Open Space/Agricultural Conservation fund to be utilized for the purchase of permanent agricultural easements in one of two MHPCA's.

Other important components of Measure S.

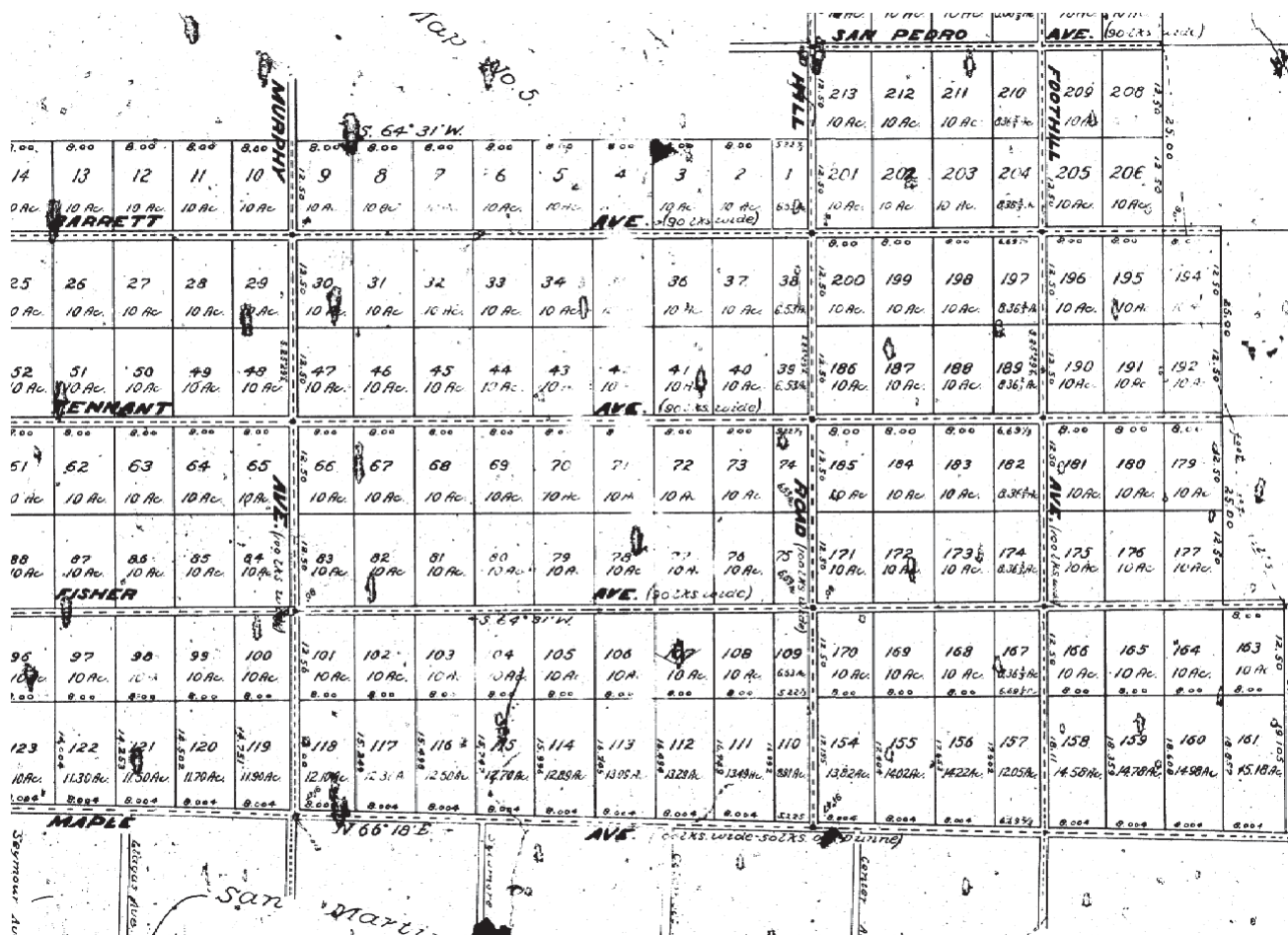
1. A minimum one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land change to a non-agricultural use.
2. Stay ahead provision – conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands.
3. Public benefit financial contributions/pledges made through Residential Development Control System (RDCS) can be used to purchase conservation easements.

Challenges and Key Considerations on Environmental Stewardship

- The majority of remaining farmland in Santa Clara County, including in the MHPCA, is unincorporated and therefore limited land use control.
- The soil in the Morgan Hill area is not highly-valued by farmers for its agricultural productivity. Many of the soils found nearby are considered marginal at best.
- Santa Clara County A-20ac Ag. Zoning requires 20-acre minimum lots, but there are no 20-acre lots that exist in the MHPCA today. Figure 3, Catherine Dunne Ranch Map No. 7 approved in 1905 established 10-acre lots. These lots are small enough to be easily converted into ranchettes. This creates a situation where the "highest and best" economic use of the land is residential estates - not agriculture and farmers continue to face pressure to sell land for nonagricultural development.
- Farming land near nonagricultural uses (homes, schools) is and has become increasingly challenging (dust, noise, traffic, etc.).
- Existing County General Plan and Zoning regulations haven't stopped the patchwork conversion of agricultural lands in the Morgan Hill Priority Conservation Area.

Morgan Hill's Conservation Strategy

Figure 3: Catherine Dunne Ranch Map No. 7



- Subsequent subdivision maps approved smaller lots, some as small as 1-acre. Many of these smaller lots are developed with single-family homes. Some undeveloped subdivisions are not apparent when looking at an aerial, but they include smaller legal lots of record that could be developed with uses that are not agricultural (typically single-family homes) (Figure 4)



Morgan Hill's Conservation Strategy

- In general, land in the County, including agricultural land is expensive, especially when compared with agricultural land outside of the County. Agricultural land in Morgan Hill's SOI, including the Morgan Hill Priority Conservation Area, is even more expensive (\$100,000 to ~\$1million/ac), which means Agricultural Conservation Easements in Morgan Hill's Sphere of Influence (SOI) are also expensive (\$50,000-\$100,000/ac).
- There aren't many available funding sources to support Agricultural Preservation. Where there is funding, it's difficult to compete with funding requests for larger/cheaper lands in other areas. According to a 2017 State Conservation Program funding report, the value of Agricultural Conservation Easements ranged from \$700/acre (Winters in Yolo Co.) to \$7,196/acre (Cotati in Sonoma Co.) to \$23,404/acre (Marina in Monterey Co.).
- For decades Morgan Hill has seen agricultural lands around its boundaries converted to nonagricultural uses¹. The adoption in 2015 of the City's Agricultural Preservation Program and subsequent adoption in 2016 of the Morgan Hill 2035 General Plan, provide a practical approach for how the City can help permanently preserve productive farmland in Santa Clara County, particularly within the City's SOI with a high priority placed on preservation of agricultural lands in the Morgan Hill Priority Conservation Area.

Conclusion

Through various policy mechanisms and tools, the City of Morgan Hill has taken a proactive role in establishing conservation efforts in South Santa Clara County. By adopting land use policies and funding mechanisms, Morgan Hill is working diligently to conserve agricultural land for open space, create opportunities for locally-grown food to be marketed and consumed locally, and preserve open areas that contribute to a unique cultural environment.

¹ 58% of farmland converted in Santa Clara County since 1994 was due to rural development in rural unincorporated areas. *Santa Clara Valley Agricultural Plan*, Page 26.

Exhibit 1: Agricultural Lands Preservation Program**City of Morgan Hill****Agricultural Lands Preservation Program****Adopted: November 5, 2014****Purpose**

The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill Sphere of Influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. To be effective for Morgan Hill, the agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.

The Morgan Hill Agricultural Lands Preservation Program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill Sphere of Influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting General Plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the City's Southeast Quadrant (SEQ) area, but also encourage preservation efforts throughout the City's SOI.

Definitions

Agricultural Land

For “Agricultural Land” that requires off-setting preservation/mitigation under this Agricultural Lands Preservation Program, Agricultural Land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that has not been subsequently developed for non-Agricultural Use prior to the adoption of this Program or subsequently developed per the provisions of this Program. Lands identified as Grazing Land are not subject to the offsetting preservation/mitigation requirements set forth in this Policy. The FMMP classifications reflect a finding by the California Department of Conservation of agricultural quality, which is based on a combination of soil quality as measured by the soil surveys of the United States Department of Agriculture (USDA) Natural Resource Conservation Service, together with recent agricultural-usage history.

Agricultural and grazing land definitions, as defined by the Department of Conservation mapping classifications include:

1. **Prime Farmland.** Prime farmland is land with “the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
2. **Unique Farmland.** Unique farmland is “farmland similar to prime farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
3. **Farmland of Statewide Importance.** Farmland of statewide importance is “farmland of lesser quality soils used for the production of the state’s leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.”
4. **Farmland of Local Importance.** Farmland of local importance is farmland identified as “land of importance to the local agricultural economy as determined by each county’s board of supervisors and a local advisory committee.”
5. **Grazing Land.** Grazing land, defined as “land on which the existing vegetation is suited to the grazing of livestock” is not included in this study’s use of the term Agricultural Land and is not considered as core to the proposed preservation program.

Agricultural Conservation Easement

An Agricultural Conservation Easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive Agricultural Use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting

development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.

Agricultural Mitigation Land

Agricultural Land (as defined above) that is encumbered by an Agricultural Conservation Easement or other farmland conservation mechanism acceptable to the City. If the Agricultural Land is also being used to meet Open Agricultural Land preservation goals, the easement or other mechanism must ensure that at least 90% of any property being used as Agricultural Mitigation Land remain as open space free of structures or other impervious surfaces so that it retains its value as Agricultural Land under the FMMP criteria. Uses allowed on Agricultural Mitigation Land shall be consistent with the Agricultural Use described below and pertaining land use regulations, and as further defined in the applicable Agricultural Conservation Easement or other farmland conservation mechanism.

Agricultural Priority Area

The Agricultural Priority Area is an area within the City's Southeast Quadrant (SEQ) that has been identified as the City's first priority for the acquisition of agricultural land conservation easements. This area was selected because it is the area within the Morgan Hill SOI where agriculture is considered to be the most viable over the long term. Conservation within this area will also contribute toward the City's goals of creating an open space buffer along its southern edge. Designating the Agricultural Priority Area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The Agricultural Priority Area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.

Agricultural Use

Agricultural Use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying Agricultural Use activities may include:

1. **Agricultural Processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
2. **Agriculturally Related Entertainment & Commercial Uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site Agricultural Uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
3. **Agricultural Research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.

4. Dairy: Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.
5. Feed Lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field Research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom Farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and Egg Farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife Refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to Type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the Type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.
12. Ancillary Uses: Uses conducted subordinate to the primary Agricultural Use being conducted upon a property and which do not occupy in total more than 10% of the property, including:
 - a) Direct sales of locally produced agricultural products.
 - b) One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c) Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d) Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

Agricultural Preservation In-lieu Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying

Entity and used by either agency solely for the purpose of acquiring Agricultural Conservation Easements. The Program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the City's ability to preserve open space Agricultural Lands within the Agricultural Priority Area.

Agricultural Lands Preservation Program Surcharge Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by either agency for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the easements. The Surcharge fee is either incorporated into the overall In-lieu Fee for projects that make use of this option, or charged directly to projects which independently establish an Agricultural Conservation Easement.

Open Agricultural Land

Open Agricultural Land is defined as Agricultural Land that is at least 90% free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other Agricultural Use. The City may make use of open space funding sources to acquire Agricultural Conservation Easements where that Easement specifies that the encumbered property be maintained as Open Agricultural Land. Because an Open Agricultural Land Conservation Easement would potentially reduce the economic potential for future agricultural uses, it would normally be more expensive to acquire than a standard Agricultural Conservation Easement. The City may however determine that at some locations an Open Agricultural Land Conservation Easement would better implement the City's land use objectives by preserving open space as well as agricultural activity.

Qualifying Entity

A government or nonprofit entity operating in Morgan Hill and/or the surrounding portions of Santa Clara County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The City favors the use of a local government or non-profit agricultural conservation entity, a statewide government or non-profit agricultural conservation entity or entities, or the regional branch of a nationally recognized non-profit agricultural conservation entity as the easement holder. The Qualifying Entity should have appropriate representation and/or participation from the farming community. The City will consider the following criteria when considering the non-profit agricultural conservation entity for these purposes, and when monitoring the performance of Qualifying Entities over time:

1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization whose principal purpose is holding and administering Agricultural Conservation Easements for the purposes of conserving and maintaining lands in agricultural production;
2. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
3. Whether the entity has a history of holding and administering easements in Santa Clara County for the foregoing purposes;
4. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards and Practices; and
5. Any other information that the City of Morgan Hill finds relevant under the circumstances.

Policies

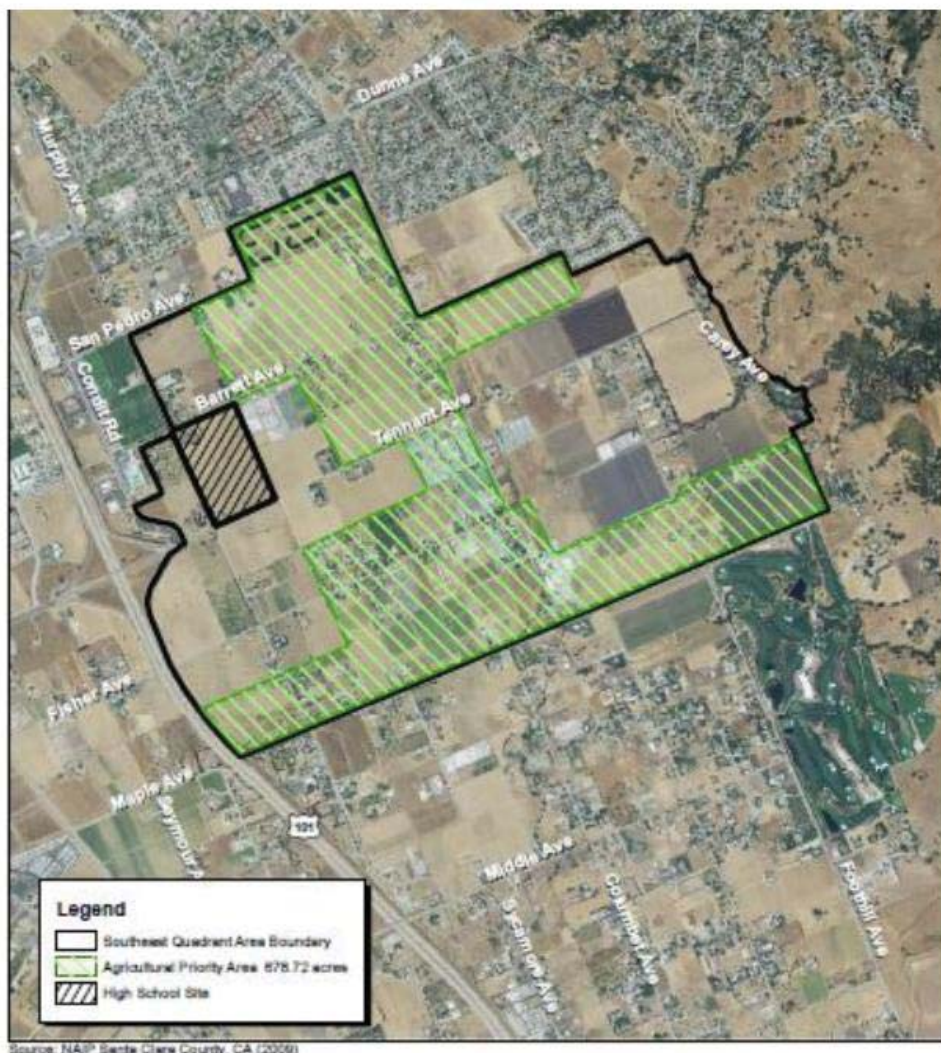
The City will implement the Program in accordance with the following policies:

1. **Agricultural Conservation Easements.** To achieve the Agricultural Lands Preservation Program objectives, activities converting Agricultural Land, such as new private or public development projects, are required to offset the conversion by directly preserving Agricultural Mitigation Land in perpetuity. Agricultural lands will be preserved through the recordation of permanent Agricultural Conservation Easements, which may be directly established by the land developer, obtained by the City or a Non-profit as an intermediary, or established through a developer-initiated transfer of development rights recorded within a development agreement. This offsetting preservation will serve as mitigation to satisfy the requirements for agricultural mitigation under the California Environmental Quality Act (CEQA) as well as to support the continuation of agriculture in and around the City of Morgan Hill consistent with community preferences and City policies.
2. **Alternate Mitigation.** The primary means of mitigation under this program are the direct recordation of conservation easements or the payment of in lieu fees which will be applied toward conservation easements. As an alternative, agricultural mitigation through Planned Development Zoning and/or a Development Agreement is allowed only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, such alternative mitigation shall still be required to achieve a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement
3. **Applicability.** All new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of at least one acre of Agricultural Land (as defined above) will be required to mitigate loss of Agricultural Land per the provisions of this Policy. This includes projects within the existing City boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption of this Policy, including completion of the CEQA process, are not subject to this Policy unless specifically required as mitigation or a condition of project approval.
4. **Mitigation Ratio.** A minimum of one (1) acre of Agricultural Land (**1:1 mitigation ratio**) shall be preserved for each acre of Agricultural Land changed to a non-agricultural use. The required acreage of area to be protected through an Agricultural Conservation Easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.
5. **“Stay Ahead” Provision.** Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of Agricultural Lands. Development occurs with either the issuance of Grading Permit or Building Permits that would result in the loss of Agricultural Land. To meet this provision the City may utilize existing open space funding to establish Agricultural Conservation Easements, or individual projects may establish such easements in advance of development activity.

6. **Measurement of Affected Area.** Consistent with the Santa Clara Valley HCP/NCCP plan, the areas subject to agricultural mitigation requirements will be the developed footprint for properties with a General Plan land use designation of Open Space, Public Facilities, or SRL. These land use designations allow for and typically include a large portion of land reserved for “open space/open fields” that in the future could be put back into Agricultural Use. Areas proposed to be so reserved must have an aggregated area of at least 10 acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.
7. **Mitigation Mechanism.** Conversion of Agricultural Land will require off-setting acquisition and/or dedication of Agricultural Conservation Easements over approved Agricultural Mitigation Land, or payment to the City of the Agricultural Preservation In-lieu Fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the Agricultural Preservation In-lieu Fee, in either case developers are also required to pay an Agricultural Lands Preservation Program Surcharge Fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.
8. **Eligible Mitigation Lands.** In order to meet the goals of this Program, lands proposed to be used as agricultural mitigation shall conform to the above definitions for Agricultural Mitigation Land and/or Open Agricultural Land and shall meet the following criteria:
 - a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only;
 - b) The property is of adequate size, configuration and location to be viable for continued Agricultural Use;
 - c) The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing Agricultural Uses, and the water rights on the Agricultural Mitigation Land shall be protected in the Agricultural Conservation Easement;
 - d) Other considerations for appropriate conserved Agricultural Lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
 - e) The mitigation land shall be located within Santa Clara County; and
 - f) The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.
9. **Ineligible Mitigation Lands.** A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:
 - a) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or

- b) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the City or other public agency; or
- c) The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

10. **Agricultural Priority Area.** The Agricultural Priority Area within Morgan Hill's Southeast Quadrant, shown on the figure below, is the City's first priority geographic area for conservation. The Agricultural Priority Area encompasses approximately 650 acres of land. The City should use all available tools, including clustering of existing development rights within the SEQ, transfer of development rights (TDR) programs, collaborative land use planning with the County, partnering with local open space conservation agencies, and the use of available grant funding to achieve conservation within this area. Within the Agricultural Priority Area the City should focus on obtaining conservation easements first on land outside of the City's land use control, specifically focusing upon the sub-area located along the southern edge of the City's Sphere of Influence.



11. **Secondary Conservation Areas.** If it is not possible to obtain conservation easements within the Agricultural Priority Area, the City should obtain conservation easements within other areas within the Morgan Hill Sphere of Influence as the next priority. The City may also identify lands intended for conservation within these areas.
12. **Alternative Conservation Areas.** Only when conservation opportunities are not available within the Sphere of Influence will the City consider easements at other locations within the County. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'Eligible Mitigation Lands' above. Developers may independently establish an Agricultural Conservation Easement on Eligible Mitigation Lands within the County. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the Agricultural Lands Preservation Program Surcharge Fee .
13. **Agricultural Sustainability.** Prioritize acquisition of easements on land that is most viable for long-term agricultural use considering factors such as soil type, water supply and location. Promote agricultural uses within easement areas including the development of high-value crops which are compatible with an urban edge condition while also economically sustainable over the long-term.
14. **Responsibility for Easement Acquisition.** The City's preference is that developers pay the Agricultural Preservation In-lieu Fee so that conservation efforts will be focused within the Agricultural Priority Area and make use of funds from multiple sources. In such cases, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the In-lieu Fee and accompanying responsibility to a Qualifying Entity. However the City will need to be a party to easements obtained by the Qualifying Entity.
15. **Minimum Easement Size.** The minimum land area for an Agricultural Conservation Easement is 10 acres on a single parcel or on multiple adjoining parcels so that the easement area is contiguous. Developments providing less than 10 acres of agricultural mitigation land are thus required to pay the Agricultural Preservation In-lieu Fee on a per acre basis except that acquisition of Agricultural Conservation Easements of less than 10 acres may be allowed when located immediately adjacent to an existing Agricultural Conservation Easement area that when combined, exceeds 10 acres in size.
16. **Management and Monitoring Fee.** As with other agricultural mitigation/preservation programs, a number of responsibilities will come with holding the Agricultural Conservation Easements, including their management and monitoring. The developer will be required to pay a one-time per acre fee (Agricultural Lands Preservation Program Surcharge Fee) to cover the average cost of these activities along with administration of the program including any administrative costs of the Qualifying Entity. The City will establish the Surcharge Fee and monitor it periodically.
17. **Implementing Entity.** The City will hold the easements and collect management and monitoring fees until an alternative implementing entity (Qualifying Entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.
18. **Mitigation Timing and Implementation.** Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or

grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.

19. **Planned Developments / Development Agreements.** Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the City's SOI in which Agricultural Lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the Agricultural Priority Area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development agreement with the City specifying the terms of the agreement and the extraordinary benefits accruing to the City.
20. **Funding for Easements.** Given the City's policy objective of agricultural land preservation within the Morgan Hill Sphere of Influence and within the Southeast Quadrant in particular, it is anticipated that the City will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the City will use open space funds collected through administration of its Residential Development Control System (RDCS) to supplement the acquisition of conservation easements.
21. **Clustering of Development.** The City may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The City should allow such alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
22. **Educational Center.** Work with local property owners, non-profits, or other agencies to develop an agricultural educational center within the SEQ.

Implementation

Agricultural Conservation Easement Program

Agricultural conservation easements can be obtained via a number of different agricultural preservation tools through dedication, purchase, or donation. The City will focus its agricultural preservation efforts on in-perpetuity Agricultural Conservation Easements. These easements may be established by private developers either to directly off-set a specific project or as part of a transfer of development rights (provided that adequate restrictions are incorporated into the easement) or purchased by the City or Qualifying Entity as defined by this Policy (using either in-lieu fee monies or alternative revenue sources). The City has determined to focus its agricultural preservation efforts in the SEQ as the first priority area, then elsewhere within the Morgan Hill SOI as the second level of priority. This program will be implemented according to the following guidance:

6. Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management. Initially, the group responsible for managing mitigation funds and Agricultural Conservation Easements will be the City of Morgan Hill. However, it is the intent of the City to partner with an established organization or transfer the operational responsibilities for managing and maintaining the City's Agricultural Lands Preservation Program to a third party Qualifying Entity. The third party Qualifying Entity will need to include individuals with direct experience and knowledge of farming activities
7. Implementation of mitigation (whether via conservation easement or payment of fee) will be due prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.
8. The specific terms and acceptance of Agricultural Conservation Easements will be at the discretion of the City of Morgan Hill or Qualifying Entity.
9. Initially, the Agricultural Preservation In-Lieu Fee, including the Program Surcharge Fee, is anticipated to be approximately \$15,000 per acre (based upon the attached Nexus Study). The program will allow for annual adjustments to the fee based on an established index and changes in land values. The In-Lieu Fee should be based on the value of Agricultural Lands at the time of development and must be sufficient to ensure lands can be purchased to meet the City's adopted ratios.
10. The Agricultural Preservation In-Lieu Fee will only be used for the acquisition of Agricultural Conservation Easements. Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
11. The Agricultural Lands Preservation Program Surcharge Fee will be used for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of easements established through the Program.
12. The Agricultural Lands Preservation Program will allow for the use of the City's Open Space Fund for acquisition of Agricultural Conservation Easements. Agricultural Conservation Easements

acquired using Open Space funds must insure that the covered lands be protected as Open Agricultural Land.

13. It is the City's goal to acquire Agricultural Conservation Easements in the immediate future utilizing available Open Space Funds. Where possible, the City of Morgan Hill will partner with conservation entities for the acquisition of easement lands.
14. The following minimum requirements shall be incorporated into all Agricultural Conservation Easements or other instruments recorded to satisfy the requirements of the Agricultural Lands Preservation Program. Nothing in this section is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of the Agricultural Lands Preservation Program are achieved:
 - a) It is the intent of the City to transfer most, if not all, of the easements that are received from this program to a Qualifying Entity, as defined above, for the purpose of monitoring compliance with easement terms and taking any necessary enforcement and related actions.
 - b) All Agricultural Conservation Easements, or other farmland conservation mechanisms, shall be implemented through a legal instrument acceptable to City Council and the Qualifying Entity that will receive the easement, and signed by all owners with an interest in the mitigation land.
 - c) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land or that are otherwise inconsistent with the conservation purposes of this Agricultural Lands Preservation Program. The instrument shall protect the existing water rights and retain them with the Agricultural Mitigation Land; however, the instrument shall not preclude the limited transfer of water rights on a temporary basis (i.e., not to exceed two years in any ten-year period) to other Agricultural Uses within Santa Clara County, so long as sufficient water remains available to continue Agricultural Use of the mitigation land.
 - d) The instrument shall prohibit the presence of a residence, except an existing residence or construction of a comparable replacement for such a home or construction of a single new home of 3,000 square feet or less on a site that does not already include a residence provided that such residence is not located where it would interfere with agricultural activities. (Alternatively, a portion of the subject property of up to 1.5 acres in area may be excluded from the Agricultural Conservation Easement and developed with a single new home provided that no other home is located on the property).
 - e) Instruments that convey an interest in the mitigation land to a Qualifying Entity, shall name the City as a third party beneficiary with full enforcement rights.
 - f) Interests in Agricultural Mitigation Land shall be held in trust by a Qualifying Entity and/or the City in perpetuity. Except as provided below (g), the Qualifying Entity or the City shall not sell, lease, or convey any interest in Agricultural Mitigation Land which it acquires.

- g) The Agricultural Conservation Easement, or other conservation mechanism recorded pursuant to the Agricultural Lands Preservation Program, can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the Agricultural Mitigation Land is received and used or otherwise dedicated to acquire interests in other Agricultural Mitigation Land in Santa Clara County, as approved by the City and as provided for in this Program.
 - h) If any Qualifying Entity owning an interest in Agricultural Mitigation Land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City or other Qualifying Entity as acceptable and approved by the City.
 - i) The City may at its discretion terminate a relationship with a Qualifying Entity if that entity no longer satisfies the intent of this Program.
15. Utilize the City's Transfer Development Credit (TDC) program for agricultural preservation (Open Agriculture Land) in addition to the current goal of hillside preservation. The revenue comes from RDCS TDC In-Lieu fee paid by residential developers who do not purchase a TDC from a property owner.
16. Add Points to the Residential Development Control System (RDCS) scoring criteria that would be awarded to Projects that commit to support the Agriculture Preservation Program by paying a fee that could be used to pay for the residential development rights (TDR) or agriculture preservation easements for agricultural uses that could not meet the 90 percent open space requirement.

Clustering and Transfer of Development Rights

As opportunities arise, the City may utilize or develop additional methods of preserving agricultural lands through the land use entitlement process, including cooperatively working with property owners or developers to preserve agricultural lands through clustering or transfer of existing development rights. Such clustering or transferring can be implemented through the City's land use entitlement processes as described above. The City may also work with the County to develop a program that would allow transferring of development rights between the County and City in order to further preserve agricultural lands.

General Plan Policies

In addition to the preservation of Agricultural Land through Agricultural Conservation Easements and/or the clustering or transfer of development rights, a broader policy framework is important to support the Program's objectives. In particular, strengthening land use policies that define supporting land uses, limiting speculation associated with the conversion of Agricultural Land, and allowing for agriculture-supporting infrastructure will play an important role in the implementation of the Agricultural Lands Preservation Program. Accordingly, goals, policies, and actions that address the following objectives should be maintained within the General Plan:

- Continue Agricultural Land uses and production in and around the City of Morgan Hill to promote the City's identity and agricultural heritage.

- Support the development of urban agriculture, and the preservation of the existing Agricultural Lands within or adjacent to Morgan Hill to increase the supply of locally-grown, healthful foods.
- Strengthen the link between the community and local farms and farmers.
- Leverage Agricultural Lands to create and maintain a unique community character, provide open space, link to the region's history, support local agri-tourism, contribute to the local economy, and add to the quality of life.
- Identify potential sites within a centralized urban area of the City appropriate and suited for a community garden.

ATTACHMENT A – Background Information

The City engaged a consultant team to analyze the viability of agricultural activities in and around Morgan Hill and to make policy recommendations for how the City of Morgan Hill could best accomplish its goals of preserving viable agricultural lands. The consultant team, Economic & Planning Systems, Inc. and House Agricultural Consultants, submitted a report in December 2011 that provides background analysis and preliminary recommendations, much of which is incorporated into this Policy. Key findings from this Report are presented within the following Background information.

Agricultural Lands within Morgan Hill

As of 2010, the Morgan Hill SOI included approximately 9,894 acres of agricultural and grazing land, of which 7,739 acres was grazing land. The remaining 2,155 acres were irrigated or irrigable agricultural land uses, which are the focus of the Agricultural Lands Preservation Program (i.e., Farmland Mapping and Monitoring Program (FMMP) classifications of prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance). About two-thirds of this land, approximately 1,436 acres, was classified as prime farmland.

While the FMMP Map identified approximately 2,155 acres of irrigated or irrigable agricultural lands, some of this acreage had already been developed or committed for development at the time of this Policy's drafting.

The table below identifies the total acreage of agricultural and grazing land within the Morgan Hill SOI, City Limits, and unincorporated areas within the SOI based on the 2010 FMMP Map.

FMMP Classification	City Limits	Unincorporated Areas within SOI	Grand Total
Prime Farmland	320	1,116	1,436
Farmland of Statewide Importance	18	187	205
Farmland of Local Importance	153	184	337
Unique Farmland	25	152	177
Grazing Land	1,284	6,455	7,739
Grand Total	1,800	8,094	9,894

Long-term Viability of Agricultural Lands

A simple definition of *agricultural viability* is: agriculture that is economically feasible to maintain and continue. To be viable agricultural activity:

- Land continues to be farmed, returning a net profit, on a multi-year basis.
- Natural resources are stewarded for the long term.
- Agricultural operations are supported by the local community.

This definition makes no distinction as to the type or scale of viable agriculture, which may change along with national and international economic trends. Farmers can be either full-time or part-time. It does, however, exclude hobby farming, meaning farming that does not return a profit. “Supported by the local community” means that agricultural activities are accepted as part of the commerce of the area by the residents of the area, that housing is available to farm laborers and small farmers, that agriculture is integrated into the policies and regulations of the City, and that trade and commerce between the farming enterprises and the residents flourishes, through such means as local sales, including on-site direct sales, and farmers' markets.

Based on data provided by the United States Department of Agriculture (USDA) Economic Research Service (ERS) in 2008, approximately 43 percent of farmers nationally indicate that farming is their major occupation, while 42 percent state that work other than farming is their major occupation; 15 percent do not consider themselves to be in the workforce. In 2008, 88 percent of all farm household income nationally came from non-farm sources. USDA ERS data indicate a long-term trend toward increasing non-farm income and decreasing farm income among United States farmers.

According to a study by the University of California (UC) Davis Small Farm Center, an annual gross income level of approximately \$25,000 per farm business is a threshold for sustainability. A majority of California farm businesses grossing more than \$25,000 annually are profitable, based on data from the 2007 USDA Census of Agriculture. There is no implication that “a living” can be made if a farm grosses \$25,000. The study does imply, however, that since a profit can be expected in this situation, it is likely that small farming will continue to be an occupation, if perhaps only a part time one. Since small farming is profitable in a majority of cases if the gross revenues exceed \$25,000, it is implied that the small acreages in the Morgan Hill area will continue to be farmed.

Examples of small-scale agriculture are:

- Nursery and flowers.
- Farms emphasizing local sales and marketing.
- Community farms and education centers.

There are national trends supporting small farming:

- Urban peoples' interest in health, open space, and community encourages small farming.
- “Buy local” makes economic, social, and ecological sense.
- There is strong interest by college-age persons in farming.
- There is strong interest by government and nonprofits in small farms.
- Small organic farms have, for the most part, enjoyed economic success in recent years.

The Report indicated that while large-scale agriculture (agriculture generally conducted on 600+ acre farms with minimum lots of at least 40 acres and general separation from urban uses) is not viable in the Morgan Hill area, the outlook for small-scale agriculture is good.

The Report identified key threats to agricultural viability in the Morgan Hill SOI as:

1. High land market values difficult for strictly agricultural producers to afford.
2. Urban proximity conflicts with many farming operations.
3. The incompatibility of small parcel size with large-scale agribusiness.

Policy Context

The Report identified the following overarching contextual issues as important to the development of an agricultural program for the City of Morgan Hill:

- **County and LAFCO Policies and Inter-agency Coordination.** For lands proposed to be annexed into the City of Morgan Hill, the successful preservation of agriculture in and around Morgan Hill will require collaboration and coordination with both the County and the Local Agency Formation Commission (LAFCO). Santa Clara County supports the continued agricultural use of lands in the unincorporated County through the use of large-lot agricultural zoning. Santa Clara LAFCO has developed a series of policies regarding agricultural mitigation and will play a critical role in the evolution of the Morgan Hill SOI in its review of boundary adjustment applications. It is important to note, though, that the City of Morgan Hill has the authority to enter into development agreements with property owners outside the Morgan Hill city limits for the purposes of preserving agricultural lands.
- **Southeast Quadrant.** The SEQ of the City is of particular importance as the last major, contiguous area of agricultural land in the Morgan Hill SOI and due to its potential as a permanent “greenbelt” between Morgan Hill and the neighboring rural residential area of San Martin.
- **Scale and Cost.** The City’s Agricultural Lands Preservation Program must recognize its unique circumstances, including: (1) the relatively small area in agricultural use in the Morgan Hill SOI; (2) the relatively high percentage of agricultural lands that are 10 acres or less in size; (3) the relatively high value of land relative to its potential for agricultural income due to rural-residential demand and speculative influences; and (4) the uncertainty in locating willing sellers of land for preservation purposes.
- **Other Goals.** The City of Morgan Hill has multiple goals for its undeveloped land within its SOI in addition to agricultural preservation. Such goals include the establishment of a greenbelt, the development of sports, recreation and leisure (SRL) amenities and uses of public benefit within the SEQ, including a new high school, and the location of appropriate and consistent uses around the adjacent freeway interchange.

Agricultural Mitigation Costs

Agricultural mitigation requirements, whether through land dedications or mitigation fees, result in additional cost to any development that converts agricultural land. In combination with other agricultural land preservation policies, these mitigation requirements increase the costs to new development and could create feasibility challenges. Under a typical agricultural mitigation program, a project found to result in the loss of agricultural land must mitigate the loss through the preservation of agricultural land elsewhere. Preserving land for agriculture means acquiring land in fee title or purchasing a conservation easement that restricts uses on the property. The cost burden of the agricultural preservation required will primarily depend on the non-agricultural value component of the land being preserved.

Land sales for agricultural land in Santa Clara County and around Gilroy steadily averaged between \$15,000 and \$45,000 per acre based on a review of transactions and listings between 2006 and 2009.

Higher agricultural land values in and around Morgan Hill relative to other Santa Clara County areas indicate the greater development pressures in the Morgan Hill SOI than the other agricultural areas in the County. In addition, Morgan Hill's agricultural parcels tend to be smaller in size compared with other County locations.

A market analysis included within the 2011 Report estimated that the cost to preserve agricultural land through fee simple purchases would range from \$50,000 to \$80,000 per acre in Morgan Hill and that the unit cost of agricultural land preservation through easement acquisition would range from \$30,000 to \$48,000 per acre within Morgan Hill's SOI and from \$9,000 to \$27,000 per acre for land outside of the City's SOI. A quick survey of agricultural mitigation programs around the state indicated that most programs result in costs of less than \$30,000 per acre. The actual land costs that individual applicants will face could vary considerably depending on market conditions at the time of land purchase; the availability of willing sellers; and the size, location, and condition of land being preserved, etc. In addition, ongoing costs are incurred to manage and monitor the agricultural conservation easements.

Agricultural Mitigation Costs for Typical Projects:

- Preservation inside Morgan Hill SOI.** With mitigation required to take place within the Morgan Hill SOI, the mitigation cost associated with acquiring an easement was estimated to be \$30,000 to \$48,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$6,000 and \$9,600 per unit. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$2.30 and \$3.60 per building square foot.
- Preservation in Santa Clara County.** With mitigation allowed to occur anywhere in Santa Clara County, the mitigation cost associated with acquiring an easement was estimated to be \$9,000 to \$27,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$1,800 and \$5,400 per acre. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$0.70 and \$2.05 per building square foot.

ATTACHMENT B – Nexus Study

The Nexus Study supporting adoption of the Agricultural Preservation In-lieu fee is available at:
<http://www.morgan-hill.ca.gov/DocumentCenter/View/12622>

EXHIBIT – Draft Agricultural Preservation General Plan Policies for Consideration

The City of Morgan Hill will evaluate the current General Plan policies related to preservation of Agricultural Land and consider updates to those policies that address the following proposed policies and actions.

Policies and Actions

Agricultural Lands Preservation

- Preserve Agricultural Lands and prime soils in non-urban areas in order to provide local and regional fresh food supplies, reduce dependence on foreign products, conserve energy, and retain the aquifer recharge capacity of these lands. Give highest priority to the preservation of Agricultural Lands with the greatest long-term potential to support sustained Agricultural Use.
- Establish and/or maintain General Plan and Zoning land use designations to support Agricultural Uses.
- Encourage contractual protection for Agricultural Lands, such as Williamson Act contracts, Agricultural Conservation Easements, transfers of development rights, or other property tax relief measures as incentives for preservation of these lands.
- Implement the City's Agricultural Lands Preservation Program to preserve Agricultural Lands as part of new annexations or development projects.
- Offer landowners fair market value for their development rights on prime farmland.
- Allow alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
- Expand the City's Transfer Development Credit (TDC) program to include agricultural preservation as well as hillside preservation. Use the revenue from new purchases of TDCs, in part, to support the purchase of Agricultural Conservation Easements.
- Award points to projects that compete through the Residential Development Control System (RDCS) competition that commit to purchase TDCs for the purpose of agricultural preservation.
- Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management.
- Promote legislation to establish Countywide and Statewide agricultural preservation programs, including identifying sources of funding necessary for implementation of such programs.
- Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
- Amend existing General Plan Policy 2o in the Open Space and Conservation Element to be consistent with the provisions of this Program.

Sustainable Agricultural Industry

- Require ancillary non-Agricultural Land uses on Agricultural Lands to be ancillary and compatible with Agricultural Land uses, agricultural production, and the rural character of the area, and to enhance the economic viability of agricultural operations.
- Promote an agricultural support system including physical components (such as farm labor housing, retail sales, equipment supply and repair) and institutional components (such as agricultural education and training).
- Pursue additional funding available through State and federal grant programs sources for Agricultural Land preservation, educational/outreach programs, and other activities that support Agricultural Land use.
- Conduct outreach to farmers/landowners about Agricultural Conservation Easements and farming succession planning.
- Encourage Agricultural Uses which follow ecologically sound agricultural practices and minimize the use of chemicals and pesticides in order to promote healthy soils and ground water, provide healthful foods, reduce energy use, and reduce the resource demand attributed to local agricultural industry.
- Seek conservation program funding for farmers planning and implementing conservation practices that improve soil, water, plant, air and related resources on their land.
- Work with agricultural entities (e.g., farming industry, non-profits, land owners), the County, other Santa Clara County cities and the Local Agency Formation Commission and other stakeholders to promote public education to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

Local Agricultural – Economic Development

- Enhance viability and profitability of ongoing use of Agricultural Lands by supporting ancillary commercial uses such as produce stands, small-scale environmental and agricultural tourism, and the processing of agricultural products.
- Facilitate the long-term viability of farming within the City's SOI through educational, resource and mentoring programs, including partnerships with educational institutions (e.g. Gavilan College), industry organizations (e.g., California FarmLink), and financial institutions that provide business planning and mentoring for new farmers.
- Work with industry groups, business groups and other organizations to institute direct marketing programs, branding campaigns, and other incentives and programs that increase purchasing agreements between local farmers and local retailers, such as grocery stores, markets, restaurants and local institutional uses, and increase consumer awareness and purchases of local agriculture.
- Support partnerships between school districts and organizations to promote and implement farm to school programs.
- Incorporate agri-tourism destinations on City signage, e.g. farm stands and farms within the city's SOI.
- Encourage and support interested farmers to create public access opportunities through farming areas (e.g., school and public farm tours, roadside stands, and farm trails).

Urban Agriculture

- Maintain existing and support the development of new community gardens, farmer's markets and produce stands at suitable locations throughout Morgan Hill.
- Periodically review and amend the Zoning Code to streamline permit/use regulations to encourage and support the sale of agricultural products within the City.
- Support urban agriculture opportunities such as backyard gardens and edible landscapes that produce ecologically sound food for local consumption.
- Encourage developers of new development projects to incorporate food-producing areas within their project landscape plans.
- Encourage healthful food choices, exercise, and the production of locally grown agriculture for personal use by providing community garden facilities either on public lands or as part of new private developments.

Urban/Agriculture Interface

- Establish an agricultural buffer between urban and rural uses. The buffer's size, location and allowed uses must be sufficient to minimize urban edge conflicts, provide safety to urban residents, and allow the broadest possible farming practices on the urban edge boundary.
- Establish a minimum agricultural buffer requirement around new development adjacent to the City's Agricultural Priority Area and County land with an Agricultural land use designation.
- Restrict land uses within and adjacent to Agricultural Lands that would compromise the agricultural viability of these lands. Require new adjacent land uses to mitigate any impacts on the use of Agricultural Lands.
- When considering annexation applications involving land that is mapped or used for agricultural production, or is located adjacent to such land, implement land use designation(s) and pre-zoning(s) to minimize the potential conflict with surrounding Agricultural Uses in the area.
- Require new development projects to record an agricultural buffer easement on the land that will make up the buffer concurrently with the permitting of any development/grading.
- Strengthen zoning development standards, where necessary, to encourage development placement, scale, and design that are consistent with the preferred rural character adjacent to the City's edge.

Inter-agency Cooperation

- Cooperate with other jurisdictions to achieve agricultural preservation goals.
- Continue to identify opportunities to work with other jurisdictions and organizations in supporting Agricultural Land preservation and the agricultural industry in and around Morgan Hill. Work with the County as a critical partner in these efforts and outreach to other organizations where efforts and resources can be pooled to support agriculture.

Access to Healthy Foods

- Support an enhanced role for local Agricultural Land in providing community farms and local food sources.
- Promote broad access within the community to healthful food, as defined by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.
- Encourage and support the marketing, sale and consumption of locally-grown produce.

Exhibit 2: MH2035 General Plan Agriculture & Open Space Conservation Policies

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Agriculture and Open Space Conservation Policies

Morgan Hill 2035 General Plan

Vision (pg. VIS-4)

The overall combination of actions envisioned by the General Plan will help Morgan Hill grow and prosper while balancing quality of life, economic development, tourism, fiscal sustainability, high-quality planned development, and preservation of habitat, the natural environment, and viable agriculture, without compromising its historic and enduring rural charm.

Urban Growth Boundary (pg. CNF-4)

In 1996, Morgan Hill and Santa Clara County jointly adopted a long-term Urban Growth Boundary (UGB) and associated policies. The UGB is encompassed within the Sphere of Influence (SOI) and is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur. It is designed to encourage compact, efficient infill development and discourage more costly development at the edge of the City. The UGB also helps to ensure that urban services provided by the City to existing neighborhoods will not be reduced by service demands of new urban development at the City's fringe.

Rural Designations (pg. CNF-9)

Rural County. This designation applies to land outside the City limit, but in the SOI. Lots with the Rural County designation are generally 5 to 20 acres in size with one single-family home and/or agricultural operation per parcel. The minimum acceptable lot size for new development is generally 5 acres.

Open Space. This designation applies to land in the City limits and SOI, and includes public parks, private golf courses, and large parcels of land generally 50 acres or more in size. Land designated Open Space is generally meant to remain unimproved and devoted to the preservation of natural resources, managed production of resources, or public health and safety, as well as to complement adjacent, higher density residential and commercial development. Allowed uses include agriculture, outdoor recreation, and a secondary dwelling unit. One single-family home per parcel is allowed, with appropriate permit.

Agriculture. The Agriculture designation identifies lands intended for long-term preservation for agricultural use and intended for a variety of agricultural uses, including grazing, dairying, raising of livestock, orchards, row crops, nursery stock, flower growing, ancillary residential uses, ancillary commercial uses such as fruit stands, agricultural research and the storage and processing of agricultural products. This designation supports open space uses such as preservation of natural resources, outdoor recreation and public health and safety, including infrastructure (such as infiltration ponds) that is similar to other open space uses. The designation also supports agricultural commercial uses such as

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roadside stands, wineries, farm-based tourism, u-pick, rodeos, farmers markets and crop-based seasonal events. Building intensity in this designation will be greatly limited. The minimum parcel size in areas designated as Agriculture is generally 20 acres; the designation however supports the clustering of existing development potential in order to preserve larger agricultural sites. Please note at the time of publication of this General Plan, the Agriculture designation had not been applied to any parcels.

Overlays and Areas of Special Consideration

East of 101 Area Plan Overlay. The East of 101 Area Plan Overlay applies to the area roughly between Half Road and Diana Avenue to the north and south and Condit Road and Hill Road to the west and east. The purpose of this overlay is to require the preparation of a comprehensive master plan when new residential development is proposed to create well-planned, cohesive neighborhoods. Development within the East of 101 Area Plan Overlay shall:

- Employ high-quality site planning, architecture, and design that reflects the rural and agricultural history of the area, following traditional town design principles, and support green building methods that reduce the environmental impact of new development.
- Seek to preserve the agricultural heritage of the area and integrate ongoing agricultural uses into future development, as indicated by the Agriculture/Open Space overlay symbol.
- Include a variety of residential housing types as permitted by the underlying General Plan land use designation.
- Include services and amenities to serve new residents so daily needs can be met close to home.
- Provide an easily accessible, fully connected street and trail network that encourages walking and biking and provides access to existing community amenities such as Live Oak High School and Nordstrom Elementary School.

Open Space/Agriculture: This symbol indicates that open space and agricultural uses should be integrated into future development in areas with a strong agricultural heritage.

Southeast Quadrant. The Southeast Quadrant (SEQ) is approximately 1,300 acres, generally bounded by Condit Road and Highway 101 to the west, San Pedro Avenue to the north, Carey Avenue to the east, and Maple Avenue to the south, as shown in Figure CNF-5. The City has adopted an Agricultural Lands Preservation Program to permanently preserve agricultural lands with the SEQ and Citywide.

Land Use Policies

CNF-3.14 Agricultural Preservation Set-Asides. Set aside at least 300 allotments for housing that may be applied anywhere in the City through 2035. Recipient projects must directly establish permanent agricultural conservation easements within the City Limits or within the City's Priority Agricultural Conservation Area.

CNF-4.1 Future Growth Areas. Use the current Urban Service Area and Urban Growth Boundary to identify future urban development areas based on adequacy and availability of municipal services.

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- CNF-4.2 Urban Growth Boundary.** Maintain a long-term Urban Growth Boundary that:
- a) provides greater stability of future land use patterns than is currently provided by the existing "short term" urban service area (USA) boundaries;
 - b) indicates the preferred extent and direction of the City's future urban expansion and capital improvements planning;
 - c) encourages compact and concentric urban growth and development;
 - d) promotes fiscal responsibility, cost-effective service delivery, and the City's ability to plan for and adequately maintain urban services over time;
 - e) provides for an adequate land supply necessary for sustainable economic growth;
 - f) compensates for the impacts of the City's historical patterns of urban growth;
 - g) achieves greater compatibility of land use planning and decision-making for lands of mutual interest to the City and County; and
 - h) provide additional certainty to rural landowners needed for purposes of planning investments and maintaining viable agricultural operations.
- CNF-4.3 Prerequisites for Urban Development.** Consider land adjacent to the City as available for urban development only when it is included within the Urban Service Area and Urban Growth Boundary, can be developed in a manner that will be cost-effective to the City, and will be served by adequate public services and facilities.
- CNF-4.7 Urban Growth Boundary Modification Criteria.** Significant modifications to the UGB are strongly discouraged in order to ensure the long term stability of the boundary by directing urban growth to areas of the city that are urbanized or planned for urbanization.
- a) Significant modifications to the UGB, or significant modifications to the General Plan text supporting the boundary, will only be considered in the context of a major, comprehensive update of the General Plan which fully considers all of the implications of expanding the limits of urbanization.
 - b) Minor modifications to the UGB may be considered during an annual General Plan review. To qualify as a minor modification a proposed modification of the UGB must meet the following criteria:
 - Be no larger than 5 acres in size; or
 - If the modification includes both areas of expansion and areas of contraction, the net expansion area is no larger than five acres in size; and

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- The expansion area must be located contiguous to lands with an urban land use designation on the City's General Plan Land Use Map.
- c) All proposed modifications must:
 - Demonstrate consistency with the applicable goals and policies in the General Plan and the surrounding General Plan Land Use designations.
 - Demonstrate a fiscally neutral effect on City finances at the time of development in the future.
 - Be adequately served by public services and infrastructure without decreasing City adopted level of service standards.
 - Demonstrate a public benefits such as the preservation of sensitive habitat or prime farmland, provision of affordable housing, provision of public park or open space land, or a public benefit established by the Morgan Hill City Council.

- CNF-4.8 Land Supply.** Include enough land within the Urban Service Area to provide for a rate, amount, and type of development consistent with the General Plan; review and modify the Urban Service Area boundaries as needed.
- CNF-4.9 Orderly Growth.** Urban growth should occur in an orderly and contiguous pattern, within the designated Urban Service Area, encouraging infill of vacant urban land. (South County Joint Area Plan 1.09 & 1.10)
- CNF-4.10 Urban Service Area Expansions.** Base expansion of urban service areas and annexations on the General Plan, consistent with the City's schedules for development and extension of services. (South County Joint Area Plan 1.11 & 1.12)
- CNF-4.11 Urban Service Area Expansions Within UGB.** Allow Urban Service Area expansions only within the long-term UGB and for lands with urban designations; the timing and extent of Urban Service Area expansion shall remain consistent with established Urban Service Area expansion policies and ordinances.
- CNF-6.1 Services to Serve Growth.** Manage and schedule urban growth consistent with the ability to provide a full array of urban services and facilities, such as sewer capacity, water, transportation, schools, public safety and other urban services. (South County Joint Area Plan 1.08)
- CNF-7.1 County General Plan Policies.** Promote the maintenance of current County General Plan policies encouraging low-density uses, including large lots and agriculture, for County projects adjacent to the UGB. Encourage the County to retain large minimum parcel sizes, and promote agricultural and open space uses on unincorporated lands.

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- CNF-7.2 Rural Landowner Home Occupation.** Support the County's effort to promote the use of expanded home occupations for rural landowners and agriculturists, within the parameters of the County's zoning ordinance.
- CNF-7.3 Rural Land Uses.** Land uses in rural areas should be low-intensity and limited in number, and public services to rural areas should be appropriately limited. (South County Joint Area Plan 1.07)
- CNF-7.4 Agricultural Land Use Conflicts.** Work with Santa Clara County to minimize potential land use conflicts between urban uses within the UGB and rural lands adjacent to the growth boundary.
- CNF-7.5 Inter-Jurisdictional Support for Agriculture.** Coordinate measures to enhance the economic viability of agriculture in conjunction with other inter-jurisdictional planning in the South County.
- CNF-20.3 East of 101 Area Design.** Require new residential development to be designed to minimize adverse impacts on adjacent residential and agricultural uses.
- CNF-20.4 East of 101 Area Integrated Agriculture.** Strongly encourage new development to preserve existing agricultural uses as feasible and integrate agricultural features into new development to reflect the history of this area.

Open Space (pg. NRE-1)

The abundance of open space within and around Morgan Hill is a key contributor to quality of life for City residents and visitors. Preserving open space, including in conjunction with new development, is essential to maintaining the uniqueness and quality of life of Morgan Hill.

Greenbelts (pg. NRE-2)

The Natural Resources and Environment Element identifies a Greenbelt, which is intended to physically define the City and separate it from San Jose and San Martin. The Greenbelt includes both public open space and private properties as shown on Figure NRE-1. Identification of areas as "Greenbelt" does not change the development potential or restrictions imposed under Santa Clara County development policies and regulations. Rather, it indicates that the City will work with the County to minimize off-site visual impacts of new development. In addition, the Greenbelt is intended to identify areas where a targeted program of acquisition of open space easements or fee title to land may occur.

Areas outside of the Urban Growth Boundary that have been substantially subdivided into parcels smaller than 10 acres generally are not included in the identified Greenbelt areas. Many of the parcels in these areas are developed or are eligible for construction of single-family homes. The existing and potential density of development in these areas minimizes their value as Greenbelt areas. However, the

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rural character of these areas does help to define and distinguish the urbanized City area from other urban and rural county areas.

Agricultural Resources (pg. NRE-2)

Agriculture has been important to the City throughout its history as an industry and employment generator, in addition to contributing to the City's rural character. The City's economy once depended on the cultivation of stone fruits, pears, apples, and nuts. Although the local economy diversified, agriculture is still an important asset to the region, as evident by the surrounding nurseries, orchards, and vineyards, which boost the region's economy and the local tourism industry.

Supporting agriculture requires finding innovative ways to help farming and ranching operations become and remain competitive in an increasingly global economic environment. Agricultural development policies intend to retain the historic agricultural character of lands surrounding Morgan Hill, and to minimize conflicts between urban development and agricultural uses.

Agricultural land can be found within the Morgan Hill City limit and within the Sphere of Influence (SOI). The Morgan Hill area includes prime farmland, farmland of statewide importance, farmland of local importance, unique farmland, and grazing land, as classified by the State Department of Conservation. As shown in Figure NRE-2, most of the prime farmland is located on the eastern side of the City, east of Highway 101. However, the Department of Conservation's data reflect conditions as of 2010. Since the time the State published the data, some limited pieces of land may have been developed or may now be under development review. Nevertheless, the data provide a broad picture of the agricultural resources within Morgan Hill today.

The California Land Conservation Act of 1965, also known as the Williamson Act, provides tax relief for landowners who preserve their agricultural and open space property under Williamson Act contracts. Under contract, the tax on a Williamson Act property is assessed at a rate consistent with its actual use, rather than the potential value. These contracts run for 10 years, are automatically renewable on an annual basis, and may be terminated by the initiative of either the property owner or the legislative body. There are a number of parcels under Williamson Act contracts in and around Morgan Hill.

Conservation Policies

- NRE-1.1 Natural Features.** Preserve outstanding natural features, such as the skyline of a prominent hill and rock outcroppings.
- NRE-1.2 Large Open Space Areas.** Work with the County, the Open Space Authority, appropriate conservancy organizations and land trusts, and property owners to preserve large open space areas, such as agricultural lands and outdoor recreation areas, to conserve natural resources and retain the City's unique identity.
- NRE-1.3 Designated Open Space.** Maintain land designated as "Open Space" on the Morgan Hill General Plan Land Use Map (Figure CNF-3).

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- NRE-1.4 South County Open Space.** Preserve and maintain the wide variety of open spaces in the South County; including greenbelt areas, parks, and agricultural uses. (South County Joint Area Plan 16.00)
- NRE-1.5 Coordinated Action.** Continue to coordinate with Gilroy and Santa Clara County to implement South County open space goals and objectives and participate in the development of regional open space preservation programs. (South County Joint Area Plan 16.19 & 16.20)
- NRE-1.6 Open Space Preservation Tools.** Use a variety of open space preservation tools to protect open space, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development. (South County Joint Area Plan 16.17)
- NRE-1.7 Priority Areas for Preservation.** The South County includes a variety of open space areas, including the valley floor, stream corridors, lands around reservoirs, foothills, inter-mountain valleys, and mountain areas beyond the foothills. Of these geographic areas, stream corridors, lands around the reservoirs, lands which provide greenbelts, and significant hillside features should receive highest priority for preservation as open space and future regional park location. (South County Joint Area Plan 16.01 & 16.02)
- NRE-1.8 County Parks and Open Space Programs.** Support County programs to:
- a) acquire and develop regional parks in the South County, providing just compensation for the taking of private lands;
 - b) protect open space resources by prohibiting the introduction of uses incompatible with open space resource preservation, and preserve open space through planning, regulation, acquisition and/or development rights transfer programs;
 - c) plan and regulate land use to avoid hazardous areas and protect critical natural resources; and
 - d) continue to provide property tax relief via the Williamson Act to land owners who agree to maintain their lands in open space uses. (South County Joint Area Plan 16.21)
- NRE-2.1 Hillside and Ridgeline Views.** Protect views of hillsides, ridgelines, and prominent natural features surrounding the City. These features help define the City's historic rural character, sense of place, image and identity.
- NRE-2.2 El Toro Mountain as Landmark Feature.** Retain the City's unique identity by preserving its landmark natural feature, El Toro Mountain.

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- NRE-2.3 Scenic Hillside Preservation.** Preserve scenic hillsides around the City in an undeveloped state, wherever feasible. Provide for retention of hillside areas as open space through the dedication and/or purchase of scenic easements and/or open space easements, transfer of development rights and other appropriate measures.
- NRE-2.4 Building Distance below Ridgelines.** Limit all building pads located within the hillside areas to an elevation at or below the 80-foot vertical drop from the ridgeline.
- NRE-3.1 Greenbelt as a Community Separator.** Maintain a greenbelt to separate the northern and southern boundaries of the City from surrounding rural lands and the urbanized areas of San Jose and San Martin.
- NRE-3.2 San Jose Coyote Valley Greenbelt.** Work with the City of San Jose and Santa Clara County to ensure that the San Jose Coyote Valley Greenbelt, which includes the area south of Palm Avenue and north of the Morgan Hill City limits and is located within the San Jose Sphere of Influence, shall continue to provide the non-urban buffer for the north side of Morgan Hill.
- NRE-3.3 Greenbelt Easements.** Acquire easements on properties using an approach that would maintain some appropriate development potential, maximize the use of available funds for greenbelt and open space protection, and minimize land management and maintenance costs.
- NRE-3.4 Land in Fee Title for Greenbelts.** Acquire land in fee title when the City's objectives include allowing public access to the site for recreational or related activities.
- NRE-3.5 "Willing Seller" Greenbelt Acquisition.** Acquire properties and easements on a "willing seller" basis.
- NRE-3.6 No Commercial/Industrial Uses within Greenbelts.** Support County policies prohibiting commercial and industrial uses (excluding agricultural industry) in the unincorporated and greenbelt areas surrounding the City.
- NRE-3.7 Appropriate Greenbelt Land Uses.** Encourage land uses appropriate within a greenbelt, which might include: a) low-density residential development on lots 10 acres or more in size; b) public parks and recreational areas; c) privately operated recreation areas (e.g., golf courses and riding stables); and, d) agriculture. (South County Joint Area Plan 16.16)
- NRE-3.8 Appropriate Greenbelt Land Uses.** Require appropriate uses within Greenbelt areas such as parks and other designated open spaces, scenic/open space easements, golf courses, low intensity public facilities involving minimal permanent improvements and agricultural activities are appropriate uses. Existing residential may remain and new residential uses should be located and designed to have minimal visual and other environmental impacts.

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- NRE-3.9 Greenbelt Areas on Private Land.** Greenbelt areas which are privately owned are not intended for public recreational use.
- NRE-3.A Tools to Create a Greenbelt.** Use a variety of tools to create a greenbelt, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development.
- NRE-3.B Greenbelt Acquisition Program.** Pursue a targeted program for acquisition of Greenbelt land in fee title or conservation easements. Prioritize undeveloped properties that are most threatened with development which, if acquired, would provide significant public benefit.
- NRE-4.1 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.2 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.3 Agriculture in the Sphere of Influence.** Support significant agricultural activity within the Sphere of Influence by providing a market for agricultural products (e.g., farmers' markets) and decreasing the costs associated with agriculture by allowing such uses to occur in the Sphere of Influence.
- NRE-4.4 Farming Cooperatives in Buffer Areas.** Support use of farming cooperatives within agricultural buffer areas.
- NRE-4.5 Local Agricultural Products.** Purchase locally-produced agricultural products for City functions and encourage Morgan Hill Unified School District and other local agencies to do the same, whenever feasible.
- NRE-4.6 Agricultural Education.** Support programs to foster agricultural education.
- NRE-4.7 Long-Term Maintenance of Agriculture.** Continue to support the long-term maintenance of agricultural land uses and agriculture, including vineyards and wineries, as an economic enterprise in South County. (South County Joint Area Plan 14.00)
- NRE-4.8 Policy Support for Agriculture.** Take positive action to encourage agriculture by supporting local, county, and State policies favorable to agriculture. (South County Joint Area Plan 14.01)

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- NRE-4.9 Urban Encroachment.** Require new urban development adjacent to an existing agricultural operation to create an appropriate buffer area, on land within the proposed development, between urban uses and agricultural activities.
- NRE-4.10 Land Use to Support Agricultural Viability.** Maintain the economic viability of agriculture using a variety of methods, such as:
- Designating land outside urban areas as agricultural;
 - Requiring minimum lot sizes in agricultural areas;
 - Requiring land uses that support agricultural activities;
 - Marketing the benefits of agricultural uses to the public. (South County Joint Area Plan 14.02)
- NRE-4.11 Agricultural Mitigation.** Enforce the agricultural mitigation requirement of requiring the preservation of a minimum of 1 acre of agricultural land for each acre of agricultural land changed to a non-agricultural use, consistent with the City's Agricultural Lands Preservation Program.
- NRE-4.12 Permanent Preservation of Agriculture.** Establish areas for the permanent preservation of agricultural lands and programs to accomplish that objective, such as exclusive agricultural zoning, transfer of development rights (TDR) programs, and right-to-farm legislation. (South County Joint Area Plan 14.03)
- NRE-4.13 Urban Growth.** Wherever existing development patterns and existing and planned roads and other public facilities permit, concentrate urban development adjacent to existing developed areas in order to minimize the impact of development on agricultural land. Plan for further urban growth to occur in areas which will avoid encroachment into those agricultural lands with the greatest long-term potential to remain economically viable. (South County Joint Area Plan 14.07)
- NRE-4.14 LAFCO Policies.** Support policies of the Local Agency Formation Commission (LAFCO) which would guide urban development away from those agricultural areas with the greatest potential for long-term economic viability. Use policies for Urban Service Area extensions and utility extensions to guide urban growth away from long-term agricultural areas. (South County Joint Area Plan 14.09 & 14.10)
- NRE-4.15 Conversion to Urban Use.** Convert agricultural land that has been designated for urban growth in an orderly manner to retain the stability and viability of remaining agricultural lands as long as possible. (South County Joint Area Plan 14.08)
- NRE-4.16 Prioritization of Agricultural Land.** Prioritize protection of existing agriculture lands in the Sphere of Influence, outside the Urban Growth Boundary.
- NRE-4.17 Williamson Act Contracts.** Support the preservation of land under Williamson Act contracts within the Morgan Hill Sphere of Influence.

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- NRE-4.18** **Agricultural Operations Disclosure.** In areas where residential development is adjacent to agricultural operations, require a disclosure to residents that agricultural operations happen nearby and that they will be exposed to impacts from such operations, such as dust, noise, and odors.
- NRE-4.19** **Agricultural Lands Preservation Program.** Use a wide variety of funding sources to support the Agricultural Lands Preservation Program, including land use regulation, urban development policy, conservation easements (with matching grant funds from appropriate agencies, where possible), transfer or purchase of development rights, increased transfer fees, Residential Development Control funds, or Homeowners Association fees for new development.
- NRE-15.4** **Sustainable Land Use.** Promote land use patterns that reduce the number and length of motor vehicle trips.

Exhibit 3: Municipal Code Chapter 18.152 Agricultural Mitigation

Chapter 18.152 – AGRICULTURAL MITIGATION

Sections:

- 18.152.010 – Agricultural Lands Preservation Program
- 18.152.020 – Purpose
- 18.152.030 – Definitions
- 18.152.040 – Applicability
- 18.152.050 – Mitigation Ratio
- 18.152.060 – "Stay Ahead" Provision
- 18.152.070 – Measurement of Affected Area
- 18.152.080 – Mitigation Mechanism
- 18.152.090 – Eligible Mitigation Lands
- 18.152.100 – Ineligible Mitigation Lands
- 18.152.110 – Agricultural Priority Area
- 18.152.120 – Responsibility for Easement Acquisition
- 18.152.130 – Management and Monitoring Fee
- 18.152.140 – Implementing Entity
- 18.152.150 – Mitigation Timing and Implementation
- 18.152.160 – Planned Developments/Development Agreements
- 18.152.170 – Funding for Easements
- 18.152.180 – Clustering of Development

18.152.010 – Agricultural Lands Preservation Program

The ordinance codified in this chapter shall be known and may be cited as the "Agricultural Lands Preservation Program" of the City of Morgan Hill.

18.152.020 – Purpose

- A. The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill sphere of influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. For Morgan Hill, an effective agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.
- B. The Morgan Hill agricultural lands preservation program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a

comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill sphere of influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting general plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the city's southeast quadrant

18.152.030 – Definitions

The following terms when used in this chapter shall have the following respective meanings:

- A. **Agricultural Land.** For "agricultural land" that requires off-setting preservation/mitigation under this agricultural lands preservation program, agricultural land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that was not subsequently developed for non-agricultural use prior to August 1, 2014 or subsequently developed per the provisions of this ordinance. Lands identified as grazing land are not subject to the offsetting preservation/mitigation requirements set forth in this policy.
- B. **Agricultural Conservation Easement.** An agricultural conservation easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive agricultural use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.
- C. **Agricultural Mitigation Land.** Agricultural land (as defined above) that is encumbered by an agricultural conservation easement or other farmland conservation mechanism acceptable to the city. If the agricultural land is also being used to meet open agricultural land preservation goals, the easement or other mechanism must ensure that at least ninety percent of any property being used as agricultural mitigation land remain as open space free of structures or other impervious surfaces so that it retains its value as agricultural

land under the FMMP criteria. Uses allowed on agricultural mitigation land shall be consistent with the agricultural use described below and pertaining land use regulations, and as further defined in the applicable agricultural conservation easement or other farmland conservation mechanism.

- D. **Agricultural Priority Area.** The agricultural priority area is an area within the SEQ that has been identified within the Agricultural Lands Preservation Program as a priority location to preserve and encourage the long-term viability of agriculture and open agricultural lands, recognizing both the vital contributions agriculture makes to the economy and quality of life within the county and the community preference for maintenance of open space areas. By designating this area, the program identifies those lands within the Morgan Hill SOI most suitable for agricultural production and related uses. Designating the agricultural priority area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The agricultural priority area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.
- E. **Agricultural Use.** Agricultural use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying agricultural use activities may include:
 - 1. **Agricultural processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
 - 2. **Agriculturally related entertainment and commercial uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site agricultural uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
 - 3. **Agricultural research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.
 - 4. **Dairy:** Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.

5. Feed lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and egg farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food paring, local agriculture and local history is also permitted.
12. Ancillary uses: Uses conducted subordinate to the primary agricultural use being conducted upon a property and which do not occupy in total more than ten percent of the property, including:
 - a. Direct sales of locally produced agricultural products.
 - b. One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c. Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d. Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

- F. **Agricultural Preservation In-lieu Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency solely for the purpose of acquiring agricultural conservation easements. The program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the city's ability to preserve open space agricultural lands within the agricultural priority area.
- G. **Agricultural Lands Preservation Program Surcharge Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency for the purpose of administering the agricultural lands preservation program and/or to cover ongoing management and monitoring of the easements. The surcharge fee is either incorporated into the overall in-lieu fee for projects that make use of this option, or charged directly to projects which independently establish an agricultural conservation easement.
- H. **Open Agricultural Land.** Open agricultural land is defined as agricultural land that is at least ninety percent free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other agricultural use. The city may make use of open space funding sources to acquire agricultural conservation easements where that easement specifies that the encumbered property be maintained as open agricultural land.

18.152.040 – Applicability

The provisions of this chapter shall apply to all new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of agricultural land (as defined above) will be required to mitigate loss of agricultural land per the provisions of this policy. This includes projects within the existing city boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption August 1, 2014, including completion of the CEQA process, are not subject to this policy unless specifically required as mitigation or a condition of project approval.

18.152.050 – Mitigation Ratio

A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.

18.152.060 – "Stay Ahead" Provision

Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands. Development occurs with either the issuance of grading permit or building permits that would result in the loss of agricultural land. To meet this provision the city may utilize existing open space funding to establish agricultural conservation easements, or individual projects may establish such easements in advance of development activity.

18.152.070 – Measurement of Affected Area

Areas subject to agricultural mitigation requirements will be the developed footprint for properties with a general plan land use designation of open space, public facilities, or sports recreation/leisure. Areas proposed to be so reserved shall have an aggregated area of at least ten acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.

18.152.080 – Mitigation Mechanism

Conversion of agricultural land will require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the city of the agricultural preservation in-lieu fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the agricultural preservation in-lieu fee, in either case developers are also required to pay an agricultural lands preservation program surcharge fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.

18.152.090 – Eligible Mitigation Lands

In order to meet the goals of this chapter, lands proposed to be used as agricultural mitigation shall conform to the above definitions for agricultural mitigation land and/or open agricultural land and shall meet the following criteria:

- A. Agricultural conservation easements resulting from this program shall be acquired from willing sellers only; eminent domain will not be used to acquire lands for conservation;
- B. The property is of adequate size, configuration and location to be viable for continued agricultural use;
- C. The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing agricultural uses, and

the water rights on the agricultural mitigation land shall be protected in the agricultural conservation easement;

- D. Other considerations for appropriate conserved agricultural lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
- E. The mitigation land shall be located within Santa Clara County; and
- F. The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.

18.152.100 – Ineligible Mitigation Lands

A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

- A. The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or
- B. The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the city or other public agency; or
- C. The property is subject to conditions that practicably prevent utilizing the property for a viable agricultural use.

18.152.110 – Agricultural Priority Area

Dedications inside the Morgan Hill sphere of influence (SOI) will be strongly encouraged within the southeast quadrant (SEQ) as the first priority. The city has identified an agricultural priority area within the SEQ as the city's first priority for conservation. The city's secondary priority is the preservation of other rural county agricultural lands within the Morgan Hill SOI. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'eligible mitigation lands' above. The agricultural priority area encompasses approximately six hundred fifty acres of land.

18.152.120 – Responsibility for Easement Acquisition

- A. In cases where the mitigation fee is paid, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the in-lieu fee and accompanying responsibility to a qualifying entity.

- B. Developments requiring less than ten acres of agricultural mitigation are required to pay the agricultural preservation in-lieu fee on a per acre basis except that acquisition of agricultural conservation easements of less than ten acres may be allowed when located immediately adjacent to an existing agricultural conservation easement area that when combined, exceeds ten acres in size.
- C. Developers may independently establish an agricultural conservation easement on eligible mitigation lands within the county. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the agricultural lands preservation program surcharge fee.

18.152.130 – Management and Monitoring Fee

The developer shall pay a one-time per acre fee (agricultural lands preservation program surcharge fee) to cover the average cost administration of the program.

18.152.140 – Implementing Entity

The city will hold the easements and collect management and monitoring fees until an alternative implementing entity (qualifying entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.

18.152.150 – Mitigation Timing and Implementation

Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of agricultural lands, whichever occurs first.

18.152.160 – Planned Developments/Development Agreements

Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the city's SOI in which agricultural lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the agricultural priority area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development

agreement with the city specifying the terms of the agreement and the extraordinary benefits accruing to the city.

18.152.170 – Funding for Easements

Given the city's policy objective of agricultural land preservation within the Morgan Hill sphere of influence and within the southeast quadrant in particular, it is anticipated that the city will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the city will use open space funds collected through administration of its residential development control system (RDCS) to supplement the acquisition of conservation easements.

18.152.180 – Clustering of Development

The city may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The city should allow such alternate methods of agricultural mitigation through planned development zoning and/or a development agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an agricultural conservation easement shall be recorded over the agricultural mitigation lands subject to the planned development zoning and/or development agreement.

**Exhibit 4: Municipal Code Section 18.30.040 Hillside Combining District
and Transfer of Development Credits Program**

18.30.030 – Downtown Specific Plan Overlay Zone

- A. Purpose.** The Downtown Specific Plan (DTSP) overlay zone identifies areas where the requirements of the Downtown Specific Plan apply.
- B. Applicability.** The DTSP overlay zone applies to parcels within the boundary of the Downtown Specific Plan as shown on the Zoning Map.
- C. Effect of Downtown Specific Plan Overlay.**
 - 1. All proposed land uses and development within the DTSP overlay shall comply with the requirements of the Downtown Specific Plan.
 - 2. In the case of conflict between the Downtown Specific Plan and the requirements of the Zoning Code, the Downtown Specific Plan shall govern.

18.30.040 – Hillside Combining District

- A. Purpose of Hillside Combining District.** The purpose of the Hillside (H) combining district is to allow for the orderly development of hillside areas while preserving significant environmental features and protecting public safety in geologically unstable areas.
- B. Applicability.**
 - 1. The H combining district applies to all areas within the City having an average slope of ten percent or greater.
 - 2. A planned development overlay zoning district shall be required for all subdivisions in with an H combining district where five or more lots are proposed.
- C. Development Standards.**
 - 1. Building Restrictions on Steep Slopes.**
 - a. Buildings, private streets, and driveways may not be constructed on slopes greater than 20 percent except as allowed by subparagraph b below.
 - b. Minor encroachments onto slopes greater than 20 percent may be allowed when the review authority finds that the proposed encroachment will not conflict with the purpose and intent of the H combining district.
 - 2. Minimum Lot Area.**
 - a. The minimum lot size in the H combining district shall not be less than "A" as determined by the formula:

$$A = S \times 2,000$$

Where "S" is the average slope of the lot to be created in terms of percent.
 - b. For lots with an average slope greater than 50 percent, the minimum lot size is 5 acres.

- c. Lots with an average slope of ten percent or greater may be created in exception to the slope/area formula above if the lots to be created contain an area of slope less than ten percent which is equal to or greater than the minimum lot size required by the underlying zone. In such a case, a deed restriction must be recorded for such lots which restrict building to the area in which the average slope is ten percent or less.

3. **Calculating Ground Slope.**

- a. The average ground slope shall be calculated using the following formula:

$$S=0.00229IL/A$$

Where:

S= Average ground slope in percent

I=Contour interval in feet

L=Combined length of the contour lines in feet

A=The gross area in acres of the parcel or lot

- b. Measurements along contours shall be made at contour intervals not to exceed ten feet, and a horizontal map scale of one inch equals two hundred feet or larger.

4. **Land Modification Restrictions.**

- a. Areas on a lot with a slope exceeding 20 percent may not be altered by grading, altering natural features, removing natural vegetation, or by any activity related to the preparation of the lot for development.
- b. The Planning Commission may allow exceptions to the land modification restrictions above to protect the public health, safety, and welfare. Exceptions may be granted to:
 - (1) Install fire trails;
 - (2) Remove of poisonous or noxious vegetation;
 - (3) Remove or thin vegetation as part of a fire-protection program approved by the Fire Chief;
 - (4) Abate geologic or seismic hazard; or
 - (5) Protect public safety through other methods as approved by the Planning Commission.

- 5. **Open Space Requirements.** Table 18.30-1 identifies the minimum percentage of lot area to remain in open space with no grading or terrain alteration.

TABLE 18.30-1: OPEN SPACE REQUIREMENTS

Average Ground Slope (Percent)	Minimum Percent of Lot Area to Remain in Open Space
12.5 to 14.9	32.5%
15.0 to 17.4	40.0%
17.5 to 19.9	47.5%
20.0 to 22.4	55.0%
22.5 to 24.9	62.5%
25.0 to 27.4	70.0%
27.5 to 29.9	77.5%
30.0 and above	85.0%

6. One Dwelling Unit Allowed Per Lot.

- a. If no portion of a lot contains slopes of less than twenty percent, and the lot is a legally-established lot of record, one dwelling unit may be constructed on the lot.
- b. Development when allowed by this section shall conform with the recommendations in the engineering geologic or geotechnical report prepared by a qualified engineer geologist as required by the provisions of Chapter 18.70 (Geologic Hazards) and any other conditions of approval or mitigation measures adopted for the proposed project.

7. Ridgeline Development. Buildings are prohibited within 80 feet of a ridgeline unless the review authority for the proposed project finds that:

- a. There are no other feasible locations on the lot other than the proposed ridgeline building site which can accommodate the building;
- b. The proposed development is consistent with all other requirements of the applicable zone;
- c. The applicant has attempted a transfer of development credits (TDC) in accordance with Subsection F (Transfer of Development Credits) as an alternative to building on the proposed ridgeline site; and
- d. The applicant has exhausted all possible avenues to accommodate development in area away from the proposed ridgeline building site.

8. Cut-and-Fill Slopes. Cut-and-fill slopes shall not be steeper than two horizontal to one vertical (2:1) unless stabilized by a retaining wall or cribbing, as approved by the Building Official.

9. **Erosion-Control Plan.** The City shall approve an erosion-control plan prior to any physical development within the H combining district. The plan shall meet the standards contained in Municipal Code Chapter 13.30 – Urban Storm Water Quality Management & Discharge Control.

D. El Toro Mountain Open Space Preservation

1. The following hillside areas of El Toro Mountain shall be preserved as open space to the maximum extent possible:
 - a. Areas above the 600-foot elevation in Llagas Valley and Paradise Valley; and
 - b. Areas above the 500-foot elevation in all other areas.
2. Subdivisions proposed in areas specified above shall include open-space easement dedications to guarantee the permanent preservation of open space.
3. Prior to approving development in the areas specified above, the review authority shall find that the applicant made every reasonable effort to avoid the development in these areas, including a transfer of development credits (TDC) and/or the establishing of a Planned Development (PD) overlay.

E. Transfer of Development Credits. This section allows for the transfer development credits (TDCs) from "transferor sites" in areas where development is restricted by the H combining district to "recipient sites" in other areas of the city authorized to receive TDCs. The City Council may from time to time authorize by resolution a TDC from one lot to another lot, where such authorization is found to be consistent with the General Plan and this section.

1. **General Standards.**
 - a. **Permitted Recipient Sites.** Zones in which an increase in the number of dwelling units are permitted are restricted to the residential zones listed in Chapter 18.16 (Residential Detached Zoning Districts).
 - b. **Number of Units on a Site.** The number of dwelling units permitted on a site may not exceed ten percent of the maximum residential development credits transfer, exclusive of density bonuses provided by other sections of this title.
 - c. **Maximum Density Bonus.** The maximum density bonus on any site shall not exceed 25 percent, including affordable housing and TDC density bonuses.
 - d. **Environmental Study.** An environmental study shall be prepared to determine the carrying capacity of the property from which development credits are being transferred. If environmental findings determine that the site, or a portion thereof, is unbuildable due to environmental constraints, the development credits to be transferred shall be reduced accordingly, prior to determining the number of units permissible under the slope-density formula.
 - e. **Minimum Area.** The site to which the TDC is proposed shall be no less than one acre.

- f. **Setback Requirements.** All setback requirements of the more restrictive district found along the perimeter of the site shall apply to perimeter yards on the site to which the transfer of development credits is proposed, unless the site is zoned for PD zoning.
 - g. **Calculation of TDC Credits.** TDCs shall be calculated in accordance with the slope-density regulations of this section, base district minimum lot sizes and this section.
 - (1) In all hillside areas of the City, with the exception of El Toro Mountain, the number of TDCs shall be determined as provided in Section 18.30.040.D (El Toro Mountain Open Space Preservation).
 - (2) On El Toro Mountain, the number of TDCs available to property within the city limits shall be twice that determined as provided in Section 18.30.040.C.2 (Minimum Lot Area). The number of transferable development credits available to property on El Toro Mountain which is outside the city limits shall be twice that allowed by the Zoning Ordinance of Santa Clara County. The calculation of transferable development credits for El Toro Mountain shall be as follows:

$$(\text{Number of Acres/Minimum Lot Size}) \times 2 = \text{Number of transferable development credits}$$
 - (3) The number of TDCs available to properties on El Toro Mountain above that allowed to other hillside areas of the city may only be used for transfer to other properties of slopes less than twenty percent and may not be used to increase on-site development potential.
 - (4) In the calculation of TDCs, a fraction occurring at the end of a calculation which is 0.5 or larger shall be considered a full development credit. The City Council may also exclude from calculation any existing dwelling and appurtenant structures on the site to be preserved.
2. **Application.** An applicant for a TDC shall contain the following information and materials:
- a. A title report and any other documentation disclosing all existing interests or obligations against the transferor site property to be affected by the open space easement. If other interests exist, a subordination agreement (in a recordable form) acknowledging the reservation of the City of Morgan Hill's open space easement claim shall be submitted with the title report.
 - b. When known, the location and land area of the recipient site to which such credits are to be transferred, the projected total number of dwelling units that would result on the recipient site from such a transfer, and a statement of the character of the projected housing development.

- c. A legal description of the open space to be preserved on the transferor site by the transfer, accompanied by an open space (scenic) easement suitable for recordation and the applicable open-space policy to be implemented by the transfer.
 - d. The location, site area, and related residential development credits of the transferor site which the applicant proposes to transfer.
 - e. Where applicable, the number of building allotments granted to the recipient site under the Residential Development Control System (RDCS).
3. **City Action.** Upon approval of the Planning Commission and the City Council of a TDC application, the City Clerk shall issue a TDC certificate to the applicant in a form approved by the City Manager. The following actions must be taken prior to these development credits being effectively conveyed to and utilized by the recipient property:
- a. Approval by the Planning Commission of a detailed site plan of the recipient site to which the development credits are to be transferred;
 - b. Where recipient site is known, execution and recordation with the County Recorder's Office of an instrument legally sufficient both in form and content to effect conveyance of the TDC from the transferor to the recipient site. Such instrument shall specifically set forth the credits to be conveyed and the resultant total residential development credits assignable to the recipient site;
 - c. Execution and recordation with the County Recorder's office of an instrument legally sufficient in form and content to effect conveyance of a permanent open space easement in the transferor site dedicated to the City. Such open space easement shall be unencumbered by any prior interests or, if so encumbered, shall be accompanied by and recorded together with subordination agreement with evidence that all persons or entities having any interest in the transferor site have acknowledged the creation and transfer of development credits, consented to the terms and conditions of the open space easement, and waived the priority of any rights or claims they may have in the transferor site. Recordation of the executed open space easement and accompanying subordination agreement shall serve as notice of the dedication of open space in the transferor site and shall be incorporated in the deeds of the transferor site; and
 - d. Other requirements as established by the City Council.

18.30.050 – Planned Development Combining District

- A. Purpose of the Planned Development Combining District.** The purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD



CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: Leslie Little, Assistant City Manager for Community Development

APPROVED BY: City Manager

ADOPT POLICY FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) AGRICULTURAL PRESERVATION EXEMPT SET-ASIDES, TRANSFER OF DEVELOPMENT RIGHTS AND/OR AUCTION

RECOMMENDATION(S)

1. Adopt a policy for Agricultural Set-A-Sides, Transfer of Development Rights, and/or Auction process;
2. Establish number of Agricultural Set-A-Sides Available for Auction in 2019; and
3. Authorize 2019 Auction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Preserving Our Cultural Heritage

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

1. Should the City Council establish an auction process for the disbursement of Agricultural Preservation Set-Asides allotments established by Measure S (RDCS), in years when no Transfer of Permitted Residential Development Rights (TDRs) occur, to provide a reliable revenue source with which to acquire Agriculture Conservation Easements (ACE) within the City's Priority Conservation Area (map attached) identified in the Morgan Hill 2035 General Plan and RDCS update?
2. The RDCS includes a set-aside of up to 35 competition-exempt allotments annually (300 total through 2035), in furtherance of the City's agricultural preservation goals. Should the City auction 2017 and 2018 allotments, for a total of 70?

REPORT NARRATIVE:

The TDR is a mechanism that the City has used successfully for many years to implement policies of the Open Space and Conservation Element of the General Plan. In 1981, the City established the transfer of development rights from hillside lots of considerable slope to affect the preservation of open space and view shed on the hills surrounding the community. The TDR provision is designed to ease the restriction of prohibited construction on slopes of over 20% by granting affected property owners development rights based upon the unused density afforded to them. The TDR policy allowed a developer to negotiate with property owners in other residential areas of town

to sell those development rights to increase the density permitted on those other properties.

In support of the City's agricultural preservation goals, Measure S established an annual set aside of up to 35 RDCS competition-exempt allotments, up to a maximum of 300, to encourage the preservation of agricultural land in the City's Priority Conservation Area (Morgan Hill Municipal Code Section 18.78.060). Developers can negotiate and obtain ACE commitments by their own initiative within the Priority Conservation Area and receive allotments in return for those easements. This would occur on a first come, first served basis, up to 35 allocations per year. The City has created a Conservation Easement template, and once an agricultural easement seller is identified by the developer, the City will assist with the negotiation of the form of easement. All ACE's will have permanent stewardship provisions. In 2019, one ACE acre will yield 6 development allotments (or cost \$16,666 per allotment) with one allotment awarded to compensate for Agricultural Trust stewardship costs associated with ACE acquisition.

To accomplish the goals of the General Plan and provide the development community the opportunity to receive these exempt Agricultural Preservation Set-aside allotments, it is recommended that at the end of each calendar year, if the TDR's are unused via developer-initiated easement acquisition, that the City auction the unclaimed exempt allotments to provide funds to replenish the Open Space and Agricultural Conservation Fund, generating dollars for staff-initiated ACE acquisition.

It is proposed that each January, the City would auction unclaimed Preservation Set-Aside allotments. As with Downtown Exempt allotments, projects are exempt from RDCS competition, but must achieve a minimum score required to receive allotments. To maximize revenue from the sale of the allotments, a base price shall be set, and a process created to allow for open bidding for the purchase of the allotments.

Terms of the sale would:

- Set a minimum base bid
- Set an auction and bidding schedule
- Limit the resale of the exempt allotments to unrelated entities
- Allow assignment of the allotments to entities substantially formed from the originating purchaser
- Require termination and re-purchase by the City if not used within 3 years from time of award
- TDR allotments do not provide credit for Ag Mitigation required by Ordinance; rather they are in addition to mitigation required by conversion of agricultural lands which include residential, commercial, and industrial properties within the City.

The process contemplated would:

- Require bidders to register with the City and receive a bidder Identification number
- Provide public view of auction process results on City Web Page
- Bidders will be given a deadline to submit bids, including the number of

- allotments requested; City will publicly post bids
- Bidders will be allowed to submit revised bids if desired by date certain, after which bidding closes
- City awards allotments to highest bidder
- City processes a TDR certificate, similar to the Open Space TDR certificate currently in use.

It is proposed that the City establish a base price of \$20,000 per allocation for auction. This price is based upon the following assumptions:

A one-acre ACE costs between \$85,000 and \$100,000, depending upon the development potential of the agricultural property that will be removed. One acre is 43,560 sf. Based upon a lot size of 7,500 square feet, a one-acre lot can yield a net of 5 residential lots. When using \$100,000 and dividing by 5 allotments the base price is \$20,000. (One acre divided by 5 is 8,712 sf; subtracting for streets and common space the assumption is that the land will net 5 – 7,500 sf lots.) If this price were held constant for the next 10 years, the set aside sale will raise \$6,000,000 for the Agriculture and Open Space Fund (306).

COMMUNITY ENGAGEMENT:

This report is intended to inform the community. Subsequently, a summary of the program will be created and circulated to the development community. Value consideration was made by consulting an agricultural appraisal expert and testing the price with a member of the local commercial real estate community.

ALTERNATIVE ACTIONS:

Measure S makes provisions for the use of agricultural preservation exempt allotments, with a limit of not more than 35 set-a side allotments available within a single year, up to a maximum of 300 allotments. The Council could choose to exercise these exemptions through developer-initiated ACE's alone as an alternative. This could limit the actual preservation of land and would limit the City's ability to acquire "at-risk" property or provide leverage to match other local preservation efforts. Assuming ACE easements utilize a constant valuation as proposed in this report, it is recommended that one ACE acre yield 6 development allotments instead of 5, to compensate for the cost associated with ACE acquisition with associated stewardship provision costs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Agricultural preservation and conservation are key policies contained within the City's General Plan. The City has created and adopted an Agricultural Preservation Program (Ordinance), requiring all agricultural land within the City to mitigate 1:1, created a stay-ahead provision to ensure that efforts are prospective and not reactive, and identified a Priority Conservation Area to target acquisition efforts.

FISCAL AND RESOURCE IMPACT:

It is proposed that the City establish a base price of \$20,000 per auction allotment. This price is based upon the assumptions described above. It is also proposed that the base price will be set each year, based upon the City's experience with appraisal and

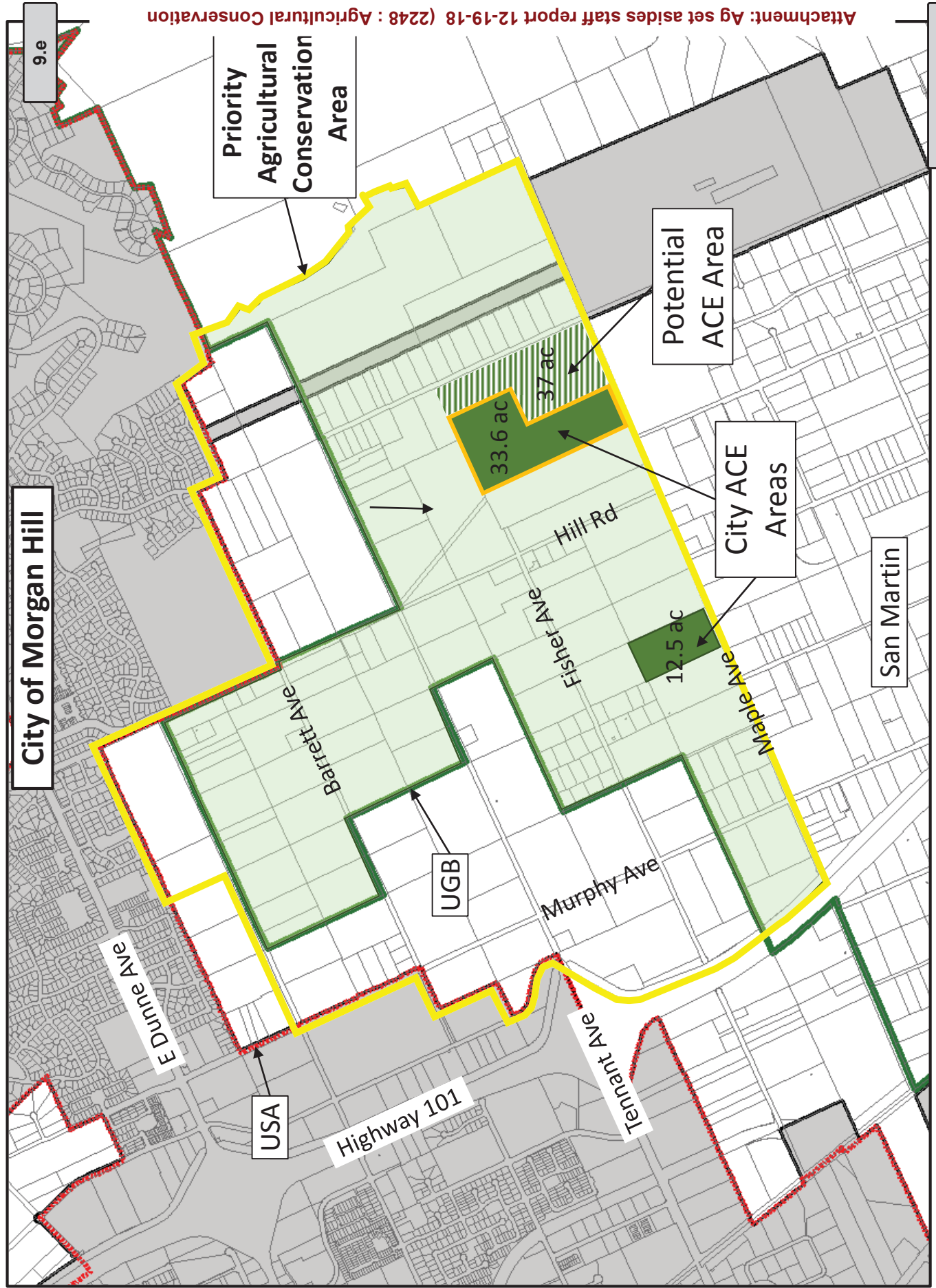
acquisition of ACE's in the Priority Conservation Area. If the price were held constant for the next 10 years, the set aside sale will raise \$6,000,000 for the Agriculture and Open Space Fund (306).

CEQA (California Environmental Quality Act):

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15378 the administrative actions taken to implement this policy are exempt from California Environmental Quality Act requirements.

LINKS/ATTACHMENTS:

1. [PriorityAgriculturalConservationArea](#)
2. [Draft TDR Program Outline 4.0](#)



Attachment: Ag set asides staff report 12-19-18 (2248 : Agricultural Conservation

AGRICULTURAL PRESERVATION TRANSFER OF DEVELOPMENT RIGHTS (TDRS)

Agricultural preservation and conservation are key policies contained within the City's General Plan. The City has created and adopted an Agricultural Preservation Program Ordinance, requiring all agricultural land within the City to mitigate 1:1, creating a stay-ahead provision to ensure that efforts are prospective and not reactive, created Agricultural Preservation Set-aside allotments through the Residential Development Control System (RDCS) and identified a Priority Conservation Area to target agricultural conservation easement (ACE) acquisition efforts.

HISTORY

The Transfer of Permitted Residential Development Rights (TDRs) is a mechanism that the City has used successfully for many years to conserve open space. TDR's have been used by the City to implement policies of the Open Space and Conservation Element of the General Plan, preserving over 500 acres of open space and view shed. In 1981, the City established the transfer of development rights from hillside lots of considerable slope to effect the preservation of open space and view shed on the hills surrounding the community. These TDR provisions were designed to ease the City's restriction of prohibiting construction on slopes of over 20%. The TDR policy allowed a developer to negotiate with a property owner in the hillside areas of town to purchase the development rights on the hillside property in exchange for receiving the right to increase the density permitted on the developer's property.

2016 RDCE MEASURE AUTHORIZATION

Use of the transfer of development rights tool was expanded from just open space to include agricultural conservation when Measure S was approved in 2016. To accomplish the agricultural conservation goals of the General Plan, Measure S set aside 35 annual Residential Development Control System (RDCE) competition-exempt allotments, up to a maximum of 300 through 2035. The exemption is meant to encourage the transfer of development rights from agricultural land in the City's Priority Conservation Area for the preservation of agricultural land at risk of development near the City's urban edge (Morgan Hill Municipal Code Section 18.156.060).

There are two ways to use the exemption: Agricultural Conservation Easement acquisition and purchase of exempt allotments by auction.

AGRICULTURAL CONSERVATION EASEMENT ACQUISITION

Developers are encouraged to negotiate and obtain ACE commitments by their own initiative within the Priority Conservation Area (map attached) to receive allotments in return for those easements. This will occur on a first come, first served basis, up to 35 allocations per year. The City has created a Conservation Easement template, and once an agricultural easement seller is identified by the developer, the City will assist with the negotiation of the form of easement. All ACE's will have permanent stewardship provisions. In 2019, one ACE acre will yield 6 development allotments (or cost \$16,666 per allotment) with one allotment awarded to compensate for Ag Trust stewardship costs associated with ACE acquisition. Upon identification of ACE property, developer must specify development to which the TDR will be applied and present Easement in an execution ready form acceptable to the City Attorney, and/or deposit 10% of ACE value to hold allotment commitment for up to 3 years, in which case ACE must be executed prior to issuance of construction permits.

At the end of each calendar year, if Agricultural Preservation TDR's are unused by developer-initiated easement acquisition, the City will auction the unclaimed exempt allotments to provide funds to replenish the Open Space and Agricultural Conservation Fund, generating dollars for City-initiated ACE acquisition.

AUCTION

In January of each year, the City will hold an auction of unclaimed agricultural conservation exempt allotments. As with Downtown Exempt allotments, Ag TDR projects are exempt from competition, but must achieve the minimum score required to otherwise receive allotments. To maximize revenue from the sale of the allotments, a base price shall be set each January, and a process created to allow for open bidding for the purchase of the allotments.

Terms of the sale:

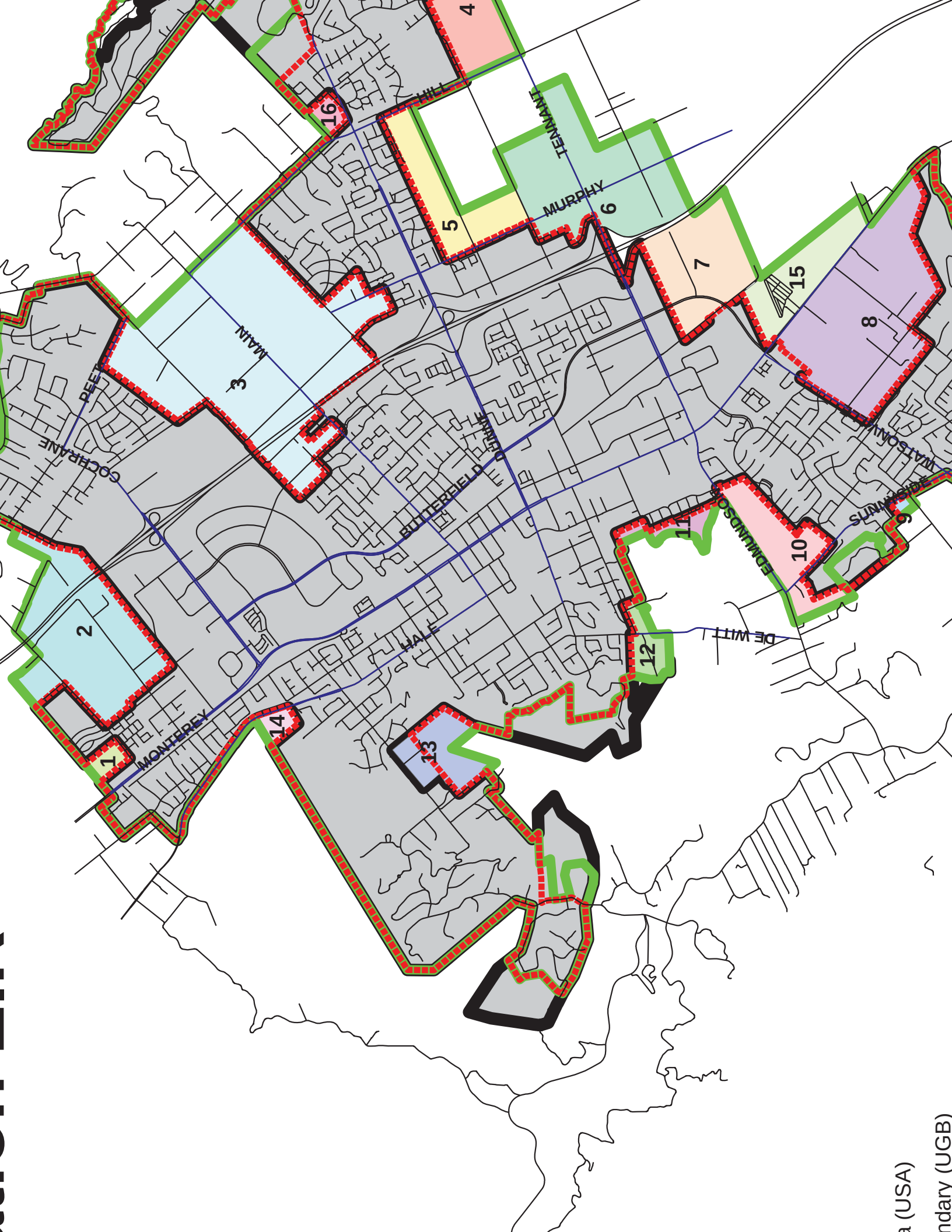
- Minimum base bid set by City for each allotment (Jan. 2019, \$20,000) or 5 allotments per acre.
- Auction and bidding schedule determined and posted by Jan. 5
- To mitigate speculation, resale of the exempt allotments to unrelated development entities will not be permitted. Purchasing developer must use allotments for projects which form an LLC or other legal entity in which developer is the controlling member.
- Assignment of allotments to entities substantially formed from the originating purchaser permitted
- Allotments terminate, and City required to refund deposit, minus a 10% administrative fee, if allotments not exercised with building permit within 3 years of time of deposit.
- TDR allotments do not provide credit for Ag Mitigation required by Ordinance; rather they are in addition to mitigation required by

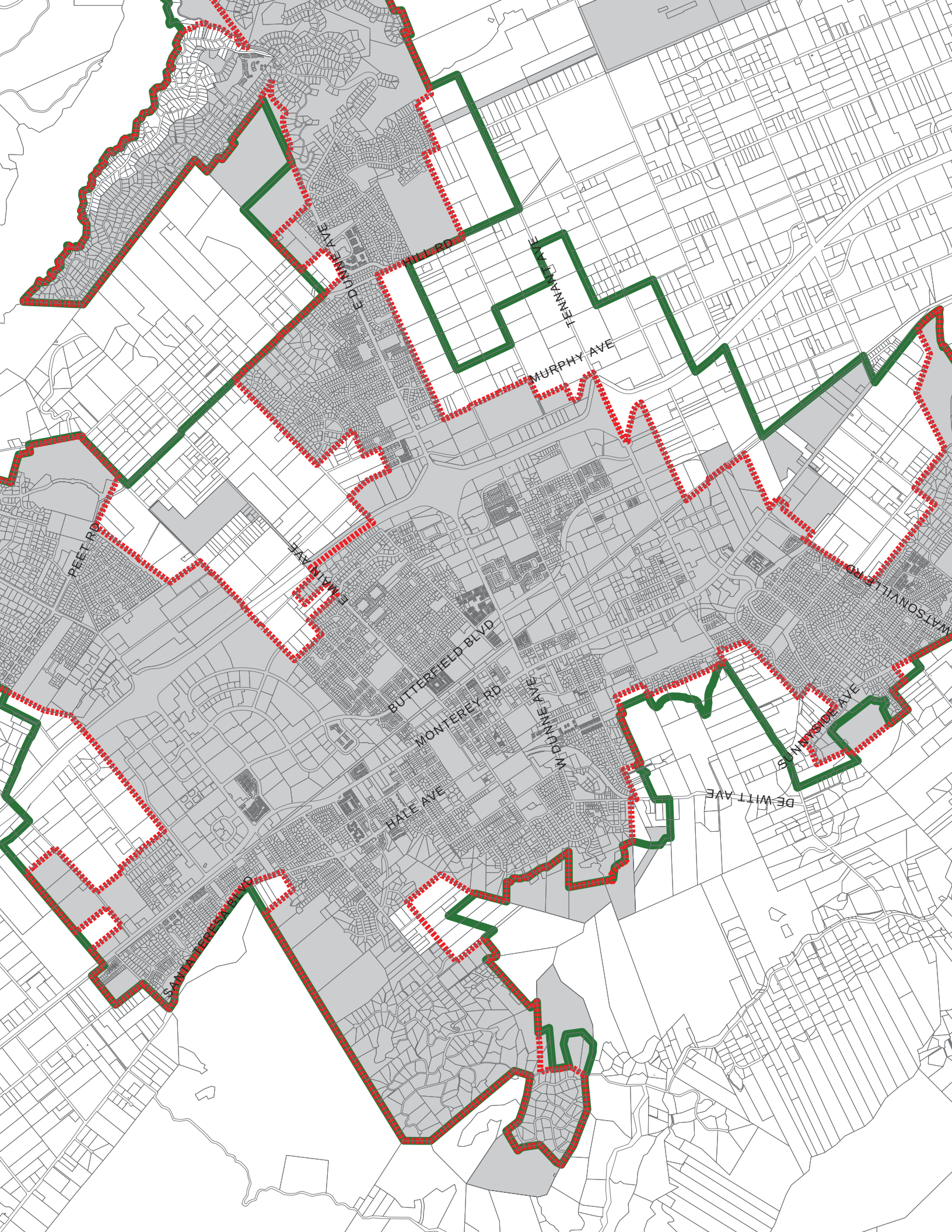
conversion of ag lands which include residential, commercial and industrial properties within the City.

- Unused allotments accrue to the pool of allotments to be available until 2035, but are subject to the RDCS limit of no more than 35 allotments available per year.

Process:

1. Bidders register with City and receive bidder identification number by January 15, 2019 and pick up simple bid form.
2. Bidders will be given a deadline (January 23) to submit bids on City simple bid form, including the number of allotments requested;
3. City will publicly post bid results on City Web Page by January 25, 2019
4. Bidders will be allowed to submit revised bids if desired by January 30, after which bidding closes. In the event of a tie high bid, one final round of bids will be taken from tied parties.
5. City awards allotments to highest bidder upon receipt of 10% of bid price no later than 30 days from January 30 or tie breaking bid round date. Should apparent high bidder fail to post deposit, allotments will be sold to second highest bidder.
6. City processes a TDR certificate, similar to the Open Space TDR certificate currently in use to memorialize bid. Successful bidder pays for balance of allotment upon issuance of building permit and TDR certificate is retired.





PEET RD

WATSON BLVD

WATSON BLVD

BUTTERFIELD BLVD

MONTEREY RD

HATE AVE

SAN JUAN BLVD

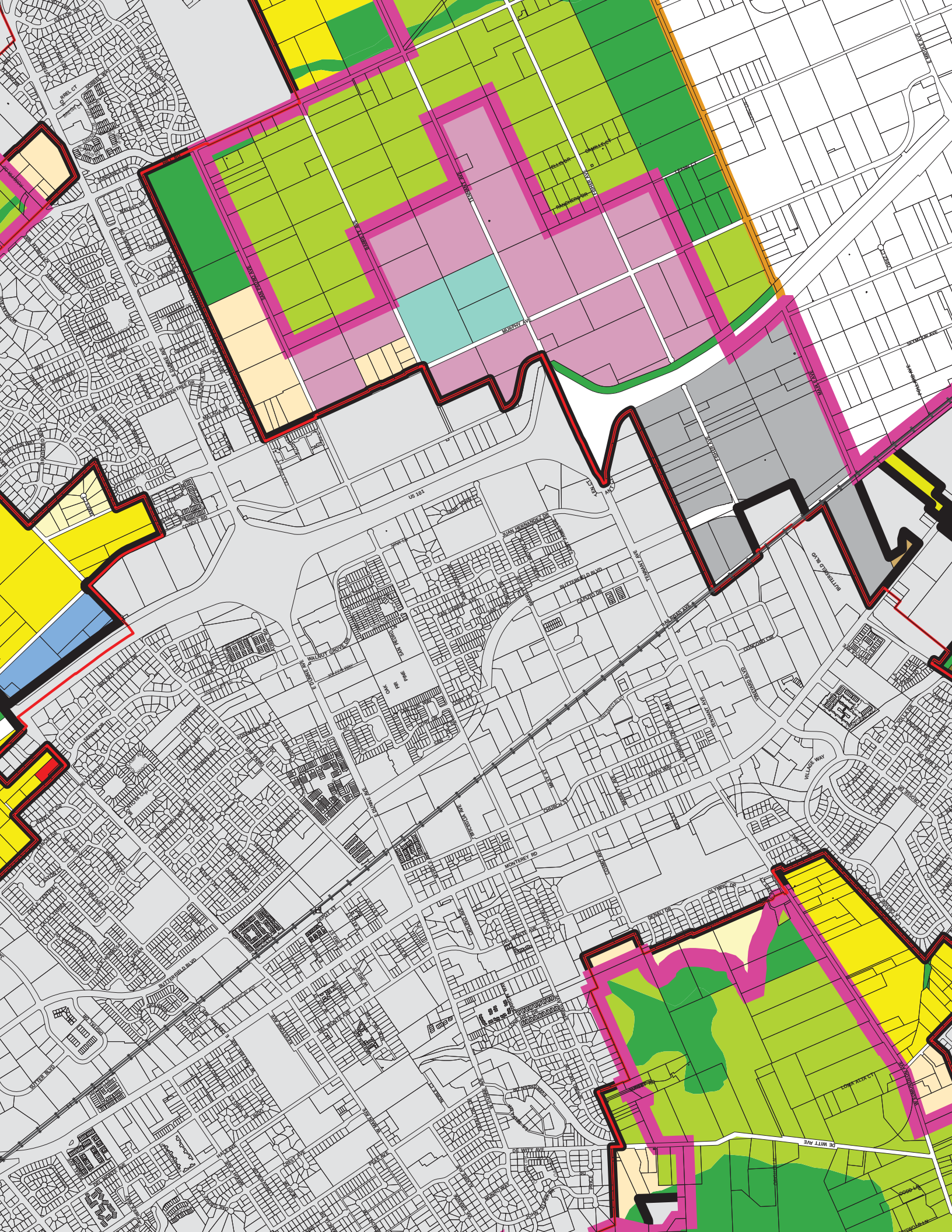
WATSON BLVD

DE WITT AVE

WATSON BLVD

MURPHY AVE

TENNYSON AVE





CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Lang, Economic Development Manager
APPROVED BY: City Manager

APPROVE DESIGN STANDARDS FOR SMALL CELL ANTENNA IN THE PUBLIC RIGHT OF WAY AND AUTHORIZE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR SMALL CELL FACILITIES

RECOMMENDATION(S)

1. Approve the Small Cell Design Standards related to pole mounted facilities located in the public right of way;
2. Approve the Small Cell License Agreement; and
3. Authorize the City Manager to negotiate, amend, and execute Small Cell License Agreements consistent with the Small Cell Design Standards for up to Forty-Four City owned street light poles for each telecommunication provider.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Economic Development
Telecommunications

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element

REPORT NARRATIVE:

A recent ruling (Small Cell Order) by the Federal Communications Commission (FCC) requires cities to identify Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this recent FCC Order, cities cannot require undergrounding and must provide objective, reasonable, deployable, and scalable design standards. Furthermore, the FCC Small Cell Order requires cities to approve wireless cell antennas within 60 days for existing poles and 90 days for new poles. Finally, the Order states that poles must be made available for small cell wireless and establishes a cost-based fee structure for review/permitting.

Small Cell antennae differ in many ways from the more traditional antennas and poles that you see currently deployed in Morgan Hill and beyond. Small cells generally are located on utility or street light poles which means the typical height is no taller than 30-40 feet which has a coverage area of 250 feet to 1,200 feet. On the other hand, Macro Cells (Towers) are typically installed on dedicated poles and will be at a minimum of 50 to 400 feet in the air and have a coverage area from one half a mile to 20 miles. Macro Cells are the basic back bone for telecommunications, and small cells will help supplement Macro cells.

The public right-of-way (streets, sidewalks, and areas owned by government agency providing public access) offer built-in infrastructure, such as street lights, traffic signals, and utility poles, which support wireless infrastructure. The California Public Utilities Commission (CPUC) has determined that wireless providers are a utility and, therefore, have the unfettered right to use the public right-of-way as any other utility. Therefore, Small Cell antennas and associated equipment can be placed on traffic signal or street light poles located in the public right-of-way.

Wireless Industry and Trends

The need for broadband is growing exponentially for both businesses and residents. Broadband can be delivered wirelessly (satellite/cellular) often through antennas or fixed (copper, coaxial, fiber) through an underground conduit or overhead cable. The City needs a strong telecommunications network to support its growing business community. Yet, the City of Morgan Hill has poor broadband availability. A 2016 study gave Morgan Hill a grade of “D” in terms of quality and access of broadband service. Morgan Hill is challenged by the limited number of providers and market models for return on investment (ROI).

In general, wireless providers are experiencing increased customer demand, particularly with respect to data capacity and speed. Because of this increasing data consumption, wireless providers are seeking rapid investment in the necessary infrastructure to meet not only current data demands with fourth generation (4G) technology but to prepare for consumer deployment of fifth generation wireless systems (5G) technology.

Unlike past approaches when wireless communication facility sites were predominately on leased private property; wireless providers are now interested in locating new facilities within public rights-of-way. Given the increasing costs for use permits, frequent public concern and resulting delay associated with leases on private property, wireless providers are seeking alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles or City-owned structures within the City’s rights-of-way.

Creation of a Small Cell License Agreement

A recent ruling by the FCC requires the City to identify Small Cell Design Standards for projects within the public right-of-way by April 15, 2019 and process applications within 90 days. To streamline this process, the City is proposing a two-part process to be compliant with the law and create certainty. The first step is to negotiate and execute a Small Cell License (SCL) Agreement with a telecommunication provider that outlines the number of city owned poles, specific location(s), and photo simulations of equipment on the poles. The second step allow providers to submit an encroachment permit to the Engineering Division for attachment of Small Cell antennas to a city owned pole(s).

The SCL agreement for the City of Morgan Hill was developed in collaboration with several Santa Clara County cities and is consistent with neighboring cities’ regulation of small cell deployments.

Basic terms of the Small Cell License Agreement are:

- Term: Five years
- Sites: Up to Forty-five (44) poles
- Options: One additional five-year extension
- Base Annual Rent: \$270 annually for each pole/cell site
- Increases: Annual rent adjustment by the Consumer Price Index, to increase by not less than 2.5% and not more than 5%, depending upon the prior year's CPI-U.

Staff recommends Council approve the proposed Small Cell Agreement and authorize the City Manager to negotiate, make minor amendments, and execute the agreement with telecommunication companies, for up to forty-four (44) pole sites.

City Standards

The City can influence investment or disinvestment in telecommunications through City's policies and regulations and/or through direct investment. Currently, the City lacks standards for either implementation (wireless or fixed) which meet Federal requirements. Furthermore, the industry is rapidly changing with federal mandates that severely limit the City's regulatory oversight authority.

The City of Morgan Hill is working diligently to comply with the FCC Declaratory Ruling and Third Report and Order FCC 18-133, which requires establishment of Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this recent FCC Order, cities cannot require undergrounding and must provide reasonable, deployable, and scalable design standards. As a result, staff is partnering with Joint Venture Silicon Valley on their Wireless Communications Initiative to work with industry professionals to develop best practices that provide clarity and encourage fiber installation and deployment of wireless antennas.

City staff has been actively engaged with telecommunication working groups, attended telecom conferences, and has identified and researched local best practices for small cell design standards. The proposed small cell design standards were then reviewed for consistency against the Small Cell License Agreement template, Title 18, Division 1, Chapter 18.96 of the Zoning Code and Public Works Design Standards.

On March 6, 2019, Telecommunications providers participated in a meeting to provide feedback on the City of Morgan Hill's Small Cell Design Standards. Telecommunication providers included: Extenet, Crown Castle, Verizon, and Mobility. These companies provided various comments regarding the proposed design standards, and subsequently the standards were reviewed and modified appropriately in response to this feedback.

The proposed Small Cell Design Standards are specific to City-owned poles, traffic signals and monopoles. Staff recommends the Council approve the proposed Small Cell Design Standards.

In order to create consistency between the FCC's Declaratory Ruling, the City's Small License Agreement, staff is also proposing text amendments to Title 18, Division 1, Chapter 18.96 of the Zoning code that removes language specific to small cells in the right of way on city owned street lights and traffic signals. The proposed Zoning amendment being heard on April 3, 2019 requires a public hearing and has been duly noticed as such. The proposed changes to the Zoning code are necessary in order to be consistent with the proposed Small Cell License Agreement and Small Cell Design Standards as outlined in this memorandum.

Other Background Legislation

a. Telecommunications Act

Section 253 of the Telecommunications Act (the Act) of 1996 guides the City's review of Wireless Communication Facilities (WCF). The Act states the City's review and approval or denial of WCF applications "shall not unreasonably discriminate among providers of functionally equivalent services," and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The Act requires the City to act on a permit application request within a reasonable period of time, and states that any decision to deny a request to "place, construct, or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record."

The Act also prohibits the City from regulating the "placement, construction, and modification of [WCFs] on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions." Title 18.96.050 of Morgan Hill's Municipal Code requires that WCF applications include a report, prepared by a qualified RF engineer, demonstrating that the WCF will comply with the FCC RF Guidelines.

b. Spectrum Act

Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) states that a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station and describes required timelines (60 days for modifications and 90 days for co-locations). The associated FCC Report and Order 14-153 provides guidance on what may be considered an eligible facility request and what constitutes substantial change.

c. FCC Declaratory Ruling and Third Report and Order FCC 18-133

The FCC adopted Report and Order FCC 18-133 (Small Cell Order) to accelerate the deployment of the next generation of wireless technology (known as 5G) using small cell antennas. Such antennas are typically placed on City streetlights or traffic signals in the right-of-way, although not exclusively. The Small Cell Order requires local

jurisdictions to process applications for co-location of small cells on existing structures within 60 days and on new structures within 90 days.

COMMUNITY ENGAGEMENT: Consult and Inform

City staff have been participating in Joint Venture Silicon Valleys' Wireless Communications Initiative for the past 18 months to learn about the evolving legislation and how other cities are addressing small cells. As part of Morgan Hill's on-going participation in the group, the City of Morgan Hill invited the telecommunications companies to provide comments on the small cell proposed design guidelines.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 12, 2019, Planning Commission conducted a public hearing on a proposed amendment to Title 18, Division 1, Chapter 18.96 (Wireless Communications) and approved a resolution to remove language from the Zoning Code specific to the Pole Mounted Facilities in the public right of way.

FISCAL AND RESOURCE IMPACT:

The Small Cell License Agreement establishes a minimum rent of \$270 annually, per pole, per small cell installation. The FCC Declaratory Ruling and Third Report and Order FCC 18-13 limits the City's ability to determine a fair market rent per pole. The agreement includes a rent escalator tied to the Consumer Price Index (CPI-U). With the escalator, over a 5-year period based upon an average CPI increases for San Francisco-Oakland-Hayward, CA Region, the total combined rent per pole the City would be expected to receive is approximately \$1,400. Rent revenue received under the Small Cell License Agreements, will be deposited into the City's General Fund (GL#: 010.37402).

An encroachment permit to allow for the installation of small cells on City owned poles will be required. The actual cost will depend on the number of installations and location as the encroachment permit fees are a cost recovery fee associated with inspections.

Pursuant to the City Manager's contract execution authority of \$60,000, staff determined the optimal number of poles to be permitted is forty four (44) per provider. Should a provider wish to install more small cells on City poles in excess of forty four (44), the contract will require City Council consideration.

CEQA (California Environmental Quality Act):

Small cell deployments on pole mounted facilities in the right-of-way are exempt from CEQA based on a Categorical Exemption pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project consists of the construction and location of a small facility, where only minor modifications are made to the exterior of the structure.

LINKS/ATTACHMENTS:

1. Morgan Hill Small Cell License Agreement
2. Morgan Hill Small Cell Guidelines-DRAFT

**SMALL CELL LICENSE
AGREEMENT**

BETWEEN

THE CITY OF MORGAN HILL, CALIFORNIA

AND

[Name of Company]

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SMALL CELL LICENSE AGREEMENT

This Small Cell License Agreement (“License”) is made and entered into as of _____, 2019, by and between the City of Morgan Hill, California, (“City” or “Licensor”) and [Name of Company], [corporate structure] (“Licensee”). Licensor and Licensee may be collectively referred to as “Parties.”

RECITALS

The following recitals are a substantive portion of this License:

- A. City is the owner of light poles, traffic signal poles or other poles (collectively “City Poles”) within the public right-of-way and owns or controls public right-of-way within the City of Morgan Hill located in Santa Clara County, State of California.
- B. Licensee is a [corporate structure] organized under the laws of the State of California, legally qualified to do business within the State of California whose business includes the installation of small cell cellular antenna sites.
- C. Licensee requests the use of certain City Poles as designated on the attached Exhibit “1”, for the installation and operation of small cell cellular antenna and radio sites.
- D. City is willing to permit Licensee to License the City Poles in accordance with the terms, conditions, and covenants of this License.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

City Poles and Improvements

- 1.1 License of City Poles. City hereby licenses to Licensee and Licensee licenses from City for the term, at the rental rate and upon all of the other terms and conditions set forth, the City Poles listed on Exhibit “1”, attached hereto and incorporated herein. The Parties acknowledge that they may amend Exhibit “1” if City and Licensee agree to additional City Pole sites.
- 1.2 Improvements. City licenses to Licensee the limited right to use City Poles only to locate a small antenna of the same or substantially similar initial design as previously approved by the City and shown on Exhibit “2”, attached hereto and incorporated herein. It is understood and agreed that the final antenna design will be shown in the plans submitted to the City in connection with the City’s encroachment permit process.

ARTICLE 2

Term

2.1 Term. The term of this License shall be for a period of five (5) years commencing on the Commencement Date and terminating on the fifth anniversary of the Commencement Date, unless earlier terminated ("Term").

2.2 Commencement Date. The Commencement Date of this License shall be the date this License is approved by the City Council.

2.3 Option to Extend. Provided Licensee is not in default, either at the time of exercise or at the time the extended Term commences, Licensee shall have the option to extend the Term of this Lease for a period of five (5) years ("Option Term") on the same terms and conditions provided. City shall not unreasonably deny this extension. Licensee shall exercise its option by giving City written notice ("Option Notice") at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration of the Term of this License.

ARTICLE 3

Rental

3.1 Base Rent. Licensee shall pay to City, as annual rent for the use of the City Poles, in advance on the first day of the calendar month during the Term and the Option Term, if any, of this License without deduction, offset, prior notice or demand, in lawful money of the United States, the sum of Two Hundred Seventy Dollars (\$270.00) ("Base Rent") for each City Pole. If the Commencement Date is not the first day of the month during the Term, the Base Rent shall be due on the first day of the calendar month after the Commencement Date of this License. The first year's rent shall be prorated as necessary, if the License does not commence upon the first day of the month. All payments, including Rent shall be mailed to: City Manager, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.

3.2 Annual Increase. During the Term of this License, including the Option Terms, the Base Rent shall be increased annually by the San Francisco-Oakland-San Jose Consumer Price Index CPI-U ("CPI-U") for the prior year, beginning on the first anniversary of the Commencement Date, and effective each anniversary thereafter throughout the Term and Option Terms, if any. The Rent shall be increased by not less than 2.5% and not more than 5% depending upon the prior year's CPI-U. The sum shall be adjusted annually resulting in a compound rate of increase. For example, the Base Rent for the first year for one pole would be Two Hundred Seventy Dollars (\$270.00) per year and the new rate commencing on the first anniversary, assuming a CPI-U of 2.5% would be Two Hundred Seventy Six Dollars and Seventy Five Cents (\$276.75).

3.3 Transactional Costs. Licensee shall pay to City, as additional rent, any reasonable transactional costs, which shall include any reasonable attorneys' fees incurred by City because of the negotiation, preparation, execution, and delivery of this License, any amendment, any future consent of City required and the preparation and negotiation of an amendment to the License ("Transactional Costs"). City shall furnish Licensee with an invoice reflecting the

Transactional Costs due, and Licensee shall make full payment to City of these costs within thirty (30) days from the date of City's invoice.

3.4 Late Charge. Licensee acknowledges late payment by Licensee to City of rent will cause City to incur costs not contemplated by this License, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. If any installment of rent due from Licensee is not received by City within ten (10) days after the date rent is due, Licensee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur because of late payment by Licensee. Acceptance of any late charge shall not constitute a waiver of Licensee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

ARTICLE 4

Use

4.1 Permitted Uses. Licensee shall use the City Poles for purposes related to the small cell antenna and radio installation (collectively "Antenna") only. Licensee shall be solely responsible for all costs associated with the construction, installation, maintenance, and use of the Antenna.

4.2 Access. City grants Licensee reasonable foot access to the City Poles. Access shall be available to Licensee, Licensee's employees and invitees, during normal business hours, except if an emergency occurs. It is anticipated, after installation of the Antenna is completed, that Licensee shall require reasonable access once every month for the purpose of ordinary tuning of Licensee's equipment and appropriate maintenance of the Antenna. As a part of this License, City grants to Licensee reasonable access to the area adjacent to the City Poles ("City Property") for the purposes of installing or maintaining the Antennas.

4.3 Prohibited Uses. Licensee shall not use City Poles for any purpose not expressly permitted herein. Licensee shall not (a) create, cause, or permit any nuisance or waste in, on or about the City Poles or permit the City Poles to be used for any unlawful purpose, (b) do or permit to be done anything that unreasonably disturbs the City's use of the City Poles or the occupants of neighboring property. Specifically, and without limiting the above, Licensee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Antenna on the City Poles. No materials or articles of any nature shall be stored outside adjacent to any portion of the City Poles.

4.4 Approval by the City and Other Agencies. Licensee, at its sole cost and expense, may install the Antenna, subject to Licensee's obtaining all required permits, licenses, and approvals from the City and any other governmental agencies having jurisdiction. Licensee shall maintain permits, licenses, and approvals in force through the Term and the Option Term, if any. The revocation or expiration of any permit, license, or approval is a breach of this License. If Licensee replaces the Antenna, it shall not do so without the prior written approval of City, and all required permits, licenses, and approvals from the City and any other governmental agencies with

jurisdiction. If a change in the Antenna is approved, Licensee and City shall amend Exhibit “2” to reflect the change. Should Licensee change or expand any Antenna without the prior approval of City, City may require that Licensee remove the expansion at Licensee’s sole cost and expense. Licensee shall be solely responsible for conducting any environmental review required in association with Licensee’s use of the City Poles and for all reasonable costs associated, as well as all fees, charges or other reasonable expenses imposed by the City or other regulatory agencies in connection with Licensee’s use of the City Poles prior to the License commencement, or at any time during the Term of the License.

4.5 Compliance with Laws. Licensee shall not do or permit anything to be done in, on the City Poles, or bring or keep anything in or on the City Poles which will conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted.

4.6 Condition, Use of City Poles. Licensor makes no warranty or representation concerning the condition of City Poles, or the fitness of City Poles for the use intended by Licensee, and disclaims any personal knowledge. Licensee has personally inspected the City Poles, knows their condition, finds them fit for Licensee’s intended use, accepts them “as is”, and has ascertained that they can be used for the limited purposes specified in Section 4.1.

4.7 Hazardous Materials.

4.7.1 Hazardous Materials on City Poles. Licensee shall not introduce any Hazardous Materials (as defined below) to the City Property, (excluding any Hazardous Materials which are components of commercially available products) unless the Hazardous Materials are transported, obtained, handled, stored, and/or disposed of in accordance with all federal, state, and local laws, ordinances, rules, regulations, or policies.

4.7.2. Hazardous Materials Defined. The term “Hazardous Material(s)” shall mean any toxic or hazardous substance, material, or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of “hazardous substances,” “hazardous waste,” “hazardous chemical substance or mixture,” “imminently hazardous chemical substance or mixture,” “toxic substances,” “hazardous air pollutant,” “toxic pollutant” or “solid waste” in the (a) “CERCLA” or “Superfund” as amended by SARA, 42 U.S.C. Secs. 9601 et seq., (b) RCRA, 42 U.S.C. Secs. 6901 et seq., (c) CWA, 33 U.S.C. Secs. 1251 et seq., (d) CAA, 42 U.S.C. Secs. 7401 et seq., (e) TSCA, 15 U.S.C. Secs. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407, (g) OSHA, 29 U.S.C. Secs. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101 et seq., (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) Carpenter- Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code Secs. 25300 et seq., (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Secs. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) “Proposition 65,” Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal.

Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100 et seq., (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500 et seq., (s) TPCA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

4.7.3 Hazardous Materials Indemnity. Licensee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold Licenser harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including, without limitation, diminution in value of the City Poles or City Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of City Poles or, damages arising from any adverse impact or marketing of the City Poles and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings, or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the License Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the City Poles by Licensee, Licensee's agents, employees, licensees or invitees or at Licensee's direction, of Hazardous Material, or by Licensee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the City Poles or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the License Term. For purposes of the indemnity, any acts or omissions of Licensee or its employees, agents, customers, assignees, contractors, or subcontractors of Licensee (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to Licensee.

4.7.4 City's Right to Perform Tests. At any time during the License Term, City shall have the right to enter upon City Poles in order to conduct tests of water and soil and to deliver to Licensee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Licensee's use of the City Poles. Licensee shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the City Poles and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at Licensee's

expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the City Poles or the Project, which has been caused by or resulted from the activities of Licensee, its agents, employees, contractors, or invitees. Licensee shall demonstrate that the antenna meets or exceeds all appropriate FCC requirements. Licensee shall provide results of any test results on the antenna prepared for the FCC or any other testing body.

4.7.5 Survival. This entire Section 4.7 of this License shall survive termination of the License, as to any activities during the Term or Option Term of this License.

4.7.6 Termination of License. City shall have the right to terminate the Term of the License in City's sole and absolute discretion in the event that (i) any anticipated use of the City Poles or City Property by Licensee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) Licensee has been required to take remedial action in connection with Hazardous Material contaminating the City Poles or City Property, if the contamination resulted from Licensee's action or use of the City Poles or City Property; or (iii) Licensee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the City Poles or City Property.

4.7.7 Covenant of Non-Interference. Licensee shall be responsible for inspecting City Poles and finding adequate space at the site without moving or relocating any of City's Poles or equipment, or any other facility, or utility located at the City Property, at the time Licensee's facilities are installed. Licensee's equipment shall not negatively impact any other existing facility or antenna. In the event that Licensee's equipment does impact other facilities, Licensee shall be required to install, at its own expense, frequency filters or take other reasonable measures to correct the problem. Licensee shall be required to coordinate with other existing utilities located at the property, to ensure that Licensee's equipment does not interfere with the frequencies utilized by existing utilities or other parties.

4.7.8 Co-location. Licensee acknowledges that City has the right to license additional positions on City Poles to third parties. All operations by Licensee shall comply with all Federal Communications Commission ("FCC") requirements. If City adds new City Poles or other facilities in the future, Licensee will not electronically or physically interfere with City owned and operated equipment. Licensee shall reasonably cooperate with current and future City licensees. Licensors will not grant a license to any party for use of the City Pole site, if the new use would unreasonably interfere with Licensee's operation of its Antenna. Any future license of the City Pole site, which permits installation of Antennas, shall be conditioned upon the new Antennas not interfering with Licensee's Antenna.

4.7.9 Electromagnetic Emissions. Licensee's operations on the City Poles shall comply with all applicable federal laws and regulations regarding electromagnetic emissions. Licensee shall conduct all necessary tests after its improvements are constructed on the City Poles to ensure that its facilities comply with those laws and regulations. The tests shall be conducted by a licensed professional engineer, and the results shall be provided to the City.

4.8 Telecommunications Services. At any time that Licensee ceases to operate as a provider of telecommunications services under Federal law, the Licenser shall have the option, in its sole discretion and upon sixty (60) days written notice to Licensee, to terminate this License and to require the removal of Licensee's Antennas from City Poles, including the cost of any site remediation, at no cost to the Licenser, without any liability to Licensee related directly or indirectly to such termination.

4.9 Scope of Agreement. All rights expressly granted to Licensee under this License, which shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of the Licenser to use all parts of the public right-of-way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the right-of-way as of the date of this License.

ARTICLE 5

Maintenance, Repairs and Alterations

5.1 General. Licensee shall keep in good order, condition, and repair City Poles and the Antenna placed on the Poles. Licensee shall keep the City Poles clean and free of debris.

5.2 Surrender. On the last day of the Term, or of the Option Term, Licensee shall surrender City Poles to City in the same condition as when received, clean and free of debris. Licensee shall also remove all improvements and cables and wires located above ground or below ground that Licensee placed upon City Poles, and repair any damage to City Poles by the installation, maintenance, or removal of Licensee's improvements and any related cables, wires or other equipment, and shall restore City Poles to the same conditions as when Licensee received City Poles from City.

5.3 City's Rights. If Licensee is in default, subject to the applicable cure periods, City may (but shall not be required to) enter upon City Poles, (except in the case of an emergency, in which case no notice shall be required), to perform obligations on Licensee's behalf and put the City Poles and/or Antenna in good order, condition and repair, and the cost, together with interest at the maximum rate then allowable by law, shall become due and payable as additional rent to City with Licensee's next rental installment, provided, however, in the case of a non-emergency, City shall notify Licensee of City's intention to perform Licensee's obligations ten (10) days prior to performing any work on Licensee's behalf. If no rental installment is due to City, these costs shall become due and payable within thirty (30) days from the date of City's invoice.

5.4 City Repair Obligations. City shall have no obligation to repair and maintain the City Poles nor the Improvements and facilities. Licensee expressly waives the benefit of any statute now or hereinafter in effect which would afford Licensee the right to make repairs at City's expense or to terminate this License because of City's failure to keep City Poles in good order, condition, and repair.

5.5 Improvements.

5.5.1 Licensee Payment for Labor or Materials. Licensee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Licensee at or for use on the City Poles, which claims are or may be secured by any mechanic or material lien against the City Poles or any interest therein. Licensee shall give City not less than ten (10) days' notice prior to the commencement of any work on the City Poles, if City shall require a surety bond, Licensee shall furnish to City a surety bond satisfactory to City in an amount equal to the contested lien, claim indemnifying City against liability for and holding the City Poles free from the lien or claim. In addition, City shall have the right to require Licensee to pay City's attorneys' fees and costs in participating in the action if City decides to participate.

5.5.2 Conditions Precedent. Before construction of any improvements are commenced on City Poles, and before any building materials have been delivered to City Poles by Licensee or its agents, Licensee shall comply with the following conditions or procure City's written waiver of the conditions specified:

5.5.2.1 Protection of Adjacent Property, Indemnity of the City. Licensee shall protect the City Property and adjacent property against damage resulting from the performance of work undertaken by Licensee or Licensee's agents, employees, contractors (excluding any damage caused by gross negligence or the willful act of City) and shall indemnify the City against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power.

5.5.2.2 Insurance. In addition to the insurance coverage otherwise required under this License, Licensee shall maintain workers' compensation insurance covering all persons employed in connection with the construction of any improvements, repair, or maintenance activities with respect to whom death or injury claims could be asserted against the City, Licensee, or the City Poles. City may require any third party(ies) contractor performing work at the City Poles to maintain workers' compensation insurance as contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this License with respect to insurance.

5.5.2.3 Final Inspection. Licensee shall not provide service to its customers from the Antenna in any way without receiving a final inspection of the Antenna from the City.

5.5.2.3 Notice of Changes in Plans. Upon completion of the installation of any Antenna, Licensee shall give City notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to City "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by the City shall be made without the City's prior written approval.

5.6 City Access. The City or its agents, may enter onto City Poles at all reasonable times during the term of this License Agreement to determine whether Licensee is complying with the terms and conditions or for any other purpose incidental to rights of the City.

5.7 Licensee Access. Licensee may enter onto City Poles during normal business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m. upon reasonable notice to the City. In the

event of an emergency, Licensee's access shall be 24/7. Licensee acknowledges that other licensees also have rights to access the City Poles, and that if multiple licensees or licensees request simultaneous access, the City may have to delay Licensee's access to the City Poles to accommodate others or vice versa.

5.8 Licensee Access During Security Alert. During times of high security alert by the Homeland Security Advisory System, Licensee must obtain City's consent to access City Poles.

5.9 Attachment to City Poles. Licensee will submit to the authorized representative of the Licensor, no more than two proposed designs for any proposed Antenna installations. Assuming that all of Licensor's requirements are met, Licensor will preapprove up to two acceptable designs for Antennas. Licensee may only install Antenna designs that are the same as the preapproved design. All installations shall, to the maximum extent possible, be placed behind equipment shrouds or located so as to minimize visual impacts to the City Engineer's satisfaction. The City Engineer may require a physical mock-up of the installation and photo simulations. If required the mock-up shall be the actual size of the equipment and include the actual color(s) to be used for the final installation. Licensee is prohibited from installing ground mounted cabinets. Licensee shall install all wires within the pole, any external wires that feed external equipment shall be hidden or shrouded from view. Any equipment (including but not limited to radio boxes, on poles shall be screened by street signs to City's Engineer's satisfaction and shall not exceed the preapproved size. Each antenna shall have identifying information on it including emergency contact numbers. No advertising may be placed on any equipment. Should any of these restrictions be technically infeasible Licensee shall provide City Engineer with documentation of the technical infeasibility and the provisions may be waived should the City Engineer reasonably determine that the requirements are technically infeasible.

5.10 Encroachment Permit. Subject to the conditions herein, Licensee shall submit an application for an encroachment permit ("Encroachment Permit") to the Licensor to enter upon the right-of-way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace the Antenna on City Poles in the public right-of-way for the purposes of providing telecommunications services. Licensor reserves the right to deny any application for an Encroachment Permit for the installation of an Antenna to City Poles at the sole discretion of the City Engineer. Licensee agrees to abide by decisions made by the City Engineer regarding Antenna placement.

5.11 Replacement Pole. If Licensee selects a Pole that is structurally inadequate to accommodate the Antenna, Licensee may at its sole cost and expense, and at the discretion of the City Engineer, replace the Pole (a "Replacement Pole") with one that is acceptable to and approved by the Licensor and dedicate such Replacement Pole to the Licensor. Ownership of Replacement Pole shall be transferred to City.

5.12 No Interference. Licensee shall not interfere in any manner with the existence and operation of any public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety, and other then existing telecommunications equipment, utility, or municipal property,

without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law or this License. However, the Licensors agree that the Licensors and/or any other tenants, licensees, or users of the public right-of-way who currently have, or in the future take possession of, space within the public right-of-way adjacent to any of Licensee's Antennas will be permitted to install only equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Licensee. Licensee shall act reasonably to accommodate future providers so that the public right-of-way may be used by additional providers.

5.13 No Authorization to Provide Other Services. Licensee represents, warrants, and covenants that the Antennas installed pursuant to this License will be utilized solely for providing the telecommunications services identified herein. Licensee is not authorized to and shall not use its Antennas to offer or provide any services not specified herein.

5.15 Payment to PG&E of Power Costs. Licensee shall cause a separate electric line to be run to its equipment. Licensee shall pay all electricity costs directly to Pacific Gas and Electric Company ("PG&E") or its other electric service provider. Licensee shall not use Licensors' electricity to power its equipment. Licensee shall make good faith efforts to negotiate a flat rate with PG&E to avoid above ground metering facilities where practicable. Should Licensee be unable to secure a flat rate service from PG&E then a ground mounted meter or pole mounted smart meters may be utilized with written approval by the City Engineer. All Equipment shall have a master cutoff switch installed which will allow power shut down to the Equipment in case of emergencies.

5.16 Commencement of Installation and Operation. Licensee shall commence installation of its initial Antenna no later than one (1) year after the mutual execution of an applicable Encroachment Permit. Licensee shall commence operation no later than six (6) months after Licensee commences installation, excepting delays due to any force majeure event. Failure of Licensee to commence installation or commence operation of the applicable telecommunications service as provided above shall afford Licensors the right to terminate the License upon thirty (30) days' notice to Licensee, unless within such thirty (30) day period, Licensee shall commence installation or commence operation, as applicable.

5.17 Relocation and Displacement of Equipment. From time to time, Licensors may require Licensee to relocate its equipment. Upon Licensors' sixty (60) days written notice to Licensee, Licensee shall relocate such equipment at Licensee's sole cost and expense when Licensors reasonably determines that the equipment relocation is necessary for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensors or other public agency project; (b) because the Antenna is interfering with, or adversely affecting proper operation of City Poles, traffic signals, communications, or other municipal facilities; or (c) to protect or preserve the public health or safety. Licensors shall use reasonable efforts to provide Licensee with a reasonably equivalent alternate location for its equipment. If Licensee shall fail to relocate any Antenna as requested by the Licensors in accordance with this provision, Licensors shall be entitled to remove or relocate the equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensors actual costs and expenses incurred by the Licensors in performing any removal work and

any storage of Licensee's property after removal within thirty (30) days of Licensors' written demand for such payment. If the City Pole is damaged or downed for any reason, and as a result is not able to hold the Antenna safely, the Licensors will have no obligation to repair or replace the City Pole for the use of Licensee's Antenna. Licensee shall bear all risk of loss because of damaged or downed City Poles, and may choose to replace City Poles pursuant to the provisions above.

5.18 Damages Caused by Licensee. Licensee shall, at its sole cost and expense and to the satisfaction of the Licensors: (a) remove, repair or replace any of its Antennas that are damaged or become detached; and/or (b) repair any damage to public right-of-way, City Property or other property, whether public or private, caused by Licensee, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of its Antennas. If Licensee does not remove, repair or replace such damage to its Antenna or to the public right-of-way, City Property or other property, the Licensors shall have the option, upon 30 days' prior written notice to Licensee, to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the Licensors. If such damage causes a public health or safety emergency, as reasonably determined by the Licensors, the Licensors may immediately perform reasonable and necessary repair or removal work on behalf of Licensee and will notify Licensee as soon as practicable; provided, such repair work involves reattachment of its Antennas to a Pole or repair of the Pole itself, and shall not include any technical work on Licensee's equipment. Upon the receipt of a demand for payment from the Licensors, Licensee shall within thirty (30) days of such receipt, reimburse the Licensors for such costs. The terms of this provision shall survive the expiration, completion, or earlier termination of this License.

5.19 Bond Requirement. Licensee shall provide a bond to Licensors in the amount of fifty thousand dollars (\$50000.00), for the first twenty five installed Antennas to protect Licensors in that event that Licensee fails to remove its Antennas upon termination of this License. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. The bond forms shall be in a form approved by the City Attorney. City reserves the right to increase bond amount required depending upon the reasonable determination of the City Public Works Director.

5.20 As Built Plans. Licensee shall provide as built plans, to the City, for each Antenna installation within 30 days of the completion of the installation.

ARTICLE 6

Indemnity and Insurance

6.1 Indemnity. This License is made upon the express condition that Licensee shall indemnify and hold harmless City and its officers, agents and employees against any suits, claims or actions arising out of Licensee's use of City Poles or from any act permitted, or any omission to act, in or about the City Poles or City Property by Licensee or its agents, employees, contractors or invitees, including, but not limited to, any injury or injuries to, or death or deaths of, persons or property that may occur, or that may be alleged to have occurred from any cause or causes whatsoever, while in, upon, about or in any way connected with City Poles during the term of this License, or during any holdover tenancy thereof (except where caused solely by the active negligence or willful misconduct of City, its employees or agents). Licensee agrees to

defend any actions, suits or claims and pay all reasonable charges of attorneys and all other costs and expenses arising therefrom. If any judgment is rendered against the City or any of the other individuals enumerated above in any action (except to the extent the judgment arises from the active negligence or willful misconduct of the City, its employees or agents) Licensee shall, at its expense, satisfy and discharge same.

6.2 Insurance. During the term of this License, Licensee shall maintain in full force and affect the following insurance policies:

- 6.2.1 Commercial general liability policy (bodily injury and property damage);
- 6.2.2 Worker's Compensation, employer's liability policy; and
- 6.2.3 Comprehensive automobile liability insurance policy.

These policies shall be maintained with respect to employees and vehicles using the City Property with coverage amounts and including the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit "3" attached and incorporated by this reference. In the event that Licensee contracts with another entity to install, monitor or utilize or own the Antenna the other entity shall also provide the same insurance as required above and in Exhibit "3".

ARTICLE 7

Damage, Destruction and Termination

7.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the City Poles by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Licensee to terminate this License, unless City Poles are rendered unusable for the Antenna.

7.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Licensee, shall excuse the performance by Licensee for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by Licensee pursuant to this License. In the event any work performed by Licensee or Licensee's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Licensee of the provisions of this License.

7.3 Waiver. City and Licensee waive the provisions of any statutes, which relate to termination of Licenses when licensed property is destroyed and agree that such event shall be governed by the terms of this License.

ARTICLE 8

Taxes

8.1 Personal Property. Licensee shall pay, prior to delinquency, all taxes, license fees, and public charges assessed or levied against Licensee or Licensee's estate in this License or Licensee's improvements, trade fixtures, furnishings, equipment and other personal property.

8.2 Real Property. Licensee shall pay Licensee's share of all real property taxes (as defined in Section 8.3 below) which become due and payable to City on or before the later of ten (10) days prior to the delinquency, or three (3) days after the date on which Licensee receives a copy of the tax bill and notice of City's determination, including documentation reasonably supporting determination hereunder. Licensee's liability to pay real property taxes shall be prorated based on a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the License Term at the commencement or end of the License. Licensee is not responsible for taxes related to rental income to City under this License. Licensee specifically acknowledges it is familiar with Section 107.6 of the California Revenue and Taxation Code and realizes that a possessory interest subject to property taxes may be created, agrees to pay any tax, and waives any rights Licensee may have under Revenue and Taxation Code 107.6.

8.3 Definition. The term "real property taxes" as used herein shall mean:

8.3.1 All taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to (i) value, occupancy, use or possession of City Poles and/or the Improvements, (ii) any improvements, fixtures, equipment and other real or personal property of Licensee that are an integral part of City Poles, (iii) use of City Poles, improvements, public utilities, or energy within City;

8.3.2 All charges, levies, or fees imposed by reason of environmental regulation or other governmental control of City Poles and/or the improvements;

8.3.3 New excise, transaction, sales, privilege, or other taxes now or hereafter imposed upon City as a result of this License; and

8.3.4 All costs and fees (including attorneys' fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the City Poles. If at any time during the Term, the taxation or assessment of the City Poles and/or the improvements prevailing as of the commencement of this License shall be altered, then any tax or charge, however designated, shall be included within the meaning of the term "real property taxes." If any real property taxes are based upon property or rents unrelated to the City Poles and/or the improvements, then only that part of such tax that is fairly allocable to the City Poles and/or the improvements, as determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

ARTICLE 9 Utilities

9. Licensee shall pay for all power, telephone, and other utilities and services supplied to the Licensee's improvements or equipment, together with any taxes.

ARTICLE 10 Signs

10. Licensee shall not place any signs upon City Poles without prior written consent of City, except for those signs that are required by law.

ARTICLE 11 Assignment and Subletting

11.1 City's Consent Required. Licensee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Licensee's interest in this License or in City Poles, without City's prior written consent, which consent shall not be unreasonably withheld. City shall respond to Licensee's request for consent in a reasonably timely manner and any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this License.

11.2 Net Worth Requirements. Notwithstanding the foregoing, Licensee may not assign or sublet its equipment attached to the City Poles, or any portion thereof, without the City's consent, to any entity which controls, is controlled by, or is under the common control with Licensee, or to any entity resulting from any merger or consolidation with Licensee, or to any partner of Licensee or to any partnership in which Licensee is a general partner, or to any person or entity which acquires all of the assets of Licensee as a going concern, or to any entity which obtains a security interest in a substantial portion of Licensee's assets. Any entity listed in this paragraph shall have a net worth of not less than ten million dollars (\$10,000,000.00).

11.3 No Release of Licensee. No subletting or assignment as approved by City shall eliminate Licensee's obligation or alter the primary liability of Licensee to pay the rent and to perform all other obligations to be performed by Licensee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Licensee or any successor of Licensee in the performance of any of the terms hereof, City may proceed directly against Licensee without the necessity of exhausting remedies against said assignee.

ARTICLE 12 Defaults; Remedies

12.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this License by Licensee:

12.1.1 The abandonment of the City Poles by Licensee as defined by Civil Code §1951.3.

12.1.2 The failure by Licensee to make any payment of rent or any other payment required to be made by Licensee hereunder, as and when due, where the failure shall continue for a period of ten (10) business days after written notice from City to Licensee. In the event City serves Licensee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

12.1.3 The failure by Licensee to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by Licensee, where the failure shall continue for a period of thirty (30) days after written notice from City to Licensee; provided, however, that if the nature of Licensee's default is that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commences cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

12.1.4 The making by Licensee of any general arrangement or assignment for the benefit of creditors; Licensee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Licensee, it is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Licensee's assets located at or on City Poles or of Licensee's interest in this License where possession is not restored to Licensee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Licensee's assets located at the City Poles or of Licensee's interest in this License, where seizure is not discharged within thirty (30) days.

12.2 Remedies. In the event of any material default or breach by Licensee, City may at any time, thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of default or breach:

12.2.1 Terminate Licensee's right to possession of the City Poles by any lawful means, in which case this License shall terminate and Licensee shall immediately surrender possession of City Poles and improvements to City. In that event, City shall be entitled to recover from Licensee all damages incurred by City by reason of Licensee's default including, but not limited to, the cost of recovering possession of the City Poles, expenses of reletting, including if necessary, removal of improvements and restoration of the City Poles, reasonable attorneys' fees, the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this License and the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of such award exceeds the amount of rental loss for the same period that Licensee proves could be reasonably avoided;

12.2.2 Maintain Licensee's right to possession, in which case this License shall continue in effect whether or not Licensee shall have abandoned City Poles. In that event, City shall be entitled to enforce all of City's rights and remedies under this License, including the right to recover rent as it becomes due; and

12.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

12.3 No Relief from Forfeiture After Default. Licensee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event Licensee is evicted or City otherwise lawfully takes possession of the City Poles by reason of any default or breach of this License by Licensee.

ARTICLE 13 **Termination of License**

13.1 Termination by Licensee. Except as provided otherwise herein or by applicable law, Licensee may terminate this License for cause upon the giving of not less than thirty (30) days written notice to City if any of the following occur:

13.1.1 The failure by City to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by City, where the failure shall continue for a period of thirty (30) days after written notice from Licensee to City; provided, however, that if the nature of the City's default is such that more than thirty (30) days are reasonably required for its cure, then City shall not be deemed to be in default, if City commenced to cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion;

13.1.2 Licensee fails to obtain or loses any permits necessary for operation of the City Poles as a cellular telephone communications facility; or

13.1.3 Licensee determines that the site is inappropriate for technological reasons, beyond its control, including but not limited to signal interference.

13.2 Termination by City. Except as otherwise provided or by applicable law, City may terminate this License for cause upon giving thirty (30) days written notice if any of the following occur:

13.2.1 The City Council of City determines through credible scientific evidence collected with regard to the Antenna operated on the City Poles, that the facility is a threat to public health or safety; or

13.2.2 Licensee loses or fails to satisfy any condition of any permit required by City necessary for operation of City Poles as a location for the Antenna.

13.3 Condemnation of Licensed City Poles. Should all or part of the Licensed City Poles be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this License:

13.3.1 Either City or Licensee may terminate this License by giving the other thirty (30) days written notice of termination; and

13.3.2 Any damages and compensation awarded or paid because of the taking shall belong to the City, except for amounts paid Licensee for moving expenses or for damage to property owned by Licensee and the value of the unexpired Term of this License.

ARTICLE 14 City's Liability

14. The term "City" as used herein, shall mean the City only while the City is the owner of the fee title of City Poles. In the event of any transfer of title or interest, the City (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of City at the time of transfer, in which Licensee has an interest, shall be delivered to the City's grantee.

ARTICLE 15 Interest on Past-Due Obligations

15. Except as expressly provided, any overdue amount due to City shall bear interest at the lesser of ten percent (10%) per year or the maximum rate allowable by law from the date due.

ARTICLE 16 Holding Over

16. If Licensee remains in possession of City Poles or any part of City Poles after the expiration of the Term or Option Term, the occupancy shall be a tenancy from month to month. All the obligations of this License applicable to Licensee shall remain in effect. The monthly rental obligation shall be two (2) times the Base Rent in effect at the time of expiration.

ARTICLE 17 City's Access

17. City and City's agents shall have the right to access City Poles for the purpose of showing to prospective purchasers, lenders, or licensees, and making alterations, repairs, improvements, or additions to City Poles as City may deem necessary.

ARTICLE 18 Prevailing Wage

18. To the extent applicable by law to Licensee's activities under this Agreement, Licensee shall pay prevailing wages.

ARTICLE 19 Easements

19. City reserves to itself, the right, from time to time, to grant such easements, rights, and dedications that City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with Licensee's use of the City Poles. Licensee shall sign any of the aforementioned documents upon request of City and failure to do so shall constitute a material breach of this License.

ARTICLE 20 General Provisions

20.1 Severability. The invalidity of any provision of this License as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision.

20.2 Time of Essence. Time is of the essence under this License.

20.3 Additional Rent. Any monetary obligations of Licensee to City under the terms of this License shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by Licensee to City.

20.4 Entire Agreement, Modification. This License contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding shall be effective. This License may be modified in writing only.

20.5 No Warranty. Except as otherwise stated in this License, Licensee hereby acknowledges that neither the City nor any employees or agents of the City has made any oral or written warranties or representations to Licensee relative to the condition or use by Licensee of the City Poles. Licensee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of City Poles, and compliance with all applicable laws and regulations in effect during the Term of this License.

20.6 Notices. Any notice required or permitted to be given, shall be in writing and may be given by personal delivery or by first class mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Licensee or to City at the address noted below:

Licensee:

Name of Company

Address

Address

Phone:

City:

City Manager

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

With Copy to:

Donald Larkin
City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037

Each notice shall specify the License provision pursuant to which it is given. Either Party may specify a different address or contact person. Notice given under this section shall be deemed in compliance with applicable statutory notice requirements, including Code of Civil Procedure §1162.

20.7 Waivers. No waiver by City or Licensee of any provision shall be deemed a waiver of any other provision or of any subsequent breach by City or Licensee of the same or any other provision. Licenser or Licensee's approval of any act shall not be deemed to render unnecessary obtaining of the other Party's consent for any subsequent act. The acceptance of rent by City shall not be a waiver of any preceding breach by Licensee of a provision, other than the failure of Licensee to pay the particular rent so accepted, regardless of City's knowledge of the breach at the time of acceptance of rent.

20.8 Cumulative Remedies. No remedy or election under this License shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.9 Choice of Law. This License shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a Party to this License, the Parties agree that trial of such action shall be conducted exclusively in the state courts of California, County of Santa Clara. The language of all parts of this License shall be construed with its fair meaning and not strictly for or against the City or Licensee.

20.10 Condition to Effectiveness of License. The approval of the City Council of City constitutes an express condition precedent to the effectiveness of this License.

20.11 Attorneys' Fees. If either party brings an action to enforce the terms or declare rights hereunder, the prevailing Party in any such action, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the other Party.

20.12 Brokers. Each Party represents that it has not had dealings with any real estate broker or finder, with respect to this License in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom the indemnifying Party has or purportedly has dealt.

20.13 Authority. Each individual executing this License on behalf of Licensee and City represents and warrants that he or she is duly authorized to execute and deliver this License on behalf of said Party.

20.14 Non-Liability of Officials and Employees of the City. No official or employee of City shall be personally liable for any default or liability under this License.

20.15 Non-Discrimination. Licensee covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry in any activity under this License.

20.16 Independent Contractor. It is agreed that Licensee shall act and be an independent contractor and not an agent nor employee of City.

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20.17 Conflict of Interest. Licensee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this License.

CITY OF MORGAN HILL, CALIFORNIA

APPROVED AS TO FORM:

City

DONALD LARKIN

City Attorney

CHRISTINA TURNER

City Manager

ATTEST:

City Clerk

Licensee

[Licensee's name]

By: _____

Title: _____

Licensee's Address:

Telephone: (____) ____-____

Facsimile: (____) ____-____

"Licensee"

Small Cell License Agreement Form Morgan Hill revised 12-12-18

Attachment: Morgan Hill Small Cell License Agreement (2240 : Small Cells in the Public Right of Way)

EXHIBIT “3” Insurance Requirements

1. **Insurance Requirements.** LICENSEE shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of LICENSEE, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. Any deductibles or self-insured retentions must be declared to and approved by City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. **LICENSEE further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to LICENSEE, at any time as deemed necessary to protect the interests of the CITY.**

1.1. **Insurance Types and Amounts.**

- 1.1.1. **Commercial General Liability (CGL).** LICENSEE shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- 1.1.2. **Automobile Liability.** LICENSEE shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if LICENSEE does not own automobiles, then LICENSEE shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE 's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- 1.1.3. **Workers’ Compensation Insurance and Employer’s Liability.** LICENSEE shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE 's combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If LICENSEE is self-insured, LICENSEE shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- 1.2. **Endorsements.** LICENSEE shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

1.2.1. **General Liability.**

1.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

1.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

1.2.1.3. insurance shall be primary non-contributing.

1.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 1.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

- 1.4. **Certificates.** LICENSEE shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the LICENSEE's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

Federal Regulations

Telecommunications Act of 1996

Section 253 of the Telecommunications Act (the Act) of 1996 guides the City's review of Wireless Communication Facilities (WCF). The Act states the City's review and approval or denial of WCF applications "shall not unreasonably discriminate among providers of functionally equivalent services," and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The Act requires the City to act on a permit application request within "a reasonable period of time", and states that any decision to deny a request to "place, construct, or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record."

The Act also prohibits the City from regulating the "placement, construction, and modification of [WCFs] on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions." Title 18.96.050 of Morgan Hill's Municipal Code requires that WCF applications provide a report, prepared by a qualified RF engineer, demonstrating that the WCF will comply with the FCC RF Guidelines.

Spectrum Act

Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) states that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station" and describes required timelines (60 days for modifications, 90 days for collocations). The associated FCC Report and Order 14-153 provides guidance on what may be considered an "eligible facilities request" and what constitutes "substantial change".

FCC Declaratory Ruling and Third Report and Order FCC 18-133 – "Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" [WC Docket No. 17-84; WT Docket No. 17-79, FCC 18-111]

The FCC adopted Report and Order FCC 18-133 (the "Small Cell Order") to accelerate the deployment of both the current and next generations of wireless technology (known respectively 4G and 5G) using small cell antennas. Such antennas are typically placed on City streetlights or traffic signals in the right-of-way, although not exclusively. The Small Cell Order requires local jurisdictions to process applications for collocation of small cells on existing structures within 60 days and on new structures within 90 days. Right-of-way applications on City assets are reviewed by City staff and processed concurrently with a Small Cell License Agreement (SCLA).

The Small Cell Order also codifies processing timelines for non-small cell WCFs required by other federal policies: 90 days for collocations, and 150 days for new projects.

California State Regulations

Assembly Bill 57 (2015)

AB 57 added Section 65964.1 to the California Government Code, which “deems approved” applications for most types of wireless sites if the City does not act on an application within the FCC’s “shot clock” timeframe if the applicant has provided all required notices.

Shot Clocks and Processing Timelines

Federal laws and policies provide shot clocks for all types of WCF approved by the City of Morgan Hill. The City must decide on a project within the shot clock timeframes outlined below. Shot clocks are tolled while the City awaits resubmittal.

Required Shot clocks for WCF projects

Time Frame	Project Type(s)
60 days	• Small Cells proposed on existing City infrastructure
90 days	• All collocations and Small Cells proposed on new structures
150 days	• Non-Small Cell new projects (Third Report and Order Shot Clock)

The shot clocks codified by the Third Report and Order force the City to act quickly. Shot clocks do not require the City to approve an application, only to act on it. To facilitate project approval, the City needs a complete application early in the process. Otherwise, staff will be forced to deny an incomplete application to meet shot clock requirements. It is the applicant’s responsibility to ensure that they submit all the information that the City needs to decide on a project. This includes (but is not limited to) noise study, photo simulations, site development plans, evidence that the project complies with the Zoning code, engineering standards and requirements of these guidelines, etc.

Small Cells

This network of low-powered micro antennas provides cellular and data coverage to supplement the provider’s macro-cellular network. New small cell installations will improve the providers’ ability to meet current and future consumer cellular and data needs.

These design standards provide design and aesthetic requirements and specifications that all small wireless facilities installed within the right-of-way must meet prior to installation within Morgan Hill boundaries. Small cells installed within the right-of-way are bound to these design standards.

Providers shall consider the aesthetics of the existing street lights and other City infrastructure near proposed small cell locations, with special attention given to the details of neighborhoods with unique

street light assemblies. Unique assemblies may include mast arms, architectural luminaires, mounting heights, pole colors, etc.

SMALL CELL EQUIPMENT DESIGN STANDARDS FOR CITY OWNED POLES

AESTHETICS: Equipment should be of a color which reasonably matches the pole.

INTERNAL INSTALLS: Equipment shall be installed within an existing pole when technologically feasible. Any equipment installed within a pole may not protrude from the pole except to the extent technically necessary to connect to power or a wireline.

EXTERNAL SHROUDING: Whenever technically feasible, any pole mounted antenna shall be located at the top of the pole contained in an enclosure (ex. Radome Shroud), otherwise mounted as close to the pole as technically feasible in accordance with applicable standards. Any other equipment shall be contained in an enclosure on the pole, unless the visual impact can otherwise be reduced by its location on the pole including behind street signs on the pole. Maximum of 4 equipment enclosures are allowed on a single pole.

TESTED EQUIPMENT: Devices and associated equipment must be UL listed and FCC certified or authorized for the intended use.

INTERFERENCE: Antenna shall not cause any interference with operation of City facilities, including signs, banners and miscellaneous lighting or of any existing City telecommunication infrastructure.

DIMENSIONS: Individual antenna, excluding other associated wireless equipment, shall be no more than three (3) cubic feet in volume, and all other associated wireless equipment shall not cumulatively exceed 28 cubic feet in volume.

SIDEARM (OFF-SET) INSTALLS: May not allow the furthest point of the enclosure to extend more than 18 inches from the pole.

SOUND: Devices shall not emit audible sounds beyond 55 dB consistent with Municipal Code Chapter 8.28. In single family neighborhoods, noise limit to be 5dBA above ambient sound, not to exceed 30 dBA as measured at a property line.

CONDUITS: All cables shall be in conduits and shall be flush with the pole unless required to be installed inside the pole.

HARDWARE ATTACHMENT: All hardware attachments should be hidden. Welding onto existing equipment is not permitted.

COLOR: All equipment should be painted to match pole aesthetics. Paint should be powder coated over zinc paint. If a wood pole, the visible attachments and hardware shall match pole aesthetics.

CABLE: All cables should be clearly labeled for future identification.

POLE MOUNTED ANTENNA: Pole Mounted Antenna must be mounted directly on top of the pole, unless a side arm installation is required. A tapered transition between the upper pole and Antenna (including enclosure) is required when mounted on top of the pole. Antenna with enclosure shall not exceed 3 cubic feet in volume. Antenna and enclosure shall not exceed 40 inches in height when mounted on top of pole.

STICKERS/SIGNS: Any pole mounted enclosure or ground mounted utility box should be labeled a (1) RF warning sticker, background to match pole color, no larger than 4 x 6 inches. Facing to the street near the elevation of the antennae, (2) 4-inch by 6-inch (maximum) plate with the provider's name, location identifying information, and 24-hour emergency telephone number, and (3) no advertising, logos or decals, unless additional identification or signage is required by law.

LIGHTS: There shall be no lights on the equipment unless required by federal law.

GROUND MOUNTED EQUIPMENT: Must meet and follow existing City ordinances for ground mounted utility boxes and be attached to a concrete foundation. Ground mounted equipment must be placed in a location that does not obstruct pedestrian or vehicular traffic and in the least conspicuous location available within a reasonable distance from the pole. Ground mounted equipment should be installed within an existing or replacement street feature including, without limitation, bus stop shelters, trash bins, benches, kiosks, advertisement panels or other street furniture to conceal the equipment. Ground mounted equipment must comply with all ADA requirements.

HEIGHT OF EQUIPMENT ON POLE: The lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.

POWER METER: As required by PG&E and in a location that (1) minimizes its interference with other users of the public right-of-way including, but not limited to, pedestrians, motorists, and other entities with equipment in the right-of-way. Wireless meters are required where technically feasible.

POLE STYLE: Galvanized Steel Pole equal to Valmont DS30 8.0A300-8s-GV. City's Design Standards E-11.

POLE CONNECTION: Where technically feasible, attachment to the side of a pole must be placed perpendicular to the street away from the vehicular traffic.

INSTALLATION OF NEW OR REPLACEMENT STREETLIGHT POLES: Should new poles be needed; structural analysis will be per most recently adopted California Building code by City of Morgan Hill. Foundations requirements per City's Design Standards E-11. For City owned wood poles, if wood pole requires replacement to insure the pole can handle the load of the equipment, replacement wood poles will be allowed when served by existing overhead power. Should City owned wood pole have underground power and requires replacement, a new Galvanized Steel Pole equal to Valmont DS30 8.0A300-8s-GV. City's Design Standards E-11 will be the standard.

COLOR: A pole shall be painted to match existing street light aesthetics. Paint shall be powder coated over zinc paint (Pole shall be galvanized if metal pole).

HEIGHT: Any city owned metal and wood street light pole with collated small cell shall not exceed 35 feet including the equipment. Pole shall be measured from the top of the foundation to the top of the Pole Mounted Antenna.

DESIGN WIND VELOCITY: All structural components of small cell pole, standard, base, couplers, anchor bolts, luminaires, pole mounted antenna and other attachment to be used shall be designed for a minimum of 85 mph wind velocity.

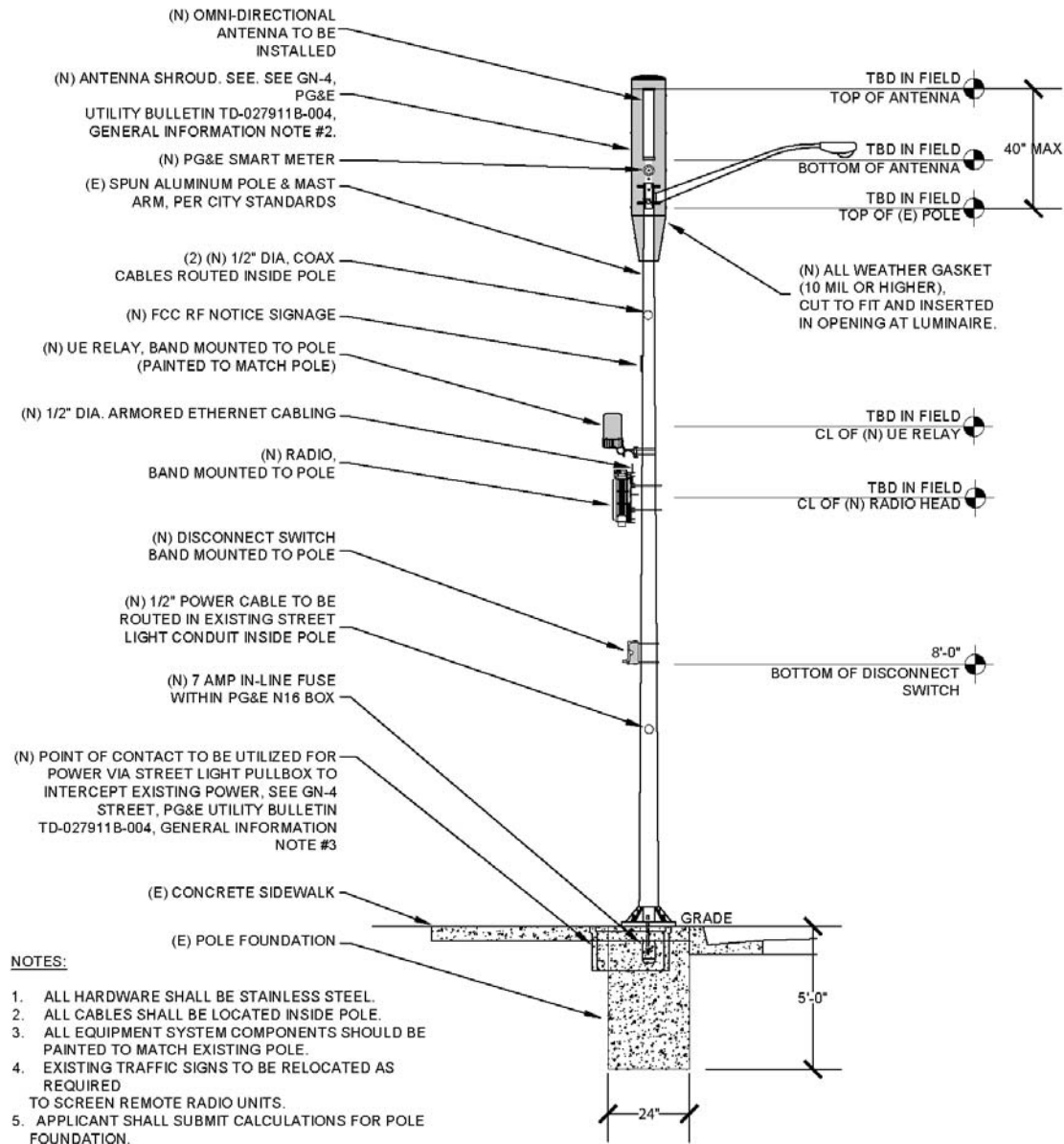
ELECTRIC SERVICE: If sharing service with City light pole, for each location, applicant shall: 1. Survey and document all loads connected to circuit involved, including any non-streetlight load. Circuit tracing shall be completed using proper circuit tracing equipment. 2. Conduct load analysis to evaluate loading level and voltage drop. Calculations shall be completed by an electrical engineer. 3. Reserve at minimum 40% of circuit load capacity (not breaker rating) for City's use. 4. Conductors shall be spliced at base of pole in pull box. If there is no existing pull box, installation of a new pull box will be required.

METERING: Applicant shall submit proof of approved service metering arrangements from PG&E (i.e. Absolving Service Agreement) to the City prior to acceptance.

COMMUNICATIONS/BACKHAUL SERVICE: Applicant shall secure their own communication/backhaul arrangements independent of City facilities.

ELECTRICAL CONDUIT: All new electrical conduit shall be separate.

CITY OWNED METAL AND WOOD POLES DESIGN STANDARDS



SMALL CELLS ON FREESTANDING POLES (MONOPOLES) DESIGN STANDARDS

AESTHETICS: Equipment should be of a color which reasonably matches surrounding poles.

POLE STYLE: Round.

INSTALLATION OF POLES: Structure analysis will be per most recently adopted California Building code by City of Morgan Hill. Foundations requirements per City's Design [City's Design Standards E-10](#)

COLOR: A pole and pole extension shall be painted to match existing street light aesthetics, paint shall be powder coated over zinc pain (Pole shall still be galvanized)

HEIGHT: Any pole with collated small cell shall not exceed 35 feet, pole shall be measured from the top of the foundation to the top of the antenna.

DESIGN WIND VELOCITY: All structural components of small cell pole, standard, base, couplers, anchor bolts, antenna and other attachment to be used shall be designed for a minimum of 85 mph wind velocity.

CONDUITS: All cables shall be in conduits within the pole.

STICKERS/SIGNS: Any pole, (1) RF warning sticker, background to match pole color, no larger than 4 x 6 inches. Facing to the street near the elevation of the antennae, (2) 4-inch by 6-inch (maximum) plate with the provider's name, location identifying information, and 24-hour emergency telephone number, and (3) No advertising, logos or decals. Additional stickers are only permitted if otherwise required by law.

ELECTRIC SERVICE: Per PG&E requirements.

COMMUNICATIONS/BACKHAUL SERVICE: Applicant shall secure their own communication/backhaul arrangements independent of City facilities.

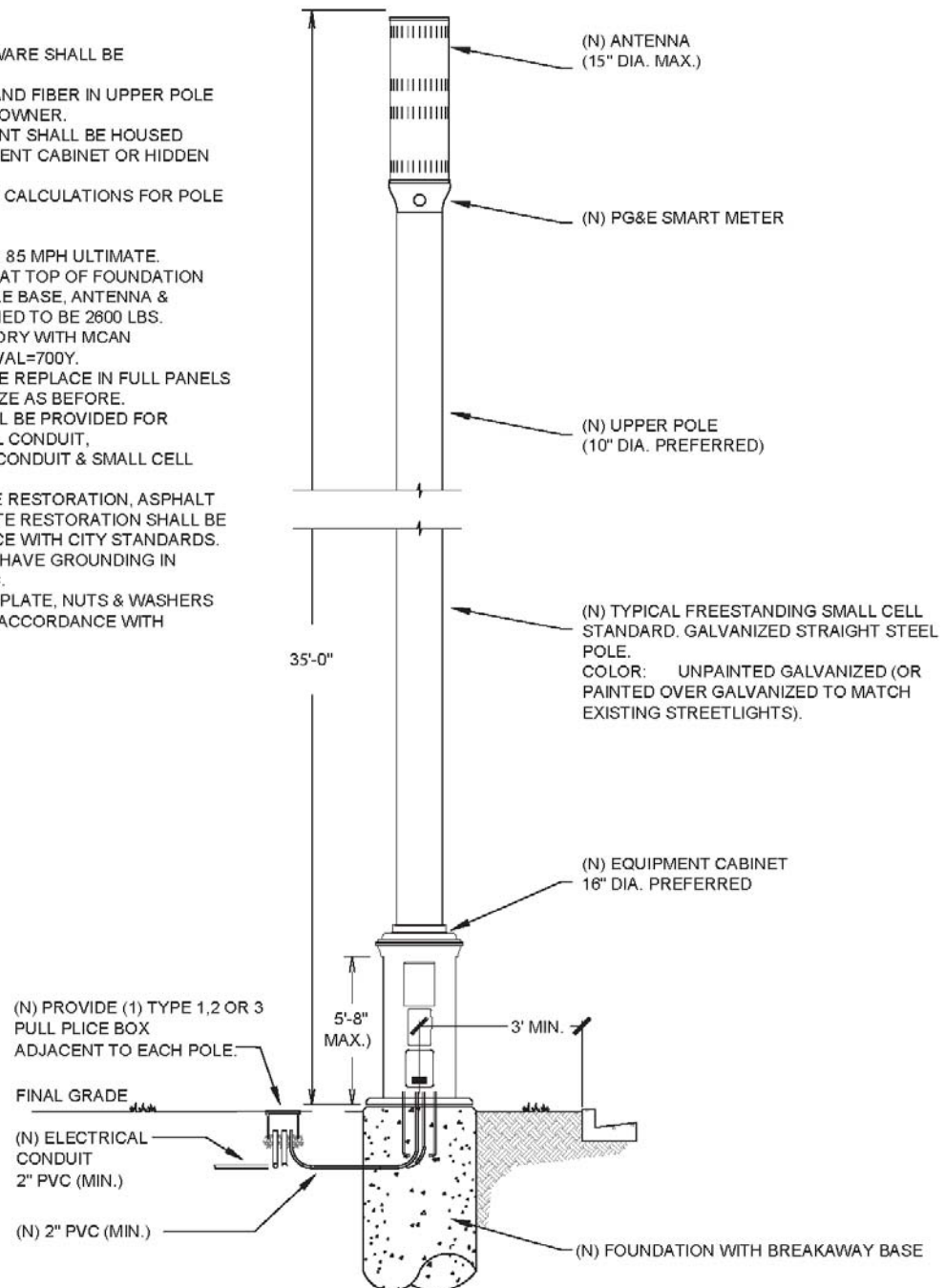
SMALL CELLS ON FREESTANDING POLES (MONOPOLES)

NOTES:

1. ALL ANCHOR BOLT HARDWARE SHALL BE CONCEALED.
2. ALL ELECTRICAL WIRING AND FIBER IN UPPER POLE SHALL BE SEPARATED BY OWNER.
3. ALL SMALL CELL EQUIPMENT SHALL BE HOUSED INTERNAL TO THE EQUIPMENT CABINET OR HIDDEN BEHIND THE ANTENNA.
4. APPLICANT SHALL SUBMIT CALCULATIONS FOR POLE FOUNDATION.

LOADS:

 - A. WIND LOAD SHALL BE 85 MPH ULTIMATE.
 - B. MAXIMUM DEAD LOAD AT TOP OF FOUNDATION (INCLUDING POLE, POLE BASE, ANTENNA & EQUIPMENT) IS ASSUMED TO BE 2800 LBS.
 - C. AASH TO RISK CATEGORY WITH MCAN RECURRENCE INTERVAL=700Y.
5. ANY HARDSCAPE SHALL BE REPLACE IN FULL PANELS OF SAME TYPE, COLOR, SIZE AS BEFORE.
6. SEPARATE CONDUIT SHALL BE PROVIDED FOR STREETLIGHT ELECTRICAL CONDUIT, SMALL CELL ELECTRICAL CONDUIT & SMALL CELL CARRIER FIBER.
7. ALL CONDUIT, LANDSCAPE RESTORATION, ASPHALT RESTORATION & CONCRETE RESTORATION SHALL BE INSTALLED IN ACCORDANCE WITH CITY STANDARDS.
8. ALL FOUNDATIONS SHALL HAVE GROUNDING IN CONFORMANCE WITH NEC.
9. ANCHOR BOLTS, ANCHOR PLATE, NUTS & WASHERS SHALL BE GALVANIZED IN ACCORDANCE WITH ASTM A153.



GENERAL APPLICABLE DESIGN STANDARDS

Any small cell facility must comply with the following requirements:

- All facilities should be installed and maintained in a workmanlike manner in compliance with the national Electric Safety Code and the National Electric Code, as applicable.
- So as not to obstruct vehicle or pedestrian sight lines in an unsafe manner
- Wherever possible, locate on poles at the intersection of property lines
- All facilities must have appropriate clearances from existing utilities.
- All equipment located within the public right-of-way shall be located such that it meets Americans with Disability Act (ADA) requirements and does not obstruct, impede, or hinder usual pedestrian or vehicular travel or interferes with the operation and maintenance of signal lights, signage, street lights, street furniture, fire hydrants, or business district maintenance.
- Any equipment within the public right-of-way that falls within the 100-year flood zone, needs to be protected from flood damage.

SMALL CELL EQUIPMENT SHALL BE MOUNTED ON OR HIDDEN INSIDE THE POLE AS FOLLOWS:

- Antenna: Where feasible inside an enclosure (ex. Radome Shroud).
- Utility poles and wood poles: All equipment located on poles if allowed by pole owner (City or PG&E), and anything not on the pole to be located in a ground mounted utility box. Fiber in conduits flush with pole.
- Traffic signal poles: All equipment in ground mounted utility box. Fiber inside pole in a conduit (if conduit is not available, pole cannot be used).
- New /replacement metal street light poles: all equipment inside pole in base cabinet.
- Decorative street lights – replace with equipment inside pole. Reusable deviations from these standards shall be approved by City of Morgan Hill prior to installation.
- Deviations from this guide may be approved if reasonable on a case-by-case basis by City of Morgan Hill prior to installation.
- Placed so as not to interfere with normal operation and maintenance of street light or other street appurtenances.
- City workers and contractors to have ability to easily shut off radio signals and power while working on pole. (And we have the right to turn off or disconnect for necessary operations).
- Attachments to a pole or any new or replacement pole should have a smooth transition between the small cell and the pole and shall not have any flat surface of more than 1.5 inches to prevent creation of a ledge.
- New small cell facility must be encased in a separate conduit than any City electronics.
- The specifications provided above are for single carrier with single technology installations within the right of way only. Dual carrier, dual technology installations, or small cell locations not in the public right of way need to conform to Zoning Code 18.96.

POWER AND GROUND MOUNTED UTILITY BOXES

- Back up batteries must be in a ground mounted utility box, or underground where feasible.
- A separate meter and disconnect is required for both the power and the cell signal that can be accessed and operated by street lighting maintenance personnel.
- Must have metered power.

LOCATION PREFERENCES:

- Attachment to city owned wood or metal street lights
- Attachment to traffic signal poles

PROCESS FOR SMALL CELLS LOCATED ON CITY OWNED POLES IN RIGHT OF WAY:

1. Contact the City about a Small Cell License Agreement:
 - o Identify locations including poles within right of way
 - o Provide renderings and simulations of equipment installation
2. Negotiate a Small Cell License Agreement
3. Agreement is executed by City Manager
4. Encroachment Permit is issued for Installation

PROCESS FOR SMALL CELLS LOCATED IN RIGHT OF WAY (MONOPOLE/TELECOMMUNICATION COMPANY OWNED)

1. Use Permit Application
2. Review in Conformance with Zoning Code 18.96 Wireless Communication Facilities

PROCESS FOR EXEMPTION OF SMALL CELL DESIGN STANDARDS

Any provider may apply for an exemption from design standards to the City Engineer. The provider must demonstrate to the reasonable satisfaction of the City Engineer that the design standard cannot be met due to technical infeasibility.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Alexandra Noble, Economic Development Fellow
APPROVED BY: City Manager

INTRODUCE ORDINANCE AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive first and second reading of Zoning Amendment ZA2019-0007: Wireless Communication Facilities; and
3. Introduce Zoning Amendment Ordinance ZA2019-0007: Wireless Communication Facilities.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

The public right-of-way (streets, sidewalks, and areas owned by government agency with access to the public) offer built-in infrastructure, such as utility poles, traffic signals, and street lights, which support wireless infrastructure. Small cell antennas and associated equipment are commonly placed on traffic signal or street lights located in the public right-of-way. The California Public Utilities Commission (CPUC) has determined that wireless providers are a utility and, therefore, have the right to use the public right-of-way as any other utility.

A recent ruling (Small Cell Order) by the Federal Communications Commission (FCC) requires cities to identify Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this FCC Order, cities cannot require undergrounding and must provide objective, reasonable, deployable, and scalable design standards. Furthermore, the FCC Small Cell Order requires cities to approve wireless cell antennas within 60 days for existing poles and 90 days for new poles. Finally, the Order states that poles must be made available for small cell wireless and establishes a cost-based fee structure for review/permitting.

In a separate report on tonight's Agenda, staff is bringing forward recommended design standards for small cell wireless telecommunication facilities in the public right-of-way

and a Small Cell Master Licensing Agreement. This report focuses on the proposed text amendments to Title 18, Division 1, Chapter 18.96 (Wireless Communications) in the Zoning Code.

PROJECT SUMMARY

Title 18, Division 1, Chapter 18.96 of the Zoning Code establishes standards and the permitting process for wireless communication facilities and regulates placement on private and public property. It is recommended the City Council approve an amendment to Chapter 18.96 (Wireless Communication Facilities), removing the requirement for an Administrative Use Permit for pole-mounted facilities within the public right-of-way in compliance with the FCC ruling. Other associated changes are recommended related to this amendment. On March 12, 2019, the Planning Commission recommended approval of the proposed changes to the Zoning Code.

ANALYSIS

The City of Morgan Hill has identified Telecommunications as one of the City's top priorities. A recent ruling by the FCC requires the City to identify Small Cell Design Standards for projects within the public right-of-way by April 15, 2019 and process these applications within 90 days. To streamline this process, an amendment to Chapter 18.96 (Wireless Communication Facilities) has been proposed (Attachment No. 1). The City would review new facilities within the public right-of-way through the encroachment permit process within the Engineering Division. A Small Cell License (SCL) agreement between the City and the wireless provider would be required.

The following sections of the report will provide additional background on the City's efforts to improve telecommunications, industry trends and additional background on State and Federal regulations.

1. Wireless Industry and Trends

The need for broadband is growing exponentially for both businesses and residents. Broadband can be delivered wirelessly (satellite/cellular) often through antennas or fixed (copper, coaxial, fiber) through an underground conduit or overhead cable. The City needs a strong telecommunications network to support its growing business community. Yet, the City of Morgan Hill has poor broadband availability. A 2016 study gave Morgan Hill a grade of "D" in terms of quality and access of broadband service. Morgan Hill is challenged by the limited number of providers and market models for return on investment (ROI).

In general, wireless providers are experiencing increased customer demand, particularly with respect to data capacity and speed. Because of this increasing data consumption, wireless providers are seeking rapid investment in the necessary infrastructure to meet not only current data demands but to prepare for consumer deployment of fifth generation wireless systems (5G) technology.

Unlike past approaches when wireless communications facilities were predominately on leased private property, wireless providers are now interested in locating new facilities

within public right-of-way. Given the increasing costs for use permits and frequent public concern and resulting delay associated with leases on private property, wireless providers are seeking alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles or City-owned structures in the City's right-of-way.

2. City's Telecommunication Efforts

The City can influence investment or disinvestment in telecommunications through City's policies and regulations and/or through direct investment. Currently, the City does not have clear City Standards for either implementation (wireless or fixed). Furthermore, the industry is rapidly changing with federal mandates that limit the City's regulatory oversight.

The City of Morgan Hill is working diligently to comply with FCC Declaratory Ruling and Third Report and Order FCC 18-133, which requires the City to identify Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this recent FCC Order, cities cannot require undergrounding and must provide reasonable, deployable, and scalable design standards. As part of this effort, staff is partnering with Joint Venture Silicon Valley on their Wireless Communications Initiative to work with industry professionals to develop best practices that provide clarity and encourage fiber installation and deployment of wireless antennas.

Other telecommunications efforts include developing a dig-once policy to incentivize installation of conduit when an open trench is available and identify opportunities to enhance connectivity amongst City facilities. This will be done through a Request for Proposals, expected to be issued in April 2019.

3. Legislative Background

a. Telecommunications Act

Section 253 of the Telecommunications Act (the Act) of 1996 guides the City's review of Wireless Communication Facilities (WCF). The Act states the City's review and approval or denial of WCF applications "shall not unreasonably discriminate among providers of functionally equivalent services," and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The Act requires the City to act on a permit application request within a reasonable timeframe, and states that any decision to deny a request to "place, construct, or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record."

The Act also prohibits the City from regulating the "placement, construction, and modification of [WCFs] on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions." Title 18.96.050 of Morgan Hill's Municipal Code requires

that WCF applications provide a report, prepared by a qualified RF engineer, demonstrating that the WCF will comply with the FCC RF Guidelines.

b. Spectrum Act

Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) states that a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station and describes required timelines (60 days for modifications and 90 days for collocations). The associated FCC Report and Order 14-153 provides guidance on what may be considered an eligible facility request and what constitutes substantial change.

c. FCC Declaratory Ruling and Third Report and Order FCC 18-133

The FCC adopted Report and Order FCC 18-133 (Small Cell Order) to accelerate the deployment of the next generation of wireless technology (known as 5G) using small cell antennas. Such antennas are typically placed on City streetlights or traffic signals in the right-of-way, although not exclusively. The Small Cell Order requires local jurisdictions to process applications for collocation of small cells on existing structures within 60 days and on new structures within 90 days. As proposed with the amendment, right-of-way applications on City assets would be reviewed by staff and processed concurrently with a SCL agreement.

COMMUNITY ENGAGEMENT: Inform

A hearing notice was published in the Morgan Hill Times ten (10) days prior to the Planning Commission hearing on March 12, 2019. Verizon Wireless provided public comment in favor of the zoning code amendments proposed. Another hearing notice was published ten (10) days prior to the City Council hearing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 12, 2019, Planning Commission conducted a public hearing on a proposed amendment to Title 18, Division 1, Chapter 18.96 (Wireless Communications) and adopted a resolution recommending City Council approve the Zoning Code amendment (Attachment No. 2).

FISCAL AND RESOURCE IMPACT:

The recommended actions amending Title 18, Division 1, Chapter 18.96 (Wireless Communications) are to comply with the new FCC Ruling. The work for this City initiated amendment was accommodated in the Economic Development and Planning Divisions' budget and workplan.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Small cell deployments on pole mounted facilities in the right-of-way are exempt from CEQA based on a Categorical Exemption pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project consists of the construction and location of a small facility, where only minor modifications are made to the exterior of the structure.

LINKS/ATTACHMENTS:

1. Ordinance-Wireless-Communication-Facilities
2. Planning Commission Staff Report Wireless Communication Facilities in the Public Right of Way March 12, 2019 (web link)

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 18.96.040 (REQUIRED PERMITS), 18.96.060 (SECTION 6409(a) MODIFICATIONS), 18.96.070 (PREFERRED SITING AND LOCATION), and 18.96.080 (DEVELOPMENT STANDARDS) OF CHAPTER 18.96 (WIRELESS COMMUNICATION FACILITIES) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING SMALL CELL DEPLOYMENTS ON POLE MOUNTED FACILITIES WITHIN THE CITY RIGHT-OF-WAY.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 18.96.040 (Required Permits) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.040 - Required permits.

- A. Conditional Use Permit. Planning commission approval of a conditional use permit is required for all new facilities and modifications ~~or collocation to existing facilities~~ outside the public right-of-way, except for facilities requiring an administrative use permit or a Section 6409(a) Permit as identified below.
- B. Administrative Use Permit. Community development director approval of an administrative use permit is required for the following facilities:
 - 1. A collocation to an existing facility that is not eligible for a Section 6409(a) permit.
 - 2. A modification to an eligible support structure that is not eligible for a Section 6409(a) permit.
 - 3. Building- and facade-mounted facilities in a non-residential zoning district where the facility is completely concealed from public view and architecturally integrated into the existing support structure.
 - 4. ~~Pole mounted facilities in the public right-of-way consistent with Section 18.96.080.D (Rights of Way Facilities).~~
 - 54. A micro wireless facility in a non-residential zoning district, ~~including within the public right-of-way.~~
- C. Section 6409(a) Permit. Modifications to an existing facility that do not result in a substantial change as defined by FCC regulations may be eligible for a Section 6409(a) permit. See Section 18.96.060 (Section 6409(a) Modifications).

SECTION 2. Section 18.96.060 (Section 6409(a) modifications) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.060 - Section 6409(a) modifications.

- A. Purpose. This section describes the process and requirements for the approval of an "eligible facilities request" that does not cause a "substantial change" to an existing facility as defined by FCC regulations.
- B. Eligible Facilities Request Defined. "Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as a request for modification of an existing tower or base station that does not substantially change the physical dimensions of the tower or base station, involving
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment; or
 - 3. Replacement of transmission equipment.
- C. Substantial Change Defined. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, defined according to the facility type and location as follows:
 - 1. Towers Outside the Public Right-of-Way. For towers outside the public right-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
 - 2. ~~Towers Monopoles~~ in the Public Right-of-Way ~~and Base Stations~~. For ~~towers~~ monopoles in the public rights-of-way ~~and for all base stations~~, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than six feet from the edge of the wireless ~~tower or base station~~ monopoles; or
 - c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (ten percent) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

3. All Towers and Base Stations. In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the community development director; or
 - b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.
4. Interpretation of Thresholds.
 - a. The thresholds for a substantial change described above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur.
 - b. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).
- D. Permit Required. Approval of an eligible facilities request as defined above requires community development director approval of a Section 6409(a) Permit.
- E. Applications. Applications for a Section 6409(a) Permit shall contain all information and materials specified in Section 18.96.050.B (Application Contents) except as follows:
 1. Section 6409(a) Permit applications are not required to include a statement of purpose (Section 18.96.050.B.1) or an alternative sites analysis (Section 18.96.050.B.5).
 2. The application must include a detailed explanation as to why the applicant believes that the application qualifies as an eligible facilities request subject to a Section 6409(a) Permit.
 3. For applications involving a collocation or modification to an eligible support structure, the application must be accompanied by all prior approvals for the existing facility (including but not limited to all conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment), as well as all permit applications with required application materials for each separate permit required by the city for the proposed facility, including but not limited to a building permit and an encroachment permit (if applicable).
- F. Public Notice. Before the community development director may approve a Section 6409(a) Permit application, notice of the application shall be posted on site at least ten calendar days prior to the city taking action on the application and shall contain the following information:
 1. A general explanation of the proposed modification or collocation;
 2. A general description of the location of the real property that is the subject of the application; and

3. The following statement: "Federal law may require approval of this application pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a)."

G. Basis for Approval.

1. This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a), and the applicable FCC and court decisions and determinations relating to the same. In the event that a court of competent jurisdiction invalidates all or any portion of Section 6409(a) or a FCC rule or regulation that interprets Section 6409(a), such that federal law would not mandate approval for any eligible facilities request, then all proposed modifications to existing facilities subject to this section must be approved by an administrative use permit, or conditional use permit, as applicable, and subject to the discretion of the community development director.
2. The community development director shall approve a Section 6409(a) Permit upon finding that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change as defined above.
3. In addition to any other alternative recourse permitted under federal law, the community development director may deny a Section 6409(a) permit upon finding that the proposed collocation or modification:
 - a. Violates any legally enforceable standard or permit condition reasonably related to public health and safety;
 - b. Involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification;
 - c. Involves the replacement of the entire support structure; or
 - d. Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
4. A denial of a Section 6409(a) permit application shall be without prejudice to the applicant, the real property owner, or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, administrative use permit, or Section 6409(a) permit as appropriate.

H. Appeals. Community development director decisions on a Section 6409(a) Permit are final and may not be appealed.

I. No Permit Term Extension.

1. The approval of a Section 6409(a) permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station.
2. A Section 6409(a) permit does not extend the permit term for any conditional use permit, administrative use permit, or other underlying regulatory approval and its term shall be coterminous with the underlying permit for the subject tower or base station.

J. Applicant Notifications for Deemed Granted Remedies.

1. Under state and/or federal law, the city's failure to act on a wireless communications facility permit application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions, accounting for tolling, may result in the permit being deemed granted by operation of law.

2. To the extent federal or state law provides a "deemed granted" remedy for wireless communications facility applications not timely acted upon by the city, no such application shall be deemed granted unless and until the applicant satisfies the following requirements:
 - a. Submits a complete application package consistent with the application procedures specified in this chapter and applicable federal and state laws and regulations.
 - b. Following the date by which the city must take final action on the application (as determined in accordance with the time periods and procedures established by applicable FCC decisions and accounting for tolling), the applicant must provide notice to the city that the application is deemed granted by operation of law.
- K. Accelerated Permit Terms Due to Invalidation.
 1. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) permit, the permit or permits issued in connection with such 6409(a) modification(s) shall automatically expire one year from the effective date of the judicial order.
 2. A permit holder is not required to remove its improvements approved under the invalidated Section 6409(a) permit if the permit holder submits an application for a conditional use permit or administrative use permit for those improvements before the one-year period ends.
- L. No Waiver of Standing. The approval of a Section 6409(a) permit shall not be construed to waive any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) modification.

SECTION 3. Section 18.96.070 (Preferred siting and location) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.070 - Preferred siting and location.

The following siting and location preferences apply to all proposed new facilities and substantial changes to existing facilities. The community development director may require the applicant to submit an alternative sites analysis and evidence to demonstrate that a proposed facility could not be feasibly installed in a preferred site or location.

- A. Preferred Siting. To the extent possible, all proposed facilities should be sited according to the following preferences, ordered from most preferred to least preferred:
 1. Collocations on existing base stations outside the rights-of-way; then
 - ~~2. Collocations on eligible support structures in the rights-of-way; then~~
 - ~~3.~~ 2. Collocations on towers outside the rights-of-way; then
 - ~~4.~~ 3. New building-mounted facilities outside the rights-of-way; then
 - ~~5. New eligible support structures in the rights-of-way; then~~
 - ~~4.~~ 6. New towers outside the rights-of-way.

- B. Preferred Locations — General. All applicants should, to the extent possible, propose new facilities and substantial changes to existing facilities in non-residential zones.
- C. Preferred Locations — Non-Residential Zones. To the extent possible, all proposed facilities in non-residential zones should be located according to the following preferences, ordered from most preferred to least preferred:
 - 1. City owned or controlled parcels; then
 - 2. Parcels in the public facilities (PF) zone; then
 - 3. Parcels in the industrial (CI, IO, IC, IL, IG) zones; then
 - 4. Parcels in the commercial (CN, CG, CH, CS) zones;
 - 5. Parcels in the sports recreation leisure (SRL) zone.
 - 6. Parcels in the mixed use (MU-D, MU-N, MUF) zones.
- D. Preferred Locations -Residential and Open Space Zones. If a facility is proposed in a residential (RE, RDL, RDH, RAL, RAM, RAH)), a residential Planned Development, or open space (OS) zone, all facilities should be located according to the following preferences, ordered from most preferred to least preferred:
 - ~~1. In the public right-of-way abutting a residential zone; then~~
 - 2~~1~~. City owned or controlled parcels; then
 - 2~~3~~. Parcels that contain non-residential uses and do not contain residential uses; then
 - 3~~4~~. Parcels that contain non-residential conditional uses and do contain residential uses; then
 - 4~~5~~. Parcels that do not contain single-family homes; then
 - 5~~6~~. All other parcels.

SECTION 4. Section 18.96.080 (Development standards) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.080 - Development standards.

- A. General Design Standards. All facilities must conform to the following design standards.
 - 1. Concealment. All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design. All ground-mounted equipment on private property must be completely concealed to the extent feasible according to the following preferences, ordered from most preferred to least preferred:
 - a. Within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse or dumpster corral; then
 - b. Within a new structure designed to integrate with or mimic the adjacent existing structure; then
 - c. Within an underground equipment vault if no other feasible above-ground design that complies with subsections (a) or (b) exists.
 - 2. Height.

- a. All new facilities and substantial changes to existing facilities must not exceed the height limit in the applicable zone except as allowed in Paragraph b below.
 - b. The review authority may approve a height exception up to 8 feet above the height limit when a proposed facility is (1) mounted on the rooftop of an existing building; (2) completely concealed; and (3) architecturally integrated into the underlying building. This exception does not apply to any towers or utility poles.
 3. Setbacks. All facilities must comply with all setback requirements in the applicable zone.
 4. Collocation. Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.
 5. Landscaping. In addition to any landscaping required by the city for concealment or screening purposes, the applicant shall install and maintain additional landscaping to replace any existing landscaping displaced during the construction or installation of the facility.
 6. Backup or Standby Power Sources and Generators. The city may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that the facility cannot feasibly achieve its power needs with batteries, fuel cells or other similarly non-polluting, low noise-level means.
 7. Lights.
 - a. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may exempt an applicant from this requirement when the applicant demonstrates a substantial public safety need.
 - b. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the city to the maximum extent feasible.
 8. Noise. All transmission equipment and other equipment (including without limitation air conditioners and sump pumps) associated with the facility must not emit sound that exceeds the applicable limit established in municipal code Chapter 8.28 (Noise).
 9. Signage.
 - a. A facility may not display any signage or advertisements unless expressly allowed by the city in a written approval, recommended under FCC regulations or required by law or permit condition.
 - b. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
 10. Code Compliance. A permit holder shall design and maintain all facilities in compliance with all applicable federal, state and local laws, codes, regulations, ordinances or other rules.
- B. Tower-Mounted Facilities.
1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new towers applications should be designed according to the following preferences, ordered from most preferred to least preferred:

- a. Faux architectural features (examples include, but are not limited to, bell towers, clock towers, lighthouses, obelisks and water tanks); then
 - b. Faux trees; then
 - c. Monopoles that do not conceal the antennas within a concealment device.
- 2. Tower-mounted Equipment. All tower-mounted equipment shall be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
- 3. Ground-mounted Equipment. Ground-mounted equipment shall be concealed with opaque fences or other opaque enclosures. The city may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
- 4. Concealment Standards for Faux Trees. All faux tree facilities shall comply with the following standards:
 - a. The canopy shall completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least eighteen inches.
 - b. The canopy shall be naturally tapered to mimic the particular tree species.
 - c. All tower-mounted equipment, including antennas, equipment cabinets, cables, mounts and brackets, shall be painted flat natural colors to mimic the particular tree species.
 - d. All antennas and other tower-mounted equipment cabinets shall be covered with broadleaf or pine needle "socks" to blend in with the faux foliage.
 - e. The entire vertical structure shall be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.
- C. Building and Facade Mounted Facilities.
 - 1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new building and facade mounted facilities should be designed according to the following preferences, ordered from most preferred to least preferred:
 - a. Completely concealed and architecturally integrated facade or rooftop mounted base stations which are not visible from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
 - b. Completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks); then
 - c. Facade-mounted facilities incorporated into "pop-out" screen boxes designed to be architecturally consistent with the original support structure; then
 - d. Exposed facade-mounted and rooftop antennas.
 - 2. Ground-mounted Equipment. Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible

to the public, outdoor ground-mounted equipment shall be concealed with opaque fences or landscape features that mimic the adjacent structures (including, but not limited to, dumpster corrals and other accessory structures).

D. ~~Rights of Way Facilities.~~

1. ~~Concealment. All facilities in the public right of way shall be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.~~
2. ~~Undergrounded Equipment. To conceal the non-antenna equipment, all non-antenna equipment shall be installed underground to the extent feasible. Additional expense to install and maintain an underground equipment enclosure shall not exempt applicants from this requirement, except where an applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.~~
3. ~~Ground mounted Equipment. Ground mounted equipment shall be installed in a location that does not obstruct pedestrian or vehicular traffic. The review authority may require landscaping as a condition of approval to conceal ground mounted equipment.~~
4. ~~Pole mounted Equipment. All pole mounted equipment shall be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile, painted flat and non-reflective colors to match the underlying pole, placed behind existing signs, and oriented away from prominent views. All required or permitted signage in the right of way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.~~

Section 4. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 5. Effective Date; Posting. This Ordinance shall take effect on _____, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 2019, and adopted at a meeting held on the _____ day of _____, 2019, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Keri Russell, Maintenance Services Coordinator
APPROVED BY: City Manager

PUBLIC HEARING AND BALLOT TABULATION FOR PARSONS CORNER SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

RECOMMENDATION(S)

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to:

- Provide the public with a final opportunity to provide the City Council with input on the special ballot proceeding needed for detachment of Parsons Corner Subarea from the Morgan Hill Landscape Assessment District Number 1 (District);
- Call an official close to the submission of ballots;
- Tabulate the ballots; and
- Certify the results of the ballot proceeding.

The City has been administering the various subareas contained in Morgan Hill Landscape Assessment District Number 1 since the 1990s. Each of these subareas function as a “mini-district” in which the revenues garnered through the annual assessments must only be used to pay the administrative and direct service costs for that subarea. One of these subareas, Parsons Corner, has had a reduction in services over the last several years due to limited revenues and rising costs. The Homeowners Association (HOA) supplements some maintenance to the Common Area.

Over recent meetings, many of the residents in the Parsons Corner Subarea have expressed to the City that they would prefer to have the HOA solely maintain the Common Area. The Common Area is currently owned by the HOA, which has signed an agreement to take on future maintenance. The assessment district cannot be detached without an affirmative vote of the majority of the voting property owners.

The City Council adopted the resolution of intent needed to start this process at the February 6, 2019 City Council meeting. Immediately thereafter, City staff mailed the required public notice and ballot to all of the property owners in the Parsons Corner Subarea informing them about the ballot proceeding and their options to respond. The mailing included a special return envelope and the City Clerk's office has been receiving sealed ballots in the intervening weeks. These ballots will now be opened and tabulated at the close of the public hearing.

Once the ballots have been tabulated, the Deputy City Clerk will announce the results of the tabulation and the Council may adopt a resolution certifying the results of the ballot proceeding. If it is not possible to tabulate the ballots for some unforeseen reason, the City Council may continue the item to a future meeting in order to finalize the tabulation.

COMMUNITY ENGAGEMENT: Consult

Staff has had multiple meetings and communications over the past year with Parsons Corner residents and HOA, and the proposed detachment is the result of those requests. The proposed action empowers the residents to decide on detachment through a vote and to ultimately take on management of the area themselves.

ALTERNATIVE ACTIONS:

There are no reasonable alternative actions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council adopted the resolution of intent needed to start this process at its meeting of February 6, 2019.

FISCAL AND RESOURCE IMPACT:

The detachment of the Parsons Corner Subarea will not result in a significant fiscal impact, as expenses and revenues will be reduced equally within the overall Landscape Assessment District budget. The annual process for the levy of assessments for the District will occur in the coming months. Administering and managing the District is included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project

The actions in this resolution are fiscal activities which do not directly involve a physical impact on the environment.

LINKS/ATTACHMENTS:

1. Maintenance Agreement

2. Resolution A
3. Resolution B

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("**Agreement**") dated as of this 25 day of February, 2019 ("**Date of Agreement**"), is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("**City**"), and PARSONS CORNER HOMEOWNERS ASSOCIATION, a California Common Interest Development Association ("**HOA**"). City and HOA are sometimes referred to herein individually as a "**Party**" or collectively as the "**Parties**".

RECITALS

The following Recitals are a substantive part of this Agreement:

A. HOA is the Homeowners Association for the ten residences known as Parsons Corner, created by Tract Number 8812, in Morgan Hill, California.

B. The Parsons Corner subdivision includes a common area designated as Lot 11 in Tract Number 8812, Morgan Hill, California (Common Area).

C. The City has established a landscape assessment District Sub-Area to provide maintenance to the Common Area. The HOA currently also provides maintenance to the Common Area. The HOA desires to provide all future maintenance to the Common Area and to dissolve the assessment district sub area by detaching Parsons Corner from the Fox Hollow/Murphy Springs Lighting and Landscaping Assessment District.

Now, therefore, City and HOA agree as follows:

1. The City shall initiate proceedings to detach Parsons Corner from the Fox Hollow/Murphy Springs Lighting and Landscaping Assessment District by June 30, 2019.
2. If the detachment proceeding is successful, the HOA agrees to immediately assume all responsibility for maintenance of Lot 11. City shall no longer be responsible for any future maintenance of the Common Area.
3. Any remaining funds within the assessment District Sub-Area account at the time of detachment shall be paid to the HOA for future maintenance of the Common Area.
4. HOA declares that it has proceeded as required by law to authorize this transaction.
5. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.
6. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed

in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

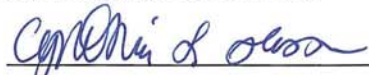
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF MORGAN HILL

By: 

Christina Turner, City Manager

APPROVED AS TO FORM:

By: 

 Donald Larkin, City Attorney

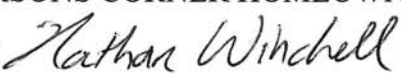
ATTEST:

By: 

 Irma Torrez, City Clerk

Homeowners Association:

PARSONS CORNER HOMEOWNERS ASSOCIATION

By:  1/27/19

Title: secretary of HOA

 1/28/19
President

Attachment: Maintenance Agreement (2242 : Parsons Corner Public Hearing)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE RESULTS OF THE BALLOT TABULATION FOR THE ASSESSMENT BALLOT PROCEEDING TO SUBMIT TO THE QUALIFIED PROPERTY OWNERS THE QUESTION OF THE PROPOSED DETACHMENT FOR THE PARSONS CORNER SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING JULY 1, 2019

The City Council of the City of Morgan Hill (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council has previously formed Landscape Assessment District No. 1 (District), previously the Fox Hollow/Murphy Springs Landscape Assessment District, to levy and collect assessments pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the “Act”) that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto;

WHEREAS, City representatives have met with residents of the Parsons Corner Subarea of Landscape Assessment District No. 1 who have expressed an interest for the Home Owner Association (HOA) to take over the maintenance of the Common Area;

WHEREAS, the City Council adopted a Resolution of Intent on February 6, 2019 initiating an assessment ballot proceeding for the detachment of the Parsons Corner Subarea from the Landscape Assessment District;

WHEREAS, immediately thereafter, the City mailed a notice and ballot to all property owners within the Parsons Corner Subarea; and

WHEREAS, the City Clerk has tabulated the ballots submitted in compliance with State law.

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO CHAPTER 2, SECTION 22587 OF THE ACT AND CALIFORNIA CONSTITUTIONAL ARTICLES XIII C AND XIII D, AS FOLLOWS:

Results: The City Clerk has tabulated the ballots properly and legally submitted on the question of detaching the Parsons Corner Subarea and determined that a majority of “In Favor of Detachment” votes has been submitted. With a majority in favor of detachment, Parsons Corner will be detached from the Landscape Assessment District as of July 1, 2019.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of April 2019.

City of Morgan Hill
 Resolution No.
 Page 2 of 2

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution A (2242 : Parsons Corner Public Hearing)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE RESULTS OF THE BALLOT TABULATION FOR THE ASSESSMENT BALLOT PROCEEDING TO SUBMIT TO THE QUALIFIED PROPERTY OWNERS THE QUESTION OF THE PROPOSED DETACHMENT FOR THE PARSONS CORNER SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING JULY 1, 2019

The City Council of the City of Morgan Hill (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council has previously formed Landscape Assessment District No. 1 (District), previously the Fox Hollow/Murphy Springs Landscape Assessment District, to levy and collect assessments pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the “Act”) that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto;

WHEREAS, City representatives have met with residents of the Parsons Corner Subarea of Landscape Assessment District No. 1 who have expressed an interest for the Home Owner Association (HOA) to take over the maintenance of the Common Area;

WHEREAS, the City Council adopted a Resolution of Intent on February 6, 2019 initiating an assessment ballot proceeding for the detachment of the Parsons Corner Subarea from the Landscape Assessment District;

WHEREAS, immediately thereafter, the City mailed a notice and ballot to all property owners within the Parsons Corner Subarea; and

WHEREAS, the City Clerk has tabulated the ballots submitted in compliance with State law.

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO CHAPTER 2, SECTION 22587 OF THE ACT AND CALIFORNIA CONSTITUTIONAL ARTICLES XIII C AND XIII D, AS FOLLOWS:

Results: The City Clerk has tabulated the ballots properly and legally submitted on the question of detaching the Parsons Corner Subarea and determined that a majority protest of “Oppose Detachment” votes has been submitted. With a majority protest, Parsons Corner will continue to be a part of the Landscape Assessment District.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of April 2019.

City of Morgan Hill
 Resolution No.
 Page 2 of 2

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution B (2242 : Parsons Corner Public Hearing)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

RECOMMENDATION(S)

1. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services;
2. Open/close the public hearing; and
3. Adopt resolution updating the City's select Development Impact Fees.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
 Protecting the Environment
 Maintaining Fiscal Responsibility
 Supporting Our Youth
 Seniors
 and Entire Community
 Fostering a Positive Organizational Culture

2019 Strategic Priorities

Economic Development
 Financial Stewardship
 Infrastructure

GUIDING DOCUMENTS

Bikeways
 Trails
 Parks and Recreation Masterplan
 General Plan/Housing Element
 Public Safety Master Plan
 Sewer System Master Plan
 Vision Zero
 Water System Master Plan

REPORT NARRATIVE:

In 2016, the City of Morgan Hill adopted its updated General Plan, outlining a plan for the growth of the City through the year 2035. In 2017, the City adopted its:

- 1) Public Safety Master Plan, serving as a foundational document for service delivery decision well into the future;
- 2) Utilities Master Plan Documents to help the Council and the public understand the future build out of the City's water and wastewater systems; and
- 3) Bikeways, Trails, Parks, and Recreation Master Plan to guide the improvement and future development of the City's bikeways, trail, parks, and recreation system in Morgan Hill.

More recently, in 2018, the City adopted its Storm Drainage Master Plan to evaluate the capacity adequacy of the existing stormwater drainage system, recommending improvements to mitigate existing deficiencies and for servicing future growth. Growth brings the need for both new and expanded infrastructure. A key element of planning for growth is identifying the funding mechanism to pay for such infrastructures.

The City relies on various resources to fund new infrastructure; a portion of funding may come from outside sources, such as federal or state grants, but much of the funding, must be raised at the local level. Therefore, the City works to ensure that new development pays for the infrastructure needs it creates. The City has in place a development impact fee program, assessing various impact fees to new developments to fund infrastructure improvements. Such fee assessments are allowed under the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600).

The General Plan requires the City to update periodically the schedule of development impact fees authorized by AB 1600 to address the impacts of growth on City infrastructure.

On February 8, 2019, the 2019 Draft Development Impact Fee Update Study ("Update Study") (Attachment No. 1), prepared by Willdan Financial Services, was released to the community via eblast along with the posting on the City's website.

On February 20, 2019, the Update Study was introduced to the City Council. The City Council directed staff to proceed with updating the City's development impact fees as presented in the Update Study. In addition, Council agreed with staff's recommendation for the following items:

- Reduce the total Priority Bikeways projects to one-third or approximately \$4 million as the City realistically would only be able to raise \$3 million from outside sources for the projects, resulting in a lower than maximum justified traffic impact fee schedule.
- Reduce the new parks to be built by half due to lack of outside sources to fund the operating and maintenance (O&M), resulting in a lower than maximum justified park impact fee schedule.
- Full implementation on July 1, 2019, without phasing in the increases.

The table below shows the total maximum justified impact fee, amount, and percent increases from the current fee as per the Update Study, and proposed fees to the current City's total impact fee.

Land Use	Per Updated Study			Proposed		
	Maximum Justified Fee	Amount Change from Current Fee	Percentage Change from Current Fee	Proposed Amount	Amount Change from Current Fee	Percentage Change from Current Fee
<i>Residential (per dwelling unit)</i>						
Single Family	\$ 53,405	\$ 14,731	38%	\$ 45,998	\$ 7,324	19%
Multi-Family	41,551	9,174	28%	35,107	2,730	8%
Senior / Downtown / ADU	35,313	6,641	23%	30,476	1,804	6%
<i>Nonresidential (per KSF or per hotel room)</i>						
Commercial	\$ 19,544	\$ 6,067	45%	\$ 18,779	\$ 5,302	39%
Office	12,377	3,310	37%	12,070	3,003	33%
Industrial	8,481	2,390	39%	8,281	2,190	36%
Auto Dealership	15,371	3,698	32%	14,831	3,158	27%
Hotel	4,170	334	9%	4,046	210	5%

On March 21, 2019, two community meeting sessions were held at the Development Services Center – Grand Conference Room. A total of six (6) community members attended the meetings. Concerns raised included the phasing in of increases, and accessory dwelling unit (ADU) density. The majority of the community members that attended the meetings expressed that both in the dollar and percentage terms, the increases from the existing fees are high and the proposed amount does not include the Residential Development Control System (RDSCS) contributions which amounted to an average of approximately \$18,000 per allotment, based on the last RDSCS competition. As such, they requested that Council reconsider the phase in directive that the Council provided to the staff at the February 20, 2019 meeting.

As for the ADU, some community members believe the density factor used in the Update Study is high. Morgan Hill Municipal Code Chapter 18.84 and existing state law allow owners to build a maximum of 1,200 square feet for a detached structure. The Update Study uses a residential density factor of 2.0 residents per unit for this category. After further consultation with Planning staff, staff believes the factor used in the Update Study is appropriate and no further adjustment is recommended. In addition, this is the same factor that was used in prior studies.

COMMUNITY ENGAGEMENT: Inform

Public notice was published in the local newspaper on March 22, 2019, informing the community of the Development Impact Fees adjustment and adoption of the new fees. In addition, two community meeting sessions were held on March 21, 2019, to present the study, and to receive feedback from the community.

ALTERNATIVE ACTIONS:

The City Council could direct staff to make adjustment to the proposed impact fees, phase in the increases, or delay updating the impact fees.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 27, 2017, the City Council approved a consultant agreement with Willdan Financial Services to update the City's development impact fees.

On February 20, 2019, the Updated Study was introduced to the City Council.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of preparing this report is included in the staff's annual workplan. The proposed impact fees would provide sufficient funding from new development for capital improvements related to that development.

CEQA (California Environmental Quality Act):

Project, Description of CEQA requirements.

These actions are exempt from CEQA under Section 15273 of Guidelines for CEQA, because they establish, modify, and approve rates and charges for the purposes of obtaining funds for capital projects.

LINKS/ATTACHMENTS:

1. Morgan Hill Development Impact Fee Update Study - Final Draft 1-31-19
2. Resolution
3. Letter from BIA

CITY OF MORGAN HILL

DEVELOPMENT IMPACT FEE UPDATE STUDY

FINAL DRAFT

JANUARY 31, 2019



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Seattle, WA

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Executive Summary

This report summarizes an analysis of the maximum justified development impact fees allowable to support future development in Morgan Hill through 2035. It is the City's intent that the costs representing future development's share of public facilities and capital improvements be imposed on that development in the form of a development impact fee, also known as a public facilities fee. The public facilities and improvements included in this analysis are divided into the fee categories listed below:

- General Public Facilities;
- Traffic Facilities;
- Library Facilities;
- Park Facilities;
- Water Facilities; and,
- Storm Drain Facilities.

Background and Study Objectives

The primary policy objective of a development impact fee program is to ensure that new development pays the capital costs associated with growth. Although growth also imposes operating costs, there is no similar system to generate revenue from new development for services. The primary purpose of this report is to calculate and present fees that will enable the City to expand its inventory of public facilities as new development creates increases in service demands.

The City imposes public facilities fees under authority granted by the *Mitigation Fee Act* (the *Act*), contained in *California Government Code* Sections 66000 *et seq.* This report provides the necessary findings required by the *Act* for adoption of the fees presented in the fee schedules contained herein.

All development impact fee-funded capital projects should be programmed through the City's six-year Capital Improvement Plan (CIP). Using a CIP can help the City identify and direct its fee revenue to public facilities projects that will accommodate future growth. By programming fee revenues to specific capital projects, the City can help ensure a reasonable relationship between new development and the use of fee revenues as required by the *Mitigation Fee Act*.

Facility Standards and Costs

There are three approaches typically used to calculate facilities standards and allocate the costs of planned facilities to accommodate growth in compliance with the *Mitigation Fee Act* requirements.

The **planned facilities** approach allocates costs based on the ratio of planned facilities that serve new development to the increase in demand associated with new development. This approach is appropriate when specific planned facilities that only benefit new development can be identified, or when the specific share of facilities benefiting new development can be identified. Examples include street improvements to avoid deficient levels of service or a water main extension to a previously undeveloped area. This approach is used for the traffic facilities, park facilities, water facilities and the storm drain facilities fees in this report.

The **existing inventory** approach is based on a facility standard derived from the City's existing level of facilities and existing demand for services. This approach results in no facility deficiencies attributable to existing development. This approach is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the fee

study. Future facilities to serve growth will be identified through the City's annual capital improvement plan and budget process and/or completion of a new facility master plan. This approach is used for the library facilities fees and general public facilities fees in this study.

The **system plan** approach is based on a master facilities plan in situations where the needed facilities serve both existing and new development. This approach allocates existing and planned facilities across existing and new development to determine new development's fair share of facility needs. This approach is used when it is not possible to differentiate the benefits of new facilities between new and existing development. Often the system plan is based on increasing facility standards, so the City must find non-impact fee revenue sources to fund existing development's fair share of planned facilities. This approach is not used in this report.

Use of Fee Revenues

Impact fee revenue must be spent on new facilities or expansion of current facilities to serve new development. Facilities can be generally defined as capital acquisition items with a useful life greater than five years. Impact fee revenue can be spent on capital facilities to serve new development, including but not limited to: land acquisition, construction of buildings and infrastructure, the acquisition of vehicles or equipment, information technology, software licenses and equipment.

Development Impact Fee Schedule Summary

Table E.1 summarizes the maximum justified development impact fees that meet the City's identified needs and comply with the requirements of the *Mitigation Fee Act*.

E.1: Maximum Justified Development Impact Fees

General										
Land Use	Public Facilities		Traffic Facilities		Library Facilities		Storm Drainage			
					Parks	Water				
<u>Residential (DU)</u>										
Single Family	\$	3,638	\$	3,313	\$	2,413	\$	1,513	\$	34,193
Multi-Family		3,191		2,054		2,117		12,632		25,168
Senior / Downtown / Accessory Unit		2,417		828		1,603		9,570		19,779
<u>Nonresidential (per KSF or hotel room)</u>										
Commercial	\$	936	\$	12,291	-	-	\$	2,139	\$	16,303
Office		1,123		4,937	-	-	-	2,139		9,136
Industrial		936		3,214	-	-	-	1,516		6,241
Auto Dealership		374		8,680	-	-	-	2,139		12,130
Hotel		112		1,988	-	-	-	713		3,116

Sources: Tabs 3.6, 4.6, 5.6, 6.9, 7.5 and 8.5.

Other Funding Needed

Impact fees may only fund the share of public facilities related to new development in Morgan Hill. They may not be used to fund the share of facility needs generated by existing development or by development outside of the City. As shown in **Table E.2**, approximately \$73.7 million in additional funding will be needed to complete the projects the City currently plans to develop. Non-fee funding is needed because these facilities are needed partially to remedy existing deficiencies and partly to accommodate new development.

The City will need to develop alternative funding sources to fund existing development's share of the planned facilities. Potential sources of revenue include but are not limited to: existing or new general fund revenues, revenues to Residential Development Control System (RDCS) in-lieu accounts, existing or new taxes, special assessments, and grants.

Table E.2: Non-Impact Fee Funding Required

Fee Category	Total Project Cost	Development Fee Revenue	Additional Funding Required
General Public Facilities	\$ 34,631,883	\$ 18,111,540	\$ 16,520,343
Traffic Facilities	55,613,839	33,680,899	21,932,940
Library Facilities	5,580,000	10,755,600	-
Parks	64,236,000	64,236,000	-
Sewer	80,969,521	58,954,990	22,014,530
Water	46,296,126	33,110,593	13,185,533
Storm Drainage ¹	12,042,945	8,080,922	-
	<u>\$ 299,370,313</u>	<u>\$ 226,930,543</u>	<u>\$ 73,653,346</u>

¹ Existing fund balances fund the difference between total project cost and projected impact fee revenue.

Sources: City of Morgan Hill; Tables 3.3, 3.5, 4.3, 4.4, 4.5, 5.3, 5.5, 6.7, 7.3, 7.4, and 8.3.

1. Introduction

This report presents an analysis of the need for public facilities to accommodate new development in Morgan Hill. This chapter provides background for the study and explains the study approach under the following sections:

- Public Facilities Financing in California;
- Study Objectives;
- Morgan Hill Impact Fee Program;
- Fee Program Maintenance;
- Study Methodology; and
- Organization of the Report.

Public Facilities Financing in California

The changing fiscal landscape in California during the past 40 years has steadily undercut the financial capacity of local governments to fund infrastructure. Three dominant trends stand out:

- The passage of a string of tax limitation measures, starting with Proposition 13 in 1978 and continuing through the passage of Proposition 218 in 1996;
- Declining popular support for bond measures to finance infrastructure for the next generation of residents and businesses; and
- Steep reductions in federal and state assistance.

Faced with these trends, many cities and counties have had to adopt a policy of “growth pays its own way.” This policy shifts the burden of funding infrastructure expansion from existing ratepayers and taxpayers onto new development. This funding shift has been accomplished primarily through the imposition of assessments, special taxes, and development impact fees also known as public facilities fees. Assessments and special taxes require the approval of property owners and are appropriate when the funded facilities are directly related to the developing property. Development impact fees, on the other hand, are an appropriate funding source for facilities that benefit all development jurisdiction-wide. Development impact fees need only a majority vote of the legislative body for adoption.

Study Objectives

The primary policy objective of a public facilities fee program is to ensure that new development pays the capital costs associated with growth. Policy 16.4(c) of the Morgan Hill General Plan states that the City will “Fully utilize existing strategies to achieve an urban level of public services throughout the city, including require [ing] developers to dedicate land and/or pay to offset the costs relating to the provision and expansion of public services and facilities.” The primary purpose of this report is to update the City’s impact fees based on the most current available facility plans and growth projections. The proposed fees will enable the City to expand its inventory of public facilities as new development leads to increases in service demands.

The City imposes public facilities fees under authority granted by the Mitigation Fee Act (the Act), contained in California Government Code Sections 66000 et seq. This report provides the necessary findings required by the Act for adoption of the fees presented in the fee schedules presented in this report.

Morgan Hill is forecast to experience moderate growth through this study’s planning horizon of 2035. This growth will create an increase in demand for public services and the City facilities

required to deliver them. Given the revenue challenges described above, Morgan Hill has decided to use a development impact fee program to ensure that new development funds the share of facility costs associated with growth. This report makes use of the most current available growth forecasts and facility plans to update the City's existing fee program to ensure that the City's fee program is representative of the facility needs resulting from new development.

Morgan Hill Impact Fee Program

Morgan Hill currently charges impact fees to fund the expansion of general public facilities, water facilities, storm drain facilities, park facilities, recreation and community center facilities, library facilities, fire facilities, police facilities, traffic facilities, and sewer facilities to serve new development. Most of the fees were established in 2002 or 2003 and have since been comprehensively updated, in addition to periodic updates for inflation.

This study provides the documentation needed for a comprehensive update of the City's impact fee program, with the exception of the City's recreation facilities fee and the sewer facilities fee. Two former fee categories, fire and police facilities fees, will be incorporated into the general public facilities fee, and the individual categories discontinued. All existing revenue within these two restricted fee funds must be spent on the purpose for which it was collected.

Fee Program Maintenance

Once a fee program has been adopted it must be properly maintained to ensure that the revenue collected adequately funds the facilities needed by new development. To avoid collecting inadequate revenue, the inventories of existing facilities and costs for planned facilities must be updated periodically for inflation, and the fees recalculated to reflect the higher costs. The use of established indices for each facility included in the inventories (land, buildings, and equipment), such as the *Engineering News-Record*, is necessary to accurately adjust the impact fees. For a list of recommended indices, see Chapter 9.

While fee updates using inflation indices are appropriate for annual or periodic updates to ensure that fee revenues keep up with increases in the costs of public facilities, it is recommended to conduct more extensive updates of the fee documentation and calculation (such as this study) when significant new data on growth forecasts and/or facility plans become available. For further detail on fee program implementation, see Chapter 9.

Morgan Hill last completed comprehensive review of the general public facilities, library, park, storm drain, fire and police impact fees in 2010. The city last comprehensively updated the community recreation centers and traffic facilities fees in 2015. Impact fees must be adjusted for inflation to fund new development's fair share of planned facilities. If impact fees are not adjusted for inflation, then deficiencies will grow, since the impact fees will no longer fully fund new development's fair share of planned facilities.

Study Methodology

Development impact fees are calculated to fund the cost of facilities required to accommodate growth. The six steps followed in this development impact fee study include:

1. **Estimate existing development and future growth:** Identify a base year for existing development and a growth forecast that reflects increased demand for public facilities;
2. **Identify facility standards:** Determine the facility standards used to plan for new and expanded facilities;
3. **Determine facilities required to serve new development:** Estimate the total amount of planned facilities, and identify the share required to accommodate new development;

4. **Determine the cost of facilities required to serve new development:** Estimate the total amount and the share of the cost of planned facilities required to accommodate new development;
5. **Calculate fee schedule:** Allocate facilities costs per unit of new development to calculate the development impact fee schedule; and
6. **Identify alternative funding requirements:** Determine if any non-fee funding is required to complete projects.

The key public policy issue in development impact fee studies is the identification of facility standards (step #2, above). Facility standards document a reasonable relationship between new development and the need for new facilities. Standards ensure that new development does not fund deficiencies associated with existing development.

Types of Facility Standards

There are three separate components of facility standards:

- ♦ *Demand standards* determine the amount of facilities required to accommodate growth, for example, park acres per thousand residents, square feet of library space per capita, or gallons of water per day. Demand standards may also reflect a level of service such as the vehicle volume-to-capacity (V/C) ratio used in traffic planning.
- ♦ *Design standards* determine how a facility should be designed to meet expected demand, for example, park improvement requirements and technology infrastructure for city office space. Design standards are typically not explicitly evaluated as part of an impact fee analysis but can have a significant impact on the cost of facilities. Our approach incorporates the cost of planned facilities built to satisfy the City's facility design standards.
- ♦ *Cost standards* are an alternate method for determining the amount of facilities required to accommodate growth based on facility costs per unit of demand. *Cost standards* are useful when demand standards were not explicitly developed for the facility planning process. *Cost standards* also enable different types of facilities to be analyzed based on a single measure (cost or value) and are useful when different facilities are funded by a single fee program. Examples include facility costs per capita, cost per vehicle trip, or cost per gallon of water per day.

New Development Facility Needs and Costs

A number of approaches are used to identify facility needs and costs to serve new development. This is often a two-step process: (1) identify total facility needs, and (2) allocate to new development its fair share of those needs.

There are three common methods for determining new development's fair share of planned facilities costs: the **planned facilities method**, the **existing inventory method** and the **system plan method**. Often the method selected depends on the degree to which the community has engaged in comprehensive facility master planning to identify facility needs.

The formula used by each approach and the advantages and disadvantages of each method is summarized below:

Planned Facilities Method

The planned facilities method allocates costs based on the ratio of planned facility costs to demand from new development as follows:

$$\frac{\text{Cost of Planned Facilities}}{\text{New Development Demand}} = \$/\text{unit of demand}$$

This method is appropriate when planned facilities will entirely serve new development, or when a fair share allocation of planned facilities to new development can be estimated. An example of the former is a water main extension to a previously undeveloped area. An example of the latter is expansion of an existing library building and book collection, which will be needed only if new development occurs, but which, if built, will in part benefit existing development, as well. Under this method new development funds the expansion of facilities at the standards used in the applicable planning documents. This method is used to calculate the traffic facilities, park facilities, water facilities and the storm drain facilities fees in this study.

Existing Inventory Method

The existing inventory method allocates costs based on the ratio of existing facilities to demand from existing development as follows:

$$\frac{\text{Current Value of Existing Facilities}}{\text{Existing Development Demand}} = \$/\text{unit of demand}$$

Under this method new development funds the expansion of facilities at the same standard currently serving existing development. By definition the existing inventory method results in no facility deficiencies attributable to existing development. This method is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the fee study. Future facilities to serve growth are identified through an annual capital improvement plan and budget process, possibly after completion of a new facility master plan. This method is used to calculate the library facilities fees and general public facilities fees in this study.

System Plan Method

This method calculates the fee based on: the value of existing facilities plus the cost of planned facilities, divided by demand from existing plus new development:

$$\frac{\text{Value of Existing Facilities} + \text{Cost of Planned Facilities}}{\text{Existing} + \text{New Development Demand}} = \$/\text{unit of demand}$$

This method is useful when planned facilities need to be analyzed as part of a system that benefits both existing and new development. It is difficult, for example, to allocate a new fire station solely to new development when that station will operate as part of an integrated system of fire stations that together achieve the desired level of service.

The system plan method ensures that new development does not pay for existing deficiencies. Often facility standards based on policies such as those found in General Plans are higher than existing facility standards. This method enables the calculation of the existing deficiency required to bring existing development up to the policy-based standard. The local agency must secure non-fee funding for that portion of planned facilities required to correct the deficiency to ensure that new development receives the level of service funded by the impact fee. This method is not used in this report.

Organization of the Report

The determination of a public facilities fee begins with the selection of a planning horizon and development of growth projections for population and employment. These projections are used throughout the analysis of different facility categories, and are summarized in Chapter 2.

Chapters 3 through 8 identify facility standards and planned facilities, allocate the cost of planned facilities between new development and existing development, and identify the maximum justified development impact fee for each of the following facility categories:

- General Public Facilities;
- Traffic Facilities;

- Library Facilities;
- Park Facilities;
- Water Facilities; and,
- Storm Drain Facilities.

Chapter 9 details the procedures that the City must follow when implementing a development impact fee program. Impact fee program adoption procedures are found in *California Government Code* Sections 66016 through 66018.

The five statutory findings required for adoption of the proposed public facilities fees in accordance with the Mitigation Fee Act are documented in Chapter 10.

2. Growth Forecasts

Growth projections are used as indicators of demand to determine facility needs and allocate those needs between existing and new development. This chapter explains the source for the growth projections used in this study based on a 2018 base year and a planning horizon of 2035.

Estimates of existing development and projections of future growth are critical assumptions used throughout this report. These estimates are used as follows:

- The estimate of existing development in 2018 is used as an indicator of existing facility demand and to determine existing facility standards.
- The estimate of total development at the 2035 planning horizon is used as an indicator of future demand to determine total facilities needed to accommodate growth and remedy existing facility deficiencies, if any.
- Estimates of growth from 2018 through 2035 are used to (1) allocate facility costs between new development and existing development, and (2) estimate total fee revenues.

The demand for public facilities is based on the service population, dwelling units or nonresidential development creating the need for the facilities. The service population for general public facilities includes residents and workers. The service population for parks and libraries includes only residents. Demand for water facilities is based on flow generation factors that vary by land use. The demand for storm drain facilities is based on the ratio of impervious surface to non-impervious surface that a development will create. Water and storm drain demand factors are provided per dwelling unit, per thousand building square feet of nonresidential space and per hotel room.

Land Use Types

To ensure a reasonable relationship between each fee and the type of development paying the fee, growth projections distinguish between different land use types. The land use types that impact fees have been calculated for are defined below.

- **Single family:** Detached and attached one-unit dwellings. Per *Municipal Code Section 18.04.155*, a single family detached dwelling unit is defined as, “a dwelling designed to contain a single dwelling unit situated on a single lot.” Per *Municipal Code Section 18.04.154*, a single family attached dwelling unit is defined as, “a dwelling attached to another dwelling on at least fifty percent of the length of the attached side of the building, sometimes called a townhouse, duet, or row house.”
- **Multi-family:** All attached multi-family dwellings including duplexes and condominiums. Per *Municipal Code Section 18.04.150*, a multi-family unit is defined as, “a building designed and used as a residence for three or more families living independently of each other and containing three or more dwelling units. Per *Municipal Code Section 18.04.157*, a duplex is defined as, “a structure which is designed and used as a residence for two families living independently of each other and containing two dwelling units.”
- **Senior / Downtown / Accessory Units:** All senior housing units, any multi-unit residential development occurring in the downtown area (as defined by the Downtown Specific Plan) and any secondary dwelling units less than 900 square feet in size per unit.
- **Commercial:** All commercial, retail and educational development.
- **Office:** All general, professional, and medical office development.

- **Industrial:** All manufacturing and warehouse development.
- **Automobile Dealerships:** All land uses selling new or used automobile or other motor vehicles.
- **Hotel/Motel:** All lodging development, including hotels and motels.

Some developments may include more than one land use type, such as a mixed-use development with both multi-family and commercial uses. In those cases, the facilities fee would be calculated separately for each land use type.

The City has the discretion to determine which land use type best reflects a development project's characteristics for purposes of imposing an impact fee and may adjust fees for special or unique uses to reflect the impact characteristics of the use.

Existing and Future Development

Table 2.1 shows the estimated number of residents, dwelling units, employees, and building square feet in Morgan Hill, both in 2018 and in 2035. Existing residents and dwelling units are based on California Department of Finance (DOF) data. These estimates exclude "group quarters" resident populations, since they do not contribute to demand for facilities. Estimates of residents in 2035 also exclude group quarters residents and is based on Municipal Code Section 18.78.040 - Population Limit of the voter-approved Residential Development Control System (RDCS), which established a maximum population of 58,200.¹

Base year dwelling units for single family units are based on DOF data. Senior/downtown/accessory dwelling unit estimates are consistent with data from the City's 2015 Traffic Impact Fee study. Multifamily base year units estimated as the difference between total units, single family units from DOF and senior/downtown/ADU units from 2015 Traffic Impact Fee study. Total dwelling units in 2035 are calculated by dividing 2035 residents by the current density of 3.145 residents per household and assuming a 4.687% vacancy rate, consistent with current DOF estimates.

Base year employees are estimated based on data provided by the US Census' American Community Survey and exclude local government employees. Future employees are estimated based on data from the Association of Bay Area Governments (ABAG) used in the Morgan Hill General Plan. Estimates of base year and planning horizon building square feet come from the Morgan Hill 2035 Final EIR.

¹ 58,200 less existing Group Quarters Population of 386 = 57,814.

Table 2.1: Existing and New Development

	2018	2035	Increase
<u>Residents</u> ¹	44,130	57,814	13,684
<u>Dwelling Units</u> ²			
Single Family	11,320	13,000	1,680
Multi-family	2,302	4,687	2,385
Senior / Downtown /			
Accessory Dwelling Units	1,100	1,600	500
Total	14,722	19,287	4,565
<u>Employment</u> ³	16,446	21,520	5,074
<u>Building Square Feet (000s)</u> ⁴			
Commercial	2,610	3,727	1,117
Office	522	1,151	629
Industrial	5,935	7,715	1,780
Auto Dealership	120	176	56
Total	9,187	12,769	3,582
<u>Hotel Rooms</u>	919	1,134	215

¹ Excludes "group quarters" resident populations. Existing residents from DOF data. Estimates of residents in 2035 based on Section 18.78.040 - Population Limit of the voter-approved Residential Development Control System (RDCS), which established a maximum population of 58,200. 58,200 less existing Group Quarters Population 386 = 57,814.

² Base year dwelling units for single family based on DOF data. senior/downtown ADU units consistent with data from 2015 Traffic Impact Fee study. Multifamily base year units estimated as the difference between total units, single family units from DOF and senior/downtown ADU units from 2015 study. Total dwelling units in 2035 calculated by dividing 2035 residents by current density of 3.145 residents per household and assuming a 4.687% vacancy rate, consistent with current DOF estimates.

³ Estimate of 16,894 total workers from American Community Survey Table B08604. 448 local government workers are further excluded from that figure based on data from OnTheMap.ces.census.gov.

⁴ Building square feet data from 2035 horizon year projection summarized on page 5-2 of the responses to comments in the Morgan Hill 2035 Final EIR.

Sources: California Department of Finance (DOF) Table E-5, 2018; U.S. Census Bureau, LEHD Origin-Destination Employment Statistics (2002-2015) accessed at <https://onthemap.ces.census.gov>; City of Morgan Hill General Plan 2035 EIR; Willdan Financial Services.

Occupant Densities

The general public facilities, library facilities, and park facilities fees are based on allocating a cost per resident or employee to new development. Occupant density assumptions ensure a

reasonable relationship between the size of a development project, the increase in service population associated with the project, and the amount of the fee.

Occupant densities (residents per dwelling unit or workers per building square foot or hotel room) are the most appropriate characteristics to use for these impact fees. The fee imposed should be based on the land use type that most closely represents the probable occupant density or impervious surface (for storm drain fees) of the development.

The average occupant density factors used in this report are shown in **Table 2.2**. The residential density factors are based on data for Morgan Hill from the U.S. Census' American Community Survey. The nonresidential factors are based on data from the City of Morgan Hill General Plan 2035 EIR.

Table 2.2: Occupant Density

<u>Residential</u>		
Single Family	3.01	Residents per dwelling unit
Multi-family	2.64	Residents per dwelling unit
Senior / Downtown / Accessory Dwelling Units	2.00	Residents per dwelling unit
<u>Nonresidential</u>		
Commercial	2.50	Employees per 1,000 square feet
Office	3.00	Employees per 1,000 square feet
Industrial	2.50	Employees per 1,000 square feet
Auto Dealership	1.00	Employees per 1,000 square feet
Hotel/Motel	0.30	Employees per room

Sources: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates, Tables B25024 and B25033; City of Morgan Hill General Plan 2035 EIR; Willdan Financial Services.

3. General Public Facilities

This chapter documents the impact fee for general public facilities. The general public facilities in this fee category include a variety of facilities including City Hall, the Development Services Center, a corporation yard, police and fire facilities.

Service Population

General public facilities are used to provide services to both residents and businesses. The service population used to determine the demand for general public facilities includes both residents and workers.

Table 3.1 shows the existing and future projected service population for general public facilities. While specific data is not available to estimate the actual ratio of demand per resident to demand by businesses (per worker) for these services, it is reasonable to assume that demand for these services is less for one employee compared to one resident, because nonresidential buildings are typically occupied less intensively than dwelling units. The 0.31-weighting factor for workers is based on a 40-hour workweek divided by the total number of non-work hours in a week (128) and reflects the degree to which nonresidential development yields a lesser demand for general public facilities.

Table 3.1: General Public Facilities Service Population

	A Persons	B Weighting Factor	A x B = C Service Population
<u>Residents</u>			
Existing (2018)	44,130	1.00	44,130
New Development (2018-2035)	13,684	1.00	13,684
Total (2035)	57,814		57,814
<u>Workers</u>			
Existing (2018)	16,446	0.31	5,100
New Development (2018-2035)	5,074	0.31	1,600
Total (2035)	21,520		6,700
<u>Combined Residents and Weighted Workers</u>			
Existing (2018)			49,230
New Development (2018-2035)			15,284
Total (2035)			64,514

¹ Workers are weighted at 0.31 of residents based on a 40 hour work week out of a possible 128 non-work hours in a week (40/128 = 0.31)

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's general public facility inventory, the cost of planned facilities and facility standards.

Existing Inventory

Table 3.2 shows the existing inventory of general public facilities, along with the facilities' estimated replacement value. The estimated land value was developed based on data from four recent appraisals of City owned property and is used consistently throughout this report to value City-owned land. Building values are based on the estimated replacement cost of each facility. Building values were informed by the City's recent construction cost experience. The present value of debt service payment made to date on the police headquarters building is also listed as an owned asset. Likewise, the present value of remaining payments is subsequently listed as a planned facility in the next table. Table 3.2 also lists the replacement cost of the City's owned fleet of general public facilities vehicles, including police vehicles, fire apparatus, public works vehicles and other fleet vehicles.

Table 3.2: Existing General Public Facilities Inventory

	Inventory	Unit	Unit Cost	Replacement Cost
<u>Land (acres)</u>				
City Hall, with Villas	4.81	acres	\$ 790,000	\$ 3,800,000
Development Services Center	1.65	acres	790,000	1,304,000
Dunne Hill Fire Station	0.29	acres	790,000	229,000
El Toro Fire Station ¹	0.50	acres	790,000	395,000
Third Fire Station Land	1.78	acres	790,000	1,406,000
Police Station	3.71	acres	790,000	2,931,000
Public Works Corporation Yard	<u>2.07</u>	acres	790,000	<u>1,635,000</u>
Subtotal - Land	14.81			\$ 11,700,000
<u>Buildings (square feet)</u>				
City Hall, with Villas ²	16,800	sq. ft.	\$ 580	\$ 9,744,000
City Hall Improvements				2,051,000
Development Services Center ²	12,600	sq. ft.	580	3,603,000
Dunne Hill Fire Station	3,316	sq. ft.	1,000	3,316,000
El Toro Fire Station	5,180	sq. ft.	1,000	5,180,000
Police Headquarters Building - Present Value of Debt Payments			NA	7,640,000
Public Works Corporation Yard	<u>5,228</u>	sq. ft.	300	<u>1,568,000</u>
Subtotal - Buildings	43,124			\$ 33,102,000
<u>Vehicles</u> ³				\$ 13,010,700
<u>Existing Fund Balance</u> ⁴				\$ 520,300
Total Value - Existing Facilities				\$ 58,333,000

¹ Total site is 1.89 acres. Only 0.5 acres is utilized for fire department activities.

² City Hall and Development Services Center building unit costs are based on the actual construction cost of the Development Services Center.

³ The City owns 137 vehicles and pieces of public works equipment listed within the general public facilities category

⁴ Existing fund balance as of 6/30/2018.

Sources: City of Morgan Hill; Willdan Financial Services.

Planned Facilities

Table 3.3 shows the additional general public facilities the City plans to develop through the 2035 planning horizon. The City plans to replace and expand its City Hall annex with a larger permanent facility to accommodate future demand caused by new development. No land costs are included because the project will take place on property that the City currently owns.

In addition to the improvements to City Hall, the City plans on moving the existing corporation yard from its current site, to a larger facility. The City plans to expand an existing fire station, and to build a new fire station, in addition to buying new fire apparatus'. These facilities are required as a direct result of new fire service demands brought on by new development. Additionally, a

third fire station has been recommended per the City's Public Safety Master Plan. During the dissolution of the Redevelopment Agency, the settlement agreement provided for the City to retain property on Butterfield Boulevard for this third fire station. However, the agreement requires the property be constructed by 2024. In addition to the cost of the construction of the building, there would be approximately \$1.5 million in new equipment costs associated with outfitting the station. The project budget accounts for a facility approximately 5,000 feet in size. Design and construction would be timed for the building to be completed by the deadline established in the settlement agreement.

The City also plans to expand the police department and its inventory of police equipment that is required as a direct result of new police service demands brought on by new development. Also included in the list of planned facilities is the present value of outstanding debt payments for the Police Headquarters.

Table 3.3: Planned General Public Facilities

	Value
Corporation Yard Improvements and Expansion	\$ 15,000,000
Replace and Expand City Hall Annex With Permanent Structure	3,000,000
Total Debt Outstanding - Police Headquarters ¹	5,769,583
Police Department Expansion and Equipment ²	2,270,000
Existing Fire Station Expansion	2,000,000
New Fire Station ³	5,000,000
Quint 105' Aerial (Equipped) ⁴	1,032,600
Type 3 Engine (Equipped) ⁴	396,700
Pickup - F250 ³	65,200
Personal Protective Equipment (9 FTEs) ⁴	97,800
Total Cost of Planned Facilities	\$ 34,631,883

¹ Discounted to 2018\$. Discount rate assumed to be 3.5% per year.

² Includes equipment costs for 11 additional police officers.

³ New fire station consisting of 5,000 square foot building.

⁴ Adjusted from 2012 to current using the Consumer Price Index - All Urban Consumers – (CPI-U) 1913-2018.

Sources: City of Morgan Hill; Willdan Financial Services.

Cost Allocation

Table 3.4 calculates the existing cost per capita facility standard by dividing the value of the existing facilities inventory by the existing service population. The resulting cost per capita is the basis of the impact fee. Funding facilities at this level will ensure that as development occurs, new development will contribute to public use center facilities at the same standard that existing development has contributed thus far. By definition, using the existing standard methodology does not result in existing deficiencies.

Table 3.4: General Public Facilities Existing Standard

Value of Existing Facilities	\$ 58,333,000
Existing Service Population	<u>49,230</u>
Cost per Capita	\$ 1,185
Facility Standard per Resident	\$ 1,185
Facility Standard per Worker ²	367

¹ Based on a weighing factor of 0.31.

Sources: Tables 3.1, 3.2 and 3.3.

Revenue Projection

The City plans to use general public facilities fee revenue to construct improvements to add to the system of general public facilities to serve new development. **Table 3.5** details a projection of fee revenue, based on the service population growth increment identified in Table 3.1. To fully fund the planned facilities, the City will have to identify \$16.5 million of alternative through the planning horizon. However, because the existing standard was used to calculate the fees, the City will meet the requirements of the Mitigation Fee Act so long as the projected \$18.1 million of fee revenue is used to fund new or expanded facilities to serve new development.

The City can use any other funding source other than impact fees to fund the balance of the planned facilities. Potential sources of revenue include, but are not limited to, existing or new general fund revenues, existing or new taxes, special assessments, grants and donations.

Table 3.5: Revenue Projection - Existing Standard

Cost per Capita	\$ 1,185
Growth in Service Population (2018- 2035)	<u>15,284</u>
Fee Revenue	\$ 18,111,540
Net Cost of Planned Facilities	<u>34,631,883</u>
Non-Fee Revenue to Be Identified	\$ (16,520,343)

Sources: Tables 3.1, 3.3 and 3.4.

Use of Fee Revenue

The City can use general public facilities fee revenues for the construction or purchase of buildings, equipment and land that are part of the system of general public facilities serving new development. The City plans to use the fee revenues to fund the facilities shown in Table 3.3.

Fee Schedule

Table 3.6 shows the maximum justified general public facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit and employment densities (persons per dwelling unit or employees per 1,000 square feet of nonresidential building space). The total fee includes a two percent (2%) percent administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 3.6: General Public Facilities Fee - Existing Standard

Land Use	A	B	C = A x B		D = C x 0.02	E = C + D	F	G = E x F
	Cost Per Capita	Density	Base Fee ¹	Admin Charge ^{1, 2}		Total Fee ¹	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 1,185	3.01	\$ 3,567	\$ 71		\$ 3,638		
Multi-family	1,185	2.64	3,128	63		3,191		
Senior / Downtown / Accessory Dwelling Units	1,185	2.00	2,370	47		2,417		
<u>Nonresidential</u>								
Commercial	\$ 367	2.50	\$ 918	\$ 18		\$ 936	21.78	\$20,386
Office	367	3.00	1,101	22		1,123	21.78	24,459
Industrial	367	2.50	918	18		936	26.14	24,467
Auto Dealership	367	1.00	367	7		374	26.14	9,776
Hotel	367	0.30	110	2		112	21.78	2,439

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential, or per room for hotel.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Based on assumed floor-area-ratio from the General Plan. FAR for commercial and office assumed to be 0.5 based on the "General Office" land use. FAR for Industrial and auto dealership assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 2.2 and 3.4.

4. Traffic Facilities

This chapter summarizes an analysis of the need for transportation facilities, including roadway segments, bike improvements and multimodal intersection improvements, to accommodate new development. The chapter documents a reasonable relationship between new development and the impact fee for funding of these facilities.

Trip Generation by Land Use

The share of roadway improvement costs allocated to each unit of new development is based on the relative amount of new trip demand generated by that development. Trip demand during the afternoon peak hour of traffic is used because this is generally the busiest time of day for traffic, and road improvements are needed to provide capacity to accommodate peak levels of traffic. The traffic study used for this analysis identified improvements needed to mitigate future deficiencies during the peak hour.

Table 4.1 shows trip generation rate assumptions used in this analysis (dwelling unit, 1,000 square feet of nonresidential development or hotel room). As new development generates increased vehicle trips for the City's transportation network, additional capacity in the system will be needed in the form of the improvements described in this report. Trip generation by major land use category allow the analysis to incorporate different estimates of demand for transportation facilities. Trip generation rates are applied to development projections to allocate improvement costs by land use type. The trip generation rates used for this analysis are based on years of study of major land use categories by the Institute of Transportation Engineers (9th Edition).

Table 4.1: PM Peak Hour Trip Rates

ITE Category		PM Peak Hour Trip Rate ¹
<u><i>Residential</i></u>		
Single Family	Single Family Housing (210)	1.00
Multi-family	Apartment (220)	0.62
Senior / Downton / ADU	Senior Adult Housing (252)	0.25
<u><i>Nonresidential</i></u>		
Commercial	Shopping Center (820)	3.71
Office	General Office Building (710)	1.49
Industrial	General Light Industrial (110)	0.97
Auto Dealership	New Car Sales (841)	2.62
Hotel Room (per room)	Hotel (310)	0.60

¹ Trips per dwelling unit or per 1,000 square feet of nonresidential building space, or per hotel room.

Source: Institute of Traffic Engineers, Trip Generation, 9th Edition.

Growth in Trip Demand Through 2035

Peak hour trip demand generated by new development is a reasonable measure of new development's demand for traffic facilities. The need for new or expanded roads and other facilities is typically determined based on peak-hour trip volumes because capacity needs are based on the busiest periods of the day. The trip generation rates from Table 4.1, multiplied by dwelling units for residential land use categories or by thousands of square feet of building space or hotel rooms for nonresidential categories from Table 2.1, equals the total peak hour trip demand generated by that land use type. **Table 4.2** shows the trip demand generated by existing development and anticipated new development in Morgan Hill through the 2035 planning horizon.

Table 4.2: Land Use Scenario and Total Trips

Land Use	PM Peak Hour Trip Rate	2018 Units / 1,000 SF	2018 Trips	Growth 2018 to 2035		Total - 2035	
				Units / 1,000 SF	Trips	Units / 1,000 SF	Trips
<u><i>Residential</i></u>							
Single Family	1.00	11,320	11,320	1,680	1,680	13,000	13,000
Multi-family	0.62	2,302	1,427	2,385	1,479	4,687	2,906
Senior / Downtown / Accessory Dwelling Units	0.25	1,100	275	500	125	1,600	400
Total		14,722	13,022	4,565	3,284	19,287	16,306
<u><i>Nonresidential</i></u>							
Commercial	3.71	2,610	9,682	1,117	4,145	3,727	13,827
Office	1.49	522	777	629	938	1,151	1,715
Industrial	0.97	5,935	5,757	1,780	1,727	7,715	7,484
Auto Dealership	2.62	120	314	56	147	176	461
Hotel Rooms	0.60	919	551	215	129	1,134	680
Subtotal		10,106	17,081	3,797	7,086	13,903	24,167
Total			30,103		10,370		40,473
			74.4%		25.6%		100%

Sources: Tables 2.1 and 4.1.

Traffic Impact Fee Project Costs

Table 4.3 shows the improvements needed to accommodate projected 2035 traffic volumes. Project costs were estimated by City Staff. Each project included in the fee program, was either included in the original fee program, or is needed as a direct result of trip demand from new development. Consequently, the entire cost of planned facilities, with no existing deficiencies is allocated to new development in this impact fee.

Consistent with the current fee program, this update assumes that developers will dedicate 36' of right-of-way, including (site work and landscaping) on each side. Developers will dedicate 26' of road improvements, including (curb, gutter & pavement) on each side. The impact fee will fund the remainder of the improvements.

Table 4.3: Project Cost Summary

No	Road	Location	Total Project Cost ¹	Cost Allocation to New Development	Allocation To Existing Deficiencies	Total Cost Allocated To New Development
1	Cochrane Road	Monterey Road to Hwy 101	\$ 408,972	100%	0%	\$ 408,972
2	Cochrane Road	Hwy 101 to Mission View Drive	546,336	100%	0%	546,336
3	Cochrane Road	Mission View Drive to Peet Road	816,223	100%	0%	816,223
4	Dunne Avenue	Hill Road to Gallop Drive	748,792	100%	0%	748,792
5	Dunne Avenue	Del Monte Avenue to Monterey Road	159,471	100%	0%	159,471
6	Hill Road/Peet Road	Half Road to Cochrane Road	-	100%	0%	-
7	Hill Road	Main Avenue to Barrett Avenue	1,160,963	100%	0%	1,160,963
8	Madrone Parkway	Hale Avenue to Monterey Road	2,000,000	100%	0%	2,000,000
9	Madrone Parkway	Monterey Road to Butterfield Blvd.	534,851	100%	0%	534,851
10	Main Avenue	Depot Street to Butterfield Blvd.	39,376	100%	0%	39,376
11	Main Avenue	Laurel Street to Condit Road	706,873	100%	0%	706,873
12	Main Avenue	Condit Road To Hill Road	-	100%	0%	-
13	Murphy/Mission View Dr.	Cochrane Road to Half Road	826,197	100%	0%	826,197
14	Murphy/Mission View Dr.	Half Road to Main Avenue	1,282,097	100%	0%	1,282,097
15	Murphy Avenue	Main Avenue to Diana Avenue	1,282,097	100%	0%	1,282,097
16	Murphy Avenue	Diana Avenue to Barrett Avenue	1,649,987	100%	0%	1,649,987
17	Hale Avenue ²	Various	22,000,000	56.8%	43.2%	12,500,000
25	Butterfield Blvd.	Madrone Parkway to Cochrane Road	553,719	100%	0%	553,719
26	Tennant Avenue	E HWY 101 to Murphy Avenue	1,394,388	100%	0%	1,394,388
27	Tennant Avenue	Juan Hernandez Drive to HWY 101	856,992	100%	0%	856,992
28	Watsonville Road	Monterey Road to La Alameda Drive	492,032	100%	0%	492,032
29	Monterey Road	Tilton Avenue to Cochrane Road	2,483,103	100%	0%	2,483,103
30	Monterey Road	Cochrane Road to Main Avenue	2,142,850	100%	0%	2,142,850
31	Monterey Road	Dunne Avenue to Middle Avenue	1,438,520	100%	0%	1,438,520
Total			\$ 43,523,839			\$ 34,023,839

¹ Total project costs increased 8.35% based on changes in ENR's Construction Cost Index from 2015 to December, 2017.

² This project includes former projects numbered 17 to 24 from existing fee program. Total project cost is \$22,000,000. VTA Measure B will contribute \$9,500,000 towards this project, so the net impact fee contribution is \$12,500,000.

Source: City of Morgan Hill.

Table 4.4 lists the priority bikeway projects and multimodal intersection improvement projects identified in Table 5-1 of the City's Bikeways, Trails, Parks and Recreation Master Plan (2017). A share of these projects is allocated to new development, based on new development's share of total trip demand in 2035, as identified in Table 4.2.

Table 4.4: Priority Bikeway Projects

Project Description	Location	Total Project Cost
Buffered Bike Lanes	Cochrane Rd and Malaguerra Ave from Monterey Rd to Coyote Creek Trailhead	\$ 1,200,000
Buffered Bike Lanes	Monterey Rd from Tilton Ave to Butterfield Blvd/Watsonville Rd	2,400,000
Buffered Bike Lanes	Burnett Rd from Monterey Rd to Coyote Creek (Sobrato School Access)	750,000
Buffered Bike Lanes	Santa Teresa Corridor, Hale Ave from Tilton Ave to W Main Ave	750,000
Buffered Bike Lanes	West Main Ave from Monterey Rd to Dewitt Ave	450,000
Protected Bike Lanes	E Main Ave from Monterey Rd to Hill Rd (Live Oak High School Access and Coyote Creek Connection) (Interim step Buffered Bike Lanes)	3,800,000
Bicycle Boulevard	Morning Star Dr/Peet Rd from Eagle View Dr to Cochrane Rd to Coyote Creek Trailhead	480,000
Bicycle Boulevard	Depot Street from E Main Ave to E Dunne Ave	380,000
Multi-Modal Intersection Improvements	Monterey Rd Downtown between E Main Ave and E Dunne Ave	790,000
Multi-Modal Intersection Improvements	E Main Ave and Butterfield Blvd	350,000
Multi-Modal Intersection Improvements	W Main Ave and Hale Ave	10,000
Multi-Modal Intersection Improvements	Cochrane Rd and Highway 101 (North & South ramps, Madrone Pkwy and Depaul Dr)	130,000
Multi-Modal Intersection Improvements	Monterey Rd and Cochrane Rd	350,000
Multi-Modal Intersection Improvements	Butterfield Blvd and Cochrane Rd	130,000
Multi-Modal Intersection Improvements	Monterey Rd and Tilton Ave/Burnett Ave	120,000
Total		\$ 12,090,000
Allocation to New Development		25.6%
Cost Allocated to New Development		\$ 3,095,040

Sources: Table 5-1, Bikeways, Trails, Parks and Recreation Master Plan, 2017; Table 4.2, Willdan Financial Services.

Cost Allocation

Based on the total improvement costs allocated to new development shown in Tables 4.3 and 4.4, and the anticipated new trip demand shown in Table 4.2, **Table 4.5** calculates new development's cost per trip demand unit. Existing fund balances are subtracted from the total project costs to ensure that the impact fee only funds new development's share of the improvements.

Table 4.5: Cost per Trip to Accommodate Growth

Fee Program Share of Planned Facilities Costs	\$ 34,023,839
New Development Allocation of Bike Project Costs	3,095,040
Less Existing Fund Balance	<u>(3,437,980)</u>
Net Costs	\$ 33,680,899
 Growth in Trip Demand	 <u>10,370</u>
 Cost per Trip	 \$ 3,248

Sources: Tables 4.2, 4.3 and 4.4; Willdan Financial Services.

Fee Schedule

Table 4.6 shows the maximum justified traffic facilities fee schedule. The cost per trip is multiplied by the PM peak hour trip rate for each land use to determine the fee per dwelling unit, on 1,000 square feet of nonresidential building space. The total fee includes a two-percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to City programs for legal, accounting, and other departmental and administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two-percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 4.6: Maximum Justified Traffic Impact Fee Schedule

Land Use	A	B	C = A x B		D = C x 0.02	E = C + D	E / 1,000
	Cost Per Trip	PM Peak Hour Trip Rate	Base Fee ¹	Admin Charge ^{1, 2}		Total Fee ¹	Fee per Sq. Ft.
<u>Residential</u>							
Single Family	\$ 3,248	1.00	\$ 3,248	\$ 65		\$ 3,313	
Multi-family	3,248	0.62	2,014	40		2,054	
Senior / Downtown / Accessory Dwelling Units	3,248	0.25	812	16		828	
<u>Nonresidential</u> ³							
Commercial	\$ 3,248	3.71	\$ 12,050	\$ 241		\$ 12,291	\$ 12.29
Office	3,248	1.49	4,840	97		4,937	4.94
Industrial	3,248	0.97	3,151	63		3,214	3.21
Auto Dealership	3,248	2.62	8,510	170		8,680	8.68
Hotel Room (per room)	3,248	0.60	1,949	39		1,988	1.99

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential or per hotel room.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Fee per trip of \$3,248 plus 2% administration cost totaling \$3,313 per trip can be used to calculate fee for any land use using the land use's PM peak hour trip rate.

Sources: Tables 4.1 and 4.5; Willdan Financial Services.

5. Library Facilities

The purpose of the library impact fee is to fund the library facilities needed to serve new development. A maximum justified fee is presented based on maintaining the existing standard of library facilities.

Service Population

Library facilities primarily provide services to residents. The service population used to determine the demand for library facilities only includes residents and excludes workers. The service area of the Morgan Hill Library is greater than just within the City limits. **Table 5.1** shows the current library facilities service population and the estimated service population at the planning horizon of 2035. Estimates of residents outside of the City are based on ABAG data.

Table 5.1: Library Facilities Service Population

	Residents
<i>Existing Service Population (2018)</i>	
City of Morgan Hill	44,130
Surrounding Unincorporated Area	9,400
Total	53,530
<i>New Development (2018-2035)</i>	
City of Morgan Hill	13,684
Surrounding Unincorporated Area ¹	11,200
Total	24,884
Total (2035)	78,414

¹ Based on annual growth rate of 1.03% estimated based on countywide Santa Clara County growth projections from 2010 to 2035 from ABAG (2013).

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's library facility inventory, facility standards, and cost of planned facilities.

Table 5.2 summarizes the City's current inventory of library facilities, including land, building and collections.

Table 5.2: Existing Library Facilities

	Inventory	Units	Unit Cost ¹	Value
<u>Existing Library</u>				
Land (acres)	4.57	acres	\$ 790,000	\$ 3,610,300
Building	27,909	square feet	900	25,118,100
Collection	166,000	items	36	<u>5,976,000</u>
Total Value - Existing and Planned Library Facilities				\$ 34,704,400

¹ Building cost costs based on recent bid for library expansion project. Cost per item based on data from similar jurisdictions.

² Planned increases in collection based on maintaining ratio of building space to items.

Source: City of Morgan Hill.

Table 5.3 lists the planned library facilities: an expansion to the building and collections.

Table 5.3: Planned Library Facilities

	Inventory	Units	Unit Cost ¹	Value
<u>Planned Expansion</u>				
Building	5,000	square feet	\$ 900	\$ 4,500,000
Collection ²	30,000	items	36	<u>1,080,000</u>
Total Cost - Planned Facilities				\$ 5,580,000

¹ Unit costs based on recent bid for library expansion project. Cost per item based on data from similar jurisdictions.

² Planned increases in collection based on maintaining ratio of building space to items.

Sources: City of Morgan Hill; Willdan Financial Services.

Cost Allocation

Table 5.4 calculates the existing cost per capita facility standard by dividing the value of the existing facilities inventory by the existing service population. The resulting cost per capita is the basis of the impact fee. Funding facilities at this level will ensure that as development occurs, new development will contribute to public use center facilities at the same standard that existing development has contributed thus far. By definition, using the existing standard methodology does not result in existing deficiencies.

Table 5.4: Library Facilities Existing Standard

Value of Existing Facilities	\$	34,704,400
Existing Service Population		<u>44,130</u>
Facility Standard per Resident	\$	786

Sources: Tables 5.1 and 5.2.

Use of Fee Revenue

The City can use library facilities fee revenues to purchase land, buildings, collections and equipment that are part of the system of library facilities serving new development. The City plans to use the fee revenues to fund the facilities shown in Table 5.3.

Revenue Projection

The library facilities fee revenue exceeds the cost of the planned facilities. The City will have to identify additional library facilities through 2035 to maintain its existing facility standard. **Table 5.5** projects library fee revenue through 2035 based on the cost per capita from Table 5.4, and the service population growth projections in Table 5.1.

Table 5.5: Revenue Projection - Existing Standard

Cost per Capita	\$	786
Growth in Service Population (2018- 2035)		<u>13,684</u>
Fee Revenue	\$	10,755,600
Net Cost of Planned Facilities		<u>5,580,000</u>
Future Facilities to Be Identified	\$	5,175,600

Sources: Tables 5.1, 5.3 and 5.4.

Fee Schedule

Table 5.5 shows the maximum justified library facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit densities (persons per dwelling unit). The total fee includes a two percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 5.6: Library Facilities Fee - Existing Standard

	A	B	C = A x B	D = C x 0.02	E = C + D
Land Use	Cost Per Capita	Density	Base Fee ¹	Admin Charge ^{1, 2}	Total Fee
<i>Residential</i>					
Single Family	\$ 786	3.01	\$ 2,366	\$ 47	\$ 2,413
Multi-family	786	2.64	2,075	42	2,117
Senior / Downtown / Accessory Dwelling Units	786	2.00	1,572	31	1,603

¹ Fee per dwelling unit.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification

Sources: Tables 2.2 and 5.4.

6. Park Facilities

The purpose of this fee is to generate revenue to fund the park facilities needed to serve new development. The impact fee is based on the parkland standards found in the Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan (2017).

Service Population

Facility standards for parks are typically expressed as a ratio of park acres per 1,000 residents. As residents are the primary users of parks in the City of Morgan Hill, demand for parks and associated facilities is based on the City's residential population, rather than a combined resident-worker service population. **Table 6.1** provides estimates of the City's current resident population and a projection for the year 2035.

Table 6.1: Parks Service Population

	Residents
Existing (2018)	44,130
New Development (2018 - 2035)	13,684
Total (2035)	57,814

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's park facility inventory, facility standards, and park facility costs.

Existing Inventory

Table 6.2 summarizes the City's existing park and open space inventory. In addition to public parkland, there is also a significant amount of parkland and open space in the City that is privately owned and maintained. **Table 6.3** displays the privately-owned park and open space land in the City.

Table 6.2: Existing Parkland Inventory

	Developed Park Acres	Undeveloped Acres	Total Park/Open Space Acres
<u>Community Parks</u>			
Community Park	26.00	-	26.00
Galvan Park	7.50	-	7.50
Subtotal	33.50	-	33.50
<u>Neighborhood Parks</u>			
Diana Park	3.08	-	3.08
Jackson Park	1.30	-	1.30
Oak Creek Park	2.93	-	2.93
Nob Hill Trail Park	3.40	-	3.40
Nordstrom Park	4.57	-	4.57
Paradise Park	5.47	-	5.47
Railroad Park	1.10	-	1.10
Third Street Creek Park	1.10	-	1.10
Subtotal	22.95	-	22.95
<u>Mini Parks</u>			
21 Mile	0.65	-	0.65
Belle Estates Park	0.46	-	0.46
Civic Center	2.00	-	2.00
Conte Gardens Park	0.50	-	0.50
Diana Estates Park	0.50	-	0.50
Fox Hollow Park	0.20	-	0.20
Hamilton Square Park	0.57	-	0.57
Howard Weichert Park	0.90	-	0.90
Mill Creek Park	0.93	-	0.93
Murphy Springs Park	0.49	-	0.49
Sanchez Park	0.16	-	0.16
Stone Creek Park	0.95	-	0.95
Subtotal	8.31	-	8.31
<u>Community Recreation Facilities</u>			
Centennial Recreation Center	5.90	-	5.90
Community and Cultural Center	6.00	-	6.00
El Toro Youth Center	0.30	-	0.30
Aquatics Center	8.00	-	8.00
Outdoor Sports Center	38.00	-	38.00
Subtotal	58.20	-	58.20

Sources: City of Morgan Hill; City of Morgan Hill *Bikeways, Trails, Parks and Recreation Master Plan*, 2017.

Table 6.2: Existing Parkland Inventory Continued

	Developed Park Acres	Undeveloped Acres	Total Park/Open Space Acres
<u>Trails</u> ¹			
Butterfield Linear Park	2.09	-	2.09
San Pedro Percolation Ponds Trail	1.21	-	1.21
Madrone Channel Trail	6.00	-	6.00
West Llagas Creek Trail	1.10	-	1.10
Subtotal	10.40	-	10.40
<u>Open Space</u> ²			
El Toro	-	86.00	21.50
Jackson Oaks	-	170.00	42.50
Subtotal	-	256.00	64.00
<u>Joint Use Facilities</u> ³			
Villa Mira Monte	2.40	-	2.40
Subtotal	2.40	-	2.40
Total	135.76	256.00	199.76

¹ Area totals includes trail and landscaping adjacent to trail.

² According to the *Bikeways, Trails, Parks and Recreation Master Plan, 2017* only 25% of open space acreage counts towards the City's parkland standard.

³ The City has joint use agreements for these facilities.

Sources: City of Morgan Hill; City of Morgan Hill *City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017*.

Table 6.3: Private Parkland Inventory

HOA	Location	Park Acres	Open Space
			Acres
Alicante	Ventura Ct. & Ventura Dr.	2.00	-
Alicante	Espana Wy. & Katherine Dr.	0.60	-
Barrett Place	Barrett Ave. & Saint John Ct.	0.60	-
Brighton Oaks Community Association	Butterfield Blvd. & Main Avenue	-	0.21
Capriano	Curry Ave. & Hale Ave.	1.50	-
Carriage Square	East Main Ave. & Carriage Lamp Way	1.70	-
Central Park	East Central Ave & Calle Central	2.20	-
Central Park	Cil Hermosa & Calle Buena Vista	0.85	-
Cerro Verde HOA	Calle Mazatan & Main Ave.	-	0.40
Cerro Verde HOA	Central & Butterfield	-	0.20
Cerro Verde HOA	Calle Mazatan & Calle Cerro	0.30	-
Cerro Verde HOA	Calle Verde & CalleCerro	0.30	-
Cottage Green	San Pedro Ave. & San Ramon Dr.	0.70	-
Country Side Villas	Venetian Way and Shasta lane	0.25	-
Coyote Estates	Peet Rd. & Eagle View Dr.	0.70	-
Coyote Estates	Savanah Ct. & Morningstar Dr.	1.60	-
Creekside Village	E.Dunne Ave. & Creekside Cr.	2.10	-
Crescent Park	Belleto Dr. & Bentley Dr.	0.80	-
Del Monte Condominiums	Del mone Ave. & Del Monte Lane	0.85	-
Del Monte Village	Hale Ave & Del Monte Ave. (Private Road)	-	0.40
Diamond Creek	Rome Ave. and Monterey Road	-	0.25
Diamond Creek HOA	Valencia Avenue	-	-
East Dunne Park Owner's Association	Grapevine Ct. & Seville Drive	-	0.49
El Dorado	East Dunne Ave. & Tassajara Cir.	0.20	-
El Toro Oaks	Oak Park Drive and Dewitt Ave.	0.50	-
Esperanza Community Association	Diana Avenue & Cayman Street	0.74	0.07
Excalibur	Excaliber Court	-	0.60
Grand Prix / Calle Siena	Grande Prix Way \$ Calle Siena	0.95	-
Heatherwood HOA	Katybeth & Heatherwood	-	0.10
Heritage Greens	East Dunne Ave & Saddleback Dr.	0.60	-
Hidden Meadow Condos	Viewcrest Lane & Dunne Ave	-	0.50
Hillwood Lane	Hillwood Lane and Hale (behind houses)	-	3.25
Holiday Lake Estates	Btwn Holiday Dr & Copper Hill Dr	-	11.85
Jackson Oaks Clubhouse	390 Oak Hill Ct.	0.90	5.50
Jasper Park	Cory Dr. & San Benancio Way	0.80	-
Kelly Park Circle	Kelly Park Cr. & Murphey Ave	0.25	-
Kendall Hill	Denali Drive and Olympic Drive	0.45	-
Las Casas de San Pedro Condominiums	San Pedro Ln. & San Pedro Ave.	0.80	-
Laurel Oaks	San Marcos Ct. & San Ramon Dr.	0.40	-
Loan Oaks Farms	San Gabriel Ave. & San Vincent Dr.	0.85	-
Loden Place Community Corporation	Stoney Creek Way and Hale Avenue	0.29	0.47
Lone Oak Farm HOA	San Domingo Drive & San Meguel Drive	0.24	0.11
Madrone Parkway Retention Area	Madrone Pkwy. & Buttefield Blvd.	-	10.00
Madrone Plaza	Opal Ln. & Jarvis Dr	0.90	-
Milano	Murpphy Ave. & Mimosa Drive	1.10	-
Mission Ranch	Capastrano Wy. & San Antonio Wy.	2.80	-
Mission Ranch	Cochrane Rd. & Mission View Ave.	2.20	-
Mission Ranch (Phase 13)	Mission View Drive & Avenida Del Los Padres	8.92	0.50
Monte Villa	Llagas Rd. & Carriage Dr.	-	0.35
Montoya Circle	East Main Ave. & Mariposa Dr.	0.80	-
Morgan Hill Ranch Apartments	Cochrane Rd. & Butterfield Blvd.	0.50	-
Morgan Lane Phase 1	Central Ave. & Aston Ct.	4.20	-
Morgan Meadows	East Dunne Ave. & Hill Rd.	-	0.60
Morgan Meadows	Domaine Dr. & Cabernet Cr.	2.30	-

Source: City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017.

Table 6.3: Private Parkland Inventory - Continued

HOA	Location	Park Acres	Open Space Acres
Morgan Meadows	Malbek Dr. & Merlot Dr.	0.75	-
Morgan Ranch	East Dunne Ave. & Bayo Claros	2.25	-
Morgan Village	East Dunne Ave & Brega Lane	1.85	-
Park Place Condominiums	LaCrosse Drive and Village Way	0.40	-
Parkside at Capriano	Corriander Ave & Basil Ave.	1.40	-
Pear Tree Estates	Pear Dr. & Jean Ct.	0.75	-
Pine Tree Park	Olympia Drive and Bryce Drive	0.50	-
Pine Tree Park	Sugarpine Dr. & Pinecone Ct.	0.25	-
Quail Creek	Via Vivaldi and Santa Teresa Blvd	1.00	-
Quail Meadows	Secretariat Way	-	0.50
Rio Sereno	Calle Sueno and Via Narretto	0.20	-
Rooyal Court Apartments	Del Monte Ave. & Wright Ave.	0.30	-
Royal Court	Wright Ave. & Del Monte Ave.	-	0.20
San Benito and San Pablo	San Benito Pl. and San Pablo Ct.	0.45	-
San Gabriel Court	San Gabriel Court	0.60	-
San Pedro Gardens	Cory Dr. & San Pedro Ave.	0.45	-
San Pedro Gardens	Cory Dr. & San Pedro Ave.	0.25	-
San Pedro Villas	San Jose Dr & San Juan Dr	1.90	-
San Savigno	Bel Air Way	-	0.50
San Savigno	S side Main btw Calle Mazatan & Grand Prix	-	0.15
San Savigno	Calle Asta & Bell Air Way	0.60	-
Shadow Brooks Estates	Shadowbrook Wy & Llagas Creek Dr.	2.00	-
Sherial Park	Jarvis Dr. & Sutter Blvd.	0.48	-
Sherimar Ranch	Jasmine Way & Bradford Way	2.40	-
Siera Ct	Llagas Rd. & Siera Ct.	0.50	-
Sonora Ranch	Peppertree & East Dunne Ave	0.25	-
Sorrento	Via Sorrento and Watsonville Road	0.25	-
St James Place	St. Timothy Pl. and St. Lawrence Dr.	1.75	-
Stonebridge Neighborhood Association	Hale Ave & Clove Avenue	3.06	4.69
Tilton Park Owner's Associatioin	Tilton Avenue & Monterey Road	2.56	0.15
Tuscany Meadows	Shafer Ave. & Katybeth Way	1.00	-
Twin Oaks	Llagas Creek Dr. & ril Marianna Dr.	-	0.60
Ventura of Morgan Hill Home Owners	Cochrane Road & St. Mark's Avenue	-	0.84
Viento	Calle Viento & Calle Viento Ct.	1.30	-
Village Avante Apartments	Cosmo Dr. & Del Monte Ave.	0.50	-
Walnut Grove	San Pedro Ave. & Walnut Grove	-	1.00
Westmoreland Park	Piazza Way	0.25	-
Total		78.93	44.47

Source: City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017.

Parkland Unit Costs

Table 6.4 shows the estimated cost per acre for parkland. Land acquisition costs are consistent with those used throughout this study. Improvement costs are based on cost estimates provided in the City of Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan (2017). The cost per acre is based on assumed community park improvement costs from Master Plan of \$8,000,000 for the improvement of 10 acres.

Table 6.4: Parkland Unit Costs

	Cost per Acre	Share of Parkland Costs
Standard Park Improvements ¹	\$ 800,000	50%
Land Acquisition	790,000	50%
Total Cost per Acre	\$ 1,590,000	100%

Note: Figures have been rounded.

¹ Based on assumed community park improvement costs from Master Plan @ \$8,000,000 for the improvement of 10 acres.

Sources: *City of Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan, 2017, Table 5-3*; Willdan Financial Services.

Park Facility Standards

The Master Plan sets forth park facility standards for the City. The Master Plan specifies a Citywide park standard of 5.0 acres per thousand residents. Per the Master Plan, private parkland counts towards the standard, but only at 50% of total acreage. Open space acreage is counted towards the standard, but only at 25% of total acreage. Private open space is not included in the calculation of the standard. The City's existing parkland facilities standard exceeds the standard recommended by the Master Plan.

Table 6.5 shows the existing parkland standards based on including discounted private parks and open space as described above. As shown, the City currently provides park facilities above the Master Plan standard, with no deficiencies. Impact fees cannot fund private parks, and the City does not intend to use impact fee revenue to purchase future open space. As such park standards are shown three ways:

- Existing Master Plan Standard: Calculated including discounted private parks and open space.
- Existing Parks Standard (Impact Fee): Calculated only including public parkland
- Existing Other Parks Standard: Calculated only including discounted open space, and discounted private parks.

Table 6.5: Parkland Standards

Type of Acreage	Total Developed Acreage	Total Undeveloped Acreage	Existing Master Plan Standard ¹	Existing Parks Standard (Impact Fees) ²	Existing Other Parks Standard
Community Parks	33.50	-	33.50	33.50	-
Neighborhood Parks	22.95	-	22.95	22.95	-
Mini Parks	8.31	-	8.31	8.31	-
Community Recreation Facilities	58.20	-	58.20	58.20	-
Trails	10.40	-	10.40	10.40	-
Schools	2.40	-	2.40	2.40	-
Open Space	-	256.00	64.00	-	64.00
Private Parkland	78.93	-	39.47	-	39.47
Private Open Space	44.47	-	-	-	-
Total	259.16	256.00	239.23	135.76	103.47
Current Population			44,130	44,130	44,130
Standard			5.42	3.08	2.34

¹ The Master Plan recommends a citywide (including public and private) parks standard of 5.0 acres per 1,000 population. Per the Master Plan, private parkland counts towards the standard, but only at 50% of total acreage. Open space acreage is counted towards the standard, but only at 25% of total acreage. Private open space is not included in the calculation of the standard. The City's existing parkland facilities standard exceeds the standard recommended by the Master Plan.

² For the purposes of calculating a parks standard to base impact fees on, only publicly owned parkland is included. Open space, and privately owned parkland are excluded from the standard. It is assumed that the existing ratio of public to private parkland will be maintained through the planning horizon as additional private parkland is added.

Sources: City of Morgan Hill; Tables 6.1 - 6.4, Willdan Financial Services.

Facilities Needed to Accommodate New Development

Table 6.6 shows the park facilities needed to accommodate new development at the “impact fee” standard. To achieve the General Plan standard by the planning horizon, new development must fund the improvement of existing undeveloped parkland, and fund the purchase and development of 42.15 additional parkland acres. The existing park impact fee fund balance is \$2,787,306. This fund balance is converted into equivalent developed acres and credited against the total parkland needs. As such, the City only needs to develop 40.40 acres of parkland to achieve the desired standard at the planning horizon. This translates to the need for new development to contribute at a standard of 2.95 acres per 1,000 residents through this impact fee.

Table 6.6: Parkland Facility Needs

	Calculation	Amount	Unit
Existing City Owned Park Standard	A	3.08	Acres per 1,000 Capita
Growth in Service Population	B	13,684	Residents
Acres needed at Buildout to Maintain Standard	$C = A \times (B / 1,000)$	42.15	Acres
Existing Fund Balance	D	\$ 2,787,306	
Cost per Acre (Land and Improvements)	E	1,590,000	
Fund Balance Developed Park Acreage Equivalent ¹	$F = D / E$	1.75	Acres
Net Developed Parkland Needs	$G = C - F$	40.40	Acres
Growth in Service Population	H	13,684	Residents
Acres per 1,000 new residents needed to achieve standard	$I = G / (H / 1,000)$	2.95	Acres per 1,000 Capita

¹ Existing fund balance converted to equivalent developed park acreage by dividing fund balance by the cost per developed park acre developed in Table 6.4 (\$1,590,000).

Sources: Tables 6.1, 6.4 and 6.5; Willdan Financial Services.

Table 6.7 shows the calculation of the cost of purchasing and improving 40.40 acres. This cost is approximately \$64.2 million through 2035.

Table 6.7: Cost of Planned Parkland Facilities Needs

	Calculation	Total
Acres needed to meet Standard	A	40.40
Cost per acre - Land	B	\$ 790,000
Cost per acre - Improvements	C	800,000
Total Parkland and Improvement cost Per Acre	$D = B + C$	\$ 1,590,000
Land Needs	$E = A \times B$	\$ 31,916,000
Improvements Needs	$F = A \times C$	32,320,000
Net Cost of Planned Park Facilities to Serve New Development	$G = E + F$	\$ 64,236,000

Sources: Tables 6.6 and 6.4; Willdan Financial Services.

Parks Cost per Capita

Table 6.8 shows the cost per capita of providing new parkland and park facilities at a 2.95 acre per 1,000 capita facility standard. The per acre unit costs are multiplied by the acreage standards to determine the total amount of costs needed to serve 1,000 residents for each type of parkland, respectively. Then, those costs are divided by 1,000 to determine the cost needed to serve one resident.

Table 6.8: Park Improvements Cost per Capita

Parkland Investment Cost (per acre)	\$ 1,590,000
Facility Standard (acres per 1,000 residents)	2.95
Total Investment Per 1,000 capita	\$ 4,691,000
Investment Per Resident	\$ 4,691

Sources: Tables 6.6, and 6.8; Willdan Financial Services.

Use of Fee Revenue

The City plans to use park facilities fee revenue to acquire parkland and construct improvements to add to the system of park and recreation facilities that serves new development. The City may only use impact fee revenue to provide facilities needed to serve new development. The City may not use impact fee revenue for the portion of park facilities needed to meet the Master Plan standards for private parkland.

Fee Schedule

Table 6.9 shows the maximum justified park facilities fee schedule. The maximum justified fees are based on the costs per capita shown in Table 6.8. The cost per capita is converted to a fee per unit of new development based on the average number of residents per dwelling unit, as shown in Table 2.2. The total fee includes a two percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 6.9: Park Facilities Fee Schedule

	A	B	C = A x B	D = C x 0.02	E = C + D
Land Use	Cost per Capita	Density	Base Fee	Admin Charge ¹	Total Fee
Single Family	\$ 4,691	3.01	\$ 14,120	\$ 282	\$ 14,402
Multifamily	4,691	2.64	12,384	248	12,632
Senior / Downtown / Accessory Dwelling Units	4,691	2.00	9,382	188	9,570

¹ Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Sources: Tables 2.2 and 6.8; Willdan Financial Services.

7. Water Facilities

This chapter summarizes an analysis of the need for water facilities to accommodate growth within the City of Morgan Hill. It documents a reasonable relationship between new development and an impact fee to fund water facilities that serve new development.

Water Demand

Estimates of new development and its consequent increased water demand provide the basis for calculating the water facilities fee. The need for water facilities improvements is based on the water demand placed on the system by development. A reasonable measure of demand is a flow generation rate, expressed as the number of gallons per day generated by a specific type of land use. Flow generation rates are a reasonable measure of demand on the City's system of water improvements because they represent the average rate of demand that will be placed on the system per land use designation.

Table 7.1 shows the calculation of water demand flow generation factors by land use category. The data is based the *City of Morgan Hill Water System Plan (2017)*. Water demand for a given land use is related to the demand for a single-family unit to calculate equivalent dwelling units (EDU).

Table 7.1: Water Demand by Land Use

Land Use Type	Flow Generation (GDP/NA) ¹	Density ²	Average Flow Generation/ DU, KSF, Room	Equivalent Dwelling Unit (EDU)
<u>Residential</u>				
Single Family	1,266	5.00	253.20	1.00
Multi-family	1,856	16.00	116.00	0.46
Senior / Downtown / Accessory Dwelling Units	3,130	24.00	130.42	0.52
<u>Nonresidential</u>				
Commercial	1,350	21.78	61.98	0.24
Office	1,350	21.78	61.98	0.24
Industrial	1,120	26.14	42.85	0.17
Auto Dealership	1,350	21.78	61.98	0.24
Hotel	1,350	67.02	20.14	0.08

¹ Gallons per day per net acre.

² Dwelling units per acre for residential, thousand square feet per acre for nonresidential or hotel rooms per acre. Nonresidential based upon the maximum floor area ratio (FAR) assumption of 0.5 for commercial, 0.5 for office, 0.6 for industrial, 0.5 for auto dealership, and 0.5 for hotel.

Sources: City of Morgan Hill General Plan 2035, Table CNF-2; City of Morgan Hill Water System Master Plan, 2017, Table 3.4; Willdan Financial Services.

Equivalent Dwelling Unit Growth

Table 7.2 calculates the existing and projected equivalent dwelling units (EDU) based on each land use's water demand factors displayed in Table 7.1. An equivalent dwelling unit represents the demand of all other land uses equivalent to one single family unit. Also displayed is the total existing and future EDUs for water facilities by land use.

Table 7.2: Water Facilities Equivalent Dwelling Units

	EDU Factor ¹	Existing (DU/KSF)	Projected Growth (DU/KSF)	Existing EDUs	Growth in EDUs	Total
<i><u>Residential</u></i>						
Single Family	1.00	11,320	1,680	11,320	1,680	13,000
Multi-family	0.46	2,302	2,385	1,059	1,097	2,156
Senior / Downtown / Accessory Dwelling Units	0.52	1,100	500	572	260	832
Subtotal		14,722	4,565	12,951	3,037	15,988
<i><u>Nonresidential</u></i>						
Commercial ²	0.24	2,610	1,117	626	268	894
Office	0.24	522	629	125	151	276
Industrial	0.17	5,935	1,780	1,009	303	1,312
Auto Dealership	0.24	120	56	29	13	42
Hotel	0.08	919	215	74	17	91
Subtotal		10,106	3,797	1,863	752	2,615
Total				14,814	3,789	18,603
Percent of Total				79.6%	20.4%	100.0%

¹ Per dwelling unit (residential) or thousand building square feet (nonresidential), or hotel room.

Sources: Tables 2.1 and 7.1, Willdan Financial Services.

Facility Needs and Costs

The City recently completed a water system master plan that identified necessary improvements to its water system. The Morgan Hill Water System Master Plan (2017) also identified the share of improvements needed to serve existing development, and the share needed to serve new development. **Table 7.3** lists the water projects, costs and allocation to existing and new development, based on Table ES.3 of the Master Plan.

Table 7.3: Costs to Serve New Development

Improv. No.	Alignment	Baseline Constr. ¹ Costs	Estimated Const. ² Costs ²	Capacity Improv. ³ Cost ³	Existing Users (%)	Future Users (%)	Allocation	
							Existing Users (\$)	Future Users (\$)
Pipeline Improvements								
BR-P1	ROW	\$ 351,714	\$ 457,229	\$ 594,397	0%	100%	\$ -	\$ 594,397
BR-P2	Cochrane Rd	373,697	485,806	631,548	0%	100%	-	631,548
BR-P3	Half Rd	763,719	992,835	1,290,685	0%	100%	-	1,290,685
BR-P4	Mission View Dr	98,920	128,596	167,174	100%	0%	167,174	-
BR-P5	Mission View Dr	509,145	661,889	860,455	0%	100%	-	860,455
BR-P6	Half Rd	400,043	520,055	676,072	0%	100%	-	676,072
NH-P1	Hale Ave Extension	1,103,149	1,434,094	1,864,322	100%	0%	1,864,322	-
NH-P2	Spring Ave	181,191	235,549	306,213	100%	0%	306,213	-
NH-P3	San Pedro Ave	160,906	209,178	271,932	100%	0%	271,932	-
NH-P4	Railroad Ave	102,395	133,114	173,048	0%	100%	-	173,048
NH-P5	Railroad Ave	175,534	228,194	296,653	0%	100%	-	296,653
NH-P6	San Pedro Ave	703,429	914,457	1,188,795	0%	100%	-	1,188,795
NH-P7	Hill Rd	725,411	943,035	1,225,945	0%	100%	-	1,225,945
NH-P8	Ternant Ave	1,066,134	1,385,975	1,801,767	0%	100%	-	1,801,767
NH-P9	Monterey Rd	516,580	671,555	873,021	0%	100%	-	873,021
NH-P10	ROW	593,519	771,575	1,003,047	0%	100%	-	1,003,047
RP-7	First St	101,721	132,238	171,909	100%	0%	171,909	-
HL-P1	Dunne Ave	160,906	209,178	271,932	40%	60%	108,773	163,159
HL-P2	Dunne Ave	133,347	173,351	225,357	40%	60%	90,143	135,214
HL-P3	Dunne Ave	594,003	772,204	1,003,865	0%	100%	-	1,003,865
HL-P4	Oak Leaf Dr	557,636	724,926	942,404	0%	100%	-	942,404
HL-P5	Lake View Dr	690,984	898,279	1,167,763	0%	100%	-	1,167,763
RP-1	Shady Ln	432,316	562,011	730,614	100%	0%	730,614	-
RP-4	Holiday Tank Site	152,582	198,357	257,864	100%	0%	257,864	-
RP-5	Manzanita Dr	279,734	363,654	472,750	100%	0%	472,750	-
RP-6	Raccoon Ct	288,211	374,674	487,076	100%	0%	487,076	-
RP-2	Hill Top Ct	104,900	136,370	177,281	100%	0%	177,281	-
RP-3	Oak View Ct	133,509	173,562	225,631	100%	0%	225,631	-
RP-8	Oak Canyon Dr	114,437	148,768	193,398	100%	0%	193,398	-
Subtotal		\$ 11,569,774	\$ 15,040,706	\$ 19,552,918		\$ 5,525,080		\$ 14,027,838

¹ Cost estimates are adjusted to September 2018 costs based on the Engineering News Record (ENR) construction cost index (CCI).² Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.³ Estimated construction costs plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Water System Master Plan, 2017; Table ES.3; Engineering News Record; Construction Cost Index; Willdan Financial Services.

Table 7.3: Costs to Serve New Development Continued

Improv. No.	Alignment	Baseline Constr. ¹ Costs	Estimated Const.. Costs ²	Capacity Improv. Cost ³	Existing Users (%)	Future Users (%)	Allocation	
							Existing Users (\$)	Future Users (\$)
<u>Storage Reservoir Improvements</u>								
BR-T1	Demolish existing 0.55 MG Boys Ranch tank and replace with 1.20 MG tank	\$ 2,186,387	\$ 2,842,303	\$ 3,694,994	30%	70%	\$ 1,108,498	\$ 2,586,496
GA-T1	Demolish existing 0.10 MG Glen Ayre tank and replace with 0.25 MG tank	569,372	740,183	962,238	80%	20%	769,791	192,448
ED-T1	Existing Edmundson tank site	2,049,738	2,664,659	3,464,057	0%	100%	-	3,464,057
WD-T1	Demolish existing 0.03 MG Woodland tank and replace with 0.25 MG tank	569,372	740,183	962,238	70%	30%	673,567	288,671
HL-T1	Dunne Ave approx 500' ne/o Flaming Oak Ln	1,935,864	2,516,623	3,271,610	40%	60%	1,308,644	1,962,966
Subtotal		\$ 7,310,732	\$ 9,503,952	\$ 12,355,137			\$ 3,860,499	\$ 8,494,638
<u>Groundwater Well Improvements</u>								
BR-W1	Burnett Ave	\$ 2,479,459	\$ 3,223,297	\$ 4,190,285	0%	100%	\$ -	\$ 4,190,285
NH-W2	Butterfield Blvd	2,479,459	3,223,297	4,190,285	0%	100%	-	4,190,285
Subtotal		\$ 4,958,918	\$ 6,446,593	\$ 8,380,571			\$ -	\$ 8,380,571
<u>Pump Station Improvements</u>								
NH-PS1	Dunne Ave and Magnolia Wy	\$ 1,378,042	\$ 1,791,454	\$ 2,328,891	40%	60%	\$ 931,556	\$ 1,397,334
HL-PS1	Dunne Ave approx 500' ne/o Flaming Oak Ln	1,179,827	1,533,775	1,993,908	90%	10%	1,794,517	199,391
Subtotal		\$ 2,557,869	\$ 3,325,230	\$ 4,322,799			\$ 2,726,073	\$ 1,596,725
<u>Pressure Reducing Valve Improvements</u>								
HL-PRV1	Thomas Gr approx 1,100' w/o Gnarled Oak Ln	\$ 50,119	\$ 65,155	\$ 84,701	40%	60%	\$ 33,880	\$ 50,821
Subtotal								
<u>Comprehensive Plan Updates</u>								
	Water System Master Plan Updates (Years 2021, 2026, 2031, 2036)	\$ -	\$ -	\$ 800,000	65%	35%	\$ 520,000	\$ 280,000
	Urban Water Management Plan Updates (Years 2021, 2026, 2031, 2036)	-	-	400,000	65%	35%	260,000	140,000
	Water Rate Study Updates (Years 2021, 2026, 2031, 2036)	-	-	400,000	65%	35%	260,000	140,000
Subtotal		\$ -	\$ -	\$ 1,600,000			\$ 1,040,000	\$ 560,000
Total		\$ 26,447,412	\$ 34,381,635	\$ 46,296,126			\$ 13,185,533	\$ 33,110,593

¹ Cost estimates are adjusted to September 2018 costs based on the Engineering News Record (ENR) construction cost index (CCI).² Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.³ Estimated construction costs plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Water System Master Plan, 2017, Table ES.3: Engineering News Record, Construction Cost Index; Willdan Financial Services.

Table 7.4 calculates a cost per EDU associated by dividing the total cost of projects allocated to new development identified in Table 7.3, by the growth in EDUs identified in Table 7.2

Table 7.4: Cost per EDU

Cost Allocated to New Development	\$ 33,110,593
Growth in EDUs	3,789
Cost per EDU	\$ 8,739

Sources: Tables 7.2 and 7.3.

Fee Schedule

The maximum justified fee for water facilities is shown in **Table 7.5**. The cost per EDU is converted to a fee per unit of new development based on the EDU factors shown in Table 7.1. The total fee includes an administrative charge to fund costs that include: (1) a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, (2) capital planning, programming, project management costs associated with the share of projects funded by the facilities fee, and (3) fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Table 7.5: Water Facilities Impact Fee

	A	B	C = A x B D = C x 0.02		E = C + D	E / 1,000	F	G = E x F
	Cost Per EDU	EDU Factor	Base Fee ¹	Admin Charge ^{1, 2}	Total Fee ¹	Fee per Sq. Ft.	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 8,739	1.00	\$ 8,739	\$ 175	\$ 8,914			
Multi-family	8,739	0.46	4,020	80	4,100			
Senior / Downtown / Accessory Dwelling Units	8,739	0.52	4,544	91	4,635			
<u>Nonresidential</u>								
Commercial	\$ 8,739	0.24	\$ 2,097	\$ 42	\$ 2,139	\$ 2.14	21.78	\$46,587
Office	8,739	0.24	2,097	42	2,139	2.14	21.78	46,587
Industrial	8,739	0.17	1,486	30	1,516	1.52	26.14	39,628
Auto Dealership	8,739	0.24	2,097	42	2,139	2.14	21.78	46,587
Hotel	8,739	0.08	699	14	713	0.71	n/a	n/a

¹ Fee per dwelling unit or per 1,000 square feet of nonresidential or hotel room.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Based on assumed floor-area-ratio (FAR) from the General Plan. FAR for commercial, office and auto dealerships assumed to be 0.5 based on the "General Commercial" land use. FAR for Industrial assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 7.1 and 7.4; Willdan Financial Services.

8. Storm Drain Facilities Fee

This chapter summarizes an analysis of the need for storm drain facilities to accommodate growth within the City of Morgan Hill. It documents a reasonable relationship between new development and a storm drain fee to fund storm drain facilities that serve new development.

Storm Drain Demand

Most new development generates storm water runoff. This runoff must be controlled through storm drain facilities. Storm drain demand is measured by impervious surface. The more impervious surface a land use creates, the more demand for storm drain facilities it creates. **Table 8.1** shows the calculation of equivalent dwelling unit (EDU) demand factors for storm drain facilities based on impervious surface area by land use category. Dwelling unit and thousand square feet per acre assumptions are from the City's General Plan. The area percent impervious factors are derived from the September 2018 *Storm Drainage System Master Plan*, by Akel Engineering Group, Inc.

Table 8.1: Equivalent Dwelling Units

	A	B	$C = (43,560 / A) \times B$	$D = C / \text{Single Family}$
	DU, KSF or Rooms per acre ¹	Average Percent Impervious per Acre	Impervious Square feet per DU, KSF or Room	Equivalent Dwelling Unit (EDU) ²
<u>Residential</u>				
Single Family ³	5.00	35%	3,049	1.00
Multi-Family ³	16.00	80%	2,178	0.71
Senior / Downtown / Accessory Dwelling Unit ³	24.00	80%	1,452	0.48
<u>Nonresidential</u>				
Commercial	21.78	95%	1,900	0.62
Office	21.78	95%	1,900	0.62
Industrial	26.14	70%	1,167	0.38
Auto Dealership ⁴	21.78	95%	1,900	0.62
Hotel ⁴	67.02	95%	618	0.20

Note: Figures have been rounded.

¹ Dwelling units for residential and thousand building square feet for non-residential. Density based on estimated development and acreage for each land use type in the City of Morgan Hill *General Plan*. Nonresidential densities are based on floor-area-ratios of 0.5 for commercial, office, hotel and auto dealerships, 0.6 for industrial.

² EDUs per dwelling unit for residential development and per thousand square feet for nonresidential development.

³ Percent impervious for single family based on the "Single Family Medium" land use category from the *Storm Drainage System Master Plan*. Multi-Family based on "Multi-Family Medium." Senior / Downtown / Second Unit also based on

⁴ Percent impervious for auto dealership and hotel based on the "Commercial" land use category from *Storm Drainage System Master Plan*.

Sources: *Storm Drainage System Master Plan*, Akel Engineering Group, Inc., September 2018; Morgan Hill General Plan; Willdan Financial Services.

Equivalent Dwelling Unit Growth

Table 8.2 calculates the existing and projected equivalent dwelling units (EDU) based on each land use's demand factors displayed in Table 8.1. An equivalent dwelling unit represents the demand of all other land uses equivalent to one single family unit. Also displayed is the total existing and future EDUs for storm drain facilities by land use.

Table 8.2: Storm Drain Facilities Equivalent Dwelling Units

EDU Factor ¹	----- DU or KSF -----		----- EDU -----		
	Existing	Projected Growth	Existing	Growth	Total
<u><i>Residential</i></u>					
Single Family	1.00	11,320	1,680	11,320	13,000
Multi-Family	0.71	2,302	2,385	1,634	3,327
Senior / Downtown / ADU	0.48	1,100	500	528	768
Subtotal		14,722	4,565	13,482	17,095
<u><i>Nonresidential</i></u>					
Commercial	0.62	2,610	1,117	1,618	2,311
Office	0.62	522	629	324	714
Industrial	0.38	5,935	1,780	2,255	2,931
Auto Dealership	0.62	120	56	74	109
Subtotal		9,187	3,582	4,271	6,065
Hotel Rooms	0.20	919	215	184	227
Total				17,937	5,450
Percent of Total				77%	23%
					100%

¹ Per dwelling unit (residential), thousand building square feet (nonresidential), or hotel room.

Sources: Tables 2.2 and 8.1, Willdan Financial Services.

Planned Facilities

The City of Morgan Hill had the September 2018 *Storm Drainage System Master Plan*, completed by Akel Engineering Group, Inc. The plan identified storm drain projects, and allocated shares of each project to existing and new development. **Table 8.3** shows the storm drain capital improvement plan and cost allocation for storm drain facilities from the *Storm Drainage System Master Plan*.

Table 8.3: Storm Drain Master Plan Improvements

Type of Improvement		Description/Street	Description/Limits	Baseline Constr. Costs	Estimated Const. Costs ¹	Capital Improv. Cost ²	Allocation			
No.							Existing Users (%)	Future Users (%)	Existing Users (\$)	Future Users (\$)
Butterfield Drainage Basin										
BTR-P1	Pipeline	Juan Hernandez Dr	From 150' s/o Saint James Dr to Tennant Ave	\$ 214,401	\$ 278,722	\$ 362,338	0%	100%	\$ -	\$ 362,338
Subtotal				\$ 214,401	\$ 278,722	\$ 362,338			\$ -	\$ 362,338
Coyote Drainage Basin										
COY-P1	Pipeline	Eagle View Dr	From 310' s/o Peet Rd to Peet Rd	\$ 99,302	\$ 129,092	\$ 167,820	0%	100%	\$ -	\$ 167,820
COY-P2	Pipeline	Eagle View Dr	From 1,400 ft s/o Peet Rd to 310' s/o Peet Rd	300,162	390,211	507,274	0%	100%	-	507,274
COY-P3	Pipeline	Peet Rd	From Eagle View Dr to Morningstar Dr	364,106	473,338	615,340	100%	0%	615,340	-
Subtotal				\$ 763,570	\$ 992,641	\$ 1,290,434			\$ 615,340	\$ 675,094
Madrone Drainage Basin										
MAD-P1	Pipeline	Half Rd	From Condit Rd to NB US 101	\$ 174,530	\$ 226,889	\$ 294,956	0%	100%	\$ -	\$ 294,956
MAD-P2	Pipeline	Half Rd	From Peet Rd to Condit Rd	958,412	1,245,936	1,619,716	0%	100%	-	1,619,716
MAD-P3	Pipeline	Dunne Ave	From Condit Rd to NB US 101	180,549	234,713	305,127	100%	0%	305,127	-
MAD-P4	Pipeline	Aspen Wy	From Bluebonnet Wy to Pine Wy	128,641	167,233	217,403	100%	0%	217,403	-
MAD-P5	Pipeline	Bluebonnet Ct	From Almond Wy to Percheron Ct	39,119	50,855	66,111	100%	0%	66,111	-
MAD-P6	Pipeline	Percheron Ct	From Bluebonnet Ct to 170' s/o Bayo Claros Cir	252,768	328,598	427,178	100%	0%	427,178	-
MAD-P7	Pipeline	San Pedro Ave	From Condit Rd to NB US 101	195,594	254,273	330,554	60%	40%	198,332	132,222
Subtotal				\$ 1,929,613	\$ 2,508,497	\$ 3,261,045			\$ 1,214,151	\$ 2,046,894
Little Llagas Drainage Basin										
LLL-P1	Pipeline	Wright Ave	From Monterey Rd to Hale Ave	\$ 414,509	\$ 538,862	\$ 700,521	50%	50%	\$ 350,261	\$ 350,261
LLL-P2	Pipeline	Wright Ave	From 450' sw/o Crest Ave to Hale Ave	276,841	359,893	467,862	50%	50%	233,931	233,931
LLL-P3	Pipeline	Main Ave	From Crest Ave to Hale Ave	234,713	305,127	396,665	50%	50%	198,333	198,333
LLL-P4	Pipeline	Main Ave	From Peak Ave to Crest Ave	248,254	322,731	419,550	50%	50%	209,775	209,775
LLL-P5	Pipeline	Del Monte Ave	From Main Ave to 2nd St	214,401	278,722	362,338	50%	50%	181,169	181,169
LLL-P6	Pipeline	Main Ave	From Del Monte Ave to Monterey Rd	200,108	260,140	338,183	50%	50%	169,092	169,092
LLL-P7	Pipeline	Lone Hill Dr	From Spring Ave to Chargin Wy	168,512	219,066	284,785	20%	80%	56,957	227,828
LLL-P8	Pipeline	La Crosse Dr	From La Barea Dr to 200' selo intersection of the Vineyard Blvd and La Crosse Dr	546,159	710,007	923,009	100%	0%	923,009	-
LLL-P9	Pipeline	Alamo Dr	From La Rocca Dr to 80' n/o Unnamed St	385,923	501,699	652,209	100%	0%	652,209	-
Subtotal				\$ 2,689,420	\$ 3,496,247	\$ 4,545,122			\$ 2,974,735	\$ 1,570,388

¹ Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.² Estimated construction cost plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Storm Drainage Master Plan, 2018, Table ES.3; Engineering News Record; Willdan Financial Services.

Table 8.3: Storm Drain Master Plan Improvements - Continued

Type of				Allocation						
No.	Improvement	Description/Street	Description/Limits	Baseline Constr. Costs ¹	Estimated Const. Costs ²	Capital Improv. Cost ³	Existing Users (%)	Future Users (%)	Existing Users (\$)	Future Users (\$)
Llagas Drainage Basin										
LLA-P1	Pipeline	Middle Ave	From Olive Ave to Gallant Fox Wy	\$ 204,622	\$ 266,008	\$ 345,811	0%	100%	\$ -	\$ 345,811
LLA-P2	Pipeline	Gallant Fox Wy	From Middle Ave to 1,200' e/o Middle Ave	397,207	516,369	671,280	20%	80%	134,256	537,024
Subtotal				\$ 601,829	\$ 782,377	\$ 1,017,091			\$ 134,256	\$ 882,835
Butterfield Drainage Basin										
BTR-D1	Basin		Approx. 900' nw/o Pollard Ave and Seymour Ave	\$ 1,171,894	1,523,462	1,980,500	50%	50%	\$ 990,250	\$ 990,250
Fisher Drainage Basin										
FIS-D1	Basin		Approx 1,000' sw/o Sutter Blvd and Butterfield Blvd	\$ 609,641	792,534	1,030,294	50%	50%	\$ 515,147	\$ 515,147
Other Storm Drainage Improvements										
Hale	Misc	Hale Ave	From Hillwood Lane to Spring Avenue and Dewitt Avenue	\$ 5,000,000	5,000,000	5,000,000	0%	100%	\$ -	\$ 5,000,000
Total									\$ 6,443,879	\$ 12,042,945
Less Existing Fund Balance ³									3,962,023	
Net Cost of Planned Facilities									\$ 8,080,922	

¹ Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.

² Estimated construction cost plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

³ Existing fund balance of \$10,405,902 as of June 30, 2018. \$3,962,023 remaining after funding existing user costs.

Source: Morgan Hill Storm Drainage Master Plan, 2018, Table ES.3; Engineering News Record; Willdan Financial Services.

Allocation of Facilities to New Development

Table 8.4 allocates new development's share of storm drain facilities to new development. New development's share of the costs is equal to the total cost of the projects net of the existing fund balances. The facility standard, in this case a planned facilities standard, is calculated by dividing new development's share of planned facilities by the growth in EDUs.

Table 8.4: Cost per Equivalent Dwelling Unit

Cost Allocated to New Development	\$ 8,080,922
Growth in EDUs (2018-2035)	<u>5,450</u>
Cost per EDU	\$ 1,483

Sources: Tables 8.2 and 8.3; Willdan Financial Services.

Non-Fee Funding Required

No non-fee funding will be required to fund the facilities, as existing storm drain fund balances are sufficient to fully fund existing development's share of those facilities. Impact fee revenue will fully fund new development's share of the facilities.

Fee Schedule

The impact fee for storm drain facilities is shown in **Table 8.5**. The cost per EDU is converted to a fee per unit of new development based on the EDU factors shown in Table 8.1. The total fee includes a two percent (2%) administrative charge to fund costs that include: (1) a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, (2) fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 8.5: Storm Drain Facilities Fee

	A	B	C = A x B D = C x 0.02		E = C + D		F	G = E x F
	Cost Per EDU	EDU	Base Fee ¹	Admin Fee ^{1,2}	Total Fee ¹	Fee per Sq. Ft.	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 1,483	1.00	\$ 1,483	\$ 30	\$ 1,513			
Multifamily	1,483	0.71	1,053	21	1,074			
Senior / Downtown / Accessory Dwelling Unit	1,483	0.48	712	14	726			
<u>Nonresidential</u>								
Commercial	\$ 1,483	0.62	\$ 919	\$ 18	\$ 937	\$ 0.94	21.78	\$ 20,408
Office	1,483	0.62	919	18	937	0.94	21.78	20,408
Industrial	1,483	0.38	564	11	575	0.58	26.14	15,031
Auto Dealership	1,483	0.62	919	18	937	0.94	21.78	20,408
Hotel	1,483	0.20	297	6	303	NA	n/a	n/a

Note: KSF = 1,000 Square Feet

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential, or per room for hotel.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analysis.

³ Based on assumed floor-area-ratio (FAR) from the General Plan. FAR for commercial, office and auto dealerships assumed to be 0.5 based on the "General Commercial" land use. FAR for Industrial assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 8.1 and 8.4; Willdan Financial Services.

9. Implementation

Impact Fee Program Adoption Process

Impact fee program adoption procedures are found in the *California Government Code* section 66016. Adoption of an impact fee program requires the City Council to follow certain procedures including holding a public hearing. Data, such as an impact fee report, must be made available at least 10 days prior to the public hearing. The City's legal counsel should be consulted for any other procedural requirements as well as advice regarding adoption of an enabling ordinance and/or a resolution. After adoption there is a mandatory 60-day waiting period before the fees go into effect.

Inflation Adjustment

The City has kept its impact fee program up to date by periodically adjusting the fees for inflation. Such adjustments should be completed regularly to ensure that new development will fully fund its share of needed facilities. We recommend that the following indices be used for adjusting fees for inflation:

- ♦ Buildings – Engineering News-Record's Construction Cost Index (CCI)
- ♦ Equipment – Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)

The indices recommended can be found for local jurisdictions (state, region), and for the nation. With the exception of land, we recommend that the national indices be used to adjust for inflation, as the national indices are not subject to frequent dramatic fluctuations that the localized indices are subject to.

Due to the highly variable nature of land costs, there is no particular index that captures fluctuations in land values. We recommend that the City adjust land values based on recent land purchases, sales or appraisals at the time of the update.

While fee updates using inflation indices are appropriate for periodic updates to ensure that fee revenues keep up with increases in the costs of public facilities, the City will also need to conduct more extensive updates of the fee documentation and calculation (such as this study) when significant new data on growth forecasts and/or facility plans become available.

Reporting Requirements

The City complies with the annual and five-year reporting requirements of the *Mitigation Fee Act*. For facilities to be funded by a combination of public fees and other revenues, identification of the source and amount of these non-fee revenues is essential. Identification of the timing of receipt of other revenues to fund the facilities is also important.

Programming Revenues and Projects with the CIP

The City maintains a five-year Capital Improvement Program (CIP) to plan for future infrastructure needs. The CIP identifies costs and phasing for specific capital projects. The use of the CIP in this manner documents a reasonable relationship between new development and the use of those revenues.

The City may decide to alter the scope of the planned projects or to substitute new projects if those new projects continue to represent an expansion of the City's facilities. If the total cost of facilities varies from the total cost used as a basis for the fees, the City should consider revising the fees accordingly.

10. Mitigation Fee Act Findings

Public facilities fees are one-time fees typically paid when a building permit is issued and imposed on development projects by local agencies responsible for regulating land use (cities and counties). To guide the widespread imposition of public facilities fees the State Legislature adopted the *Mitigation Fee Act* (the *Act*) with Assembly Bill 1600 in 1987 and subsequent amendments. The *Act*, contained in *California Government Code* Sections 66000 through 66025, establishes requirements on local agencies for the imposition and administration of fee programs. The *Act* requires local agencies to document five findings when adopting a fee.

The five statutory findings required for adoption of the public facilities fees documented in this report are presented in this chapter and supported in detail by the preceding chapters. All statutory references are to the *Act*.

Purpose of Fee

- ♦ *Identify the purpose of the fee (§66001(a)(1) of the Act).*

Development impact fees are designed to ensure that new development will not burden the existing service population with the cost of facilities required to accommodate growth. The purpose of the fees proposed by this report is to provide a funding source from new development for capital improvements to serve that development. The fees advance a legitimate City interest by enabling the City to provide municipal services to new development.

Use of Fee Revenues

- ♦ *Identify the use to which the fees will be put. If the use is financing facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in §65403 or §66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the facilities for which the fees are charged (§66001(a)(2) of the Act).*

Fees proposed in this report, if enacted by the City, would be used to fund expanded facilities to serve new development. Facilities funded by these fees are designated to be located within the City's sphere of influence. Fees addressed in this report have been identified by the City to be restricted to funding the following facility categories: general public facilities, traffic facilities, library facilities, parks, water facilities and storm drain facilities.

Benefit Relationship

- ♦ *Determine the reasonable relationship between the fees' use and the type of development project on which the fees are imposed (§66001(a)(3) of the Act).*

The City will restrict fee revenue to the acquisition of land, construction of facilities and buildings, and purchase of related equipment, furnishings, vehicles, and services used to serve new development. Facilities funded by the fees are expected to provide a citywide network of facilities accessible to the additional residents and workers associated with new development. Under the *Act*, fees are not intended to fund planned facilities needed to correct existing deficiencies. Thus, a reasonable relationship can be shown between the use of fee revenue and the new development residential and non-residential use classifications that will pay the fees.

Burden Relationship

- ♦ *Determine the reasonable relationship between the need for the public facilities and the types of development on which the fees are imposed (§66001(a)(4) of the Act).*

Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. For each facility category, demand is measured by a single facility standard that can be applied across land use types to ensure a reasonable relationship to the type of development. For most facility categories service population standards are calculated based upon the number of residents associated with residential development and the number of workers associated with non-residential development. To calculate a single, per capita standard, one worker is weighted less than one resident based on an analysis of the relative use demand between residential and non-residential development.

The standards used to identify growth needs are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.

Chapter 2, Growth Forecasts provides a description of how service population and growth forecasts are calculated. Facility standards are described in the *Facility Standards* sections of each facility category chapter.

Proportionality

- ♦ *Determine how there is a reasonable relationship between the fees amount and the cost of the facilities or portion of the facilities attributable to the development on which the fee is imposed (§66001(b) of the Act).*

The reasonable relationship between each facilities fee for a specific new development project and the cost of the facilities attributable to that project is based on the estimated new development growth the project will accommodate. Fees for a specific project are based on the project's size. Larger new development projects can result in a higher service population resulting in higher fee revenue than smaller projects in the same land use classification. Thus, the fees ensure a reasonable relationship between a specific new development project and the cost of the facilities attributable to that project.

See *Chapter 2, Growth Forecasts*, or the *Service Population*, or *Equivalent Dwelling Units* sections in each facility category chapter for a description of how service populations or other factors are determined for different types of land uses. See the *Fee Schedule* section of each facility category chapter for a presentation of the maximum justified facilities fees.

Appendix

Table A.1: Police: Lease Payments for Police Building

Date	Payment (nom. dollars)	Discount Factor ¹	Payment (real dollars)
<i>Past Payments</i>			
Jan-05	\$ 122,132	1.564	\$ 191,009
Jul-05	328,156	1.564	513,222
Jan-06	155,606	1.511	235,132
Jul-06	295,606	1.511	446,681
Jan-07	153,506	1.460	224,114
Jul-07	298,506	1.460	435,810
Jan-08	151,331	1.411	213,468
Jul-08	301,331	1.411	425,057
Jan-09	148,706	1.363	202,671
Jul-09	303,706	1.363	413,920
Jan-10	145,994	1.317	192,246
Jul-10	305,994	1.317	402,935
Jan-11	143,194	1.272	182,182
Jul-11	308,194	1.272	392,109
Jan-12	140,306	1.229	172,472
Jul-12	310,306	1.229	381,446
Jan-13	136,906	1.188	162,602
Jul-13	311,906	1.188	370,447
Jan-14	133,844	1.148	153,589
Jul-14	313,844	1.148	360,143
Jan-15	130,694	1.109	144,902
Jul-15	320,694	1.109	355,559
Jan-16	127,131	1.071	136,186
Jul-16	322,131	1.071	345,075
Jan-17	123,475	1.035	127,797
Jul-17	328,475	1.035	339,972
Jan-18	119,375	1.000	119,375
Subtotal	\$ 5,981,051		\$ 7,640,121

¹Discount rate assumed to be 3.5% per year.

Source: City of Morgan Hill.

Table A.1: Police: Lease Payments for Police Building - Continued

Date	Payment (nom. dollars)	Discount Factor¹	Payment (real dollars)
<i>Future Payments</i>			
Jul-18	329,375	1.000	329,375
Jan-19	115,175	0.966	111,280
Jul-19	335,175	0.966	323,841
Jan-20	110,638	0.934	103,281
Jul-20	340,638	0.934	317,989
Jan-21	105,750	0.902	95,380
Jul-21	345,750	0.902	311,847
Jan-22	100,500	0.871	87,580
Jul-22	350,500	0.871	305,441
Jan-23	94,875	0.842	79,882
Jul-23	354,875	0.842	298,795
Jan-24	89,025	0.814	72,422
Jul-24	359,025	0.814	292,067
Jan-25	82,950	0.786	65,198
Jul-25	367,950	0.786	289,205
Jan-26	76,395	0.759	58,015
Jul-26	371,395	0.759	282,042
Jan-27	69,463	0.734	50,967
Jul-27	379,463	0.734	278,423
Jan-28	62,178	0.709	44,079
Jul-28	387,178	0.709	274,477
Jan-29	54,540	0.685	37,357
Jul-29	394,540	0.685	270,238
Jan-30	46,550	0.662	30,806
Jul-30	401,550	0.662	265,739
Jan-31	38,119	0.639	24,373
Jul-31	413,119	0.639	264,150
Jan-32	29,213	0.618	18,047
Jul-32	419,213	0.618	258,982
Jan-33	19,950	0.597	11,908
Jul-33	429,950	0.597	256,633
Jan-34	10,213	0.577	5,890
Jul-34	440,213	0.577	253,873
Subtotal	\$ 7,525,438		\$ 5,769,583

¹Discount rate assumed to be 3.5% per year.

Sources: City of Morgan Hill; Willdan Financial Services.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADJUSTING THE SELECTED DEVELOPMENT IMPACT FEES

WHEREAS, new development within the City of Morgan Hill ("City") will continue to result in additional population and business growth, and such growth will continue to place additional burdens on various City facilities, infrastructure and services, requiring construction of expanded and/or new City facilities and services; and

WHEREAS, all development within the City should bear a proportionate financial burden in the construction and improvement of public facilities and services necessary to service the growth engendered by such development; and

WHEREAS, the imposition of development impact fees is the preferred method of ensuring that new development bears its proportionate share of the cost of public facilities and service improvements; and

WHEREAS, imposition of impact fees to finance public facilities and service improvements required by new development is necessary in order to avoid adversely impacting existing facilities and services; and

WHEREAS, consistent with these principles, Chapter 3.56 of the City's Municipal Code establishes Development Impact Mitigation Fees; and

WHEREAS, Municipal Code Section 3.56.060 provides for revision of established fees, including increases, by resolution; and

WHEREAS, the City Council has received and duly considered the report authored by Willdan Financial Services ("Willdan") entitled "Development Impact Fee Update Study" dated January 31, 2019 (the "Willdan Report"), and presented to the City Council on February 20, 2019; and

WHEREAS, the Willdan Report analyzed the City's existing land use patterns and zoning, and the goals and objectives of the City's General Plan 2035, 2017 Public Safety Master Plan, 2017 Utilities Master Plans, 2017 Bikeways, Trails, Parks, and Recreation Master Plan, and 2018 Storm Drainage Master Plan; and

WHEREAS, the Willdan Report determined the public facilities and system improvements engendered by anticipated development in light of those various plans and existing and projected land use patterns and zoning; and

WHEREAS, the Willdan Report demonstrates, the development impact fees adjusted by this resolution are based upon estimated costs for new public facilities and service improvements that will be required, incrementally, by new development within the City's sphere of influence; and

WHEREAS, the Willdan Report demonstrates, the development impact fees adjusted by this resolution do not exceed the reasonable cost of providing public facilities and service improvements occasioned by development projects within the City; and

WHEREAS, the fees recommended by the Willdan Report rationally relate to the reasonable cost of providing public facilities occasioned by the development projects and service improvements within the City's sphere of influence; and

WHEREAS, the Willdan Report and all background data referenced in the report were available for public inspection and review at the City Clerk's office of the City of Morgan Hill; and

WHEREAS, City staff emailed information regarding the proposed adoption of and public hearing on the fees and a copy of the Willdan Report to all known regular real estate and development firms and individuals who have done business in the City in the recent past; and

WHEREAS, on March 21, 2019, Willdan and City staff hosted two special briefing sessions on the Willdan Report for those firms and individuals to provide them an opportunity to query the consultant and staff on how the development impact fees were calculated; and

WHEREAS, a public hearing on adoption of this resolution and the fees attached hereto as Exhibit A and incorporated herein by reference, was noticed pursuant to and in compliance with Government Code section 6062(a), and set as part of a regular City Council meeting held on April 3, 2019, in the Council Chamber located at City Hall, 17555 Peak Avenue; and

WHEREAS, the City Council has received and duly considered all written and oral comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and

WHEREAS, the City Council deems it necessary that the development impact fees be adjusted to ensure that new development in the City continues to pay its proportionate share of public facilities and service improvements necessary to accommodate such development in order to promote the public health, safety and welfare; and

WHEREAS, the City Council hereby incorporates the findings made in Municipal Code Section 3.56.010 and applies them in support of the adoption of this Resolution; and

WHEREAS, the Projects approved pursuant hereto are exempt from the California Environmental Quality Act (CEQA) under Section 15273 of Guidelines for CEQA and Public Resources Code Section 21080(b)(8) because they establish, modify and approve rates and charges for the purposes of obtaining funds for capital projects; and

WHEREAS, further reasons supporting the adjustment of the development impact fees described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Adopt a Resolution Updating the City's Select Development Impact Fees" submitted for City Council consideration at its meeting of April 3, 2019, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference.

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that:

Section 1. The recitals, findings and determinations set forth above are true and correct and are incorporated by reference herein.

Section 2. The City Council hereby further finds as follows, with respect to the requirements of California Government Code sections 66000 through 66025:

- A. *Purpose of Fee.* The purpose of the fees recommended in the Willdan Report is to provide a funding source from new development for capital improvements to serve that development. The fees advance a legitimate City interest by enabling the City to provide municipal services to new development.
- B. *Use of Fee Revenues.* The proposed fees would be used to fund expanded facilities to serve new development. Facilities funded by these fees are designated to be located within the City's sphere of influence. Fees addressed in the Willdan Report are restricted to funding the following facility categories: general public facilities, traffic, library, parks, water, and storm drainage.
- C. *Benefit Relationship.* Use of fee revenue will be restricted to the acquisition of land, construction of facilities and buildings, and purchase of related equipment, furnishings, vehicles, and services used to serve new development. Facilities funded by the fees are expected to provide a City-wide network of facilities accessible to the additional residents and workers associated with new development. Fees are not intended to fund planned facilities needed to correct existing deficiencies. Thus, a reasonable relationship can be shown between the use of fee revenue and the new development of residential and non-residential use classifications that will pay the fees.
- D. *Burden Relationship.* Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. For each facility category, demand is measured by a single facility standard that can be applied across land use types to ensure a reasonable relationship to the type of development. The standards used to identify growth needs are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.
- E. *Proportionality.* The reasonable relationship between each facilities fee for a specific new development project and the cost of the facilities attributable to

that project is based on the estimated new development growth the project will accommodate. Fees for a specific project are based on the project's size. Larger new development projects can result in a higher service population resulting in higher fee revenue than smaller projects in the same land use classification. Thus, the fees ensure a reasonable relationship between a specific new development project and the cost of the facilities attributable to that project.

Section 3. The City Council hereby adjusts the selected development impact fees as stated in Exhibit A, which is attached hereto and incorporated by this reference. Except as modified herein, Resolution No 5592 and its attached fee schedule, along with the corresponding automatic annual adjustments pursuant to Municipal Code Section 3.56.050, shall remain in full force and effect.

Section 4. The City Council hereby orders that all adjustments in the selected development impact fees be effective 60 days following adoption of this ordinance.

Section 5. The City Council hereby finds the approval of the adjustments in the selected development impact fees of the City of Morgan Hill to be exempt from CEQA.

Section 6. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this resolution is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivision, sentences, clauses, phrases, words, or portions thereof be declared invalid.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 3rd day of April 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Rich Constantine, MAYOR

∞ CERTIFICATION ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 20219.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution (2249 : Updating Development Impact Fees)

Exhibit A

SELECTED DEVELOPMENT IMPACT FEE ADJUSTMENTS

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Water	Storm Drainage
<u>Residential (DU)</u>						
Single Family	\$ 3,638	\$ 3,107	\$ 2,413	\$ 7,201	\$ 8,914	\$ 1,513
Multi-Family	3,191	1,926	2,117	6,316	4,100	1,074
Senior / Downtown / ADU	2,417	776	1,603	4,785	4,635	726
<u>Nonresidential (per KSF or per hotel room)</u>						
Commercial	\$ 936	\$ 11,526	-	-	\$ 2,139	\$ 937
Office	1,123	4,630	-	-	2,139	937
Industrial	936	3,014	-	-	1,516	575
Auto Dealership	374	8,140	-	-	2,139	937
Hotel	112	1,864	-	-	713	303



March 27, 2019

Mayor Constantine and City Councilmembers
City of Morgan Hill
VIA EMAIL

RE: Council Meeting April 3, 2019: Development Impact Fees

Dear Mayor Constantine and Councilmembers,

BIA Bay Area (BIA), representing hundreds of home builders throughout the Bay Area, respectfully submits the following comments regarding City of Morgan Hill (City) development impact fee increases that are before you for action on the April 3, 2019 agenda. BIA appreciates that the City Council has directed Staff to recommend residential impact fees for traffic and parks lower than the maximum legally justifiable levels because the City will not be able to build and maintain the corresponding facilities. Nevertheless, we oppose the recommended residential development impact fee increases as unjustifiably high and they are a factor in driving higher housing costs in Morgan Hill and Santa Clara County.

BIA remains very concerned by the spiraling cost of development and construction, including impact fees assessed by government. Affordable housing requirements, park fees, traffic fees, facility fees, sewer and water fees, school fees, etc., etc., all add tens of thousands of dollars to the cost to build a new home, pricing thousands of California families out of the market each day. Rising impact fees must be administered more judiciously.

The Turner Center for Housing Innovation at UC Berkeley has concluded in its March 2018 report, "It All Adds Up: The Cost of Housing Development Fees in Seven California Cities", individual fees add up and substantially increase the cost of building housing. Findings from this report show that development impact fees have significant implications for the cost and delivery of new housing in California. For example, Turner Center research found that total fees can amount to anywhere from 6 percent to 18 percent of the median price of a new home depending on location.

BIA also strongly recommends that the City assess whether any new or increased fee would individually or cumulatively represent a constraint to new housing and whether that action could trigger HCD action on the City's adopted housing element under AB 72. Here is a brief explanation of AB 72 from the HCD website:

"AB 72 grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

In addition, HCD may notify the California Office of the Attorney General that the local jurisdiction is in violation of state law for non-compliance with housing element law, the Housing Accountability Act, "no net loss" law, density bonus law or anti-discrimination law."

Other BIA concerns regarding the development impact fee increases include:

- Fee assessment and payment requirements – The City should confirm that fees are set for all residential projects at time of application with payment due at building permit for single family homes or due at certificate of occupancy for multifamily projects;
- Total fee load – The total fee load before and after adoption of the development impact fee, including BMR inclusionary or linkage fees, should be clearly communicated. The staff report and supporting document omit important parts of this information;
- Feasibility Study – A feasibility study should analyze all development product types before recommending fee levels;

While BIA acknowledges the City Council's direction to reduce the 2019 development impact fee increase for traffic and parks below the maximum justifiable levels, we feel it is vital to point out that impact fees create serious impediments to addressing the housing affordability crisis the region is facing. BIA Bay Area looks forward to working with the City of Morgan Hill on development issues.

Thank you for your attention to these concerns.

Yours truly,

Dennis Martin
BIA Bay Area



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK ONE (EAST SIDE OF MONTEREY ROAD NORTH OF BURNETT AVE) SR2019-0009

RECOMMENDATION(S)

1. Provide a determination on SR2019-0009 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block One; and
2. Provide feedback on SR2019-0009 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development
Housing

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element

REPORT NARRATIVE:

Purpose of Preliminary Plan Review

The Preliminary Plan Review for Monterey Corridor Block One (File No. SR2019-0009) serves two primary purposes:

1. To determine the Preliminary Plan's consistency with the approved Monterey Corridor Block One Block-Level Master Plan (BLMP).

On March 8, 2019 the applicant, North Corridor Investors, LLC, submitted an application for the 2018/2019 Residential Development Control System (RDCS) competition. With City Council's determination that the Preliminary Plan Review is consistent with the adopted Block One BLMP (Ordinance No. 2297n.s., Attachment 1), the applicant will be allowed to continue in the current RDCS competition.

2. To allow for feedback on the Preliminary Plan's consistency with the City's Planned Development (PD) Master Plan findings.

After the RDCS competition, if the applicant is awarded allotments, the applicant would submit for a Zoning Amendment to establish a PD Master Plan for the entire

block, which would provide specific details for the applicant's proposed project and demonstrate how the project will integrate with future development on any remaining portions of the block.

The Preliminary Plan Review provides the City Council with an opportunity to provide early feedback on the proposal's consistency with the City's required PD Master Plan Findings.

Attached is an updated tentative schedule illustrating how the Preliminary Plan Review/PD Master Plan process could progress in parallel with the current RDCS schedule (Attachment 2).

Background

Mixed Use Flex General Plan Land Use Designation

On July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan and Morgan Hill 2035 General Plan Land Use Map that designates certain properties Mixed Use Flex (MU-F).

The MU-F designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The MU-F designation allows 7 to 24 units per acre (residential) and a maximum Floor Area Ratio (FAR) of 0.5 (commercial). The density of residential and intensity of non-residential uses should transition from higher near Downtown to lower at the ends of the Monterey Road corridor.

The General Plan requires that, prior to development of residential or mixed-use projects within the MU-Flex designation, a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other.

Monterey Road Corridor Block One Block-Level Master Plan (BLMP)

Following City Council meetings on November 28, December 5, and December 19, 2018, the City Council directed the Development Services Director to initiate a Zoning Amendment to establish a Block-Level Master Plan (BLMP) for Monterey Road Corridor Block One, which includes the approximately 8.55 acres of property located at the northeast corner of Monterey Road and Burnett Avenue.

The Planning Commission held a study session and public hearing on January 22, 2019 to evaluate the draft guidelines and standards for the proposed BLMP Ordinance (File No. ZA2019-0001: Monterey Corridor Block One) and recommended the City Council approve, with two modifications, the proposed Zoning Amendment.

On February 6, 2019 the City Council introduced Ordinance No. 2297n.s. (Attachment 1), which was adopted on February 20, 2019, establishing a BLMP for Monterey Corridor Block One.

ANALYSIS:

The proposed Preliminary Plan Review was analyzed with respect to consistency with 1) the adopted Block-Level Master Plan for Block One; and, 2) the City's required Planned Development (PD) Master Plan Findings.

1. Block One Block-Level Master Plan (BLMP) Consistency

The adopted BLMP Ordinance for Block One established the basic expectations and specific requirements for future development within the block in the form of a diagram (Attachment 1-Exhibit A) and land use regulations (Attachment 1-Exhibit B).

Consistent with the BLMP diagram (Attachment 1-Exhibit A), the proposal shows:

- A setback buffer along the northerly property line (adjacent to Coyote Greenbelt) and along the Monterey Road frontage
- The Tilton Avenue extension through the block
- Preservation of the existing historic building on the commercial/mixed-use portion of the block
- Residential development on the residential or commercial portion of the block

In terms of consistency with land use regulations (Attachment 1-Exhibit B), the project is proposing:

- A density of 12.06 dwelling units per acre; within the allowable 7 to 24 units per acre
- To transition from four-plex to tri-plex to duplex units and three story to two story units from south to north
- Perimeter setbacks greater than required by the MU-F Mixed Use Flex Zoning District
- Visual and future physical connections with the adjacent commercial/mixed-use portion of the block
- Primary (front) building entrances oriented toward the street or pedestrian paseos with parking accessed off the rear via alleys
- No separate/new driveway access off Monterey Road
- Accessible and visible public gathering places, including at the new Tilton Avenue intersection and adjacent to commercial/mixed-use portion of block

The applicant has provided letters and plans (Attachments 3, 4, and 5) that demonstrate how their proposal meets each of the standards of the adopted BLMP Ordinance.

2. Planned Development (PD) Master Plan Findings

In addition to providing feedback to the applicant regarding their Preliminary Plan's consistency with the adopted BLMP, the City Council should also provide preliminary input on the proposal's consistency with the Planned Development (PD) Master Plan findings in Section 18.30.050.H.7 of the Zoning Code.

18.30.050.H.7 PD Master Plans / Findings

- a. The proposed development is consistent with the General Plan, Zoning Code and any applicable specific plan or area plan adopted by the City Council.

- b. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.
- c. The proposed project will provide a substantial public benefit(s) as defined in Paragraph 8 Substantial Public Benefit Defined (Attachment 6). The public benefit provided shall be of sufficient value as determined by the Planning Commission to justify deviation from the standards of the zoning district that currently applies to the property.
- d. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.
- e. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.
- f. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.
- g. Findings required for the concurrent approval of a Zoning Map Amendment can be made.

Summary of Planning Commission Feedback on Preliminary Plan Review

On March 12, 2019, the Planning Commission discussed and provided feedback on the Preliminary Plan Review for Monterey Corridor Block One (SR2019-0009). While the Commission did not express significant concerns regarding the Preliminary Plan's overall consistency with the adopted BLMP for Block One, the Commission was concerned about how the commercial/mixed-use portion of the block would develop in the future, particularly since the applicant does not control that part of Block One.

The Commission advised the applicant at the subsequent PD Master Plan (Zoning Amendment) stage to develop a more detailed concept plan or plans for how the commercial/mixed-use portion of the block could develop, which will help the City establish more specific expectations and requirements for items such as the amount and design of retail, live/work, residential, open space, connections, and public gathering spaces.

Otherwise the Commission particularly appreciated how the project provided and designed around the Tilton Avenue extension and the amount of proposed open space, including the paths around the project and the wide paseo/promenade that extends from the northern property line (next to Coyote Greenbelt) through the project site to the adjacent commercial/mixed-use property.

Conclusion

The Preliminary Plan Review has demonstrated consistency with the adopted Block One BLMP and should allow the applicant to continue in the current RDCS competition.

If the applicant is awarded residential allotments, they will submit a Zoning Amendment application to establish a Planned Development (PD) Master Plan for all of Block One. In addition to refining the specific details of the portion of the block that the applicant controls, the PD Master Plan should include, as recommended by Planning Commission, a more detailed concept plan (or plans) for how the remaining commercial/mixed-use portion of the block would develop.

COMMUNITY ENGAGEMENT: Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission discussed and provided feedback on the Preliminary Plan Review for Monterey Corridor Block One (SR2019-0009) at a public hearing on March 12, 2019.

FISCAL AND RESOURCE IMPACT:

Not Applicable.

CEQA (California Environmental Quality Act):

Statutory Exemption

Pursuant to CEQA Guidelines Section 15262 a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

Although this Preliminary Plan Review is exempt from CEQA, the future adoption of a Zoning Amendment to establish a Planned Development Master Plan for Monterey Corridor Block One will be subject to additional CEQA review.

LINKS/ATTACHMENTS:

1. Ordinance No. 2297n.s. Block One BLMP
2. BLMP/PD Master Plan and RDCS Tentative Schedules
3. Manzanita Park Preliminary PD Letters
4. Manzanita Park Preliminary Plans
5. Surrounding Land Use Plan
6. Substantial Public Benefit Defined (18.30.050.H.8)

ORDINANCE NO. 2297, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT FROM THE PLANNED UNIT DEVELOPMENT (PUD) AND SERVICE COMMERCIAL (CS) ZONING DISTRICTS TO THE MIXED USE FLEX (MU-F)/ PLANNED DEVELOPMENT (PD) COMBINING DISTRICT ESTABLISHING A BLOCK-LEVEL MASTER PLAN FOR MONTEREY ROAD CORRIDOR BLOCK ONE, AN APPROXIMATELY 8.55-ACRE SITE LOCATED ON THE NORTH EAST CORNER OF MONTEREY ROAD AND BURNETT AVENUE (APN 725-01-018, 725-01-032, AND 725-01-033)

WHEREAS, on July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan; and

WHEREAS, the Morgan Hill 2035 General Plan Land Use Map designates certain properties, including the subject property, Mixed Use Flex; and

WHEREAS, the Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The Mixed Use Flex designation allows 7 to 24 units per acre (residential) and a maximum FAR of 0.5 (commercial) and density should transition from higher near Downtown to lower at the ends of the Monterey Road corridor; and

WHEREAS, the Morgan Hill 2035 General Plan requires that, prior to development of residential or mixed-use projects within the Mixed Use Flex designation a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other; and

WHEREAS, the Block-Level Master Plan requirement applies to those segments of the Monterey Road Corridor north and south of Downtown that include properties that have a Mixed Use Flex General Plan Land Use designation. Blocks may include properties with a variety of General Plan designations (e.g., Commercial, Residential Attached Low, Public Facilities, Mixed Use Flex, etc.) and Zoning Districts (e.g., CG General Commercial, RAL 3,500, PF Public Facilities, MU-F Mixed Use Flex, etc.);

WHEREAS, Section 18.22.010 B3 of the Zoning Code states that the purpose of the Mixed Use Flex (MU-F) zoning district is to accommodate a mixture of residential and commercial uses typically along the Monterey Road corridor north and south of Downtown. New mixed use development may be vertical (residences above ground floor commercial) or horizontal (separate buildings with different uses on a single site). Development in the MU-F zoning district creates attractive gateways into Morgan Hill, provides a range of housing options, and creates new centers

of activity to serve surrounding neighborhoods;

WHEREAS, Section 18.30.050 of the Zoning Code states that the purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD combining district provides land owners with enhanced flexibility to take advantage of unique site characteristics and develop projects that will provide public benefits for residents, employees, and visitors; and

WHEREAS, Section 18.114.020 of the Zoning Code states that the City Council, Planning Commission, or Community Development Director may initiate Zoning Map and Text amendments; and

WHEREAS, on December 19, 2018 the City Council directed staff to draft Zoning amendments to establish a Block-Level Master Plan (BLMP) Planned Development (PD) for Monterey Road Corridor Block One and Block Four; and

WHEREAS, in addition to the underlying base zoning district requirements, specific requirements are shown/listed in **Exhibit A: Block-Level Master Plan Map – Block One** and **Exhibit B: Block-Level Master Plan Land Use Regulations - Block One**; and

WHEREAS, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074) was prepared April 4, 2018 for the City of Morgan Hill Zoning Code Update project pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164, and the City of Morgan Hill determined, pursuant to CEQA Guidelines Section 15183, that the proposed zoning amendment shall not require additional environmental review in that the project will not result in any new impacts that were not already identified in the Morgan Hill 2035 EIR and subsequent Addendum or any impacts of greater severity than were already addressed; and

WHEREAS, a visioning and goal setting workshop was held on September 25, 2018 where members of the public and various stakeholders provided feedback that facilitated the crafting of preliminary guiding principles for the development of the Monterey Corridor; and

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

WHEREAS, the Block-Level Master Plan Planned Development (BLMP PD) ordinance for Monterey Corridor Block One, was considered by the Planning Commission at their study session and regular meeting of January 22, 2019, at which time the Planning Commission recommended City Council consider the Addendum to the Morgan Hill 2035 EIR in accordance with the California Environmental Quality Act (CEQA) and approval of the Zoning Amendment to establish a BLMP PD for Monterey Corridor Block One; and

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

- SECTION 1.** As provided in Section 18.114.060 of the Municipal Code the proposed Monterey Road Corridor Block-Level Master Plan Planned Development (BLMP PD) with an underlying base zoning district of Mixed Use Flex:
- A.** Is consistent with the Morgan Hill 2035 General Plan; and
 - B.** Is required in order to serve the public convenience, necessity, and general welfare; and
 - C.** The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the Zoning Code and General Plan and contribute to the health, safety, and welfare of the property, surrounding properties, and the community at large.
- SECTION 2.** The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).
- SECTION 3.** There hereby is attached hereto as **Exhibit A: Block-Level Master Plan Map – Block One** and made a part of this ordinance.
- SECTION 4.** There hereby is attached hereto as **Exhibit B: Block-Level Master Plan Land Use Regulations - Block One** and made a part of this ordinance.
- SECTION 5.** The underlying base zoning district is designated Mixed Use Flex (MU-F).
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

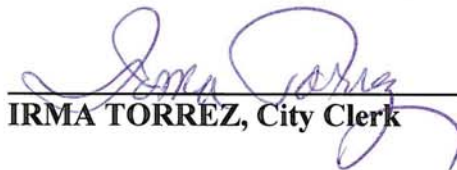
THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF FEBRUARY 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF FEBRUARY 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: **COUNCIL MEMBERS:** Larry Carr, Rene Spring, Yvonne Martinez Beltran,
John McKay, Rich Constantine
NOES: **COUNCIL MEMBERS:** None
ABSTAIN: **COUNCIL MEMBERS:** None
ABSENT: **COUNCIL MEMBERS:** None

APPROVED:


RICH CONSTANTINE, Mayor

ATTEST:


IRMA TORREZ, City Clerk

DATE: 2/25/2019

Effective March 23, 2019

❧ CERTIFICATION ❧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2297, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 20th day of February 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 2/25/2019

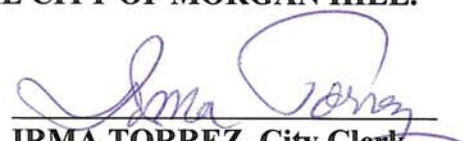

IRMA TORREZ, City Clerk

Exhibit A: Block-Level Master Plan Map – Block One



Block



Tilton Ave / Burnett Ave Re-Alignment



Preserve Historic Building for Commercial Use



Residential or Commercial



Commercial or Mixed-Use



Open Space Buffer

Exhibit B: Block-Level Master Plan Land Use Regulations - Block One

I. Land Use Regulations

- A. **Permitted Uses.** Zoning Code Table 18.22-1 identifies permitted uses in the MU-F Mixed Use Flex Zoning District. Specific uses allowed for Block One are further described on Exhibit A and below.
- B. **Development Standards.** Zoning Code Tables 18.22-2 and 18.22-3 identify development standards for the MU-F Mixed Use Flex Zoning District.
 1. Residential Density. 7 to 24 du/ac. Consistent with General Plan Policy CNF-9.2 and CNF-13.2, residential uses shall be feathered toward the northern Sphere of Influence (SOI) boundary with San Jose. Feathering can be achieved through a combination of measures including lowering the density and stories/height of the residences and including substantial open space setbacks closest to the SOI boundary.
 2. Floor Area Ratio. For non-residential and vertical mixed-use projects, the maximum floor area ratio (FAR) is 0.5.
 3. Setbacks. The setbacks identified in Zoning Code Table 18.22-3 are required setbacks around the project perimeter.
 4. Residential Development Standards. A medium density residential development project may use the development standards specified in Zoning Code Section 18.40.050 and through the subsequent PD Master Plan process establish deviations from those standards.
- C. **Commercial Requirements**
 1. Corner Lot Commercial/Non-Residential. Commercial uses (retail, services, office) and/or other non-residential (public/quasi-public) uses are required at the northeast corner of Burnett Avenue and Monterey Road. These commercial or non-residential uses may be accommodated within a standalone building(s) or in vertical mixed-use building(s).
 2. Historic Preservation. The existing building located on the northeast corner of Burnett Avenue and Monterey Road (19500 Monterey Road) constructed c. 1929 shall be preserved/retained for commercial or non-residential use.
 3. Connections. Ensure a strong connection between the commercial/non-residential, residential, and public gathering places within the block.
- D. **General Specifications**
 1. Primary entrances for new buildings should be oriented toward the street.
 2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
 3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
 4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.

5. Building depth for non-residential uses: 35-feet minimum.
 6. Urban Form Characteristics:
 - a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space
 7. Reasonable accommodations shall be provided, as appropriate, to provide relief from any physical standards that make meeting accessibility requirements challenging for a particular project.
 8. Future development must accommodate the extension/realignment of Tilton Avenue with Burnett Avenue.
 9. Future development must address potential shifting east of Monterey Road to accommodate future High-Speed Rail.
 10. Future development must provide adequate buffer to Coyote Greenbelt and Monterey Road.
 11. Incorporate design feature(s) that reflect project's location at a northern entrance to the City.
- E. **Public Gathering Places.** Residential or mixed-use project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards, and parks.
1. Location. The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.
 2. Activity. For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located along the edge of a courtyard and plazas.
 3. Visibility and Access. Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
 4. Seating. Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
 5. Year-round Use. Open space must be usable year-round with features such as

awnings, wind breaks, sun shades, and umbrellas, or other similar features that provide shelter from the elements.

- F. **Temporary Uses.** In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

II. Subsequent Approvals

- A. **Zoning Amendment/PD Master Plan.** Pursuant to the requirements of Zoning Code Section 18.30.050 – Planned Development Combining District, a Zoning Amendment to establish a PD Master Plan is required. The PD Master Plan shall be consistent with the approved BLMP PD and must plan for the future development and integration of all parts of the block.
- B. **Design Review.** A proposed development must receive a Design Permit as required by Zoning Code Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.

Tentative Schedule - BLMPs / PD Master Plans for Blocks 1 and 4 / RDCS 2018/2019

	Block-Level Master Plan / Planned Development Master Plan	Residential Development Control System (RDCS) 2018/2019
4	Jan. 22, 2019 — Planning Commission Study Session & Hearing (BLMPs)	
5	Feb. 6, 2019 — City Council Hearing (Introduce BLMP Ordinances)	
6	Feb. 8, 2019 — Block 1 and 4 Applicants Submit Preliminary Plan Reviews for PD Master Plans	
7	Feb. 20, 2019 — City Council Hearing (Adopt BLMP Ordinances)	
8		Mar. 8, 2019 — RDCS Application Date
9	Mar. 12, 2019 — Planning Commission Review of Preliminary PD Master Plans for Consistency with BLMPs	
10	Mar. 22, 2019, Planned Development Zonings (BLMP Ordinances Effective)	Mar. 25, 2019 — Staff GP & Zoning Consistency Determination
11	Apr. 3, 2019 - City Council Review of Preliminary PD Master Plans for Consistency with BLMPs	Apr. 4, 2019 - Deadline to File GP & Zoning Consistency Appeal to City Council
12		May 1, 2019 – GP & Zoning Appeal City Council
13		May 3, 2019 - Staff Scoring of Applications / Recommendations to Planning Commission
14		Jun. 11, 2019 - Planning Commission Finalize Scores
15		Jun. 21, 2019 - Deadline to File Scoring Appeal to City Council
16		Jul. 17, 2019 - Scoring Appeal Heard by City Council
17		Jul. 19, 2019 - Staff Recommendations Award of Allotments
18		Jul. 23, 2019 - Planning Commission Award of Allotments
19		Aug. 2, 2019 - Deadline to File Allotment Appeal to City Council
20		Aug. 21, 2019 - Allotment Appeal Heard by City Council
21	Late 2019/2020 Applicants Submit Zoning Amendment Applications for Block 1 and Block 4 PD Master Plans	

Attachment: BLMP/PD Master Plan and RDCS Tentative Schedules (2253 : SR2019-0009 Preliminary Plan Review: Monterey - Block One)

NORTH CORRIDOR INVESTORS LLC
385 Woodview Ave., #100
Morgan Hill, CA 95037

February 26, 2019

Mr. John Baty
City of Morgan Hill, Planning Department
17575 Peak Ave
Morgan Hill, CA 95037

Re: Block One Preliminary PD Master Plan Consistency. APN 725-01-018 and 725-01-32

Dear Mr. Baty:

We have worked with all our consultants to accomplish the more difficult, but very critical (at least as expressed by both city council and planning commission members) provisions for the PD Master Plan for Block One:

1. Connectivity between the residential portion and commercial portion (existing and more important, future) and to the public gathering places and plaza.
2. Public gathering places that function for both the residential and commercial (existing and more important, future) with an integrated pathway (which creates some difficulty to separate what is public and what is private for the residential project) which are preserving by committed by recording easements and CC&R's on the residential portion for the future connectivity and the intended public walkways.
3. The concept of buffering and feathering, in relation to the adjoining and nearby projects and future development of the adjoining properties.
4. Attempting to satisfy all the other guidelines/requirements (set forth in Exhibit B), including historic and tree preservation and future Tilton-Burnett connection (a significant public benefit), while at the same time meeting BMR requirements and complying with State goals to meet housing densities.
5. It should be noted that the High-Speed RR is now likely off the radar and in any event if pursued in the future, could be accommodated in the existing ROW on the west side of Monterey Road
6. Although the northern property is identified as the Coyote Valley Greenbelt that property is owned by San Jose(given to the city by the Sobrato family); and, it has indicted to some that the city might be considering other uses for the property. The land has not been farmed for many years. Sobrato High ball fields exist in similarly situated land. We have buffered with community gardens maintained by the HOA.
7. Feathering should take into account the R1-4500 GP designation for the property to the east of the project. Methods other than density should be considered, to avoid being contrary to the State's emphasis on meeting higher general plan densities.

It was our goal to incorporate a large central park area fronting on Tilton Ave. We also wanted to create wide paseos (in excess of 60 feet) which results in an unobstructed open space view corridor from the northern property line to the southern property line, which could then be connected to an unobstructed view through a future public gathering place and plaza and promenade on the adjoining commercial property all the way to Burnett Avenue. This view corridor through both the residential and commercial properties is the key concept of our land plan and overcomes the significant hurdle of having the residential property bifurcated by extending Tilton for future connection to Burnett; and, together these two features create the public benefits to support the PD.

To that end, I believe that we have indicated on the submitted plans both a realistic, and doable residential project that will be very livable for future residents and at the same time will preserve the real possibility for the commercial site. We believe both the residential and commercial sites meet all of the above stated objectives, the Land Use Regulations, the Development Standards, the Commercial Requirements and the General Specifications set forth in the Draft Ordinance, Exhibit "B" to the Block-Level Master Plan Use Regulations for consistency.

Richard B. Oliver
V.P.

DRAFT ORDINANCE – MONTEREY ROAD CORRIDOR BLOCK ONE

Exhibit B: Block-Level Master Plan Land Use Regulations - Block One**I. Land Use Regulations**

- A. **Permitted Uses.** Zoning Code Table 18.22-1 identifies permitted uses in the MU-F Mixed Use Flex Zoning District. Specific uses allowed for Block One are further described on Exhibit A and below.
- B. **Development Standards.** Zoning Code Tables 18.22-2 and 18.22-3 identify development standards for the MU-F Mixed Use Flex Zoning District.
1. Residential Density. 7 to 24 du/ac. Consistent with General Plan Policy CNF-9.2 and CNF-13.2, residential uses shall be feathered toward the northern Sphere of Influence (SOI) boundary with San Jose. Feathering can be achieved through a combination of measures including lowering the density and stories/height of the residences and including substantial open space setbacks closest to the SOI boundary.
 2. Floor Area Ratio. For non-residential and vertical mixed-use projects, the maximum floor area ratio (FAR) is 0.5.
 3. Setbacks. The setbacks identified in Zoning Code Table 18.22-3 are required setbacks around the project perimeter.
 4. Residential Development Standards. A medium density residential development project may use the development standards specified in Zoning Code Section 18.40.050 and through the subsequent PD Master Plan process establish deviations from those standards.

C. Commercial Requirements

1. Corner Lot Commercial/Non-Residential. Commercial uses (retail, services, office) and/or other non-residential (public/quasi-public) uses are required at the northeast corner of Burnett Avenue and Monterey Road. These commercial or non-residential uses may be accommodated within a standalone building(s) or in vertical mixed-use building(s).
2. Historic Preservation. The existing building located on the northeast corner of Burnett Avenue and Monterey Road (19500 Monterey Road) constructed c. 1929 shall be preserved/retained for commercial or non-residential use.
3. Connections. Ensure a strong connection between the commercial/non-residential, residential, and public gathering places within the block.

D. General Specifications

1. Primary entrances for new buildings should be oriented toward the street.
2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.

DRAFT ORDINANCE – MONTEREY ROAD CORRIDOR BLOCK ONE

5. Building depth for non-residential uses: 35-feet minimum.
 6. Urban Form Characteristics:
 - a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space
 7. Reasonable accommodations shall be provided, as appropriate, to provide relief from any physical standards that make meeting accessibility requirements challenging for a particular project.
 8. Future development must accommodate the extension/realignment of Tilton Avenue with Burnett Avenue.
 9. Future development must address potential shifting east of Monterey Road to accommodate future High-Speed Rail.
 10. Future development must provide adequate buffer to Coyote Greenbelt and Monterey Road.
 11. Incorporate design feature(s) that reflect project's location at a northern entrance to the City.
- E. **Public Gathering Places.** Residential or mixed-use project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards, and parks.
1. Location. The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.
 2. Activity. For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located along the edge of a courtyard and plazas.
 3. Visibility and Access. Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
 4. Seating. Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
 5. Year-round Use. Open space must be usable year-round with features such as awnings, wind breaks, sun shades, and umbrellas, or other similar features that

Attachment: Draft Ordinance Block One BLMP [Revision 1] (2161 : ZA2019-0001: Monterey Corridor Block One)
Attachment: Manzanita Park Preliminary PD Letters (2253 : SR2019-0009 Preliminary Plan Review: Monterey - Block One)

DRAFT ORDINANCE – MONTEREY ROAD CORRIDOR BLOCK ONE

provide shelter from the elements.

- F. **Temporary Uses.** In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

II. Subsequent Approvals

- A. **Zoning Amendment/PD Master Plan.** Pursuant to the requirements of Zoning Code Section 18.30.050 – Planned Development Combining District, a Zoning Amendment to establish a PD Master Plan is required. The PD Master Plan shall be consistent with the approved BLMP PD and must plan for the future development and integration of all parts of the block.
- B. **Design Review.** A proposed development must receive a Design Permit as required by Zoning Code Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.

EXISTING ON COMMERCIAL
PORTION OF BLOCK ONE

State of California— The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary #
HRI #
Trinomial
NRHP Status Code 7R

Other Listings
Review Code

Reviewer

Date

Page 1 of 1

*Resource Name or #: 4

P1. Other Identifier:

*P2. Location: ☐ Not for Publication ☒ Unrestricted

*a. County: SANTA CLARA COUNTY and (P2b and P2c or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad:

Date: T ; R ; _ of _ of Sec ; M.D. B.M.
City: MORGAN HILL Zip: 95037

c. Address: 19500 MONTEREY RD

d. UTM: Zone: 10 ; mE/ mN (G.P.S.)

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate) Elevation:
APN: 72501017

P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

19500 Monterey Road is a one-story, wood frame commercial building. The building has an irregular floor plan, is clad with stucco and has a flat roof. The center volume is flanked at each side by a recessed circular entry tower and adjacent rectangular wing. The center volume has a band of five windows separated by slender ionic columns and the rectangular wings exhibit a decorative stucco recess with central window openings flanked by spiral columns. Long rectangular vents with ornamental sills ornament the towers and an arched opening provides access to the main entries. Other distinguishing characteristics include modern plate glass windows, attached stucco planters and circular tile vents. There are several rear additions to the building that appear to be of later construction. The property also includes two mature conifers at the front of the property. The building appears to be in fair condition. This property should be evaluated prior to any changes or alterations.

*P3b. Resource Attributes: HP6 - 1-3 Story Commercial Building

*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☐ District ☐ Element of District ☐ Other (Isolates, etc.)



P5b. Description of Photo: Front View

*P6. Date Constructed/Age and Sources:

☒ Historic
☐ Prehistoric ☐ Both
Not Available (Assessor Records)

*P7. Owner and Address:
Not Available

*P8. Recorded by:
Sheila McElroy
Circa: Historic Property
Development
One Sutter Street, Suite 910
San Francisco, CA 94104

*P9. Date Recorded: 12/13/2006

*P10. Survey Type:
Reconnaissance Survey

*P11. Report Citation: Morgan
Hill Citywide Survey

*Attachments: ☒ NONE ☐ Location Map ☐ Sketch Map ☐ Continuation Sheet ☐ Building, Structure, and Object Record
☐ Archaeological Record ☐ District Record ☐ Linear Feature Record ☐ Milling Station Record ☐ Rock Art Record
☐ Artifact Record ☐ Photograph Record ☐ Other (List):
DPR 523A (1/95)

*Required Information

Attachment: Manzanita Park Preliminary PD Letters (2253 : SR2019-0009 Preliminary Plan Review: Monterey - Block One)

NORTH CORRIDOR INVESTORS LLC
385 Woodview Ave., #100
Morgan Hill, CA 95037

March 7, 2019

Mr. John Baty
City of Morgan Hill, Planning Department
17575 Peak Ave
Morgan Hill, CA 95037

Re: Block One Preliminary PD Master Plan Consistency. APN 725-01-018 and 725-01-32
Letter of Justification

Dear Mr. Baty:

We have worked with all our consultants to accomplish the more difficult, but very critical (at least as expressed by both city council and planning commission members) provisions for the PD Master Plan for Block One, as set forth in Exhibit B to the existing approvals. The plans (comprising four sheets: Sheet 1 showing the residential portion of Block One, Sheet 2 showing a portion of the residential and all of the commercial portion, Sheet 3 (not numbered) showing expanded easements and walkways to provide the connectivity between the residential and commercial portions of Block One and Sheet 4 (not numbered) showing in highlights the interconnected public and private (proposed and future) and a highlighted open space view corridor for the entire Block One. These plans indicate with letter and number locations relating to the requirements set forth in Exhibit B Block-Level Master Plan Land Use Regulations-Block One. There are a few minor deviations from the zoning (e.g. we are a few parking spaces short), which are indicated in the PD Plans, which were necessitated by having a new public street bifurcate the project and to otherwise comply with all the requirements of Exhibit B. The resulting public benefits more than compensate for any deviations reflected in the submitted plans.

- a. The proposed residential portion of the PD plan is otherwise consistent with the General Plan, the Zoning Ordinance and with the requirements set forth in Exhibit B. The future commercial development will be consistent.
- b. The proposed residential incorporates the critical "connectivity" to the existing and future commercial portion of Block One and is superior to that which could be occur without a PD. There is no other existing zoning district that could allow for the provisions of Exhibit B to be met. The PD zoning amendment is consistent with the existing GP and Zoning and provides for the orderly and reasonable development as envisioned by the city in adopting the Mixed-Use Flex designation for the Monterey Corridor and allows us to meet the goals and objectives of the Block Level Plan and thereby serve the public health, general welfare and convenience as provided for in the General Plan and Municipal Code of the City

The proposed residential project, including the future commercial portion meets the provision of Mixed-Use Flex General Plan and zoning designations for Block One

- c. The proposed project will provide the following substantial public benefits:

- (i) Tilton Ave. will be extended right through the project to provide for a future connection to Barrett Avenue, which has long been a City goal.
 - (ii) A buffered bike lane will be provided along the Monterey Road frontage of the residential project (funding for such bike lanes were omitted from the recent impact fee provisions because of the lack of matching-funds)
 - (iii) Interconnected public and private pathways are provided for to assure the connectivity between the residential and commercial portions of Block One
 - (iv) An open space view corridor, at least 60' wide, has been created from the northern property line to Barrett Avenue, runs through the entire Block One. (reference is made to Sheet 4 (not numbered) showing this view corridor.
 - (v) There will be two public gathering plazas on the residential property. One of which will be expanded with future commercial development and a third major plaza with outdoor dining will be part of the future commercial development. These public gathering places/plazas will serve both the general public and the new residents of the residential project.
 - (vi) The preservation of the historic building housing Josephine's restaurant and bakery will be encouraged by the approvals and development of the residential portion of the Block One.
 - (vii) The new project and new public/private pathways will improve the accessibility and connectivity within Block One. The residential project will also provide an increase in current patrons to the existing commercial (Josephine's bakery and restaurant) thereby enhancing its economic viability.
 - (viii) The project will encourage and enhance the long-awaited future development of the Monterey Corridor in the northern part of Morgan Hill.
- d. The residential project site, even with the loss of land for including a new public street thru the site, is of adequate size and shape to accommodate the proposed project, which is consistent with the General Plan and existing Mixed-Use Flex zoning.
- e. The proposed residential project will be installing additional water, sanitary and storm facilities to facilitate the residential portion, and provide additional storm facilities for the area. The existing commercial project has sufficient infrastructure, with any additional improvements being provided when the commercial site proposed additional improvements.
- f. The proposed development will not have any substantial adverse effect on adjacent property. In fact, the vacant land to the east (which has not been annexed into the City) will be benefited by having a second access to the Tilton Ave. extension that the residential project will provide.
- g. There is no reason why the appropriate findings cannot be made for the approval of the PD Zoning Amendment.

Very truly yours,

North Corridor Investors, LLC



By: Richard B. Oliver, VP

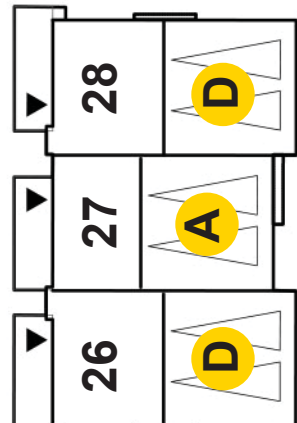
PASEO

113.9

TILTON
AVE.

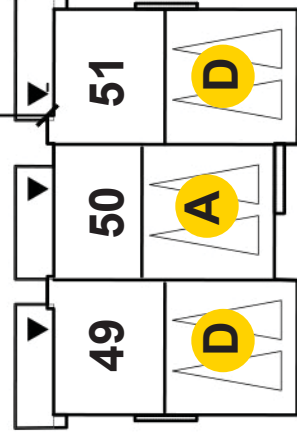
PASEO

66.8'99



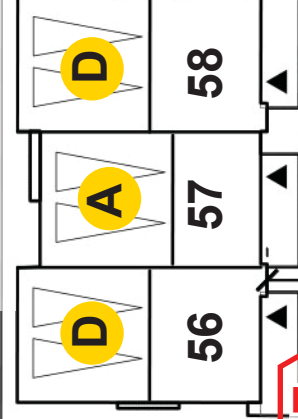
BLDG. 10

BLDG. 13



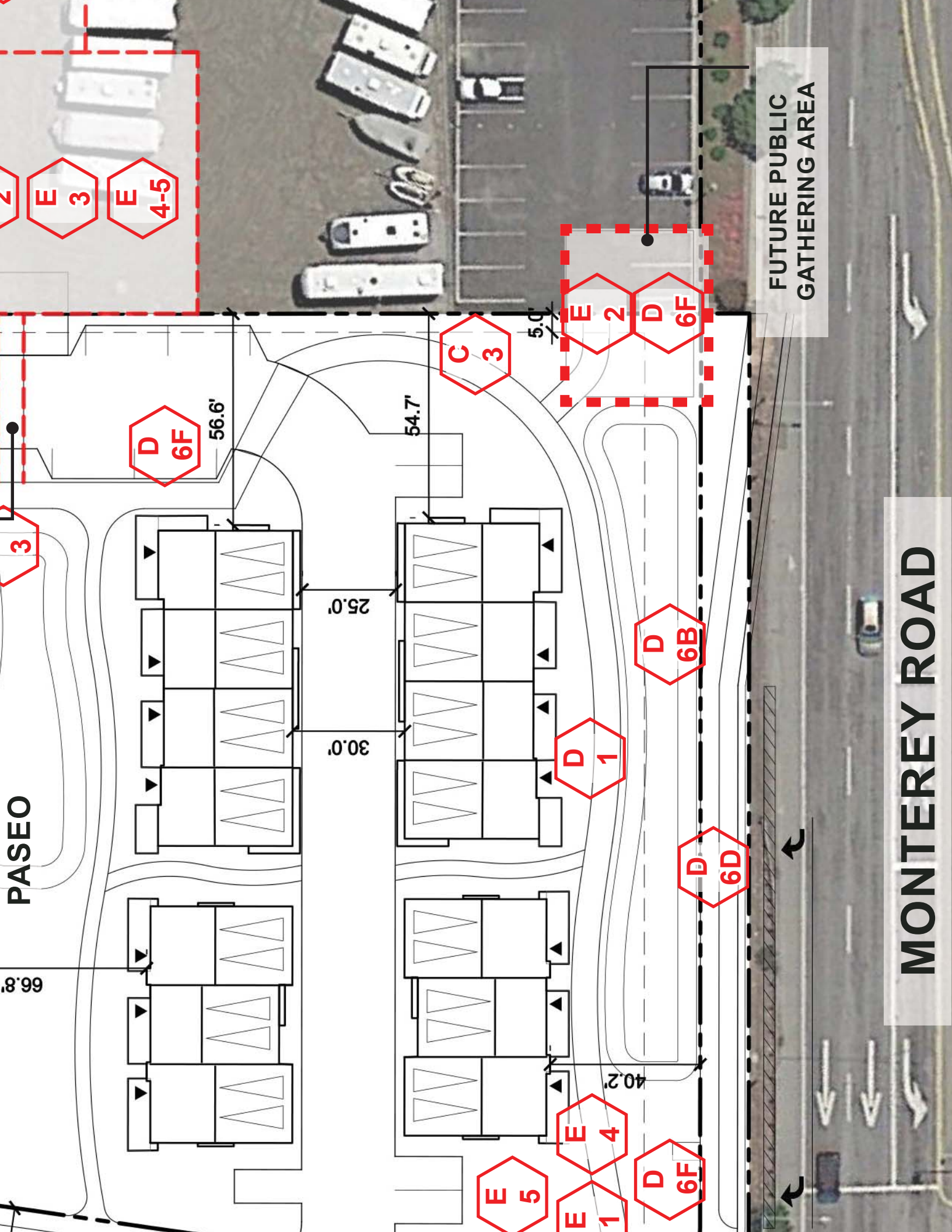
BLDG. 18

BLDG. 20



--> 3 STORY

MONTERE



PASEO

66.8'

E 3
E 4-5

D 6F

56.6'

25.0'

30.0'

54.7'

C 3

5.0'

D 1

E 2

D 6B

D 6D

E 4

E 5

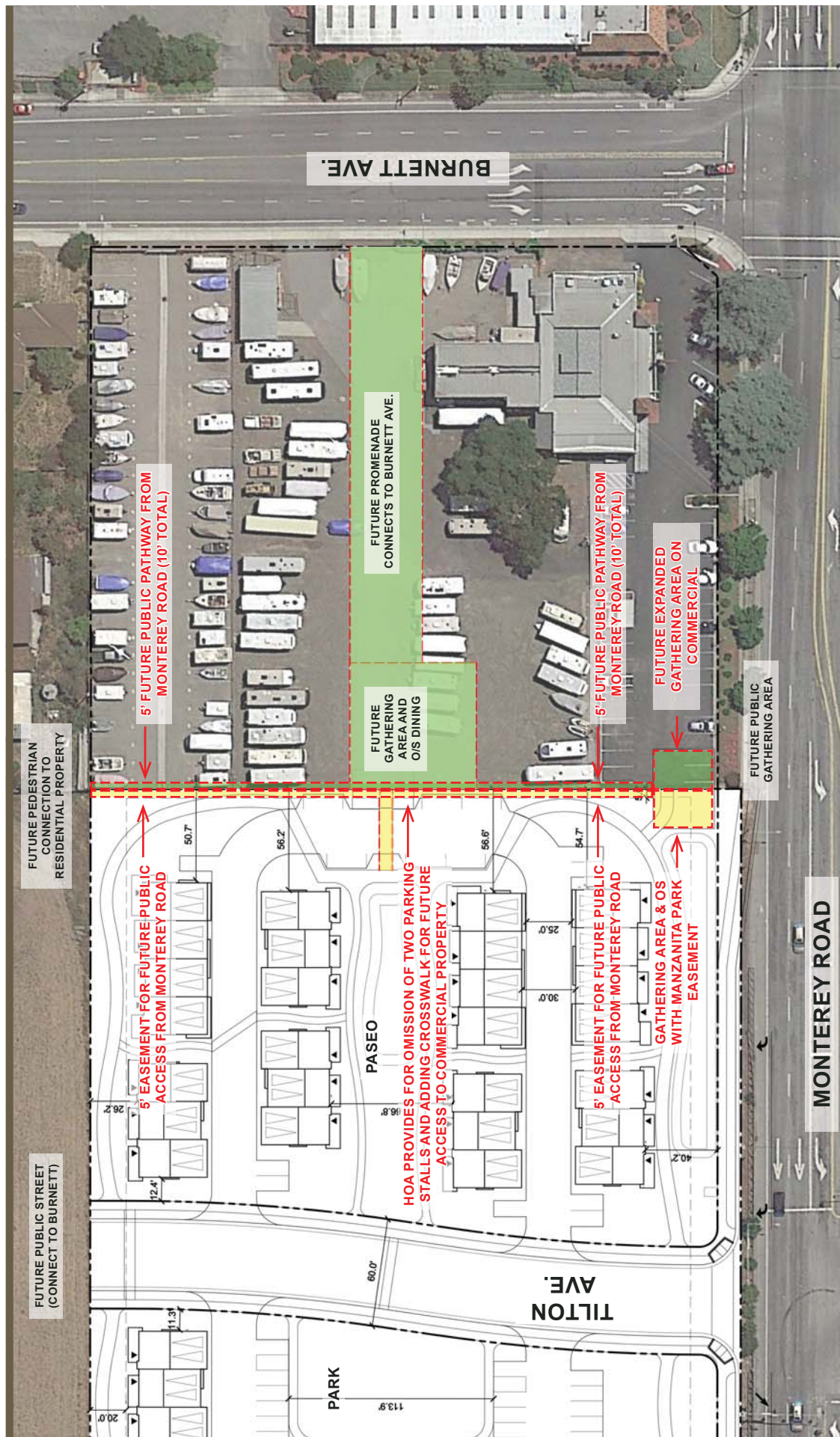
E 1

D 6F

D 6F

FUTURE PUBLIC
GATHERING AREA

MONTEREY ROAD



Note: HOA CC&R's will provide for future omission of two parking stalls and adding a cross walk to provide access for owners from the project to the future public gathering area and outside dining on the commercial property. This area will include a "transition zone" from private to public at the proposed easement area.

DATE 02-22-2019
JOB NO. 297-081

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

BLOCK ONE COMMERCIAL LOT

MANZANITA PARK IN MORGAN HILL, CA
NORTH CORRIDOR INVESTORS, LLC

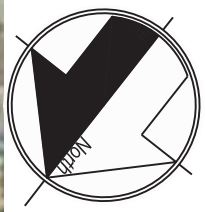
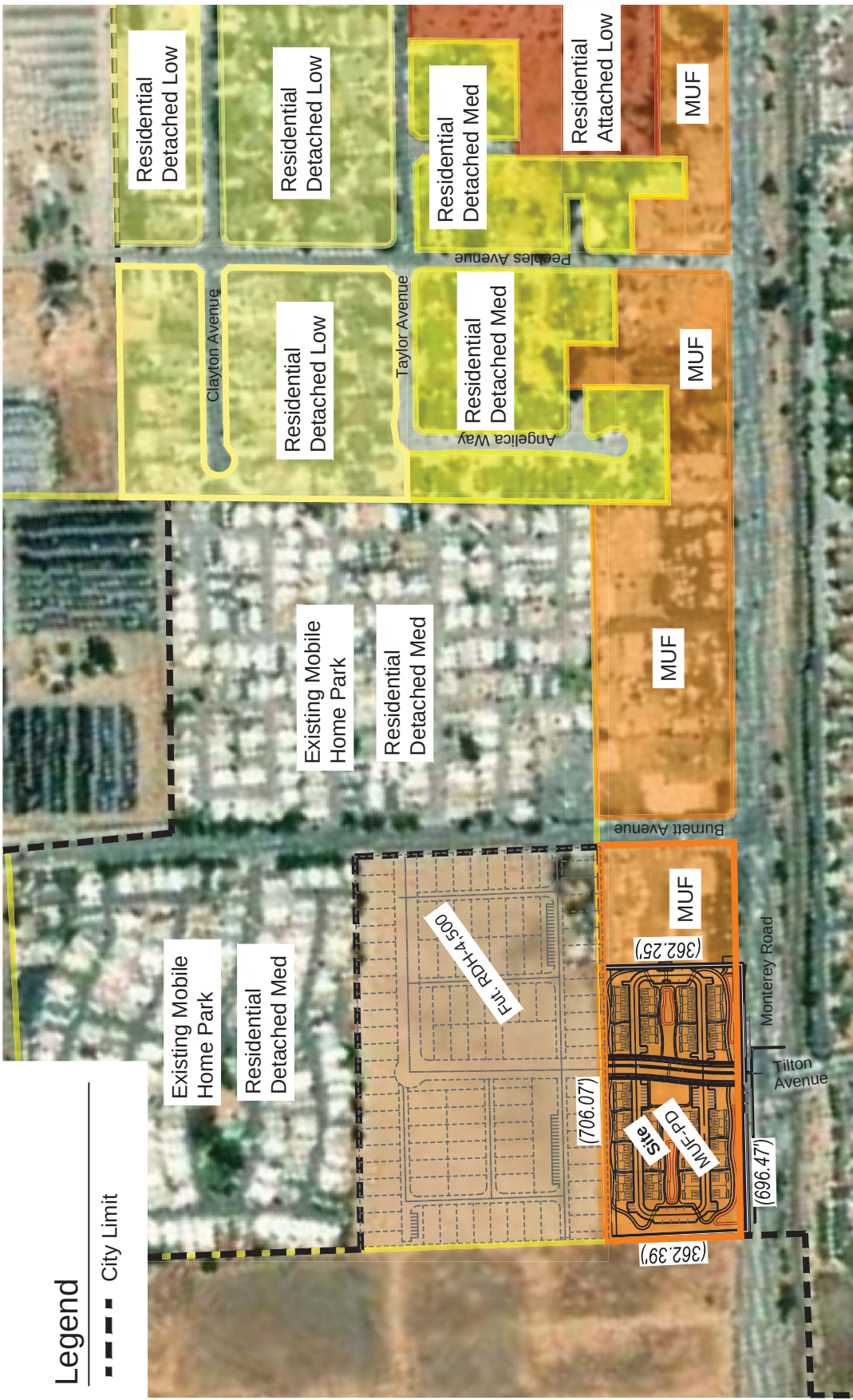
NORTH CORRIDOR INVESTORS, LLC

DAHLIN



Legend

--- City Limit



Total Project Boundary Length = $706.07' + 362.25' + 696.47' + 362.39' = 2,127.18'$
Project Boundary Length Adjacent to Existing Development = $696.47'$
% Project Boundary Adjacent to Existing Development = $696.47' / 2,127.18' \times 100 = 32.74\%$



MH engineering Co.
16075 VINEYARD BOULEVARD MORGAN HILL, CA 95037
(408) 779-7381

Surrounding Land Use
Manzanita Park

SCALE: 1"=400'
DRAWN BY:

JOB #: 218149
DATE: 02/19
SHEET
1 of 1

Substantial Public Benefit Defined

18.30.050.H. PD Master Plans

8. **Substantial Public Benefit Defined.** When used in this section, “substantial public benefit” means a project feature not otherwise required by the Zoning Code or any other provision of local, state, or federal law that substantially exceeds the City’s minimum development standards and significantly advances goals of the General Plan. A project must include one or more substantial public benefits to be rezoned as a planned development. The public benefit provided shall be of sufficient value as determined by City Council to justify deviation from the standards of the zoning district that currently apply to the property. Examples of substantial public benefits include but are not limited to:
- a. Housing that is affordable to lower-income households.
 - b. Public plazas, courtyards, open space, and other public gathering places that provide opportunities for people to informally meet and gather.
 - c. New or improved pedestrian and bicycle pathways that enhance circulation within the property and connectivity to the surrounding neighborhood.
 - d. Green building and sustainable development features that substantially exceed the city’s minimum requirements.
 - e. Preservation, restoration, or rehabilitation of a historic resource.
 - f. Increased transportation options for residents and visitors to walk, bike, and take public transit to destinations and reduce greenhouse gas emissions.
 - g. Publicly accessible parks and open space beyond the minimum required by the city or other public agency.
 - h. Habitat restoration and or protection of natural resources beyond the minimum required by the city or other public agency.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK FOUR (EAST SIDE OF MONTEREY ROAD SOUTH OF OLD MONTEREY ROAD) SR2019-0008

RECOMMENDATION(S)

1. Provide a determination on SR2019-0008 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block Four; and
2. Provide feedback on SR2019-0008 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development
Housing

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element

REPORT NARRATIVE:

Purpose of Preliminary Plan Review

The Preliminary Plan Review for Monterey Corridor Block Four (File No. SR2019-0008) serves two primary purposes:

1. To determine the Preliminary Plan's consistency with the approved Monterey Corridor Block Four Block-Level Master Plan (BLMP).

On March 8, 2019 the applicant, City Ventures, submitted an application for the 2018/2019 Residential Development Control System (RDSCS) competition. With City Council's determination that the Preliminary Plan Review is consistent with the adopted Block Four BLMP (Ordinance No. 2298n.s., Attachment 1), the applicant will be allowed to continue in the current RDSCS competition.

2. To allow for feedback on the Preliminary Plan's consistency with the City's Planned Development (PD) Master Plan findings.

After the RDSCS competition, if the applicant is awarded allotments, the applicant would submit for a Zoning Amendment to establish a PD Master Plan for the entire

block, which would provide specific details for the applicant's proposed project and demonstrate how the project will integrate with future development on any remaining portions of the block.

The Preliminary Plan Review provides the City Council with an opportunity to provide early feedback on the proposal's consistency with the City's required PD Master Plan findings.

Attached is an updated tentative schedule illustrating how the Preliminary Plan Review/PD Master Plan process could progress in parallel with the current RDCS schedule (Attachment 2).

Background

Mixed Use Flex General Plan Land Use Designation

On July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan and Morgan Hill 2035 General Plan Land Use Map that designates certain properties Mixed Use Flex (MU-F).

The MU-F designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The MU-F designation allows 7 to 24 units per acre (residential) and a maximum Floor Area Ratio (FAR) of 0.5 (commercial). The density of residential and intensity of non-residential uses should transition from higher near Downtown to lower at the ends of the Monterey Road corridor.

The General Plan requires that, prior to development of residential or mixed-use projects within the MU-F designation, a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other.

Monterey Road Corridor Block Four Block-Level Master Plan (BLMP)

Following City Council meetings on November 28, December 5, and December 19, 2018, the City Council directed the Development Services Director to initiate a Zoning Amendment to establish a Block-Level Master Plan (BLMP) for Monterey Road Corridor Block Four, which includes the approximately 7.58 acres of property located at the east side of Monterey Road opposite Old Monterey Road.

The Planning Commission held a study session and public hearing on January 22, 2019 to evaluate the draft guidelines and standards for the proposed BLMP Ordinance (File No. ZA2019-0002: Monterey Corridor Block Four) and recommended the City Council approve, with two modifications, the proposed Zoning Amendment.

On February 6, 2019 the City Council introduced Ordinance No. 2298n.s. (Attachment 1), which was adopted on February 20, 2019, establishing a BLMP for Monterey Corridor Block Four.

ANALYSIS:

The proposed Preliminary Plan Review was analyzed with respect to consistency with 1) the adopted Block-Level Master Plan for Block Four; and 2) the City's required Planned Development (PD) Master Plan Findings.

1. Block Four Block-Level Master Plan (BLMP) Consistency

The adopted BLMP for Block Four established the basic expectations and specific requirements for future development within the block in the form of a diagram (Attachment 1 - Exhibit A) and land use regulations (Attachment 1 - Exhibit B).

Consistent with the BLMP diagram (Attachment 1 - Exhibit A), the proposal shows:

- The east leg of the Old Monterey Road / Monterey Road intersection
- Commercial/mixed-use at the southeast corner of the new intersection
- Preservation of the existing specimen tree
- Connection options through the adjacent existing single-family site to Granada Street

In terms of consistency with land use regulations (Attachment 1 - Exhibit B), the project is proposing:

- A density of between 18 and 24 dwelling units per acre; allowed density is 7 to 24 dwelling units per acre
- A non-residential Floor Area Ratio (FAR) less than the maximum 0.5 FAR
- Perimeter setbacks that comply with the MU-F Zoning District standards or are within allowable deviations
- An accessible and visible public gathering place adjacent to commercial that incorporates existing specimen tree as a key feature
- Buildings with primary entrances to streets and pedestrian paseos with parking accessed from alleys

The applicant has provided a letter of justification, land use regulation compliance table, and exhibits/plans (Attachments 3, 4, and 5) that demonstrate how their proposal meets each of the standards of the adopted BLMP Ordinance.

2. Planned Development (PD) Master Plan Findings

In addition to providing feedback to the applicant regarding their Preliminary Plan's consistency with the adopted BLMP, the City Council should also provide preliminary input on the proposal's consistency with the Planned Development (PD) Master Plan findings in Section 18.30.050.H.7 of the Zoning Code.

18.30.050.H.7 PD Master Plans / Findings

- a. The proposed development is consistent with the General Plan, Zoning Code and any applicable specific plan or area plan adopted by the City Council.
- b. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

- c. The proposed project will provide a substantial public benefit(s) as defined in Paragraph 8 Substantial Public Benefit Defined (Attachment 6). The public benefit provided shall be of sufficient value as determined by the Planning Commission to justify deviation from the standards of the zoning district that currently applies to the property.
- d. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.
- e. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.
- f. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.
- g. Findings required for the concurrent approval of a Zoning Map Amendment can be made.

Summary of Planning Commission Feedback on Preliminary Plan Review

On March 12, 2019 the Planning Commission discussed, identified a number of concerns, and provided positive feedback on the Preliminary Plan Review for Monterey Corridor Block Four (SR2019-0008).

Planning Commission Concerns

- Site is awkward and prominent
- Proposed railroad buffer is marginal – KB Monterey Parque has landscaping and street separating homes from railroad
- Limited open space – type of housing proposed needs more open space
- Is the project too dense or not dense enough – reducing the proposed units and/or changing part of the proposal to a denser product type (perhaps next to railroad) could allow for more open space
- Size of commercial space not specified – commercial study recommended if commercial is required, that between 3,000 and 4,000 square feet could be sustainable
- Depth of retail too shallow for maximum flexibility
- Transition to KB Monterey Parque – detached townhouse style units fronting Granada Street
- Homes right on curve of Monterey Road are elevated – how could height/appearance be mitigated
- One driveway, if extended to adjacent property, appears to require removal of a specimen tree
- Residents must cross a lot of driveways, possibly competing with cars, to access open space areas and commercial area – not well-connected by pedestrian walkways
- Although the Block Four BLMP does not include a specific requirement for “feathering” like with the Block One BLMP at the northern end of the Monterey

Corridor, the Commission discussed the appropriateness of a proposed density between 18 and 24 units/acre when the Monterey Parque project to the south is approximately 14.2 units/acre

Planning Commission Positive Feedback

- Prominent, visible commercial area at corner of new intersection that includes a public community gathering area with a large specimen tree as a key element
- Commercial area is part of the block that is controlled by the applicant, so there is more certainty that it will be completed as part of the project
- Preliminary Plan has made great strides since proposed 2017 Zoning Amendment application and with some re-working, could become even better through the subsequent Zoning Amendment/PD Master Plan process.

To address the feedback received from the Planning Commission, the applicant has provided a revised Preliminary Plan (Attachment 4) that:

- 1) Increases the proposed railroad buffer with buildings re-oriented to the buffer and allowing for a future connection through the adjacent property to the Monterey Parque project
- 2) Provides interconnected open space areas along the railroad buffer
- 3) Increases the amount of common open space
- 4) Reduces massing along the Monterey Road frontage – smaller grouping of units and 2-story homes
- 5) Enhanced connectivity between public plaza and on-site/resident open space areas
- 6) Reduced density from approximately 20 units/acre to approximately 17.8 units/acre
- 7) The specimen tree located on the parcel between the applicant's site and the Monterey Parque development will be preserved as part of any future development proposed on the intervening parcel

Conclusion

The Preliminary Plan Review has sufficiently demonstrated consistency with the adopted Block Four BLMP, which would allow the applicant to continue in the current RDCS competition.

If the applicant is awarded residential allotments, through the subsequent Zoning Amendment process, they are committed to developing a more detailed PD Master Plan for Block Four that will continue to be consistent with the adopted Block Four BLMP and address the Planning Commission's concerns and any feedback provided by the City Council.

The future Zoning Amendment process will provide an opportunity for the Planning Commission and City Council to evaluate the detailed Block Four PD Master Plan for consistency with the Block Four BLMP and required PD Master Plan findings.

COMMUNITY ENGAGEMENT: Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission discussed and provided feedback on the Preliminary Plan Review for Monterey Corridor Block Four (SR2019-0008) at a public hearing on March 12, 2019.

FISCAL AND RESOURCE IMPACT:

Not Applicable.

CEQA (California Environmental Quality Act):

Statutory Exemption

Pursuant to CEQA Guidelines Section 15262 a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

Although this Preliminary Plan Review is exempt from CEQA, the future adoption of a Zoning Amendment to establish a Planned Development Master Plan for Monterey Corridor Block Four will be subject to additional CEQA review.

LINKS/ATTACHMENTS:

1. Ordinance No. 2298n.s. Block Four BLMP
2. BLMP/PD Master Plan and RDCS Tentative Schedules
3. Applicant's Justification Letter
4. Preliminary Plans
5. Applicant's BLMP Compliance Table
6. Substantial Public Benefit Defined (18.30.050.H.8)

ORDINANCE NO. 2298, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ADD A PLANNED DEVELOPMENT (PD) COMBINING DISTRICT ESTABLISHING A BLOCK-LEVEL MASTER PLAN FOR MONTEREY ROAD CORRIDOR BLOCK FOUR, AN APPROXIMATELY 7.58-ACRE SITE LOCATED ON THE EAST SIDE OF MONTEREY ROAD OPPOSITE OLD MONTEREY ROAD (APN 726-25-006 AND 726-25-005)

WHEREAS, on July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan; and

WHEREAS, the Morgan Hill 2035 General Plan Land Use Map designates certain properties Mixed Use Flex; and

WHEREAS, the Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The Mixed Use Flex designation allows 7 to 24 units per acre (residential) and a maximum FAR of 0.5 (commercial) and density should transition from higher near Downtown to lower at the ends of the Monterey Road corridor; and

WHEREAS, the Morgan Hill 2035 General Plan requires that, prior to development of residential or mixed-use projects within the Mixed Use Flex designation a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other; and

WHEREAS, the Block-Level Master Plan requirement applies to those segments of the Monterey Road Corridor north and south of Downtown that include properties that have a Mixed Use Flex General Plan Land Use designation. Blocks may include properties with a variety of General Plan designations (e.g., Commercial, Residential Attached Low, Public Facilities, Mixed Use Flex, etc.) and Zoning Districts (e.g., CG General Commercial, RAL 3,500, PF Public Facilities, MU-F Mixed Use Flex, etc.);

WHEREAS, Section 18.30.050 of the Zoning Code states that the purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD combining district provides land owners with enhanced flexibility to take advantage of unique site characteristics and develop projects that will provide public benefits for residents, employees, and visitors; and

WHEREAS, Section 18.114.020 of the Zoning Code states that the City Council, Planning Commission, or Community Development Director may initiate Zoning Map and Text amendments; and

WHEREAS, on December 19, 2018 the City Council directed staff to draft a Zoning amendment to establish a Block-Level Master Plan (BLMP) Planned Development (PD) for Monterey Road Corridor Block One and Block Four; and

WHEREAS, in addition to the underlying base zoning district requirements, specific requirements are shown/listed in **Exhibit A: Block-Level Master Plan Map – Block Four** and **Exhibit B: Block-Level Master Plan Land Use Regulations - Block Four**; and

WHEREAS, Exhibit A includes, by reference, the existing 58-unit residential development on an approximately 4.37-acre site zoned R3(PD) Planned Development (Ordinance No. 2169, New Series adopted October 7, 2015) and that existing development will remain subject to that Ordinance unless subsequently amended; and

WHEREAS, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074) was prepared for the Zoning Code Update project pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164, and the Addendum concludes that the proposed project will not result in any new impacts that were not already identified in the Morgan Hill 2035 EIR or any impacts of greater severity than were already addressed; and

WHEREAS, a visioning and goal setting workshop was held on September 25, 2018 where members of the public and various stakeholders provided feedback that facilitated the crafting of preliminary guiding principles for the development of the Monterey Corridor; and

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

WHEREAS, the Block-Level Master Plan Planned Development (BLMP PD) ordinance for Monterey Corridor Block Four, was considered by the Planning Commission at their study session and regular meeting of January 22, 2019, at which time the Planning Commission recommended City Council consider the Addendum to the Morgan Hill 2035 EIR in accordance with the California Environmental Quality Act (CEQA) and approval of the Zoning Amendment to establish a BLMP PD for Monterey Corridor Block Four; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The proposed Monterey Road Corridor Block-Level Master Plan Planned Development (BLMP PD) is consistent with the Morgan Hill 2035 General Plan.

- SECTION 2.** The Amendment to establish this BLMP PD is required in order to serve the public convenience, necessity, and general welfare as provided in Section 18.114.060 of the Municipal Code.
- SECTION 3.** The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).
- SECTION 4.** There hereby is attached hereto as **Exhibit A: Block-Level Master Plan Map – Block Four** and made a part of this ordinance.
- SECTION 5.** There hereby is attached hereto as **Exhibit B: Block-Level Master Plan Land Use Regulations - Block Four** and made a part of this ordinance.
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF FEBRUARY 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF FEBRUARY 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: **COUNCIL MEMBERS:** Larry Carr, Rene Spring, Yvonne Martinez Beltran, John McKay, Rich Constantine

NOES: **COUNCIL MEMBERS:** None

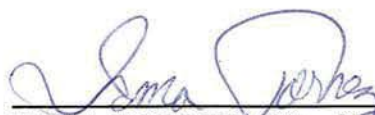
ABSTAIN: **COUNCIL MEMBERS:** None

ABSENT: **COUNCIL MEMBERS:** None

APPROVED:


RICH CONSTANTINE, Mayor

ATTEST:


IRMA TORREZ, City Clerk

DATE: 2/25/2019

Effective March 23, 2019

❧ CERTIFICATION ❧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2298, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 20th day of February 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

2/25/2019


IRMA TORREZ, City Clerk

Exhibit A: Block-Level Master Plan Map – Block Four

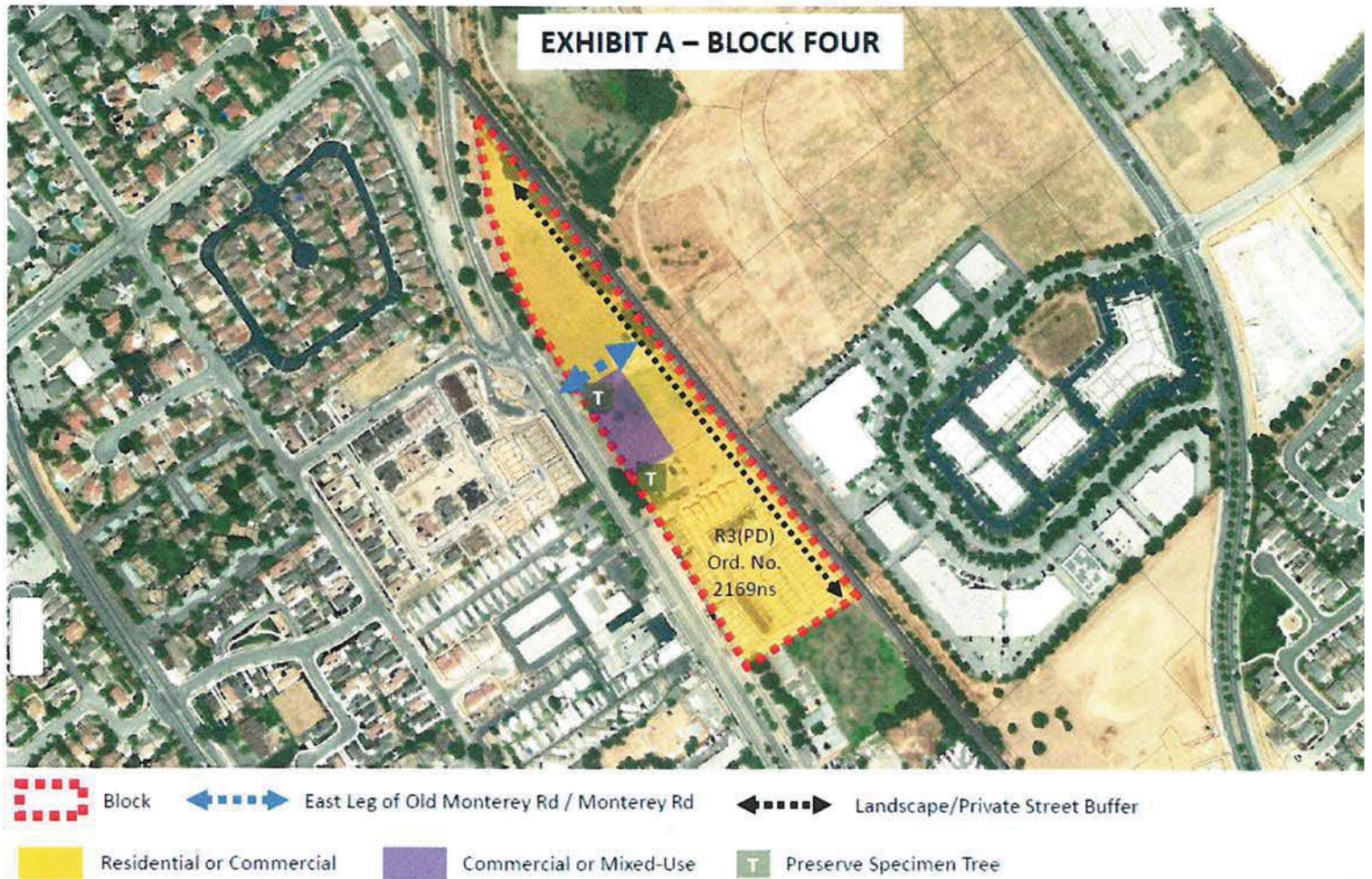


Exhibit B: Block-Level Master Plan Land Use Regulations - Block Four

I. Land Use Regulations

- A. **Permitted Uses.** Zoning Code Table 18.22-1 identifies permitted uses in the MU-F Mixed Use Flex Zoning District. Specific uses allowed for Block Four are further described on Exhibit A and below.
- B. **Development Standards.** Zoning Code Tables 18.22-2 and 18.22-3 identify development standards for the MU-F Mixed Use Flex Zoning District.
1. Residential Density. 7 to 24 du/ac.
 2. Floor Area Ratio. For non-residential and vertical mixed-use projects, the maximum floor area ratio (FAR) is 0.5.
 3. Setbacks. The setbacks identified in Zoning Code Table 18.22-3 are required setbacks around the project perimeter.
 4. Residential Development Standards. A medium density residential development project may use the development standards specified in Zoning Code Section 18.40.050 and through the subsequent PD Master Plan process establish deviations from those standards.

C. Commercial Requirements

1. Corner Lot Commercial/Non-Residential. Commercial use(s) (retail, services, office) and/or other non-residential (public/quasi-public) use(s) are required at the southeast corner of Monterey Road and the new intersection opposite Old Monterey Road. Commercial or non-residential use(s) may be accommodated within a standalone building(s) or in vertical mixed-use building(s).
2. Tree Preservation. The existing specimen trees located in/adjacent to the commercial/mixed-use area shall be preserved in place as a key/public feature of any future project. Preserve all other significant trees to the greatest extent practicable, as defined in Municipal Code Chapter 12.32 – Restrictions on Removal of Significant Trees.
3. Connections. Ensure a strong connection between the commercial/non-residential, residential, and public gathering places within the block.

D. General Specifications

1. Primary entrances for new buildings should be oriented toward the street.
2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.

5. Building depth for non-residential uses: 35-feet minimum.
6. Urban Form Characteristics:
 - a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space
7. Reasonable accommodations shall be provided, as appropriate, to provide relief from any physical standards that make meeting accessibility requirements challenging for a particular project.
8. Future development must accommodate and complete the fourth leg of the intersection with Monterey Road / Old Monterey Road.
9. Future development must provide a buffer to the adjacent railroad right-of-way and internal connection between developments within the block.
10. Future development must provide commercial/non-residential component at new intersection to support new and existing residential.
- E. **Public Gathering Places.** Residential or mixed-use project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards, and parks.
 1. Location. The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.
 2. Activity. For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located along the edge of a courtyard and plazas.
 3. Visibility and Access. Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
 4. Seating. Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
 5. Year-round Use. Open space must be usable year-round with features such as awnings, wind breaks, sun shades, and umbrellas, or other similar features that provide shelter from the elements.
 6. Specimen Trees. Incorporate existing specimen trees into design of public gathering space(s).

- F. **Temporary Uses.** In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

II. Subsequent Approvals

- A. **Zoning Amendment/PD Master Plan.** Pursuant to the requirements of Zoning Code Section 18.30.050 – Planned Development Combining District, a Zoning Amendment to establish a PD Master Plan is required. The PD Master Plan shall be consistent with the approved BLMP PD and must plan for the future development and integration of all parts of the block.
- B. **Design Review.** A proposed development must receive a Design Permit as required by Zoning Code Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.

Tentative Schedule - BLMPs / PD Master Plans for Blocks 1 and 4 / RDCS 2018/2019

	Block-Level Master Plan / Planned Development Master Plan	Residential Development Control System (RDCS) 2018/2019
4	Jan. 22, 2019 — Planning Commission Study Session & Hearing (BLMPs)	
5	Feb. 6, 2019 — City Council Hearing (Introduce BLMP Ordinances)	
6	Feb. 8, 2019 — Block 1 and 4 Applicants Submit Preliminary Plan Reviews for PD Master Plans	
7	Feb. 20, 2019 — City Council Hearing (Adopt BLMP Ordinances)	
8		Mar. 8, 2019 — RDCS Application Date
9	Mar. 12, 2019 — Planning Commission Review of Preliminary PD Master Plans for Consistency with BLMPs	
10	Mar. 22, 2019, Planned Development Zonings (BLMP Ordinances Effective)	Mar. 25, 2019 — Staff GP & Zoning Consistency Determination
11	Apr. 3, 2019 - City Council Review of Preliminary PD Master Plans for Consistency with BLMPs	Apr. 4, 2019 - Deadline to File GP & Zoning Consistency Appeal to City Council
12		May 1, 2019 – GP & Zoning Appeal City Council
13		May 3, 2019 - Staff Scoring of Applications / Recommendations to Planning Commission
14		Jun. 11, 2019 - Planning Commission Finalize Scores
15		Jun. 21, 2019 - Deadline to File Scoring Appeal to City Council
16		Jul. 17, 2019 - Scoring Appeal Heard by City Council
17		Jul. 19, 2019 - Staff Recommendations Award of Allotments
18		Jul. 23, 2019 - Planning Commission Award of Allotments
19		Aug. 2, 2019 - Deadline to File Allotment Appeal to City Council
20		Aug. 21, 2019 - Allotment Appeal Heard by City Council
21	Late 2019/2020 Applicants Submit Zoning Amendment Applications for Block 1 and Block 4 PD Master Plans	



2/1/19

John Baty
Principal Planner
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Dear John,

Please find below City Ventures' Letter of Justification for the proposed PD Permit for 18110 Monterey Road in Morgan Hill. We appreciate your consideration of our proposal. Please let me know if there is any additional information you need to complete your staff report.

Best wishes,

Jason Bernstein
City Ventures

- a. The proposed development is consistent with the general plan, zoning code and any applicable specific plan or area plan adopted by the city council.

The proposed development is located within a Mixed Use Flex General Plan designation and Mixed Use Flex zoning district. The City of Morgan Hill has also adopted a Block Level Master Plan land use regulation to comply with the General Plan requirements for mixed use projects within the Mixed Use Flex designation. The Mixed Use Flex designation allows for all commercial, all residential, or a combination of the two only if a Block Level Master Plan has been approved. The Block Level Master Plan that was approved for this block requires a mixed use development or all commercial development.

The proposed project meets all requirements of the General Plan, Zoning and Block Level Master Plan land use regulations. As such, the development plan established by this zoning amendment will define an orderly and logical development plan and establish uses that are supportive of the surrounding development and future development permitted in the Morgan Hill Mixed Use Flex zone. The proposed amendments are required in order to achieve the goals of the Block Level Master Plan and to serve the public health, convenience and general welfare as provided by the Morgan Hill Municipal Code.

- b. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

Development of the project site is subject to compliance with the adopted Block Level Master Plan land use regulation for development of mixed use or all residential projects in the Monterey Corridor. The Block Level Master Plan requires a PD Permit to develop mixed use projects; therefore, to ensure compliance with the Block Level Master Plan the project is



City Ventures

requesting approval of a PD Permit.

- c. The proposed project will provide a substantial public benefit as defined in Paragraph 8 (Substantial Public Benefit Defined) below. The public benefit provided shall be of sufficient value as determined by the planning commission to justify deviation from the standards of the zoning district that currently applies to the property.

The Block Level Master Plan includes several public benefits that make a PD Permit appropriate for this site. The project will incorporate a public plaza which will interface with new commercial to create a community-oriented space that will benefit the existing neighborhood along with the future development. The project also commits to improving pedestrian and bike connectivity and ensuring that the new public plaza is designed to promote walking and biking as an alternative to driving. Finally, the project commits to exceeding the City's minimum Build It Green checklist minimums to ensure that it serves as an example of sustainable building and design.

- d. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The proposed project will incorporate the underlying development standards from the Mixed Use Flex zoning, and can adequately accommodate the proposed Mixed Use development.

- e. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.

The project proponent has verified that existing infrastructure is sufficient to serve the proposed development. Currently, the project proponent plans to extend a new sewer line into the project as part of the proposed development, but all other public infrastructure is sufficient in its current configuration to serve the site.

- f. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.

The proposed development conforms with the General Plan designation and is compatible with the existing and planned land use character of the surrounding area.

- g. Findings required for the concurrent approval of a zoning map amendment can be made.

The requested PD Permit is consistent with all applicable land use policy and regulatory documents, including the General Plan and Block Level Master Plan. All findings for zoning amendment and associated map amendment can be made.



Monterey Gateway

Block Level Master Plan Consistency & Preliminary Plan Review

Morgan Hill City Council

April 3, 2019

conceptual plan to help shape and guide the project as it moves through the City’s process. The City’s staff has provided to assist in the Council’s review of these two items.

Agency

The Map Master Plan (BLMP) for Block Four to guide and shape development along the project is in Block Four of the Monterey Corridor BLMP. The BLMP established basic future development of Block Four, with the specific intent of meeting with the following

with Monterey Road / Old Monterey Road
Height-of-way
Impervious within the block

ment at new intersection to support new and existing residential

is, the BLMP includes Exhibit A, Block Level Master Plan – Map Block 4, which lays out the Block.

design team relied on the BLMP objectives and Exhibit A of the BLMP Block Four to design

plan sheets, the Monterey Gateway conceptual plan is entirely consistent with the in Exhibit A.

is lined up with the intersection with Monterey Road/Old Monterey Road and existing intersection. Completion of the fourth leg of the intersection is integrated into as shown on Sheet 3.

is a buffer along the railroad right of way that ranges between 18 and 42 feet and all way are oriented to either rear or side-onto right of way. As shown on Sheet 4, half and the other half is buffered with an internal roadway. Additionally, several large area. Please see Conceptual Site Plan for reference. The BLMP does not include a however, the BLMP does call for an “adequate buffer” from the railroad right of way. to railroad tracks and is well-aware of the design benefits of adequate buffers environment for future residents. The proposed setbacks together with the orientation of of sound attenuated windows, and the use of walls and vegetation, all of which is concept plan, will contribute to providing an adequate buffer along the railroad right of

the block. Please see Sheet 4 for connectivity.

- 4. Preserve Specimen Trees.** The focal point of Monterey Gateway is preservation of the project entrance. Consistent with the BLMP objectives, the project is designed to include other existing trees that exist along the railroad right of way. Please see Sheet 3 for location.
- 5. Commercial Use & Public Gathering Place.** The BLMP requires a commercial or mixed use the southeast corner of the new Old Monterey Road/Monterey Road intersection. Monterey square feet of neighborhood serving commercial (with a minimum building depth of 50 feet southwest corner of the new intersection. The plaza is immediately adjacent to the project incorporates preservation of the large specimen Oak tree and is also linked to the project connections. Pedestrian connections are also located to and through the project area to public plaza. Consistent with the intent of the BLMP, the commercial uses and public plaza Gateway, and connected to the internal green plaza, allowing for these uses to best serve patronize the neighborhood serving uses and public plaza.

For all the reasons described above, the Monterey Gateway concept plan is consistent with

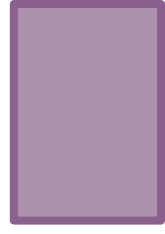




East Leg of Old Monterey Rd / Monterey Rd



Landscape/Private



Commercial or Mixed-Use



Preserve Sp



Connectivity of plaza
to internal green &
commercial space



Neighborhood retail
50-foot depth



Specimen Tree
Preserved



es through the City's entitlement review process.

cept plan package for review by the Planning h 12, 2019. The Planning Commission provided es has iterated the Monterey Gateway concept ed. **The Monterey Gateway concept plan included address the comments received by the Planning** copy of the preliminary plan that Commission ference.

n provided comments related to the railroad n Monterey Avenue, the location of potential f the south, and type and size of open space within edback and made changes to: 1) increase the along the railroad buffer; 3) provide an railroad buffer; 4) reduce massing along the 2 - and 3-story homes; 5) increase connectivity open space; and 6) reconfigure building placement r future connectivity along the railroad buffer. n included in this packet reduced the density from units/acre).

ncept of working alongside stakeholders to ensure ome communities. At its best, development is an ng the way by all parties. City Ventures is ill to ensure that development of Monterey rent and future residents. We look forward to any n our Monterey Gateway development plans and .



Preliminary plan for City Council review on April 3, 2019 (updated to add



Land Use Regulation Compliance Table
Block 4, 18110 Monterey Road, Morgan Hill

I. Land Use Regulations	Land Use Regulation	Proposed Project
A. PERMITTED USE	Use restrictions – comply with Table 18.22-1	Commercial uses will be restricted to comply with table 18.22-1 using CC&Rs. Residential uses will be entitled via the PD Permit.
B. DEVELOPMENT STANDARDS	1. Residential Density – 7 to 24 du/ac.	Density will be between 18 and 24 dwelling units per acre.
	2. Floor Area Ratio (FAR) – maximum of .5 for non-residential or mixed-use areas.	All non-residential uses will have a maximum FAR of .5.
	3. Setback – comply with Table 18.22-3.	Table 18.22-3 setbacks will be implemented. All setbacks will comply with the municipal codes within allowed deviances.
	4. Residential Development Standards – comply with Section 18.40.050	Multi-family standards will be applied under a PD permit to comply with Section 18.40.050.
C. COMMERCIAL REQUIREMENTS	1. Commercial or non-residential use is required at the southeast corner of the new intersection.	A mixed-use building featuring a commercial use at the southeast corner of the new intersection is proposed.
	2A. Tree Preservation – existing tree adjacent to the mixed-use area shall be preserved in place.	The existing Oak tree adjacent to the mixed-use area will be preserved in place.
	2B. Preserve trees as described in Municipal Code Chapter 12.32.	Trees preservation will comply with Chapter 12.32 of the municipal code.
	3. Ensure strong connection between commercial/non-residential and public gathering place.	A publicly accessible plaza will be designed to interface and integrate with the commercial space.
D. General Specifications	1. Primary entrances for new buildings should be oriented toward street.	Building adjacent to Monterey Road will have front doors facing the street.
	2. Parking for new uses should be located behind buildings with limited or no visibility from streets.	Parking for the new uses will be located within the project and will be screened from Monterey Road.
	3. Primary access to/from rear parking shall be provided via driveways located at side streets to the greatest extent possible.	Parking will be located throughout the project, and it will be focused on side streets to the greatest extent possible.
	4. First floor floor-to-ceiling clear heights for non-residential uses will be 14 feet minimum.	First floor floor-to-ceiling clear heights for non-residential uses will be 14 feet minimum.
	5. Building depth for non-residential uses will be 35 feet.	Building depth for mixed use building at the southeast corner of the new intersection will be 35 feet.
D6. Urban Form Characteristics	6A. Signature design qualities and attractive architectural features, including articulated facades,	High quality design and architecture including facades, articulations and projections that create

Land Use Regulation Compliance Table
Block 4, 18110 Monterey Road, Morgan Hill

	projections and recessed entryways.	an attractive built environment will be implemented.
	6B. Adaptive reuse where existing buildings may have desirable characteristics.	Not applicable.
	6C. Higher intensity developments designed with sensitivity to adjacent lower intensity residential development.	Existing built environment, including the single-family home to the south, will be considered when designing new buildings along Monterey Road.
	6D. Street design balancing pedestrian and bicycle use with vehicular circulation.	A balance of pedestrian and bicyclist experience will be considered in the design of the road layout, particularly to create connections to the Public Gathering Place.
	6E. Consistent planting of street trees to provide shade and enhance character and identity.	Street tree plan will be provided.
	6F. Well designed, publicly-accessible open space.	A publicly accessible open space / plaza will be prominently featured at the entry of the project.
	7. Future development must accommodate and complete the fourth leg of the intersection with Monterey Road / Old Monterey Road.	The development will complete the 4 th leg of the intersection.
	8. Future development must provide a buffer to the adjacent railroad right of way.	An appropriate buffer to the railroad right of way is part of the design. Proposed examples can be found on sheet 3.
	9. Future development must provide internal connection between development with the block.	This development has been designed to allow for future connections throughout the block. Proposed examples can be found on sheet 4.
	10. Future development must provide commercial/non-residential component at new intersection to support new and existing residential.	A commercial component will interface with a proposed public gathering space to support new and existing residential.
E. Public Gathering Places	Project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards and parks.	A public gathering space, in the form of a public plaza, is proposed adjacent to the mixed-use building and the new intersection. See proposed design on Sheet 2.
	1. <u>Location</u> : The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.	The public plaza will feature prominently at the southeast corner of the new intersection which is where paths and roads connect to create a highly visible and accessible gathering place
	2. <u>Activity</u> : For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground	The plaza will be designed to interface with the ground floor commercial space and will help to activate the plaza as a gathering place for the block.

Land Use Regulation Compliance Table
Block 4, 18110 Monterey Road, Morgan Hill

	floor uses must be located along the edge of a courtyard and plazas.	
	3. <u>Visibility and Access:</u> Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.	The plaza will open to a public sidewalk and the commercial space along the project frontage.
	4. <u>Seating:</u> Usable open spaces must include well designed seating, such as seat walls, free standing elements, fixed and moveable seating, and other seating options.	The plaza will be designed as a gathering place with well-designed seating.
	5. <u>Year Round Use:</u> Open spaces must be usable year-round with features such as awning, wind breaks, sun shades and umbrellas or other similar features that provide shelter from the elements.	The plaza will be designed for year-round use with design features meant to encourage the use of the plaza throughout the year.
	6. <u>Specimen Tree:</u> Incorporate existing specimen trees into design of public gathering space.	The plaza will incorporate the existing Live Oak tree specimen.
II. Subsequent Approvals	A1. Zoning Code Section 18.30.050 requires a Zoning Amendment to establish a PD Master Plan to be required.	The project will establish a PD Master Plan as required.
	A2. The PD Master Plan shall be consistent with the approval of BLMP PD and must plan for the future development and integration of all parts of the block.	The project will plan for future developments and be consistent with the BLMP PD.
	B. A proposed development must receive a Design Permit as required by Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.	The project will obtain a Design Permit.

Substantial Public Benefit Defined

18.30.050.H. PD Master Plans

8. **Substantial Public Benefit Defined.** When used in this section, “substantial public benefit” means a project feature not otherwise required by the Zoning Code or any other provision of local, state, or federal law that substantially exceeds the City’s minimum development standards and significantly advances goals of the General Plan. A project must include one or more substantial public benefits to be rezoned as a planned development. The public benefit provided shall be of sufficient value as determined by City Council to justify deviation from the standards of the zoning district that currently apply to the property. Examples of substantial public benefits include but are not limited to:
- a. Housing that is affordable to lower-income households.
 - b. Public plazas, courtyards, open space, and other public gathering places that provide opportunities for people to informally meet and gather.
 - c. New or improved pedestrian and bicycle pathways that enhance circulation within the property and connectivity to the surrounding neighborhood.
 - d. Green building and sustainable development features that substantially exceed the city’s minimum requirements.
 - e. Preservation, restoration, or rehabilitation of a historic resource.
 - f. Increased transportation options for residents and visitors to walk, bike, and take public transit to destinations and reduce greenhouse gas emissions.
 - g. Publicly accessible parks and open space beyond the minimum required by the city or other public agency.
 - h. Habitat restoration and or protection of natural resources beyond the minimum required by the city or other public agency.



Special - Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, April 3, 2019 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 p.m. for the purpose of conducting a closed session.

6:00 p.m. Closed Session

7:00 p.m. Regular Meeting

TELECONFERENCE

Council Member Spring will be participating in the regular meeting via teleconference as follows:

Crowne Plaza, Greater Noida
Institutional Green 1, Surajpur Chowk
Greater Noida, Uttar Pradesh -201306

Public comment from the teleconference location shall be allowed.

SPECIAL MEETING

6:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Michelle Clerk Bigelow

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION (CA Govt Code Section 54956.9(a)
Patton et al. v. City of Morgan Hill, et al. Case No. 16-CV-303044

RECONVENE

REGULAR MEETING

7:00 P.M.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council 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)

ADOPTION OF AGENDA

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPROVE FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE 2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

Recommendation:

Authorize the City Manager to execute a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

2. APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE MORGAN HILL TECHNOLOGY PARK & MIXED-USE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)

Recommendation:

Authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Morgan Hill Technology Park & Mixed-Use Residential Project Environmental Impact Report (EIR) for a total contract amount not to exceed \$252,828 for the term through December 31, 2019.

3. APPROVE SECOND AMENDMENT TO MORGAN HILL JET ELECTRIC ON-CALL MAINTENANCE SERVICE AGREEMENT

Recommendation:

Approve the Second Amendment to the on-call maintenance service agreement with Morgan Hill JET Electric, Inc. for an additional \$15,000 in services increasing the total contract amount to \$100,000 for the term through June 30, 2019.

4. RATIFY CITY POSITION ON PENDING LEGISLATION AB 1783 H-2A WORKER HOUSING: STATE FUNDING: STREAMLINED APPROVAL PROCESS FOR AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT

Recommendation:

1. Receive legislative correspondence in support of AB 1783 (R. Rivas) "H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development"; and
2. Ratify City's position.

5. RESOLUTION SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Recommendation:

Adopt resolution supporting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

6. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. APPROVE MEMORANDUM OF UNDERSTANDING ACCEPTING FAMILY JUSTICE CENTER GRANT FUNDS FROM COMMUNITY SOLUTIONS

Recommendation:

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with Community Solutions to accept grant funds as a sub-recipient of the California Office of Emergency Services grant for a total amount of \$50,000 over three fiscal years; and
2. Amending the City's adopted FY2018-19 and FY2019-20 biennial budget to recognize grant revenue of \$12,500 in FY2018-19 and \$25,000 in FY2019-20, in the General Fund (010).

8. APPROVE THE MARCH 20, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. PROVIDE DIRECTION REGARDING AGRICULTURAL CONSERVATION PROGRAM

Recommendation:

Provide direction to staff regarding next steps in the City's agricultural mitigation program.

Estimated Time: 45 Minutes

10. APPROVE DESIGN STANDARDS FOR SMALL CELL ANTENNA IN THE PUBLIC RIGHT OF WAY AND AUTHORIZE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR SMALL CELL FACILITIES

Recommendation:

1. Approve the Small Cell Design Standards related to pole mounted facilities located in the public right of way;
2. Approve the Small Cell License Agreement; and
3. Authorize the City Manager to negotiate, amend, and execute Small Cell License Agreements consistent with the Small Cell Design Standards for up to Forty-Four City owned street light poles for each telecommunication provider.

Estimated Time: 20 Minutes

PUBLIC HEARING

11. INTRODUCE ORDINANCE AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of Zoning Amendment ZA2019-0007: Wireless Communication Facilities; and
3. Introduce Zoning Amendment Ordinance ZA2019-0007: Wireless Communication Facilities.

Estimated Time: 10 Minutes

12. PUBLIC HEARING AND BALLOT TABULATION FOR PARSONS CORNER SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

Estimated Time: 15 Minutes

13. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services;
2. Open/close the public hearing; and
3. Adopt resolution updating the City's select Development Impact Fees.

Estimated Time: 30 Minutes

14. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK ONE (EAST SIDE OF MONTEREY ROAD NORTH OF BURNETT AVE) SR2019-0009

Recommendation:

1. Provide a determination on SR2019-0009 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block One; and
2. Provide feedback on SR2019-0009 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Estimated Time: 30 Minutes

15. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK FOUR (EAST SIDE OF MONTEREY ROAD SOUTH OF OLD MONTEREY ROAD) SR2019-0008

Recommendation:

1. Provide a determination on SR2019-0008 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block Four; and
2. Provide feedback on SR2019-0008 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council 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 Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council 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 Council, 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 City Council 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 City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council 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 City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, 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 City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



Vision:

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill:

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational
Culture · Preserving and Cultivating Public Trust · Preserving Our Community History ·
Enhancing Diversity and Inclusiveness · Advancing Regional Initiatives

2019-2020 STRATEGIC PRIORITIES

Agricultural Preservation
Cannabis Policy
Community Engagement and Messaging
Economic Development
Financial Stewardship
High Speed Rail
Homelessness
Housing Infrastructure
Telecommunications
Traffic/Transportation



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Lynette Kong, Associate Engineer
APPROVED BY: City Manager

APPROVE FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE 2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

RECOMMENDATION(S)

Authorize the City Manager to execute a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

REPORT NARRATIVE:

On November 8, 2016, a 30 year half-cent transportation sales tax measure commonly referred to as 2016 Measure B was approved by Santa Clara County voters. The implementation of the Measure was delayed due to a legal challenge by a county resident. On January 23, 2019, the last of the legal challenges to the Measure were exhausted, allowing the Santa Clara Valley Transportation Authority (VTA) to proceed with the implementation of the program.

In order to be eligible to receive 2016 Measure B Local Streets and Roads Program (LS&R) funding, the City must enter into a funding agreement with the VTA. Upon the execution of the agreement, the City will receive approximately \$800,000 annually in LS&R funds to use on road maintenance, repairs, and improvements. As part of the agreement, the City will need to submit to the VTA (no later than October 1st of each year) specific information that ensures that 2006 Measure B funds are expended on allowable LS&R category expenditures.

The first of the available LS&R funds will be utilized on the upcoming 2019 Pavement Resurfacing Project. The agreement is only for the LS&R program and is separate from the County Expressways program (which would fund the Hale Avenue Extension Project).

COMMUNITY ENGAGEMENT: Inform

Affected businesses and/or property owners will be notified of the pavement resurfacing work that is funded with this grant money.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On September 21, 2016, the Council directed staff to correspond appropriately in support of Measure B.
- On March 6, 2019, the Council received an update on the 2019 Pavement Improvement Plan.

FISCAL AND RESOURCE IMPACT:

The estimated \$800,000 in annual LS&R funds have been budgeted as a revenue source (GL# 308.37582) within the Street CIP Fund (308) beginning in Fiscal Year (FY) 2018-19 and will continue through the term of the agreement, which is March 31, 2047. The FY 2018-19 Fund 308 budget also includes the rollover of the unspent FY 2017-18 allocation.

CEQA (California Environmental Quality Act):

Categorical Exemption

The execution of this funding agreement will fund pavement project activities which are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Funding Agreement with VTA

FUNDING AGREEMENT
BETWEEN
THE CITY OF MORGAN HILL
AND
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM

THIS AGREEMENT ("Agreement") is between the CITY OF MORGAN HILL, a "Member Agency," referred to herein as "RECIPIENT," and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA." Hereinafter, RECIPIENT and VTA may be individually referred to as "Party" or collectively referred to as "Parties."

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax ("2016 MEASURE B") for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program ("PROGRAM") and adopted the 2016 Measure B Program Category Guidelines; and
4. Whereas, the PROGRAM includes a "Local Streets and Roads" program category consisting of a return-to-source formula based on city populations and County of Santa Clara's road and expressway lane mileage; and
5. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
6. Whereas, VTA and RECIPIENT desire to specify herein the terms and conditions under which the Local Streets and Roads program category ("LS&R CATEGORY") 2016 MEASURE B revenues will be administered by VTA as directed by the VTA Board of Directors; and
7. Whereas, VTA has established a manual for purposes of documenting administrative requirements related to LS&R CATEGORY funds disbursement and expenditure ("VTA LS&R Program Manual").

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

II. AGREEMENT

1. LS&R CATEGORY PROGRAM DEFINITION

The LS&R CATEGORY covers the entirety of public right-of-way and infrastructure, including, but not limited to, pavement, sidewalk, signals, signage, drainage, and pedestrian and public transit amenities.

2. TERM OF AGREEMENT

The term of this Agreement will commence on the Effective Date (as defined in the signature block below) and continue through March 31, 2047, or until LS&R CATEGORY funds allocated to RECIPIENT have been expended entirely, whichever occurs later.

3. ELIGIBLE USE OF FUNDS

RECIPIENT is permitted to use RECIPIENT's allocated LS&R CATEGORY funds for any phase (including but not limited to planning, construction, etc.) and any cost of the maintenance, rehabilitation, reconstruction, minor improvements of, minor enhancements of, and preservation of multi-modal roadway infrastructure. This includes implementation of "Complete Streets" elements. See Attachment A for a definition of Complete Streets.

If RECIPIENT has achieved a jurisdictional average Pavement Condition Index ("PCI") of 70, RECIPIENT may use funds for other congestion relief projects as permitted by 2016 MEASURE B.

Only LS&R CATEGORY costs incurred on or after July 1, 2017, will be eligible for reimbursement.

4. DESIGN STANDARDS

RECIPIENT'S project(s) proposed hereunder must incorporate Complete Streets design, including, but not limited to, best practice design standards and guidelines, such as those published by VTA (e.g. Bicycle Technical Guidelines, Pedestrian Technical Guidelines, and Community, Design, and Transportation Manual), Institute of Transportation Engineers (e.g. Designing Walkable Urban Thoroughfares), American Association of State Highway and Transportation Officials (e.g. Guide for the Development of Bicycle Facilities), National Association of City Transportation Officials (e.g. Urban Street Design Guide, Urban Bikeway Design Guide, Transit Street Design Guide), and Caltrans (e.g. Class IV Bikeway Guidance (Separated Bikeways/Cycle Tracks)).

5. FUNDING ALLOCATIONS

- a. RECIPIENT'S funding allocation for each fiscal year, starting July 1, 2017, will be based upon RECIPIENT's percentage share of the population or road mileage, as applicable, applied to the VTA Board of Directors Adopted Biennial Budget for the LS&R CATEGORY.
- b. The LS&R CATEGORY annual fund distribution formula is calculated every two fiscal years (in line with VTA's budget cycle; a fiscal year begins July 1 and ends June 30) and is based on the following:

- i. First, at the same time that VTA plans and finalizes its budget for the two upcoming fiscal years, the VTA Board of Directors determines the allocation of 2016 MEASURE B funds for the two upcoming fiscal years.
 - ii. Second, the VTA Board of Directors determines the amount of 2016 MEASURE B funds to be allocated amongst the PROGRAM categories, including the LS&R CATEGORY.
 - iii. Third, the County of Santa Clara's percentage share of the total budgeted LS&R CATEGORY funds ("SC Percentage Share") is calculated by determining the percentage of the total road and expressway lane mileage recorded in Santa Clara County, California that the County of Santa Clara itself is responsible for maintaining (according to the then most current California Public Road Data report issued by Caltrans).
 - iv. Fourth, the SC Percentage Share is multiplied by the total budgeted LS&R CATEGORY funds to determine the dollar amount allocated to County of Santa Clara.
 - v. Fifth, the budgeted LS&R CATEGORY funds remaining after the allocation of the County of Santa Clara's share described above ("Remaining Funds") are distributed to eligible cities. Each city's percentage share of the Remaining Funds (each, a "City Percentage Share") is calculated by determining the percentage of the total Santa Clara County, California population (excluding unincorporated areas) attributed to each city (according to the then most current California Department of Finance's annual population estimates (Report E-1, or any successor report)).
 - vi. Sixth, each City Percentage Share is multiplied by the Remaining Funds to determine the dollar amount allocated to each city.
- c. RECIPIENT's allocations are subject to change based on variations in annual population or road mileage and actual 2016 MEASURE B receipts for prior fiscal years.
- d. RECIPIENT will receive a one-time advance equivalent to the RECIPIENT's percentage allocation of the LS&R CATEGORY's percentage share of 2016 MEASURE B revenue collections made from April 2017 through June 2017, upon (i) execution of this Agreement, (ii) RECIPIENT's submittal of an invoice for the one-time advance, and (iii) RECIPIENT's first submittal of 1) proposed projects in RECIPIENT's "Annual Program of Projects", 2) maintenance of effort certification (see Section 7.d.), and 3) Complete Streets checklist provided by VTA. Any interest earned or accrued from the one-time advance by RECIPIENT must be expended only on eligible costs as set forth above under ELIGIBLE USE OF FUNDS and DESIGN STANDARDS. RECIPIENT's Annual Program of Projects must contain, at a minimum, the following information:
- i. Brief description of project/s
 - ii. Location of project/s
- e. After the one-time advance, all remaining and future funds, if any, will be available only on a reimbursement basis.

- f. The one-time advance is in addition to RECIPIENT's FY18 and FY19 LS&R CATEGORY allocations.

6. VTA's OBLIGATIONS

VTA will:

- a. Annually update the LS&R CATEGORY formula to reflect the most current populations and road mileage using the California Department of Finance's annual population estimates (Report E-1, or any successor report) and the most current California Public Road Data report issued by Caltrans. VTA shall use the updated LS&R CATEGORY allocation formula in the allocations beginning July 1 immediately following each VTA budget cycle.
- b. Annually update the LS&R CATEGORY PCI for RECIPIENT based on the Metropolitan Transportation Commission release of the prior year's PCI.
- c. Annually report to the public the amount of LS&R CATEGORY revenues allocated and distributed to RECIPIENT.
- d. VTA shall remit the amount due to the RECIPIENT within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice.

7. RECIPIENT's OBLIGATIONS

RECIPIENT will:

- a. Ensure that all 2016 MEASURE B funds are expended on allowable LS&R CATEGORY expenditures as described above in ELIGIBLE USE OF FUNDS and DESIGN STANDARDS.
- b. Annually complete and submit to VTA, by October 1st of each year, RECIPIENT's Annual Program of Projects, in which RECIPIENT will set forth proposed projects, and develop all such projects which are approved as eligible (each a "PROJECT").
- c. Annually submit to VTA, by October 1st of each year, a summary of the prior fiscal year's completed PROJECT(S) and current fiscal year's program of PROJECTS.
- d. Annually submit to VTA, by October 1st of each year, a certification (which certification form will be provided by VTA to RECIPIENT) that RECIPIENT is sustaining a maintenance of effort ("MOE"), meaning that RECIPIENT will maintain a level of expenditures on LS&R CATEGORY eligible activities equivalent to RECIPIENT's expenditures submitted to the California Transportation Commission per 2017 California Senate Bill 1 ("SB1") MOE requirements for the Road Repair and Accountability Act Local Streets and Roads Program. RECIPIENT must submit to VTA an initial MOE base amount and certification of MOE for FY18 upon the execution of this Agreement.

- e. Comply with the VTA Board of Directors-approved Complete Streets requirements. RECIPIENT must submit to VTA a Complete Streets Resolution adopted by the RECIPIENT's governing body upon the execution of this Agreement.
- f. Annually complete and submit to VTA, by October 1st of each year, the VTA Complete Streets checklist and any accompanying reporting requirements for the LS&R CATEGORY Annual Program of Projects.
- g. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for expenditure of the one-time advance funds (which funds, including any and all interest earned or accrued therefrom, must be exhausted in their entirety prior to requesting funds for reimbursement).
- h. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- i. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this Agreement for five (5) years from the date on which the relevant cost(s) was/were incurred. RECIPIENT shall make such records available to VTA upon written request for review and audit purposes. Financial audits will be performed at VTA's discretion.
- j. Submit invoices to VTA, no more frequently than monthly, for reimbursement of work completed on PROJECTS. Invoices must be submitted within one year of the date posted on the contractor's invoice submitted as substantiation for RECIPIENT's invoice, if applicable.

8. GENERAL TERMS AND CONDITIONS

- a. **Indemnity.** Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to RECIPIENT's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction associated with this Agreement. RECIPIENT shall fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description brought on for or on account of injury (as defined by California Government Code §810.8) arising out of or relating to RECIPIENT's negligence, recklessness, or willful misconduct under or in connection with any work, authority, or jurisdiction delegated to RECIPIENT under this Agreement. This provision will survive the termination or expiration of this Agreement.
- b. **Amendment.** No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the Parties hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the Parties hereto.
- c. **Incorporation of Documents; Entire Agreement.**
 - i. In addition to the terms set forth herein, this Agreement is subject to the provisions of (i) the 2016 Measure B Program Category Guidelines and (ii) the VTA

LS&R Program Manual, both of which are incorporated herein by this reference. VTA may, in its sole discretion, make changes to the 2016 Measure B Program Category Guidelines and/or LS&R Program Manual at any time. If VTA makes such changes, VTA will make reasonable efforts to provide RECIPIENT with advance notice of such changes. Copies of the 2016 Measure B Program Category Guidelines and the VTA LS&R Program Manual are available at the VTA website (www.vta.org) or upon request to VTA.

- ii. This Agreement, along with the 2016 Measure B Program Category Guidelines and VTA LS&R Program Manual, contains the entire understanding between VTA and RECIPIENT relating to the subject matter hereof. This Agreement supersedes any and all other agreements which may have existed between the Parties, whether oral or written. This Agreement, along with the 2016 Measure B Program Category Guidelines and VTA LS&R Program Manual, is binding upon each Party, their legal representatives, and successors for the duration of the Agreement.
- d. **Notices.** Any notice which may be required under this Agreement must be in writing, will be effective when received, and must be given by personal service or certified mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the Parties hereto.

VTA:
 Marcella Rensi
 Deputy Director, Programming and Grants
 Santa Clara Valley Transportation Authority
 3331 N First Street
 San Jose, CA 95134
 Email: marcella.rensi@vta.org

RECIPIENT:
 City Clerk
 City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
 cityclerk@morganhill.ca.gov

Written notification to the other Party must be provided, in advance, for changes in the name or address of the individuals identified above.

The individual identified above for RECIPIENT is RECIPIENT's LS&R CATEGORY Liaison ("LIAISON"). The LIAISON shall be (i) the liaison to VTA pertaining to implementation of this Agreement and (ii) the contact for information about the LS&R CATEGORY and PROJECTS.

- e. **Representation of Authority.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement.

- f. **No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement will not be deemed a waiver of any right or remedy that either Party may have, and will not be deemed a waiver of either Party's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this Agreement or its performance, or (ii) the alleged failure of a Party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this Agreement (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and RECIPIENT shall negotiate an equitable adjustment in the provisions this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this Agreement, as well as any claim that might arise between RECIPIENT and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this Agreement must be commenced and prosecuted in the courts of Santa Clara County, California. RECIPIENT agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

Signatures of parties on following page.

IN WITNESS WHEREOF, VTA and RECIPIENT have executed this Agreement as of the last date set forth below ("Effective Date").

***Santa Clara Valley
Transportation Authority***

RECIPIENT

Nuria I. Fernandez
General Manager/CEO

Christina Turner
City Manager

Date

Date

Approved as to Form

Megan Gristch
Staff Attorney II

ATTACHMENT A
Definition of Complete Streets

Complete Streets are generally defined as streets:

- That are planned, designed, funded, constructed, operated and maintained for the safe travel of all users.
- Where designs are context sensitive and incorporate a balanced network approach.
- Which prioritize the safety, comfort, and convenience of pedestrians, bicyclists, transit riders (including access and operations), as appropriate for the local context, while still providing safe accommodations for motorists and other roadway users.
- Where capital projects, once completed, should not degrade the safety, comfort, or convenience of pedestrians, bicyclists, or access to transit, nor should they degrade the travel time of transit operations (recognizing that there may be situations where one of these modes may need to be prioritized over another).
- Where designs are developed with input from the community and support future conditions.

This definition was set forth in VTA Board Memo No. 6096, dated May 25, 2017, and presented at the VTA Board meeting held June 1, 2017 (“Measure B Complete Streets Reporting Requirements”).



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE MORGAN HILL TECHNOLOGY PARK & MIXED-USE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)

RECOMMENDATION(S)

Authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Morgan Hill Technology Park & Mixed-Use Residential Project Environmental Impact Report (EIR) for a total contract amount not to exceed \$252,828 for the term through December 31, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element

REPORT NARRATIVE:

The purpose of the proposed consultant agreement with David J. Powers & Associates, Inc. (DJPA) is to prepare an Environmental Impact Report (EIR) to evaluate the potential environmental impacts from future development on the commercial, industrial, and residential designated portions of the block bounded by Cochrane Road (north), Half Road (south), Mission View Drive (east), and Highway 101 (west).

On January 29, 2019, TC Morgan Hill Venture, LLC (applicant) submitted a General Plan Amendment application (File No. GPA2019-0002) and Zoning Amendment application (File No. ZA2019-0005) for the commercial and industrial portions of the site and on February 25, 2019 an Environmental Review application (EA2019-0009) for the preparation of the EIR for the entire site. The cost for preparation of the EIR has been paid in full by the applicant.

Although the City has had an existing master environmental consultant agreement with DJPA for general environmental review services associated with private development applications and capital projects since September 2010, preparation of the EIR for the

proposed project will extend beyond the allocated budget for the DJPA master agreement.

Attached for City Council's consideration is a consultant agreement with DJPA in an amount not to exceed \$252,828. The scope and schedule for the preparation of the EIR are attached as Exhibit A, to the consultant agreement.

COMMUNITY ENGAGEMENT: Inform

Throughout the EIR process there will be several opportunities for formal and informal community participation beginning with the Notice of Preparation (NOP) and EIR public Scoping Meeting (scheduled for April 23, 2019 with the Planning Commission); followed by posting of a Notice of Completion (NOC) and public circulation of the Draft EIR; and, concluding with noticed Planning Commission and City Council public hearings, and posting of a Notice of Determination (NOD).

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

The consultant agreement will be an expenditure of the Planning Division, within the Development Services Fund (206), for which the fees are collected directly from the project applicant.

CEQA (California Environmental Quality Act):

Not a Project.

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378, the selection of a consultant to prepare an EIR, which does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, does not qualify as a "project".

The following activities are specifically listed as not a project under Section 15378:

- (b)(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making;
- (b)(4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.
- (b)(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Consultant Agreement w/ David J. Powers & Associates

**CONSULTANT AGREEMENT
DAVID J. POWERS & ASSOCIATES, INC.**

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and DAVID J. POWERS & ASSOCIATES, INC. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2019 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be preparation of the Morgan Hill Technology Center EIR as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$252,828.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Fifty Two Thousand Eight Hundred Twenty Eight dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and

CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit A attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5. Professional Liability.
- 7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance

available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.2. **Endorsements.** CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. **General Liability.**

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 7.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.**

- 9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

10. **Independent Contractor**. CONSULTANT is an independent contractor and not an agent or employee of CITY.
11. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.
12. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
13. **Notices**. All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San Jose, CA 95126

Address of CITY is as follows:

Development Svcs. Dir.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees**. CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **CONSULTANT'S Proposal**. If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
16. **Maintenance of Records**.
 - 16.1. **Maintenance**. CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least

3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

16.3. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance

policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

21.4. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

22. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

23. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

24. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

26. Binding Agreement. Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

[Signatures on Next Page]

27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

DAVID J. POWERS & ASSOCIATES, INC.

 City Attorney

By: _____

 Donald A. Larkin
 Print Name

 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: _____

Date: _____

By: _____

 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: _____



Trammell Crow Morgan Hill Technology Center and Mixed-Use Project Environmental Impact Report

Primary Contact

The primary David J. Powers & Associates, Inc. (DJP&A) contact for this project will be Kurt Schlyer. Kurt's contact information is provided below. Akoni Danielsen will serve as Principal, and be available as needed to support Kurt and stand in should Kurt be away from the office.

Kurt Schlyer Direct: (408) 454-3437

Email: kschlyer@davidjpowers.com

Project Understanding

It is our understanding that the project applicant, Trammell Crow, is proposing a Master Plan Planned Development to be designated as three main land use groupings of Industrial, Commercial and Low density attached residential development. The approximately 89-acre project site is planned to be parceled as Commercial/Industrial (approximately 57.5 acres), Commercial (approximately 3.5 acres), and Residential Attached Low Density (approximately 28 acres). The project includes roadway improvements to Mission View Drive, and an extension of DePaul Drive south to a new connection with Half Road. The EIR would also evaluate the potential impacts from extension of Avenida De Los Padres west from Mission View Drive to DePaul Drive, based on the level of detail available. Other offsite roadway improvements contemplated for this project include r.o.w. improvements to Half Road and a small portion of Condit Road where the two roads intersect.

Industrial Component

The industrial component of the project would include approximately 1 million square feet of industrial uses in three buildings. The Industrial development is planned to be accessible directly from the existing De Paul Drive off Cochrane Road and a proposed extension of De Paul Road connecting to Half Road, and a possible additional third access location that would extend Avenida De Los Padres west to the project site across Mission View Drive. Additionally, a 2.14 ac parcel that is depicted as 'Not a Part' on the conceptual site plan would be evaluated for potential future industrial/warehouse uses based on the proposed PD Combining District, assuming 45,000 square feet of industrial office.

Residential Component

The total number of housing units proposed for the residential portion of the project is assumed to not exceed 300 units, consisting of roughly 25% of the land area devoted to detached single-family residential units and roughly 75% of the land area devoted to attached residential units, to achieve an overall density range of up to 11 units/acre. The project's residential portion shall compete in the City of Morgan Hill's RDCS competition and once partially or fully allocated, shall pursue a Tentative Map for this portion of the project. It is not associated with the Trammell Crow Industrial development.

The residential development is planned to be accessible directly from Mission View Drive to the east, Half Road to the south, and a planned extension of De Paul Drive that is planned to bisect the site north to south connecting Cochrane Road to Half Road. The residential development would include walkways and crosswalks that would connect to off-site sidewalks along Cochrane Road, Mission View Drive & Half Road.

The Residential Project's proposed site improvements would include on- and off-street parking, small neighborhood park area, sidewalks, landscape areas, drive aisles, underground utilities, Low Impact Development (LID) drainage and water quality treatment structures, screen walls, lighting, and an optional fountain.

Commercial Component

The commercial component of the project would occupy 3.48 acres and will be assumed to be developed with approximately 74,000 square feet of commercial that could be general retail, auto dealer, hotel, medical or professional office uses, and two drive-through establishments.

Scope of Work

David J. Powers & Associates, Inc. (DJP&A) will prepare a Focused Environmental Impact Report (EIR) for the Trammell Crow Morgan Hill Technology Center and Mixed-Use project. Our scope includes: 1) preparation of the Administrative Draft EIR/Initial Study and Notice of Preparation (NOP); 2) preparation of the Draft EIR and Notice of Completion (NOC); 3) preparation of the Final EIR, Mitigation Monitoring and Reporting Program (MMRP), and other related items; and 4) meeting and hearing attendance and project management. These tasks are described below.

Task 1: Administrative Draft Focused EIR/Initial Study and Notice of Preparation

Kick-Off Meeting and EIR Initiation

DJP&A will attend one EIR kick-off meeting with the City and the project team to discuss the project, further refine the EIR scope as needed, identify alternatives, and coordinate the scheduling and preparation of the EIR.

Project Description and Notice of Preparation

DJP&A will draft a project description and provide it to the City to review for accuracy. The project description will be based on project information to be provided by the City and Trammell Crow. A preliminary list of project information needed is included on page 16 of this scope of work.

Once the project description is finalized, DJP&A will prepare the NOP for circulation by the City of Morgan Hill. The NOP will include a brief project description, project location map, and discussion of potential environmental effects of the project. This scope includes DJP&A attendance at one public EIR scoping meeting for the project, at which the DJP&A Principal and Project Manager will be available to present the EIR process and primary environmental issues to be covered in the EIR. The text of the EIR will incorporate relevant issues raised in the responses to the NOP received during the 30-day NOP circulation period.

Preparation of Administrative Draft Focused EIR

DJP&A will prepare a Focused EIR consistent with the requirements of the California Environmental Quality Act (CEQA) and the City of Morgan Hill. The EIR will include an introduction, summary, project description, environmental setting, discussion of environmental impacts, and mitigation measures to reduce significant impacts. An Initial Study (IS) will be prepared and included as Appendix A to the EIR. The IS will be used to identify those issues for which the project would have no impacts or less than significant impacts. Only those issues identified in the IS as having significant impacts would be discussed in depth in the main text EIR, so that it is focused on those issues that require mitigation or that are incapable of being mitigated to a less than significant level.

Upon completion of the Administrative Draft Focused EIR (ADEIR) and IS, DJP&A will submit up to 10 hard copies of the document to the City for review and comment.

The expected main sections of the Focused EIR are described below.

Introduction

The introduction to the EIR will describe the purpose of the EIR, provide a general overview of the CEQA process, and describe the public participation process and opportunities for input.

EIR Summary

A summary of the EIR will include a brief description of the proposed project and identify the impacts of the project and proposed mitigation measures in tabular format. The summary will also briefly describe the project alternatives and address any known areas of public controversy.

Project Description

The project description prepared in Task 2 will be included in the EIR. The project description will also include a list of project objectives, necessary discretionary actions, and decision-making agencies. Maps and graphics will be provided to illustrate the text.

Existing Environmental Setting, Impacts, and Mitigation Measures

The EIR, and Initial Study Appendix, will provide: 1) a detailed description of the existing environmental setting, based on the conditions that exist at the time the NOP is released; 2) impacts that may result from the proposed project; and 3) feasible mitigation measures to avoid or reduce impacts to a less than significant level. A discussion of the project's consistency with applicable plans and policies will be included with particular attention given to inconsistencies, if any are identified.

Based upon our current understanding of the project, we anticipate the key environmental issues for the project to be presented in the Focused EIR will include the following resources (while the remaining environmental topics covered in the 2019 CEQA Appendix G Checklist will be covered in the Initial Study):

- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Noise
- Traffic; and
- Utilities

Agricultural Resources

The project site is used for agricultural purposes. According to the Santa Clara County Important Farmland 2014 Map, the site is designated as *Prime Farmland*, *Farmland of Statewide Importance*, and *Unique Farmland*. In November 2014, the City adopted its Agricultural Lands Preservation Program (Preservation Program), which intends to preserve open space agricultural activity within the Morgan Hill Sphere of Influence. The EIR will discuss the project's compliance with the City's General Plan and the Preservation Program's mitigation measures as detailed in the Agricultural Mitigation Ordinance.

Air Quality

The project proposes up to 300 residential units, approximately 74,000 square feet of commercial space, and approximately 1.045 million square feet of industrial uses, which in combination exceeds the Operational- and Construction-Related BAAQMD Criteria Air Pollutant and Precursor Screening Level Sizes pursuant to the 2011 BAAQMD CEQA Guidelines. Project operations would generate an increase in air pollutant emissions, resulting in potential community risk impacts to existing nearby sensitive receptors as well as regional criteria pollutants during construction and operations.

The project site is adjacent to existing housing and a medical center to the east which could expose residents, and medical center patients and staff, to toxic air contaminants (TACs) during project construction. The EIR will provide an analysis of impacts resulting from Construction TAC emissions upon nearby sensitive receptors based on an air quality assessment to be prepared by *Illingworth & Rodkin, Inc.*, under contract to DJP&A, in accordance with the Bay Area Air Quality Management District's CEQA Guidelines. The air quality assessment will also evaluate potential toxic air contaminant and criteria pollutant health impacts to nearby sensitive receptors during project operations, e.g. trucking activity associated with the three industrial/warehouse buildings, which are shown with approximately 200 loading docks in combination. The EIR will also account for changes in roadway volumes on existing and proposed roadways and the potential for increased traffic to lead to localized air quality impacts.

While CEQA is primarily concerned with the impacts of a project on the environment and generally does not require agencies to analyze the impact of existing conditions on a project's future users or residents, the City has General Plan policies and regulations that address existing conditions affecting a proposed project, and therefore, the EIR will evaluate the potential exposure of future project residents to TACs sources in the vicinity by examining stationary and mobile TAC sources that may adversely impact residences.

For those portions of the project currently without sufficient detail to allow for detailed modeling of construction activity in the EIR (i.e. the 3.5 acre commercial site, the 2.14 acre Not a Part industrial parcel, and the 28 acre residential site), the EIR will identify future mitigation measures in the form of performance standards that must be met prior to issuance of grading permits for future phases of development, in accordance with BAAQMD health standards and CEQA Guidelines provisions regarding impermissibly deferred mitigation.

Biological Resources

The project site is currently used for agricultural purposes and contains few trees, other than boxed trees for sale, which are not biological resources. This scope assumes the applicant will provide to DJP&A an arborist report meeting the City's standards. The project site is designated *Orchard and*

Grain, Row-crop, Hay and Pasture, Disked/ Short-term Fallowed in the Santa Clara Valley Habitat Conservation Plan, designations for which no survey requirements apply at the environmental review stage to establish baseline conditions.

Cultural Resources

The project site contains several buildings that are more than 50 years in age, which are therefore required to be analyzed for historic significance under CEQA. Under contract to DJP&A, *Urban Programmers Historic Preservation and Urban Revitalization Consultants* will prepare a Historic Resource Evaluation Report for the project site to identify the historic significance or lack of significance for buildings and site improvements identified to be at least 50 years old. The report will also identify whether any documented historic resources are present in the vicinity and have the potential to be impacted, whether directly or indirectly, by the proposed new structures. Mitigation measures for significant historic resources will be identified, if necessary.

According to the City's archaeological sensitivity map (2000), the project is located in an area of archaeological sensitivity due to the past presence of three historic ranch locations in the vicinity. Therefore, as a subconsultant to DJP&A, an archaeological literature search and field review will be conducted by *Basin Research Associates*. *Basin Research Associates* will also prepare the Native American consultation letter on behalf of the City of Morgan Hill per AB52 standards. Impacts to significant cultural resources, if any, will be evaluated in the Focused EIR, and appropriate mitigation will be identified.

Energy

The EIR will discuss the amount of energy (i.e. electricity, natural gas, and gasoline use) the project would consume, based on the air quality and greenhouse gas emissions studies identified in this scope, and information concerning project construction and operations provided by the applicant's engineer and/or architect, and identify whether the project's consumption of energy would be wasteful, inefficient, or unnecessary in accordance with Appendix F of the CEQA Guidelines. Mitigation measures will be identified to reduce impacts, as appropriate.

Greenhouse Gas Emissions

The proposed project is expected to be operational after 2020, and therefore it is subject to the statewide 2030 GHG targets set by SB 32. GHG emissions resulting from the proposed project will be assessed based on a GHG analysis to be prepared by *Illingworth & Rodkin, Inc*, under contract to DJP&A. The GHG analysis would utilize the California Emission Estimator Model Version 2016.3.2 (CalEEMod) to model GHG emissions, and impact conclusions would be based on BAQQMD recommended thresholds. In the event the emissions exceed the 2030 targets, mitigation measures would be identified to attempt to reduce the project's GHG emissions to less than significant levels. The discussion of GHG emissions would be based to the extent possible on the City's General Plan

EIR and Climate Action Plan, as well as Plan Bay Area and the statewide Scoping Plan implementing SB32.

Noise

The proposed project site is located east of Highway 101 and south of Cochrane and is adjacent to a medical/health center and residential neighborhood to the east. Noise would be generated during the construction of the project, as a result of increased vehicle traffic along area roadways, and as a result of the operations of proposed land uses within the project area, in particular truck loading and other activity associated with the proposed industrial buildings. Under contract to DJP&A, *Illingworth & Rodkin, Inc.* will prepare a noise and vibration assessment to calculate future noise and vibration levels as a result of construction and operation of the project. The noise and land use compatibility of sensitive uses proposed as part the Project will be assessed by adjusting existing noise data based on future traffic noise level projections. Noise impacts resulting from cumulative development of the Project area will also be evaluated. Mitigation measures would be identified for any significant impacts, as needed.

For those portions of the project currently without sufficient detail to allow for detailed modeling of construction activity and operational noise in the EIR (i.e. the 3.5 acre commercial site, the 2.14 acre Not a Part industrial parcel, and the 28 acre residential site), the EIR will identify future mitigation measures in the form of performance standards that must be met prior to issuance of grading permits for future phases of development, in accordance with City noise policies and CEQA Guidelines provisions regarding impermissibly deferred mitigation.

Traffic

A traffic analysis will be prepared for the project by *Hexagon Transportation Consultants ,Inc.* under contract to DJP&A. The purpose of the traffic analysis is to satisfy the requirements of the City of Morgan Hill and the Congestion Management Program (CMP) of the Santa Clara Valley Transportation Authority (VTA). The study will be based on the City's current policy to evaluate new development according to level of service (LOS) to determine the traffic impacts of the proposed development on the key intersections and freeway segments in the vicinity of the site during the weekday AM and PM peak hours. At a minimum, the project would study 50 intersections and eight freeway segments listed below:

1. Monterey Road and Burnett Avenue
2. Monterey Road and Madrone Parkway
3. Monterey Road and Cochrane Road
4. Monterey Road and Old Monterey Road
5. Monterey Road and Wright Avenue
6. Monterey Road and Central Avenue
7. Monterey Road and Main Avenue
8. Monterey Road and Second Street
9. Monterey Road and Dunne Avenue

10. Church Street and Dunne Avenue
11. Butterfield Boulevard and Dunne Avenue
12. Walnut Grove Drive and Dunne Avenue
13. US 101 SB Ramps and Dunne Avenue
14. 101 NB Ramps and Dunne Avenue
15. Condit Road and Dunne Avenue
16. Murphy Avenue and Dunne Avenue
17. Butterfield Boulevard and Diana Ave
18. Butterfield Boulevard and Main Avenue
19. Butterfield Boulevard and Central Ave
20. Butterfield Boulevard and Jarvis Drive (South)
21. Butterfield Boulevard and Sutter Boulevard
22. Butterfield Boulevard and Cochrane Road
23. Cochrane Circle and Cochrane Road
24. Sutter Boulevard and Cochrane Road
25. Madrone Parkway/Cochrane Plaza and Cochrane Road
26. US 101 SB Ramps and Cochrane Road
27. US 101 NB Ramps and Cochrane Road
28. De Paul Drive and Cochrane Road
29. Mission View Drive and Cochrane Road
30. Mission View Drive and Avenida De Los Padres
31. Mission View Drive and Half Road
32. De Paul Drive Extension and Half Road (Future)
33. Condit Road and Main Avenue
34. Murphy Avenue and Main Avenue (Future)
35. Vista De Lomas and Burnett Avenue
36. Butterfield Boulevard and San Pedro Avenue
37. Monterey Road and Tennant Avenue
38. Church Street and Tennant Avenue
39. Vineyard Boulevard and Tennant Avenue
40. Butterfield Boulevard and Tennant Avenue
41. US 101 SB Ramps and Tennant Avenue
42. US 101 NB Ramps and Tennant Avenue
43. Condit Road and Tennant Avenue
44. Murphy Avenue and Tennant Avenue
45. Monterey Road and Vineyard Boulevard
46. Monterey Road and Watsonville Road
47. Monterey Road and Spring Avenue
48. Juan Hernandez Drive and Tennant Avenue
49. Butterfield Boulevard and Barrett Avenue
50. Monterey Road and Cosmo Avenue

Study Freeway Segments:

1. US 101 between SR-85 and Bailey Avenue
2. US 101 between Bailey Avenue and Coyote Creek Golf Drive

3. US 101 between Coyote Creek Golf Drive and Burnett Avenue
4. US 101 between Burnett Avenue and Cochrane Road
5. US 101 between Cochrane Road and Dunne Avenue
6. US 101 between Dunne Avenue and Tennant Avenue
7. US 101 between Tennant Avenue and San Martin Avenue
8. US 101 between San Martin Avenue and Masten Avenue

The level of service analysis will identify the current operating conditions of the intersections and will evaluate whether the project may have an adverse impact on intersection operations during existing plus project and background plus project conditions. Existing weekday AM and PM peak-hour traffic volumes at the study intersections will be obtained, where available, from recent traffic studies conducted in the area. New manual peak-hour turning movement counts will be conducted at intersections where current counts are either outdated or not available.

A qualitative analysis of the project's effect on transit service in the area and on bicycle and pedestrian circulation in the study area will be included in the traffic report. Proposed bicycle and pedestrian facilities will be evaluated for consistency with VTA's Livable Community design guidelines.

Hexagon will use the TDF model to calculate the projected 2015 baseline Citywide VMT and the change in VMT with the project under each of the future condition scenarios. The VMT will be calculated for internal and external trips and will be specified in absolute terms (by households and jobs) and per capita.

Portions of the proposed residential units and industrial space will require a General Plan Amendment analysis (GPA). The purpose of the GPA traffic analysis is to estimate the impacts of the proposed land use amendment on key intersections and freeway segments in the vicinity of the project area. The analysis will consist of a long-term evaluation of identified potential development levels on the project site due to the proposed land use amendment. The City of Morgan Hill travel demand model will be used to evaluate long-term effects on the transportation system of the identified development level of the project site.

The City will need to confirm the GPA analysis approach regarding the level of development on the project site in relation to GP Buildout conditions, i.e. whether the additional development proposed on the site is a net add to the ultimate development allowed under the General Plan (and evaluated in the GP EIR), or whether the additional development on the project site reflects a (zero sum) transfer/relocation of growth from elsewhere in the City, thereby holding constant the amount of development consistent with the GP Update and related EIR's analysis.

The traffic report will be incorporated into the EIR to identify potential significant impacts and mitigation measures, if any significant impacts are identified.

Hazards and Hazardous Materials

Phase I/II reports have been prepared for the Industrial portion of the property (approximately 58 acres). The reports indicated that there are no recognized environmental conditions on the site. The applicant's Phase I/II consultant will need to confirm their reports results are also applicable to the

land that would be dedicated to the City for the extension of DePaul Drive to Half Road. The remainder of the property that is planned to be commercial (3.48 acres), residential (28 acres), and the area designated as “Not A Part” (2.14 acres) would be analyzed in the EIR at a program-level and future developments on those sites would need to prepare Phase I/II. In addition, the future extension of Avenida de las Padres would also require Phase I/II be completed at the time of a project-level review.

Utilities

The EIR will discuss the project’s potential to impact utilities and assess water and wastewater demand and supply based upon a Water Supply Assessment (WSA) prepared by *Todd Groundwater* under contract to DJP&A. The WSA, which is required due to the General Plan Amendment and the projected water demand not already being covered by the WSA prepared for the General Plan EIR, will evaluate water supply and demand for the project during normal and drought conditions with five-year incremental projections to the year 2040. Water supply and demand will be compared to assess the sufficiency of water supply for the project.

The project site was previously used for agricultural uses and therefore the WSA includes evaluation of recent historical water demand to define the net change in water demand by the project. Existing water demand would be calculated for the site using data from the City (as available) and/or applying water demand factors, including estimates of agricultural water use, if needed. Any significant impacts will be identified, as necessary.

Cumulative Impacts

In conformance with CEQA Guidelines Section 15130, the EIR will include a discussion of cumulative impacts from the project in combination with other past, pending and reasonably probable future development in the area, based on projections for development according to General Plan buildout. The EIR will analyze and describe any significant cumulative impacts to which the project may contribute.

Alternatives

The EIR will evaluate possible alternatives to the proposed project based on the results of the environmental analysis. The alternatives discussion will focus on those alternatives that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant environment effects (CEQA Guidelines Section 15126.6). DJP&A will coordinate with the City staff to identify the alternatives to be analyzed in the EIR; however, it is currently anticipated that the alternatives to be evaluated in the EIR could include the following:

1. No Project Alternative;
2. Reduced Scale Alternative;
3. Location Alternative(s);
4. Design Alternative;
5. Environmentally superior alternative (to be chosen from one of the above).

This section will evaluate the impacts of each alternative as required by CEQA (Guidelines Section 15126.6) and based on the “rule of reason.” The alternatives discussion will describe the environmental impacts and benefits of the alternatives, and compare them with the proposed project’s impacts and their ability to achieve project objectives. In accordance with CEQA, the EIR will identify an environmentally superior alternative from the alternatives described, based on the number and degree of associated environmental impacts.

Other Required Sections

The above discussions identify and highlight the major issues to be addressed in the proposed EIR. In conformance with the CEQA Guidelines, the EIR will also contain other sections, including: 1) Significant Unavoidable Impacts; 2) Growth Inducing Impacts; 3) Significant Irreversible Environmental Changes; 4) EIR References and Organizations & Persons Consulted; and 5) EIR Authors.

Task 2: Draft Focused EIR and Notice of Completion

Revision of Administrative Draft EIR/Preparation of Draft EIR

Once the City provides DJP&A with comments on the ADEIR (and Initial Study appendix), DJP&A will revise the document and submit a second Administrative Draft for review and comment. DJP&A will revise the document and submit an electronic copy of the Screencheck Draft EIR to the City for final review and comment. DJP&A will make any final revisions to the Screencheck Draft EIR and prepare the Draft EIR for public circulation.

DJP&A will provide the City with up to 35 hard copies of the Draft EIR for public distribution, a PDF of the document for posting on the City’s website, as well as 15 hardcopies of the executive summary and 15CDs of the entire document for submittal to the State Clearinghouse.

Notice of Completion/Notice of Availability

DJP&A will prepare the Notice of Completion (NOC) and Notice of Availability (NOA), in accordance with the CEQA and City of Morgan Hill requirements. The NOC and NOA will include a brief description of the project, the project location, and will state where copies of the Draft EIR are available for review. DJP&A will submit an electronic draft of the NOC and NOA to the City for review and comment. DJP&A will revise and finalize the NOC and NOA based on City comments. This scope assumes the City will distribute the NOA locally, and DJP&A will transmit the NOC and copies of the EIR to the State Clearinghouse on behalf of the City.

Task 3: Final EIR, Mitigation Monitoring and Reporting Program, and Other Related Items

Preparation of Final EIR

Upon completion of the 45-day Draft EIR circulation period, DJP&A will prepare an Administrative Draft Final EIR. The Final EIR will contain the following:

- List of persons and agencies who commented on the Draft EIR;
- Responses to comments on the Draft EIR;
- Revisions to the EIR text, as necessary; and
- Copies of letters received on the Draft EIR.

This scope of work assumes approximately ten hours of Principal Project Manager time and 30 hours of Project Manager time to respond to comments. If additional effort is required to respond to the comments, it can be completed on a time and materials basis, in accordance with the fee schedule included with our on-call contract with the City. The participation of subconsultants in the preparation of the FEIR will require a supplemental scope based on the nature and extent of their support needed.

Up to 12 copies of the Administrative Draft Final EIR will be submitted to City Staff for review. The document will be revised per the comments received, and DJP&A will provide up to 25 copies of the Final EIR to the City for public distribution. DJP&A will also provide the City with a PDF of the document for posting on the City's website.

Preparation of Mitigation Monitoring and Reporting Program

DJP&A will prepare a draft MMRP for the project. The MMRP will summarize the mitigation measures identified, when mitigation measures will be implemented, who will be responsible for implementation, and who will provide oversight. DJP&A will submit a draft of the MMRP for the City's use prior to the project hearing.

Findings

Although we are not attorneys and do not prepare legal findings, DJP&A will assist City Staff and the City Attorney in compiling information from the EIR for findings required under CEQA Guidelines Section 15091, if requested to do so. This scope does not assume DJP&A's support in drafting a Statement of Overriding Considerations, should one be required.

Notice of Determination

If the project is approved, DJP&A will prepare a Notice of Determination (NOD), in accordance with CEQA and City of Morgan Hill requirements. The NOD will include a brief project description, date of project approval, determination of the project's environmental effects, mitigation measures and

conditions of approval, statement whether overriding considerations were adopted, and the location where the Final EIR and record of project approval may be examined.

DJP&A will submit an electronic copy of the draft NOD for the City's review. Based on comments received from the City, DJP&A will revise and finalize the NOD and file along with applicable CDFW filing fees at the County Clerk and SCH. An electronic copy of the finalized NOD will be submitted to the City.

Task 4: Meetings and Hearing Attendance, Project Management

Attendance of Meetings and Hearings

This scope of work includes DJP&A Principal and Project Manager attendance at up to two project/community meetings and two public hearings (e.g., one Planning Commission hearing and one City Council hearing). DJP&A can attend additional public hearings or meetings requested on a time and materials basis.

Project Management

DJP&A will provide general EIR project management, contract administration, and coordination with the City and project team throughout the EIR process. The DJP&A Project Manager will coordinate with the City on a regular basis using email and telephone communications.

Estimated Schedule

DJP&A proposes the following optimum schedule for preparation of the EIR. DJP&A can commit to maintain the schedule in the areas that are within our control. Completion of the EIR, as outlined in the schedule below, is based upon receipt of project information listed on the following page in accordance with the schedule. Delays in receiving requested information or responses by others will result in at least day-for-day delays in the overall schedule. The schedule is expected to take 40 weeks to have the project eligible for Planning Commission hearing (i.e. 10 days after release of FEIR), which if authorized by end of February, allows for public hearings in first week of December 2019.

Task	Duration of Task	Time Elapsed
1. DJP&A receives authorization to proceed and requested project information	---	1 day
2. DJP&A submits project description and NOP for City review	0.5 week	Week 0.5
3. City provides all comments on project description and NOP	0.5 weeks	Week 1
4. DJP&A revises NOP and provides to City for public circulation	0.5 week	Week 1.5
5. Circulation of NOP complete and responses provided to DJP&A (scoping meeting scheduled during 30-days)	4 weeks	Week 5.5
6. DJP&A receives technical reports*	14 weeks	Week 14
7. DJP&A submits Administrative Draft EIR (ADEIR)	2 weeks	Week 16
8. City staff review of ADEIR	3 weeks	Week 19
9. DJP&A revises ADEIR, prepared 2 nd ADEIR	2 weeks	Week 21
10. City staff review of 2 nd ADEIR complete	2 weeks	Week 23
11. DJP&A prepares Screencheck Draft EIR	1 week	Week 24
12. City staff review of Screencheck Draft EIR	0.5 week	Week 24.5
13. DJP&A makes final revisions and prints Draft EIR for circulation	0.5 week	Week 25

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14. Draft EIR 45-day Public Review	6.5 weeks	Week 31.5
15. DJP&A prepares Administrative Draft Final EIR (ADFEIR)	2.5 weeks	Week 34
16. City staff reviews ADFEIR	2 weeks	Week 36
17. DJP&A revises ADFEIR and submits Screencheck Final EIR	1 weeks	Week 37
18. City staff reviews and approves Screencheck Final EIR	1 week	Week 38
19. DJP&A revises Screencheck FEIR and print Final EIR for circulation	0.5 week	Week 38.5
20. City circulates Final EIR for 10 days	1.5 weeks	Week 40
21. Public Hearings	TBD	TBD
Total		+/- 40 weeks

*The traffic report will take 14 weeks and drives the overall schedule. If the City were to rely solely on VMT to evaluate the project, per SB 743 amendments, the schedule could be reduced substantially. Should the City desire to begin reviewing the 1st ADEIR ahead of the TIA, a 1st ADEIR without Traffic section (and related discussions of Cumulative Traffic and Alternative(s) designed to avoid traffic impacts), could be provided 2-4 weeks earlier, based on completion of AQ/GHG and Noise technical reports. The Traffic section would be added to the EIR as part of the 2nd Admin Draft. This approach would not have an effect on the overall schedule.

Project Information Required from Trammell Crow

Our scope and schedule are based on the assumption that we will receive the below project information concurrent with the authorization to proceed.

Plans (in PDF)

- ☐ Project plans, including landscaping plan, stormwater control plan, utility plan, grading plan, and parking and circulation plan
- ☐ Building elevations/cross-sections
- ☐ Renderings (if available)
- ☐ Lighting plan

Project Details

- ☐ Written description of the project, including maximum development assumptions and discretionary approvals
- ☐ Construction details, including duration, maximum depth of excavation, and total amount of cut/fill
- ☐ Utility improvements (if any)
- ☐ Right of way improvements (if any)
- ☐ Green building measures, LEED or Greenpoint certification details
- ☐ List of Best Management Practices to conform to Provisions C.3 of the NPDES permit
- ☐ Project objectives

Technical Reports

- ☐ Phase I/II reports (received)
- ☐ Arborist Report
- ☐ Geotechnical Investigation (received)

Cost Estimate

Based on our understanding of the project and technical reports required, the cost for preparation of the EIR is estimated not to exceed **\$229,844**. Should the City prefer, a 10% contingency could be included in the contract to allow for unanticipated tasks, in which case the amount would be \$252,828. Use of funds from the contingency would only be as authorized by the City. Payment will be due on a monthly basis. A breakdown of the cost estimate is provided below. Costs will be charged on a time and materials basis, commensurate with work completed, in accordance with the charge rate schedule outlined on the following page. If DJP&A does not need all the time that has been budgeted, we will only bill for the time actually spent completing the work.

This scope is valid for 90 days and assumes that no issues that arise would require any additional technical analysis or documentation. In the event additional technical analysis is required, we can complete that work on a time and materials basis, upon your authorization. Project description changes after our notice to proceed is received may have schedule and budget implications.

David J. Powers & Associates, Inc.

- | | |
|--|----------|
| • Preparation of Environmental Impact Report | \$65,385 |
| • Reimbursables (travel, printing, etc.)* | \$3,272 |
| • CDFW Filing Fee and NOD Fee | \$3,321 |

Subconsultants*

- | | |
|---|----------|
| • Hexagon Transportation Consultants (Traffic) | \$88,550 |
| • Urban Programmers (Historic Resources Evaluation) | \$6,009 |
| • Todd Groundwater (WSA) | \$24,967 |
| • Illingworth & Rodkin (Noise) | \$14,030 |
| • Illingworth & Rodkin (AQ) | \$13,455 |
| • Illingworth & Rodkin (GHG) | \$3,795 |
| • Basin Research Associates (archaeology) | \$6,785 |

Total	\$229,844
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Total with 10% Contingency	\$252,828
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* Subconsultant and reimbursable expenses include our standard 15 percent administrative fee.

EXHIBIT B - SCHEDULE OF COMPENSATION RATES

CHARGE RATE SCHEDULE¹

SENIOR PRINCIPAL	\$ 250.00 PER HOUR
PRINCIPAL PROJECT MANAGER	\$ 220.00 PER HOUR
SENIOR ENVIRONMENTAL SPECIALIST	\$ 195.00 PER HOUR
SENIOR PROJECT MANAGER	\$ 175.00 PER HOUR
ENVIRONMENTAL SPECIALIST	\$ 160.00 PER HOUR
PROJECT MANAGER	\$ 150.00 PER HOUR
ASSOCIATE PROJECT MANAGER	\$ 135.00 PER HOUR
ASSISTANT PROJECT MANAGER	\$ 110.00 PER HOUR
RESEARCHER	\$ 95.00 PER HOUR
DRAFTSPERSON/GRAPHIC ARTIST	\$ 85.00 PER HOUR
DOCUMENT PROCESSOR/QUALITY CONTROL	\$ 85.00 PER HOUR
ADMINISTRATIVE MANAGER	\$ 85.00 PER HOUR
OFFICE SUPPORT	\$ 70.00 PER HOUR

MATERIALS, OUTSIDE SERVICES AND SUBCONSULTANTS INCLUDE A 15% ADMINISTRATION FEE.

MILEAGE WILL BE CHARGED PER THE CURRENT IRS STANDARD MILEAGE RATE AT THE TIME COSTS OCCUR.

SUBJECT TO REVISION JANUARY 2012

¹ David J. Powers & Associates, Inc. provides regular, clear and accurate invoices as the work on this project proceeds, in accordance with normal company billing procedures. The cost estimate prepared for this project does not include special accounting or bookkeeping procedures, nor does it include preparation of extraordinary or unique statements or invoices. If a special invoice or accounting process is requested, the service can be provided on a time and materials basis.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO MORGAN HILL JET ELECTRIC ON-CALL MAINTENANCE SERVICE AGREEMENT

RECOMMENDATION(S)

Approve the Second Amendment to the on-call maintenance service agreement with Morgan Hill JET Electric, Inc. for an additional \$15,000 in services increasing the total contract amount to \$100,000 for the term through June 30, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this item is to provide the Council with an opportunity to consider a second amendment to the City's on-call electrical maintenance service agreement with Morgan Hill JET Electric, Inc. The current not to exceed amount of the maintenance service agreement is \$85,000. This second amendment would bring the not to exceed amount to \$100,000, an increase of \$15,000. The additional \$15,000 is needed to cover maintenance related projects through the remainder of the term, June 30, 2019. These projects include tennis court lights, the corporation yard LED light project, various parks LED lighting projects, concert exit lights and additional electrical outlets at the Community and Cultural Center.

Morgan Hill JET Electric, Inc. has provided electrical maintenance services to the City of Morgan Hill for many years. Maintenance staff is very satisfied with the level of service provided by this electrician. Staff recommends increasing their maintenance service agreement by \$15,000 for a new total contract amount of \$100,000. While there are two other electricians on-call with the City, maintenance staff has found JET Electric to be the most responsive to work requests.

COMMUNITY ENGAGEMENT: Not Applicable

Electrical maintenance services are normally expected to be performed at City facilities, therefore no community engagement was completed for this contract.

ALTERNATIVE ACTIONS:

The Council could reject this Second Amendment and provide direction to staff to work with other on-call electricians until the new on-call electrical agreements are in place on July 1, 2019. The City has released a Request for Proposals (RFP) for on-call

electrician services. Staff anticipates returning to Council with the RFP results and a recommendation on June 5, 2019.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The First Amendment to JET Electric's Maintenance Service Agreement was approved by the City Council on May 16, 2018.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this maintenance service agreement will be \$100,000. Budgetary appropriations for the additional on-call electrical maintenance services are included in the adopted Fiscal Year 2018-19 Budget for the various city facilities and cost centers receiving services under this agreement. No additional appropriations are needed at this time.

CEQA (California Environmental Quality Act):

Categorical Exemption.

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Morgan Hill JET Electric Second Amendment

SECOND AMENDMENT TO AGREEMENT MORGAN HILL J.E.T. ELECTRIC, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and MORGAN HILL J.E.T. ELECTRIC, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement made as of September 27, 2016, for services for a maximum compensation of FORTY-FIVE THOUSAND AND 00/100 DOLLARS (\$45,000.00) ("MAINTENANCE SERVICE AGREEMENT").
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of May 24, 2018, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$85,000.00). The MAINTENANCE SERVICE AGREEMENT and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Total compensation to SERVICE PROVIDER under this Agreement during the term set forth in Section 2 above shall not exceed ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00). Effective July 1, 2018, CITY shall be billed based on the rate and basis set forth in revised **Exhibit B** Schedule of Compensation Rates dated April 26, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement."

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or the FIRST AMENDMENT, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

MORGAN HILL J.E.T. ELECTRIC, INC

Donald A. Larkin, City Attorney

Date: _____

By: _____

Title: JAMES E. TARP - PRESIDENT

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 3/21/19

Karen L. Tarp

By: _____

Title: Karen L. Tarp Secretary

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 3/21/19

12804-16-02

**FIRST AMENDMENT TO AGREEMENT
MORGAN HILL J.E.T. ELECTRIC, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on May 24, 18 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, MORGAN HILL J.E.T. ELECTRIC, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on May 16, 2018.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of September 27, 2016, for services for a maximum compensation of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "1," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from September 27, 2016, until June 30, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Total compensation to SERVICE PROVIDER under this Agreement during the term set forth in Section 2 above shall not exceed EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$85,000.00). Effective July 1, 2018, CITY shall be billed based on the rate and basis set forth in revised **Exhibit B** Schedule of Compensation Rates dated April 26, 2018, attached hereto and incorporated herein by this reference. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"9. Compliance with Law.

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the

City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section."

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST

Deputy

City Clerk

Date:

5/30/18

APPROVED AS TO FORM:

for

City Attorney

Date:

5-21-18

CITY OF MORGAN HILL

City Manager

Date:

5/24/18

MORGAN HILL J.E.T. ELECTRIC, INC.

By:

Title:

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

By:

Title:

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date:

JET Electric, Inc.
First Amendment to Agreement
Revised Exhibit "B" - Schedule of Compensation Rates

JET Electric
16230 Church St.
Morgan Hill, CA 95037
Lic. #342193
(408) 779-6695

April 26, 2018

City Of Morgan Hill
17575 Peak Ave.
Morgan Hill, Ca. 95037

Re: Exhibit B - New Schedule of Compensation Rates starting July 1, 2018

Normal Working Hours (8:00 a.m. to 4:30 p.m.) Monday through Friday: \$205.00 per hour. After Hours Charged at time and a half normal rates (1.5 times x \$205.00): \$307.50 per hour. Trip Charge (Truck Charges) are \$50.00 per invoice for normal working hours and after hours.

Jim Tarp
Owner
JET Electric

128-04-16-027

EXHIBIT "1"

MAINTENANCE SERVICE AGREEMENT
Morgan Hill J E T Electric, Inc.

THIS AGREEMENT is entered into and becomes effective on 9/27/14 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Morgan Hill J E T Electric, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2018 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be on-call electrical maintenance and repair services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$45,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed forty-five thousand dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to SERVICE PROVIDER during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to SERVICE PROVIDER during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work

product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws: SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

8. **Insurance Requirements.** SERVICE PROVIDER shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of SERVICE PROVIDER, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. SERVICE PROVIDER further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to SERVICE PROVIDER, at any time as deemed necessary to protect the interests of the CITY.

8.1. **Insurance Types and Amounts.**

8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.1.2. Automobile Liability. SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. Professional Liability.
- 8.1.5.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 8.1.5.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware

engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.2. **Endorsements.** SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

8.2.1. **General Liability.**

8.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

8.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

8.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the SERVICE PROVIDER's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill

Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

9. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.
10. **Compliance with Law.**
 - 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
 - 10.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
 - 10.3. DIR Registration. The City will not accept a Bid Proposal from or enter into a contract with a Contractor, without first receiving proof to the satisfaction of City that Contractor and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Morgan Hill J E T Electric, Inc.
16230 Church Street, Ste. A
Morgan Hill, CA 95037

Address of CITY is as follows:

Director of Community Services	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

16. **Maintenance of Records.**

16.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

16.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY; it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

22. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

26. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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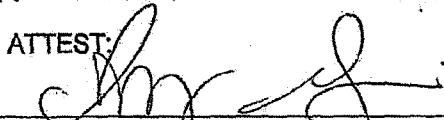
27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:


City Clerk/Deputy City Clerk

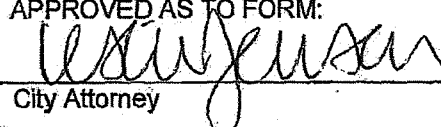
CITY OF MORGAN HILL


City Manager

for Michelle Wilson
Print Name

Date: 9/27/16

APPROVED AS TO FORM:


City Attorney

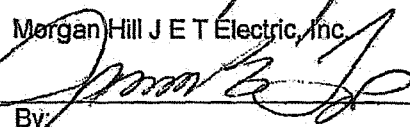
for Donald A. Larkin
Print Name

Date: 09/26/16

Steve Rymer
Print Name

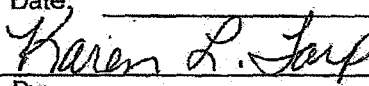
Date: 9/27/16

Morgan Hill JET Electric, Inc.


By:

Title: JAMES E. TARP - PRESIDENT
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date:


By:

Title: Karen L. Tarp - Secretary
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date:

342193

Contractor's License Number(s) (if applicable)

Expiration Date(s)

Seal:

P:\Forms\Consultant Agreements\City Maintenance Service Agreement 10-5-15.Docx

Attachment: Morgan Hill JET Electric Second Amendment (2255 : JET Electric Second Amendment)

EXHIBIT A SCOPE OF SERVICES

The State licensed Electrical Contractors will provide On-Call Electrical Maintenance and Repair Services at various City facilities. Contractor will provide full-service, on-call electrical maintenance and repair services and administer the duties and responsibilities, in compliance with all applicable laws, regulations, policies and procedures.

Services to be performed include the furnishing of all labor, materials, tools, equipment, supplies, services, tasks and incidental and customary work necessary to competently perform on-call electrical maintenance and repair work at various City facilities including, but not limited to those listed in Section 2-4 of this Exhibit A.

The work will include the provision of a total maintenance and repair program consisting of a variety of tasks including, but not limited to, laying out, installing, replacing, wiring and testing electrical service and electrical wire systems and components used to provide heat, light, power, air conditioning, and refrigeration in municipal buildings and facilities. Services may also include installing and repairing conduit and other materials; connecting electrical machinery, equipment and controls and transmission systems and servicing other electrical related issues as they arise and services necessary to insure safe, well maintained electrical systems for City employees and the public. The scope and number of projects and tasks are unknown at the time of contract execution.

The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform electrical maintenance.

The Contractor shall erect barricades, warning signs, and any other devices to prevent unauthorized access by the public or unauthorized City staff to work areas.

The Contractor shall respond to all requests for repairs or unscheduled emergency repairs as required, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for these calls shall be included in the proposal. Response time by the Contractor shall be within four (4) hours of all requests.

The Contractor will be responsible for providing labor, supervision, materials, equipment, transportation, service and the shop facilities necessary to perform high quality work. Contractor will also be responsible for discarding all used materials.

It is the intent of the City of Morgan Hill to identify and establish long term partnerships with highly qualified contractors. To achieve the best level of service, the City believes that the relationship must be based on mutual trust and respect. Teamwork, flexibility, and cooperation will be essential characteristics of the successful Contractor.

2-1 SCOPE OF SERVICE The Contractor shall provide full-service on-call electrical maintenance and repair services to City Facilities as outlined in this document. Contractor shall retain professional personnel who have successfully and competently provided municipal facility electrical maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to effectively repair and maintain, to the satisfaction of the City representative, all aspects of electrical systems in City defined facilities with minimal downtime. All maintenance and repairs shall be provided in accordance with the highest standards of the industry,

skill, workmanship, applicable trade practices, shall meet warranties and be in conformance to all applicable laws, codes and regulations. The successful Contractor's electrical maintenance and repairs shall, at a minimum, include but not be limited to the specifications outlined herein.

2-2 SERVICES TO BE PROVIDED It is the Contractor's responsibility to provide an appropriate level of staffing and provide appropriate tools and vehicles necessary to support all facility electrical maintenance and repair functions during hours of operation and for response after normal working hours. Proposer shall maintain the appropriate license and will comply with all other license, insurance and permit requirements of the City, State and Federal governments, as well as all other requirements of the law.

2-3 TERM OF SERVICE The term of the contract will be from October 1, 2016 through June 30, 2018. The contract may be canceled or any portion thereof at any time during the term of service and such cancellations shall be effective upon giving sixty (60) days written notice. The City, at its option, may renew this contract for up to three, one year periods, beginning on July 1, 2018. This option will be exercised only if the contractor has demonstrated superior performance in provision of On-Call Electrical Maintenance and Repair Services to the City.

Pricing entries in the Bid Proposal apply to the period of October 1, 2016 to June 30, 2018. If the contract is renewed, a 3% cost escalation will automatically be applied for each subsequent year beginning on July 1, 2018.

2-4 WORK HOURS Scheduled maintenance and repairs shall typically occur during normal business hours. Facility business hours are:

- Aquatics Center is open weekdays from 5:00 a.m. to 8:00 p.m., Saturdays from 7:00 a.m. to 12:00 p.m. (summer season to 6:30 p.m.), and Sundays 11:30 a.m. to 6:30 p.m. (summer season only).
- Centennial Recreation Center is an active facility on Weekdays from 5:00 a.m. to 10:00 p.m., Saturdays from 6:30 a.m. to 8:00 p.m., and on Sundays from 8:00 a.m. to 6:00 p.m.
- City Hall is open Monday-Friday 8:00 a.m. – 5 p.m.
- Chambers Building is open Monday-Friday 8:00 a.m. – 5 p.m.
- The Community and Cultural Center is open Monday-Friday 8:00 a.m. – 5 p.m.
- El Toro Youth Center is open Monday-Friday 2:00 p.m. – 6:00 p.m.
- The Friendly Inn is open Monday-Saturday 8:00 a.m. to 10:00 p.m.
- The Outdoor Sports Complex – coordinate hours with Project Manager, Dale Dapp
- The Police Department is open Monday-Friday 8 a.m. – 5:30 p.m.
- The Public Works Corporation Yard is open Monday-Thursday 6:30 a.m. – 4:00 p.m. and Fridays from 6:30 a.m. -3:00 p.m.
- The Villas are open Monday-Friday 8:00 a.m. – 5 p.m.
- Community Park Restrooms are open seven days a week 6 a.m. to 10 p.m.
- Galvan Park Restroom are open seven days a week 6 a.m. to 10 p.m.

2-5 SERVICE AVAILABILITY The contractor shall have trouble-call service available on a twenty-four hours a day, seven days a week basis with a response time not to exceed the following:

EMERGENCIES.....two (2) hour response time
NON-EMERGENCIES..... four (4) hour response time

Time to respond shall start when the City calls the problem into Contractor's designated emergency phone number. Additionally, the contractor shall provide the ability to respond immediately to

situations involving the health and safety of employees and/or the public and the comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of request by City Representative.

2-6 TROUBLE-CALL/REPAIR SERVICE Should the City request the contractor to make unscheduled, emergency electrical system repairs, the City shall be responsible for labor and travel costs associated therewith. These costs, as listed in the proposal, will be a critical part of the bid evaluation in determining the lowest responsive and responsible contractor. Rates shall be firm for the term of the contract. The City reserves the right to contract with others for trouble calls and repairs.

2-7 BILLABLE WORK The Contractor shall not bill for unnecessary repairs, for repairs that were not completed satisfactorily, for repairs that did not fix an identified problem, or for facility visits that are made by staff unqualified to complete needed repairs.

2-8 STAFFING, WORKMANSHIP AND QUALITY LEVEL The Contractor shall provide a staffing level to perform on-call electrical maintenance and repair services at designated City facilities in a thorough and professional manner, so that the City is provided with reliable and high quality electrical maintenance at all times. The Contractor shall possess and maintain a C-10 General Electrical license by the State of California Contractors Licensing Board through the term of the contract. All personnel performing work under this Contract shall possess and maintain a state Journeyman certification and be directly employed and supervised by the Contractor. Any assigned apprentice shall work directly under the supervision of a qualified journeyman. The Contractor shall provide management and technical supervision through competent supervisors as required. The Contractor shall be responsible for the skills, methods and actions of all employees, subcontractors and for all work done.

2-9 MAINTENANCE AND REPAIR LOCATIONS: including, but not limited to locations described in Section 2-4 above.

2-10 TOOLS AND EQUIPMENT The Contractor shall furnish and maintain all equipment necessary for properly servicing and maintaining electrical systems in City buildings. The City of Morgan Hill reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

2-11 PARTS AND MATERIALS The Contractor shall furnish all parts and materials necessary for properly maintaining and repairing electrical systems in City buildings. Mark-up on parts and materials may not exceed 10% of Contractor's cost. Invoices must identify the work performed, cost of labor, parts/materials used, parts/materials cost, and parts/materials mark-up cost.

2-12 INSPECTIONS AND REMEDIES So as to ensure consistent quality of the work being performed, the City Representative will perform periodic inspections of electrical systems to ensure compliance with the contract specifications. Inspections may be made by the City at any time to confirm that work performed meets specifications. If corrective work is required, the City will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the City may perform the work using others and deduct the cost from the Contractor's payment.

2-13 DAMAGES The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

2-14 SAFETY & SECURITY The Contractor and staff shall follow all established safety procedures and shall take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors at the conclusion of work in each room. All exterior doors should remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.

2-15 FINGERPRINTING (Live Scan State of California Criminal Records Check): All Contractor staff who will be working on City facilities must pass a State of California Department of Justice Criminal Records Check. Fingerprinting Appointments can be scheduled at the Morgan Hill Police Department (16200 Vineyard Boulevard, Morgan Hill) by calling 408-776-7300. Live Scan (Criminal Records Check Request) Forms are available at www.morganhill.ca.gov (Department Tab: Police Department Link) and the fingerprint fee is \$52.00 per person (payable at the time of the appointment). The Contractor is responsible for providing the City of Morgan Hill with updated records check information for their employees.

2-16 EMERGENCY SITUATIONS For medical or public safety emergencies occurring at the Facilities call 9-1-1. For all building maintenance emergencies (water leaks, etc.) contact the Maintenance Manager or designated staff to report the issue immediately (24-hours/day).

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Normal Working Hours (8:00 a.m. to 4:30 p.m.) Monday through Friday: \$185.00 per hour

After Hours Charged at time and a half normal rates (1.5 times X \$185): \$277.50 per hour

Trip Charge (Truck Charges) are \$40.00 per invoice for normal working hours and after hours.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

To be scheduled with City of Morgan Hill Maintenance Manager or other appropriate city staff.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Hilary Holeman, Administrative Analyst
APPROVED BY: City Manager

RATIFY CITY POSITION ON PENDING LEGISLATION AB 1783 H-2A WORKER HOUSING: STATE FUNDING: STREAMLINED APPROVAL PROCESS FOR AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT

RECOMMENDATION(S)

1. Receive legislative correspondence in support of AB 1783 (R. Rivas) "H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development"; and
2. Ratify City's position.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

Regional Initiatives
Homelessness
Housing

REPORT NARRATIVE:

Per Resolution No. 6851, the City Council recognizes occasional situations arise where communication indicating support or opposition on pending State legislation is timely and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position on pending legislation as long as the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy. When this occurs, a written report to the City Council for comment and acceptance is required at the next possible meeting.

On March 26, 2019, the office of State Assembly Member Robert Rivas requested the City's support of farmworker housing bill AB 1783 before the rollout of the bill on April 2, 2019. AB 1783 would continue to provide access to state resources and add a streamlined process to build dignified, quality housing for farmworkers and their families. By developing long-term, permanent housing on their own land, an agricultural

company would have the opportunity to retain and develop a more knowledgeable workforce. Through its focus on family housing, this bill also seeks to address the children's homelessness crisis in our community and improve continuity of education.

The City feels strongly about improving farmworker living conditions in South County and therefore submitted a letter of support (Attachment No. 3) electronically on March 28, 2019 via the California Legislature Advocates Portal, before the April 2, 2019 rollout as requested.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the letter that the City sent regarding AB 1783.

ALTERNATIVE ACTIONS:

Council could rescind position taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

No fiscal impact at this time. Tracking legislation is an activity included in the annual workplan of the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project - Proposals for legislation to be enacted by the State Legislature.

LINKS/ATTACHMENTS:

1. Resolution 6851
2. AB1783 Farmworkers Housing Bill Text
3. AB 1783 Farmworker Housing Letter of Support

RESOLUTION NO. 6851

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE LEGISLATION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report entitled "City Position on Pending State Legislation" submitted for City Council consideration at its meeting of April 16, 2014, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which meeting the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council prefers, whenever possible, that determinations on whether to take a position on pending State legislation be brought before

the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State legislation that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State legislation that may have impacts upon City when all of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending State legislation or the City has otherwise become aware of such pending State legislation; and
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending State legislation is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending State legislation; and
 - iii. The pending State legislation clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending State legislation.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending State legislation pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending State legislation and the comment or position transmitted.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 16th day of April, 2014 by the following vote:

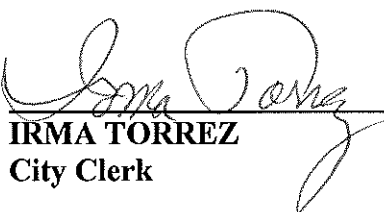
AYES: **COUNCIL MEMBERS:** Rich Constantine, Marilyn Librers, Gordon Siebert, Steve Tate

NOES: **COUNCIL MEMBERS:** None

ABSTAIN: **COUNCIL MEMBERS:** None

ABSENT: **COUNCIL MEMBERS:** Larry Carr

ATTEST:


 IRMA TORREZ
 City Clerk

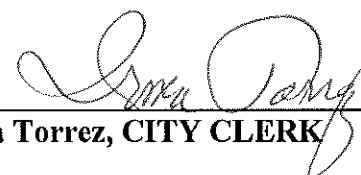

 STEVE TATE, Mayor

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 6851, adopted by the City Council at the meeting held on April 16, 2014.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 4/21/2014


 Irma Torrez, CITY CLERK

AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1783

Introduced by Assembly Member Robert Rivas

(Coauthors: Senators Durazo and Wiener)

February 22, 2019

An act to amend Sections 12745, 12760, 12767, 12787, and 65582.1 of, and to add Section 12788 to, the Government Code, *and* to amend Sections 17008, 17021, 17021.6, 17030, 17035, 17037, 17037.5, 50470, 50517.10, and 50715 of, and to add Sections 17021.8, 17030.10, and 50205 to, the Health and Safety Code, ~~and to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code,~~ relating to agricultural employee housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1783, as amended, Robert Rivas. H-2A worker housing: state funding: ~~tax credits~~: streamlined approval process for agricultural employee housing development.

(1) Existing federal law governing immigration authorizes the importation of an alien as a nonimmigrant agricultural worker, known as an H-2A worker, if specified requirements are met, including that the employer furnish housing, as provided.

~~(A) Existing~~

Existing state law establishes various housing programs administered by the Department of Housing and Community Development, including the Joe Serna, Jr. Farmworker Housing Grant Program, pursuant to which the department provides, subject to availability of funds, grants and loans to specified entities ~~or for~~ *for* the construction or rehabilitation of housing for agricultural employees and their families or for the

acquisition of manufactured housing, as provided. Existing state law, the California Community Services Block Grant Program, requires the ~~department~~ *Department of Community Services and Development* to administer the federal Community Services Block Grant funds to provide financial assistance for activities designed to have a measurable and potentially major impact on causes of poverty in a community or areas of a community where poverty is a particularly acute problem. Existing law authorizes this funding to assist programs that, among other things, meet the needs of migrant and seasonal farmworkers and their families, such as improved housing and sanitation, including the provision and maintenance of emergency and temporary housing and sanitation facilities.

This bill would prohibit the provision of state funding, as defined, for the purposes of planning, developing, or operating any housing used to comply with the federal law requirement to furnish housing to H-2A workers and would require an employer, as defined, or other recipient of state funding who utilizes state funding for these purposes to reimburse the state or state agency that provided the funding in an amount equal to the amount of that state funding expended for those purposes. The bill would exempt from these provisions any contract or other enforceable agreement pursuant to which the state or a state agency provides funding that was entered into prior to January 1, 2020. The bill would also make various conforming changes to other laws.

~~(B) Existing law establishes a low-income housing tax credit program pursuant to which the California Tax Credit Allocation Committee provides procedures and requirements for the allocation of state insurance, personal income, and corporation tax credit amounts among qualified low-income housing projects in modified conformity to federal law that have been allocated, or qualify for, a federal low-income housing tax credit, and for farmworker housing. Existing law allows a state credit, which is not dependent on receiving a federal low-income housing credit, of \$500,000 per calendar year for projects to provide farmworker housing. Existing law additionally allows an amount of any unallocated or returned credits, as specified, until fully exhausted for projects to provide farmworker housing. Existing law defines "farmworker housing" to mean housing for agricultural workers that is available to, and occupied by, only farmworkers and their households.~~

~~This bill, under the law governing the taxation of insurers, the Personal Income Tax Law, and the Corporation Tax Law, would prohibit the~~

~~above-described tax credits for any farmworker housing used to comply with the federal law requirement to furnish housing to H-2A workers.~~

(2) The Planning and Zoning Law requires that the housing element of a city's or county's general plan include, among other things, that the housing element of a city's or county's general plan include, among other things, an analysis of any special housing needs, including the needs of, among others, farmworkers. Existing law exempts certain housing developments from conditional use permits and requires those developments to be subject to certain streamlined approval processes, as specified.

Existing law, the Employee Housing Act, requires a person operating employee housing, as defined, to obtain a permit to operate that housing from the agency that enforces the act, which ~~can~~ *may* either be the Department of Housing and Community Development or a city, county, or city and county that assumes responsibility for enforcing the act. The act generally reserves local use zone requirements to local governments except as provided, including requiring a specified streamlined approval process for ~~the~~ certain improvements related to employee housing for agricultural employees. The act also deems ~~certain~~ *employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household to be* an agricultural land use and prohibits a local government from requiring a conditional use permit, zoning variance, or other zoning clearance for the employee housing, or from subjecting the employee housing to certain taxes or fees that are not required for other agricultural activity in that zone. A violation of the act is a misdemeanor.

This bill would expand the definition of employee housing under the act to include agricultural employee housing, as defined, and would require the department to be the enforcement agency for agricultural employee housing. The bill would provide that a tenant residing in agricultural employee housing has all rights applicable to a person residing in employee housing under existing provisions, including the California Fair Employment and Housing Act and specified provisions relating to tenant rights. The bill would require the department to establish and administer, as specified, an application and review process for certifying that a person is an affordable housing organization qualified to operate *specified* agricultural employee housing. The bill also would require the department to establish and maintain a roster of all certified affordable housing organizations. The bill would, as an exception to the provision reserving local use zone requirements to

local governments, authorize a development proponent to submit an application for an agricultural employee housing development that is subject to an unspecified streamlined, ministerial approval process and that is not subject to a conditional use permit if certain conditions are satisfied, including that the agricultural employee housing will be maintained and operated by a qualified affordable housing organization that has been certified by the department and has been issued a permit to operate the agricultural employee housing from the department. *The bill would provide that agricultural employee housing approved under this process is not subject to the density limitations otherwise required to be considered an agricultural land use and exempt from local approval, taxes, and fees, as described above.* The bill would also require, as a condition of that approval process, the qualified affordable housing organization and the landowner to obligate themselves and any successors in interest to maintain the affordability of the proposed agricultural employee housing, as specified, for not less than 55 years. If that organization does not continue to operate and maintain the housing for the time period agreed to satisfy that condition, the bill would require the landowner *who obtained approval of the housing* to select an alternative certified person within 90 days, and would subject the landowner to an unspecified administrative penalty if the landowner fails to do so. By increasing the duties of local officials with respect to the Employee Housing Act, and by expanding the scope of an existing crime with respect to violations of the Employee Housing Act, this bill would impose a state-mandated local program. The bill would make related findings and declarations, and would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities. The bill would make various conforming changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the

environment. CEQA does not apply to the approval of ministerial projects.

Because the approval process established by the bill is streamlined and ministerial in nature, the approval of projects subject to this process are exempt from CEQA.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

~~This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12745 of the Government Code is
- 2 amended to read:
- 3 12745. (a) Eligible activities for which financial assistance
- 4 may be obtained pursuant to this chapter shall be designed to have
- 5 a measurable and potentially major impact on causes of poverty
- 6 in the community or those areas of the community where poverty
- 7 is a particularly acute problem. These activities shall be designed
- 8 to assist low-income participants to do all the following:
- 9 (1) Secure and retain meaningful employment.
- 10 (2) Attain an adequate education.
- 11 (3) Make better use of available income.
- 12 (4) Obtain and maintain adequate housing and suitable living
- 13 environment subject to Section 12788.
- 14 (5) Obtain emergency assistance through loans or grants to meet
- 15 immediate and urgent individual and family needs, including the
- 16 need for health services, nutritious food, housing and
- 17 employment-related assistance subject to Section 12788.
- 18 (6) Remove obstacles and solve problems that block the
- 19 achievement of self-sufficiency.
- 20 (7) Achieve greater participation in the affairs of the community.
- 21 (8) Address the needs of youth in low-income communities.

1 (9) Make more effective use of other programs related to the
2 purposes of this chapter.

3 (b) Additionally, activities shall be designed to do all of the
4 following:

5 (1) Provide on an emergency basis for the provision of the
6 supplies and services, nutritious foodstuffs, and related services,
7 as may be necessary to counteract conditions of starvation and
8 malnutrition among the poor.

9 (2) Coordinate and establish linkages between governmental
10 and other social services programs to assure the effective delivery
11 of those services to low-income individuals.

12 (3) Encourage the use of entities in the private sector of the
13 community in efforts to ameliorate poverty in the community.

14 (c) Each eligible entity shall, through the local planning process,
15 select and propose for funding the programs or projects that, in its
16 judgment, will produce the maximum impact on its community.

17 (d) Entities eligible for funding under Article 9 (commencing
18 with Section 12775) are limited purpose agencies that need not
19 respond to the broad range of eligible activities but may provide
20 specialized training, technical assistance and support services to
21 enhance the effectiveness of community action programs, migrant
22 and seasonal farmworker programs, and American Indian programs.

23 (e) The department may prescribe statewide priorities among
24 eligible activities or strategies that shall be considered and
25 addressed in the local planning process and described in the
26 community action plan submitted to the state. Each eligible entity
27 shall be authorized to set its own program priorities in conformance
28 to its own determination of local needs.

29 (f) If no other entity in the community provides those services,
30 eligible entities under Article 6 (commencing with Section 12750),
31 Article 7 (commencing with Section 12765), or Article 8
32 (commencing with Section 12770) shall provide a minimum level
33 of services to help the poor receive the benefits for which they are
34 eligible under health, food, income, and housing assistance
35 programs designed to meet the basic survival needs of the poor
36 subject to Section 12788. These services shall include, but shall
37 not be limited to, all of the following:

38 (1) A service to help the poor complete the various required
39 application forms, and, when necessary and possible, to help them
40 gather verification of the contents of completed applications.

1 (2) A service to explain program requirements and client
2 responsibilities in programs serving the poor.

3 (3) A service to provide transportation, when necessary and
4 possible.

5 (4) A service that does all things necessary to make the programs
6 accessible to the poor, so that they may become self-sufficient.

7 (g) Standards of effectiveness to be addressed and attained in
8 setting goals and assessing accomplishments are:

9 (1) Strengthened community capabilities for planning and
10 coordinating so as to insure that available assistance related to the
11 elimination of poverty can be more responsive to local needs and
12 conditions.

13 (2) Better organization of services related to the needs of the
14 poor.

15 (3) Maximum feasible participation of the poor in the
16 development and implementation of all programs and projects
17 designed to serve the poor.

18 (4) Broadened resource base of programs directed to the
19 elimination of poverty so as to include all elements of the
20 community able to influence the quality and quantity of services
21 to the poor.

22 (5) Greater use of new types of services and innovative
23 approaches in attacking causes of poverty, so as to develop
24 increasingly effective methods of employing available resources.

25 (6) Maximum employment opportunity, including opportunity
26 for further occupational training and career development for
27 residents of the area and members of the groups served.

28 (7) Those programmatic and fiscal standards set by the
29 department through regulation that are necessary to enable the
30 department to demonstrate the assurances and certifications it
31 makes to the secretary in the state plan.

32 (h) In administering the California Community Services Block
33 Grant Program, the department shall enforce all the programmatic
34 and fiscal requirements and standards of effectiveness provided
35 by this chapter, except that no eligible entity shall be determined
36 to be out of compliance with programmatic or fiscal requirements
37 established by the department until those requirements and
38 standards are published for review and comment by the eligible
39 entities and until eligible entities are afforded a reasonable
40 opportunity to comply therewith.

SEC. 2. Section 12760 of the Government Code is amended to read:

12760. Subject to Section 12788, community action agencies funded under this article shall coordinate their plans and activities with other eligible entities funded under Articles 7 (commencing with Section 12765) and 8 (commencing with Section 12770) that serve any part of their communities, so that funds are not used to duplicate particular services to the same beneficiaries and plans and policies affecting all grantees under this chapter are shaped, to the extent possible, so as to be equitable and beneficial to all community agencies and the populations they serve.

SEC. 3. Section 12767 of the Government Code is amended to read:

12767. Subject to Section 12788, programs assisted under this article may include projects or activities to do any of the following:

(a) Meet the immediate needs of migrant and seasonal farmworkers and their families, such as ~~day care~~ *daycare* for children and elderly persons, education, health services, improved housing and sanitation, including the provision and maintenance of emergency and temporary housing and sanitation facilities, legal advice and representation, and consumer training and counseling, and assistance in processing applications for legalization and citizenship.

(b) Promote increased community acceptance of migrant and seasonal farmworkers and their families.

(c) Equip unskilled migrant and seasonal farmworkers and members of their families, as appropriate, through education, training, and developmental programs to meet the changing demands in agricultural employment brought about by technological advancement and economic exigencies, and to take advantage of opportunities available to improve their well-being and self-sufficiency by gaining regular or permanent employment or by participating in available federally assisted employment or training programs.

(d) Provide such other services as are permissible under Section 12745 with specific focus on the needs of migrant and seasonal farmworkers and their families.

SEC. 4. Section 12787 of the Government Code is amended to read:

12787. Except as provided in Section 12788, this chapter shall not be construed to prohibit an eligible entity under Article 6 (commencing with Section 12750), Article 7 (commencing with Section 12765), or Article 8 (commencing with Section 12770), from applying for state discretionary funds, provided that no discretionary funding received by the eligible entity shall be used to duplicate services funded pursuant to other provisions of this chapter.

SEC. 5. Section 12788 is added to the Government Code, to read:

12788. On and after January 1, 2020, housing funded pursuant to this chapter shall not include housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers, as defined in Section 50205 of the Health and Safety Code. A person who receives funds made available pursuant to this chapter on or after January 1, 2020, and expends any of those funds for the purpose of planning, developing, or operating housing described in this article shall reimburse the department or other state agency that provided those funds, as provided in paragraph (2) of subdivision (b) of Section 50205 of the Health and Safety Code.

SEC. 6. Section 65582.1 of the Government Code is amended to read:

65582.1. The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:

(a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).

(b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).

(c) Restrictions on disapproval of housing developments (Section 65589.5).

(d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).

(e) Least cost zoning law (Section 65913.1).

(f) Density bonus law (Section 65915).

(g) Accessory dwelling units (Sections 65852.150 and 65852.2).

1 (h) By-right housing, in which certain multifamily housing ~~are~~
2 is designated a permitted use (Section 65589.4).

3 (i) No-net-loss-in zoning density law limiting downzonings and
4 density reductions (Section 65863).

5 (j) Requiring persons who sue to halt affordable housing to pay
6 attorney fees (Section 65914) or post a bond (Section 529.2 of the
7 Code of Civil Procedure).

8 (k) Reduced time for action on affordable housing applications
9 under the approval of development permits process (Article 5
10 (commencing with Section 65950) of Chapter 4.5).

11 (l) Limiting moratoriums on multifamily housing (Section
12 65858).

13 (m) Prohibiting discrimination against affordable housing
14 (Section 65008).

15 (n) California Fair Employment and Housing Act (Part 2.8
16 (commencing with Section 12900) of Division 3).

17 (o) Community redevelopment law (Part 1 (commencing with
18 Section 33000) of Division 24 of the Health and Safety Code, and
19 in particular Sections 33334.2 and 33413).

20 (p) Streamlining housing approvals during a housing shortage
21 (Section 65913.4).

22 (q) Housing sustainability districts (Chapter 11 (commencing
23 with Section 66200)).

24 (r) Streamlining agricultural employee housing development
25 approvals (Section 17021.8 of the Health and Safety Code).

26 SEC. 7. Section 17008 of the Health and Safety Code is
27 amended to read:

28 17008. (a) "Employee housing," as used in this part, means
29 any portion of any housing accommodation, or property upon
30 which a housing accommodation is located, if all of the following
31 factors exist:

32 (1) The accommodations consist of any living quarters, dwelling,
33 boardinghouse, tent, bunkhouse, maintenance-of-way car,
34 mobilehome, manufactured home, recreational vehicle, travel
35 trailer, or other housing accommodations, maintained in one or
36 more buildings or one or more sites, and the premises upon which
37 they are situated or the area set aside and provided for parking of
38 mobilehomes or camping of five or more employees by the
39 employer.

1 (2) The accommodations are maintained in connection with any
2 work or place where work is being performed, whether or not rent
3 is involved.

4 (b) (1) Except as provided in paragraphs (2) and (3), “employee
5 housing,” as used in this part, also includes any portion of any
6 housing accommodation or property upon which housing
7 accommodations are located, if all of the following factors exist:

8 (A) The housing accommodations or property are located in
9 any rural area, as defined by Section 50101.

10 (B) The housing accommodations or property are not maintained
11 in connection with any work or workplace.

12 (C) The housing accommodations or property are provided by
13 someone other than an agricultural employer, as defined in Section
14 1140.4 of the Labor Code.

15 (D) The housing accommodations or property are used by five
16 or more agricultural employees of any agricultural employer or
17 employers for any of the following:

18 (i) Temporary or seasonal residency.

19 (ii) Permanent residency, if the housing accommodation is a
20 mobilehome, manufactured home, travel trailer, or recreational
21 vehicle.

22 (iii) Permanent residency, if the housing accommodation is
23 subject to the State Housing Law and is more than 30 years old
24 and at least 51 percent of the structures in the housing
25 accommodation, or 51 percent of the accommodation if not
26 separated into units, are occupied by agricultural employees.

27 (2) “Employee housing” does not include a hotel, motel, inn,
28 tourist hotel, multifamily dwelling, or single-family house if all
29 of the following factors exist:

30 (A) The housing is offered and rented to nonagricultural
31 employees on the same terms that it is offered and rented to
32 agricultural employees.

33 (B) None of the occupants of the housing are employed by the
34 owner or property manager of the housing or any party with an
35 interest in the housing.

36 (C) None of the occupants of the housing have rent deducted
37 from their wages.

38 (D) The owner or property manager of the housing is not an
39 agricultural employer as defined in Section 1140.4 of the Labor

1 Code, or an agent, as it relates to the housing in question, of an
2 agricultural employer.

3 (E) Negotiation of the terms of occupancy of the housing is
4 conducted between each occupant and the owner of the housing
5 or between each occupant and a manager of the property who is
6 employed by the owner of the housing.

7 (F) The occupants are not required to live in the housing as a
8 condition of employment or of securing employment and the
9 occupants are not referred to live in the housing by the employer
10 of the occupants, the agent of the employer of the occupants, or
11 an agricultural employer as defined in Section 1140.4 of the Labor
12 Code.

13 (G) The housing accommodation was not at any time before
14 January 1, 1984, employee housing as defined in subdivision (a).

15 (3) "Employee housing," as defined by this subdivision, does
16 not include a hotel, motel, inn, tourist hotel, or permanent housing
17 as defined by subdivision (d) of Section 17010, that has not been
18 maintained, before January 1, 1984, or is not maintained on or
19 after that date, as employee housing, as defined in subdivision (a).

20 (c) If at any time before January 1, 1984, a housing
21 accommodation was employee housing, as defined in subdivision
22 (a), and on or after January 1, 1984, was employee housing, as
23 defined in subdivision (b), the owner and operator shall comply
24 with all requirements of this part. The owner and operator of any
25 other housing accommodation which is employee housing pursuant
26 to subdivision (b) shall be subject to the licensing and inspection
27 provisions of this part and shall comply with all other provisions
28 of this part, except that if any portion of the housing
29 accommodation is held out for rent or lease to the general public,
30 the construction and physical maintenance standards of the housing
31 accommodation shall be consistent with the applicable provisions
32 of the State Housing Law, Part 1.5 (commencing with Section
33 17910), the Manufactured Housing Act, Part 2 (commencing with
34 Section 18000); or the Mobilehome Parks Act, Part 2.1
35 (commencing with Section 18200). The owner or operator of the
36 employee housing shall designate all units or spaces which are
37 employee housing, as defined in this subdivision, for the purpose
38 of inspection and licensing by the enforcement agency, subject to
39 confirmation by the enforcement agency, based on all relevant
40 evidence.

(d) “Employee housing” does not include employee community housing, as defined by Section 17005.5, that has been granted an exemption pursuant to Section 17031.3; housing, and the premises upon which it is situated, owned by a public entity; or privately owned housing, including ownership by a nonprofit entity, and the premises upon which it is situated, financed with public funds equaling 50 percent or more of the original development or purchase cost.

(e) “Employee housing” means the same as “labor camp,” as that term may be used in this or other codes and, notwithstanding any local ordinance to the contrary in a general law or charter city, county, or city and county, shall be deemed a residential use if it exists in structures that are single-family houses or apartment houses as those terms are used in the State Housing Law (Part 1.5 (commencing with Section 17910)).

(f) (1) (A) “Employee housing,” as used in this part, also includes agricultural employee housing, as defined in paragraph (B).

(B) “Agricultural employee housing” means housing occupied by an employee of an agricultural employer, as defined in Section 1140.4 of the Labor Code, or by a farm labor contractor, as defined in Section 1682 of the Labor Code.

(2) A tenant residing in agricultural employee housing has all rights applicable to a person residing in employee housing, including the following:

(A) The right to file a verified complaint with the Department of Fair Employment and Housing alleging a violation of housing discrimination, or to assert any other right, under the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code).

(B) Any protections for tenants or lessees under the Civil Code or the Labor Code, except as otherwise provided in Section 17031.6.

(C) Any protection or right under the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code).

SEC. 8. Section 17021 of the Health and Safety Code is amended to read:

1 17021. (a) Except as provided in Sections 17021.5, 17021.6,
2 and 17021.8, local use zone requirements, local fire zones, property
3 line, source of water supply and method of sewage disposal
4 requirements are hereby specifically and entirely reserved to the
5 local jurisdictions.

6 (b) Notwithstanding any other law, with respect to a building
7 permit, grading permit, or other approval from a city or county
8 building department for the rehabilitation of real property
9 improvements that are or will be agricultural employee housing,
10 or from a city or county health department for the operation,
11 construction, or repair of a water system or waste disposal system
12 servicing agricultural employee housing, all of the following
13 processing requirements shall apply:

14 (1) The local building or health department shall have up to 60
15 calendar days to approve or deny a complete application or permit
16 request accompanied by applicable fees, or a shorter time period
17 if required by the Permit Streamlining Act (Chapter 4.5
18 (commencing with Section 65920) of Division 1 of Title 7 of the
19 Government Code). The local building or health department may
20 deny an application or permit request on procedural grounds only
21 if the denial occurs within 30 calendar days and the denial includes
22 an itemization of the procedural defects. The local building or
23 health department may deny an application or permit request on
24 substantive grounds if the denial includes an itemization of all
25 substantive defects.

26 (2) If the local building or health department does not approve
27 or deny the application or permit request within the period
28 prescribed by paragraph (1), then the Department of Housing and
29 Community Development may approve the application or permit
30 request if it determines that the plans are consistent with all
31 applicable building codes and health and safety requirements. At
32 that time, the applicant may initiate any work consistent with the
33 application or permit approved pursuant to this subdivision. Upon
34 completion of the work, any other state or local agency shall accept
35 the improvements as if the local building or health department had
36 approved them. However, if that other local agency identifies any
37 defects that would have resulted in that agency's disapproval of
38 the improvements or plans for improvement, the agency may
39 identify those defects and the applicant shall correct them. The
40 local building or health department shall inspect the plans and

1 improvements prior to and during rehabilitation and issue a
2 certificate of completion if the work is consistent with the plans
3 and all applicable building codes and health and safety
4 requirements.

5 (c) Nothing in this section shall be construed to exempt an
6 application or permit request from complying with the California
7 Environmental Quality Act (Division 13 (commencing with Section
8 21000) of the Public Resources Code).

9 (d) The Department of Housing and Community Development
10 may recover from a local building or health department costs
11 incurred to review an application or permit request in compliance
12 with paragraph (2) of subdivision (b). The amount recoverable
13 may not exceed the applicable plan check fee published by the
14 International Conference of Building Officials.

15 SEC. 9. Section 17021.6 of the Health and Safety Code is
16 amended to read:

17 17021.6. (a) The owner of any employee housing who has
18 qualified or intends to qualify for a permit to operate pursuant to
19 this part may invoke this section.

20 (b) Any employee housing consisting of no more than 36 beds
21 in a group quarters or 12 units or spaces designed for use by a
22 single family or ~~household~~ household, *or that is approved pursuant*
23 *to Section 17021.8*, shall be deemed an agricultural land use for
24 the purposes of this section. For the purpose of all local ordinances,
25 employee housing shall not be deemed a use that implies that the
26 employee housing is an activity that differs in any other way from
27 an agricultural use. No conditional use permit, zoning variance,
28 or other zoning clearance shall be required of this employee
29 housing that is not required of any other agricultural activity in
30 the same zone. The permitted occupancy in employee housing in
31 a zone allowing agricultural uses shall include agricultural
32 employees who do not work on the property where the employee
33 housing is located.

34 (c) Except as otherwise provided in this part, employee housing
35 consisting of no more than 36 beds in a group quarters or 12 units
36 or spaces designed for use by a single family or ~~household~~
37 *household, or that is approved pursuant to Section 17021.8*, shall
38 not be subject to any business taxes, local registration fees, use
39 permit fees, or other fees to which other agricultural activities in
40 the same zone are not likewise subject. This subdivision does not

1 forbid the imposition of local property taxes, fees for water services
 2 and garbage collection, fees for normal inspections, local bond
 3 assessments, and other fees, charges, and assessments to which
 4 other agricultural activities in the same zone are likewise subject.
 5 Neither the State Fire Marshal nor any local public entity shall
 6 charge any fee to the owner, operator, or any resident for enforcing
 7 fire inspection regulation pursuant to state law or regulations or
 8 local ordinance, with respect to employee housing consisting of
 9 no more than 36 beds in a group quarters or 12 units or spaces
 10 designed for use by a single family or household.

11 (d) For the purposes of any contract, deed, or covenant for the
 12 transfer of real property, employee housing consisting of no more
 13 than 36 beds in a group quarters or 12 units or spaces designed for
 14 use by a single family or ~~household~~ *household, or that is approved*
 15 *pursuant to Section 17021.8*, shall be considered an agricultural
 16 use of property, notwithstanding any disclaimers to the contrary.
 17 For purposes of this section, “employee housing” includes
 18 employee housing defined in subdivisions (b) and (c) of Section
 19 17008, even if the housing accommodations or property are not
 20 located in a rural area, as defined by Section 50101.

21 (e) The Legislature hereby declares that it is the policy of this
 22 state that each county and city shall permit and encourage the
 23 development and use of sufficient numbers and types of employee
 24 housing facilities as are commensurate with local need. This section
 25 shall apply equally to any charter city, general law city, county,
 26 city and county, district, and any other local public entity.

27 (f) If any owner who invokes the provisions of this section fails
 28 to maintain a permit to operate pursuant to this part throughout
 29 the first 10 consecutive years following the issuance of the original
 30 certificate of occupancy, both of the following shall occur:

31 (1) The enforcement agency shall notify the appropriate local
 32 government entity.

33 (2) The public agency that has waived any taxes, fees,
 34 assessments, or charges for employee housing pursuant to this
 35 section may recover the amount of those taxes, fees, assessments,
 36 or charges from the landowner, less 10 percent of that amount for
 37 each year that a valid permit has been maintained.

38 (g) Subdivision (f) shall not apply to an owner of any
 39 prospective, planned, or unfinished employee housing facility who
 40 has applied to the appropriate state and local public entities for a

1 permit to construct or operate pursuant to this part prior to January
2 1, 1996.

3 SEC. 10. Section 17021.8 is added to the Health and Safety
4 Code, to read:

5 17021.8. (a) A development proponent may submit an
6 application for a development that is subject to a streamlined,
7 ministerial approval process and is not subject to a conditional use
8 permit if all of the following is satisfied:

9 (1) The development is located on land zoned for agricultural
10 uses.

11 (2) The development is an agricultural employee housing
12 development that satisfies both of the following:

13 (A) The agricultural employee housing does not contain
14 dormitory style housing.

15 (B) ~~The~~ (i) *Except as otherwise provided in clause (ii), the*
16 *agricultural employee housing will be maintained and operated by*
17 *a qualified affordable housing organization that has been certified*
18 *pursuant to Section 17030.10 and that has been issued a permit*
19 *pursuant to Section 17030. The development proponent shall*
20 *submit proof of issuance of the qualified affordable housing*
21 *organization's permit.*

22 (ii) *In the case of agricultural employee housing that is*
23 *maintained and operated by a local public housing agency or a*
24 *multicounty, state, or multistate agency that has been certified as*
25 *a qualified affordable housing organization as required by this*
26 *subparagraph, that agency may either directly maintain and*
27 *operate the agricultural employee housing or contract with another*
28 *qualified affordable housing organization that has been certified*
29 *pursuant to Section 17030.10 and that has been issued a permit*
30 *pursuant to Section 17030 to maintain and operate the agricultural*
31 *employee housing.*

32 (3) The qualified affordable housing organization and the
33 landowner shall obligate themselves and any successors in interest
34 to maintain the affordability of the proposed agricultural employee
35 housing for agricultural employees for not less than 55 years.

36 (4) *The agricultural employee housing is not ineligible for state*
37 *funding pursuant to paragraph (1) of subdivision (b) of Section*
38 *50205.*

39 (b) *A development that is approved pursuant to this section shall*
40 *not be subject to the density limits specified in Section 17021.6 in*

1 *order to constitute an agricultural land use for purposes of that*
2 *section.*

3 ~~(b)~~

4 (c) The Legislature hereby declares that it is the policy of this
5 state that each county and city shall permit and encourage the
6 development and use of sufficient numbers and types of agricultural
7 employee housing as are commensurate with local need. The
8 Legislature further finds and declares that this section addresses
9 a matter of statewide concern rather than a municipal affair as that
10 term is used in Section 5 of Article XI of the California
11 Constitution. Therefore, this section applies to all cities, including
12 charter cities.

13 SEC. 11. Section 17030 of the Health and Safety Code is
14 amended to read:

15 17030. (a) A person operating employee housing shall obtain
16 a permit to operate that employee housing from the enforcement
17 agency, unless otherwise exempted by this part. It shall be unlawful
18 for a person to operate employee housing without a valid permit
19 to operate issued by the enforcement agency, as required by this
20 part. Permits to operate shall be issued annually by the enforcement
21 agency, except as provided in this section and Section 17030.5.

22 (b) Employee housing on a dairy farm which meets the
23 requirements of Section 32505 of the Food and Agricultural Code,
24 consisting only of permanent single-family employee housing,
25 may be exempted from the requirement of obtaining a permit to
26 operate employee housing, as provided in Section 17031. This
27 housing shall meet the requirements of the State Housing Law
28 before an exemption is granted.

29 (c) A permit to operate shall be valid from the date of issuance
30 through December 31 of the year of issuance, or December 31 of
31 the year designated by the enforcement agency for permanent
32 single-family employee housing. Permits to operate employee
33 housing may prescribe conditions on the use or occupancy of the
34 employee housing.

35 (d) The Department of Housing and Community Development
36 shall be the enforcement agency for employee housing owned or
37 operated by a railroad corporation.

38 (e) The Department of Housing and Community Development
39 shall be the enforcement agency for agricultural employee housing.

1 SEC. 12. Section 17030.10 is added to the Health and Safety
2 Code, to read:

3 17030.10. (a) The department shall establish an application
4 and review process for certifying that a person is an affordable
5 housing organization qualified to operate agricultural employee
6 ~~housing.~~ *housing that is approved pursuant to Section 17021.8.*

7 (b) A person desiring certification as a qualified affordable
8 housing organization may, in the form and manner prescribed by
9 the department, submit an application to the department. The
10 department shall review an application so submitted, and shall
11 certify the person as a qualified affordable housing organization
12 if the following requirements are satisfied:

13 (1) The applicant has demonstrated relevant prior experience
14 in California and current capacity, as capable of operating the
15 housing and related facilities for its remaining useful life, either
16 by itself or through a management agent.

17 (2) The applicant is one of the following:

18 (A) A not-for-profit corporation organized pursuant to Division
19 2 (commencing with Section 5000) of Title 1 of the Corporations
20 Code that satisfies both of the following:

21 (i) The not-for-profit corporation has as its principal purpose
22 the ownership, development, or management of housing or
23 community development projects for persons and families of low
24 or moderate income and very low income.

25 (ii) The not-for-profit corporation has a broadly representative
26 board, a majority of whose members are community based and
27 have a proven track record of local community service.

28 (B) A local public housing agency. For purposes of this
29 subdivision, "local public housing agency" means a housing
30 authority, redevelopment agency, or any other agency of a city,
31 county, or city and county, whether general law or chartered, that
32 is authorized to own, develop, or manage housing or community
33 development projects for persons and families of low or moderate
34 income and very low income.

35 (C) A not-for-profit, charitable corporation organized on a
36 multicounty, state, or multistate basis that satisfies both of the
37 following:

38 (i) The charitable corporation has as its principal purpose the
39 ownership, development, or management of housing or community

1 development projects for persons and families of low or moderate
2 income and very low income.

3 (ii) The charitable corporation owns or operates at least three
4 comparable rent- and income-restricted affordable rental properties
5 governed under a regulatory agreement with a department or
6 agency of the State of California or the United States, either directly
7 or by serving as the managing general partner of limited
8 partnerships or managing member of limited liability corporations.

9 (D) A multicounty, state, or multistate agency that satisfies both
10 of the following:

11 (i) The agency is authorized to own, develop, or manage housing
12 or community development projects for persons and families of
13 low or moderate income and very low income.

14 (ii) The agency owns and operates at least three comparable
15 rent- and income-restricted affordable rental properties governed
16 under a regulatory agreement with a department or agency of the
17 State of California or the United States, either directly or by serving
18 as the managing general partner of limited partnerships or
19 managing member of limited liability corporations.

20 (E) Any other *not-for-profit* organization ~~or entity~~ that the
21 department determines, by regulation, is sufficiently similar to any
22 of the organizations described in this paragraph.

23 (3) Except for local public housing agencies with elected
24 legislative bodies, the applicant does not have a member among
25 its officers or directorate with a financial interest in an agricultural
26 employer, as defined in Section 1140.4 of the Labor Code, or a
27 farm labor contractor, as defined in Section 1682 of the Labor
28 Code.

29 SEC. 13. Section 17035 of the Health and Safety Code is
30 amended to read:

31 17035. (a) The department shall establish and maintain a roster
32 of all employee housing having a valid permit to operate.

33 (b) The department shall establish and maintain a roster of all
34 affordable housing organizations certified pursuant to Section
35 17030.10.

36 SEC. 14. Section 17037 of the Health and Safety Code is
37 amended to read:

38 17037. A person, or the agent or officer thereof, constructing,
39 operating, or maintaining employee housing shall comply with the
40 requirements of this part, with building standards published in the

1 State Building Standards Code relating to employee housing, and
2 with the other regulations adopted pursuant to this part.

3 (a) A person operating or maintaining employee housing without
4 first having obtained a permit to operate from the enforcement
5 agency shall pay double the fees prescribed for the permit to
6 operate the employee housing.

7 (b) A person found for a second or subsequent time within a
8 five-year period to be operating or maintaining employee housing
9 without first having obtained a permit to operate from the
10 enforcement agency shall pay 10 times the fees prescribed for the
11 permit to operate the employee housing. The two or more violations
12 referenced in this paragraph may be with regard either to the same
13 enforcement agency or to two or more different enforcement
14 agencies.

15 (c) Notwithstanding Section 17061, a landowner *who obtained*
16 *approval of an agricultural employee housing development*
17 *pursuant to Section 17021.8* shall be subject to an administrative
18 penalty issued by the department if the landowner fails to select
19 an alternative certified person to operate and maintain the
20 agricultural employee housing development as required by
21 subdivision (c) of Section 17037.5.

22 SEC. 15. Section 17037.5 of the Health and Safety Code is
23 amended to read:

24 17037.5. (a) A person who ceases to operate or maintain
25 employee housing that is subject to the permit requirement pursuant
26 to this part shall complete and submit annually a Certificate of
27 Non-Operation to the enforcement agency. The Certificate of
28 Non-Operation shall be submitted for two years following the
29 discontinuation of the use of any area on the property as employee
30 housing. The Certificate of Non-Operation shall attest under
31 penalty of perjury that the employee housing has been destroyed,
32 or is no longer owned or operated, or has not been and shall not
33 be occupied by five or more employees during the calendar year.

34 (b) The Certificate of Non-Operation shall include the owner's
35 name and address, the operator's name and address, the employee
36 housing name and location, the maximum number of employees
37 who have occupied or shall occupy the employee housing during
38 the calendar year, and any other information considered relevant
39 by the enforcement agency. The Certificate of Non-Operation shall
40 be completed and submitted to the enforcement agency no later

1 than 30 calendar days after the enforcement agency provides the
2 form to the owner or operator.

3 (c) If a certified person's permit required by Section 17030
4 expires or the certified person is otherwise unable or unwilling to
5 continue to operate and maintain an agricultural employee housing
6 *that was approved pursuant to Section 17021.8* for the agreed time
7 period as required by Section 17021.8, the ~~landowner~~, *landowner*
8 *who obtained that approval* within 90 days of the certified person's
9 ceasing operation and maintenance of the agricultural employee
10 housing, shall select an alternative certified affordable housing
11 organization to operate and maintain the agricultural employee
12 housing.

13 SEC. 16. Section 50205 is added to the Health and Safety Code,
14 to read:

15 50205. (a) As used in this section:

16 (1) "Employer" means a person who has petitioned, or will
17 petition, to import an H-2A worker pursuant to Section 1188 of
18 Title 8 of the United States Code to work on the employer's
19 agricultural land.

20 (2) "H-2A worker" means a nonimmigrant alien as described
21 in Section 1101(a)(15)(H)(ii)(a) of Title 8 of the United States
22 Code employed to work for an employer.

23 (3) "State funding" means any provision of moneys or other
24 financial assistance provided by the state or a state agency,
25 including, but not limited to, grants, loans, and write-downs of
26 land costs, but does not include any allocation of federal or state
27 low-income housing tax credits pursuant to Chapter 3.6
28 (commencing with Section 50199.4) of this part or Sections 12206,
29 17058, or 23610.5 of the Revenue and Taxation Code.

30 (b) (1) Notwithstanding any other law and subject to paragraph
31 (2), state funding shall not be provided for the purposes of
32 planning, developing, or operating any housing used to comply
33 with the requirement under Section 1188(c)(4) of Title 8 of the
34 United States Code to furnish housing to H-2A workers.

35 (2) Any employer or other recipient of state funding who utilizes
36 state funding for the purposes described in paragraph (1) shall
37 reimburse the state or state agency that provided the funding in an
38 amount equal to the amount of that state funding expended for
39 those purposes.

1 (3) This subdivision shall not apply to any contract or other
2 enforceable agreement pursuant to which the state or a state agency
3 provides state funding that was entered into prior to January 1,
4 2020.

5 SEC. 17. Section 50470 of the Health and Safety Code is
6 amended to read:

7 50470. (a) (1) There is hereby created in the State Treasury
8 the Building Homes and Jobs Trust Fund. All interest or other
9 increments resulting from the investment of moneys in the fund
10 shall be deposited in the fund, notwithstanding Section 16305.7
11 of the Government Code.

12 (2) Moneys in the Building Homes and Jobs Trust Fund shall
13 not be subject to transfer to any other fund pursuant to any
14 provision of Part 2 (commencing with Section 16300) of Division
15 4 of Title 2 of the Government Code, except to the Surplus Money
16 Investment Fund.

17 (b) Moneys in the Building Homes and Jobs Trust Fund shall
18 be appropriated either through the annual Budget Act, or as
19 provided in this subdivision, in accordance with the following:

20 (1) Moneys collected on and after January 1, 2018, and until
21 December 31, 2018, shall, upon appropriation by the Legislature,
22 be allocated as follows:

23 (A) Fifty percent of deposits into the fund shall be made
24 available for local governments to update planning documents and
25 zoning ordinances in order to streamline housing production,
26 including, but not limited to, general plans, community plans,
27 specific plans, sustainable communities strategies, and local coastal
28 programs. Eligible uses also include new environmental analyses
29 that eliminate the need for project-specific review and local process
30 updates that improve and expedite local permitting.

31 (i) Five percent of the funds specified by this subparagraph shall
32 be available for technical assistance to jurisdictions updating
33 specified planning documents. Technical assistance shall be
34 provided by the department and the Governor's Office of Planning
35 and Research.

36 (ii) The funds to be allocated pursuant to this subparagraph shall
37 be held by the department until a local government submits a
38 request for use. The request shall include a description of the
39 proposed use of the funds in the interest of accelerating housing
40 production. The proposed use of these funds shall be included in

1 the local government's funding plan and annual reports pursuant
2 to subclauses (II) and (III) of clause (ii) of subparagraph (B) of
3 paragraph (2). Any of these funds not allocated by the department
4 within the first two years that those funds are available shall be
5 made available by the department for the Multifamily Housing
6 Program (Chapter 6.7 (commencing with Section 50675)).

7 (B) Fifty percent of deposits into the fund shall be made
8 available to the department to assist persons experiencing or at
9 risk of homelessness, including, but not limited to, providing rapid
10 rehousing, rental assistance, navigation centers, and the new
11 construction, rehabilitation, and preservation of permanent and
12 transitional rental housing.

13 (C) The department shall ensure geographic equity in the
14 distribution and expenditure of funds allocated pursuant to this
15 paragraph.

16 (2) Moneys collected on and after January 1, 2019, shall be
17 allocated as follows:

18 (A) Twenty percent of all moneys in the fund shall, upon
19 appropriation by the Legislature, be expended for affordable
20 owner-occupied workforce housing.

21 (B) (i) Seventy percent of moneys deposited in the fund shall,
22 upon appropriation by the Legislature, be made available to local
23 governments as follows:

24 (I) Ninety percent of the moneys specified in this subparagraph
25 shall be allocated based on the formula specified in Section 5306
26 of Title 42 of the United States Code, in accordance with the
27 distribution of funds pursuant to that formula for the federal Fiscal
28 Year 2017, except that the portion allocated to nonentitlement
29 areas pursuant to that section shall be distributed through a
30 competitive grant program, administered by the department, as
31 follows:

32 (ia) The department shall award priority points to a county that
33 has a population of 200,000 or less within the unincorporated areas
34 of the county, to a local government that did not receive an award
35 based on the formula specified in Section 5306 of Title 42 of the
36 United States Code in 2016, and to a local government that pledges
37 to use the money awarded pursuant to a competitive grant under
38 this subclause to assist persons experiencing or at risk of
39 homelessness, including, but not limited to, providing rapid
40 rehousing, rental assistance, navigation centers, and the new

1 construction, rehabilitation, and preservation of permanent and
2 transitional rental housing.

3 (ib) Moneys awarded to a local government pursuant to the
4 competitive grant program shall be used for the purposes specified
5 in subparagraph (D).

6 (II) The remaining 10 percent of the moneys specified in this
7 subparagraph shall be allocated equitably among local jurisdictions
8 that are nonentitlement areas pursuant to the formula specified in
9 Section 5306 of Title 42 of the United States Code for federal
10 Fiscal Year 2017.

11 (ii) To receive moneys pursuant to this subparagraph, local
12 governments shall document minimum standards including the
13 following:

14 (I) Submit a plan to the department detailing the manner in
15 which allocated funds will be used by the local government in a
16 manner consistent with this paragraph and to meet the local
17 government's unmet share of the regional housing needs allocation.

18 (II) Have a compliant housing element with the state and submit
19 a current annual report pursuant to Section 65400 of the
20 Government Code.

21 (III) Submit an annual report to the department that provides
22 ongoing tracking of the uses and expenditures of any allocated
23 funds.

24 (IV) Funds may be expended for the uses listed in subparagraph
25 (D). Two or more local governments that receive an allocation
26 pursuant to this subparagraph may expend those moneys on a joint
27 project that is an authorized use under subparagraph (D).

28 (V) Prioritize investments that increase the supply of housing
29 to households that are at or below 60 percent of area median
30 income, adjusted for household size.

31 (VI) If a local government does not have a documented plan to
32 expend the moneys allocated to it pursuant to this subparagraph
33 within five years of that allocation, those moneys shall be exempt
34 from the allocation requirements in this paragraph and shall revert
35 to, and be paid and deposited in, the Housing Rehabilitation Loan
36 Fund established pursuant to Section 50661 to be used for the
37 Multifamily Housing Program (Chapter 6.7 (commencing with
38 Section 50675)) or for technical assistance for local governments.

39 (VII) A local government may petition the department to return
40 any moneys allocated to it pursuant to this subparagraph. Any

1 moneys returned pursuant to this clause shall be used for the
2 Multifamily Housing Program (Chapter 6.7 (commencing with
3 Section 50675)).

4 (C) Thirty percent of moneys deposited in the fund shall be
5 made available to the department for use as follows:

6 (i) Five percent of the moneys deposited in the fund shall, upon
7 appropriation by the Legislature, be used for state incentive
8 programs, including loans and grants administered by the
9 department. If the department receives insufficient funding
10 applications for incentive programs financed pursuant to this
11 clause, the department shall make those funds available for the
12 Multifamily Housing Program (Chapter 6.7 (commencing with
13 Section 50675)).

14 (ii) (I) Subject to subclause (II), 10 percent of the moneys
15 deposited in the fund shall, upon appropriation by the Legislature,
16 be used to address affordable homeownership and rental housing
17 opportunities for agricultural workers and their families.

18 (II) On and after January 1, 2020, housing funded pursuant to
19 this clause shall not include housing used to comply with the
20 requirement under Section 1188(c)(4) of Title 8 of the United
21 States Code to furnish housing to H-2A workers, as defined in
22 Section 50205. A person who receives funds made available
23 pursuant to this clause on or after January 1, 2020, and expends
24 any of those funds for the purpose of planning, developing, or
25 operating housing described in this subclause shall reimburse the
26 department or other state agency that provided those funds, as
27 provided in paragraph (2) of subdivision (b) of Section 50205.

28 (iii) Fifteen percent of the moneys deposited in the fund shall,
29 notwithstanding any other provision of this section or Section
30 13340 of the Government Code, be continuously appropriated to
31 the California Housing Finance Agency for the purpose of creating
32 mixed income multifamily residential housing for lower to
33 moderate income households pursuant to Chapter 6.7 (commencing
34 with Section 51325) of Part 3.

35 (D) The moneys in the fund allocated to local governments may
36 be expended for the following purposes:

37 (i) The predevelopment, development, acquisition, rehabilitation,
38 and preservation of multifamily, residential live-work, rental
39 housing that is affordable to extremely low, very low, low-, and

1 moderate-income households, including necessary operating
2 subsidies.

3 (ii) Affordable rental and ownership housing that meets the
4 needs of a growing workforce earning up to 120 percent of area
5 median income, or 150 percent of area median income in high-cost
6 areas.

7 (iii) Matching portions of funds placed into local or regional
8 housing trust funds.

9 (iv) Matching portions of funds available through the Low and
10 Moderate Income Housing Asset Fund pursuant to subdivision (d)
11 of Section 34176 of the Health and Safety Code.

12 (v) Capitalized reserves for services connected to the creation
13 of new permanent supportive housing, including, but not limited
14 to, developments funded through the Veterans Housing and
15 Homelessness Prevention Bond Act of 2014.

16 (vi) Assisting persons who are experiencing or at risk of
17 homelessness, including providing rapid rehousing, rental
18 assistance, navigation centers, emergency shelters, and the new
19 construction, rehabilitation, and preservation of permanent and
20 transitional housing.

21 (vii) Accessibility modifications.

22 (viii) Efforts to acquire and rehabilitate foreclosed or vacant
23 homes.

24 (ix) Homeownership opportunities, including, but not limited
25 to, downpayment assistance.

26 (x) Fiscal incentives or matching funds to local agencies that
27 approve new housing for extremely low, very low, low-, and
28 moderate-income households.

29 (3) A state or local entity that receives an appropriation or
30 allocation pursuant to this chapter shall use no more than 5 percent
31 of that appropriation or allocation for costs related to the
32 administration of the housing program for which the appropriation
33 or allocation was made.

34 (c) Both of the following shall be paid and deposited in the fund:

35 (1) Any moneys appropriated and made available by the
36 Legislature for purposes of the fund.

37 (2) Any other moneys that may be made available to the
38 department for the purposes of the fund from any other source or
39 sources.

(d) In consultation with stakeholders, the department may adopt guidelines to implement this section, including to determine allocation methodologies. Any guideline, rule, policy, or standard of general application employed by the department in implementing this chapter shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 18. Section 50517.10 of the Health and Safety Code is amended to read:

50517.10. (a) In addition to the purposes specified in subdivision (a) of Section 50517.5 and except as otherwise provided in subdivision (b), the department may make grants and loans under the Joe Serna, Jr. Farmworker Housing Grant Program to local public entities and nonprofit corporations in order to establish capitalized operating reserves for short-term occupancy housing for migrant farmworker households, purchase land for, and construct, housing structures for short-term occupancy by migrant farmworker households, lease or purchase existing structures for short-term occupancy by migrant farmworker households, and, where the department determines that extraordinary or emergency circumstances exist, directly rent or lease housing for short-term occupancy by migrant farmworker households.

(b) (1) Notwithstanding any other provision of this chapter, except as provided in paragraph (2), the department shall not make grants or loans under the Joe Serna, Jr. Farmworker Housing Grant Program on or after January 1, 2020, for the purpose of planning, developing, or operating housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers, as provided in subdivision (b) of Section 50205. A person who receives any grant or loan under the Joe Serna, Jr. Farmworker Housing Grant Program on or after January 1, 2020, and expends any of those funds for any purpose described in this subdivision shall reimburse the department as provided in paragraph (2) of subdivision (b) of Section 50205.

(2) This subdivision shall not apply to any contract entered into or any grant or loan provided pursuant to the Joe Serna, Jr. Farmworker Housing Grant Program prior to January 1, 2020.

1 SEC. 19. Section 50715 of the Health and Safety Code is
2 amended to read:

3 50715. (a) Housing operated pursuant to this chapter may be
4 used for the purposes set forth in Chapter 11.5 (commencing with
5 Section 50800), provided that no funds appropriated for the
6 purposes of this chapter shall be used for the operation or
7 administration of this housing as emergency shelter pursuant to
8 Chapter 11.5, and provided further that this housing may be made
9 available as emergency shelter pursuant to Chapter 11.5 only during
10 the months of November to March, inclusive.

11 (b) (1) Notwithstanding any other provision of this chapter,
12 except as provided in paragraph (2), housing operated pursuant to
13 this chapter shall not include any housing used to comply with the
14 requirement under Section 1188(c)(4) of Title 8 of the United
15 States Code to furnish housing to H-2A workers, as defined in
16 Section 50205. The department or a city, county, or other local
17 agency shall not enter into any contract pursuant to Section 50710
18 or 50712, respectively, or provide any financial assistance under
19 this chapter on or after January 1, 2020. A person who receives
20 financial assistance under this chapter on or after January 1, 2020,
21 and expends any of those funds for any purpose described in this
22 subdivision shall reimburse the department as provided in
23 paragraph (2) of subdivision (b) of Section 50205.

24 (2) This subdivision shall not apply to any contract entered into
25 or any financial assistance provided pursuant to this chapter prior
26 to January 1, 2020.

27 SEC. 20. ~~Section 12206 of the Revenue and Taxation Code is~~
28 ~~amended to read:~~

29 ~~12206. (a) (1) There shall be allowed as a credit against the~~
30 ~~“tax,” described by Section 12201, a state low-income housing~~
31 ~~tax credit in an amount equal to the amount determined in~~
32 ~~subdivision (c), computed in accordance with Section 42 of the~~
33 ~~Internal Revenue Code, relating to low-income housing credit,~~
34 ~~except as otherwise provided in this section.~~

35 ~~(2) “Taxpayer,” for purposes of this section, means the sole~~
36 ~~owner in the case of a “C” corporation, the partners in the case of~~
37 ~~a partnership, and the shareholders in the case of an “S”~~
38 ~~corporation.~~

39 ~~(3) “Housing sponsor,” for purposes of this section, means the~~
40 ~~sole owner in the case of a “C” corporation, the partnership in the~~

1 case of a partnership, and the “S” corporation in the case of an “S”
 2 corporation.

3 ~~(b) (1) The amount of the credit allocated to any housing~~
 4 ~~sponsor shall be authorized by the California Tax Credit Allocation~~
 5 ~~Committee, or any successor thereof, based on a project’s need~~
 6 ~~for the credit for economic feasibility in accordance with the~~
 7 ~~requirements of this section.~~

8 ~~(A) Except for projects to provide farmworker housing, as~~
 9 ~~defined in subdivision (h) of Section 50199.7 of the Health and~~
 10 ~~Safety Code, that are allocated credits solely under the set-aside~~
 11 ~~described in subdivision (c) of Section 50199.20 of the Health and~~
 12 ~~Safety Code, the low-income housing project shall be located in~~
 13 ~~California and shall meet either of the following requirements:~~

14 ~~(i) The project’s housing sponsor has been allocated by the~~
 15 ~~California Tax Credit Allocation Committee a credit for federal~~
 16 ~~income tax purposes under Section 42 of the Internal Revenue~~
 17 ~~Code, relating to low-income housing credit.~~

18 ~~(ii) It qualifies for a credit under Section 42(h)(4)(B) of the~~
 19 ~~Internal Revenue Code, relating to special rule where 50 percent~~
 20 ~~or more of building is financed with tax-exempt bonds subject to~~
 21 ~~volume cap.~~

22 ~~(B) The California Tax Credit Allocation Committee shall not~~
 23 ~~require fees for the credit under this section in addition to those~~
 24 ~~fees required for applications for the tax credit pursuant to Section~~
 25 ~~42 of the Internal Revenue Code, relating to low-income housing~~
 26 ~~credit. The committee may require a fee if the application for the~~
 27 ~~credit under this section is submitted in a calendar year after the~~
 28 ~~year the application is submitted for the federal tax credit.~~

29 ~~(C) (i) For a project that receives a preliminary reservation of~~
 30 ~~the state low-income housing tax credit, allowed pursuant to~~
 31 ~~subdivision (a), on or after January 1, 2009, and before January 1,~~
 32 ~~2020, the credit shall be allocated to the partners of a partnership~~
 33 ~~owning the project in accordance with the partnership agreement,~~
 34 ~~regardless of how the federal low-income housing tax credit with~~
 35 ~~respect to the project is allocated to the partners, or whether the~~
 36 ~~allocation of the credit under the terms of the agreement has~~
 37 ~~substantial economic effect, within the meaning of Section 704(b)~~
 38 ~~of the Internal Revenue Code, relating to determination of~~
 39 ~~distributive share.~~

1 (ii) ~~This subparagraph shall not apply to a project that receives~~
2 ~~a preliminary reservation of state low-income housing tax credits~~
3 ~~under the set-aside described in subdivision (c) of Section 50199.20~~
4 ~~of the Health and Safety Code unless the project also receives a~~
5 ~~preliminary reservation of federal low-income housing tax credits.~~

6 (2) (A) ~~The California Tax Credit Allocation Committee shall~~
7 ~~certify to the housing sponsor the amount of tax credit under this~~
8 ~~section allocated to the housing sponsor for each credit period.~~

9 (B) ~~In the case of a partnership or an “S” corporation, the~~
10 ~~housing sponsor shall provide a copy of the California Tax Credit~~
11 ~~Allocation Committee certification to the taxpayer.~~

12 (C) (1) ~~The taxpayer shall attach a copy of the certification to~~
13 ~~any return upon which a tax credit is claimed under this section.~~

14 (2) ~~In the case of a failure to attach a copy of the certification~~
15 ~~for the year to the return in which a tax credit is claimed under this~~
16 ~~section, no credit under this section shall be allowed for that year~~
17 ~~until a copy of that certification is provided.~~

18 (D) ~~All elections made by the taxpayer pursuant to Section 42~~
19 ~~of the Internal Revenue Code, relating to low-income housing~~
20 ~~credit, shall apply to this section.~~

21 (E) (i) ~~Except as described in clause (ii) or (iii), for buildings~~
22 ~~located in designated difficult development areas (DDAs) or~~
23 ~~qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)~~
24 ~~of the Internal Revenue Code, relating to increase in credit for~~
25 ~~buildings in high-cost areas, credits may be allocated under this~~
26 ~~section in the amounts prescribed in subdivision (c), provided that~~
27 ~~the amount of credit allocated under Section 42 of the Internal~~
28 ~~Revenue Code, relating to low-income housing credit, is computed~~
29 ~~on 100 percent of the qualified basis of the building.~~

30 (ii) ~~Notwithstanding clause (i), the California Tax Credit~~
31 ~~Allocation Committee may allocate the credit for buildings located~~
32 ~~in DDAs or QCTs that are restricted to having 50 percent of the~~
33 ~~building’s occupants be special needs households, as defined in~~
34 ~~the California Code of Regulations by the California Tax Credit~~
35 ~~Allocation Committee, even if the taxpayer receives federal credits~~
36 ~~pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,~~
37 ~~relating to increase in credit for buildings in high-cost areas,~~
38 ~~provided that the credit allowed under this section shall not exceed~~
39 ~~30 percent of the eligible basis of the building.~~

~~(iii) On and after January 1, 2018, notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit pursuant to paragraph (4) of subdivision (c) even if the taxpayer receives federal credits, pursuant to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas.~~

~~(F) (i) The California Tax Credit Allocation Committee may allocate a credit under this section in exchange for a credit allocated pursuant to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, in amounts up to 30 percent of the eligible basis of a building if the credits allowed under Section 42 of the Internal Revenue Code, relating to low-income housing credit, are reduced by an equivalent amount.~~

~~(ii) An equivalent amount shall be determined by the California Tax Credit Allocation Committee based upon the relative amount required to produce an equivalent state tax credit to the taxpayer.~~

~~(c) Section 42(b) of the Internal Revenue Code, relating to applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings, shall be modified as follows:~~

~~(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:~~

~~(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, relating to temporary minimum credit rate for nonfederally subsidized new buildings, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.~~

~~(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.~~

~~(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:~~

~~(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.~~

1 (B) For the fourth year, the difference between 13 percent and
2 the sum of the applicable percentages for the first three years.

3 (3) For purposes of this section, the term “at risk of conversion,”
4 with respect to an existing property means a property that satisfies
5 all of the following criteria:

6 (A) The property is a multifamily rental housing development
7 in which at least 50 percent of the units receive governmental
8 assistance pursuant to any of the following:

9 (i) New construction, substantial rehabilitation, moderate
10 rehabilitation, property disposition, and loan management set-aside
11 programs, or any other program providing project-based assistance
12 pursuant to Section 8 of the United States Housing Act of 1937,
13 Section 1437f of Title 42 of the United States Code, as amended.

14 (ii) The Below-Market-Interest-Rate Program pursuant to
15 Section 221(d)(3) of the National Housing Act, Sections
16 1715l(d)(3) and (5) of Title 12 of the United States Code.

17 (iii) Section 236 of the National Housing Act, Section 1715z-1
18 of Title 12 of the United States Code.

19 (iv) Programs for rent supplement assistance pursuant to Section
20 101 of the Housing and Urban Development Act of 1965, Section
21 1701s of Title 12 of the United States Code, as amended.

22 (v) Programs pursuant to Section 514 of the Housing Act of
23 1949, Section 1484 of Title 42 of the United States Code, as
24 amended, and Section 515 of the Housing Act of 1949, Section
25 1485 of Title 42 of the United States Code, as amended.

26 (vi) The low-income housing credit program set forth in Section
27 42 of the Internal Revenue Code, relating to low-income housing
28 credit.

29 (vii) Programs for loans or grants administered by the
30 Department of Housing and Community Development.

31 (B) The restrictions on rent and income levels will terminate or
32 the federally insured mortgage or rent subsidy contract on the
33 property is eligible for prepayment or termination any time within
34 five years before or after the date of application to the California
35 Tax Credit Allocation Committee.

36 (C) The entity acquiring the property enters into a regulatory
37 agreement that requires the property to be operated in accordance
38 with the requirements of this section for a period equal to the
39 greater of 55 years or the life of the property.

~~(D) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code, relating to rehabilitation expenditures treated as separate new building, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.~~

~~(4) On and after January 1, 2018, in the case of any qualified low-income building that is (A) farmworker housing, as defined by paragraph (2) of subdivision (h) of Section 50199.7 of the Health and Safety Code, and (B) is federally subsidized, the term “applicable percentage” means for each of the first three years, 20 percent of the qualified basis of the building, and for the fourth year, 15 percent of the qualified basis of the building.~~

~~(d) The term “qualified low-income housing project” as defined in Section 42(c)(2) of the Internal Revenue Code, relating to qualified low-income building, is modified by adding the following requirements:~~

~~(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, that, at the election of the taxpayer, is equal to:~~

~~(A) An amount not to exceed 8 percent of the lesser of:~~

~~(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.~~

~~(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.~~

~~(B) The amount of the cashflow from those units in the building that are not low-income units. For purposes of computing cashflow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code, relating to low-income housing credit.~~

~~(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.~~

~~(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an “S” corporation.~~

~~(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under~~

~~paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code, relating to in general.~~

~~(e) The provisions of Section 42(f) of the Internal Revenue Code, relating to definition and special rules relating to credit period, shall be modified as follows:~~

~~(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code, relating to credit period defined, is modified by substituting “four taxable years” for “10 taxable years.”~~

~~(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code, relating to special rule for 1st year of credit period, shall not apply to the tax credit under this section.~~

~~(3) Section 42(f)(3) of the Internal Revenue Code, relating to determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period, is modified to read:~~

~~If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.~~

~~(f) The provisions of Section 42(h) of the Internal Revenue Code, relating to limitation on aggregate credit allowable with respect to projects located in a state, shall be modified as follows:~~

~~(1) Section 42(h)(2) of the Internal Revenue Code, relating to allocated credit amount to apply to all taxable years ending during or after credit allocation year, does not apply and instead the following provisions apply:~~

~~The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.~~

~~(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code, relating to limitation on aggregate credit allowable with respect to projects located in a state, do not apply to this section.~~

~~(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of all the following:~~

~~(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor.~~

~~(2) The unused housing credit ceiling, if any, for the preceding calendar years.~~

~~(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.~~

~~(4) Except as provided in paragraph (6), five hundred thousand dollars (\$500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(5) Except as provided in paragraph (6), the amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(6) No amount shall be provided for projects to provide farmworker housing used to comply with the requirement under~~

1 Section 1188(c)(4) of Title 8 of the United States Code to furnish
2 housing to H-2A workers.

3 (h) The term “compliance period” as defined in Section 42(i)(1)
4 of the Internal Revenue Code, relating to compliance period, is
5 modified to mean, with respect to any building, the period of 30
6 consecutive taxable years beginning with the first taxable year of
7 the credit period with respect thereto.

8 (i) (1) Section 42(j) of the Internal Revenue Code, relating to
9 recapture of credit, shall not be applicable and the provisions in
10 paragraph (2) shall be substituted in its place.

11 (2) The requirements of this section shall be set forth in a
12 regulatory agreement between the California Tax Credit Allocation
13 Committee and the housing sponsor, and the regulatory agreement
14 shall be subordinated, when required, to any lien or encumbrance
15 of any banks or other institutional lenders to the project. The
16 regulatory agreement entered into pursuant to subdivision (f) of
17 Section 50199.14 of the Health and Safety Code, shall apply,
18 provided that the agreement includes all of the following
19 provisions:

20 (A) A term not less than the compliance period.

21 (B) A requirement that the agreement be recorded in the official
22 records of the county in which the qualified low-income housing
23 project is located.

24 (C) A provision stating which state and local agencies can
25 enforce the regulatory agreement in the event the housing sponsor
26 fails to satisfy any of the requirements of this section.

27 (D) A provision that the regulatory agreement shall be deemed
28 a contract enforceable by tenants as third-party beneficiaries thereto
29 and that allows individuals, whether prospective, present, or former
30 occupants of the building, who meet the income limitation
31 applicable to the building, the right to enforce the regulatory
32 agreement in any state court.

33 (E) A provision incorporating the requirements of Section 42
34 of the Internal Revenue Code, relating to low-income housing
35 credit, as modified by this section.

36 (F) A requirement that the housing sponsor notify the California
37 Tax Credit Allocation Committee or its designee and the local
38 agency that can enforce the regulatory agreement if there is a
39 determination by the Internal Revenue Service that the project is

1 not in compliance with Section 42(g) of the Internal Revenue Code,
 2 relating to qualified low-income housing project.

3 (G) A requirement that the housing sponsor, as security for the
 4 performance of the housing sponsor's obligations under the
 5 regulatory agreement, assign the housing sponsor's interest in rents
 6 that it receives from the project, provided that until there is a
 7 default under the regulatory agreement, the housing sponsor is
 8 entitled to collect and retain the rents.

9 (H) A provision that the remedies available in the event of a
 10 default under the regulatory agreement that is not cured within a
 11 reasonable cure period include, but are not limited to, allowing
 12 any of the parties designated to enforce the regulatory agreement
 13 to collect all rents with respect to the project; taking possession of
 14 the project and operating the project in accordance with the
 15 regulatory agreement until the enforcer determines the housing
 16 sponsor is in a position to operate the project in accordance with
 17 the regulatory agreement; applying to any court for specific
 18 performance; securing the appointment of a receiver to operate
 19 the project; or any other relief as may be appropriate.

20 (j) (1) The committee shall allocate the housing credit on a
 21 regular basis consisting of two or more periods in each calendar
 22 year during which applications may be filed and considered. The
 23 committee shall establish application filing deadlines, the maximum
 24 percentage of federal and state low-income housing tax credit
 25 ceiling that may be allocated by the committee in that period, and
 26 the approximate date on which allocations shall be made. If the
 27 enactment of federal or state law, the adoption of rules or
 28 regulations, or other similar events prevent the use of two allocation
 29 periods, the committee may reduce the number of periods and
 30 adjust the filing deadlines, maximum percentage of credit allocated,
 31 and the allocation dates.

32 (2) The committee shall adopt a qualified allocation plan, as
 33 provided in Section 42(m)(1) of the Internal Revenue Code, relating
 34 to plans for allocation of credit among projects. In adopting this
 35 plan, the committee shall comply with the provisions of Sections
 36 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
 37 relating to qualified allocation plan and relating to certain selection
 38 criteria must be used, respectively.

39 (3) Notwithstanding Section 42(m) of the Internal Revenue
 40 Code, relating to responsibilities of housing credit agencies, the

1 California Tax Credit Allocation Committee shall allocate housing
2 credits in accordance with the qualified allocation plan and
3 regulations, which shall include the following provisions:

4 (A) All housing sponsors, as defined by paragraph (3) of
5 subdivision (a), shall demonstrate at the time the application is
6 filed with the committee that the project meets the following
7 threshold requirements:

8 (i) The housing sponsor shall demonstrate there is a need and
9 demand for low-income housing in the community or region for
10 which it is proposed.

11 (ii) The project's proposed financing, including tax credit
12 proceeds, shall be sufficient to complete the project and that the
13 proposed operating income shall be adequate to operate the project
14 for the extended use period.

15 (iii) The project shall have enforceable financing commitments,
16 either construction or permanent financing, for at least 50 percent
17 of the total estimated financing of the project.

18 (iv) The housing sponsor shall have and maintain control of the
19 site for the project.

20 (v) The housing sponsor shall demonstrate that the project
21 complies with all applicable local land use and zoning ordinances.

22 (vi) The housing sponsor shall demonstrate that the project
23 development team has the experience and the financial capacity
24 to ensure project completion and operation for the extended use
25 period.

26 (vii) The housing sponsor shall demonstrate the amount of tax
27 credit that is necessary for the financial feasibility of the project
28 and its viability as a qualified low-income housing project
29 throughout the extended use period, taking into account operating
30 expenses, a supportable debt service, reserves, funds set aside for
31 rental subsidies and required equity, and a development fee that
32 does not exceed a specified percentage of the eligible basis of the
33 project prior to inclusion of the development fee in the eligible
34 basis, as determined by the committee.

35 (B) The committee shall give a preference to those projects
36 satisfying all of the threshold requirements of subparagraph (A)
37 if both of the following apply:

38 (i) The project serves the lowest income tenants at rents
39 affordable to those tenants.

~~(ii) The project is obligated to serve qualified tenants for the longest period.~~

~~(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:~~

~~(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three or more bedrooms.~~

~~(ii) Projects providing single-room occupancy units serving very low income tenants.~~

~~(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (3) of subdivision (c).~~

~~(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.~~

~~(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.~~

~~(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.~~

~~(k) Section 42(l) of the Internal Revenue Code, relating to certifications and other reports to secretary, shall be modified as follows:~~

~~The term “secretary” shall be replaced by the term “Franchise Tax Board.”~~

~~(l) In the case in which the credit allowed under this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted.~~

~~(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, apply to calendar years after 1993.~~

~~(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.~~

~~(o) (1) For a project that receives a preliminary reservation under this section beginning on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an irrevocable election in~~

1 its application to the California Tax Credit Allocation Committee
2 to sell all or any portion of any credit allowed under this section
3 to one or more unrelated parties for each taxable year in which the
4 credit is allowed subject to both of the following conditions:

5 (A) The credit is sold for consideration that is not less than 80
6 percent of the amount of the credit.

7 (B) The unrelated party or parties purchasing any or all of the
8 credit pursuant to this subdivision is a taxpayer allowed the credit
9 under this section for the taxable year of the purchase or any prior
10 taxable year or is a taxpayer allowed the federal credit under
11 Section 42 of the Internal Revenue Code, relating to low-income
12 housing credit, for the taxable year of the purchase or any prior
13 taxable year in connection with any project located in this state.
14 For purposes of this subparagraph, "taxpayer allowed the credit
15 under this section" means a taxpayer that is allowed the credit
16 under this section without regard to the purchase of a credit
17 pursuant to this subdivision.

18 (2) (A) The taxpayer that originally received the credit shall
19 report to the California Tax Credit Allocation Committee within
20 10 days of the sale of the credit, in the form and manner specified
21 by the California Tax Credit Allocation Committee, all required
22 information regarding the purchase and sale of the credit, including
23 the social security or other taxpayer identification number of the
24 unrelated party or parties to whom the credit has been sold, the
25 face amount of the credit sold, and the amount of consideration
26 received by the taxpayer for the sale of the credit.

27 (B) The California Tax Credit Allocation Committee shall
28 provide an annual listing to the Franchise Tax Board, in a form
29 and manner agreed upon by the California Tax Credit Allocation
30 Committee and the Franchise Tax Board, of the taxpayers that
31 have sold or purchased a credit pursuant to this subdivision.

32 (3) (A) A credit may be sold pursuant to this subdivision to
33 more than one unrelated party.

34 (B) (i) Except as provided in clause (ii), a credit shall not be
35 resold by the unrelated party to another taxpayer or other party.

36 (ii) All or any portion of any credit allowed under this section
37 may be resold once by an original purchaser to one or more
38 unrelated parties, subject to all of the requirements of this
39 subdivision.

~~(4) Notwithstanding any other law, the taxpayer that originally received the credit that is sold pursuant to paragraph (1) shall remain solely liable for all obligations and liabilities imposed on the taxpayer by this section with respect to the credit, none of which shall apply to a party to whom the credit has been sold or subsequently transferred. Parties that purchase credits pursuant to paragraph (1) shall be entitled to utilize the purchased credits in the same manner in which the taxpayer that originally received the credit could utilize them.~~

~~(5) A taxpayer shall not sell a credit allowed by this section if the taxpayer was allowed the credit on any tax return of the taxpayer.~~

~~(6) Notwithstanding paragraph (1), the taxpayer, with the approval of the Executive Director of the California Tax Credit Allocation Committee, may rescind the election to sell all or any portion of the credit allowed under this section if the consideration for the credit falls below 80 percent of the amount of the credit after the California Tax Credit Allocation Committee reservation.~~

~~(p) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.~~

~~(q) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credit, remains in effect.~~

~~SEC. 21. Section 17058 of the Revenue and Taxation Code is amended to read:~~

~~17058. (a) (1) There shall be allowed as a credit against the "net tax," defined in Section 17039, a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, relating to low-income housing credit, except as otherwise provided in this section.~~

~~(2) "Taxpayer," for purposes of this section, means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an "S" corporation.~~

1 ~~(3) “Housing sponsor,” for purposes of this section, means the~~
2 ~~sole owner in the case of an individual, the partnership in the case~~
3 ~~of a partnership, and the “S” corporation in the case of an “S”~~
4 ~~corporation.~~

5 ~~(b) (1) The amount of the credit allocated to any housing~~
6 ~~sponsor shall be authorized by the California Tax Credit Allocation~~
7 ~~Committee, or any successor thereof, based on a project’s need~~
8 ~~for the credit for economic feasibility in accordance with the~~
9 ~~requirements of this section.~~

10 ~~(A) The low-income housing project shall be located in~~
11 ~~California and shall meet either of the following requirements:~~

12 ~~(i) Except for projects to provide farmworker housing, as defined~~
13 ~~in subdivision (h) of Section 50199.7 of the Health and Safety~~
14 ~~Code, that are allocated credits solely under the set-aside described~~
15 ~~in subdivision (c) of Section 50199.20 of the Health and Safety~~
16 ~~Code, the project’s housing sponsor has been allocated by the~~
17 ~~California Tax Credit Allocation Committee a credit for federal~~
18 ~~income tax purposes under Section 42 of the Internal Revenue~~
19 ~~Code, relating to low-income housing credit.~~

20 ~~(ii) It qualifies for a credit under Section 42(h)(4)(B) of the~~
21 ~~Internal Revenue Code, relating to special rule where 50 percent~~
22 ~~or more of building is financed with tax-exempt bonds subject to~~
23 ~~volume cap.~~

24 ~~(B) The California Tax Credit Allocation Committee shall not~~
25 ~~require fees for the credit under this section in addition to those~~
26 ~~fees required for applications for the tax credit pursuant to Section~~
27 ~~42 of the Internal Revenue Code, relating to low-income housing~~
28 ~~credit. The committee may require a fee if the application for the~~
29 ~~credit under this section is submitted in a calendar year after the~~
30 ~~year the application is submitted for the federal tax credit.~~

31 ~~(C) (i) For a project that receives a preliminary reservation of~~
32 ~~the state low-income housing tax credit, allowed pursuant to~~
33 ~~subdivision (a), on or after January 1, 2009, and before January 1,~~
34 ~~2020, the credit shall be allocated to the partners of a partnership~~
35 ~~owning the project in accordance with the partnership agreement,~~
36 ~~regardless of how the federal low-income housing tax credit with~~
37 ~~respect to the project is allocated to the partners, or whether the~~
38 ~~allocation of the credit under the terms of the agreement has~~
39 ~~substantial economic effect, within the meaning of Section 704(b)~~

1 of the Internal Revenue Code, relating to determination of
2 distributive share.

3 (ii) To the extent the allocation of the credit to a partner under
4 this section lacks substantial economic effect, any loss or deduction
5 otherwise allowable under this part that is attributable to the sale
6 or other disposition of that partner's partnership interest made prior
7 to the expiration of the federal credit shall not be allowed in the
8 taxable year in which the sale or other disposition occurs, but shall
9 instead be deferred until and treated as if it occurred in the first
10 taxable year immediately following the taxable year in which the
11 federal credit period expires for the project described in clause (i).

12 (iii) This subparagraph shall not apply to a project that receives
13 a preliminary reservation of state low-income housing tax credits
14 under the set-aside described in subdivision (c) of Section 50199.20
15 of the Health and Safety Code unless the project also receives a
16 preliminary reservation of federal low-income housing tax credits.

17 (2) (A) The California Tax Credit Allocation Committee shall
18 certify to the housing sponsor the amount of tax credit under this
19 section allocated to the housing sponsor for each credit period.

20 (B) In the case of a partnership or an "S" corporation, the
21 housing sponsor shall provide a copy of the California Tax Credit
22 Allocation Committee certification to the taxpayer.

23 (C) The taxpayer shall, upon request, provide a copy of the
24 certification to the Franchise Tax Board.

25 (D) All elections made by the taxpayer pursuant to Section 42
26 of the Internal Revenue Code, relating to low-income housing
27 credit, apply to this section.

28 (E) (i) Except as described in clause (ii) or (iii), for buildings
29 located in designated difficult development areas (DDAs) or
30 qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
31 of the Internal Revenue Code, relating to increase in credit for
32 buildings in high-cost areas, credits may be allocated under this
33 section in the amounts prescribed in subdivision (c), provided that
34 the amount of credit allocated under Section 42 of the Internal
35 Revenue Code, relating to low-income housing credit, is computed
36 on 100 percent of the qualified basis of the building.

37 (ii) Notwithstanding clause (i), the California Tax Credit
38 Allocation Committee may allocate the credit for buildings located
39 in DDAs or QCTs that are restricted to having 50 percent of the
40 building's occupants be special needs households, as defined in

1 the California Code of Regulations by the California Tax Credit
2 Allocation Committee, even if the taxpayer receives federal credits
3 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
4 relating to increase in credit for buildings in high-cost areas,
5 provided that the credit allowed under this section shall not exceed
6 30 percent of the eligible basis of the building.

7 (iii) On and after January 1, 2018, notwithstanding clause (i),
8 the California Tax Credit Allocation Committee may allocate the
9 credit pursuant to paragraph (5) of subdivision (c) even if the
10 taxpayer receives federal credits, pursuant to Section 42(d)(5)(B)
11 of the Internal Revenue Code, relating to increase in credit for
12 buildings in high-cost areas.

13 (F) (i) The California Tax Credit Allocation Committee may
14 allocate a credit under this section in exchange for a credit allocated
15 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
16 relating to increase in credit for buildings in high-cost areas, in
17 amounts up to 30 percent of the eligible basis of a building if the
18 credits allowed under Section 42 of the Internal Revenue Code,
19 relating to low-income housing credit, are reduced by an equivalent
20 amount.

21 (ii) An equivalent amount shall be determined by the California
22 Tax Credit Allocation Committee based upon the relative amount
23 required to produce an equivalent state tax credit to the taxpayer.

24 (c) Section 42(b) of the Internal Revenue Code, relating to
25 applicable percentage: 70 percent present value credit for certain
26 new buildings; 30 percent present value credit for certain other
27 buildings, shall be modified as follows:

28 (1) In the case of any qualified low-income building placed in
29 service by the housing sponsor during 1987, the term “applicable
30 percentage” means 9 percent for each of the first three years and
31 3 percent for the fourth year for new buildings (whether or not the
32 building is federally subsidized) and for existing buildings.

33 (2) In the case of any qualified low-income building that receives
34 an allocation after 1989 and is a new building not federally
35 subsidized, the term “applicable percentage” means the following:

36 (A) For each of the first three years, the percentage prescribed
37 by the Secretary of the Treasury for new buildings that are not
38 federally subsidized for the taxable year, determined in accordance
39 with the requirements of Section 42(b)(2) of the Internal Revenue
40 Code, relating to temporary minimum credit rate for nonfederally

1 subsidized new buildings, in lieu of the percentage prescribed in
2 Section 42(b)(1)(A) of the Internal Revenue Code.

3 (B) For the fourth year, the difference between 30 percent and
4 the sum of the applicable percentages for the first three years.

5 (3) In the case of any qualified low-income building that receives
6 an allocation after 1989 and that is a new building that is federally
7 subsidized or that is an existing building that is “at risk of
8 conversion,” the term “applicable percentage” means the following:

9 (A) For each of the first three years, the percentage prescribed
10 by the Secretary of the Treasury for new buildings that are federally
11 subsidized for the taxable year.

12 (B) For the fourth year, the difference between 13 percent and
13 the sum of the applicable percentages for the first three years.

14 (4) For purposes of this section, the term “at risk of conversion,”
15 with respect to an existing property means a property that satisfies
16 all of the following criteria:

17 (A) The property is a multifamily rental housing development
18 in which at least 50 percent of the units receive governmental
19 assistance pursuant to any of the following:

20 (i) New construction, substantial rehabilitation, moderate
21 rehabilitation, property disposition, and loan management set-aside
22 programs, or any other program providing project-based assistance
23 pursuant to Section 8 of the United States Housing Act of 1937,
24 Section 1437f of Title 42 of the United States Code, as amended.

25 (ii) The Below-Market-Interest-Rate Program pursuant to
26 Section 221(d)(3) of the National Housing Act, Sections
27 1715l(d)(3) and (5) of Title 12 of the United States Code.

28 (iii) Section 236 of the National Housing Act, Section 1715z-1
29 of Title 12 of the United States Code.

30 (iv) Programs for rent supplement assistance pursuant to Section
31 101 of the Housing and Urban Development Act of 1965, Section
32 1701s of Title 12 of the United States Code, as amended.

33 (v) Programs pursuant to Section 514 of the Housing Act of
34 1949, Section 1484 of Title 42 of the United States Code, as
35 amended, and Section 515 of the Housing Act of 1949, Section
36 1485 of Title 42 of the United States Code, as amended.

37 (vi) The low-income housing credit program set forth in Section
38 42 of the Internal Revenue Code, relating to low-income housing
39 credit.

1 ~~(vii) Programs for loans or grants administered by the~~
2 ~~Department of Housing and Community Development.~~

3 ~~(B) The restrictions on rent and income levels will terminate or~~
4 ~~the federally insured mortgage or rent subsidy contract on the~~
5 ~~property is eligible for prepayment or termination any time within~~
6 ~~five years before or after the date of application to the California~~
7 ~~Tax Credit Allocation Committee.~~

8 ~~(C) The entity acquiring the property enters into a regulatory~~
9 ~~agreement that requires the property to be operated in accordance~~
10 ~~with the requirements of this section for a period equal to the~~
11 ~~greater of 55 years or the life of the property.~~

12 ~~(D) The property satisfies the requirements of Section 42(e) of~~
13 ~~the Internal Revenue Code, relating to rehabilitation expenditures~~
14 ~~treated as separate new building, except that the provisions of~~
15 ~~Section 42(e)(3)(A)(ii)(I) shall not apply.~~

16 ~~(5) On and after January 1, 2018, in the case of any qualified~~
17 ~~low-income building that is (A) farmworker housing, as defined~~
18 ~~by paragraph (2) of subdivision (h) of Section 50199.7 of the~~
19 ~~Health and Safety Code, and (B) is federally subsidized, the term~~
20 ~~“applicable percentage” means for each of the first three years, 20~~
21 ~~percent of the qualified basis of the building, and for the fourth~~
22 ~~year, 15 percent of the qualified basis of the building.~~

23 ~~(d) The term “qualified low-income housing project” as defined~~
24 ~~in Section 42(c)(2) of the Internal Revenue Code, relating to~~
25 ~~qualified low-income building, is modified by adding the following~~
26 ~~requirements:~~

27 ~~(1) The taxpayer shall be entitled to receive a cash distribution~~
28 ~~from the operations of the project, after funding required reserves,~~
29 ~~that, at the election of the taxpayer, is equal to:~~

30 ~~(A) An amount not to exceed 8 percent of the lesser of:~~

31 ~~(i) The owner equity, which shall include the amount of the~~
32 ~~capital contributions actually paid to the housing sponsor and shall~~
33 ~~not include any amounts until they are paid on an investor note.~~

34 ~~(ii) Twenty percent of the adjusted basis of the building as of~~
35 ~~the close of the first taxable year of the credit period.~~

36 ~~(B) The amount of the cashflow from those units in the building~~
37 ~~that are not low-income units. For purposes of computing cashflow~~
38 ~~under this subparagraph, operating costs shall be allocated to the~~
39 ~~low-income units using the “floor space fraction,” as defined in~~

1 Section 42 of the Internal Revenue Code, relating to low-income
2 housing credit.

3 (C) Any amount allowed to be distributed under subparagraph
4 (A) that is not available for distribution during the first five years
5 of the compliance period may be accumulated and distributed any
6 time during the first 15 years of the compliance period but not
7 thereafter.

8 (2) The limitation on return shall apply in the aggregate to the
9 partners if the housing sponsor is a partnership and in the aggregate
10 to the shareholders if the housing sponsor is an "S" corporation.

11 (3) The housing sponsor shall apply any cash available for
12 distribution in excess of the amount eligible to be distributed under
13 paragraph (1) to reduce the rent on rent-restricted units or to
14 increase the number of rent-restricted units subject to the tests of
15 Section 42(g)(1) of the Internal Revenue Code, relating to in
16 general.

17 (e) The provisions of Section 42(f) of the Internal Revenue
18 Code, relating to definition and special rules relating to credit
19 period, shall be modified as follows:

20 (1) The term "credit period" as defined in Section 42(f)(1) of
21 the Internal Revenue Code, relating to credit period defined, is
22 modified by substituting "four taxable years" for "10 taxable
23 years."

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code, relating to
26 special rules for 1st year of credit period, shall not apply to the tax
27 credit under this section.

28 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
29 determination of applicable percentage with respect to increases
30 in qualified basis after 1st year of credit period, is modified to
31 read:

32 If, as of the close of any taxable year in the compliance period,
33 after the first year of the credit period, the qualified basis of any
34 building exceeds the qualified basis of that building as of the close
35 of the first year of the credit period, the housing sponsor, to the
36 extent of its tax credit allocation, shall be eligible for a credit on
37 the excess in an amount equal to the applicable percentage
38 determined pursuant to subdivision (c) for the four-year period
39 beginning with the taxable year in which the increase in qualified
40 basis occurs.

1 ~~(f) The provisions of Section 42(h) of the Internal Revenue~~
2 ~~Code, relating to limitation on aggregate credit allowable with~~
3 ~~respect to projects located in a state, shall be modified as follows:~~

4 ~~(1) Section 42(h)(2) of the Internal Revenue Code, relating to~~
5 ~~allocated credit amount to apply to all taxable years ending during~~
6 ~~or after credit allocation year, does not apply and instead the~~
7 ~~following provisions apply:~~

8 ~~The total amount for the four-year credit period of the housing~~
9 ~~credit dollars allocated in a calendar year to any building shall~~
10 ~~reduce the aggregate housing credit dollar amount of the California~~
11 ~~Tax Credit Allocation Committee for the calendar year in which~~
12 ~~the allocation is made.~~

13 ~~(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),~~
14 ~~(7), and (8) of Section 42(h) of the Internal Revenue Code, relating~~
15 ~~to limitation on aggregate credit allowable with respect to projects~~
16 ~~located in a state, do not apply to this section.~~

17 ~~(g) The aggregate housing credit dollar amount that may be~~
18 ~~allocated annually by the California Tax Credit Allocation~~
19 ~~Committee pursuant to this section, Section 12206, and Section~~
20 ~~23610.5 shall be an amount equal to the sum of all the following:~~

21 ~~(1) Seventy million dollars (\$70,000,000) for the 2001 calendar~~
22 ~~year, and, for the 2002 calendar year and each calendar year~~
23 ~~thereafter, seventy million dollars (\$70,000,000) increased by the~~
24 ~~percentage, if any, by which the Consumer Price Index for the~~
25 ~~preceding calendar year exceeds the Consumer Price Index for the~~
26 ~~2001 calendar year. For the purposes of this paragraph, the term~~
27 ~~“Consumer Price Index” means the last Consumer Price Index for~~
28 ~~All Urban Consumers published by the federal Department of~~
29 ~~Labor.~~

30 ~~(2) The unused housing credit ceiling, if any, for the preceding~~
31 ~~calendar years.~~

32 ~~(3) The amount of housing credit ceiling returned in the calendar~~
33 ~~year. For purposes of this paragraph, the amount of housing credit~~
34 ~~dollar amount returned in the calendar year equals the housing~~
35 ~~credit dollar amount previously allocated to any project that does~~
36 ~~not become a qualified low-income housing project within the~~
37 ~~period required by this section or to any project with respect to~~
38 ~~which an allocation is canceled by mutual consent of the California~~
39 ~~Tax Credit Allocation Committee and the allocation recipient.~~

~~(4) Except as provided in paragraph (6), five hundred thousand dollars (\$500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(5) Except as provided in paragraph (6), the amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.~~

~~(6) No amount shall be provided for projects to provide farmworker housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers.~~

~~(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code, relating to compliance period, is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.~~

~~(i) Section 42(j) of the Internal Revenue Code, relating to recapture of credit, shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and the regulatory agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, provided that the agreement includes all of the following provisions:~~

~~(1) A term not less than the compliance period.~~

~~(2) A requirement that the agreement be recorded in the official records of the county in which the qualified low-income housing project is located.~~

~~(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.~~

~~(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation~~

1 applicable to the building, the right to enforce the regulatory
2 agreement in any state court.

3 (5) A provision incorporating the requirements of Section 42
4 of the Internal Revenue Code, relating to low-income housing
5 credit, as modified by this section.

6 (6) A requirement that the housing sponsor notify the California
7 Tax Credit Allocation Committee or its designee if there is a
8 determination by the Internal Revenue Service that the project is
9 not in compliance with Section 42(g) of the Internal Revenue Code,
10 relating to qualified low-income housing project.

11 (7) A requirement that the housing sponsor, as security for the
12 performance of the housing sponsor's obligations under the
13 regulatory agreement, assign the housing sponsor's interest in rents
14 that it receives from the project, provided that until there is a
15 default under the regulatory agreement, the housing sponsor is
16 entitled to collect and retain the rents.

17 (8) A provision that the remedies available in the event of a
18 default under the regulatory agreement that is not cured within a
19 reasonable cure period include, but are not limited to, allowing
20 any of the parties designated to enforce the regulatory agreement
21 to collect all rents with respect to the project; taking possession of
22 the project and operating the project in accordance with the
23 regulatory agreement until the enforcer determines the housing
24 sponsor is in a position to operate the project in accordance with
25 the regulatory agreement; applying to any court for specific
26 performance; securing the appointment of a receiver to operate
27 the project; or any other relief as may be appropriate.

28 (j) (1) The committee shall allocate the housing credit on a
29 regular basis consisting of two or more periods in each calendar
30 year during which applications may be filed and considered. The
31 committee shall establish application filing deadlines, the maximum
32 percentage of federal and state low-income housing tax credit
33 ceiling that may be allocated by the committee in that period, and
34 the approximate date on which allocations shall be made. If the
35 enactment of federal or state law, the adoption of rules or
36 regulations, or other similar events prevent the use of two allocation
37 periods, the committee may reduce the number of periods and
38 adjust the filing deadlines, maximum percentage of credit allocated,
39 and the allocation dates.

~~(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code, relating to plans for allocation of credit among projects. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code, relating to qualified allocation plan and relating to certain selection criteria must be used, respectively.~~

~~(3) Notwithstanding Section 42(m) of the Internal Revenue Code, relating to responsibilities of housing credit agencies, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:~~

~~(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:~~

~~(i) The housing sponsor shall demonstrate that there is a need and demand for low-income housing in the community or region for which it is proposed.~~

~~(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.~~

~~(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.~~

~~(iv) The housing sponsor shall have and maintain control of the site for the project.~~

~~(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.~~

~~(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.~~

~~(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies and required equity, and a development fee that~~

1 does not exceed a specified percentage of the eligible basis of the
2 project prior to inclusion of the development fee in the eligible
3 basis, as determined by the committee.

4 (B) The committee shall give a preference to those projects
5 satisfying all of the threshold requirements of subparagraph (A)
6 if both of the following apply:

7 (i) The project serves the lowest income tenants at rents
8 affordable to those tenants.

9 (ii) The project is obligated to serve qualified tenants for the
10 longest period.

11 (C) In addition to the provisions of subparagraphs (A) and (B),
12 the committee shall use the following criteria in allocating housing
13 credits:

14 (i) Projects serving large families in which a substantial number,
15 as defined by the committee, of all residential units are low-income
16 units with three or more bedrooms.

17 (ii) Projects providing single-room occupancy units serving
18 very low income tenants.

19 (iii) Existing projects that are “at risk of conversion,” as defined
20 by paragraph (4) of subdivision (c):

21 (iv) Projects for which a public agency provides direct or indirect
22 long-term financial support for at least 15 percent of the total
23 project development costs or projects for which the owner’s equity
24 constitutes at least 30 percent of the total project development
25 costs.

26 (v) Projects that provide tenant amenities not generally available
27 to residents of low-income housing projects.

28 (4) For purposes of allocating credits pursuant to this section,
29 the committee shall not give preference to any project by virtue
30 of the date of submission of its application.

31 (k) Section 42(l) of the Internal Revenue Code, relating to
32 certifications and other reports to secretary, shall be modified as
33 follows:

34 The term “secretary” shall be replaced by the term “Franchise
35 Tax Board.”

36 (l) In the case in which the credit allowed under this section
37 exceeds the net tax, the excess may be carried over to reduce the
38 net tax in the following year, and succeeding years, if necessary,
39 until the credit has been exhausted.

~~(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:~~

~~(1) The project was not placed in service prior to 1990.~~

~~(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.~~

~~(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).~~

~~(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.~~

~~(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, apply to calendar years after 1989.~~

~~(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.~~

~~(q) (1) For a project that receives a preliminary reservation under this section beginning on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an irrevocable election in its application to the California Tax Credit Allocation Committee to sell all or any portion of any credit allowed under this section to one or more unrelated parties for each taxable year in which the credit is allowed subject to both of the following conditions:~~

~~(A) The credit is sold for consideration that is not less than 80 percent of the amount of the credit.~~

~~(B) The unrelated party or parties purchasing any or all of the credit pursuant to this subdivision is a taxpayer allowed the credit under this section for the taxable year of the purchase or any prior taxable year or is a taxpayer allowed the federal credit under Section 42 of the Internal Revenue Code, relating to low-income housing credit, for the taxable year of the purchase or any prior taxable year in connection with any project located in this state. For purposes of this subparagraph, "taxpayer allowed the credit under this section" means a taxpayer that is allowed the credit under this section without regard to the purchase of a credit pursuant to this subdivision.~~

1 ~~(2) (A) The taxpayer that originally received the credit shall~~
2 ~~report to the California Tax Credit Allocation Committee within~~
3 ~~10 days of the sale of the credit, in the form and manner specified~~
4 ~~by the California Tax Credit Allocation Committee, all required~~
5 ~~information regarding the purchase and sale of the credit, including~~
6 ~~the social security or other taxpayer identification number of the~~
7 ~~unrelated party or parties to whom the credit has been sold, the~~
8 ~~face amount of the credit sold, and the amount of consideration~~
9 ~~received by the taxpayer for the sale of the credit.~~

10 ~~(B) The California Tax Credit Allocation Committee shall~~
11 ~~provide an annual listing to the Franchise Tax Board, in a form~~
12 ~~and manner agreed upon by the California Tax Credit Allocation~~
13 ~~Committee and the Franchise Tax Board, of the taxpayers that~~
14 ~~have sold or purchased a credit pursuant to this subdivision.~~

15 ~~(3) (A) A credit may be sold pursuant to this subdivision to~~
16 ~~more than one unrelated party.~~

17 ~~(B) (i) Except as provided in clause (ii), a credit shall not be~~
18 ~~resold by the unrelated party to another taxpayer or other party.~~

19 ~~(ii) All or any portion of any credit allowed under this section~~
20 ~~may be resold once by an original purchaser to one or more~~
21 ~~unrelated parties, subject to all of the requirements of this~~
22 ~~subdivision.~~

23 ~~(4) Notwithstanding any other law, the taxpayer that originally~~
24 ~~received the credit that is sold pursuant to paragraph (1) shall~~
25 ~~remain solely liable for all obligations and liabilities imposed on~~
26 ~~the taxpayer by this section with respect to the credit, none of~~
27 ~~which shall apply to a party to whom the credit has been sold or~~
28 ~~subsequently transferred. Parties that purchase credits pursuant to~~
29 ~~paragraph (1) shall be entitled to utilize the purchased credits in~~
30 ~~the same manner in which the taxpayer that originally received~~
31 ~~the credit could utilize them.~~

32 ~~(5) A taxpayer shall not sell a credit allowed by this section if~~
33 ~~the taxpayer was allowed the credit on any tax return of the~~
34 ~~taxpayer.~~

35 ~~(6) Notwithstanding paragraph (1), the taxpayer, with the~~
36 ~~approval of the Executive Director of the California Tax Credit~~
37 ~~Allocation Committee, may rescind the election to sell all or any~~
38 ~~portion of the credit allowed under this section if the consideration~~
39 ~~for the credit falls below 80 percent of the amount of the credit~~
40 ~~after the California Tax Credit Allocation Committee reservation.~~

~~(r) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.~~

~~(s) The amendments to this section made by Chapter 1222 of the Statutes of 1993 apply only to taxable years beginning on or after January 1, 1994.~~

~~(t) This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credit, remains in effect. Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.~~

~~SEC. 22. Section 23610.5 of the Revenue and Taxation Code is amended to read:~~

~~23610.5. (a) (1) There shall be allowed as a credit against the "tax," defined in Section 23036, a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, relating to low-income housing credit, except as otherwise provided in this section.~~

~~(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a "C" corporation, the partners in the case of a partnership, and the shareholders in the case of an "S" corporation.~~

~~(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a "C" corporation, the partnership in the case of a partnership, and the "S" corporation in the case of an "S" corporation.~~

~~(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.~~

~~(A) The low-income housing project shall be located in California and shall meet either of the following requirements:~~

1 (i) Except for projects to provide farmworker housing, as defined
2 in subdivision (h) of Section 50199.7 of the Health and Safety
3 Code, that are allocated credits solely under the set-aside described
4 in subdivision (c) of Section 50199.20 of the Health and Safety
5 Code, the project's housing sponsor has been allocated by the
6 California Tax Credit Allocation Committee a credit for federal
7 income tax purposes under Section 42 of the Internal Revenue
8 Code, relating to low-income housing credit.

9 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
10 Internal Revenue Code, relating to special rule where 50 percent
11 or more of building is financed with tax-exempt bonds subject to
12 volume cap.

13 (B) The California Tax Credit Allocation Committee shall not
14 require fees for the credit under this section in addition to those
15 fees required for applications for the tax credit pursuant to Section
16 42 of the Internal Revenue Code, relating to low-income housing
17 credit. The committee may require a fee if the application for the
18 credit under this section is submitted in a calendar year after the
19 year the application is submitted for the federal tax credit.

20 (C) (i) For a project that receives a preliminary reservation of
21 the state low-income housing tax credit, allowed pursuant to
22 subdivision (a), on or after January 1, 2009, and before January 1,
23 2020, the credit shall be allocated to the partners of a partnership
24 owning the project in accordance with the partnership agreement,
25 regardless of how the federal low-income housing tax credit with
26 respect to the project is allocated to the partners, or whether the
27 allocation of the credit under the terms of the agreement has
28 substantial economic effect, within the meaning of Section 704(b)
29 of the Internal Revenue Code, relating to determination of
30 distributive share.

31 (ii) To the extent the allocation of the credit to a partner under
32 this section lacks substantial economic effect, any loss or deduction
33 otherwise allowable under this part that is attributable to the sale
34 or other disposition of that partner's partnership interest made prior
35 to the expiration of the federal credit shall not be allowed in the
36 taxable year in which the sale or other disposition occurs, but shall
37 instead be deferred until and treated as if it occurred in the first
38 taxable year immediately following the taxable year in which the
39 federal credit period expires for the project described in clause (i).

1 ~~(iii) This subparagraph shall not apply to a project that receives~~
2 ~~a preliminary reservation of state low-income housing tax credits~~
3 ~~under the set-aside described in subdivision (c) of Section 50199.20~~
4 ~~of the Health and Safety Code unless the project also receives a~~
5 ~~preliminary reservation of federal low-income housing tax credits.~~

6 ~~(2) (A) The California Tax Credit Allocation Committee shall~~
7 ~~certify to the housing sponsor the amount of tax credit under this~~
8 ~~section allocated to the housing sponsor for each credit period.~~

9 ~~(B) In the case of a partnership or an "S" corporation, the~~
10 ~~housing sponsor shall provide a copy of the California Tax Credit~~
11 ~~Allocation Committee certification to the taxpayer.~~

12 ~~(C) The taxpayer shall, upon request, provide a copy of the~~
13 ~~certification to the Franchise Tax Board.~~

14 ~~(D) All elections made by the taxpayer pursuant to Section 42~~
15 ~~of the Internal Revenue Code, relating to low-income housing~~
16 ~~credit, apply to this section.~~

17 ~~(E) (i) Except as described in clause (ii) or (iii), for buildings~~
18 ~~located in designated difficult development areas (DDAs) or~~
19 ~~qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)~~
20 ~~of the Internal Revenue Code, relating to increase in credit for~~
21 ~~buildings in high-cost areas, credits may be allocated under this~~
22 ~~section in the amounts prescribed in subdivision (c), provided that~~
23 ~~the amount of credit allocated under Section 42 of the Internal~~
24 ~~Revenue Code, relating to low-income housing credit, is computed~~
25 ~~on 100 percent of the qualified basis of the building.~~

26 ~~(ii) Notwithstanding clause (i), the California Tax Credit~~
27 ~~Allocation Committee may allocate the credit for buildings located~~
28 ~~in DDAs or QCTs that are restricted to having 50 percent of the~~
29 ~~building's occupants be special needs households, as defined in~~
30 ~~the California Code of Regulations by the California Tax Credit~~
31 ~~Allocation Committee, even if the taxpayer receives federal credits~~
32 ~~pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,~~
33 ~~relating to increase in credit for buildings in high-cost areas,~~
34 ~~provided that the credit allowed under this section shall not exceed~~
35 ~~30 percent of the eligible basis of the building.~~

36 ~~(iii) On and after January 1, 2018, notwithstanding clause (i),~~
37 ~~the California Tax Credit Allocation Committee may allocate the~~
38 ~~credit pursuant to paragraph (5) of subdivision (c) even if the~~
39 ~~taxpayer receives federal credits, pursuant to Section 42(d)(5)(B)~~

1 of the Internal Revenue Code, relating to increase in credit for
2 buildings in high-cost areas:

3 (F) (i) The California Tax Credit Allocation Committee may
4 allocate a credit under this section in exchange for a credit allocated
5 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
6 relating to increase in credit for buildings in high-cost areas, in
7 amounts up to 30 percent of the eligible basis of a building if the
8 credits allowed under Section 42 of the Internal Revenue Code,
9 relating to low-income housing credit, are reduced by an equivalent
10 amount.

11 (ii) An equivalent amount shall be determined by the California
12 Tax Credit Allocation Committee based upon the relative amount
13 required to produce an equivalent state tax credit to the taxpayer.

14 (c) Section 42(b) of the Internal Revenue Code, relating to
15 applicable percentage: 70 percent present value credit for certain
16 new buildings; 30 percent present value credit for certain other
17 buildings, shall be modified as follows:

18 (1) In the case of any qualified low-income building placed in
19 service by the housing sponsor during 1987, the term “applicable
20 percentage” means 9 percent for each of the first three years and
21 3 percent for the fourth year for new buildings (whether or not the
22 building is federally subsidized) and for existing buildings.

23 (2) In the case of any qualified low-income building that receives
24 an allocation after 1989 and is a new building not federally
25 subsidized, the term “applicable percentage” means the following:

26 (A) For each of the first three years, the percentage prescribed
27 by the Secretary of the Treasury for new buildings that are not
28 federally subsidized for the taxable year, determined in accordance
29 with the requirements of Section 42(b)(2) of the Internal Revenue
30 Code, relating to temporary minimum credit rate for nonfederally
31 subsidized new buildings, in lieu of the percentage prescribed in
32 Section 42(b)(1)(A) of the Internal Revenue Code.

33 (B) For the fourth year, the difference between 30 percent and
34 the sum of the applicable percentages for the first three years.

35 (3) In the case of any qualified low-income building that receives
36 an allocation after 1989 and that is a new building that is federally
37 subsidized or that is an existing building that is “at risk of
38 conversion,” the term “applicable percentage” means the following:

1 (A) For each of the first three years, the percentage prescribed
 2 by the Secretary of the Treasury for new buildings that are federally
 3 subsidized for the taxable year.

4 (B) For the fourth year, the difference between 13 percent and
 5 the sum of the applicable percentages for the first three years.

6 (4) For purposes of this section, the term “at risk of conversion,”
 7 with respect to an existing property means a property that satisfies
 8 all of the following criteria:

9 (A) The property is a multifamily rental housing development
 10 in which at least 50 percent of the units receive governmental
 11 assistance pursuant to any of the following:

12 (i) New construction, substantial rehabilitation, moderate
 13 rehabilitation, property disposition, and loan management set-aside
 14 programs, or any other program providing project-based assistance
 15 pursuant to Section 8 of the United States Housing Act of 1937,
 16 Section 1437f of Title 42 of the United States Code, as amended.

17 (ii) The Below-Market-Interest-Rate Program pursuant to
 18 Section 221(d)(3) of the National Housing Act, Sections
 19 1715l(d)(3) and (5) of Title 12 of the United States Code.

20 (iii) Section 236 of the National Housing Act, Section 1715z-1
 21 of Title 12 of the United States Code.

22 (iv) Programs for rent supplement assistance pursuant to Section
 23 101 of the Housing and Urban Development Act of 1965, Section
 24 1701s of Title 12 of the United States Code, as amended.

25 (v) Programs pursuant to Section 514 of the Housing Act of
 26 1949, Section 1484 of Title 42 of the United States Code, as
 27 amended, and Section 515 of the Housing Act of 1949, Section
 28 1485 of Title 42 of the United States Code, as amended.

29 (vi) The low-income housing credit program set forth in Section
 30 42 of the Internal Revenue Code, relating to low-income housing
 31 credit.

32 (vii) Programs for loans or grants administered by the
 33 Department of Housing and Community Development.

34 (B) The restrictions on rent and income levels will terminate or
 35 the federally insured mortgage or rent subsidy contract on the
 36 property is eligible for prepayment or termination any time within
 37 five years before or after the date of application to the California
 38 Tax Credit Allocation Committee.

39 (C) The entity acquiring the property enters into a regulatory
 40 agreement that requires the property to be operated in accordance

1 with the requirements of this section for a period equal to the
2 greater of 55 years or the life of the property.

3 (D) The property satisfies the requirements of Section 42(e) of
4 the Internal Revenue Code, relating to rehabilitation expenditures
5 treated as separate new building, except that the provisions of
6 Section 42(e)(3)(A)(ii)(I) shall not apply.

7 (5) On and after January 1, 2018, in the case of any qualified
8 low-income building that is (A) farmworker housing, as defined
9 by paragraph (2) of subdivision (h) of Section 50199.7 of the
10 Health and Safety Code, and (B) is federally subsidized, the term
11 “applicable percentage” means for each of the first three years, 20
12 percent of the qualified basis of the building, and for the fourth
13 year, 15 percent of the qualified basis of the building.

14 (d) The term “qualified low-income housing project” as defined
15 in Section 42(c)(2) of the Internal Revenue Code, relating to
16 qualified low-income building, is modified by adding the following
17 requirements:

18 (1) The taxpayer shall be entitled to receive a cash distribution
19 from the operations of the project, after funding required reserves;
20 that, at the election of the taxpayer, is equal to:

21 (A) An amount not to exceed 8 percent of the lesser of:

22 (i) The owner equity, which shall include the amount of the
23 capital contributions actually paid to the housing sponsor and shall
24 not include any amounts until they are paid on an investor note.

25 (ii) Twenty percent of the adjusted basis of the building as of
26 the close of the first taxable year of the credit period.

27 (B) The amount of the cashflow from those units in the building
28 that are not low-income units. For purposes of computing cashflow
29 under this subparagraph, operating costs shall be allocated to the
30 low-income units using the “floor space fraction,” as defined in
31 Section 42 of the Internal Revenue Code, relating to low-income
32 housing credit.

33 (C) Any amount allowed to be distributed under subparagraph
34 (A) that is not available for distribution during the first five years
35 of the compliance period may be accumulated and distributed any
36 time during the first 15 years of the compliance period but not
37 thereafter.

38 (2) The limitation on return shall apply in the aggregate to the
39 partners if the housing sponsor is a partnership and in the aggregate
40 to the shareholders if the housing sponsor is an “S” corporation.

~~(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code, relating to in general.~~

~~(e) The provisions of Section 42(f) of the Internal Revenue Code, relating to definition and special rules relating to credit period, shall be modified as follows:~~

~~(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code, relating to credit period defined, is modified by substituting "four taxable years" for "10 taxable years."~~

~~(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code, relating to special rule for 1st year of credit period, shall not apply to the tax credit under this section.~~

~~(3) Section 42(f)(3) of the Internal Revenue Code, relating to determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period, is modified to read:~~

~~If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.~~

~~(f) The provisions of Section 42(h) of the Internal Revenue Code, relating to limitation on aggregate credit allowable with respect to projects located in a state, shall be modified as follows:~~

~~(1) Section 42(h)(2) of the Internal Revenue Code, relating to allocated credit amount to apply to all taxable years ending during or after credit allocation year, shall not be applicable and instead the following provisions shall be applicable:~~

~~The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California~~

1 Tax Credit Allocation Committee for the calendar year in which
2 the allocation is made.

3 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
4 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
5 to limitation on aggregate credit allowable with respect to projects
6 located in a state, shall not be applicable.

7 (g) The aggregate housing credit dollar amount that may be
8 allocated annually by the California Tax Credit Allocation
9 Committee pursuant to this section, Section 12206, and Section
10 17058 shall be an amount equal to the sum of all the following:

11 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
12 year, and, for the 2002 calendar year and each calendar year
13 thereafter, seventy million dollars (\$70,000,000) increased by the
14 percentage, if any, by which the Consumer Price Index for the
15 preceding calendar year exceeds the Consumer Price Index for the
16 2001 calendar year. For the purposes of this paragraph, the term
17 “Consumer Price Index” means the last Consumer Price Index for
18 All Urban Consumers published by the federal Department of
19 Labor.

20 (2) The unused housing credit ceiling, if any, for the preceding
21 calendar years.

22 (3) The amount of housing credit ceiling returned in the calendar
23 year. For purposes of this paragraph, the amount of housing credit
24 dollar amount returned in the calendar year equals the housing
25 credit dollar amount previously allocated to any project that does
26 not become a qualified low-income housing project within the
27 period required by this section or to any project with respect to
28 which an allocation is canceled by mutual consent of the California
29 Tax Credit Allocation Committee and the allocation recipient.

30 (4) Except as provided in paragraph (6), five hundred thousand
31 dollars (\$500,000) per calendar year for projects to provide
32 farmworker housing, as defined in subdivision (h) of Section
33 50199.7 of the Health and Safety Code.

34 (5) Except as provided in paragraph (6), the amount of any
35 unallocated or returned credits under former Sections 17053.14,
36 23608.2, and 23608.3, as those sections read prior to January 1,
37 2009, until fully exhausted for projects to provide farmworker
38 housing, as defined in subdivision (h) of Section 50199.7 of the
39 Health and Safety Code.

~~(6) No amount shall be provided for projects to provide farmworker housing used to comply with the requirement under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers.~~

~~(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code, relating to compliance period, is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.~~

~~(i) Section 42(j) of the Internal Revenue Code, relating to recapture of credit, shall not be applicable and the following shall be substituted in its place:~~

~~The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and the regulatory agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, provided that the agreement includes all of the following provisions:~~

~~(1) A term not less than the compliance period.~~

~~(2) A requirement that the agreement be recorded in the official records of the county in which the qualified low-income housing project is located.~~

~~(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.~~

~~(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.~~

~~(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code, relating to low-income housing credit, as modified by this section.~~

~~(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is~~

1 not in compliance with Section 42(g) of the Internal Revenue Code,
2 relating to qualified low-income housing project.

3 ~~(7) A requirement that the housing sponsor, as security for the~~
4 ~~performance of the housing sponsor's obligations under the~~
5 ~~regulatory agreement, assign the housing sponsor's interest in rents~~
6 ~~that it receives from the project, provided that until there is a~~
7 ~~default under the regulatory agreement, the housing sponsor is~~
8 ~~entitled to collect and retain the rents.~~

9 ~~(8) A provision that the remedies available in the event of a~~
10 ~~default under the regulatory agreement that is not cured within a~~
11 ~~reasonable cure period include, but are not limited to, allowing~~
12 ~~any of the parties designated to enforce the regulatory agreement~~
13 ~~to collect all rents with respect to the project; taking possession of~~
14 ~~the project and operating the project in accordance with the~~
15 ~~regulatory agreement until the enforcer determines the housing~~
16 ~~sponsor is in a position to operate the project in accordance with~~
17 ~~the regulatory agreement; applying to any court for specific~~
18 ~~performance; securing the appointment of a receiver to operate~~
19 ~~the project; or any other relief as may be appropriate.~~

20 ~~(j) (1) The committee shall allocate the housing credit on a~~
21 ~~regular basis consisting of two or more periods in each calendar~~
22 ~~year during which applications may be filed and considered. The~~
23 ~~committee shall establish application filing deadlines, the maximum~~
24 ~~percentage of federal and state low-income housing tax credit~~
25 ~~ceiling that may be allocated by the committee in that period, and~~
26 ~~the approximate date on which allocations shall be made. If the~~
27 ~~enactment of federal or state law, the adoption of rules or~~
28 ~~regulations, or other similar events prevent the use of two allocation~~
29 ~~periods, the committee may reduce the number of periods and~~
30 ~~adjust the filing deadlines, maximum percentage of credit allocated,~~
31 ~~and allocation dates.~~

32 ~~(2) The committee shall adopt a qualified allocation plan, as~~
33 ~~provided in Section 42(m)(1) of the Internal Revenue Code, relating~~
34 ~~to plans for allocation of credit among projects. In adopting this~~
35 ~~plan, the committee shall comply with the provisions of Sections~~
36 ~~42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,~~
37 ~~relating to qualified allocation plan and relating to certain selection~~
38 ~~criteria must be used, respectively.~~

39 ~~(3) Notwithstanding Section 42(m) of the Internal Revenue~~
40 ~~Code, relating to responsibilities of housing credit agencies, the~~

1 California Tax Credit Allocation Committee shall allocate housing
 2 credits in accordance with the qualified allocation plan and
 3 regulations, which shall include the following provisions:

4 (A) All housing sponsors, as defined by paragraph (3) of
 5 subdivision (a), shall demonstrate at the time the application is
 6 filed with the committee that the project meets the following
 7 threshold requirements:

8 (i) The housing sponsor shall demonstrate there is a need for
 9 low-income housing in the community or region for which it is
 10 proposed.

11 (ii) The project's proposed financing, including tax credit
 12 proceeds, shall be sufficient to complete the project and shall be
 13 adequate to operate the project for the extended use period.

14 (iii) The project shall have enforceable financing commitments;
 15 either construction or permanent financing, for at least 50 percent
 16 of the total estimated financing of the project.

17 (iv) The housing sponsor shall have and maintain control of the
 18 site for the project.

19 (v) The housing sponsor shall demonstrate that the project
 20 complies with all applicable local land use and zoning ordinances.

21 (vi) The housing sponsor shall demonstrate that the project
 22 development team has the experience and the financial capacity
 23 to ensure project completion and operation for the extended use
 24 period.

25 (vii) The housing sponsor shall demonstrate the amount of tax
 26 credit that is necessary for the financial feasibility of the project
 27 and its viability as a qualified low-income housing project
 28 throughout the extended use period, taking into account operating
 29 expenses, a supportable debt service, reserves, funds set aside for
 30 rental subsidies and required equity, and a development fee that
 31 does not exceed a specified percentage of the eligible basis of the
 32 project prior to inclusion of the development fee in the eligible
 33 basis, as determined by the committee.

34 (B) The committee shall give a preference to those projects
 35 satisfying all of the threshold requirements of subparagraph (A)
 36 if both of the following apply:

37 (i) The project serves the lowest income tenants at rents
 38 affordable to those tenants.

39 (ii) The project is obligated to serve qualified tenants for the
 40 longest period.

1 (C) In addition to the provisions of subparagraphs (A) and (B),
2 the committee shall use the following criteria in allocating housing
3 credits:

4 (i) Projects serving large families in which a substantial number,
5 as defined by the committee, of all residential units are low-income
6 units with three or more bedrooms.

7 (ii) ~~Projects providing single-room occupancy units serving~~
8 ~~very low income tenants.~~

9 (iii) Existing projects that are “at risk of conversion,” as defined
10 by paragraph (4) of subdivision (c).

11 (iv) Projects for which a public agency provides direct or indirect
12 long-term financial support for at least 15 percent of the total
13 project development costs or projects for which the owner’s equity
14 constitutes at least 30 percent of the total project development
15 costs.

16 (v) Projects that provide tenant amenities not generally available
17 to residents of low-income housing projects.

18 (4) ~~For purposes of allocating credits pursuant to this section,~~
19 ~~the committee shall not give preference to any project by virtue~~
20 ~~of the date of submission of its application except to break a tie~~
21 ~~when two or more of the projects have an equal rating.~~

22 (5) ~~Not less than 20 percent of the low-income housing tax~~
23 ~~credits available annually under this section, Section 12206, and~~
24 ~~Section 17058 shall be set aside for allocation to rural areas as~~
25 ~~defined in Section 50199.21 of the Health and Safety Code. Any~~
26 ~~amount of credit set aside for rural areas remaining on or after~~
27 ~~October 31 of any calendar year shall be available for allocation~~
28 ~~to any eligible project. No amount of credit set aside for rural areas~~
29 ~~shall be considered available for any eligible project so long as~~
30 ~~there are eligible rural applications pending on October 31.~~

31 (k) ~~Section 42(l) of the Internal Revenue Code, relating to~~
32 ~~certifications and other reports to secretary, shall be modified as~~
33 ~~follows:~~

34 The term “secretary” shall be replaced by the term “Franchise
35 Tax Board.”

36 (l) ~~In the case in which the credit allowed under this section~~
37 ~~exceeds the “tax,” the excess may be carried over to reduce the~~
38 ~~“tax” in the following year, and succeeding years, if necessary,~~
39 ~~until the credit has been exhausted.~~

~~(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:~~

~~(1) The project was not placed in service prior to 1990.~~

~~(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.~~

~~(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).~~

~~(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.~~

~~(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, apply to calendar years after 1989.~~

~~(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.~~

~~(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, "affiliated corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and "voting common stock" is substituted for "voting stock" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.~~

~~(2) The election provided in paragraph (1):~~

~~(A) May be based on any method selected by the corporation that originally receives the credit.~~

~~(B) Shall be irrevocable for the taxable year the credit is allowed, once made.~~

~~(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the~~

1 returns of the affiliated corporations that assign and receive the
2 credits.

3 (r) (1) For a project that receives a preliminary reservation
4 under this section beginning on or after January 1, 2016, and before
5 January 1, 2020, a taxpayer may make an irrevocable election in
6 its application to the California Tax Credit Allocation Committee
7 to sell all or any portion of any credit allowed under this section
8 to one or more unrelated parties for each taxable year in which the
9 credit is allowed subject to both of the following conditions:

10 (A) The credit is sold for consideration that is not less than 80
11 percent of the amount of the credit.

12 (B) (i) The unrelated party or parties purchasing any or all of
13 the credit pursuant to this subdivision is a taxpayer allowed the
14 credit under this section for the taxable year of the purchase or any
15 prior taxable year or is a taxpayer allowed the federal credit under
16 Section 42 of the Internal Revenue Code, relating to low-income
17 housing credit, for the taxable year of the purchase or any prior
18 taxable year in connection with any project located in this state.

19 (ii) For purposes of this subparagraph, "taxpayer allowed the
20 credit under this section" means a taxpayer that is allowed the
21 credit under this section without regard to the purchase of a credit
22 pursuant to this subdivision without regard to any of the following:

23 (I) The purchase of a credit under this section pursuant to this
24 subdivision.

25 (II) The assignment of a credit under this section pursuant to
26 subdivision (q).

27 (III) The assignment of a credit under this section pursuant to
28 Section 23363.

29 (2) (A) The taxpayer that originally received the credit shall
30 report to the California Tax Credit Allocation Committee within
31 10 days of the sale of the credit, in the form and manner specified
32 by the California Tax Credit Allocation Committee, all required
33 information regarding the purchase and sale of the credit, including
34 the social security or other taxpayer identification number of the
35 unrelated party or parties to whom the credit has been sold, the
36 face amount of the credit sold, and the amount of consideration
37 received by the taxpayer for the sale of the credit.

38 (B) The California Tax Credit Allocation Committee shall
39 provide an annual listing to the Franchise Tax Board, in a form
40 and manner agreed upon by the California Tax Credit Allocation

1 Committee and the Franchise Tax Board, of the taxpayers that
2 have sold or purchased a credit pursuant to this subdivision.

3 ~~(3) (A) A credit may be sold pursuant to this subdivision to~~
4 ~~more than one unrelated party.~~

5 ~~(B) (i) Except as provided in clause (ii), a credit shall not be~~
6 ~~resold by the unrelated party to another taxpayer or other party.~~

7 ~~(ii) All or any portion of any credit allowed under this section~~
8 ~~may be resold once by an original purchaser to one or more~~
9 ~~unrelated parties, subject to all of the requirements of this~~
10 ~~subdivision.~~

11 ~~(4) Notwithstanding any other law, the taxpayer that originally~~
12 ~~received the credit that is sold pursuant to paragraph (1) shall~~
13 ~~remain solely liable for all obligations and liabilities imposed on~~
14 ~~the taxpayer by this section with respect to the credit, none of~~
15 ~~which shall apply to a party to whom the credit has been sold or~~
16 ~~subsequently transferred. Parties that purchase credits pursuant to~~
17 ~~paragraph (1) shall be entitled to utilize the purchased credits in~~
18 ~~the same manner in which the taxpayer that originally received~~
19 ~~the credit could utilize them.~~

20 ~~(5) A taxpayer shall not sell a credit allowed by this section if~~
21 ~~the taxpayer was allowed the credit on any tax return of the~~
22 ~~taxpayer.~~

23 ~~(6) Notwithstanding paragraph (1), the taxpayer, with the~~
24 ~~approval of the Executive Director of the California Tax Credit~~
25 ~~Allocation Committee, may rescind the election to sell all or any~~
26 ~~portion of the credit allowed under this section if the consideration~~
27 ~~for the credit falls below 80 percent of the amount of the credit~~
28 ~~after the California Tax Credit Allocation Committee reservation.~~

29 ~~(s) The California Tax Credit Allocation Committee may~~
30 ~~prescribe rules, guidelines, or procedures necessary or appropriate~~
31 ~~to carry out the purposes of this section, including any guidelines~~
32 ~~regarding the allocation of the credit allowed under this section.~~
33 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~
34 ~~3 of Title 2 of the Government Code shall not apply to any rule,~~
35 ~~guideline, or procedure prescribed by the California Tax Credit~~
36 ~~Allocation Committee pursuant to this section.~~

37 ~~(t) Any unused credit may continue to be carried forward, as~~
38 ~~provided in subdivision (l), until the credit has been exhausted.~~

1 ~~(u) This section shall remain in effect on and after December~~
2 ~~1, 1990, for as long as Section 42 of the Internal Revenue Code,~~
3 ~~relating to low-income housing credit, remains in effect.~~

4 ~~(v) The amendments to this section made by Chapter 1222 of~~
5 ~~the Statutes of 1993 shall apply only to taxable years beginning~~
6 ~~on or after January 1, 1994, except that paragraph (1) of subdivision~~
7 ~~(q), as amended, shall apply to taxable years beginning on or after~~
8 ~~January 1, 1993.~~

9 ~~SEC. 23.~~

10 *SEC. 20.* No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act or because costs that may be
15 incurred by a local agency or school district will be incurred
16 because this act creates a new crime or infraction, eliminates a
17 crime or infraction, or changes the penalty for a crime or infraction,
18 within the meaning of Section 17556 of the Government Code, or
19 changes the definition of a crime within the meaning of Section 6
20 of Article XIII B of the California Constitution.

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March 27, 2019

The Honorable David Chiu
Chair, Assembly Committee on Housing and Community Development
Sacramento, CA 95814

RE: AB 1783 (R. Rivas) – Letter of Support

Dear Mr. Chair:

The City of Morgan Hill is pleased to offer support of AB 1783, which creates a streamlined process in which farm owners and operators can dedicate agricultural land to quality employee housing, and the phasing out of state support of the federal H-2A program.

The state's housing shortage is not just an urban problem nor can a singular approach solve our housing crisis. The housing shortage affects rural areas as well, particularly those that depend on agriculture. Many farms have surplus land that could be used to build safe and secure housing for farmworkers, but in order to do that the land first needs to be rezoned. In fact, the City of Morgan Hill, County of Santa Clara, and local farmers have created the "South Santa Clara County Agricultural Worker Housing Focus Group" to brainstorm ideas to develop Farmworker housing. The City has learned that many of our local Farmers have had to let crops die because they have not been able to employ workers to pick their crops, have had to resort to competing with one another for workers (due to the affordable housing situation), and at times, have not even tried to farm their land because of the shortage of workers. Many of these Farmers expressed that they would be willing to build housing for workers on their land if they were permitted to do so.

Unfortunately, rezoning is often blocked by communities that don't want housing for farmworkers. This leads to farmworker housing stopgaps that are often substandard and unsafe. Without adequate housing, farmworkers and their families are left with no choice, but to sleep in their vehicles, illegally converted garages, and sometimes even the outdoors; living conditions that are not suitable under any circumstances.

The City of Morgan Hill is proud to support AB 1783 which encourages growers to supply quality housing in order to address one of many types of housing shortages in the state. California's failure to provide decent and affordable housing hurts our ability to attract workers to California's farms, and the federal H-2A program push makes a bad situation even worse. Under the visa program, a farmworker is disconnected from family and dependent on a single employer that controls daily meals, housing, and immigration status. This situation can be punitive for a farmworker.

The City of Morgan Hill commends Assemblymember Rivas' leadership in authoring AB 1783 to create a tool for agriculture growers to provide quality, dignified housing for their domestic workforce. The Farm Worker Housing Act of 2019 creates a streamlined process where agricultural employee housing located on

land zoned for agricultural uses shall be subject solely to a ministerial approval process and not subject to a conditional use permit, provided it meets certain objective quality standards, which include:

- No barrack-style housing or gender discrimination (all male dorms).
- Housing that does not promote family unity will not be eligible.
- No dual-role of employer and landlord. An employer of farm workers cannot also serve as a landlord.
- No for-profit management. Housing must be managed by a qualified affordable housing organization.

California's housing needs are diverse and require alternative solutions for different areas in the state. AB 1783 addresses a need in the rural parts of the state to establish opportunities for a grower to more easily offer housing for the workforce that drives California's multi-billion dollar industry. The City of Morgan Hill looks forward to continuing to support AB 1783 as it advances through the legislative process.

Sincerely,



Rich Constantine
Mayor

Cc: Morgan Hill City Council Members



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Harjot Sangha, Accounting Manager
APPROVED BY: City Manager

RESOLUTION SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

RECOMMENDATION(S)

Adopt resolution supporting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

REPORT NARRATIVE:

On December 18, 1979, the United Nations General Assembly adopted CEDAW, a United Nations treaty for all women's equality. The CEDAW is a landmark international agreement that affirms principles of fundamental human rights and equality for women around the world (Attachment No. 1). It focuses on women's rights and provides a universal definition of discrimination against women and calls for action to eliminate discrimination in many areas including politics, law, employment, education, and health care. Thus far, 189 out of 193 United Nations member states have ratified CEDAW. The United States signed the CEDAW in 1980 but has not formally ratified it.

In 2013, Women's Intercultural Network (WIN), a Non-Governmental Organization (NGO) with Consultative Status to the UN Economic and Social Council (ECOSOC), and the San Francisco Department of the Status of Women (DOSW), jointly launched a *Cities for CEDAW* Campaign in 2013 (Attachment No. 2), to lead efforts that provide tools and leadership to empower local women's civil and human rights organizations and municipalities to effectively initiate CEDAW within their city, county, town or state by adopting resolutions or ordinances that support or implement three key components: a gender analysis of city departments and operations; an oversight body to monitor the implementation of a local CEDAW ordinance; and funding to support the implementation of the principles of CEDAW. In 2015, The Leadership Conference on Civil and Human Rights joined the campaign to help build capacity and provide educational resources to inform cities to take action in their local areas and promote adoption of CEDAW principles for the Cities for CEDAW campaign.

In 1998, San Francisco became the first city in the United States to adopt such an

ordinance, followed by Los Angeles in 2003. According to the Cities for CEDAW website, as of August 2018, 7 cities or counties have adopted ordinances (including County of Santa Clara), 31 cities or counties have adopted resolutions, and 31 additional cities and or counties have made commitments to use CEDAW principles in local law and policy by adopting resolutions and proclamations.

In January 2019, the City Council held its annual goal setting workshop at which it confirmed Morgan Hill's vision to sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community. Further, the City Council instituted fundamentals to its success by having 9 ongoing priorities, which include enhancing diversity and inclusiveness.

On March 20, 2019, at the request of the Mayor, the City Council received a report on CEDAW, discussed the initiative, and provided unanimous directive for staff to prepare a resolution in support of CEDAW (Attachment No. 3).

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of a position the City Council plans to take regarding CEDAW.

ALTERNATIVE ACTIONS:

Council could choose not to adopt the resolution.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 20, 2019, the City Council received a report on CEDAW and directed staff to prepare a resolution in support.

FISCAL AND RESOURCE IMPACT:

There were no significant fiscal or resource impacts in preparing this report as it was an activity accommodated within the existing workplan of the City Manager's office.

CEQA (California Environmental Quality Act):

Not a Project. This is an administrative activity of the government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Introduction to CEDAW and Full Text (web link)
2. Cities for CEDAW Campaign Website (web link)
3. CEDAW Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SUPPORTING THE UNITED NATIONS CONVENTION OF THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

WHEREAS, the Convention of the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly on December 18, 1979, became an international treaty on September 3, 1981, and 189 United Nations member nations have agreed to be bound by CEDAW's provisions; and

WHEREAS, while women have made gains in the struggle for equality in many fields, there remains a need to fully eradicate gender-based discrimination and to provide one of the most basic human rights-equality to all; and

WHEREAS, Cities for CEDAW is a grass roots effort that provides tools and leadership to empower local women's organization and municipalities to effectively initiate CEDAW within their respective localities; and

WHEREAS, the City Council wishes to express its desire that women who live in Morgan Hill, California enjoy all the rights, privileges, and remedies that are bestowed on all people in the United States, no matter their race, national origin, gender or religious belief, and with a purpose to proclaim that Morgan Hill, California is a city that will not tolerate discrimination against women; and

WHEREAS, CEDAW provides a comprehensive framework for governments to examine their policies and practices in relation to women and to rectify discrimination based on gender; and

WHEREAS, the City Council adopted its 2019-2020 Sustainable Morgan Hill strategic priorities on February 6, 2019, including enhancing diversity and inclusiveness as an ongoing priority; and

WHEREAS, by adopting this CEDAW Resolution, the City Council pledge to continuing work to ensure safety, security, and equality for all, and fight discrimination and violence, in the City of Morgan Hill; and

NOW, THEREFORE, BE IT RESOLVED that the City Council do hereby commit to eliminating all forms of violence against females, promoting the health and safety of women and affording them equal education, economic, social and business opportunities in the City of Morgan Hill, California.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of April 2019.

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

Attachment: CEDAW Resolution (2257 : CEDAW Resolution)

DATE: _____

RICH CONSTANTINE, Mayor∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: CEDAW Resolution (2257 : CEDAW Resolution)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDSCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2300, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Economic Development
Financial Stewardship
Housing
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

On March 20, 2019, the City Council introduced Ordinance No. 2300 New Series, by the following roll call vote: AYES: Carr, McKay, Constantine; NOES: Martinez Beltran; ABSTAIN: None; ABSENT: Spring.

Ordinance 2300 will approve a Development Agreement between the City of Morgan Hill and the Latala Group, LLC. This Development Agreement contains the Residential Development Control System (RDSCS) public benefit commitments for 49 Downtown

RDCS, allotments. On March 20, 2019, City Council approved the payment of in-lieu fees rather than on-site construction of Inclusionary Housing units for the project and the Development Agreement has been modified to incorporate this change.

On October 3, 2018, the City Council approved a Disposition Development Agreement (DDA) memorializing the sale of .29 acres of Depot Street right-of-way, the realignment and construction of Depot Street to Church Street and East Dunne Avenue intersection, and the option to purchase a 3,116 square foot office within the mixed-use building of the proposed project. In conformance with the approved DDA, the applicant submitted preliminary and final RDCS applications and was awarded 49 building allotments at the January 22, 2019 Planning Commission meeting. The Planning Commission also recommended approval of the RDCS Development Agreement (DA) solidifying the project public benefit commitments.

The updated Development Agreement will be provided as a supplement before the April 3, 2019 City Council Meeting.

COMMUNITY ENGAGEMENT: Inform

All prior City Council actions were publicly noticed for the item including the Downtown Housing and Retail Capacity, Trends, and Opportunities workshop with the Planning Commission at the July 24, 2018 meeting.

In addition, the Developer met with:

- ☐ Jeff Dixon on June 15, 2018 representing the Freedom Fest event
- ☐ Downtown Restaurant Association on August 13, 2018
- ☐ Downtown Association on August 16, 2018
- ☐ Chamber of Commerce on August 28, 2018
- ☐ Sunday Minnich representing the Mardi Gras event on September 10, 2018
- ☐ Chamber of Commerce Economic Development Committee on September 13, 2018
- ☐ Cricket Rubino representing Bingo at the CCC on September 13, 2018.

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- April 18, 2018 – ENA was presented and approved by City Council.
- July 24, 2018 – Planning Commission Workshop on Downtown Housing and Retail Capacity, Trends, and Opportunities.

- August 21, 2018 – Presentation to the Parks and Recreation Commission for the opportunity to purchase the 3,000 square foot office space within the proposed development. Parks and Recreation Commission recommended approval to City Council.
- September 5, 2018 – Presented City Council the opportunity to purchase the 3,000-office building for non-profits, to be developed as part of the project.
- October 3, 2018 – Approved Disposition Development Agreement for the sale of .29-acres of former Depot Street right-of-way and realignment of Depot Street to Church Street in conjunction with the redevelopment of the Hale Lumber site.
- October 17, 2018 – City Council adopted Ordinance No. 2282 N.S., approving General Plan and Zoning Amendments for the Depot Street right-of-way as the first step towards realigning Depot Street.
- January 22, 2019 – Planning Commission awarded 49 Downtown allotments and recommended approval of the RDCS Development Agreement to memorialize the commitments for those units.
- February 20, 2019 – The Council received the presentation, opened public comment, and continued the item to a date certain for staff to report back with Downtown Set-a-Side Units as it relates to RDCS, tree replacement plan, current development, and construction Downtown, and Depot Street circulation as it relates to future grade separations and Quiet Zones.
- March 20, 2019 – The Council approved the Development Agreement with the understanding that the developer will pay the affordable housing in-lieu fee instead of building the units.

FISCAL AND RESOURCE IMPACT:

Depot Street Realignment with Parking Lot Enhancements

The estimated cost of construction for the realignment of Depot Street with CCC parking lot enhancements is a total of \$901,726. The resources to pay for the realignment of Depot Street and parking lot enhancements are outlined within the approved DDA.

Office Building

The project includes a 3,000 square foot office building that the City would like to purchase for non-profit services from the Recreation Center Impact Fund (360). An appraisal was completed for the proposed structure, assessing the price at \$800,000. On September 5, 2018, the Council was provided options for funding.

CEQA (California Environmental Quality Act):

The Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan was certified in November 2009 in conformance with California Environmental

Quality Act (CEQA) Guidelines Section 15175(a), identified the impacts of the Downtown Specific Plan in order to streamline the later environment review of projects and approvals required to implement the Specific Plan. The intent was for the Downtown Specific Plan FEIR to be a program-level document from which subsequent development consistent with the Specific Plan could tier from (in conformance with CEQA Guidelines Section 15176(d)).

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH #2015022074).

CEQA Guidelines § 15164 states that the lead agency or a responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in § 15162 calling for preparation of a subsequent EIR have occurred.

An Addendum was prepared to provide a program-level CEQA analysis of the proposed project, as part of the adopted 2009 Downtown Specific Plan EIR. The Addendum found no impacts that were not previously disclosed in the General Plan FEIR or the Downtown Specific Plan Master FEIR, nor would it result in a substantial increase in the magnitude of any significant environmental impacts previously identified.

LINKS/ATTACHMENTS:

1. 2300 Depot Latale RDCS DA

ORDINANCE NO. 2300, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2018-
0007: DEPOT-LATALA FOR A 49-UNIT MIXED USE
DEVELOPMENT LOCATED ON THE EASTERLY SIDE OF
DEPOT STREET NORTH OF EAST DUNNE AVENUE (APN
726-13-049)**

**THE CITY COUNCIL OF THE CITY MORGAN HILL DOES
ORDAIN AS FOLLOWS:**

SECTION 1. The Planning Commission, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code (MHMC), awarded 49 Downtown RDCS set-aside building allotments to application RDCS2018-0002 Depot-Latala. Additionally, pursuant to MHMC Chapter 18.116.040, the Planning Commission recommended approval of the Development Agreement.

SECTION 2. The City Council of the City of Morgan Hill adopted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the MHMC.

SECTION 3. 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.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby accepts the recommendation of the Planning Commission and further finds that the development proposal and Development Agreement approved by this Ordinance are consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and the Downtown Specific Plan. The project would provide 49, residential units in a mixed use development, as well as the realignment of Depot Street. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 6. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the proposed mixed-use development is permitted within the Mixed Use-Downtown Specific Plan area and would be compatible with the surrounding residential and small business uses.

SECTION 7. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 8. The City Council directed the payment for the affordable housing commitments by an in-lieu fee at the March 20, 2019 meeting. These commitments are described within Exhibit C of the Development Agreement. This Development Agreement satisfies the Inclusionary Housing Ordinance requirements.

SECTION 9. The City Council hereby finds that the project 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 because project construction would adhere to state, local and federal laws. The project is a mixed-use residential development that would include the same normal daily operations of other surrounding uses.

SECTION 10. The City Council of the City of Morgan Hill finds that the Development Agreement was analyzed pursuant to the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Initial Study/Addendum previously prepared for purposes of the Development Agreement and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 11. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because 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 12. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 13. Severability: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the

applicability of this Ordinance to other situations.

SECTION 14. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to 36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF MARCH 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 3rd DAY OF APRIL 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: May 4, 2019

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2300, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3rd day of April 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: David Swing, Police Chief

APPROVED BY: City Manager

APPROVE MEMORANDUM OF UNDERSTANDING ACCEPTING FAMILY JUSTICE CENTER GRANT FUNDS FROM COMMUNITY SOLUTIONS

RECOMMENDATION(S)

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with Community Solutions to accept grant funds as a sub-recipient of the California Office of Emergency Services grant for a total amount of \$50,000 over three fiscal years; and
2. Amending the City's adopted FY2018-19 and FY2019-20 biennial budget to recognize grant revenue of \$12,500 in FY2018-19 and \$25,000 in FY2019-20, in the General Fund (010).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The Morgan Hill Police Department partnered with Community Solutions in 2015 to open a South County Family Justice Center (FJC) located at the Morgan Hill Community Solutions office. The FJC operates one-day a week and is staffed by a Victim Advocate, Immigration Attorney, Deputy District Attorney, and Domestic Violence Detective.

Community Solutions, a local community-based organization that provides an array of social services including advocacy services for domestic violence survivors, was recently awarded a grant from the California Office of Emergency Services for Family Justice Center Programs (Grant FJ 18 01 1043). This grant provides for reimbursement to agencies who provide services at a Family Justice Center (FJC).

As part of the grant award, Community Solutions would like to enter into a Memorandum of Understanding (MOU) to compensate the City of Morgan Hill for the staff time the Domestic Violence Detective dedicates to the FJC for a not to exceed amount of \$50,000 over three fiscal years, from January 1, 2019 to December 31, 2020.

Staff received this request on March 25, 2019 and needed to return the signed MOU by Friday, March 29, 2019. If Council chooses to not approve the receipt of funds, staff will void the MOU and not invoice Community Solutions for staff time at the FJC.

COMMUNITY ENGAGEMENT: Inform

This staff report informs the community about the receipt of the grant and reminds the community about the resources available through the Family Justice Center.

ALTERNATIVE ACTIONS:

Council could choose to not accept the grant and staff would not invoice Community Solutions for reimbursement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

This is a new grant award and there have been no previous actions taken on this item.

FISCAL AND RESOURCE IMPACT:

The total amount of the grant award is \$50,000.

FY2018-19 = \$12,500

FY2019-20 = \$25,000

FY2020-21 = \$12,500

Notification of funds availability was received after the conclusion of the budget process and therefore this grant revenue was not included in the FY2018-20 biennial budget process. The Domestic Violence Detective's salary is fully appropriated from the General Fund (010) as part of the budget process. Staff recommends amending the adopted FY2018-20 biennial budget to accept grant revenue in the amount of \$37,500 for reimbursement for the Domestic Violence Detective time at the FJC in the General Fund (010). The Domestic Violence Detective will not incur additional responsibilities as a result of this grant. The final \$12,500 to be expended in the first six months of FY2020-21 will be included in the budget development process for that fiscal year.

CEQA (California Environmental Quality Act): Not a project

Not a Project.

The grant entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Resolution
2. Community Solutions MOU

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN MEMORANDUM OF UNDERSTANDING WITH COMMUNITY SOLUTIONS FOR THE CALIFORNIA OFFICE OF EMERGENCY SERVICES GRANT PROGRAM FOR FAMILY JUSTICE CENTERS AND AMENDING THE CITY'S FISCAL YEAR 2018-19 and 2019-20 BIENNIAL BUDGET IN THE GENERAL FUND (010) TO RECOGNIZE REVENUE OF \$37,500, THEREFORE**

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve Memorandum of Understanding Accepting Family Justice Center Grant from Community Solutions" submitted for City Council consideration at its meeting of April 3, 2019 submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Biennial Budget for Fiscal Years 2018-19 and 2019-20, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the Memorandum of Understanding with Community Solutions substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the “Agreement”) is hereby approved; and
- b. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to terminate as necessary or appropriate, the Agreement substantially in the form attached hereto as Exhibit B; provided, specifically, that the total amounts to be received in grant funds by City under the Memorandum of Understanding shall in no event exceed thirty seven thousand five hundred dollars (\$37,500) in the first two fiscal years; and
- c. That the City’s previously adopted Fiscal Years 2018-19 and 2019-20 Biennial Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- d. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City’s Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Years 2018-19 and 2019-20 Biennial Budget of City.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 3rd day of April 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Richard Constantine, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (2262 : MOU - Community Solutions and MHPD)

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

037

FUND:

010 General Fund

DEPARTMENT:

OBJECT:

37585 Domestic Violence Grant

AGENDA DATE:

04/03/19

AGENDA ITEM TITLE:

Family Justice Center Grant from Community Solution (\$25,000 FY 20)

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	595,353	994,986	(399,633)
RECOMMENDED ACTION	-	12,500	-	12,500
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,872,402</u>	<u>42,653,475</u>	<u>16,905,979</u>

Exhibit B

MEMORANDUM OF UNDERSTANDING

Between

**COMMUNITY SOLUTIONS,
9015 Murray Ave #100
Gilroy, CA 95020**

**Morgan Hill Police Department
16200 Vineyard Blvd.
Morgan Hill, CA 95037
Cal-OES Family Justice Center Program
Award No.FJ 18 01 1043**

This Operational Agreement ("Agreement") is entered into and becomes effective on January 1, 2019("Effective Date") by and between MORGAN HILL POLICE DEPARTMENT and COMMUNITY SOLUTIONS, a 501(c)(3) nonprofit corporation ("Community Solutions"), hereinafter referred to collectively as "Parties."

RECITALS

SECTION 1: Term of Agreement

The term of this Agreement is from January 1, 2019 through December 31, 2020.

SECTION 2: Services to be provided by Community Solutions

Community Solutions, as the lead agency for the partnership, agrees to provide the following services during the term of this Agreement:

- a) Serve as Fiscal Agent for the partnership;
- b) Identify roles and expectations of key partners;
- c) Ensure administrative coordination among partners, including the facilitation of all programmatic meetings;
- d) Ensure prompt and accurate invoicing to CalOES; and
- e) Maintain all financial records for the CalOES FJC Program contract in accordance with the standards and procedures prescribed by CalOES.

SECTION 3: Services to be provided by Subcontractor:

Sub-contractor agrees to the following:

The Morgan Hill Police Department provides a Domestic Violence Detective who is co-located at the Family Justice Center. As such, the listed employee is expected to adhere to and comply with all appropriate Morgan Hill Police Department Policies and Procedures. In addition, the Morgan Hill Police Department will:

1. Provide a Police Detective to service as the primary liaison between the Morgan Hill Police Department and the Participating Partners.

[DOCUMENT TITLE]

AIDA ZALDIVAR

Attachment: Community Solutions MOU (2262 : MOU - Community Solutions and MHPD)

2. The Detective will be responsible for investigating and providing follow up on misdemeanor and felony domestic violence related cases in Morgan Hill.
3. The Detective will be assigned to the SC FJC one day a week to meet with domestic violence victims as needed.
4. The Detective will address the safety needs of victims of domestic violence, dating violence or stalking using the training in the *Lethality Assessment for First Responders*.
5. The Detective will conduct the activities outlined below:
 - a. Follow up with victims, letting them know the status of the investigation.
 - b. Work closely with Victim Advocates to ensure that victims receive the services that they need.
 - c. Present domestic violence cases to the District Attorney's Office.

Provide relevant project training to law enforcement, human service providers and other community groups in partnership with Community Solutions on domestic violence issues, prosecution, restraining order violations, victim support and referrals and *Lethality Assessment for First Responders*

SECTION 4: Fiscal Provisions

Compensation - Community Solutions as lead agency will compensate Subcontractor for services provided under this agreement in accordance with units of services. Maximum compensation must not exceed **\$50,000**.

Monthly invoice— Contractor will invoice Community Solutions in accordance with monthly services rendered per the limited scope representation fee schedule. The invoice must be signed by the CEO/President or other authorized agency representative with authority to confirm the accuracy of unit of service. By signing the invoice this will verify that the information submitted is correct and in accordance with this Agreement. Invoice is due to Community Solutions ten (10) working days after the end of each month. The invoice must be accompanied with the outcome or deliverables based on this agreement. The invoice must be submitted to:

Jan Pham, Controller
Community Solutions
9015 Murray Ave #100
Gilroy, CA 95020

Community Solutions will review invoices and supporting documentation, verify adherence to agreement requirements and services, and authorize payment to Subcontractor based upon claims submitted pursuant to the agreed upon monthly amount, provided that the Subcontractor is not in default under any provisions of this agreement. Community Solutions will not pay for unauthorized services rendered by Subcontractors/Category Leads or the claimed services, which have not been provided as required by this agreement. All reimbursement will be paid upon reimbursement to Community Solutions from CalOES.

Monitoring – To ensure compliance with CalOES, Community Solutions will monitor the work performed and financial obligations incurred under this agreement to determine whether Subcontractor's operation conforms to state, federal statutes, and regulations.

Subcontractor agrees to cooperate with Community Solutions on the implementation monitoring and evaluation of the Program and to comply with any and all reporting, data collection and evaluation requirements as established by CalOES.

Evaluation – Subcontractor agrees to participate in research and evaluation studies designed by Community Solutions, and consistent with CalOES requirements, in order to show effectiveness of the services provided within South Santa Clara County.

SECTION 5: Compliance with Laws

The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

SECTION 6: Indemnification

Subcontractor and Community Solutions agree to mutually and reciprocally protect, defend, indemnify, and hold harmless each other's officers, directors, employees, and agents from any and all liability, loss, damage, suits, actions, or claims arising or resulting from any property damage or injury to, or death of, any person which is caused by the willful or negligent act (active or passive) or omission by either sub-contractor or Community Solutions, or their respective officers, employees, agents, or collaborators, or which arises or results from any dangerous or defective condition on the premises used by Subcontractor or Community Solutions, or their respective officers, employees, agents or collaborators in connection with performance of this Agreement.

SECTION 7: Costs and Attorney's Fees.

In any action instituted to enforce any term or condition of this Agreement, the prevailing party shall be entitled to receive from the other party all costs and fees, including reasonable attorney's fees, and the prevailing legal interest rate on all debts from the date of default.

SECTION 8: Disclosures

Recognizing that the parties will depend upon one another in order to successfully operate the Project, each agrees to notify the other in the event of an occurrence that would materially affect its ability to perform its obligations under this Agreement including, without limitation the following:

- Lapse of insurance coverage
- Lapse, denial, suspension, revocation, termination, restriction or voluntary relinquishment of its 501c3 status, business or professional license, etc.
- Other material adverse change in condition of the organization including, without limitation, loss of funding or incursion of unexpected liability that threatens the viability of the organization

SECTION 9: Confidentiality.

The parties agree that confidentiality is of the utmost importance to protect the privacy of the clients. Nevertheless, there will be some information that will be shared which must be held in the strictest confidence.

Disclosure of confidential client information such as personal history, diagnosis, treatment plans and results, etc. shall not be made without the express written permission of the client except, as needed, to legal counsel, accountants or financial advisors assisting Subcontractor or Community Solutions in the operation of the Projects or auditing Subcontractor.

Confidential information, which has been released with consent, shall be physically protected with appropriate safeguards to prevent unintended exposure.

Unauthorized disclosure of confidential information shall be considered a material breach of this Agreement subject to immediate termination of the Agreement.

SECTION 10: Assurance.

Each party represents and warrants that it has authority to enter into this Agreement.

SECTION 11: Entire Agreement.

This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this Agreement shall be valid or binding.

SECTION 12: Modification.

This Agreement may not be enlarged, modified, or altered, except in writing, signed by both parties and endorsed to this Agreement.

SECTION 13: Insurance.

Subcontractor shall secure and maintain at all times during the term of this Agreement, at its sole expense, liability, hazard, and worker's compensation insurance as well as professional/errors and omissions insurance relative to its provision of services. Subcontractor shall provide COMMUNITY SOLUTIONS with certificate(s) evidencing said coverage within 30 days of obtaining coverage. Said certificate(s) shall provide for at least 30 days notice of cancellation by the carrier.

COMMUNITY SOLUTIONS shall secure and maintain at all times during the term of this Agreement, at its sole expense, liability and worker's compensation insurance as well as professional/errors and omissions insurance relative to its provision of services. COMMUNITY SOLUTIONS shall provide Subcontractor with certificate(s) evidencing said coverage within 30 days of obtaining coverage. Said certificate shall provide for at least 30 days notice of cancellation by the carrier.

SECTION 14: Default.

Each of Subcontractor's obligations under this agreement shall be deemed material. If Subcontractor fails to perform any of its obligations under this Agreement, COMMUNITY

CS/Sub-Contractor MOU

Grant No. FJ 18 01 1043

SOLUTIONS may terminate this Agreement upon thirty (30) days advance written notice ("Notice Period") to Subcontractor with either the opportunity to cure the specified breach, or the opportunity to commence to cure the specified breach within the Notice Period. In the event Subcontractor fails to cure or to commence to cure the specified breach within the Notice Period, this Agreement shall immediately terminate.

Nothing in this Agreement shall be construed so as to deprive Subcontractor or COMMUNITY SOLUTIONS of any of their respective rights and remedies at law or in equity for any claims or causes of action either may have for any injury, damage, loss, or liability resulting from any cause arising at any time in connection with the performance of this Agreement.

SECTION 15: Assignment.

The expertise and experience of Subcontractor are material considerations for this Agreement. Subcontractor shall not assign or transfer the performance of this Agreement to any other party without prior written consent of COMMUNITY SOLUTIONS.

SECTION 16: Notices.

Any notice shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, to the respective parties addressed as follows:

Community Solutions
9015 Murray Ave #100
Gilroy, CA 95020

Morgan Hill Police Department
16200 Vineyard Blvd.
Morgan Hill, CA 95037

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

Community Solutions

A non-profit corporation

By: _____
Erin O'Brien President/CEO

Date: _____

Morgan Hill Police Department

A public agency

By: _____
Christina Turner – City Manager

Date: March 29, 2019

APPROVED AS TO FORM:

Cynthia Hasson
Cynthia Hasson, Assistant City Attorney

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, March 20, 2019 5:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 5:00 p.m. for the purpose of conducting Library, Culture, and Arts Commission Interviews.

SPECIAL MEETING

5:00 P.M.

CALL TO ORDER

Mayor Constantine called the meeting to order at 5:36 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Absent	
Yvonne Martinez Beltran	Council Member	Late	
Larry Carr	Council Member	Late	
John McKay	Council Member	Present	

Minutes Acceptance: Minutes of Mar 20, 2019 5:00 PM (CONSENT CALENDAR)

DECLARATION OF POSTING AGENDA

Deputy City Clerk Bigelow declared the posting of the agenda.

COMMISSION INTERVIEWS

1. INTERVIEWS TO FILL FOUR (4) VACANCIES ON THE LIBRARY, CULTURE, AND ARTS COMMISSION

Recommendation:

1. Discuss the characteristics/traits that successful applicants would possess;
2. Conduct Interviews;
3. Council Members identify top applicants and provide recommendations to the Mayor; and
4. Discuss and/or appoint applicants.

The City Council shared what qualities they are looking for in Library, Culture, and Arts Commissioners and started the interviews.

The following people were interviewed:

Eric West
Gabrielle Bates
Jake Thompson
Karen McNulty
Katie Khera
Poonam Chabra
Suman Ganapathy

The City Council re-appointed Katie Khera and Poonam Chabra and appointed Jake Thompson and Suman Ganapathy. All seats have a term expiring April 1, 2021.

The special meeting was adjourned at 7:04 p.m.

REGULAR MEETING

7:00 P.M.

The regular meeting was called to order at 7:10 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Constantine shared that he serves on the Policy Advisory Committee (PAC) for the Valley Transportation Authority (VTA), which advises policies up to the Board. At a recent meeting a member of the public brought up that our Measure B funds may be misappropriated. We are in the process of finding out what is going on with those funds. Measure B, which was a transportation measure that was voted on in 2016, raises tax dollars to complete specific transportation projects throughout the county, as well as, provides us with approximately \$800,000 for road improvements in Morgan Hill. A portion of the funds will also be used to provide a fourth train through CalTrain. CalTrain has stated that they will not be able to provide the fourth train until they overhaul their trains. The \$4.3 million being used for the overhaul comes from Measure B. The gentlemen who stated that the Measure B funds were being misappropriated, stated that the CalTrain overhaul was scheduled prior to the availability of the Measure B funds and therefore should not be used for the overhaul and/or maintenance. The PAC has approved the

appropriations of the Measure B dollars and the various projects being completed throughout the county, however, the PAC will be asking for an explanation as to why the Measure B funds are being used for maintenance. The PAC is and will continue to keep a close on eye on how the Measure B funds are being used.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She shared that she, Council Member Martinez Beltran, and Human Resources Director Michelle Katsuyoshi attended an event on Monday at Linked In which was sponsored by the League of California Cities and the International City Managers Association talent initiative. The audience was made up of both elected and appointed officials with a goal of bringing together people, primarily in Santa Clara County, to talk about how to attract, retain, and grow talent in local government. They learned that 10,000 baby boomers are leaving the workforce every day. As a service organization, our biggest and most important asset, is our team. This topic is very important to all of us. Linked In shared some interesting facts and advice about how to go about maintaining and growing talent, such as branding the organization and creating a culture of appreciation and recognition. This has spurred us to think about how we can continue to be a great organization to work for. She shared that she is proud to say that we have a great culture that is very family friendly, however, there is always room to improve and so we are looking at ways to continue investing in our team, such as offering more professional development opportunities and flexibility. She reminded the community to mark their calendars for the upcoming AMGEN race on May 14th. Morgan Hill will be hosting the stage 3 finish.

CITY ATTORNEY'S REPORT

None.

OTHER REPORTS

None.

PROCLAMATION

PROCLAIMING THE MONTH OF MARCH AS AMERICAN RED CROSS MONTH

PRESENTATION

YOUTH ACTION COUNCIL - ASSET #14 ADULT ROLE MODELS

PUBLIC COMMENT

The public comment was opened at 7:34 p.m.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 3, 4, 6 and 8 through 11.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

2. ITEM PULLED FOR DISCUSSION

3. APPROVE GENERAL PLAN AND HOUSING ELEMENT ANNUAL PROGRESS REPORT 2018

Recommendation:

Adopt resolution accepting the 2018 General Plan and Housing Element Annual Progress Report (APR) and directing staff to file the report with the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD).

4. ACCEPT JANUARY 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

5. ITEM PULLED FOR SEPARATE VOTE

6. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - SHADOW PINES – TRACT NO. 10258

Recommendation:

1. Accept the subdivision public improvements for Shadow Pines – Tract No. 10258;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

7. ITEM PULLED FOR DISCUSSION

8. APPROVE PURCHASE OF FIVE WATER AND SEWER VEHICLES

Recommendation:

1. Approve the purchase of five (5) water and sewer utility trucks in the amount of \$342,252.14;
2. Authorize City Manager to approve purchase order in the amount of \$342,252.14 with National Auto Fleet Group;
3. Declare vehicles W08170, W03167, W07104, W06169 and S07103 to be surplus; and
4. Authorize the disposal of the surplus vehicles in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

9. APPROVE LICENSE AGREEMENT WITH TOGLIATTI FARMS, INC.

Recommendation:

Authorize the City Manager to Execute a License Agreement with Togliatti Farms for 1469 Maple Ave.

10. ADOPT ORDINANCE 2299 AMENDING SECTIONS 14.04.020 PURPOSE AND 14.04.070 ALTERNATIVES OF CHAPTER 14.04, INCLUSIONARY HOUSING

Recommendation:

Waive the reading, adopt Ordinance No. 2299, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

11. APPROVE THE MARCH 6, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM PULLED FOR SEPARATE VOTE

5. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - BARLEY PLACE – TRACT NO. 10239

Recommendation:

1. Accept the subdivision public improvements for Barley Place – Tract No. 10239;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

MOTION:

Approving the recommended actions.

RESULT:	APPROVED [3 TO 0]
MOVER:	John McKay, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, McKay
ABSTAIN:	Carr
ABSENT:	Spring

ITEMS PULLED FOR DISCUSSION

2. CITY POSITION ON PENDING LEGISLATION AB 276 FIREARMS: STORAGE AND AB 1255 SURPLUS PUBLIC LAND: DATABASE

Recommendation:

1. Receive legislative correspondence in support of AB 276 (Friedman) Firearms: storage;
2. Consider supporting AB 1255 (Rivas) Surplus public land: database; and
3. Direct staff to submit letters in support of AB 1255 to the appropriate representatives.

The public comment was opened at 7:37 p.m.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended actions.

RESULT: DIRECTED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: John McKay, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

7. UPDATE ON THE CITY'S PILOT RODENTICIDE USE REDUCTION PROJECT

Recommendation:

Accept Report.

Council accepted the report.

RESULT: ACCEPT REPORT

OTHER BUSINESS

12. APPROVE PEACE POLE ART PROPOSAL

Recommendation:

Approve the updated design for the Peace Pole Project for installation at the civic center with specific City input to be included for the different and appropriate languages.

Communications and Engagement Manager Maureen Tobin presented the report.

The public comment was opened at 7:53 p.m.

There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT: APPROVED [UNANIMOUS]
MOVER: Larry Carr, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

13. PROVIDE DIRECTION REGARDING ADOPTION OF A RESOLUTION OR ORDINANCE SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Recommendation:

1. Receive report; and
2. Provide direction.

City Manager Christina Turner presented the report.

The public comment was opened at 7:59 p.m.

Brian Faircloth was called to speak.

There being no further requests to speak, the public comment was closed.

MOTION:

Directing staff to bring a resolution to Council to adopt the principles of CEDAW.

RESULT: DIRECTED [UNANIMOUS]
MOVER: Rich Constantine, Mayor
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

The meeting was recessed at 8:11 p.m.
The meeting was reconvened at 8:17 p.m.

PUBLIC HEARING

14. ADOPT ORDINANCE APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

1. Open and close public hearing;
2. Waive first and second reading of Development Agreement Ordinance; and
3. Introduce Development Agreement Ordinance.

Community Development Director Jennifer Carman, along with City Engineer Scott Creer, Associate Planner Tiffany Brown, Economic Development Director Edith Ramirez, and Community Services Supervisor Mariah Dabel presented the report and answered questions.

The public hearing was opened at 8:42 p.m. The following people were called to speak:

Paul Latala
Julia Wolfsmith
Lesley Miles
Suman Ganapathy
Rosy Bergin
David Dindak
Brian Faircloth

There being no further requests to speak, the public hearing was closed.

A motion made by Council Member Martinez Beltran to deny the Development Agreement to confirm RDCS commitments, failed due to lack of a second.

Council provided direction to staff.

MOTION:

Waiving the first and second reading of the ordinance.

RESULT: WAIVED [3 TO 1]
MOVER: Larry Carr, Council Member
SECONDER: John McKay, Council Member
AYES: Constantine, Carr, McKay
NAYS: Martinez Beltran
ABSENT: Spring

MOTION:

Introducing the ordinance.

RESULT:	INTRODUCED [3 TO 1]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Carr, McKay
NAYS:	Martinez Beltran
ABSENT:	Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:39 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING AGRICULTURAL CONSERVATION PROGRAM

RECOMMENDATION(S)

Provide direction to staff regarding next steps in the City's agricultural mitigation program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Advancing Regional Initiatives

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

In early Fall 2018, in preparation for the submission of an annual LAFCO (Local Agency Formation Commission) application for an Urban Service Area (USA) amendment for the proposed Catholic High School, the City Council requested an amendment to the Sports Recreation Leisure (SRL) sub-zone B Zoning District. During that discussion, some comments about the Urban Growth Boundary (UGB) and the City's long-term growth intentions ensued, so that subsequently, staff responded to City Council with an amended SRL-B district (reducing allowable uses) as well as a query as to whether the City Council would like to discuss modifications to the UGB.

The SRL-B Zoning District was amended, but the UGB discussion was referred to the City Council Annual Goal Setting Workshop for discussion. At the workshop, the UGB issue was not discussed and the City Council asked staff to present a more thorough discussion of the City's agricultural conservation/preservation program and priorities. The purpose of this item is to provide the Council with background information and an opportunity for a substantive discussion on the City's current agricultural conservation strategy and how activities contained in approved planning documents provide guidance for agricultural mitigation actions.

The City's principal guiding document for agricultural conservation is the Agricultural Lands Preservation Program (Program) and accompanying Zoning Code amendments which directly implemented these General Plan Policies and Actions of 2014 and 2016 respectively. These documents identify Priority Agricultural Lands Preservation Areas

and contain the Policy Framework for the ongoing preservation of agricultural lands through conservation easements.

The original Program was drafted based upon the recommendations of an agricultural land's preservation expert and a land use economist hired to act as consultants to the City. Specific details of the Program were further edited to reflect input from the Open Space Authority (OSA) and the Planning Commission. These policies also contain the framework of the City's adopted Agricultural Mitigation Program, the only agricultural mitigation program in Santa Clara County. The Agricultural Mitigation program provides:

1. A focus of preservation activity in priority conservation areas of the General Plan,
2. 1:1 mitigation for any conversion of ag land located inside of the City (land identified on State Land Soil Map with significant designation),
3. An Ag Mitigation in-lieu fee established via appraisal, and
4. The requirement to maintain a "stay ahead" conservation effort.

Working with counterparts from the County, LAFCO and OSA, the Program was further refined. OSA staff strongly encouraged the City to include a Transfer of Development Rights (TDR) system within the Program and to delay adoption of the Program until the TDR system was in place. City staff agreed that it could be helpful to include TDR in the Program and that this would be consistent with the General Plan. However, staff concluded that in order to develop a TDR program with adequate economic incentive to insure its implementation, it would be necessary to modify the City's Residential Development Control System (RDCS). Therefore, the program was adopted and subsequently the TDR provision added when Measure "S" was approved by the voters of Morgan Hill in 2016. This added a total of 300 exempt Ag Preservation set-aside allotments (35 per year maximum) to the Agricultural Mitigation program. The sale of these allotments could contribute significantly to the City's Agricultural Preservation and Open Space Fund which is dedicated to the purchase of land and conservation easements.

Additionally, the 2016 General Plan Update included conservation and agricultural preservation goals and policies within the City and Neighborhood Form (CNF) and Natural Resources and Environment (NRE) chapters, capturing an enriched conversation of the City's conservation goals. Utilizing additional planning tools such as the UGB, Priority Conservation Areas, identification of City greenbelt areas, the USA, and Sphere of Influence (SOI), with the Morgan Hill 2035 Update, collective policies and measures completed the City's comprehensive growth and preservation statements, culminating in Morgan Hill's Conservation Program (policies and maps attached).

There are several items that need direction which have bearing upon Morgan Hill's agricultural preservation efforts as well as residual issues that have been raised related to geographical territory impacted by decisions associated with conservation efforts. The Council may choose to review these and determine if action is necessary. These include:

1. Amendment of the UGB. Consistent with the General Plan policies providing guidance, if this is desired the City should enter into a community planning

process to explore amending the UGB, to be completed prior to submission of a new Housing Element in 2022.

2. Further acquisition of Agricultural Conservation Easements (ACEs) in the Priority Conservation areas.
3. Focused ACE acquisition to create large farmable concentrations of land and/or fulfillment of a greenbelt buffer at Maple Street along the southeastern perimeter of the City.
4. Suspension of the Agricultural Mitigation program “stay-ahead” ACE acquisition provisions until a UGB amendment and ACE priorities process concludes.
5. Reconsideration of the December 17, 2018 Agricultural TDR program discussion, establishing a formal process for implementation of the Agricultural TDR program, including an auction process.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- 2014 – Agricultural Lands Conservation Program (including Agricultural Mitigation Program) and related Zoning Amendments adopted
- 2016 – Morgan Hill 2035 General Plan Update/EIR adopted
- Approval of submission of Joint Morgan Hill, County, OSA grant application for a 70-acre ACE acquisition of Fountain Oaks Ranch lands and the subsequent approval of an easement purchase solely by the City
- Approval of 12-acre acquisition on Maple Ave

COMMUNITY ENGAGEMENT:

This report is intended to inform the City Council and community.

FISCAL AND RESOURCE IMPACT:

This item has no fiscal impact other than the staff time spent to prepare this report.

CEQA (California Environmental Quality Act):

This item is not a project under CEQA.

LINKS/ATTACHMENTS:

1. PriorityAgriculturalConservationArea_and_PlanBayArea-PCA
2. Conservation Strategy
3. ResponseLetter_11-14-18.pdf USA discussion 2018 LAFCO follow
4. ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity
5. Ag set asides staff report 12-19-18
6. AnnexationEIR-Map2
7. CityLimits_UGB_USA
8. GP-Map_with_Boundaries

City of Morgan Hill

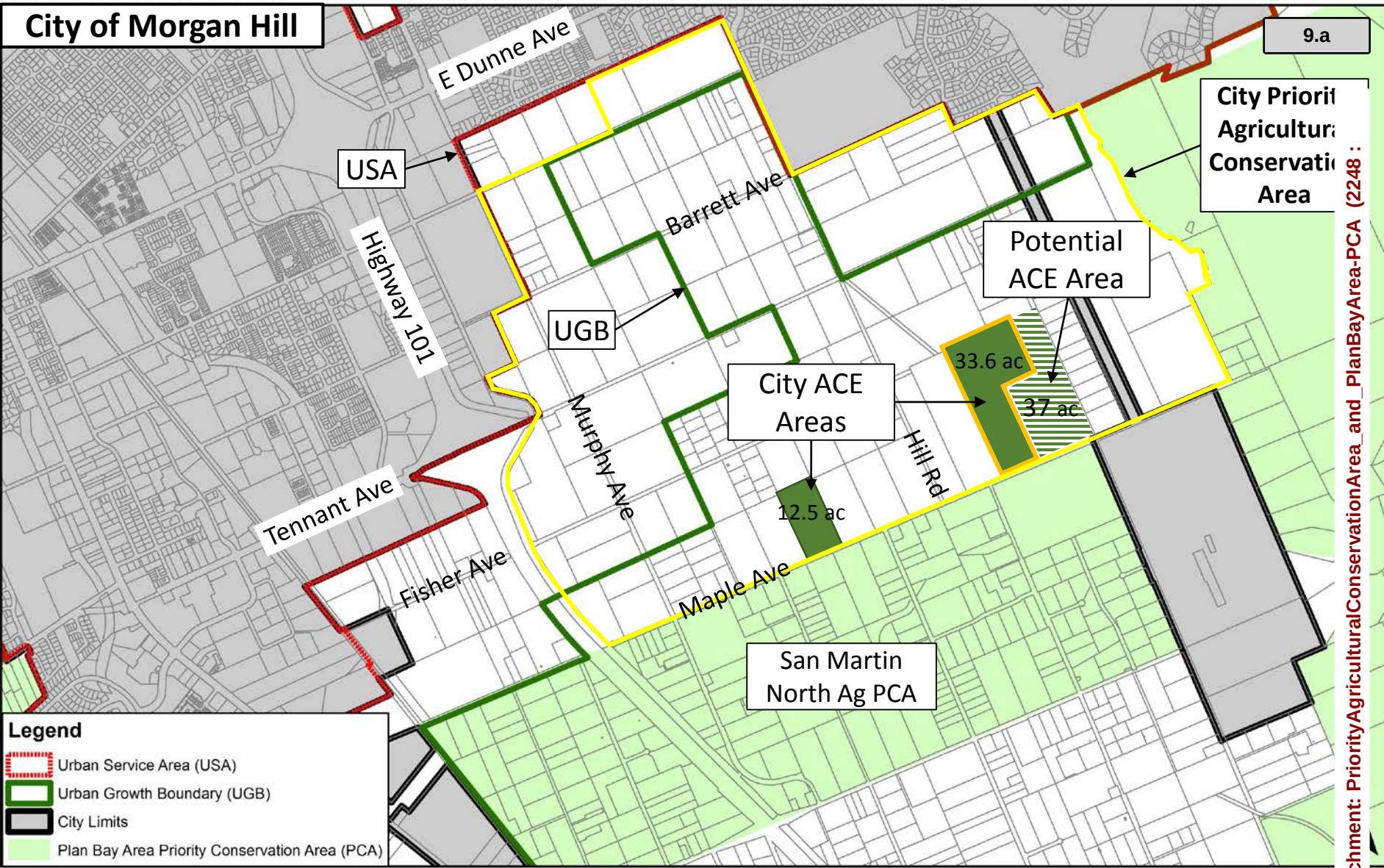
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City Priority
Agricultural
Conservation
Area

Potential
ACE Area

City ACE
Areas

San Martin
North Ag PCA



Legend

- Urban Service Area (USA)
- Urban Growth Boundary (UGB)
- City Limits
- Plan Bay Area Priority Conservation Area (PCA)

City Priority Agricultural Conservation Area. Section 18.152.110 of the City's Agricultural Lands Preservation Program identifies an agricultural priority area within the Southeast Quadrant (SEQ) as the City's first priority for conservation.

ACE = Agricultural Conservation Easement

Attachment: PriorityAgriculturalConservationArea_and_PlanBayArea-PCA (2248 :

Morgan Hill's Conservation Strategy



Attachment: Conservation Strategy (2248 : Agricultural Conservation Program)

Morgan Hill's Conservation Strategy

Introduction

Morgan Hill is located within the southern part of Santa Clara County, 10 miles south of San Jose and 10 miles north of Gilroy. Morgan Hill is nestled between the Diablo Mountain Range and the Santa Cruz Mountains, and has a rich history of farming and manufacturing. While Morgan Hill is a part of the Silicon Valley in its business mix, rich entrepreneurial spirit and thirst for innovation, the city's natural geography and open space make it a unique place. The City has made many thoughtful decisions on open space preservation, water and agricultural land conservation, and environmental stewardship.

This whitepaper on Morgan Hill's Conservation Strategy outlines the City's approach to ensuring future open space and agriculture lands remain in South Santa Clara County. The white paper is broken down into policy and plan adoptions, tools that support those policies and plans, and finally challenges and key considerations on environmental stewardship for Morgan Hill.

Policies and Plan Adoptions

A. Agriculture Preservation

As community interest in preserving the agricultural open space areas on the valley floor grew and national interest in farmland preservation increased, the City spent several years evaluating strategies for protecting the agricultural lands surrounding the community. The culmination of this work, the City's *Agricultural Lands Preservation Program* (Program), was adopted by the City Council on November 5, 2014 ([Exhibit 1](#)). In concert with the Morgan Hill [2035 General Plan Update](#) ([Exhibit 2](#)), the City formally identified two Priority Conservation Areas (MHPCA) located adjacent to the City boundary, as the primary focus of future agricultural conservation easement acquisition. While located outside of City limits but within the City's Sphere of Influence, these lands had been the most significantly impacted by development pressure and conversion, and of growing concern to the preservation efforts.

In the years since the Program and General Plan update were adopted, the City has implemented the Program by engaging in the following tasks:

- Adopted an Agricultural Mitigation ordinance ([Exhibit 3](#)) that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;
- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and negotiate conservation easements;

Morgan Hill's Conservation Strategy

- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the MHPCA and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

To date, the outcomes from the Program have resulted in:

- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development; and
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal, and allocated over \$1 million in funding.

In the coming months, the City of Morgan Hill plans the following:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue; and
- Identify additional parcels in the MHPCA that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

Morgan Hill's Conservation Strategy

B. Conservation of Open Space

The City of Morgan Hill has a long history of preserving open space in the important hillside areas that surround the community. Using a combination of purchases, dedications, regulations, incentives, and open space easements, nearly all of the important hillside areas (totaling more than 595 acres) surrounding the community are restricted from further development.

The City first established a Transfer of Development Credit (TDC) program in the Municipal Code in 1981 ([Exhibit 4](#)). A Transferable Development Credit allows the transfer of development credits from areas where development is restricted such as hillsides to sites in other areas of the City more appropriate for development. TDCs were originally created to help implement the City's hillside preservation activities. TDC acquisition is tied to the City development process where development allotments are competitively awarded based upon a project's public benefit contribution, including pledges to purchase TDCs. In 2001, there were no TDCs available in the market. As a result, the City created a TDC in-lieu fee which allowed projects pledging acquisition of TDC's to incrementally pay an in-lieu fee for that pledge, collected at the final of the building permit.

Morgan Hill Program Implementation Tools

A. Morgan Hill Priority Conservation Area (MHPCA)

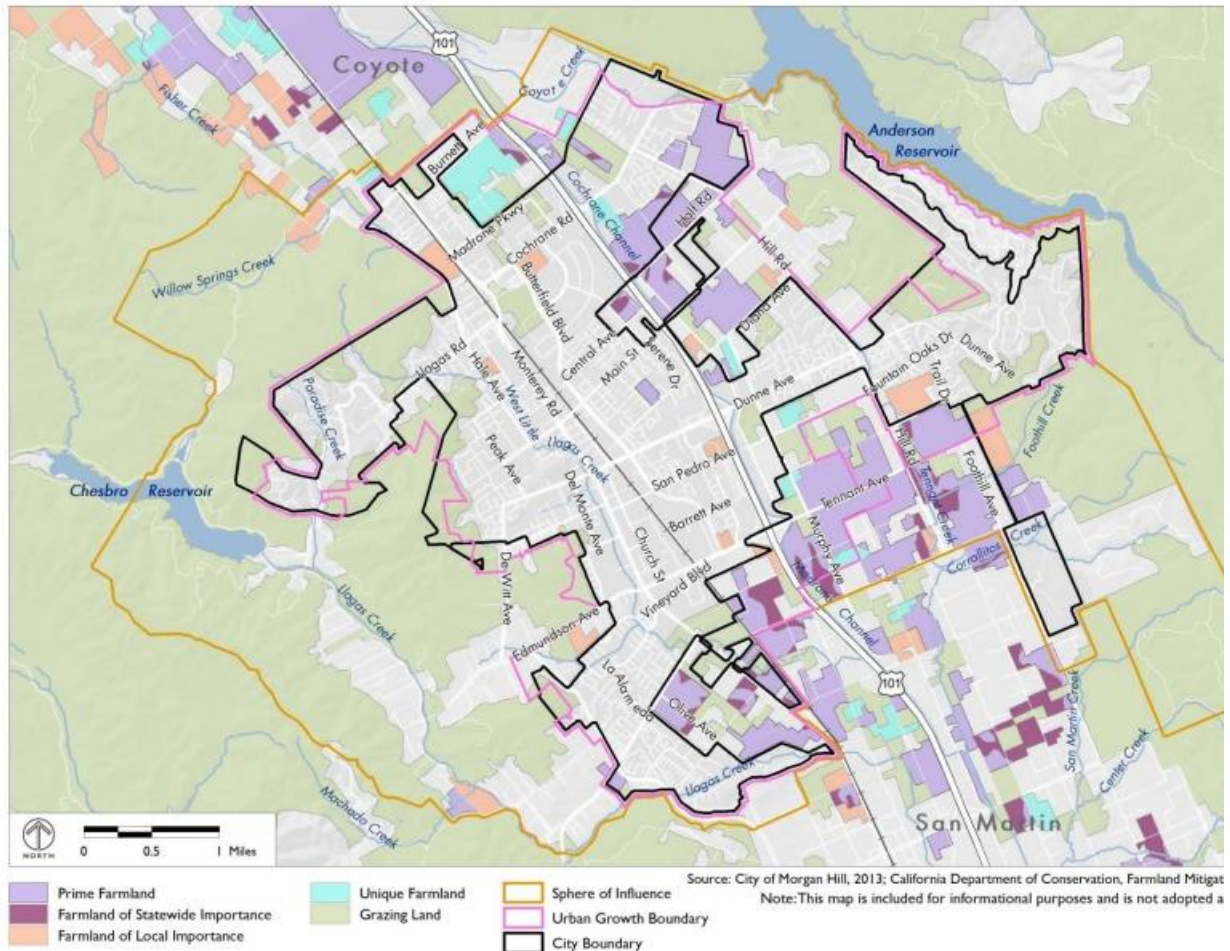
In Figure 1, the City's Priority Conservation Areas are focused in the areas shown in purple east of highway 101. These areas recognize the important farmland consistent with the subareas maps for Live Oak/Half Road and San Martin/Tennant in the recently adopted *Santa Clara Valley Agricultural Plan: Investing in our Working Lands for Regional Resilience* and the agriculture priority area shown in the City's Agricultural Mitigation Program. The MHPCA focuses on agri-hood development in the Live Oak/Half Road area that will benefit from Conservation Easements and larger agricultural land preservation in the areas south of Tennant.

Like most cities in Santa Clara County, Morgan Hill was developed on agricultural land. Agriculture is still an important asset to the region, as evident by surrounding vineyards, which boost the region's economy and tourism industry. However, local farmers continually describe constraints on the continued long-term viability of agriculture within the City's Urban Growth Boundary. Existing orchards and vineyards are experiencing urban encroachment that adversely affects the efficiency of farming operations due to restrictions on pesticide use, noise and dust complaints, trespass, vandalism, and theft. The goal of Morgan Hill's Priority Conservation Areas is to create larger areas of land permanently dedicated for agricultural uses.

Morgan Hill's Conservation Strategy

Figure 1: 9,848 acres of Agricultural Lands within Morgan Hill's Sphere of Influence

Figure NRE-2 Important Farmland



Designated farmlands within Morgan Hill Sphere of Influence

Farmland Classification	Within City Limit (Acres)	Total (Acres)
Prime Farmland	314	1,386
Farmland of Statewide Importance	22	196
Farmland of Local Importance	153	346
Unique Farmland	30	234
Grazing Land	1,265	7,686

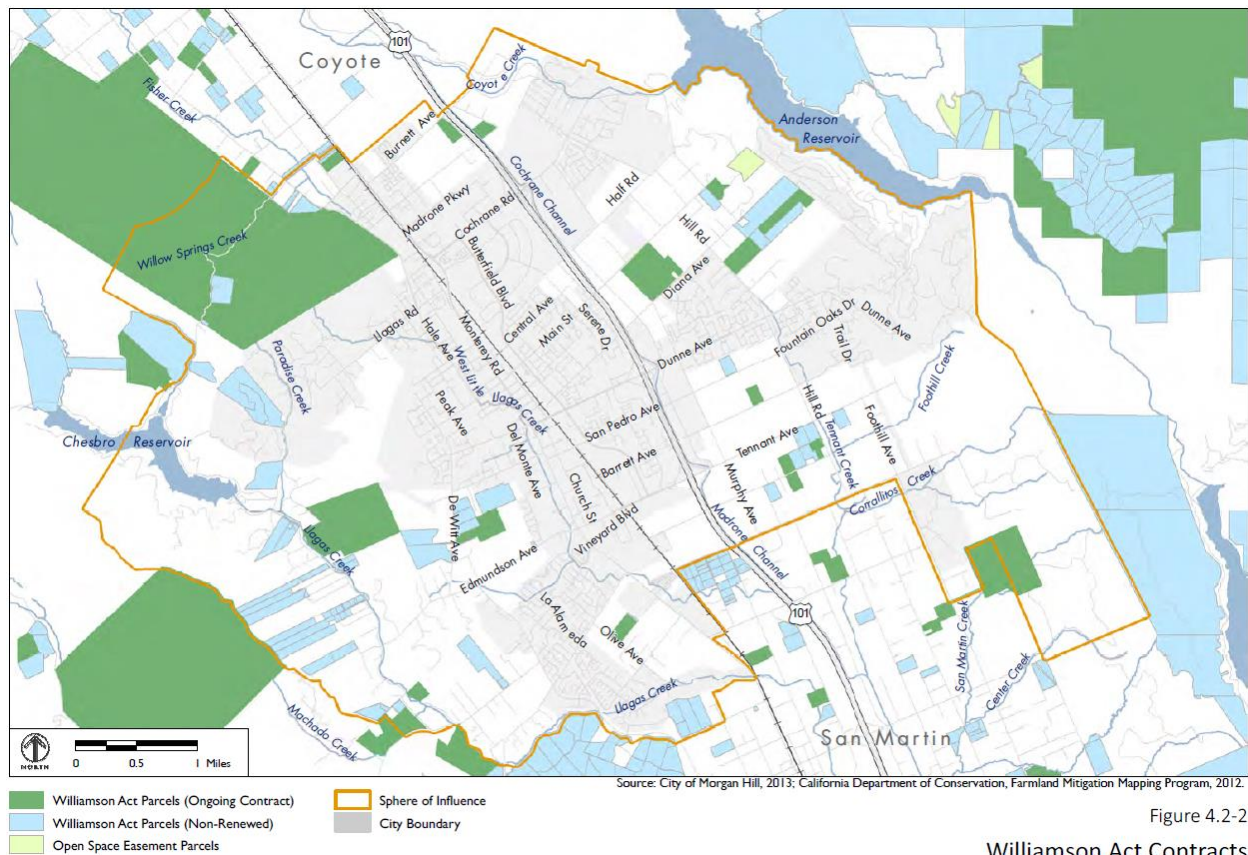
Source: Source: Department of Conservation, Farmland Mapping and Monitoring Program GIS data, 2012.

Morgan Hill's Conservation Strategy

B. Williamson Act Contracts

The Williamson Act is one of the most widely used agricultural easement programs in the City of Morgan Hill, Santa Clara County, and the state of California. These areas are shown in the Figure 2. There are 1,703 acres of land that are under on-going Williamson Act contracts that are within the Morgan Hill's Sphere of Influence.

Figure 2. 1,703 acres of Williamson Act parcels in Morgan Hill's Sphere of Influence.



C. Approval of Measure S

Through recommendations contained within the Morgan Hill 2035 General Plan update, City voters approved Measure S, a new residential growth measure, to guide the pacing and total population of the community to mirror General Plan aspirations. In that voter approved measure, the community approved 300 Agricultural Preservation set-aside allotments, at the rate of up to 35 per year, to encourage and promote agricultural preservation in the Morgan Hill Priority Conservation Areas (MHPCA). The set-a-sides translate into Transfers of Development Credit (TDC) ([Exhibit 4](#)), whereby a developer purchases the TDC from the City, and receives the right to build "out-side" of the City's Residential Development Control (RDCS) process. The dollars raised through the sale

Morgan Hill's Conservation Strategy

of the TDC's are added to the City's Open Space/Agricultural Conservation fund to be utilized for the purchase of permanent agricultural easements in one of two MHPCA's.

Other important components of Measure S.

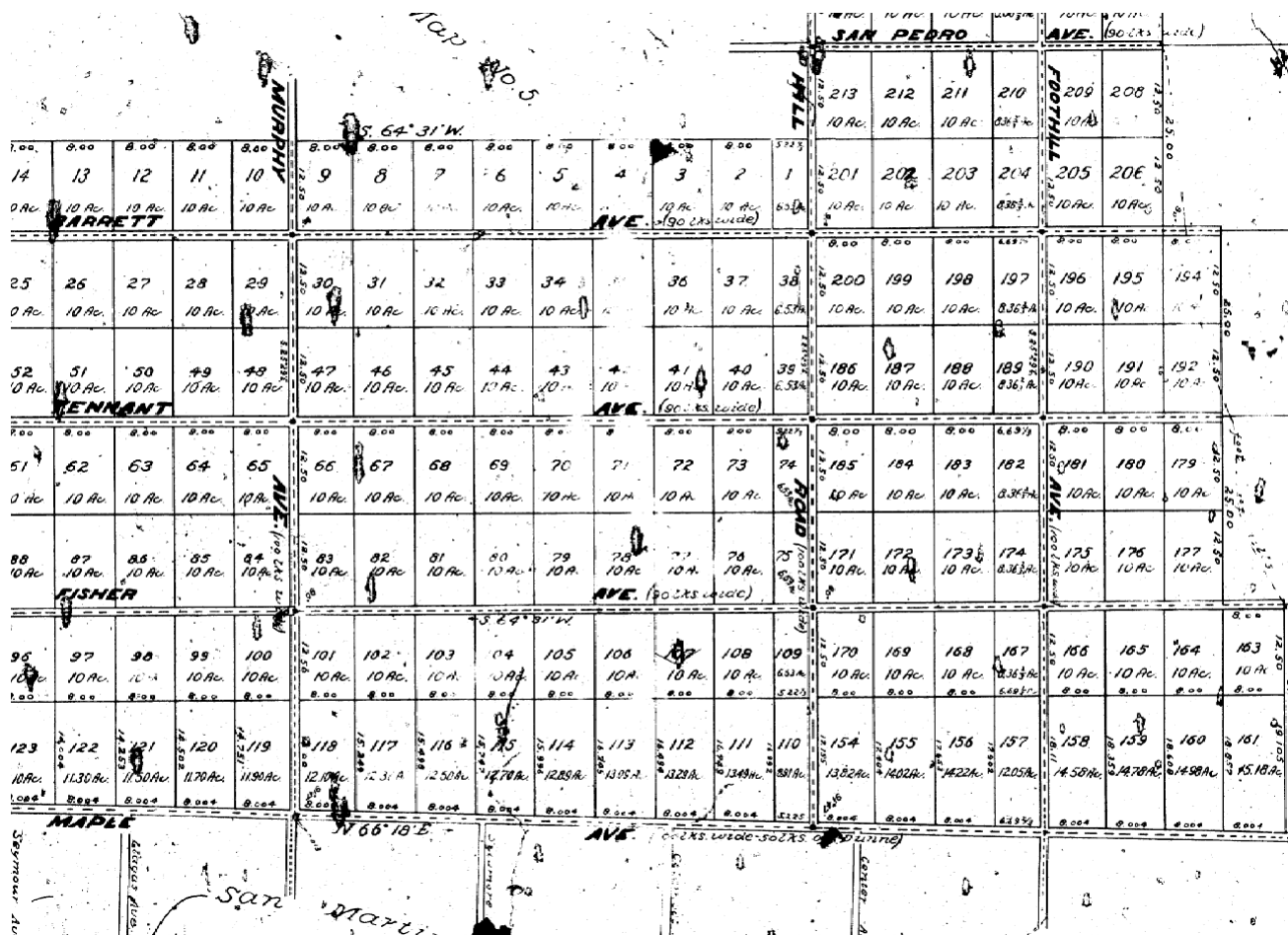
1. A minimum one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land change to a non-agricultural use.
2. Stay ahead provision – conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands.
3. Public benefit financial contributions/pledges made through Residential Development Control System (RDCS) can be used to purchase conservation easements.

Challenges and Key Considerations on Environmental Stewardship

- The majority of remaining farmland in Santa Clara County, including in the MHPCA, is unincorporated and therefore limited land use control.
- The soil in the Morgan Hill area is not highly-valued by farmers for its agricultural productivity. Many of the soils found nearby are considered marginal at best.
- Santa Clara County A-20ac Ag. Zoning requires 20-acre minimum lots, but there are no 20-acre lots that exist in the MHPCA today. Figure 3, Catherine Dunne Ranch Map No. 7 approved in 1905 established 10-acre lots. These lots are small enough to be easily converted into ranchettes. This creates a situation where the "highest and best" economic use of the land is residential estates - not agriculture and farmers continue to face pressure to sell land for nonagricultural development.
- Farming land near nonagricultural uses (homes, schools) is and has become increasingly challenging (dust, noise, traffic, etc.).
- Existing County General Plan and Zoning regulations haven't stopped the patchwork conversion of agricultural lands in the Morgan Hill Priority Conservation Area.

Morgan Hill's Conservation Strategy

Figure 3: Catherine Dunne Ranch Map No. 7



- Subsequent subdivision maps approved smaller lots, some as small as 1-acre. Many of these smaller lots are developed with single-family homes. Some undeveloped subdivisions are not apparent when looking at an aerial, but they include smaller legal lots of record that could be developed with uses that are not agricultural (typically single-family homes) (Figure 4)



Morgan Hill's Conservation Strategy

- In general, land in the County, including agricultural land is expensive, especially when compared with agricultural land outside of the County. Agricultural land in Morgan Hill's SOI, including the Morgan Hill Priority Conservation Area, is even more expensive (\$100,000 to ~\$1million/ac), which means Agricultural Conservation Easements in Morgan Hill's Sphere of Influence (SOI) are also expensive (\$50,000-\$100,000/ac).
- There aren't many available funding sources to support Agricultural Preservation. Where there is funding, it's difficult to compete with funding requests for larger/cheaper lands in other areas. According to a 2017 State Conservation Program funding report, the value of Agricultural Conservation Easements ranged from \$700/acre (Winters in Yolo Co.) to \$7,196/acre (Cotati in Sonoma Co.) to \$23,404/acre (Marina in Monterey Co.).
- For decades Morgan Hill has seen agricultural lands around its boundaries converted to nonagricultural uses¹. The adoption in 2015 of the City's Agricultural Preservation Program and subsequent adoption in 2016 of the Morgan Hill 2035 General Plan, provide a practical approach for how the City can help permanently preserve productive farmland in Santa Clara County, particularly within the City's SOI with a high priority placed on preservation of agricultural lands in the Morgan Hill Priority Conservation Area.

Conclusion

Through various policy mechanisms and tools, the City of Morgan Hill has taken a proactive role in establishing conservation efforts in South Santa Clara County. By adopting land use policies and funding mechanisms, Morgan Hill is working diligently to conserve agricultural land for open space, create opportunities for locally-grown food to be marketed and consumed locally, and preserve open areas that contribute to a unique cultural environment.

¹ 58% of farmland converted in Santa Clara County since 1994 was due to rural development in rural unincorporated areas. *Santa Clara Valley Agricultural Plan*, Page 26.

Exhibit 1: Agricultural Lands Preservation Program**City of Morgan Hill****Agricultural Lands Preservation Program****Adopted: November 5, 2014****Purpose**

The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill Sphere of Influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. To be effective for Morgan Hill, the agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.

The Morgan Hill Agricultural Lands Preservation Program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill Sphere of Influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting General Plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the City's Southeast Quadrant (SEQ) area, but also encourage preservation efforts throughout the City's SOI.

Definitions

Agricultural Land

For “Agricultural Land” that requires off-setting preservation/mitigation under this Agricultural Lands Preservation Program, Agricultural Land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that has not been subsequently developed for non-Agricultural Use prior to the adoption of this Program or subsequently developed per the provisions of this Program. Lands identified as Grazing Land are not subject to the offsetting preservation/mitigation requirements set forth in this Policy. The FMMP classifications reflect a finding by the California Department of Conservation of agricultural quality, which is based on a combination of soil quality as measured by the soil surveys of the United States Department of Agriculture (USDA) Natural Resource Conservation Service, together with recent agricultural-usage history.

Agricultural and grazing land definitions, as defined by the Department of Conservation mapping classifications include:

1. **Prime Farmland.** Prime farmland is land with “the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
2. **Unique Farmland.** Unique farmland is “farmland similar to prime farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
3. **Farmland of Statewide Importance.** Farmland of statewide importance is “farmland of lesser quality soils used for the production of the state’s leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.”
4. **Farmland of Local Importance.** Farmland of local importance is farmland identified as “land of importance to the local agricultural economy as determined by each county’s board of supervisors and a local advisory committee.”
5. **Grazing Land.** Grazing land, defined as “land on which the existing vegetation is suited to the grazing of livestock” is not included in this study’s use of the term Agricultural Land and is not considered as core to the proposed preservation program.

Agricultural Conservation Easement

An Agricultural Conservation Easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive Agricultural Use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting

development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.

Agricultural Mitigation Land

Agricultural Land (as defined above) that is encumbered by an Agricultural Conservation Easement or other farmland conservation mechanism acceptable to the City. If the Agricultural Land is also being used to meet Open Agricultural Land preservation goals, the easement or other mechanism must ensure that at least 90% of any property being used as Agricultural Mitigation Land remain as open space free of structures or other impervious surfaces so that it retains its value as Agricultural Land under the FMMP criteria. Uses allowed on Agricultural Mitigation Land shall be consistent with the Agricultural Use described below and pertaining land use regulations, and as further defined in the applicable Agricultural Conservation Easement or other farmland conservation mechanism.

Agricultural Priority Area

The Agricultural Priority Area is an area within the City's Southeast Quadrant (SEQ) that has been identified as the City's first priority for the acquisition of agricultural land conservation easements. This area was selected because it is the area within the Morgan Hill SOI where agriculture is considered to be the most viable over the long term. Conservation within this area will also contribute toward the City's goals of creating an open space buffer along its southern edge. Designating the Agricultural Priority Area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The Agricultural Priority Area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.

Agricultural Use

Agricultural Use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying Agricultural Use activities may include:

1. **Agricultural Processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
2. **Agriculturally Related Entertainment & Commercial Uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site Agricultural Uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
3. **Agricultural Research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.

4. Dairy: Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.
5. Feed Lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field Research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom Farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and Egg Farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife Refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to Type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the Type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.
12. Ancillary Uses: Uses conducted subordinate to the primary Agricultural Use being conducted upon a property and which do not occupy in total more than 10% of the property, including:
 - a) Direct sales of locally produced agricultural products.
 - b) One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c) Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d) Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

Agricultural Preservation In-lieu Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying

Entity and used by either agency solely for the purpose of acquiring Agricultural Conservation Easements. The Program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the City's ability to preserve open space Agricultural Lands within the Agricultural Priority Area.

Agricultural Lands Preservation Program Surcharge Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by either agency for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the easements. The Surcharge fee is either incorporated into the overall In-lieu Fee for projects that make use of this option, or charged directly to projects which independently establish an Agricultural Conservation Easement.

Open Agricultural Land

Open Agricultural Land is defined as Agricultural Land that is at least 90% free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other Agricultural Use. The City may make use of open space funding sources to acquire Agricultural Conservation Easements where that Easement specifies that the encumbered property be maintained as Open Agricultural Land. Because an Open Agricultural Land Conservation Easement would potentially reduce the economic potential for future agricultural uses, it would normally be more expensive to acquire than a standard Agricultural Conservation Easement. The City may however determine that at some locations an Open Agricultural Land Conservation Easement would better implement the City's land use objectives by preserving open space as well as agricultural activity.

Qualifying Entity

A government or nonprofit entity operating in Morgan Hill and/or the surrounding portions of Santa Clara County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The City favors the use of a local government or non-profit agricultural conservation entity, a statewide government or non-profit agricultural conservation entity or entities, or the regional branch of a nationally recognized non-profit agricultural conservation entity as the easement holder. The Qualifying Entity should have appropriate representation and/or participation from the farming community. The City will consider the following criteria when considering the non-profit agricultural conservation entity for these purposes, and when monitoring the performance of Qualifying Entities over time:

1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization whose principal purpose is holding and administering Agricultural Conservation Easements for the purposes of conserving and maintaining lands in agricultural production;
2. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
3. Whether the entity has a history of holding and administering easements in Santa Clara County for the foregoing purposes;
4. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards and Practices; and
5. Any other information that the City of Morgan Hill finds relevant under the circumstances.

Policies

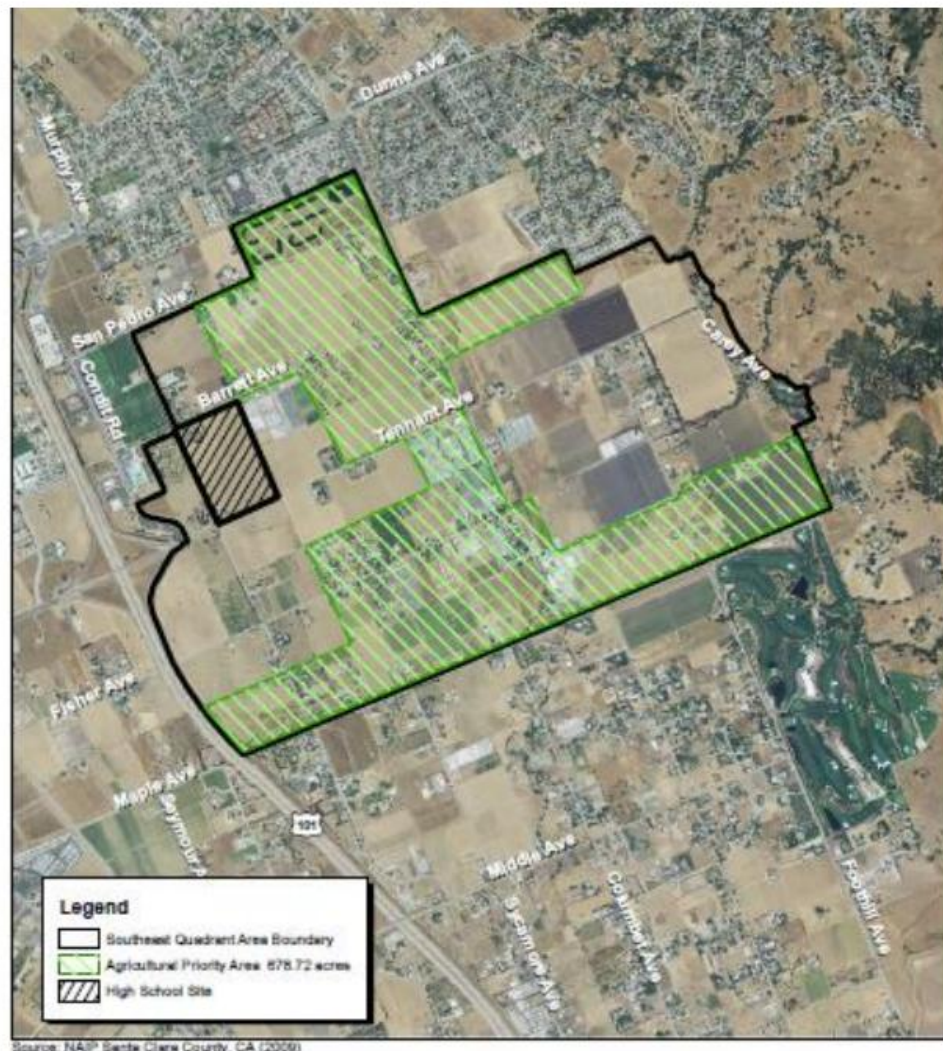
The City will implement the Program in accordance with the following policies:

1. **Agricultural Conservation Easements.** To achieve the Agricultural Lands Preservation Program objectives, activities converting Agricultural Land, such as new private or public development projects, are required to offset the conversion by directly preserving Agricultural Mitigation Land in perpetuity. Agricultural lands will be preserved through the recordation of permanent Agricultural Conservation Easements, which may be directly established by the land developer, obtained by the City or a Non-profit as an intermediary, or established through a developer-initiated transfer of development rights recorded within a development agreement. This offsetting preservation will serve as mitigation to satisfy the requirements for agricultural mitigation under the California Environmental Quality Act (CEQA) as well as to support the continuation of agriculture in and around the City of Morgan Hill consistent with community preferences and City policies.
2. **Alternate Mitigation.** The primary means of mitigation under this program are the direct recordation of conservation easements or the payment of in lieu fees which will be applied toward conservation easements. As an alternative, agricultural mitigation through Planned Development Zoning and/or a Development Agreement is allowed only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, such alternative mitigation shall still be required to achieve a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
3. **Applicability.** All new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of at least one acre of Agricultural Land (as defined above) will be required to mitigate loss of Agricultural Land per the provisions of this Policy. This includes projects within the existing City boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption of this Policy, including completion of the CEQA process, are not subject to this Policy unless specifically required as mitigation or a condition of project approval.
4. **Mitigation Ratio.** A minimum of one (1) acre of Agricultural Land (**1:1 mitigation ratio**) shall be preserved for each acre of Agricultural Land changed to a non-agricultural use. The required acreage of area to be protected through an Agricultural Conservation Easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.
5. **“Stay Ahead” Provision.** Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of Agricultural Lands. Development occurs with either the issuance of Grading Permit or Building Permits that would result in the loss of Agricultural Land. To meet this provision the City may utilize existing open space funding to establish Agricultural Conservation Easements, or individual projects may establish such easements in advance of development activity.

6. **Measurement of Affected Area.** Consistent with the Santa Clara Valley HCP/NCCP plan, the areas subject to agricultural mitigation requirements will be the developed footprint for properties with a General Plan land use designation of Open Space, Public Facilities, or SRL. These land use designations allow for and typically include a large portion of land reserved for “open space/open fields” that in the future could be put back into Agricultural Use. Areas proposed to be so reserved must have an aggregated area of at least 10 acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.
7. **Mitigation Mechanism.** Conversion of Agricultural Land will require off-setting acquisition and/or dedication of Agricultural Conservation Easements over approved Agricultural Mitigation Land, or payment to the City of the Agricultural Preservation In-lieu Fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the Agricultural Preservation In-lieu Fee, in either case developers are also required to pay an Agricultural Lands Preservation Program Surcharge Fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.
8. **Eligible Mitigation Lands.** In order to meet the goals of this Program, lands proposed to be used as agricultural mitigation shall conform to the above definitions for Agricultural Mitigation Land and/or Open Agricultural Land and shall meet the following criteria:
 - a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only;
 - b) The property is of adequate size, configuration and location to be viable for continued Agricultural Use;
 - c) The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing Agricultural Uses, and the water rights on the Agricultural Mitigation Land shall be protected in the Agricultural Conservation Easement;
 - d) Other considerations for appropriate conserved Agricultural Lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
 - e) The mitigation land shall be located within Santa Clara County; and
 - f) The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.
9. **Ineligible Mitigation Lands.** A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:
 - a) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or

- b) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the City or other public agency; or
- c) The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

10. **Agricultural Priority Area.** The Agricultural Priority Area within Morgan Hill's Southeast Quadrant, shown on the figure below, is the City's first priority geographic area for conservation. The Agricultural Priority Area encompasses approximately 650 acres of land. The City should use all available tools, including clustering of existing development rights within the SEQ, transfer of development rights (TDR) programs, collaborative land use planning with the County, partnering with local open space conservation agencies, and the use of available grant funding to achieve conservation within this area. Within the Agricultural Priority Area the City should focus on obtaining conservation easements first on land outside of the City's land use control, specifically focusing upon the sub-area located along the southern edge of the City's Sphere of Influence.



11. **Secondary Conservation Areas.** If it is not possible to obtain conservation easements within the Agricultural Priority Area, the City should obtain conservation easements within other areas within the Morgan Hill Sphere of Influence as the next priority. The City may also identify lands intended for conservation within these areas.
12. **Alternative Conservation Areas.** Only when conservation opportunities are not available within the Sphere of Influence will the City consider easements at other locations within the County. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'Eligible Mitigation Lands' above. Developers may independently establish an Agricultural Conservation Easement on Eligible Mitigation Lands within the County. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the Agricultural Lands Preservation Program Surcharge Fee .
13. **Agricultural Sustainability.** Prioritize acquisition of easements on land that is most viable for long-term agricultural use considering factors such as soil type, water supply and location. Promote agricultural uses within easement areas including the development of high-value crops which are compatible with an urban edge condition while also economically sustainable over the long-term.
14. **Responsibility for Easement Acquisition.** The City's preference is that developers pay the Agricultural Preservation In-lieu Fee so that conservation efforts will be focused within the Agricultural Priority Area and make use of funds from multiple sources. In such cases, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the In-lieu Fee and accompanying responsibility to a Qualifying Entity. However the City will need to be a party to easements obtained by the Qualifying Entity.
15. **Minimum Easement Size.** The minimum land area for an Agricultural Conservation Easement is 10 acres on a single parcel or on multiple adjoining parcels so that the easement area is contiguous. Developments providing less than 10 acres of agricultural mitigation land are thus required to pay the Agricultural Preservation In-lieu Fee on a per acre basis except that acquisition of Agricultural Conservation Easements of less than 10 acres may be allowed when located immediately adjacent to an existing Agricultural Conservation Easement area that when combined, exceeds 10 acres in size.
16. **Management and Monitoring Fee.** As with other agricultural mitigation/preservation programs, a number of responsibilities will come with holding the Agricultural Conservation Easements, including their management and monitoring. The developer will be required to pay a one-time per acre fee (Agricultural Lands Preservation Program Surcharge Fee) to cover the average cost of these activities along with administration of the program including any administrative costs of the Qualifying Entity. The City will establish the Surcharge Fee and monitor it periodically.
17. **Implementing Entity.** The City will hold the easements and collect management and monitoring fees until an alternative implementing entity (Qualifying Entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.
18. **Mitigation Timing and Implementation.** Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or

grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.

19. **Planned Developments / Development Agreements.** Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the City's SOI in which Agricultural Lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the Agricultural Priority Area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development agreement with the City specifying the terms of the agreement and the extraordinary benefits accruing to the City.
20. **Funding for Easements.** Given the City's policy objective of agricultural land preservation within the Morgan Hill Sphere of Influence and within the Southeast Quadrant in particular, it is anticipated that the City will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the City will use open space funds collected through administration of its Residential Development Control System (RDCS) to supplement the acquisition of conservation easements.
21. **Clustering of Development.** The City may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The City should allow such alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
22. **Educational Center.** Work with local property owners, non-profits, or other agencies to develop an agricultural educational center within the SEQ.

Implementation

Agricultural Conservation Easement Program

Agricultural conservation easements can be obtained via a number of different agricultural preservation tools through dedication, purchase, or donation. The City will focus its agricultural preservation efforts on in-perpetuity Agricultural Conservation Easements. These easements may be established by private developers either to directly off-set a specific project or as part of a transfer of development rights (provided that adequate restrictions are incorporated into the easement) or purchased by the City or Qualifying Entity as defined by this Policy (using either in-lieu fee monies or alternative revenue sources). The City has determined to focus its agricultural preservation efforts in the SEQ as the first priority area, then elsewhere within the Morgan Hill SOI as the second level of priority. This program will be implemented according to the following guidance:

6. Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management. Initially, the group responsible for managing mitigation funds and Agricultural Conservation Easements will be the City of Morgan Hill. However, it is the intent of the City to partner with an established organization or transfer the operational responsibilities for managing and maintaining the City's Agricultural Lands Preservation Program to a third party Qualifying Entity. The third party Qualifying Entity will need to include individuals with direct experience and knowledge of farming activities
7. Implementation of mitigation (whether via conservation easement or payment of fee) will be due prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.
8. The specific terms and acceptance of Agricultural Conservation Easements will be at the discretion of the City of Morgan Hill or Qualifying Entity.
9. Initially, the Agricultural Preservation In-Lieu Fee, including the Program Surcharge Fee, is anticipated to be approximately \$15,000 per acre (based upon the attached Nexus Study). The program will allow for annual adjustments to the fee based on an established index and changes in land values. The In-Lieu Fee should be based on the value of Agricultural Lands at the time of development and must be sufficient to ensure lands can be purchased to meet the City's adopted ratios.
10. The Agricultural Preservation In-Lieu Fee will only be used for the acquisition of Agricultural Conservation Easements. Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
11. The Agricultural Lands Preservation Program Surcharge Fee will be used for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of easements established through the Program.
12. The Agricultural Lands Preservation Program will allow for the use of the City's Open Space Fund for acquisition of Agricultural Conservation Easements. Agricultural Conservation Easements

acquired using Open Space funds must insure that the covered lands be protected as Open Agricultural Land.

13. It is the City's goal to acquire Agricultural Conservation Easements in the immediate future utilizing available Open Space Funds. Where possible, the City of Morgan Hill will partner with conservation entities for the acquisition of easement lands.
14. The following minimum requirements shall be incorporated into all Agricultural Conservation Easements or other instruments recorded to satisfy the requirements of the Agricultural Lands Preservation Program. Nothing in this section is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of the Agricultural Lands Preservation Program are achieved:
 - a) It is the intent of the City to transfer most, if not all, of the easements that are received from this program to a Qualifying Entity, as defined above, for the purpose of monitoring compliance with easement terms and taking any necessary enforcement and related actions.
 - b) All Agricultural Conservation Easements, or other farmland conservation mechanisms, shall be implemented through a legal instrument acceptable to City Council and the Qualifying Entity that will receive the easement, and signed by all owners with an interest in the mitigation land.
 - c) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land or that are otherwise inconsistent with the conservation purposes of this Agricultural Lands Preservation Program. The instrument shall protect the existing water rights and retain them with the Agricultural Mitigation Land; however, the instrument shall not preclude the limited transfer of water rights on a temporary basis (i.e., not to exceed two years in any ten-year period) to other Agricultural Uses within Santa Clara County, so long as sufficient water remains available to continue Agricultural Use of the mitigation land.
 - d) The instrument shall prohibit the presence of a residence, except an existing residence or construction of a comparable replacement for such a home or construction of a single new home of 3,000 square feet or less on a site that does not already include a residence provided that such residence is not located where it would interfere with agricultural activities. (Alternatively, a portion of the subject property of up to 1.5 acres in area may be excluded from the Agricultural Conservation Easement and developed with a single new home provided that no other home is located on the property).
 - e) Instruments that convey an interest in the mitigation land to a Qualifying Entity, shall name the City as a third party beneficiary with full enforcement rights.
 - f) Interests in Agricultural Mitigation Land shall be held in trust by a Qualifying Entity and/or the City in perpetuity. Except as provided below (g), the Qualifying Entity or the City shall not sell, lease, or convey any interest in Agricultural Mitigation Land which it acquires.

- g) The Agricultural Conservation Easement, or other conservation mechanism recorded pursuant to the Agricultural Lands Preservation Program, can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the Agricultural Mitigation Land is received and used or otherwise dedicated to acquire interests in other Agricultural Mitigation Land in Santa Clara County, as approved by the City and as provided for in this Program.
 - h) If any Qualifying Entity owning an interest in Agricultural Mitigation Land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City or other Qualifying Entity as acceptable and approved by the City.
 - i) The City may at its discretion terminate a relationship with a Qualifying Entity if that entity no longer satisfies the intent of this Program.
15. Utilize the City's Transfer Development Credit (TDC) program for agricultural preservation (Open Agriculture Land) in addition to the current goal of hillside preservation. The revenue comes from RDCS TDC In-Lieu fee paid by residential developers who do not purchase a TDC from a property owner.
16. Add Points to the Residential Development Control System (RDCS) scoring criteria that would be awarded to Projects that commit to support the Agriculture Preservation Program by paying a fee that could be used to pay for the residential development rights (TDR) or agriculture preservation easements for agricultural uses that could not meet the 90 percent open space requirement.

Clustering and Transfer of Development Rights

As opportunities arise, the City may utilize or develop additional methods of preserving agricultural lands through the land use entitlement process, including cooperatively working with property owners or developers to preserve agricultural lands through clustering or transfer of existing development rights. Such clustering or transferring can be implemented through the City's land use entitlement processes as described above. The City may also work with the County to develop a program that would allow transferring of development rights between the County and City in order to further preserve agricultural lands.

General Plan Policies

In addition to the preservation of Agricultural Land through Agricultural Conservation Easements and/or the clustering or transfer of development rights, a broader policy framework is important to support the Program's objectives. In particular, strengthening land use policies that define supporting land uses, limiting speculation associated with the conversion of Agricultural Land, and allowing for agriculture-supporting infrastructure will play an important role in the implementation of the Agricultural Lands Preservation Program. Accordingly, goals, policies, and actions that address the following objectives should be maintained within the General Plan:

- Continue Agricultural Land uses and production in and around the City of Morgan Hill to promote the City's identity and agricultural heritage.

- Support the development of urban agriculture, and the preservation of the existing Agricultural Lands within or adjacent to Morgan Hill to increase the supply of locally-grown, healthful foods.
- Strengthen the link between the community and local farms and farmers.
- Leverage Agricultural Lands to create and maintain a unique community character, provide open space, link to the region's history, support local agri-tourism, contribute to the local economy, and add to the quality of life.
- Identify potential sites within a centralized urban area of the City appropriate and suited for a community garden.

ATTACHMENT A – Background Information

The City engaged a consultant team to analyze the viability of agricultural activities in and around Morgan Hill and to make policy recommendations for how the City of Morgan Hill could best accomplish its goals of preserving viable agricultural lands. The consultant team, Economic & Planning Systems, Inc. and House Agricultural Consultants, submitted a report in December 2011 that provides background analysis and preliminary recommendations, much of which is incorporated into this Policy. Key findings from this Report are presented within the following Background information.

Agricultural Lands within Morgan Hill

As of 2010, the Morgan Hill SOI included approximately 9,894 acres of agricultural and grazing land, of which 7,739 acres was grazing land. The remaining 2,155 acres were irrigated or irrigable agricultural land uses, which are the focus of the Agricultural Lands Preservation Program (i.e., Farmland Mapping and Monitoring Program (FMMP) classifications of prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance). About two-thirds of this land, approximately 1,436 acres, was classified as prime farmland.

While the FMMP Map identified approximately 2,155 acres of irrigated or irrigable agricultural lands, some of this acreage had already been developed or committed for development at the time of this Policy's drafting.

The table below identifies the total acreage of agricultural and grazing land within the Morgan Hill SOI, City Limits, and unincorporated areas within the SOI based on the 2010 FMMP Map.

FMMP Classification	City Limits	Unincorporated Areas within SOI	Grand Total
Prime Farmland	320	1,116	1,436
Farmland of Statewide Importance	18	187	205
Farmland of Local Importance	153	184	337
Unique Farmland	25	152	177
Grazing Land	1,284	6,455	7,739
Grand Total	1,800	8,094	9,894

Long-term Viability of Agricultural Lands

A simple definition of *agricultural viability* is: agriculture that is economically feasible to maintain and continue. To be viable agricultural activity:

- Land continues to be farmed, returning a net profit, on a multi-year basis.
- Natural resources are stewarded for the long term.
- Agricultural operations are supported by the local community.

This definition makes no distinction as to the type or scale of viable agriculture, which may change along with national and international economic trends. Farmers can be either full-time or part-time. It does, however, exclude hobby farming, meaning farming that does not return a profit. “Supported by the local community” means that agricultural activities are accepted as part of the commerce of the area by the residents of the area, that housing is available to farm laborers and small farmers, that agriculture is integrated into the policies and regulations of the City, and that trade and commerce between the farming enterprises and the residents flourishes, through such means as local sales, including on-site direct sales, and farmers' markets.

Based on data provided by the United States Department of Agriculture (USDA) Economic Research Service (ERS) in 2008, approximately 43 percent of farmers nationally indicate that farming is their major occupation, while 42 percent state that work other than farming is their major occupation; 15 percent do not consider themselves to be in the workforce. In 2008, 88 percent of all farm household income nationally came from non-farm sources. USDA ERS data indicate a long-term trend toward increasing non-farm income and decreasing farm income among United States farmers.

According to a study by the University of California (UC) Davis Small Farm Center, an annual gross income level of approximately \$25,000 per farm business is a threshold for sustainability. A majority of California farm businesses grossing more than \$25,000 annually are profitable, based on data from the 2007 USDA Census of Agriculture. There is no implication that “a living” can be made if a farm grosses \$25,000. The study does imply, however, that since a profit can be expected in this situation, it is likely that small farming will continue to be an occupation, if perhaps only a part time one. Since small farming is profitable in a majority of cases if the gross revenues exceed \$25,000, it is implied that the small acreages in the Morgan Hill area will continue to be farmed.

Examples of small-scale agriculture are:

- Nursery and flowers.
- Farms emphasizing local sales and marketing.
- Community farms and education centers.

There are national trends supporting small farming:

- Urban peoples’ interest in health, open space, and community encourages small farming.
- “Buy local” makes economic, social, and ecological sense.
- There is strong interest by college-age persons in farming.
- There is strong interest by government and nonprofits in small farms.
- Small organic farms have, for the most part, enjoyed economic success in recent years.

The Report indicated that while large-scale agriculture (agriculture generally conducted on 600+ acre farms with minimum lots of at least 40 acres and general separation from urban uses) is not viable in the Morgan Hill area, the outlook for small-scale agriculture is good.

The Report identified key threats to agricultural viability in the Morgan Hill SOI as:

1. High land market values difficult for strictly agricultural producers to afford.
2. Urban proximity conflicts with many farming operations.
3. The incompatibility of small parcel size with large-scale agribusiness.

Policy Context

The Report identified the following overarching contextual issues as important to the development of an agricultural program for the City of Morgan Hill:

- County and LAFCO Policies and Inter-agency Coordination.** For lands proposed to be annexed into the City of Morgan Hill, the successful preservation of agriculture in and around Morgan Hill will require collaboration and coordination with both the County and the Local Agency Formation Commission (LAFCO). Santa Clara County supports the continued agricultural use of lands in the unincorporated County through the use of large-lot agricultural zoning. Santa Clara LAFCO has developed a series of policies regarding agricultural mitigation and will play a critical role in the evolution of the Morgan Hill SOI in its review of boundary adjustment applications. It is important to note, though, that the City of Morgan Hill has the authority to enter into development agreements with property owners outside the Morgan Hill city limits for the purposes of preserving agricultural lands.
- Southeast Quadrant.** The SEQ of the City is of particular importance as the last major, contiguous area of agricultural land in the Morgan Hill SOI and due to its potential as a permanent “greenbelt” between Morgan Hill and the neighboring rural residential area of San Martin.
- Scale and Cost.** The City’s Agricultural Lands Preservation Program must recognize its unique circumstances, including: (1) the relatively small area in agricultural use in the Morgan Hill SOI; (2) the relatively high percentage of agricultural lands that are 10 acres or less in size; (3) the relatively high value of land relative to its potential for agricultural income due to rural-residential demand and speculative influences; and (4) the uncertainty in locating willing sellers of land for preservation purposes.
- Other Goals.** The City of Morgan Hill has multiple goals for its undeveloped land within its SOI in addition to agricultural preservation. Such goals include the establishment of a greenbelt, the development of sports, recreation and leisure (SRL) amenities and uses of public benefit within the SEQ, including a new high school, and the location of appropriate and consistent uses around the adjacent freeway interchange.

Agricultural Mitigation Costs

Agricultural mitigation requirements, whether through land dedications or mitigation fees, result in additional cost to any development that converts agricultural land. In combination with other agricultural land preservation policies, these mitigation requirements increase the costs to new development and could create feasibility challenges. Under a typical agricultural mitigation program, a project found to result in the loss of agricultural land must mitigate the loss through the preservation of agricultural land elsewhere. Preserving land for agriculture means acquiring land in fee title or purchasing a conservation easement that restricts uses on the property. The cost burden of the agricultural preservation required will primarily depend on the non-agricultural value component of the land being preserved.

Land sales for agricultural land in Santa Clara County and around Gilroy steadily averaged between \$15,000 and \$45,000 per acre based on a review of transactions and listings between 2006 and 2009.

Higher agricultural land values in and around Morgan Hill relative to other Santa Clara County areas indicate the greater development pressures in the Morgan Hill SOI than the other agricultural areas in the County. In addition, Morgan Hill's agricultural parcels tend to be smaller in size compared with other County locations.

A market analysis included within the 2011 Report estimated that the cost to preserve agricultural land through fee simple purchases would range from \$50,000 to \$80,000 per acre in Morgan Hill and that the unit cost of agricultural land preservation through easement acquisition would range from \$30,000 to \$48,000 per acre within Morgan Hill's SOI and from \$9,000 to \$27,000 per acre for land outside of the City's SOI. A quick survey of agricultural mitigation programs around the state indicated that most programs result in costs of less than \$30,000 per acre. The actual land costs that individual applicants will face could vary considerably depending on market conditions at the time of land purchase; the availability of willing sellers; and the size, location, and condition of land being preserved, etc. In addition, ongoing costs are incurred to manage and monitor the agricultural conservation easements.

Agricultural Mitigation Costs for Typical Projects:

- Preservation inside Morgan Hill SOI.** With mitigation required to take place within the Morgan Hill SOI, the mitigation cost associated with acquiring an easement was estimated to be \$30,000 to \$48,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$6,000 and \$9,600 per unit. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$2.30 and \$3.60 per building square foot.
- Preservation in Santa Clara County.** With mitigation allowed to occur anywhere in Santa Clara County, the mitigation cost associated with acquiring an easement was estimated to be \$9,000 to \$27,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$1,800 and \$5,400 per acre. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$0.70 and \$2.05 per building square foot.

ATTACHMENT B – Nexus Study

The Nexus Study supporting adoption of the Agricultural Preservation In-lieu fee is available at:
<http://www.morgan-hill.ca.gov/DocumentCenter/View/12622>

EXHIBIT – Draft Agricultural Preservation General Plan Policies for Consideration

The City of Morgan Hill will evaluate the current General Plan policies related to preservation of Agricultural Land and consider updates to those policies that address the following proposed policies and actions.

Policies and Actions

Agricultural Lands Preservation

- Preserve Agricultural Lands and prime soils in non-urban areas in order to provide local and regional fresh food supplies, reduce dependence on foreign products, conserve energy, and retain the aquifer recharge capacity of these lands. Give highest priority to the preservation of Agricultural Lands with the greatest long-term potential to support sustained Agricultural Use.
- Establish and/or maintain General Plan and Zoning land use designations to support Agricultural Uses.
- Encourage contractual protection for Agricultural Lands, such as Williamson Act contracts, Agricultural Conservation Easements, transfers of development rights, or other property tax relief measures as incentives for preservation of these lands.
- Implement the City's Agricultural Lands Preservation Program to preserve Agricultural Lands as part of new annexations or development projects.
- Offer landowners fair market value for their development rights on prime farmland.
- Allow alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
- Expand the City's Transfer Development Credit (TDC) program to include agricultural preservation as well as hillside preservation. Use the revenue from new purchases of TDCs, in part, to support the purchase of Agricultural Conservation Easements.
- Award points to projects that compete through the Residential Development Control System (RDCS) competition that commit to purchase TDCs for the purpose of agricultural preservation.
- Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management.
- Promote legislation to establish Countywide and Statewide agricultural preservation programs, including identifying sources of funding necessary for implementation of such programs.
- Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
- Amend existing General Plan Policy 2o in the Open Space and Conservation Element to be consistent with the provisions of this Program.

Sustainable Agricultural Industry

- Require ancillary non-Agricultural Land uses on Agricultural Lands to be ancillary and compatible with Agricultural Land uses, agricultural production, and the rural character of the area, and to enhance the economic viability of agricultural operations.
- Promote an agricultural support system including physical components (such as farm labor housing, retail sales, equipment supply and repair) and institutional components (such as agricultural education and training).
- Pursue additional funding available through State and federal grant programs sources for Agricultural Land preservation, educational/outreach programs, and other activities that support Agricultural Land use.
- Conduct outreach to farmers/landowners about Agricultural Conservation Easements and farming succession planning.
- Encourage Agricultural Uses which follow ecologically sound agricultural practices and minimize the use of chemicals and pesticides in order to promote healthy soils and ground water, provide healthful foods, reduce energy use, and reduce the resource demand attributed to local agricultural industry.
- Seek conservation program funding for farmers planning and implementing conservation practices that improve soil, water, plant, air and related resources on their land.
- Work with agricultural entities (e.g., farming industry, non-profits, land owners), the County, other Santa Clara County cities and the Local Agency Formation Commission and other stakeholders to promote public education to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

Local Agricultural – Economic Development

- Enhance viability and profitability of ongoing use of Agricultural Lands by supporting ancillary commercial uses such as produce stands, small-scale environmental and agricultural tourism, and the processing of agricultural products.
- Facilitate the long-term viability of farming within the City's SOI through educational, resource and mentoring programs, including partnerships with educational institutions (e.g. Gavilan College), industry organizations (e.g., California FarmLink), and financial institutions that provide business planning and mentoring for new farmers.
- Work with industry groups, business groups and other organizations to institute direct marketing programs, branding campaigns, and other incentives and programs that increase purchasing agreements between local farmers and local retailers, such as grocery stores, markets, restaurants and local institutional uses, and increase consumer awareness and purchases of local agriculture.
- Support partnerships between school districts and organizations to promote and implement farm to school programs.
- Incorporate agri-tourism destinations on City signage, e.g. farm stands and farms within the city's SOI.
- Encourage and support interested farmers to create public access opportunities through farming areas (e.g., school and public farm tours, roadside stands, and farm trails).

Urban Agriculture

- Maintain existing and support the development of new community gardens, farmer's markets and produce stands at suitable locations throughout Morgan Hill.
- Periodically review and amend the Zoning Code to streamline permit/use regulations to encourage and support the sale of agricultural products within the City.
- Support urban agriculture opportunities such as backyard gardens and edible landscapes that produce ecologically sound food for local consumption.
- Encourage developers of new development projects to incorporate food-producing areas within their project landscape plans.
- Encourage healthful food choices, exercise, and the production of locally grown agriculture for personal use by providing community garden facilities either on public lands or as part of new private developments.

Urban/Agriculture Interface

- Establish an agricultural buffer between urban and rural uses. The buffer's size, location and allowed uses must be sufficient to minimize urban edge conflicts, provide safety to urban residents, and allow the broadest possible farming practices on the urban edge boundary.
- Establish a minimum agricultural buffer requirement around new development adjacent to the City's Agricultural Priority Area and County land with an Agricultural land use designation.
- Restrict land uses within and adjacent to Agricultural Lands that would compromise the agricultural viability of these lands. Require new adjacent land uses to mitigate any impacts on the use of Agricultural Lands.
- When considering annexation applications involving land that is mapped or used for agricultural production, or is located adjacent to such land, implement land use designation(s) and pre-zoning(s) to minimize the potential conflict with surrounding Agricultural Uses in the area.
- Require new development projects to record an agricultural buffer easement on the land that will make up the buffer concurrently with the permitting of any development/grading.
- Strengthen zoning development standards, where necessary, to encourage development placement, scale, and design that are consistent with the preferred rural character adjacent to the City's edge.

Inter-agency Cooperation

- Cooperate with other jurisdictions to achieve agricultural preservation goals.
- Continue to identify opportunities to work with other jurisdictions and organizations in supporting Agricultural Land preservation and the agricultural industry in and around Morgan Hill. Work with the County as a critical partner in these efforts and outreach to other organizations where efforts and resources can be pooled to support agriculture.

Access to Healthy Foods

- Support an enhanced role for local Agricultural Land in providing community farms and local food sources.
- Promote broad access within the community to healthful food, as defined by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.
- Encourage and support the marketing, sale and consumption of locally-grown produce.

Exhibit 2: MH2035 General Plan Agriculture & Open Space Conservation Policies

Agriculture and Open Space Conservation Policies

Morgan Hill 2035 General Plan

Vision (pg. VIS-4)

The overall combination of actions envisioned by the General Plan will help Morgan Hill grow and prosper while balancing quality of life, economic development, tourism, fiscal sustainability, high-quality planned development, and preservation of habitat, the natural environment, and viable agriculture, without compromising its historic and enduring rural charm.

Urban Growth Boundary (pg. CNF-4)

In 1996, Morgan Hill and Santa Clara County jointly adopted a long-term Urban Growth Boundary (UGB) and associated policies. The UGB is encompassed within the Sphere of Influence (SOI) and is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur. It is designed to encourage compact, efficient infill development and discourage more costly development at the edge of the City. The UGB also helps to ensure that urban services provided by the City to existing neighborhoods will not be reduced by service demands of new urban development at the City's fringe.

Rural Designations (pg. CNF-9)

Rural County. This designation applies to land outside the City limit, but in the SOI. Lots with the Rural County designation are generally 5 to 20 acres in size with one single-family home and/or agricultural operation per parcel. The minimum acceptable lot size for new development is generally 5 acres.

Open Space. This designation applies to land in the City limits and SOI, and includes public parks, private golf courses, and large parcels of land generally 50 acres or more in size. Land designated Open Space is generally meant to remain unimproved and devoted to the preservation of natural resources, managed production of resources, or public health and safety, as well as to complement adjacent, higher density residential and commercial development. Allowed uses include agriculture, outdoor recreation, and a secondary dwelling unit. One single-family home per parcel is allowed, with appropriate permit.

Agriculture. The Agriculture designation identifies lands intended for long-term preservation for agricultural use and intended for a variety of agricultural uses, including grazing, dairying, raising of livestock, orchards, row crops, nursery stock, flower growing, ancillary residential uses, ancillary commercial uses such as fruit stands, agricultural research and the storage and processing of agricultural products. This designation supports open space uses such as preservation of natural resources, outdoor recreation and public health and safety, including infrastructure (such as infiltration ponds) that is similar to other open space uses. The designation also supports agricultural commercial uses such as

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roadside stands, wineries, farm-based tourism, u-pick, rodeos, farmers markets and crop-based seasonal events. Building intensity in this designation will be greatly limited. The minimum parcel size in areas designated as Agriculture is generally 20 acres; the designation however supports the clustering of existing development potential in order to preserve larger agricultural sites. Please note at the time of publication of this General Plan, the Agriculture designation had not been applied to any parcels.

Overlays and Areas of Special Consideration

East of 101 Area Plan Overlay. The East of 101 Area Plan Overlay applies to the area roughly between Half Road and Diana Avenue to the north and south and Condit Road and Hill Road to the west and east. The purpose of this overlay is to require the preparation of a comprehensive master plan when new residential development is proposed to create well-planned, cohesive neighborhoods. Development within the East of 101 Area Plan Overlay shall:

- Employ high-quality site planning, architecture, and design that reflects the rural and agricultural history of the area, following traditional town design principles, and support green building methods that reduce the environmental impact of new development.
- Seek to preserve the agricultural heritage of the area and integrate ongoing agricultural uses into future development, as indicated by the Agriculture/Open Space overlay symbol.
- Include a variety of residential housing types as permitted by the underlying General Plan land use designation.
- Include services and amenities to serve new residents so daily needs can be met close to home.
- Provide an easily accessible, fully connected street and trail network that encourages walking and biking and provides access to existing community amenities such as Live Oak High School and Nordstrom Elementary School.

Open Space/Agriculture: This symbol indicates that open space and agricultural uses should be integrated into future development in areas with a strong agricultural heritage.

Southeast Quadrant. The Southeast Quadrant (SEQ) is approximately 1,300 acres, generally bounded by Condit Road and Highway 101 to the west, San Pedro Avenue to the north, Carey Avenue to the east, and Maple Avenue to the south, as shown in Figure CNF-5. The City has adopted an Agricultural Lands Preservation Program to permanently preserve agricultural lands with the SEQ and Citywide.

Land Use Policies

CNF-3.14 Agricultural Preservation Set-Asides. Set aside at least 300 allotments for housing that may be applied anywhere in the City through 2035. Recipient projects must directly establish permanent agricultural conservation easements within the City Limits or within the City's Priority Agricultural Conservation Area.

CNF-4.1 Future Growth Areas. Use the current Urban Service Area and Urban Growth Boundary to identify future urban development areas based on adequacy and availability of municipal services.

Agriculture and Open Space Conservation

- CNF-4.2 Urban Growth Boundary.** Maintain a long-term Urban Growth Boundary that:
- a) provides greater stability of future land use patterns than is currently provided by the existing "short term" urban service area (USA) boundaries;
 - b) indicates the preferred extent and direction of the City's future urban expansion and capital improvements planning;
 - c) encourages compact and concentric urban growth and development;
 - d) promotes fiscal responsibility, cost-effective service delivery, and the City's ability to plan for and adequately maintain urban services over time;
 - e) provides for an adequate land supply necessary for sustainable economic growth;
 - f) compensates for the impacts of the City's historical patterns of urban growth;
 - g) achieves greater compatibility of land use planning and decision-making for lands of mutual interest to the City and County; and
 - h) provide additional certainty to rural landowners needed for purposes of planning investments and maintaining viable agricultural operations.
- CNF-4.3 Prerequisites for Urban Development.** Consider land adjacent to the City as available for urban development only when it is included within the Urban Service Area and Urban Growth Boundary, can be developed in a manner that will be cost-effective to the City, and will be served by adequate public services and facilities.
- CNF-4.7 Urban Growth Boundary Modification Criteria.** Significant modifications to the UGB are strongly discouraged in order to ensure the long term stability of the boundary by directing urban growth to areas of the city that are urbanized or planned for urbanization.
- a) Significant modifications to the UGB, or significant modifications to the General Plan text supporting the boundary, will only be considered in the context of a major, comprehensive update of the General Plan which fully considers all of the implications of expanding the limits of urbanization.
 - b) Minor modifications to the UGB may be considered during an annual General Plan review. To qualify as a minor modification a proposed modification of the UGB must meet the following criteria:
 - Be no larger than 5 acres in size; or
 - If the modification includes both areas of expansion and areas of contraction, the net expansion area is no larger than five acres in size; and

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- The expansion area must be located contiguous to lands with an urban land use designation on the City's General Plan Land Use Map.
- c) All proposed modifications must:
 - Demonstrate consistency with the applicable goals and policies in the General Plan and the surrounding General Plan Land Use designations.
 - Demonstrate a fiscally neutral effect on City finances at the time of development in the future.
 - Be adequately served by public services and infrastructure without decreasing City adopted level of service standards.
 - Demonstrate a public benefits such as the preservation of sensitive habitat or prime farmland, provision of affordable housing, provision of public park or open space land, or a public benefit established by the Morgan Hill City Council.

- CNF-4.8 Land Supply.** Include enough land within the Urban Service Area to provide for a rate, amount, and type of development consistent with the General Plan; review and modify the Urban Service Area boundaries as needed.
- CNF-4.9 Orderly Growth.** Urban growth should occur in an orderly and contiguous pattern, within the designated Urban Service Area, encouraging infill of vacant urban land. (South County Joint Area Plan 1.09 & 1.10)
- CNF-4.10 Urban Service Area Expansions.** Base expansion of urban service areas and annexations on the General Plan, consistent with the City's schedules for development and extension of services. (South County Joint Area Plan 1.11 & 1.12)
- CNF-4.11 Urban Service Area Expansions Within UGB.** Allow Urban Service Area expansions only within the long-term UGB and for lands with urban designations; the timing and extent of Urban Service Area expansion shall remain consistent with established Urban Service Area expansion policies and ordinances.
- CNF-6.1 Services to Serve Growth.** Manage and schedule urban growth consistent with the ability to provide a full array of urban services and facilities, such as sewer capacity, water, transportation, schools, public safety and other urban services. (South County Joint Area Plan 1.08)
- CNF-7.1 County General Plan Policies.** Promote the maintenance of current County General Plan policies encouraging low-density uses, including large lots and agriculture, for County projects adjacent to the UGB. Encourage the County to retain large minimum parcel sizes, and promote agricultural and open space uses on unincorporated lands.

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- CNF-7.2 Rural Landowner Home Occupation.** Support the County's effort to promote the use of expanded home occupations for rural landowners and agriculturists, within the parameters of the County's zoning ordinance.
- CNF-7.3 Rural Land Uses.** Land uses in rural areas should be low-intensity and limited in number, and public services to rural areas should be appropriately limited. (South County Joint Area Plan 1.07)
- CNF-7.4 Agricultural Land Use Conflicts.** Work with Santa Clara County to minimize potential land use conflicts between urban uses within the UGB and rural lands adjacent to the growth boundary.
- CNF-7.5 Inter-Jurisdictional Support for Agriculture.** Coordinate measures to enhance the economic viability of agriculture in conjunction with other inter-jurisdictional planning in the South County.
- CNF-20.3 East of 101 Area Design.** Require new residential development to be designed to minimize adverse impacts on adjacent residential and agricultural uses.
- CNF-20.4 East of 101 Area Integrated Agriculture.** Strongly encourage new development to preserve existing agricultural uses as feasible and integrate agricultural features into new development to reflect the history of this area.

Open Space (pg. NRE-1)

The abundance of open space within and around Morgan Hill is a key contributor to quality of life for City residents and visitors. Preserving open space, including in conjunction with new development, is essential to maintaining the uniqueness and quality of life of Morgan Hill.

Greenbelts (pg. NRE-2)

The Natural Resources and Environment Element identifies a Greenbelt, which is intended to physically define the City and separate it from San Jose and San Martin. The Greenbelt includes both public open space and private properties as shown on Figure NRE-1. Identification of areas as "Greenbelt" does not change the development potential or restrictions imposed under Santa Clara County development policies and regulations. Rather, it indicates that the City will work with the County to minimize off-site visual impacts of new development. In addition, the Greenbelt is intended to identify areas where a targeted program of acquisition of open space easements or fee title to land may occur.

Areas outside of the Urban Growth Boundary that have been substantially subdivided into parcels smaller than 10 acres generally are not included in the identified Greenbelt areas. Many of the parcels in these areas are developed or are eligible for construction of single-family homes. The existing and potential density of development in these areas minimizes their value as Greenbelt areas. However, the

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rural character of these areas does help to define and distinguish the urbanized City area from other urban and rural county areas.

Agricultural Resources (pg. NRE-2)

Agriculture has been important to the City throughout its history as an industry and employment generator, in addition to contributing to the City's rural character. The City's economy once depended on the cultivation of stone fruits, pears, apples, and nuts. Although the local economy diversified, agriculture is still an important asset to the region, as evident by the surrounding nurseries, orchards, and vineyards, which boost the region's economy and the local tourism industry.

Supporting agriculture requires finding innovative ways to help farming and ranching operations become and remain competitive in an increasingly global economic environment. Agricultural development policies intend to retain the historic agricultural character of lands surrounding Morgan Hill, and to minimize conflicts between urban development and agricultural uses.

Agricultural land can be found within the Morgan Hill City limit and within the Sphere of Influence (SOI). The Morgan Hill area includes prime farmland, farmland of statewide importance, farmland of local importance, unique farmland, and grazing land, as classified by the State Department of Conservation. As shown in Figure NRE-2, most of the prime farmland is located on the eastern side of the City, east of Highway 101. However, the Department of Conservation's data reflect conditions as of 2010. Since the time the State published the data, some limited pieces of land may have been developed or may now be under development review. Nevertheless, the data provide a broad picture of the agricultural resources within Morgan Hill today.

The California Land Conservation Act of 1965, also known as the Williamson Act, provides tax relief for landowners who preserve their agricultural and open space property under Williamson Act contracts. Under contract, the tax on a Williamson Act property is assessed at a rate consistent with its actual use, rather than the potential value. These contracts run for 10 years, are automatically renewable on an annual basis, and may be terminated by the initiative of either the property owner or the legislative body. There are a number of parcels under Williamson Act contracts in and around Morgan Hill.

Conservation Policies

- NRE-1.1 Natural Features.** Preserve outstanding natural features, such as the skyline of a prominent hill and rock outcroppings.
- NRE-1.2 Large Open Space Areas.** Work with the County, the Open Space Authority, appropriate conservancy organizations and land trusts, and property owners to preserve large open space areas, such as agricultural lands and outdoor recreation areas, to conserve natural resources and retain the City's unique identity.
- NRE-1.3 Designated Open Space.** Maintain land designated as "Open Space" on the Morgan Hill General Plan Land Use Map (Figure CNF-3).

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- NRE-1.4 South County Open Space.** Preserve and maintain the wide variety of open spaces in the South County; including greenbelt areas, parks, and agricultural uses. (South County Joint Area Plan 16.00)
- NRE-1.5 Coordinated Action.** Continue to coordinate with Gilroy and Santa Clara County to implement South County open space goals and objectives and participate in the development of regional open space preservation programs. (South County Joint Area Plan 16.19 & 16.20)
- NRE-1.6 Open Space Preservation Tools.** Use a variety of open space preservation tools to protect open space, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development. (South County Joint Area Plan 16.17)
- NRE-1.7 Priority Areas for Preservation.** The South County includes a variety of open space areas, including the valley floor, stream corridors, lands around reservoirs, foothills, inter-mountain valleys, and mountain areas beyond the foothills. Of these geographic areas, stream corridors, lands around the reservoirs, lands which provide greenbelts, and significant hillside features should receive highest priority for preservation as open space and future regional park location. (South County Joint Area Plan 16.01 & 16.02)
- NRE-1.8 County Parks and Open Space Programs.** Support County programs to:
- a) acquire and develop regional parks in the South County, providing just compensation for the taking of private lands;
 - b) protect open space resources by prohibiting the introduction of uses incompatible with open space resource preservation, and preserve open space through planning, regulation, acquisition and/or development rights transfer programs;
 - c) plan and regulate land use to avoid hazardous areas and protect critical natural resources; and
 - d) continue to provide property tax relief via the Williamson Act to land owners who agree to maintain their lands in open space uses. (South County Joint Area Plan 16.21)
- NRE-2.1 Hillside and Ridgeline Views.** Protect views of hillsides, ridgelines, and prominent natural features surrounding the City. These features help define the City's historic rural character, sense of place, image and identity.
- NRE-2.2 El Toro Mountain as Landmark Feature.** Retain the City's unique identity by preserving its landmark natural feature, El Toro Mountain.

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- NRE-2.3 Scenic Hillside Preservation.** Preserve scenic hillsides around the City in an undeveloped state, wherever feasible. Provide for retention of hillside areas as open space through the dedication and/or purchase of scenic easements and/or open space easements, transfer of development rights and other appropriate measures.
- NRE-2.4 Building Distance below Ridgelines.** Limit all building pads located within the hillside areas to an elevation at or below the 80-foot vertical drop from the ridgeline.
- NRE-3.1 Greenbelt as a Community Separator.** Maintain a greenbelt to separate the northern and southern boundaries of the City from surrounding rural lands and the urbanized areas of San Jose and San Martin.
- NRE-3.2 San Jose Coyote Valley Greenbelt.** Work with the City of San Jose and Santa Clara County to ensure that the San Jose Coyote Valley Greenbelt, which includes the area south of Palm Avenue and north of the Morgan Hill City limits and is located within the San Jose Sphere of Influence, shall continue to provide the non-urban buffer for the north side of Morgan Hill.
- NRE-3.3 Greenbelt Easements.** Acquire easements on properties using an approach that would maintain some appropriate development potential, maximize the use of available funds for greenbelt and open space protection, and minimize land management and maintenance costs.
- NRE-3.4 Land in Fee Title for Greenbelts.** Acquire land in fee title when the City's objectives include allowing public access to the site for recreational or related activities.
- NRE-3.5 "Willing Seller" Greenbelt Acquisition.** Acquire properties and easements on a "willing seller" basis.
- NRE-3.6 No Commercial/Industrial Uses within Greenbelts.** Support County policies prohibiting commercial and industrial uses (excluding agricultural industry) in the unincorporated and greenbelt areas surrounding the City.
- NRE-3.7 Appropriate Greenbelt Land Uses.** Encourage land uses appropriate within a greenbelt, which might include: a) low-density residential development on lots 10 acres or more in size; b) public parks and recreational areas; c) privately operated recreation areas (e.g., golf courses and riding stables); and, d) agriculture. (South County Joint Area Plan 16.16)
- NRE-3.8 Appropriate Greenbelt Land Uses.** Require appropriate uses within Greenbelt areas such as parks and other designated open spaces, scenic/open space easements, golf courses, low intensity public facilities involving minimal permanent improvements and agricultural activities are appropriate uses. Existing residential may remain and new residential uses should be located and designed to have minimal visual and other environmental impacts.

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- NRE-3.9 Greenbelt Areas on Private Land.** Greenbelt areas which are privately owned are not intended for public recreational use.
- NRE-3.A Tools to Create a Greenbelt.** Use a variety of tools to create a greenbelt, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development.
- NRE-3.B Greenbelt Acquisition Program.** Pursue a targeted program for acquisition of Greenbelt land in fee title or conservation easements. Prioritize undeveloped properties that are most threatened with development which, if acquired, would provide significant public benefit.
- NRE-4.1 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.2 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.3 Agriculture in the Sphere of Influence.** Support significant agricultural activity within the Sphere of Influence by providing a market for agricultural products (e.g., farmers' markets) and decreasing the costs associated with agriculture by allowing such uses to occur in the Sphere of Influence.
- NRE-4.4 Farming Cooperatives in Buffer Areas.** Support use of farming cooperatives within agricultural buffer areas.
- NRE-4.5 Local Agricultural Products.** Purchase locally-produced agricultural products for City functions and encourage Morgan Hill Unified School District and other local agencies to do the same, whenever feasible.
- NRE-4.6 Agricultural Education.** Support programs to foster agricultural education.
- NRE-4.7 Long-Term Maintenance of Agriculture.** Continue to support the long-term maintenance of agricultural land uses and agriculture, including vineyards and wineries, as an economic enterprise in South County. (South County Joint Area Plan 14.00)
- NRE-4.8 Policy Support for Agriculture.** Take positive action to encourage agriculture by supporting local, county, and State policies favorable to agriculture. (South County Joint Area Plan 14.01)

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- NRE-4.9 Urban Encroachment.** Require new urban development adjacent to an existing agricultural operation to create an appropriate buffer area, on land within the proposed development, between urban uses and agricultural activities.
- NRE-4.10 Land Use to Support Agricultural Viability.** Maintain the economic viability of agriculture using a variety of methods, such as:
- Designating land outside urban areas as agricultural;
 - Requiring minimum lot sizes in agricultural areas;
 - Requiring land uses that support agricultural activities;
 - Marketing the benefits of agricultural uses to the public. (South County Joint Area Plan 14.02)
- NRE-4.11 Agricultural Mitigation.** Enforce the agricultural mitigation requirement of requiring the preservation of a minimum of 1 acre of agricultural land for each acre of agricultural land changed to a non-agricultural use, consistent with the City's Agricultural Lands Preservation Program.
- NRE-4.12 Permanent Preservation of Agriculture.** Establish areas for the permanent preservation of agricultural lands and programs to accomplish that objective, such as exclusive agricultural zoning, transfer of development rights (TDR) programs, and right-to-farm legislation. (South County Joint Area Plan 14.03)
- NRE-4.13 Urban Growth.** Wherever existing development patterns and existing and planned roads and other public facilities permit, concentrate urban development adjacent to existing developed areas in order to minimize the impact of development on agricultural land. Plan for further urban growth to occur in areas which will avoid encroachment into those agricultural lands with the greatest long-term potential to remain economically viable. (South County Joint Area Plan 14.07)
- NRE-4.14 LAFCO Policies.** Support policies of the Local Agency Formation Commission (LAFCO) which would guide urban development away from those agricultural areas with the greatest potential for long-term economic viability. Use policies for Urban Service Area extensions and utility extensions to guide urban growth away from long-term agricultural areas. (South County Joint Area Plan 14.09 & 14.10)
- NRE-4.15 Conversion to Urban Use.** Convert agricultural land that has been designated for urban growth in an orderly manner to retain the stability and viability of remaining agricultural lands as long as possible. (South County Joint Area Plan 14.08)
- NRE-4.16 Prioritization of Agricultural Land.** Prioritize protection of existing agriculture lands in the Sphere of Influence, outside the Urban Growth Boundary.
- NRE-4.17 Williamson Act Contracts.** Support the preservation of land under Williamson Act contracts within the Morgan Hill Sphere of Influence.

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- NRE-4.18** **Agricultural Operations Disclosure.** In areas where residential development is adjacent to agricultural operations, require a disclosure to residents that agricultural operations happen nearby and that they will be exposed to impacts from such operations, such as dust, noise, and odors.
- NRE-4.19** **Agricultural Lands Preservation Program.** Use a wide variety of funding sources to support the Agricultural Lands Preservation Program, including land use regulation, urban development policy, conservation easements (with matching grant funds from appropriate agencies, where possible), transfer or purchase of development rights, increased transfer fees, Residential Development Control funds, or Homeowners Association fees for new development.
- NRE-15.4** **Sustainable Land Use.** Promote land use patterns that reduce the number and length of motor vehicle trips.

Exhibit 3: Municipal Code Chapter 18.152 Agricultural Mitigation

Chapter 18.152 – AGRICULTURAL MITIGATION

Sections:

- 18.152.010 – Agricultural Lands Preservation Program
- 18.152.020 – Purpose
- 18.152.030 – Definitions
- 18.152.040 – Applicability
- 18.152.050 – Mitigation Ratio
- 18.152.060 – "Stay Ahead" Provision
- 18.152.070 – Measurement of Affected Area
- 18.152.080 – Mitigation Mechanism
- 18.152.090 – Eligible Mitigation Lands
- 18.152.100 – Ineligible Mitigation Lands
- 18.152.110 – Agricultural Priority Area
- 18.152.120 – Responsibility for Easement Acquisition
- 18.152.130 – Management and Monitoring Fee
- 18.152.140 – Implementing Entity
- 18.152.150 – Mitigation Timing and Implementation
- 18.152.160 – Planned Developments/Development Agreements
- 18.152.170 – Funding for Easements
- 18.152.180 – Clustering of Development

18.152.010 – Agricultural Lands Preservation Program

The ordinance codified in this chapter shall be known and may be cited as the "Agricultural Lands Preservation Program" of the City of Morgan Hill.

18.152.020 – Purpose

- A. The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill sphere of influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. For Morgan Hill, an effective agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.
- B. The Morgan Hill agricultural lands preservation program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a

comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill sphere of influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting general plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the city's southeast quadrant

18.152.030 – Definitions

The following terms when used in this chapter shall have the following respective meanings:

- A. **Agricultural Land.** For "agricultural land" that requires off-setting preservation/mitigation under this agricultural lands preservation program, agricultural land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that was not subsequently developed for non-agricultural use prior to August 1, 2014 or subsequently developed per the provisions of this ordinance. Lands identified as grazing land are not subject to the offsetting preservation/mitigation requirements set forth in this policy.
- B. **Agricultural Conservation Easement.** An agricultural conservation easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive agricultural use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.
- C. **Agricultural Mitigation Land.** Agricultural land (as defined above) that is encumbered by an agricultural conservation easement or other farmland conservation mechanism acceptable to the city. If the agricultural land is also being used to meet open agricultural land preservation goals, the easement or other mechanism must ensure that at least ninety percent of any property being used as agricultural mitigation land remain as open space free of structures or other impervious surfaces so that it retains its value as agricultural

land under the FMMP criteria. Uses allowed on agricultural mitigation land shall be consistent with the agricultural use described below and pertaining land use regulations, and as further defined in the applicable agricultural conservation easement or other farmland conservation mechanism.

- D. **Agricultural Priority Area.** The agricultural priority area is an area within the SEQ that has been identified within the Agricultural Lands Preservation Program as a priority location to preserve and encourage the long-term viability of agriculture and open agricultural lands, recognizing both the vital contributions agriculture makes to the economy and quality of life within the county and the community preference for maintenance of open space areas. By designating this area, the program identifies those lands within the Morgan Hill SOI most suitable for agricultural production and related uses. Designating the agricultural priority area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The agricultural priority area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.
- E. **Agricultural Use.** Agricultural use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying agricultural use activities may include:
 - 1. **Agricultural processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
 - 2. **Agriculturally related entertainment and commercial uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site agricultural uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
 - 3. **Agricultural research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.
 - 4. **Dairy:** Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.

5. Feed lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and egg farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food paring, local agriculture and local history is also permitted.
12. Ancillary uses: Uses conducted subordinate to the primary agricultural use being conducted upon a property and which do not occupy in total more than ten percent of the property, including:
 - a. Direct sales of locally produced agricultural products.
 - b. One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c. Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d. Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

- F. **Agricultural Preservation In-lieu Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency solely for the purpose of acquiring agricultural conservation easements. The program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the city's ability to preserve open space agricultural lands within the agricultural priority area.
- G. **Agricultural Lands Preservation Program Surcharge Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency for the purpose of administering the agricultural lands preservation program and/or to cover ongoing management and monitoring of the easements. The surcharge fee is either incorporated into the overall in-lieu fee for projects that make use of this option, or charged directly to projects which independently establish an agricultural conservation easement.
- H. **Open Agricultural Land.** Open agricultural land is defined as agricultural land that is at least ninety percent free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other agricultural use. The city may make use of open space funding sources to acquire agricultural conservation easements where that easement specifies that the encumbered property be maintained as open agricultural land.

18.152.040 – Applicability

The provisions of this chapter shall apply to all new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of agricultural land (as defined above) will be required to mitigate loss of agricultural land per the provisions of this policy. This includes projects within the existing city boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption August 1, 2014, including completion of the CEQA process, are not subject to this policy unless specifically required as mitigation or a condition of project approval.

18.152.050 – Mitigation Ratio

A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.

18.152.060 – "Stay Ahead" Provision

Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands. Development occurs with either the issuance of grading permit or building permits that would result in the loss of agricultural land. To meet this provision the city may utilize existing open space funding to establish agricultural conservation easements, or individual projects may establish such easements in advance of development activity.

18.152.070 – Measurement of Affected Area

Areas subject to agricultural mitigation requirements will be the developed footprint for properties with a general plan land use designation of open space, public facilities, or sports recreation/leisure. Areas proposed to be so reserved shall have an aggregated area of at least ten acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.

18.152.080 – Mitigation Mechanism

Conversion of agricultural land will require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the city of the agricultural preservation in-lieu fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the agricultural preservation in-lieu fee, in either case developers are also required to pay an agricultural lands preservation program surcharge fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.

18.152.090 – Eligible Mitigation Lands

In order to meet the goals of this chapter, lands proposed to be used as agricultural mitigation shall conform to the above definitions for agricultural mitigation land and/or open agricultural land and shall meet the following criteria:

- A. Agricultural conservation easements resulting from this program shall be acquired from willing sellers only; eminent domain will not be used to acquire lands for conservation;
- B. The property is of adequate size, configuration and location to be viable for continued agricultural use;
- C. The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing agricultural uses, and

the water rights on the agricultural mitigation land shall be protected in the agricultural conservation easement;

- D. Other considerations for appropriate conserved agricultural lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
- E. The mitigation land shall be located within Santa Clara County; and
- F. The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.

18.152.100 – Ineligible Mitigation Lands

A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

- A. The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or
- B. The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the city or other public agency; or
- C. The property is subject to conditions that practicably prevent utilizing the property for a viable agricultural use.

18.152.110 – Agricultural Priority Area

Dedications inside the Morgan Hill sphere of influence (SOI) will be strongly encouraged within the southeast quadrant (SEQ) as the first priority. The city has identified an agricultural priority area within the SEQ as the city's first priority for conservation. The city's secondary priority is the preservation of other rural county agricultural lands within the Morgan Hill SOI. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'eligible mitigation lands' above. The agricultural priority area encompasses approximately six hundred fifty acres of land.

18.152.120 – Responsibility for Easement Acquisition

- A. In cases where the mitigation fee is paid, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the in-lieu fee and accompanying responsibility to a qualifying entity.

- B. Developments requiring less than ten acres of agricultural mitigation are required to pay the agricultural preservation in-lieu fee on a per acre basis except that acquisition of agricultural conservation easements of less than ten acres may be allowed when located immediately adjacent to an existing agricultural conservation easement area that when combined, exceeds ten acres in size.
- C. Developers may independently establish an agricultural conservation easement on eligible mitigation lands within the county. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the agricultural lands preservation program surcharge fee.

18.152.130 – Management and Monitoring Fee

The developer shall pay a one-time per acre fee (agricultural lands preservation program surcharge fee) to cover the average cost administration of the program.

18.152.140 – Implementing Entity

The city will hold the easements and collect management and monitoring fees until an alternative implementing entity (qualifying entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.

18.152.150 – Mitigation Timing and Implementation

Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of agricultural lands, whichever occurs first.

18.152.160 – Planned Developments/Development Agreements

Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the city's SOI in which agricultural lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the agricultural priority area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development

agreement with the city specifying the terms of the agreement and the extraordinary benefits accruing to the city.

18.152.170 – Funding for Easements

Given the city's policy objective of agricultural land preservation within the Morgan Hill sphere of influence and within the southeast quadrant in particular, it is anticipated that the city will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the city will use open space funds collected through administration of its residential development control system (RDCS) to supplement the acquisition of conservation easements.

18.152.180 – Clustering of Development

The city may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The city should allow such alternate methods of agricultural mitigation through planned development zoning and/or a development agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an agricultural conservation easement shall be recorded over the agricultural mitigation lands subject to the planned development zoning and/or development agreement.

**Exhibit 4: Municipal Code Section 18.30.040 Hillside Combining District
and Transfer of Development Credits Program**

18.30.030 – Downtown Specific Plan Overlay Zone

- A. Purpose.** The Downtown Specific Plan (DTSP) overlay zone identifies areas where the requirements of the Downtown Specific Plan apply.
- B. Applicability.** The DTSP overlay zone applies to parcels within the boundary of the Downtown Specific Plan as shown on the Zoning Map.
- C. Effect of Downtown Specific Plan Overlay.**
 - 1. All proposed land uses and development within the DTSP overlay shall comply with the requirements of the Downtown Specific Plan.
 - 2. In the case of conflict between the Downtown Specific Plan and the requirements of the Zoning Code, the Downtown Specific Plan shall govern.

18.30.040 – Hillside Combining District

- A. Purpose of Hillside Combining District.** The purpose of the Hillside (H) combining district is to allow for the orderly development of hillside areas while preserving significant environmental features and protecting public safety in geologically unstable areas.
- B. Applicability.**
 - 1. The H combining district applies to all areas within the City having an average slope of ten percent or greater.
 - 2. A planned development overlay zoning district shall be required for all subdivisions in with an H combining district where five or more lots are proposed.
- C. Development Standards.**
 - 1. Building Restrictions on Steep Slopes.**
 - a. Buildings, private streets, and driveways may not be constructed on slopes greater than 20 percent except as allowed by subparagraph b below.
 - b. Minor encroachments onto slopes greater than 20 percent may be allowed when the review authority finds that the proposed encroachment will not conflict with the purpose and intent of the H combining district.
 - 2. Minimum Lot Area.**
 - a. The minimum lot size in the H combining district shall not be less than "A" as determined by the formula:

$$A = S \times 2,000$$

Where "S" is the average slope of the lot to be created in terms of percent.
 - b. For lots with an average slope greater than 50 percent, the minimum lot size is 5 acres.

- c. Lots with an average slope of ten percent or greater may be created in exception to the slope/area formula above if the lots to be created contain an area of slope less than ten percent which is equal to or greater than the minimum lot size required by the underlying zone. In such a case, a deed restriction must be recorded for such lots which restrict building to the area in which the average slope is ten percent or less.

3. **Calculating Ground Slope.**

- a. The average ground slope shall be calculated using the following formula:

$$S = 0.00229IL/A$$

Where:

S= Average ground slope in percent

I=Contour interval in feet

L=Combined length of the contour lines in feet

A=The gross area in acres of the parcel or lot

- b. Measurements along contours shall be made at contour intervals not to exceed ten feet, and a horizontal map scale of one inch equals two hundred feet or larger.

4. **Land Modification Restrictions.**

- a. Areas on a lot with a slope exceeding 20 percent may not be altered by grading, altering natural features, removing natural vegetation, or by any activity related to the preparation of the lot for development.
- b. The Planning Commission may allow exceptions to the land modification restrictions above to protect the public health, safety, and welfare. Exceptions may be granted to:
 - (1) Install fire trails;
 - (2) Remove of poisonous or noxious vegetation;
 - (3) Remove or thin vegetation as part of a fire-protection program approved by the Fire Chief;
 - (4) Abate geologic or seismic hazard; or
 - (5) Protect public safety through other methods as approved by the Planning Commission.

- 5. **Open Space Requirements.** Table 18.30-1 identifies the minimum percentage of lot area to remain in open space with no grading or terrain alteration.

TABLE 18.30-1: OPEN SPACE REQUIREMENTS

Average Ground Slope (Percent)	Minimum Percent of Lot Area to Remain in Open Space
12.5 to 14.9	32.5%
15.0 to 17.4	40.0%
17.5 to 19.9	47.5%
20.0 to 22.4	55.0%
22.5 to 24.9	62.5%
25.0 to 27.4	70.0%
27.5 to 29.9	77.5%
30.0 and above	85.0%

6. One Dwelling Unit Allowed Per Lot.

- a. If no portion of a lot contains slopes of less than twenty percent, and the lot is a legally-established lot of record, one dwelling unit may be constructed on the lot.
- b. Development when allowed by this section shall conform with the recommendations in the engineering geologic or geotechnical report prepared by a qualified engineer geologist as required by the provisions of Chapter 18.70 (Geologic Hazards) and any other conditions of approval or mitigation measures adopted for the proposed project.

7. Ridgeline Development. Buildings are prohibited within 80 feet of a ridgeline unless the review authority for the proposed project finds that:

- a. There are no other feasible locations on the lot other than the proposed ridgeline building site which can accommodate the building;
- b. The proposed development is consistent with all other requirements of the applicable zone;
- c. The applicant has attempted a transfer of development credits (TDC) in accordance with Subsection F (Transfer of Development Credits) as an alternative to building on the proposed ridgeline site; and
- d. The applicant has exhausted all possible avenues to accommodate development in area away from the proposed ridgeline building site.

8. Cut-and-Fill Slopes. Cut-and-fill slopes shall not be steeper than two horizontal to one vertical (2:1) unless stabilized by a retaining wall or cribbing, as approved by the Building Official.

9. **Erosion-Control Plan.** The City shall approve an erosion-control plan prior to any physical development within the H combining district. The plan shall meet the standards contained in Municipal Code Chapter 13.30 – Urban Storm Water Quality Management & Discharge Control.

D. El Toro Mountain Open Space Preservation

1. The following hillside areas of El Toro Mountain shall be preserved as open space to the maximum extent possible:
 - a. Areas above the 600-foot elevation in Llagas Valley and Paradise Valley; and
 - b. Areas above the 500-foot elevation in all other areas.
2. Subdivisions proposed in areas specified above shall include open-space easement dedications to guarantee the permanent preservation of open space.
3. Prior to approving development in the areas specified above, the review authority shall find that the applicant made every reasonable effort to avoid the development in these areas, including a transfer of development credits (TDC) and/or the establishing of a Planned Development (PD) overlay.

E. Transfer of Development Credits. This section allows for the transfer development credits (TDCs) from "transferor sites" in areas where development is restricted by the H combining district to "recipient sites" in other areas of the city authorized to receive TDCs. The City Council may from time to time authorize by resolution a TDC from one lot to another lot, where such authorization is found to be consistent with the General Plan and this section.

1. **General Standards.**
 - a. **Permitted Recipient Sites.** Zones in which an increase in the number of dwelling units are permitted are restricted to the residential zones listed in Chapter 18.16 (Residential Detached Zoning Districts).
 - b. **Number of Units on a Site.** The number of dwelling units permitted on a site may not exceed ten percent of the maximum residential development credits transfer, exclusive of density bonuses provided by other sections of this title.
 - c. **Maximum Density Bonus.** The maximum density bonus on any site shall not exceed 25 percent, including affordable housing and TDC density bonuses.
 - d. **Environmental Study.** An environmental study shall be prepared to determine the carrying capacity of the property from which development credits are being transferred. If environmental findings determine that the site, or a portion thereof, is unbuildable due to environmental constraints, the development credits to be transferred shall be reduced accordingly, prior to determining the number of units permissible under the slope-density formula.
 - e. **Minimum Area.** The site to which the TDC is proposed shall be no less than one acre.

- f. **Setback Requirements.** All setback requirements of the more restrictive district found along the perimeter of the site shall apply to perimeter yards on the site to which the transfer of development credits is proposed, unless the site is zoned for PD zoning.
 - g. **Calculation of TDC Credits.** TDCs shall be calculated in accordance with the slope-density regulations of this section, base district minimum lot sizes and this section.
 - (1) In all hillside areas of the City, with the exception of El Toro Mountain, the number of TDCs shall be determined as provided in Section 18.30.040.D (El Toro Mountain Open Space Preservation).
 - (2) On El Toro Mountain, the number of TDCs available to property within the city limits shall be twice that determined as provided in Section 18.30.040.C.2 (Minimum Lot Area). The number of transferable development credits available to property on El Toro Mountain which is outside the city limits shall be twice that allowed by the Zoning Ordinance of Santa Clara County. The calculation of transferable development credits for El Toro Mountain shall be as follows:

$$(\text{Number of Acres/Minimum Lot Size}) \times 2 = \text{Number of transferable development credits}$$
 - (3) The number of TDCs available to properties on El Toro Mountain above that allowed to other hillside areas of the city may only be used for transfer to other properties of slopes less than twenty percent and may not be used to increase on-site development potential.
 - (4) In the calculation of TDCs, a fraction occurring at the end of a calculation which is 0.5 or larger shall be considered a full development credit. The City Council may also exclude from calculation any existing dwelling and appurtenant structures on the site to be preserved.
2. **Application.** An applicant for a TDC shall contain the following information and materials:
- a. A title report and any other documentation disclosing all existing interests or obligations against the transferor site property to be affected by the open space easement. If other interests exist, a subordination agreement (in a recordable form) acknowledging the reservation of the City of Morgan Hill's open space easement claim shall be submitted with the title report.
 - b. When known, the location and land area of the recipient site to which such credits are to be transferred, the projected total number of dwelling units that would result on the recipient site from such a transfer, and a statement of the character of the projected housing development.

- c. A legal description of the open space to be preserved on the transferor site by the transfer, accompanied by an open space (scenic) easement suitable for recordation and the applicable open-space policy to be implemented by the transfer.
 - d. The location, site area, and related residential development credits of the transferor site which the applicant proposes to transfer.
 - e. Where applicable, the number of building allotments granted to the recipient site under the Residential Development Control System (RDSCS).
3. **City Action.** Upon approval of the Planning Commission and the City Council of a TDC application, the City Clerk shall issue a TDC certificate to the applicant in a form approved by the City Manager. The following actions must be taken prior to these development credits being effectively conveyed to and utilized by the recipient property:
- a. Approval by the Planning Commission of a detailed site plan of the recipient site to which the development credits are to be transferred;
 - b. Where recipient site is known, execution and recordation with the County Recorder's Office of an instrument legally sufficient both in form and content to effect conveyance of the TDC from the transferor to the recipient site. Such instrument shall specifically set forth the credits to be conveyed and the resultant total residential development credits assignable to the recipient site;
 - c. Execution and recordation with the County Recorder's office of an instrument legally sufficient in form and content to effect conveyance of a permanent open space easement in the transferor site dedicated to the City. Such open space easement shall be unencumbered by any prior interests or, if so encumbered, shall be accompanied by and recorded together with subordination agreement with evidence that all persons or entities having any interest in the transferor site have acknowledged the creation and transfer of development credits, consented to the terms and conditions of the open space easement, and waived the priority of any rights or claims they may have in the transferor site. Recordation of the executed open space easement and accompanying subordination agreement shall serve as notice of the dedication of open space in the transferor site and shall be incorporated in the deeds of the transferor site; and
 - d. Other requirements as established by the City Council.

18.30.050 – Planned Development Combining District

- A. Purpose of the Planned Development Combining District.** The purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD



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November 14, 2018

Neelima Palacherla, Executive Officer
LAFCO of Santa Clara County
 777 N. First Street, Suite 410
 San Jose, CA 95112

Subject: Morgan Hill Urban Service Area Amendment 2018 - Additional Information Request

Dear Neelima:

Thank you for our call on Monday, November 12th regarding additional information requested to support your review of the City of Morgan Hill's Urban Service Area Amendment 2018.

Information/Clarification Requested

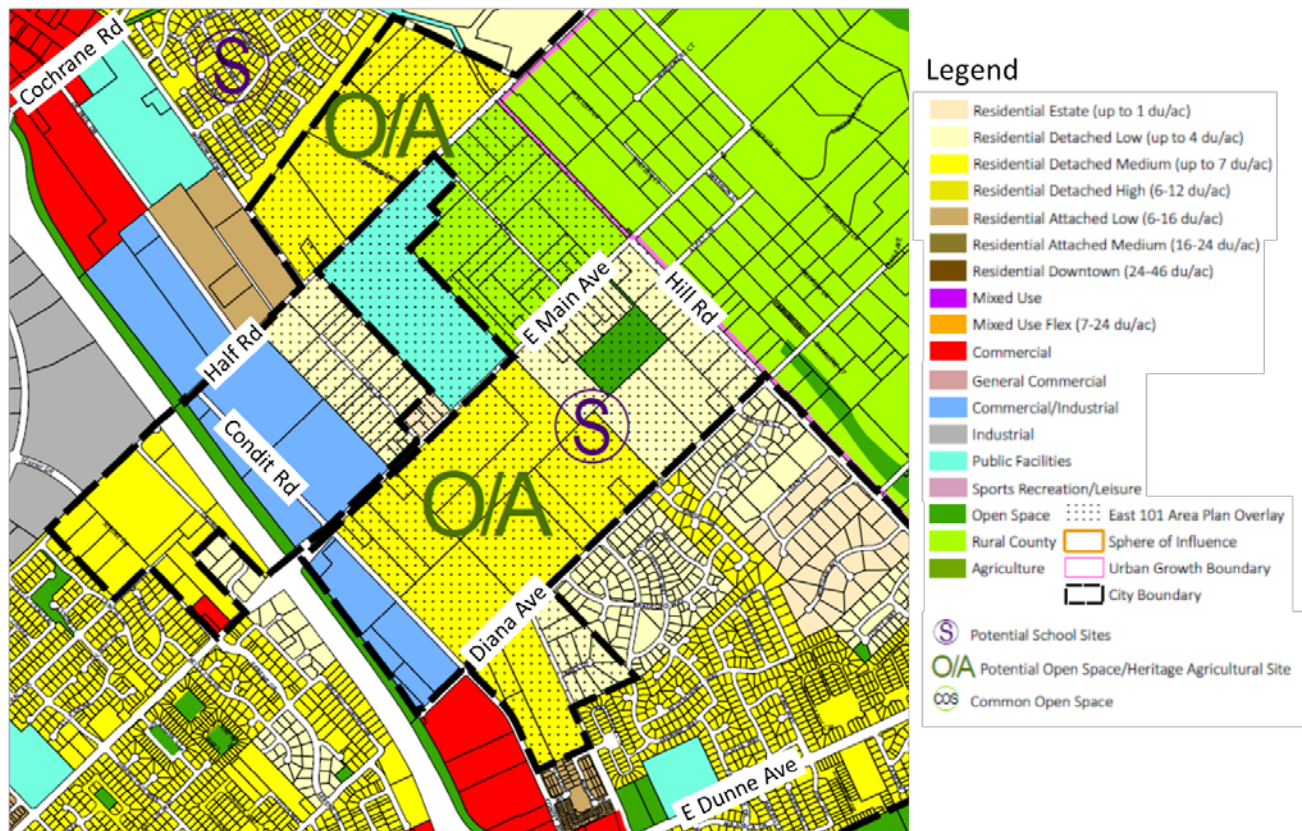
1. Clarify Morgan Hill Priority Conservation Areas Described in Conservation Strategy

Consistent with the City's Agricultural Preservation Program (Ordinance) the area within the Southeast Quadrant (SEQ) is the City's first/primary priority conservation area for agricultural preservation. The East of 101 Area, identified in the City's General Plan as an overlay area, is a secondary priority conservation area for agricultural preservation.

The purpose of the East of 101 Overlay is to require the preparation of a comprehensive master plan that, among other goals, seeks to preserve the agricultural heritage of the East of 101 area by integrating agricultural uses into future development. Those agricultural uses could be preserved in perpetuity through the acquisition of conservation easements.

The following is an excerpt from the City's Morgan Hill 2035 General Plan Land Use Map showing the East of 101 Area Plan Overlay (dotted hatch pattern). The "O/A" Open Space/Heritage Agricultural symbol indicates general areas with a strong agricultural heritage where open space and agricultural uses should be integrated into future development.

Attachment: ResponseLetter_11-14-18.pdf USA discussion 2018 LAFCO follow (2248 : Agricultural Conservation Program)



2. Provide Background Information for Future Commercial and Industrial Absorption

As requested, the following table provides commercial and industrial square footage that was issued building permits from fiscal year 2015/16 through 2017/18.

Fiscal Year	Commercial (sf)	Industrial (sf)
2015/16	60,171	47,130
2016/17	103,574	121,585
2017/18	74,829	-
Total	238,574	168,715

As we discussed during our most recent phone conversation, the square footage of new commercial and particularly new industrial constructed in recent history is probably not the best indicator of future absorption. Historical job growth, on the other hand, may be a better predictor of absorption given that job growth captures both the occupying of existing buildings and new construction.

Over the years leading out of the recession, the City has consistently grown its numbers of commercial and industrial jobs, with most of that growth being accommodated in existing buildings.

	Jobs Added						Average
	2013	2014	2015	2016	2017	Total	
Commercial	14	195	554	275	300	1,338	268
Industrial	(62)	365	338	351	440	1,432	286
Other	113	(10)	187	62	87	439	88

Source: Morgan Hill QCEW, Aggregated data by year. CA Employment Development Dept.

Other includes Public/Government, Agricultural, and unclassified jobs.

Average commercial and industrial job growth can be translated into average square footage numbers that can then be used to better approximate future absorption.

For example:

- 268 commercial jobs/year x 350sf commercial/commercial job = 93,800sf commercial/year
- 286 industrial jobs/year x 550sf industrial/industrial job = 157,300sf industrial/year

The square footage (sf) / job numbers are an average based on different types of commercial and industrial uses anticipated in Morgan Hill.

With commercial and industrial vacancies low, businesses that want to relocate to or expand in Morgan Hill are choosing new construction. There are several commercial and industrial projects in the pipeline that are close to or have already completed their Planning entitlement process(es) but have not yet been issued Building permits. The City expects Building permits to be issued for these projects this fiscal year 2018/19.

Fiscal Year	Commercial (sf)	Industrial (sf)
2015/16	60,171	47,130
2016/17	103,574	121,585
2017/18	74,829	-
Pipeline	41,662	647,284
Total	280,236	815,999

Note: The commercial pipeline square footage number does not include the recently approved precise development plan for a new 195,500 square foot retail center. The components of this project will still need design review approval from Planning before building permits can be issued.

3. Follow-up on Plan for Services Questions

a. Water

Who pays for capital improvement project NH-P8 (new 10-inch water main in Tennant Avenue) referenced in the Plan for Services and the City's [Water System Master Plan](#)?

Water System Master Plan Table ES.3 Capital Improvement Program indicates that the suggested cost allocation for project NH-P8 is 0% existing users (\$0) and 100% future users (\$1,700,426). The term "future users" includes the proposed South County Catholic High School (SCCHS) and other new users throughout the City. All future users, including the SCCHS, pay development impact fees that are collected and used to pay for capital improvements in general.

Because there are no water lines that currently serve their site, the SCCHS will be responsible for constructing a new water main or mains connecting from existing water line(s) to their frontage. This could include constructing a portion of project NH-P8.

To the extent that improvements constructed by the SCCHS exceed the need directly attributable to and reasonably related to their project, the SCCHS can request reimbursement for actual construction costs for that portion of the improvement that exceeds their project's need.

b. Sewer

Are the existing sewer pipes located in Barrett Avenue referenced in the Plan for Services and the City's [Sewer System Master Plan](#) sized to handle the proposed SCCHS?

I confirmed with Scott Creer, Deputy Director for Engineering in the City's Engineering and Utilities Department that the existing pipes in Barrett Avenue from Condit Road to Hill Road are adequately sized to accommodate the proposed SCCHS project. In order to serve their project, if the SCCHS is required to construct a new main and/or other infrastructure to tie-in to the existing system, they will be required to fund/construct that improvement.

Should you have any questions or require additional information, please do not hesitate to contact me via phone (408) 310-4635 or email John.Baty@MorganHill.ca.gov or Jennifer Carman, Community Development Director at (408) 310-4657 or Jennifer.Carman@MorganHill.ca.gov.

Best Regards,

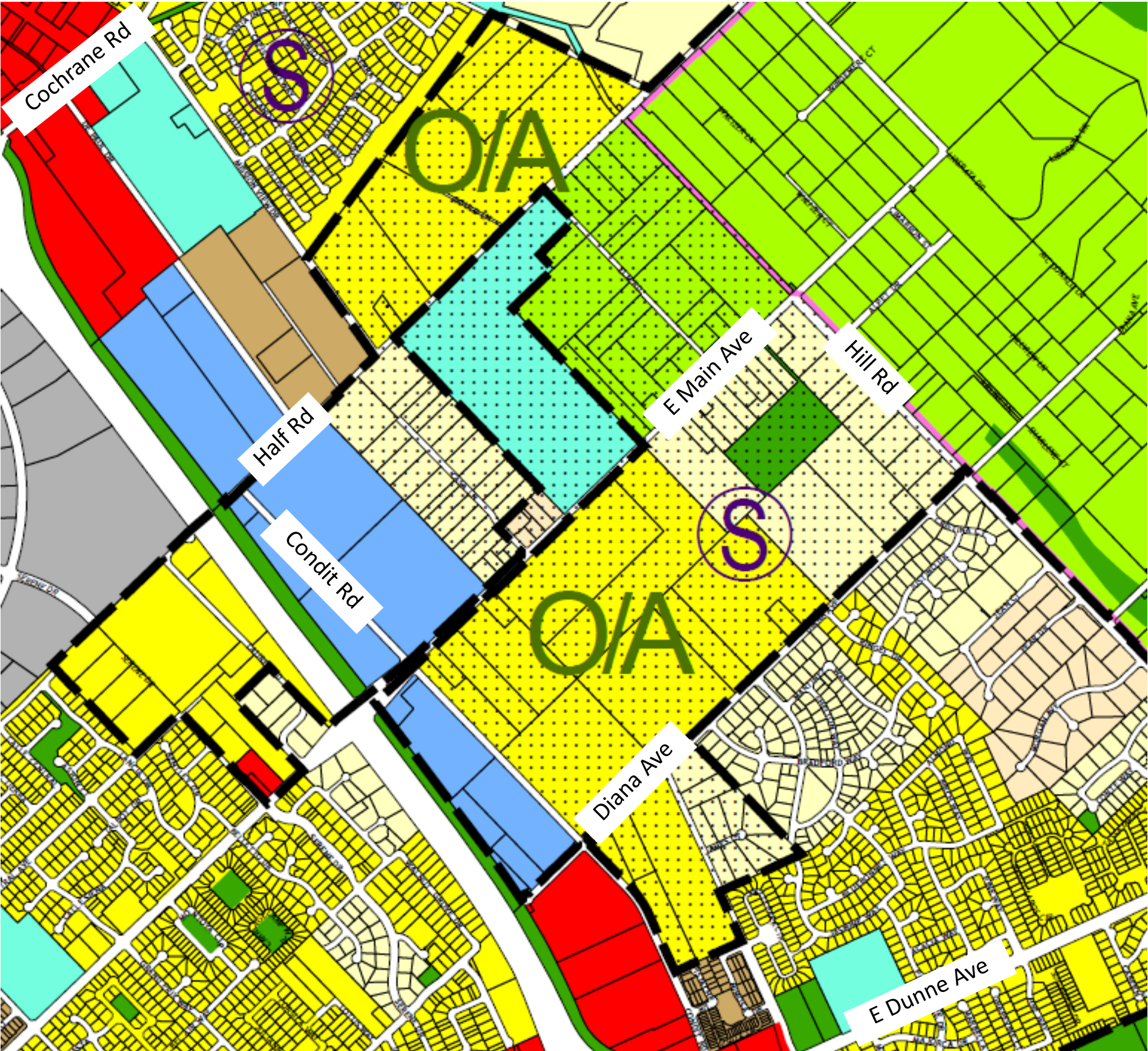


John W. Baty, Principal Planner
Development Services Department

Attachments:

1. Morgan Hill 2035 General Plan – East of 101 Area Plan Overlay
2. [Water System Master Plan](#) (web link)
3. [Sewer System Master Plan](#) (web link)

Morgan Hill 2035 General Plan – East of 101 Area Plan Overlay



Legend

- Residential Estate (up to 1 du/ac)
- Residential Detached Low (up to 4 du/ac)
- Residential Detached Medium (up to 7 du/ac)
- Residential Detached High (6-12 du/ac)
- Residential Attached Medium (16-24 du/ac)
- Residential Downtown (24-46 du/ac)
- Mixed Use
- Mixed Use Flex (7-24 du/ac)
- General Commercial
- Commercial/Industrial
- Industrial
- Public Facilities
- Sports Recreation/Leisure 01 Area Plan Overlay
- Rural County
- Agriculture
- Sphere of Influence
- Urban Growth Boundary
- City Boundary
- Potential School Sites
- Potential Open Space/Heritage Agricultural Site
- Common Open Space



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November 2, 2018

Neelima Palacherla, Executive Officer

LAFCO of Santa Clara County

777 N. First Street, Suite 410

San Jose, CA 95112

Subject: Morgan Hill Urban Service Area Amendment 2018 - Additional Information Request

Dear Neelima:

Thank you again for the phone conversation on Tuesday, October 23rd and your follow-up email on Tuesday, October 30th regarding additional information requested to support your review of the City of Morgan Hill's Urban Service Area Amendment 2018.

Information Requested

1. Provide Copy of Recorded Agricultural Conservation Easement (ACE)

- The developers of the San Sebastian subdivision off Cochrane Road in Morgan Hill were required to secure a 100-acre Agricultural Conservation Easement (ACE) as a condition of their development. The developers recorded a Grant Deed (see attached) securing an ACE on approximately 109.74 acres of farmland in San Joaquin County. This mitigation requirement and specific ACE requirements preceded the City's Agricultural Preservation Program Ordinance.
- The City has recently purchased a 12-acre parcel on Maple Avenue in the City's Priority Conservation Area for the purposes of agricultural lands preservation. The process of recording an ACE on this property is underway.
- The City has planned the purchase of a 20-acre parcel on Hill Road, completing an ACE appraisal and allocating over \$1,000,000 in funding.
- Now that State grant funding has been lost, the City has committed to purchasing one-half of the 71-acre Fountain Oaks Ranch ACE on its own using the \$3,000,000 that the City has dedicated to this preservation effort. The City will continue collaborating with the County and Open Space Authority to preserve the entire 71-acre site if additional funding can be secured.
- As soon as one is available, the City will provide a copy of an ACE recorded per the requirements of the City's Agricultural Preservation Program. In the meantime, attached is a copy of the City's ACE template.

2. Provide Details for Proposed SRL-B Sports Recreation and Leisure District Zoning Amendment

- On October 24, 2018 the City Council introduced Ordinance No. 2290 n.s. to modify the uses allowed in the SRL-B Sports Recreation and Leisure Sub-zone B Zoning District. Please see attached staff report and Ordinance No. 2290 n.s., which is scheduled for adoption on November 7, 2018.

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

- The Ordinance lessens the intensity of potential uses that would be allowed in the SRL-B district by dis-allowing several commercial uses that are currently allowable.

3. Provide Number of Residential Units Issued Building Permits for 2015, 2016, 2017 (calendar year)

Year Units*

2015: 533

2016: 277

2017: 281

2018: 245 (to date)

* Includes Accessory Dwelling Units

4. Explanation for the USA Expansion Given the City has 5 or More Years of Vacant Land Availability within its City Limits.

- Santa Clara County LAFCO Urban Service Area Policy B.5 reads, “When a city with a substantial supply of vacant land within its Urban Service Area applies for an Urban Service Area expansion, LAFCO will require an explanation of why the expansion is necessary, why infill development is not undertaken first, and how an orderly, efficient growth pattern, consistent with LAFCO mandates, will be maintained.”
 - The City does not have a substantial supply of vacant Public Facilities or Sports Recreation and Leisure designated and/or zoned lands within the City’s existing Urban Service Area. In fact, there are zero (0) acres of such lands. Note: Public Facilities includes a variety of uses associated with public or quasi-public agencies and organizations, including private schools.
 - The City has limited vacant land available within its current Urban Service Area to accommodate future development in a manner that is consistent with the City’s 2035 General Plan. Much of the vacant land that is available is jobs lands (commercial and mostly industrial) that is critical to the City’s future fiscal health and desire to be a balanced, sustainable community. Any loss of job generating lands will only exacerbate the City’s current jobs-housing imbalance and contribute to the region’s existing commute imbalance. It is also important for the City to maintain a healthy supply of diverse types of vacant industrial land with a variety of attributes (location, visibility, access, etc.) that would be attractive to a wide variety of job-generating uses.
 - There are no infill opportunities within the City’s existing Urban Service Area that could accommodate the proposed approximately 38-acre South County Catholic High School on a vacant commercial or industrial designated and/or zoned site or contiguous sites. The location of outdoor sports and recreation uses also require substantial parcel sizes that would be better accommodated on the sites directly adjacent to the City’s existing Outdoor Sports Complex and Aquatics Center. Please see attached letter from Colliers International dated May 11, 2016.
 - The area proposed to be included in the City’s Urban Service Area (USA) boundary is located directly adjacent to land within the existing Morgan Hill City Limits and USA and is within the City’s long-term Urban Growth Boundary.

5. Provide a Copy of the City's Plan for Growth/Preservation

- Please see attached October 17, 2018 City Council Staff Report with Conservation Strategy.

6. Provide Summary of Recent City Council Discussion on UGB Modifications and ACE Acquisitions

- The following summary is from the City Manager's October 24, 2018 verbal report to City Council regarding their October 17, 2018 discussion regarding whether the City should consider contracting its Urban Growth Boundary (UGB):
 - o While a vote was not taken, or specific direction provided at the October 17, 2018 meeting, the general consensus from the City Council on whether the City should consider contracting the City's UGB was to bring the discussion back in the future. In addition:
 - The conversation regarding contracting the UGB should begin with a discussion of the concept, perhaps at the City Council's January 2019 goal setting workshop as suggested by councilmembers. As with any potential staff workplan item, the discussion would involve a staff presentation on the history of establishing the current UGB, timelines and resources required for any modification of the UGB, as well as pros/cons.
 - The Council noted that the process that established the location of the current Urban Growth Boundary (UGB) was very deliberate and extensive. In fact, it occurred between the 2001 General Plan Update and adoption of the Morgan Hill 2035 General Plan in 2016.
 - Should the Council decide at the goal setting (or another meeting) to add the UGB contraction to the workplan, staff would bring forward options for a process and budget to consider.
 - During the discussion of this item, the Council reinforced the importance of continuing the City's agricultural preservation efforts.

We hope you find this submittal includes all information you need to process the Morgan Hill Urban Service Area Amendment 2018 application. Should you have any questions or require additional information, please do not hesitate to contact me via phone (408) 310-4635 or email John.Baty@MorganHill.ca.gov or Jennifer Carman, Community Development Director at (408) 310-4657 or Jennifer.Carman@MorganHill.ca.gov.

Best Regards,



John W. Baty, Principal Planner
Development Services Department

Attachments:

1. San Sebastian Recorded ACE
2. ACE Template
3. SRL-B Zoning Amendment
 - a. October 24, 2018 City Council Staff Report
 - b. Ordinance No. 2290 n.s.
4. May 11, 2016 Letter from Colliers International re: Vacant Industrial/Commercial in Morgan Hill
5. October 17, 2018 City Council Staff Report and Conservation Strategy

Chicago Title

Recording requested by and when
recorded please return to:

Central Valley Farmland Trust
8788 Elk Grove Blvd., Bldg. 1, Suite I
Elk Grove, CA 95624

Certified Copy of Original
May 11, 2017,
Inst. # 2017-053520

Chicago Title
Gina Belletto

(Space above this line reserved for Recorder's use)

APNs: 131-030-11 (portion) and 131-030-10 (portion)

Documentary Transfer Tax: \$ 00.00 **
**R&T 11930

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Grant Deed of Agricultural Conservation Easement ("Easement") is made on this 24th day of April, 2017, by **BF COCHRANE, LP**, a California limited partnership ("Grantor"), to the **CENTRAL VALLEY FARMLAND TRUST**, a California nonprofit public benefit corporation, having an address at 8788 Elk Grove Blvd., Bldg. 1, Suite I, Elk Grove, CA 95624 ("Grantee"), for the purpose of forever conserving the agricultural productive capacity and open space character of the subject property.

RECITALS

A. Grantor is the sole owner in fee simple of that certain farm property located in San Joaquin County, California, legally described in **Exhibit A** attached hereto ("Property"), consisting of approximately 125 acres of land and commonly known as the "Roberts Island Farm," also identified as a portion of assessor parcel number 131-030-11 and a portion of assessor parcel number 131-030-10. Currently there are no buildings or substantial improvements on the Property. Future agricultural and residential buildings and improvements allowed by this Easement must be constructed within a 2.46 acre farmstead area ("Farmstead Area") as depicted in **Exhibit B** attached hereto. The Property consists of open farmland, of which at least 100 acres have been classified as prime farmland by the Natural Resources Conservation Service, U.S. Department of Agriculture, and by the California Department of Conservation ("Department"), Farmland Mapping and Monitoring Program, because this land has a soil quality, growing season, and water supply needed for sustained agricultural production.

B. The agricultural and other characteristics of the Property, its current use and state of improvement, are documented and described in a baseline documentation report, dated as of March 10, 2017 ("Baseline Report"), prepared by Grantee with the cooperation of Grantor and incorporated herein by reference. Grantor and Grantee acknowledge, as set forth in **Exhibit C** attached hereto, that each has received and will retain a duplicate original of the Baseline Report

and that the Baseline Report is complete and accurate as of the date of this Easement. The Baseline Report may be used to establish whether or not a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement.

C. Grantor and Grantee acknowledge that the purpose of this Easement is to satisfy the Agricultural Mitigation requirements of the City of Morgan Hill ("City") that are summarized in the City's Mitigation Monitoring and Reporting Program ("MMRP"), for Cochrane-Borello Residential Development Project (State Clearinghouse #2011082039) dated January 2013, and found at AG MM-2 at page 1 of the MMRP ("Project"). Grantor is required to provide 100 acres of agricultural mitigation for the Project. This Easement has identified an agricultural mitigation area on the Property, consisting of 109.74 +/- acres, located as shown on **Exhibit B** ("Agricultural Mitigation Area"). Grantor shall be solely responsible for ensuring that the conveyance of this Easement satisfies Grantor's Agricultural Mitigation requirement. City shall be a third party beneficiary of this Easement.

D. Grantor grants this Easement to Grantee for the purpose of assuring that, under Grantee's perpetual stewardship, the agricultural productive capacity, including its prime soils, and open space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree that the current agricultural use of, and improvements to, the Property are consistent with the conservation purpose of this Easement.

E. The conservation purpose of this Easement is recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

Section 815.1 of the California Civil Code, which defines perpetual conservation easements;

California Constitution Article XIII, section 8, California Revenue and Taxation Code, sections 421.5 and 422.5, and California Civil Code section 815.1, under which this Easement is an enforceable restriction, requiring that the Property's tax valuation be consistent with restriction of its use for purposes of food and fiber production and conservation of natural resources;

Section 10200 et seq. of the California Public Resources Code, which creates the California Farmland Conservancy Program;

Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands; and

The California General Plan law, section 65300 et seq., and section 65400 et seq. of the California Government Code, and the San Joaquin County General Plan, as amended in 2005, which includes as one of its objectives to protect agricultural lands needed for the continuation of commercial agricultural enterprises, small-scale farming operations and the preservation of open space.

F. Grantee is a California publicly supported nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3, and is a tax exempt and “qualified organization” within the meaning of section 170(h)(3) and 170(b)(1)(A)(iv) as defined by the United States Internal Revenue Code. Grantee’s primary purpose is the preservation and protection of land in its agricultural and/or open space condition.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual conservation easement, pursuant to the laws of the State of California and in particular California Civil Code sections 815 *et seq.*, of the nature and character described in this Easement for the purpose described below, and agree as follows:

1. *Conservation Purpose.*

The conservation purpose (“Conservation Purpose” or “Purpose”) of this Easement, pursuant to the governmental policies detailed in the Recitals hereto, and in order to yield a significant public benefit, is to enable the Property to remain in productive agricultural use in perpetuity by preventing and correcting uses of the Property prohibited by the provisions of this Easement, including those uses that will diminish, impair or interfere with the Property’s agricultural productive capacity, its soils, and its agricultural character, values, and utility (the “Conservation Values” of the Property). To the extent that the preservation of the open space character values of the Property is consistent with such use, it is within the Conservation Purpose of this Easement to protect those values (and such values are part of the Conservation Values of the Property).

2. *Right to Use Property for Agricultural Purposes.*

Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law, as long as the Conservation Values of the Property are not thereby significantly impaired. The term “significantly impaired” (or any derivation thereof, as applicable) shall mean a material, adverse effect on the quantity, quality, viability or character of the Property that is intended to be protected. Nothing contained in this Easement is intended to limit or restrict the acreage on the Property planted with row crops or permanent plantings or otherwise restrict agricultural husbandry practices, so long as the Conservation Values of the Property are not thereby significantly impaired. “Husbandry practices” means agricultural activities, such as those specified in section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

3. *Prohibited Uses.*

Grantor shall not perform, or knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Easement. Any use or activity that would diminish or impair the agricultural productive capacity and open space character of the Property or that

would cause significant soil degradation or erosion is prohibited. This Easement authorizes Grantee to enforce these covenants in the manner described herein. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from fire, flood, storm, extreme temperatures, unavailability of water, and earth movement or other natural occurrences, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to any person, property, or the Property resulting from such causes.

4. *Written Advisement; Grantee Approval.*

(a) *Written Advisement.* As described in this sub-section, below, and as set forth elsewhere in this Easement, certain actions by Grantor will require written notice to Grantee. Grantor shall give at least sixty (60) days' advance notice to Grantee in writing ("Written Advisement") in accordance with Section 19: (i) where expressly required in this Easement; (ii) prior to seeking any or carrying out any activity requiring a building, grading, or zoning permit or environmental regulatory review or permit for an activity or improvement on the Property; and (iii) prior to exercising any reserved right on the Property that may significantly impair the Conservation Values. The Written Advisement must provide Grantee with adequate information, documents and plans so as to enable Grantee to confirm compliance with this Easement and to keep its records current.

(b) *Grantee Approval.* Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (i) shall not be unreasonably withheld, conditioned or delayed by Grantee, (ii) shall be sought at least sixty (60) days' in advance and given in writing, and (iii) shall in all cases be obtained by Grantor prior to taking the proposed action. In seeking approval, Grantor will provide Grantee with adequate information, documents and plans, so as to enable Grantee to confirm compliance with this Easement and to keep its records current. Grantee may grant permission or approval to Grantor only where Grantee, acting in Grantee's reasonable discretion and in good faith, determines that the proposed action will not significantly diminish or impair the agricultural productive capacity and open space character of the Property and would not cause significant soil degradation or erosion. If, in the judgment of Grantee, the proposed use or activity should not be permitted in the form proposed, but could be permitted if modified, then Grantee's response may propose to Grantor suggested modification(s) and/or conditions that would permit the use or activity. If Grantor disagrees with the Grantee's decision, the parties may agree to mediate the disagreement in accordance with Section 13(d).

5. *Permitted Uses and Actions; Actions Permitted without Prior Approval of Grantee as long as Conducted in Manner Consistent with this Conservation Easement.*

The following uses and actions are permitted without the prior approval of Grantee as long as they are conducted in a manner consistent with this Easement. Grantor shall give Grantee Written Advisement where expressly required and as otherwise set forth in Section 4(a).

Except as permitted in this Easement, all other construction, erection, installation or placement of buildings, structures, or other improvements on the Property is prohibited. For purposes of this Section, "improvements" shall not refer to, and specifically excludes: (i) crops, plants, trees,

vines, or other living improvements planted for agricultural or residential landscaping purposes; (ii) to agricultural and irrigation improvements necessary or desirable to produce agricultural crops on the Property; and (iii) temporary shade structures and temporary sanitary facilities to support agricultural employees, all of which may be made without the consent of Grantee and without advising Grantee.

(a) *Fences.* Existing fences may be repaired and replaced, and new fences may be built on the Property for purposes of reasonable and customary management of livestock, wildlife and farm produce, and the reasonable and customary security of farm produce and the residences and other improvements upon the Property.

(b) *Agricultural Structures and Improvements.* Existing agricultural structures and improvements, as shown in **Exhibit B** and/or as described in the Baseline Report, may be repaired, reasonably enlarged, and replaced at their current locations in the Farmstead Area for agricultural purposes without further permission from Grantee. New buildings and other structures and improvements to be used solely for agricultural production on the Property, including barns, equipment sheds, and improvements to be used for agricultural production purposes or sale of farm products predominantly grown or raised on the Property may be built on the Property within the Farmstead Area.

Minor agricultural structures, such as pump houses, small solar facilities to power specific pieces of agricultural equipment, and other structures used for the direct growing or support of growing agricultural crops, are allowed outside of the Farmstead Area. Each individual minor agricultural structure that is to be located outside of the Farmstead Area may not exceed two hundred (200) square feet and the aggregate area of all of such minor structures shall not exceed eight hundred (800) square feet.

(c) *Single-Family Dwelling.* There is no existing single family dwelling on the Property. One (1) new single-family residential dwelling, with customary ancillary uses, including, but not limited to, swimming pool, tennis court, gazebo and garage may be built or placed entirely within the Farmstead Area. No other residential dwelling may be constructed or placed on the Property (except for agricultural employee housing per Section 5(d)). The total living area of the new single-family dwelling shall not exceed three thousand five hundred (3,500) square feet of living area (exclusive of garage area).

(d) *Agricultural Employee Housing.* There is no existing agricultural employee housing on the Property. New dwellings or structures to be used primarily to house farm tenants, farm employees or others engaged in agricultural production may be built on the Property, provided they are located entirely within the Farmstead Area. The total aggregate living area of agricultural employee housing shall not exceed two thousand five hundred (2,500) square feet.

(e) *Utilities and Septic Systems.* Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to and serving the improvements permitted herein, or to transmit power generated on the Property, may be installed, maintained, repaired, removed, relocated and replaced. The granting of any rights-of-way over and under the Property for such purposes is subject to Grantee's prior approval. Septic or other underground sanitary systems serving the improvements permitted

herein may be installed, maintained, repaired, replaced, relocated or improved, and shall be placed with the Farmstead Area, where possible.

(f) *Renewable Power Generation; Solar.* Except as provided in Section 5(b) above (respecting minor agricultural structures), solar or other renewable power generation and transmission facilities to be used primarily for agricultural and other permitted uses on the Property may be constructed or installed in the Farmstead Area. Incidental, non-commercial power generated in excess of requirements on the Property may be sold or traded to appropriate public utilities.

(g) *Use and Storage of Agricultural Products and Equipment.* The use and storage of the following is permitted as long as they are for use on the Property and carried out in accordance with applicable law and labeling requirements: agricultural products, agricultural chemicals, agricultural byproducts and agricultural equipment. "Agricultural chemicals" includes herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations even though they may be "Hazardous Materials" as defined in Section 20.

(h) *Paving and Road Construction.* Construction and maintenance of unpaved farm roads that are reasonably necessary and incidental to carrying out the uses permitted on the Property by this Easement are permitted, provided that, to the extent reasonable, with respect to agricultural efficiency, productivity and cost, such unpaved farm roads shall not significantly diminish or impair the agricultural productive capacity of the Property. Paving within the Farmstead Area is permitted without prior written approval from Grantee. Grantor may pave a single road/driveway leading to the Farmstead Area with Written Advisement to Grantee.

(i) *Recreational Improvements and Uses.* Private recreational improvements (e.g. swimming pool, tennis court) for the personal, non-commercial use of Grantor and Grantor's family and guests are permitted within the Farmstead Area. Passive, recreational and educational activities such as hiking and bird-watching are permitted. Grantor expressly reserves the right for themselves and their family and guests to hunt on the Property.

(j) *Customary Rural Enterprises.* Customary rural enterprises, such as home and agricultural management offices, are permitted on the Property and in the permitted buildings constructed and maintained in the Farmstead Area for residential and agricultural use of the Property. Customary rural enterprises that require their own buildings are prohibited.

(k) *Agri-tourism Activities.* Low impact agri-tourism activities, such as farm tours, work experiences, and field trips are permitted. The uses and activities set forth herein are permitted, provided that: (i) all parking related to such uses and activities is located within the Farmstead Area; (ii) all such uses and activities are incidental or ancillary to the primary agricultural activities permitted on the Property; and (iii) no land is taken out of its customary agricultural production for any agri-tourism activities.

(l) *Subsequent Liens or Encumbrances on Property.* Grantor may use the Property as collateral for a subsequent borrowing, provided any subsequent obligations secured by the Property are subordinate to this Easement, generally, and all of the beneficiary's rights, interests, claims, remedies and privileges under any security instrument (including, but not limited to, any right of the beneficiary to insurance proceeds or proceeds in a condemnation proceeding), specifically,

are, and at all times shall continue to be, subject and subordinate in all respects to the Easement and the interest of Grantee, with the same force and effect as if the Easement had been executed, delivered and recorded prior to the execution and delivery of the security instrument.

(m) *Emergencies and Construction of Temporary Improvements.* In an emergency, Grantor may take such limited and temporary actions as are reasonably necessary to protect physical safety of persons and property on the Property and the Property itself, including residential and agricultural improvements and agricultural products and only to the limited extent necessary for such protection and provided such actions are in compliance with applicable laws. The construction, placement, or use of limited, temporary living quarters, or construction of temporary farm management quarters or mobile homes on the Property during limited periods of any permitted dwelling construction or during or immediately following an emergency rendering permitted dwellings uninhabitable, is permitted, provided such construction or use is in compliance with applicable laws and such trailers or temporary improvements are removed immediately after the period of emergency is over or construction is completed, as determined by Grantee. Grantor shall give Grantee prompt notice of any emergency actions taken under this sub-section. If emergency actions taken in accordance with this subsection continue for more than sixty (60) days, Grantor will seek Grantee's approval pursuant to Section 4 of this Easement and such approval shall not be unreasonably withheld.

(n) *Hunting and Seasonal Habitat Improvements for Water Fowl.* Hunting by Grantor and guests of Grantor is permitted, including, though not limited to, non-commercial water fowl hunting. Seasonal improvements to enhance water fowl habitat, including construction of low berms to allow flooding, is permitted, though limited to the months of October through January. Construction of such habitats and such water fowl hunting shall not impair or interfere with the agricultural productive capacity of the Property or its agricultural operations.

6. *Uses and Actions Permitted with Prior Approval of Grantee.*

The following uses and practices may be consistent with this Easement, depending on the manner in which they are carried out. Prior written notice to and approval of Grantee is required before Grantor begins these uses and practices. Prior written approval shall be sought by Grantor in accordance with Section 4.

(a) *New Agricultural Enterprise Structures.* New structures and improvements to be used for "Agricultural Enterprises" (as defined below) may be permitted if the structures are located solely within the Farmstead Area. "Agricultural Enterprises" means otherwise lawful and customary agricultural rural enterprises owned and operated by Grantor or Grantor's lessees, such as, but not limited to, marketing of farm products predominantly grown, raised or produced on the Property or on other real property owned by Grantor that is located in San Joaquin County and businesses principally providing agricultural-related goods and services to other farms and farmers in the vicinity of the Property. All such structures individually and collectively must be consistent with this Easement and approved under local zoning and building codes. A single "roadside stand" in accordance with the County Zoning Ordinance in effect as of the date of this Easement and located within the Farmstead Area may be constructed. "Roadside stand" is defined as an area of an agricultural property set aside for the sale of processed and unprocessed

crops that are grown on and off the Property. Crops that have been grown or produced off the Property may only be sold in conjunction with the sale of crops grown on the Property.

(b) *Signs for Agricultural Use.* Signs may be placed on the Property only for the purpose of identifying the Property or to advertise agricultural enterprises or a roadside stand operating on the Property in accordance with this Easement. However, the total surface area of all the signs shall not exceed three hundred sixty (360) square feet and the top of each sign shall be no more than twenty (20) feet from the ground. A maximum of two (2) signs may be erected with no single sign exceeding a surface area of one hundred eighty (180) square feet.

(c) *Utility Easements.* The granting of rights-of-way over and under the Property for the purposes set forth in Section 5(e), i.e. the installation of wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to and serving the improvements permitted herein, or to transmit power generated on the Property, may be permitted with the prior approval of Grantee.

Utility easements requested by commercial utility providers may be permitted but only upon the express written approval of Grantor and Grantee. Any such easement shall: (i) be consistent with the Conservation Purpose of this Easement; (ii) comply with all applicable laws, including section 170(h) of the Internal Revenue Code, and any regulations promulgated in accordance with that section, and with section 815 et seq. of the California Civil Code; (iii) have only a net beneficial, neutral or insignificant effect on the Conservation Purpose and Conservation Values protected by the Easement; (iv) be located and of the nature and extent intended to minimize or mitigate any effects on the Conservation Values; (v) not confer a private benefit on Grantor or the commercial utility provider; (vi) be granted only upon the payment of consideration to Grantor and Grantee as appropriate to their interests in the Property as set forth in Section 18; (vii) be granted only upon the payment of all costs pertaining to the easement, including the costs of Grantee for reviewing and approving any such proposed easements. Copies of any proposed easements shall be provided to Grantee. Grantee's approval may be granted, granted with conditions or denied in Grantee's sole and exclusive discretion.

(d) *Other Activities, Uses and Structures and Improvements.* Grantor and Grantee acknowledge that, in view of the perpetual duration of this Easement, they are unable to foresee all potential future land uses, technologies, and natural changes to the land and its Conservation Values over time. If it is reasonably debatable as to whether an activity, use, or structure or improvement that is not expressly addressed in this Easement is consistent with the terms of this Easement or might impair or interfere with the Conservation Values of the Property, then Grantor shall notify and seek prior approval from Grantee in the manner described in Section 4(b).

(e) *Oil and Gas Exploration and Development.* The manner of exploration for, and extraction of any oil or gas or other hydrocarbons or minerals by the "Third Party Mineral Rights Holders" (as described in Section 21) and/or any other party, including Grantor and Grantor's successors and assigns, shall comply with all of the following: (i) be only by a subsurface method; (ii) as to "Third Party Mineral Rights A" (as described in Section 21(c)), be located only within the two (2) "Extraction Areas" delineated in **Exhibit B** or, as to "Third Party Mineral Rights B" (as described in Section 21(d)), be located only within the limited area of ownership of Third Party Mineral Rights B, as shown in the Baseline Report; (iii) not damage, impair or endanger the

Conservation Values of the Property; (iv) not impair the availability, quantity or quality of water resources of the Property for the agricultural and residential uses allowed under this Easement; (v) be in accordance with applicable law; and (vi) be approved by Grantee, in its sole and absolute discretion, prior to its execution. Any approval by Grantee may be subject to additional conditions and requirements, including written plans, baseline testing of water supplies, monitoring cost coverage, insurance and indemnification. Any damage, impairment or endangerment of the Conservation Values would violate the terms of this Easement and the enforcement provisions set forth in Section 13 will apply. Upon termination of any oil and gas or mineral exploration or extraction activities, Grantor shall immediately notify Grantee, and the Property shall be restored to its pre-existing condition within ninety (90) days. The indemnity set forth in Section 21(f) shall apply whether the Third Party Mineral Rights are held and exercised by third parties or acquired, held and exercised by Grantor and Grantor's successors and assigns. Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal or extraction of soil, sand, gravel, rock, or any other mineral substance.

7. *Prohibited Uses.*

All activities and uses that are not consistent with the Conservation Purpose of this Easement are prohibited. The following uses and practices, though not an exhaustive recital of inconsistent uses and practices, are inconsistent with this Easement, and are prohibited on the Property, except as specifically permitted in Sections 5 or 6 or elsewhere in this Easement:

(a) *Buildings and Improvements.* Except as permitted in Sections 5 or 6 above, the construction or placement of any buildings, residential dwellings, camping accommodations, temporary living quarters of any sort, mobile homes, signs, billboards or other advertising materials, utility towers, or other structures is prohibited.

(b) *Dumping and Trash.* No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste or "Hazardous Materials," as defined in Section 20, shall be placed, stored, dumped, buried or permitted to remain on the Property. However, temporary storage of residential and agricultural waste generated on the Property for periodic removal off-site is permitted, as is the use and storage of agricultural products, agricultural chemicals, agricultural byproducts and agricultural equipment as provided in Section 5(g). Composting of organic materials from the Property is also permitted provided that the Conservation Values of the Property are not significantly impaired.

(c) *Industrial and Commercial Uses.* Industrial and commercial uses are prohibited unless expressly permitted for agricultural purposes.

(d) *Mining and Surface Alteration.* Except as may be permitted in accordance with Sections 5(h) (paving and road construction) and 6(c) (oil and gas exploration and development), and 21 (Grantor's Title Warranty; No Prior Conservation Easements; Third Party Mineral Rights), the mining, excavation, removal or extraction of oil, natural gas, fuel, soil, sand, gravel, rock, or any other mineral substance by any method is prohibited. Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal, extraction or sale of soil, sand, gravel, rock, or any

other mineral substance of or from the Property.

(e) *Commercial Recreational Structures.* Resort structures, golf courses, non-residential swimming pools, non-residential tennis courts, commercial equestrian facilities, playing fields, airstrips, helicopter pads, or any other commercial recreational structure are strictly prohibited on the Property. Operation of a public stable and the commercial raising, training and boarding of horses are prohibited.

(f) *No Subsequent Easements Impairing Agricultural Productive Capacity.* The grant of any subsequent easements (including conservation easements), other interests in land, or use restrictions that might interfere with the Conservation Purpose, diminish or impair the Conservation Values or be otherwise inconsistent with this Easement is prohibited.

(g) *No Subsequent Easements for Utilities and Roads.* Except for permitted uses specified in Section 5, with Written Advisement to Grantee, or as may be permitted for utilities with express written approval as specified in Section 6 (e), the granting of easements for utilities and roads is prohibited.

(h) *Subdivision and Common Ownership of the Property.* The division, subdivision, de facto subdivision or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process, is prohibited. The Property is currently comprised and is described in **Exhibit A** as one (1) legal parcel. Grantor asserts that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance or conditional certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent deed or easement conveyances, subdivisions, leases or surveys of any kind. Grantor will not apply for or otherwise seek recognition of additional legal parcels with the Property based on certificates of compliance, conditional certificates of compliance or any other authority. Grantor will not sell, exchange, convert, transfer, assign, mortgage or otherwise encumber, alienate or convey any portion of the Property separately or apart from the Property as a whole, and Grantor and its successors in interest will at all times treat the Property as a single integrated economic unit of property, provided, however, that a lease of a portion of the Property for agricultural or other permitted uses (subject to this Easement) shall not be prohibited by this sub-section.

(i) *Road Paving and Construction.* Except as may be permitted in or to the Farmstead Area under Section 5(h), or unless such measures are required by air quality laws or regulations applicable to the Property (Grantee to give Grantor Written Advisement of said requirements), no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material.

(j) *Off-road Motorized Vehicle Use.* The use of motorized vehicles on the Property off roadways and outside the Farmstead Area is prohibited except as necessary to conduct farming operations, for residential access and use, for property maintenance and security, or to monitor this Easement. Motorized vehicle use off roadways shall be carried out in a manner which does not diminish or impair the agricultural productive capacity and open space character of the Property or cause significant soil degradation or erosion.

(k) *Commercial Signs.* Commercial signs, including billboards, unrelated to permitted activities conducted on the Property are prohibited.

(l) *Commercial Power Generation and Collection.* Except as may be permitted in Section 5(f) (renewable power generation), commercial power generation, collection or transmission facilities, including solar or wind farms or facilities, are prohibited.

8. *Extinguishment of Development Rights.*

Except as specifically reserved in this Easement, Grantor hereby grants to Grantee all development rights that are now or shall hereafter be allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred by either party to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

9. *Water Rights and Uses.*

Grantor shall retain and reserve all ground water, and all appropriative, prescriptive, contractual or other water rights appurtenant to the Property as of the date of this Easement. Grantor shall not permanently transfer, encumber, lease, sell, or otherwise separate water or water rights from title to the Property itself. No permanent separation of water or water rights shall be permitted. All water shall be retained in San Joaquin County for agricultural production and used in conjunction with improvements and uses permitted by this Easement. Water may be distributed to a contiguous property or other property owned or leased by Grantor on an annual basis for agricultural production only. Any temporary distribution of water shall not impair the long-term agricultural productive capacity or open space character of the Property.

Grantor retains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural management potential of the Property.

10. *Rights Retained by Grantor.*

Subject to Section 8 and to interpretation under Section 22(a), as owner of the Property, Grantor reserves all interests in the Property not transferred, conveyed, restricted, extinguished or prohibited by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, devise or otherwise transfer the Property to anyone Grantor chooses, as well as the right to privacy, the right to exclude any member of the public from trespassing on the Property, and any other rights consistent with the Conservation Purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.

11. *Responsibilities of Grantor and Grantee Not Affected.*

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

(a) *Taxes.* Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee ever pays any taxes or assessments on the Property, or if Grantee pays levies on Grantor's interest in order to protect Grantee's interest in the Property, Grantor will reimburse Grantee for the same. It is intended that this Easement constitute an enforceable restriction within the meaning of Article XIII, section 8 of the California Constitution and that this Easement qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code sections 402.1(a)(8) and 423.

(b) *Upkeep and Maintenance.* Grantor will maintain the Property in a safe condition consistent with the terms of this Easement and applicable laws and take reasonable precautions to prevent trespass, encroachment or unpermitted use or occupancy of the Property. Grantor shall be solely responsible for the upkeep and maintenance of the Property. Grantee shall have no obligation for the upkeep or maintenance of the Property. If Grantee acts to maintain the Property in order to protect Grantee's interest in the Property, Grantor will reimburse Grantee for any such costs.

(c) *Compliance with Law.* Grantor shall comply with all applicable laws with respect to the uses and improvements of and to the Property. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by applicable laws. As used in this Easement, the term "applicable law(s)" shall mean all laws, ordinances, regulations, rules, orders, or permit requirements applicable to the Property or this Easement, whether currently existing or hereafter enacted or otherwise promulgated by any federal, state, county, municipal, or other governmental body (whether legislative, administrative, or judicial), or by any competent official of any of the foregoing. In no event shall this Easement be construed as granting any landowner rights not permitted by local building, land use and/or zoning regulations at the time of construction, demolition, occupation or other regulated use.

(d) *Liability and Indemnification.* In view of Grantee's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, Grantor shall indemnify, protect, defend and hold harmless Grantee, and its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively, "Agents and Assigns") from and against any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, orders, liens, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Property, except to the extent resulting from the gross negligence or intentional misconduct of Grantee and/or its Agents and Assigns. Grantor shall indemnify and hold harmless Grantee and its Agents and Assigns for the breach of any and all representations, warranties, covenants, and agreements contained in this Easement, or violations of any applicable laws, including all Environmental Laws.

As between Grantor and Grantee, Grantor shall be liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, violation of the law or of this Easement or other matter related to or occurring on or about the Property, regardless of cause, unless and to the extent due to the gross negligence or intentional misconduct of Grantee and/or its Agents and Assigns.

Neither Grantee, nor its Agents and Assigns shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, neither Grantee, nor its Agents and Assigns shall be liable to Grantor or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against Grantor or any other person or entity, unless and to the extent the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of Grantee and/or its respective Agents and Assigns.

(e) *Liability Insurance.* Grantee shall be named as an additional insured on Grantor's general liability insurance policy. Grantor shall provide Grantee with a certificate of insurance on an annual basis evidencing compliance with the terms of this paragraph.

12. *Monitoring Reports.*

Grantee shall manage its responsibilities as holder of this Easement so as to uphold the Conservation Purpose of this Easement. Grantee's responsibilities include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement, for the purpose of preserving the Property's agricultural productive capacity and open space character in perpetuity. Failure to do so shall not impair the validity of this Easement or limit its enforceability in any way.

13. *Monitoring and Enforcement.*

With reasonable advance written notice (except in the event of an emergency or suspected emergency), Grantee shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.

(a) *Monitoring.* Monitoring visits shall be subject to the following conditions:

(i) Grantee shall give at least forty-eight (48) hours written notice to Grantor before entering upon the Property, except in the event of an emergency or suspected emergency, in which case reasonable oral notice shall be given. The notice shall indicate the purpose of the entry and shall provide the timeframe during which Grantee shall be upon the Property;

(ii) Entry shall take place during normal business hours unless otherwise required due to exigent circumstances; and

(iii) Grantee shall indemnify, defend with counsel of Grantor's choice, and hold Grantor harmless from, all expense, loss, liability, damages and claims, including Grantor's reasonable attorneys' fees, if necessary, arising out of Grantee's entry on the Property, unless caused by a violation of this Easement by Grantor or by Grantor's negligence or willful misconduct.

(b) *Disputes and Remedies.* Grantee may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants and Conservation Purpose of this Easement. Grantee shall have the right to prevent and correct violations of the terms, conditions, covenants and Conservation Purpose of this Easement. Grantor shall indemnify, protect, defend and hold harmless Grantee and its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of the violation of the terms of this Easement. If Grantee determines that Grantor or any occupant of the Property is conducting or allowing a use, activity, or condition on the Property which is prohibited by the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and, where the violation involves damage to the Property resulting from any use or activity inconsistent with the Conservation Purpose of this Easement, to restore the portion of the Property so damaged to the condition in which it existed prior to the damage.

(c) *Consultations Regarding Interpretation and Enforcement of Easement.* When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to this Easement, each party shall first consult with the other party in good faith and attempt to resolve the issue without resorting to mediation or legal action. Consultation is not a condition precedent to actions to enforce this Easement under exigent circumstances.

(d) *Mediation.* Grantor and Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation. Mediation is therefore the parties' preferred dispute resolution procedure when circumstances do not require Grantor or Grantee to seek immediate injunctive relief from the courts. In the event of any dispute between Grantor and Grantee over the meaning, requirements, interpretation, or implementation of the Easement, Grantor or Grantee may refer the dispute to mediation by written request served upon the other party. The non-requesting party shall have ten (10) days after receipt of a mediation request to consent thereto or refuse to mediate the dispute.

(i) *Procedure.* Within ten (10) days after Grantor and Grantee agree to mediation of a dispute, the parties shall mutually select a mediator. Mediation hearings shall remain informal, with each party being permitted to present such facts and evidence as it may reasonably believe supports that party's position. Costs and expenses of mediation shall be divided equally between Grantor and Grantee; provided, however, that each party shall pay its own attorneys' fees.

(ii) *Limitations.* Notwithstanding any provision to the contrary, the mediation procedure set forth herein shall in no way be construed to deprive Grantor or Grantee of any judicial remedy provided at law or in equity, or by agreement herein, and is intended solely as an informal dispute resolution mechanism. Neither Grantor nor Grantee shall have the right to compel performance of mediated solutions, unless such solutions are reduced to a binding

written agreement between Grantor and Grantee at the conclusion of the mediation process. The parties hereto intend that each conflict and dispute submitted to mediation shall be unique, with facts, circumstances, and recommended resolutions to be determined on a case-by-case basis, without reference to prior conflicts, disputes, or the resolutions thereto.

(e) *Grantee's Other Remedies.* If Grantee finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants and Conservation Purpose of this Easement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, Grantee shall give Grantor written notice of the violation or potential violation and thirty (30) days to correct it, before filing any legal action. If the violation will reasonably take longer to correct than thirty (30) days, it is sufficient that Grantor has taken reasonable steps to correct the violation within the thirty (30) days period and continues to use reasonable efforts to completely correct the violation as soon as reasonably possible.

(f) If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, Grantee may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the Conservation Values protected by this Easement; (ii) restoration of the Property to its condition existing prior to such violation; and (iii) an award for all Grantee's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. Grantee's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(g) Without limiting Grantor's liability therefor, Grantee shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, Grantee shall apply any and all damages recovered to furthering Grantee's mission, with primary emphasis on agricultural conservation easement acquisition and enforcement.

(h) Grantor hereby waives any defense of laches, estoppel, prescription, unclean hands or the doctrine of changed circumstances in any action or proceeding, including but not limited to any mediation brought by Grantee to enforce or to interpret the provisions of this Easement.

14. *Transfer of Easement; Executory Limitation.*

This Easement may only be assigned or transferred to a private nonprofit organization that, at the time of transfer, is a "qualified organization" under section 170(h) of the U.S. Internal Revenue Code and meets the requirements of section 815.3(a) of the California Civil Code and has similar purposes to preserve agricultural lands and open space. If no such private nonprofit organization exists or is willing to assume the responsibilities imposed by this Easement, then this Easement may be transferred to a public agency authorized to hold interests in real property as provided in section 815.3(b) of the California Civil Code. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the

Conservation Purpose for which it was created. All assignment and assumption agreements transferring the Easement shall be duly recorded in the county in which the Property is located.

If Grantee ceases (a) to exist for any reason, (b) to be a qualified organization under section 170(h)(3) of the U.S. Internal Revenue Code, or (c) to be authorized to acquire and hold conservation easements under California law, then, after consulting with Grantor or its successor, Grantor's right, title, and interest in this Easement shall be transferred to a "qualified organization," within the meaning of section 170(h)(3) of the Code or any successor provision, which is authorized to acquire and hold conservation easements under California law and has similar purposes to preserve agricultural lands and open space, and which expressly agrees to assume the responsibilities imposed by this Easement.

15. *Transfer of Property Interest.*

Subject to the terms of this Easement, Grantor may transfer the Property or an interest therein, but each transfer shall be subject to, and be bound by, the terms and provisions of this Easement. Grantor shall notify Grantee in writing at least thirty (30) days prior to the transfer of the Property or an interest therein and shall provide Grantee with a copy of the proposed document of conveyance. The document of conveyance, including any lease, shall expressly incorporate this Easement by reference. Failure of Grantor to comply with the terms of this section shall not impair the validity of this Easement or limit its enforceability in any way.

Grantor shall deliver to the buyer as part of the escrow for the sale of the Property Grantor's copy of the Baseline Report, or request Grantee provide a copy of the Baseline Report at Grantor's cost and expense. As part of the escrow for the sale of the Property, Grantor shall obtain from the buyer and deliver to Grantee, an acknowledgement to be signed by the buyer in substantially the same form as **Exhibit C** attached hereto, wherein the buyer acknowledges receipt of the Baseline Report and certifies that the Baseline Report is an accurate representation of the condition of the Property as of the date of the acknowledgement (subject to any changes of condition as may be specified by the buyer).

16. *Transfer Fee.*

(a) Grantor and Grantee recognize and agree that any transfer of the Property and any division of ownership will result in an additional burden on the monitoring and enforcement responsibilities of Grantee. Therefore, there shall arise, by virtue of any transfer for consideration of all or a portion of the Property, or interest therein (other than a lease for a total term, including any options to renew or extend, not exceeding thirty-five (35) years) a fee which is referred to herein as the "Transfer Fee." The Transfer Fee shall be the obligation of the seller of the Property and shall be payable to Grantee or subsequent holder of this Easement. The Transfer Fee shall be equal to one percent (1%) of the consideration paid in connection with the transfer of any interest in the Property and shall be paid to Grantee concurrently with the close of escrow or other consummation of the sale of the Property. For example, if the Property has a purchase price/consideration paid of two hundred fifty thousand dollars (\$250,000.00), the Transfer Fee would be two thousand five hundred dollars (\$2,500.00); if the Property has a purchase price/consideration paid of five hundred thousand dollars (\$500,000.00), the Transfer Fee would be five thousand dollars (\$5,000.00); and if the Property has a purchase

price/consideration of seven hundred fifty thousand dollars (\$750,000.00), the Transfer Fee would be seven thousand five hundred dollars (\$7,500.00). The Transfer Fee shall be paid to Grantee at the address for giving notices to Grantee as set forth hereinbelow. Grantor and Grantee agree to execute and record along with this Easement a "NOTICE OF PAYMENT OF TRANSFER FEE REQUIRED" in accordance with California Civil Code section 1098.5 respecting the Transfer Fee.

(b) Grantor or any subsequent purchaser shall provide reasonable written proof of the sales price of the Property, including but not limited to executed closing statements, contracts of sale, copies of deeds or other similar evidence satisfactory to Grantee. An exchange of properties pursuant to Internal Revenue Code section 1031, or similar statute, shall be deemed to be for consideration based on the appraised market value of the Property at the time of the exchange. Market value shall be determined by agreement of Grantor and Grantee, or in the absence of such agreement, by an appraiser selected by Grantee that is State certified, designated, and qualified to value the real property, whose appraisal fee shall be paid by Grantee.

(c) Any of the following transfers, subsequent to the conveyance of this Easement, shall be exempt from the assessment of such Transfer Fee: (i) a transfer without consideration (e.g. an inter vivos gift or testamentary conveyance); and (ii) any transfer of any portion of the Property made as a result of condemnation or eminent domain proceedings, including any negotiated transfer made to an entity with condemning authority in response to actual or threatened condemnation proceedings by that entity and (iii) a sale or other conveyance or exchange from one or more of the partners of the original Grantor or the partners' issue to any other one or more of the partners of the original Grantor or their issue; or (iv) a sale or other conveyance or exchange to the issue of any of the partners of the original Grantor or any trust established for the exclusive benefit of the issue of any of the partners of the original Grantor.

(d) In the event of non-payment of the Transfer Fee in accordance with this Section, Grantee shall have the right to record a lien against the Property in the amount equal to the unpaid Transfer Fee plus any and all reasonable costs and attorney's fees necessary to prepare and enforce the lien of the Transfer Fee. The lien shall be recorded in accordance with California Civil Code sections 2872 et seq. The lien shall be subordinate to this Conservation Easement and any other prior liens, encumbrances, mortgages and deeds of trust of record and any subsequent mortgages or deeds of trust. A copy of the lien shall be mailed via certified mail, return receipt requested, to the purchaser at his last known address upon recordation of the lien. After the expiration of thirty (30) days following the mailing of a copy of the lien, the lien may be enforced in any manner permitted by law, including without limitation a sale by the court or sale by the trustee designated by Grantee in the lien, in the sole exercise of its discretion, in accordance with the provisions of section 2924 of the California Civil Code.

17. *Amendment of Easement.*

This Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the Conservation Purpose of this Easement and with Grantee's easement amendment policies and shall comply with all applicable laws, including section 170(h) of the Internal Revenue Code, and any regulations promulgated in accordance with that section, and with section 815 et seq. of the California Civil Code. Any amendment

shall have a net beneficial or neutral effect on the Conservation Values protected by the Easement. No amendment shall: (a) diminish or affect the perpetual duration or the Conservation Purpose of this Easement nor the status or rights of Grantee under the terms of this Easement; (b) confer a private benefit to Grantor or any other individual greater than the benefit to the general public; (c) result in private inurement for a board member, staff or contract employee of Grantee or violate Grantee's conflict of interest policy; or (d) jeopardize Grantee's tax-exempt status or status as a charitable organization under federal or state law.

18. *Termination of Easement.*

(a) It is the intention of the parties that the Conservation Purposes of this Easement shall be carried out in perpetuity as provided in section 815.2(b) of the California Civil Code. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity, notwithstanding conditions or hardship of any kind that may provide a basis for termination of this Easement at law or in equity. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(b) This Easement shall not be terminated unless it meets the criteria for termination including, California Constitution Article XIII, section 8, Revenue and Taxation Code sections 421.5 and 422.5, and other applicable laws, rules and regulations. Grantee shall be notified at least thirty (30) days prior to initiation of any proceedings to terminate this Easement. No inaction or silence by Grantee shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use is not reason for termination of this Easement. Other than pursuant to eminent domain or purchase in lieu of eminent domain, no other voluntary or involuntary sale, exchange, conversion or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate the provisions of this Easement.

(c) In the event of the exercise of the power of eminent domain against all or any part of the Property, Grantor and Grantee acknowledge that Grantee is entitled to certain rights of notice and comment and Grantee is entitled to compensation as provided in section 1240.055 of the California Code of Civil Procedure. Termination of the Easement through condemnation is subject the eminent domain laws of the State of California, federal law, and this Easement. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven (7) years in the future (California Code of Civil Procedure section 1240.220). Grantee shall be paid by the condemnor the value of the Easement at the time of condemnation, as determined by an appraisal conforming to the Uniform Standards of Professional Appraisal Practice and any proceeds received from the condemning party shall be distributed as set forth in Section 18(d) below. Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of Grantee and San Joaquin County. Grantee shall have an opportunity to accompany the appraiser for the condemning agency when the appraiser goes on the Property with Grantor.

If Grantor or Grantee is notified that the Property may be acquired for public use by eminent domain, the party receiving such notice shall notify the other party of the potential acquisition no

later than fifteen (15) days after first receiving such notice. Prior to the inspection of the Property by the appraiser pursuant to section 7267.1 of the California Government Code or any other provision of law, Grantor shall notify Grantee that it or its designated representative may accompany the appraiser during his or her inspection. Within seven (7) days of receiving any notice of the hearing on the resolution of necessity pursuant to section 1245.235 of the California Code of Civil Procedure, Grantor shall provide Grantee a copy of the notice of the hearing. As provided in sections 1250.220 and 1250.230 of the California Code of Civil Procedure, in any eminent domain proceeding to acquire all or a portion of the Property, Grantee shall be named as a defendant and may appear in the proceedings.

Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement. In this event, all relevant related documents shall be updated and re-recorded by Grantee to reflect the modified easement area and encumbrances junior to this Easement shall remain subordinate to the Easement as amended.

(d) The grant of this Easement gives rise to a property right, immediately vested in Grantee. For the purpose of determining the amount to be paid by Grantor in a termination pursuant to judicial proceedings, and for the purpose of allocating proceeds from a sale or other disposition of the Property at the time of termination, the Easement and Grantee's property right therein shall have a value equal to the difference between the current fair market value of the Property unencumbered by this Easement and the current fair market value of the Property encumbered by this Easement, each as determined on or about the date of termination. The values shall be determined by an appraisal performed by an appraiser jointly selected by Grantor and Grantee. The cost of the appraisal shall be paid by Grantor. The appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. Nothing herein shall prevent Grantor or Grantee from having an appraisal prepared at its own expense.

Upon approval of termination of this Easement or any portion thereof, Grantor shall pay Grantee the value of the Easement, or portion thereof. This Easement shall not be deemed terminated until such payment is received by Grantee. Grantee shall use the net proceeds from the condemnation or termination of the Easement for the purchase of property that replaces the natural resource characteristics the original mitigation was intended to protect, or as near as reasonably feasible and in a manner consistent with the Conservation Purposes of this Easement.

(e) If Grantee obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be used in a manner consistent with the Conservation Purposes of this Easement.

19. *Notices.*

Any notices to Grantor and Grantee required by this Easement shall be in writing and shall be personally delivered or sent by First Class Mail, to the following addresses, unless a party has been notified by the other of a change of address:

To Grantor:

BF Cochran, LP
Attn: Robert C. Borello
PO BOX 2107
Morgan Hill, CA 95038

To Grantee:

Central Valley Farmland Trust
8788 Elk Grove Blvd., Bldg. 1, Suite I
Elk Grove, CA 95624

20. *Grantor's Environmental Warranty.*

(a) Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of the Grantor's activities on the Property, or otherwise to become an "owner" or "operator" or "generator" or "arranger" with respect to the Property as those words are defined and used in "Environmental Laws" (as defined below), including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any corresponding state and local statute or ordinance.

(b) Grantor warrants that, to the best of its knowledge, it is in compliance with, and Grantor and its successors and assigns and the Third Party Mineral Rights Holders shall be in compliance with, all applicable Environmental Laws. Grantor warrants that, to the best of its knowledge, there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no knowledge of a release or threatened release of "Hazardous Materials," as defined below on, at, beneath or from the Property.

(c) Grantor hereby promises to defend, hold harmless and indemnify Grantee against all litigation, claims, administrative actions, testing, investigation, remediation, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws on the Property by Grantor or any other prior owner of the Property or any Third Party Mineral Rights Holder. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

(d) "Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous

Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

(e) "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal sources, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, asbestos-containing materials, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or any other material defined and regulated by Environmental Laws.

(f) If at any time after the effective date of this Easement there occurs a release, discharge or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take any steps that are required of Grantor with respect thereto under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

21. Grantor's Title Warranty; No Prior Conservation Easements; Third Party Mineral Rights.

(a) Grantor represents and warrants that it owns the entire fee simple interest in the Property, including the mineral estate, except as set forth in below (respecting third party mineral rights), free from any and all liens or encumbrances, except those set forth in Exhibit D ("Prior Encumbrances") attached hereto and made a part hereof by this reference, and hereby promises to defend the same against all claims that may be made against it. Any and all financial liens or financial encumbrances with priority over this Easement existing as of the date of the recording of this Easement (excepting liens for property taxes which are not yet due and payable) have been subordinated to this Easement. Grantor represents and warrants that the Property is not subject to any other conservation easement whatsoever.

(b) If Grantor discovers at any time that any outstanding interest in the Property exists that is not disclosed herein, Grantor shall immediately notify Grantee of the discovery, and shall take all necessary steps to ensure that the interest is made subject to this Easement and that the existence of the interest or the exercise of any rights under it does not interfere with the Conservation Purpose of this Easement.

(c) Grantor and Grantee acknowledge that the ownership of the surface estate of that portion of the Property consisting of Assessor Parcel No. 131-030-11 (portion, as shown in the Baseline Report) and all petroleum, gas, asphaltum, and other hydrocarbons, and other minerals, whether similar to those specified or not, within or underlying, or that may be produced from the Property ("Third Party Mineral Rights A") is separated. Said Third Party Mineral Rights A were granted by

Mortimer Fleishhacker et ux to Standard Oil Company of California, a corporation, by deed dated May 25, 1945 and recorded May 31, 1945, in Vol. 931, page 249 San Joaquin County Records. The aforesaid owners of the Third Party Mineral Rights A are not in any way related to Grantor. If the exercise of Third Party Mineral Rights A is expected to be exercised, Grantor shall notify Grantee and shall do one or more of the following: (i) cause the rights to be exercised only within the two (2) designated Extraction Areas on the Property, as shown in **Exhibit B**, and in accordance with the provisions of Section 6(e); (ii) cause the surface rights to be subordinated to this Easement; (iii) acquire the Third Party Mineral Rights A, and exercise the mineral rights only within the two (2) designated Extraction Areas on the Property and in accordance with the limitations and requirements of Section 6(e); or, as a last, and least desired action, (iv) place a new conservation easement over 99 acres of equivalent or better quality agricultural land as the Property, with prior approval of Grantee and the City of Morgan Hill. Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal, extraction or sale of soil, sand, gravel, rock, or any other mineral substance of or from the Property.

(d) Grantor and Grantee further acknowledge that the ownership of the surface estate of that portion of the Property consisting of Assessor Parcel No. 131-030-10 (portion, as shown in the Baseline Report) and all oil, gas and minerals in or under the Property ("Third Party Mineral Rights B") is separated. Said Third Party Mineral Rights B were reserved by Mortimer Fleishhacker et ux, by deed dated July 7, 1942 and recorded August 17, 1942, in Vol. 787, page 93, San Joaquin County Records. The aforesaid owners of the Third Party Mineral Rights B are not in any way related to Grantor. If the exercise of Third Party Mineral Rights B is expected to be exercised, Grantor shall notify Grantee and shall do one or more of the following: (i) cause the rights to be exercised only within the limited area of ownership of Third Party Mineral Rights B, as shown in the Baseline Report and exercised in accordance with the provisions of Section 6(e); (ii) cause the surface rights to be subordinated to this Easement; (iii) acquire the Third Party Mineral Rights B, and exercise the mineral rights only in accordance with the limitations and requirements of Section 6(e). Notwithstanding anything to the contrary in this Easement, if Grantor shall ever acquire the Third Party Mineral Rights, Grantor shall be prohibited from mining, excavation, removal, extraction or sale of soil, sand, gravel, rock, or any other mineral substance of or from the Property.

(e) The Third Party Mineral Rights A and Third Party Mineral Rights B may be referred to herein jointly as "Third Party Mineral Rights." The holders or owners of Third Party Mineral Rights A and the holders or owners of Third Party Mineral Rights B may be referred to herein jointly as "Third Party Mineral Rights Holders."

(f) Grantor hereby agrees that Grantor will not exercise any of their mineral rights and interests in the Property now owned or hereafter acquired (if any), or cooperate with any Third Party Mineral Rights Holders, in any manner which would unreasonably interfere with the Conservation Purpose of this Easement. Grantor hereby promises to defend, hold harmless and indemnify Grantee against: (i) any damage to the Conservation Values of the Property which is caused by, connected with, or arises from the exercise of any Third Party Mineral Rights not in conformance with this Section 21 and Section 6(e) or as otherwise provided in this Easement; and (ii) any and all costs, expenses, litigation, claims, administrative actions, testing, investigation, remediation, restoration, demands, penalties and damages, including reasonable

attorneys' fees, caused by, connected with, or arises from the exercise of any Third Party Mineral Rights. This indemnity shall apply whether the Third Party Mineral Rights are held and exercised by third parties or acquired, held and exercised by Grantor or Grantor's successors and assigns.

(g) With respect to that certain Permit Agreement between Reclamation District No. 684 ("District") and Linda Heisig and Reeves Sand & Gravel, Inc. ("Permittee") for the excavation of sand material as part of an agricultural excavation bearing Application No. PA-1000095 at the southwest corner of Boulton Road and McDonald Road, Stockton, California, APN 131-030-11, recorded September 21, 2010 in the San Joaquin Recorder's Office as Instrument No. 2010-124435 (the "Permit"), Grantor warrants and represents that all excavation activities authorized under the Permit and any other related County, State or Federal permit have been completed in full compliance with all applicable permits and laws and expressly renounces and waives forever any right to carry out any further excavation activities on the Property under the Permit and any other related County, State, or Federal permit and shall defend, hold harmless and indemnify CVFT against any and all costs, expenses, liability, litigation, claims, administrative actions, testing, investigation, remediation, restoration, demands, penalties and damages, including reasonable attorneys' fees, caused by, connected with, or arising from the Permit and any other related County, State, or Federal permit or any activities authorized thereby or carried out thereunder.

22. *General Provisions.*

(a) *Interpretation.* This Easement shall be interpreted under the laws of the State of California resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. References to authorities in this Easement shall be to the statute, rule, regulation, ordinance or other legal provision that is in effect at the time this Easement becomes effective. No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

(b) *Successors; Termination of Rights and Obligations.* The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property. A party's rights and obligations under this Easement terminate upon transfer of that party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(c) *Severability.* If any term, provision, covenant, condition or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of the Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(d) *Perpetual Duration; No Merger or Forfeiture.* Pursuant to California Civil Code at Part 2, Chapter 4 (commencing with section 815), this Easement shall run with the land in perpetuity. No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion

thereof, to Grantee, or its successors or assigns. It is the express intent of the parties that this Easement not be extinguished by, or merged into, or modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by Grantee or its successors or assigns. In the event that Grantee shall ever acquire the fee simple title to the Property, Grantee will assign and convey its interest under this Easement to a third party in accordance with Section 14.

(e) *No Waiver.* Enforcement of the terms of this Easement is at the discretion of Grantee. Any forbearance by Grantee to exercise its rights under this Easement or any failure of Grantee to discover a violation or potential violation or to take immediate legal action to prevent or correct a violation or potential violation known to Grantee, shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement, nor bar Grantee from taking subsequent legal action. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. No forbearance or waiver by Grantee of any default or breach, whether intentional or not, shall be deemed to extend to any prior or subsequent defaults or breaches, nor shall it affect in any way any rights arising by virtue of any prior or subsequent occurrence.

(f) *Joint Obligation.* If and when Grantor consists of more than one party, the obligations imposed by this Easement upon Grantor shall be joint and several.

(g) *Recording.* This Easement and any amendments hereto shall be recorded in the Official Records of the County of San Joaquin, State of California.

(h) *Entire Agreement.* This Easement is the final and complete expression of the agreement between the parties with respect to the subject matter contained herein. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superseded by this written instrument.

(i) *Exhibits and Recitals.* All of the exhibits attached to this Easement are hereby incorporated into this Easement by this reference. All recitals in this Easement are accurate and shall constitute an integral part of this Easement, and this Easement shall be construed in light of those recitals.

(j) *Administrative Costs.* The administration of this Easement by Grantee requires considerable time and expense. Grantee shall bear all routine administrative expenses related to the Easement including, but not limited to the following activities: routine easement monitoring and reporting, and notices of permitted activities, and routine staff work related to Grantor's refinancing and or sale of the Property. Grantor agrees to pay the reasonable expenses of Grantee for non-routine administration of the Easement including, but not limited to actions requiring Grantee's prior approval, any actions of Grantee resulting from a violation of the terms of this Easement and any Easement amendment requests of Grantor.

(k) *Counterparts.* The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(l) *Attorney's Fees.* If any party commences an action to enforce or interpret this Easement or any provision hereof or to assert a claim or cause of action arising of this Easement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

(m) *Authority.* Each party executing this Easement represents to the other party that the person or persons signing this Easement on behalf of said party, has full power and authority to sign for and to bind said party to this Easement.

(n) *Third Party Beneficiary.* The City of Morgan Hill shall be a third party beneficiary of this Easement. In the event Grantee fails to enforce any term, condition, covenant or restriction of this Easement, the City of Morgan Hill shall have the right, but not the obligation, to enforce this Easement after giving notice to Grantee and Grantor and providing a reasonable opportunity under the circumstances for Grantee to enforce any term, condition, covenant, or restriction of the Easement.

23. *Acceptance.*

As attested by the signature of its Executive Director affixed hereto, as authorized by Grantee's Board of Directors, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Grant Deed of Agricultural Conservation Easement.

To Have and To Hold, this Grant Deed of Agricultural Conservation Easement unto Grantee, its successors and assigns, forever.

In Witness Whereof, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

BF COCHRANE, LP
a California limited partnership

By its General Partner:

BF Cochrane, LLC
a California limited liability company,

By: Robert Cosmo Borello
Robert Cosmo Borello, Manager

GRANTEE:

CENTRAL VALLEY FARMLAND TRUST,
a California nonprofit public benefit corporation,

By: _____
Charlotte Mitchell, Executive Director

(l) *Attorney's Fees.* If any party commences an action to enforce or interpret this Easement or any provision hereof or to assert a claim or cause of action arising of this Easement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

(m) *Authority.* Each party executing this Easement represents to the other party that the person or persons signing this Easement on behalf of said party, has full power and authority to sign for and to bind said party to this Easement.

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As attested by the signature of its Executive Director affixed hereto, as authorized by Grantee's Board of Directors, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Grant Deed of Agricultural Conservation Easement.

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In Witness Whereof, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

BF COCHRANE, LP
a California limited partnership

By its General Partner:

BF Cochrane, LLC
a California limited liability company,

By: _____
Robert Cosmo Borello, Manager

GRANTEE:

CENTRAL VALLEY FARMLAND TRUST,
a California nonprofit public benefit corporation,

By: 
Charlotte Mitchell, Executive Director

ACKNOWLEDGMENTS

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 Butte)

On May 4, 2017, before me, ALTA NEAL, a Notary Public in and for said State, personally appeared Robert Cosmo Borello 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

Alta Neal



(Seal)

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

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, 20__, before me, _____, a Notary Public in and for said State, 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)

ACKNOWLEDGMENTS

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.

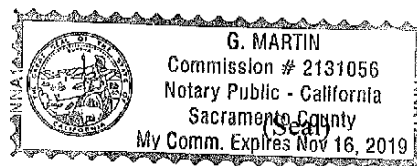
COUNTY OF Sacramento)

On 4-26, 2017, before me, G. Martin, a Notary Public in and for said State, personally appeared Charlotte Mitchell, 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 G. Martin



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 _____, 20____, before me, _____, a Notary Public in and for said State, 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)

List of Attachments:

Exhibit A (Property Legal Description)

Exhibit B (Sketch Map of Farmstead Area, Agricultural Mitigation Area and Extraction Areas)

Exhibit C (Acknowledgement of Condition and Receipt of Baseline Report)

Exhibit D (Prior Encumbrances)

EXHIBIT A

Property Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

All that certain real property identified as "Legal Description of Parcel "3" per PA-1500268" as shown on Notice of Lot Line Adjustment recorded April 22, 2016, Instrument No. 2016-045805, San Joaquin County Records.

A portion of Section 6 Township 1 North, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California and being more particularly described as follows:

A single parcel of land comprised of the following three descriptions:

Description One:

Parcel 1 as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records.

Description Two:

Parcel 2 as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records.

Description Three:

Parcel 3 as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records.

Except from the above Three descriptions the following described parcel:

A portion of Section 6 Township 1 North, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California and being more particularly described as follows:

Commencing at a 2" iron pipe located at the Northwest corner of the Northeast Quarter of said Section 6 as shown on that certain Map of Survey filed for record on the 14th day of February, 1968 in Book 17 of Surveys, at Page 37, San Joaquin County Records, said 2" iron pipe is tagged with a washer stamped LS 4450 set on top, also being a point on the Northerly line of Parcel 3, as described in that certain Individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records; thence along the Northerly line of said Section 6 and along the Northerly line of said Parcel 3, East, a distance of 1867.56 feet to the most Easterly corner of said Parcel 3 and being a point in the centerline of Reclamation District No. 684 drainage canal, as shown on said Survey; thence along said centerline and the Southeasterly line of said Parcel 3, South 45°40'00" West, a distance of 205.47 feet to the beginning of a non-tangent curve concaved Southwesterly having a radius of 499.06 feet and to which beginning a radial line bears, North 41°01'50" East, and being a point on the centerline of McDonald Road (an 80-foot wide road) and being the TRUE POINT OF BEGINNING; thence continuing along said centerline of drainage canal and said Southeasterly line of the following 2 courses:

1. South 45°40'00" West, a distance of 696.19 feet;
2. South 42°47'00" West, a distance of 474.00 feet; thence along the Southerly line of said Parcel 3, North 82°10'00" West, a distance of 161.50 feet to the Northeasterly corner of Parcel 2 as described in said Heisig Quitclaim Deed; thence along the Easterly line of said Parcel 2 and Parcel 1, as described in said Heisig Quitclaim Deed, South, a distance of 210.39 feet to the right bank of Whiskey Slough, thence meandering along said right bank downstream on the following 5 courses:

EXHIBIT A**Property Legal Description (continued)**

1. North 69°28'18" West, a distance of 32.63 feet;
2. North 78°41'52" West, a distance of 112.36 feet;
3. South 81°02'01" West, a distance of 86.51 feet;
4. South 64°22'56" West, a distance of 81.85 feet;
5. South 45°51'00" West, a distance of 70.07 feet; thence North 49°53'03" West, a distance of 181.12 feet; thence North 20°01'55" East, a distance of 228.20 feet to a point on the Northerly line of said Parcel 2 from which the said Northeasterly corner of Parcel 2 bears, South 82°10'00" East, a distance of 575.99 feet; thence along said Northerly line, South 82°10'00" East, a distance of 29.47 feet; thence North 20°01'55" East, a distance of 94.48 feet; thence South 89°26'43" East, a distance of 511.15 feet to a point being 106.00 feet Northwesterly at right angles with that certain said courses which bears, South 42°47'00" West, a distance of 474.00 feet; thence North 45°11'38" East, a distance of 917.80 feet to a radial line from said curve which bears, North 24°52'18" East, thence along said radial line, North 24°52'18" East, a distance of 116.41 feet to said curve; thence Southeasterly 140.75 feet along said curve through a central angle of 16°09'32" to the true point of beginning.

Subject to McDonald Road along the Northeasterly boundary.

Also Except from the above Three descriptions the following described parcel:

A portion of Section 6 Township 1 North, Range 5 East, Mount Diablo Base and Meridian, County of San Joaquin, State of California and being more particularly described as follows:

Commencing at a 2" iron pipe located at the Northwest corner of the Northeast Quarter of said Section 6 as shown on that certain Map of Survey filed for record on the 14th day of February, 1968 in Book 17 of Surveys, at Page 37, San Joaquin County Records, said 2" iron pipe is tagged with a washer stamped LS 4450 set on top, also being a point on the Northerly line of Parcel 3 as described in that certain individual Quitclaim Deed to Linda Beers Heisig, recorded the 7th day of January, 2009, as Document No. 2009-001720, San Joaquin County Records; thence along the Northerly line of said Section 6 and along the Northerly line of said Parcel 3, East, a distance of 1867.56 feet to the most Easterly corner of said Parcel 3 and being a point in the centerline of Reclamation District No. 684 drainage canal as shown on said survey; thence along said centerline and the Southeasterly line of said Parcel 3 on the following 2 courses:

1. South 45°40'00" West, a distance of 901.66 feet to an angle point;
2. South 42°47'00" West, a distance of 474.00 feet; thence along the Southerly line of said Parcel 3, North 82°10'00" West, a distance of 161.50 feet to the Northeasterly corner of Parcel 2 of Heisig Quitclaim Deed; thence continuing along said Southerly line, being also the Northerly line of said Parcel 2, North 82°10'00" West, a distance of 575.99 feet to the TRUE POINT OF BEGINNING; thence South 20°01'55" West, a distance of 228.20 feet; thence South 49°53'03" East, a distance of 181.12 feet to the right bank of Whiskey Slough; thence meandering along said right bank of Whiskey Slough downstream on the following Four courses:

1. South 45°51'00" West, a distance of 76.23 feet;
2. South 33°14'00" West, a distance of 184.00 feet;
3. South 34°45'00" West, a distance of 190.00 feet;
4. South 36°08'00" West, a distance of 157.61 feet; thence North 51°41'32" West, a distance of 39.16 feet; thence North, a distance of 842.24 feet to a point on the Northerly line of said Parcel 2; thence along said Northerly line, South 82°10'00" East, a distance of 330.24 feet to the true point of beginning.

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EXHIBIT C
Acknowledgement of Condition
and Receipt of Baseline Report

Robert Cosmo Borello, Manager, representing BF Cochrane, LLC, a California limited liability company, General Partner of BF Cochrane, LP, a California limited partnership, certifies as Grantor, and Charlotte Mitchell, Executive Director, representing Central Valley Farmland Trust, certifies as Grantee of the Easement, as follows:

- a) Each is familiar with the condition of the Property, and
- b) Each does hereby acknowledge and certify that the Baseline Report, dated March 10, 2017, and all of its inclusions, is an inventory of the natural resources of the Property and an accurate representation of the condition of the Property as of the date of the Easement.

Duplicate originals of the Baseline Report were signed and delivered by each of Grantor and Grantee, and each received a duplicate original of the Baseline Report.

GRANTOR:

BF COCHRANE, LP
a California limited partnership

By its General Partner:

BF Cochrane, LLC
a California limited liability company,

By: _____
Robert Cosmo Borello, Manager

Date: _____

GRANTEE:

CENTRAL VALLEY FARMLAND TRUST,
a California nonprofit public benefit corporation,

By: 
Charlotte Mitchell, Executive Director

Date: 4/26/17

EXHIBIT D
Prior Encumbrances

1. A lien for real property taxes and assessments of San Joaquin County, and for taxes and assessments levied by Reclamation District No. 684 and the Sacramento-San Joaquin Drainage District, not yet due and payable.

2. - 12. Intentionally Omitted.

13. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
Purpose: Electrical transmission lines
Recording Date: January 9, 1913
Recording No.: Book "A" of Deeds, Volume 228, at Page 44

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document:

Reserved by: Pacific Coast Lands Co.
Purpose: Roadway
Recording Date: July 7, 1917
Recording No.: Book "A" of Deeds, Volume 303, at Page 371

15. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The County of San Joaquin
Purpose: Roadway
Recording Date: November 21, 1921
Recording No.: Book "A" of Deeds, Volume 262, at Page 207

16. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The County of San Joaquin
Purpose: Public road
Recording Date: December 14, 1927
Recording No.: Book 221, at Page 200

17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
Purpose: Electrical transmission lines
Recording Date: August 14, 1930
Recording No.: Book 337, at Page 6

18. Intentionally Omitted.

19. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
 Purpose: Electrical transmission lines
 Recording Date: October 23, 1937
 Recording No.: Book 594, at Page 189

20. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Gas and Electric Company, a California corporation
 Purpose: Electrical transmission lines
 Recording Date: October 23, 1937
 Recording No.: Book 594, at Page 190

21. Intentionally Omitted.

22. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: The Pacific Telephone & Telegraph Company, a corporation
 Purpose: Public utilities and incidental purposes
 Recording Date: June 16, 1953
 Recording No.: Book 1533, at Page 183

23. - 24. Intentionally Omitted.

25. Matters contained in that certain document

Entitled: Permit Agreement
 Executed by: Reclamation District No. 684, Linda Beers Heisig and Reeves Sand & Gravel
 Recording Date: September 21, 2010
 Recording No.: 2010-124435

Reference is hereby made to said document for full particulars.

An agreement to modify the terms and provisions of the said document, as therein provided

Executed by: Linda Heisig, aka Linda Beers Heisig, Reclamation District No. 684, BF Cochrane, LP, a California limited partnership, and Central Valley Farmland Trust, a California nonprofit public benefit corporation
 Recording Date: (recorded herewith)

26. Intentionally Omitted.

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as shown in a document:

Purpose: Ingress Egress and Public Utilities
Recording Date: January 23, 2017
Recording No.: 2017-009798
Affects: A Portion

Corrective quitclaim deed to correct and clarify that the ingress egress easement in grant deed recorded January 23, 2017 as instrument no. 2017-009798 is reserved by Linda Beers Heisig (grantor) and not granted to BF Cochrane, LP, a California limited partnership (grantee).

Executed by: Linda Beers Heisig
Recording Date: (recorded herewith)

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as shown in a document:

Purpose: Ingress Egress and Public Utilities
Recording Date: January 23, 2017
Recording No.: 2017-009798
Affects: A Portion

Corrective quitclaim deed to correct and clarify that the ingress egress easement in grant deed recorded January 23, 2017 as instrument no. 2017-009798 is reserved by Linda Beers Heisig (grantor) and not granted to BF Cochrane, LP, a California limited partnership (grantee).

Executed by: Linda Beers Heisig
Recording Date: (recorded herewith)

Recording requested by and when
recorded please return to:

(Space above this line reserved for Recorder's use)

DEED OF AGRICULTURAL CONSERVATION EASEMENT

This Deed of Agricultural Conservation Easement is granted on this ____ of ____ 2018, by _____, having an address at _____ ("Landowner"), to the _____ having an address at _____ ("Grantee"), for the purpose of forever conserving the agricultural productive capacity and open space character of the subject property.

RECITALS

- A. The Landowner is the sole owner in fee simple of the agricultural property ("Property") legally described in **Exhibit A** ("Legal Description") and generally depicted in **Exhibit B** ("Vicinity Map"), attached to and made a part of this Agricultural Conservation Easement ("Easement"). The Property consists of approximately ____ acres of land and is commonly known as "____," together with agricultural improvements, is located in Santa Clara County, California, and is identified as a portion of assessor's parcel number XXX-XX-XXX. The existing buildings and improvements on the Property are shown within an agricultural building envelope ("Agricultural Building Envelope.") The Agricultural Building Envelope is depicted in **Exhibit C** ("Building Envelope and Existing Improvements"), also attached to and made a part of this Easement. Except as shown in Exhibit C, the Property is open farmland, whose majority of soils have been classified as prime farmland by the U.S. Department of Agriculture's Natural Resources Conservation Service, because this land has the soil quality, growing season, and water supply needed for sustained agricultural production.
- B. The agricultural and other characteristics of the Property, its current use and state of improvement, are documented and described in a Baseline Documentation Report ("Baseline Report"), prepared by the Grantee with the cooperation of the Landowner and incorporated herein by this reference. The Landowner and the Grantee warrant that the Baseline Report is complete and accurate as of the date of this Easement. Both the Landowner and the Grantee shall retain duplicate original copies of the Baseline Report. The Baseline Report may be used to establish whether a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Easement.

- C. Grantor and Grantee acknowledge that the funding of this Easement is provided through the Agricultural Lands Preservation Program of the City of Morgan Hill (“City”).
- D. The Landowner grants this Easement for valuable consideration to the Grantee for the purpose of assuring that, under the Grantee’s perpetual stewardship, the agricultural productive capacity and open space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property, as represented in the Baseline Report completed at the time of this Easement’s recordation, are consistent with the conservation purposes of this Easement.
- E. The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation and environmental policies:

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. section 4201 et seq., whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland;”

The California Environmental Quality Act (PRC §§21000 et seq.) which requires that significant impacts to the environment resulting from a project be mitigated to the extent feasible;

California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements;

California Government Code Section 65966 (a), which states that “any conservation easement created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration”;

California Constitution Article XIII, section 8, California Revenue and Taxation Code sections 421.5 and 422.5, and California Civil Code section 815.1, under which this Agricultural Conservation Easement is an enforceable restriction, requiring that the Property’s tax valuation be consistent with restriction of its use for purposes of food and fiber production and conservation of natural resources;

Section 10200 et seq. of the California Public Resources Code, which creates the California Farmland Conservancy Program within the Department;

Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands, by providing that "agricultural lands have a definitive public value as open space" and "that the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest";

California Food and Agriculture Code Section 821 states that one of the major principles of the State's agricultural policy is "to sustain the long-term productivity of the State's farms by conserving and protecting the soil, water, and air, which are agriculture's basic resources;"

The California General Plan law section 65300 et seq. and Section 65400 et seq. of the California Government Code, and the Santa Clara County General Plan, as a updated on November 19, 2015, which includes as one of its strategies to enhance the long term economic viability of agriculture; and,

- F. The Grantee is a California nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3 and is a tax exempt and "qualified conservation organization" within the meaning of Sections 501(c)(3) and 170(b)(1)(A)(iv) as defined by the United States Internal Revenue Code. Grantee, as certified by a resolution of Grantee's Board of Directors, accepts the responsibility of enforcing the terms of this Easement and upholding its conservation purposes forever.

GRANT OF AGRICULTURAL CONSERVATION EASEMENT

Now, therefore, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Landowner voluntarily grants and conveys to the Grantee, and the Grantee voluntarily accepts, a perpetual conservation easement, as defined by Sections 815.1 and 815.2 of the California Civil Code and Section 10211 of the California Public Resources Code, and of the nature and character described in this Easement for the purpose described below, and agree as follows:

1. *Conservation Purpose.*

The conservation purpose ("Purpose") of this Easement is to enable the Property to remain in productive agricultural use in perpetuity by preventing and correcting

uses of the Property prohibited by the provisions of this Easement. To the extent that the preservation of the open space character of the Property are consistent with such use, it is within the Purpose of this Easement to protect those values.

2. *Right to Use Property for Agricultural Purposes.*

The Landowner retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law and this Easement.

3. *Prohibited Uses.*

The Landowner shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with this Easement. Any use or activity that would diminish or impair the agricultural productive capacity of the Property and open space character protected by this Easement, or that would cause significant soil degradation or erosion, restrict agricultural husbandry practices, or that is otherwise inconsistent with the Conservation Purpose is prohibited ("Prohibited Use").

"Husbandry practices" means agricultural activities, such as those specified in Section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality.

This Easement authorizes the Grantee to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Easement shall require the Landowner to take any action to restore the condition of the Property after any Act of God or other similar event over which the Landowner had no control. The Landowner understands that nothing in this Easement relieves it of any obligation or restriction on the use of the Property imposed by law.

4. *Permission of the Grantee.*

Where the Landowner is expressly required to obtain the Grantee's permission for a proposed use hereunder, said permission (a) shall not be unreasonably delayed or withheld by the Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by the Landowner prior to the Landowner's undertaking of the proposed use. The Grantee shall grant permission to the Landowner only where the Grantee, acting in the Grantee's sole reasonable discretion and in good faith, determines that the proposed use is not a "Prohibited Use" as defined in Section 3.

5. *Construction or Placement of Buildings and Other Improvements.*

The Landowner may undertake construction, erection, installation, or placement of buildings, structures, or other improvements on the Property only as provided in subsections (a) through (c) below. All other construction, erection, installation, or placement of buildings, structures, or other improvements on the Property is prohibited. Before undertaking any construction, erection, installation or placement that requires permission, the Landowner shall notify the Grantee and obtain prior written permission from the Grantee.

For purposes of this section, the term “improvements” shall not refer to, and specifically excludes, crops, plants, trees, vines, or other living improvements planted for agricultural purposes, nor shall it refer to irrigation improvements necessary or desirable to irrigate the Property for agricultural purposes, all of which may be made without permission of the Grantee.

- (a) Fences – Existing fences may be repaired and replaced without permission of the Grantee. New fences may be built anywhere on the Property for purposes of reasonable and customary agricultural management, and for security of farm produce, livestock, equipment, and improvements on the Property, without permission of the Grantee.
- (b) Agricultural Structures and Improvements – Existing agricultural structures and improvements as shown in Exhibit C and more fully described in the Baseline Report, may be repaired, reasonably enlarged, and replaced at their current locations. New buildings and other structures and improvements to be used solely for agricultural production on the Property or sale of farm products predominantly grown or raised on the Property, including barns, equipment sheds, hoop houses and other non-permanent greenhouse structures that do not have solid foundations or concrete flooring, but not including any dwelling or farm labor housing, may be built, repaired, reasonably enlarged, and replaced on the Property only and entirely within the Agricultural Building Envelope. Any other agricultural production or marketing-related structures may be constructed only with permission of the Grantee pursuant to Section 4, and then only and entirely within the Agricultural Building Envelope.
- (c) Utilities – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, energy generation, or other utility services solely to serve the improvements permitted herein or to transmit power generated on the Property may be installed, maintained, repaired, removed, relocated and replaced.

6. *No Subdivision.*

The division, subdivision, defacto subdivision, or partition of the Property,

including transfer of development rights, whether by physical, legal, or any other process, is prohibited.

The Landowner and Grantee acknowledge and understand that the Property consists of a portion of one legal parcel, and that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance or conditional certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. The Landowner will not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. The Landowner shall continue to maintain the legal parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel.

Lot line adjustment may be permitted only with the written approval of the Grantee pursuant to Section 4, in conjunction with the approval of the local jurisdiction, and for purposes of maintaining, enhancing or expanding agricultural practices or productivity on the Property.

7. *Extinguishment of Development Rights.*

The Landowner hereby grants to the Grantee all development rights except as specifically reserved in this Easement, that were previously, are now or hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred by either party to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

8. *General Prohibition on Surface Mining.*

Except as specifically authorized herein, the mining, removal or extraction on or from the area subject to this Easement of soil, sand, gravel, aggregate, rock, oil, natural gas, fuel, or any other mineral substance, through a surface mining, removal or extraction method or from above a depth of 150 feet below the surface of the Property is prohibited. This prohibition includes the installation of roads or pipelines for transportation of the aforesaid resources.

This section is not intended to interfere with Landowners' right to remove cobble and hardpan from farm areas in order to prepare the land for agricultural purposes.

9. *Paving and Road Construction.*

Other than existing roads identified in the Baseline Report, no portion of the

Property presently unpaved shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, unless such measures are required by air quality laws or regulations applicable to the Property. Except as otherwise permitted herein, no road for access or other purposes shall be constructed without the permission of the Grantee pursuant to Section 4. Notwithstanding the foregoing, construction of unpaved farm roads, as necessary or desirable by agricultural operations, is permitted without permission from the Grantee. The Landowner shall notify the Grantee of any significant relocation or net addition of unpaved farm roads.

10. *Trash and Storage.*

The dumping or accumulation on the Property of any kind of trash, refuse, vehicle bodies or parts, or "Hazardous Materials," as defined in Section 25 is prohibited. Farm-related trash and refuse produced on the Property may be temporarily stored on the Property subject to all applicable laws. The storage of agricultural products and byproducts produced on the Property and materials reasonably required for agricultural production on the Property, including Hazardous Materials, is permitted as long as it is done in accordance with all applicable government laws and regulations.

11. *Commercial Signs.*

Commercial signs (including billboards) unrelated to permitted activities conducted on the Property are prohibited.

12. *Recreational Uses; Motorized Vehicle Use Off Roadways*

Resort structures, athletic fields, golf courses, swimming pools, public or commercial airstrips, commercial equestrian facilities, public or commercial helicopter pads, and any other non-agricultural recreational structures or facilities are prohibited on the Property. The use of motorized vehicles off roadways and outside of the Agricultural Building Envelope is prohibited except where used for agricultural production, property maintenance and security, or for the purpose of monitoring this Easement.

13. *Water Rights.*

The Landowner shall retain and reserve all ground water, and all appropriative, prescriptive, contractual or other water rights appurtenant to the Property at the time this Easement becomes effective. The Landowner shall not permanently transfer, encumber, lease, sell, or otherwise separate such quantity of water or water rights from title to the Property itself. Permanent separation of water or water rights is prohibited. All water shall be retained in Santa Clara County for agricultural production and used in conjunction with the improvements permitted by Section 5 of this Easement only.

Water may be distributed to a contiguous property or other property owned or leased by the Landowner on an annual basis for agricultural production only. Any temporary distribution of water shall not impair the long-term agricultural productive capacity or open space character of the Property.

14. *Rights Retained by the Landowner.*

Subject to Section 7 and to interpretation under Section 23, as owner of the Property, the Landowner reserves all interests in the Property not transferred, conveyed, restricted, prohibited or extinguished by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, or otherwise transfer the Property to anyone the Landowner chooses, as well as the right to privacy, the right to exclude any member of the public from trespassing on the Property, and any other rights consistent with the Purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.

Nothing in this Easement relieves the Landowner of any obligation or restriction on the use of the Property imposed by law.

15. *Responsibilities of the Landowner and the Grantee Not Affected.*

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Landowner as owner of the Property. Among other things, this shall apply to:

- (a) Taxes – The Landowner shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee ever pays any taxes or assessments on the Property, or if the Grantee pays levies on the Landowner's interest in order to protect Grantee's interests in the Property, the Landowner will reimburse the Grantee for the same. It is intended that this Easement constitute an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that this Easement qualify as an enforceable restriction under the provisions of California Revenue and Taxation Code Sections 402.1(a)(8) and 423.
- (b) Upkeep and Maintenance – The Landowner shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property. If the Grantee acts to maintain the Property in order to protect the Grantee's interest in the Property, the Landowner will reimburse the Grantee for any such costs.
- (c) Liability and Indemnification – In view of the Grantee's negative rights, limited access to the land, and lack of active involvement in the day-to-day

management activities on the Property, the Landowner shall indemnify, protect, defend and holds harmless the Grantee and Grantee's officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively, "Agents and Assigns") from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of or in any way connected with or relating to the Property or the Easement. The Landowner shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of the Grantee and/or their respective Agents and Assigns. The Grantee shall be named as an additional insured on Landowner's general liability insurance policy.

Neither the Grantee nor their Agents and Assigns shall have responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of the Landowner, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, neither the Grantee nor their respective Agents and Assigns shall be liable to the Landowner or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against the Landowner or any other person or entity, except as the claim, liability, damage, or expense is the result of the gross negligence or intentional misconduct of the Grantee and/or their respective Agents and Assigns.

16. *Monitoring.*

- (a) The Grantee shall manage its responsibilities as holder of this Easement in order to uphold the Purpose of this Easement. The Grantee's responsibilities include, but are not limited to, annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcement of this Easement, for the purpose of preserving the Property's agricultural productive capacity and open space character in perpetuity. Failure of the Grantee to carry out these responsibilities shall not impair the validity of this Easement or limit its enforceability in any way. With reasonable advance notice (except in the event of an emergency circumstance or prevention of a threatened breach), Grantee shall have the right to enter upon, inspect, observe, monitor and evaluate the Property to identify the current condition of, and uses and practices on the Property and to determine whether the condition, uses and practices are consistent with this Easement.
- (b) Grantee shall indemnify, defend with counsel of Landowner's choice, and hold Landowner harmless from, all expense, loss, liability, damages and

claims, including Landowner's attorneys' fees, if necessary, arising out of Grantee's entry on the Property, unless caused by a violation of this Easement by Landowner or by Landowner's negligence or willful misconduct.

17. *Enforcement.*

- (a) The Grantee may take all actions, including legal actions, that it deems necessary to ensure compliance with the terms, conditions, covenants, and purposes of this Easement. The Grantee shall have the right to prevent and correct violations of the terms, conditions, covenants, and purposes of this Easement. If the Grantee finds what it believes is a violation or potential violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants, and purposes of this Easement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, the Grantee shall give the Landowner written notice of the violation or potential violation, and thirty (30) days to correct it, before filing any legal action.
- (b) If a court with jurisdiction determines that a violation may exist, has occurred, or is about to occur, the Grantee may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) money damages, including damages for the loss of the agricultural conservation values protected by this Easement, (ii) restoration of the Property to its condition existing prior to such violation, and (iii) an award for all of the Grantee's expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or potential violation, or to take immediate legal action to prevent or correct a violation or potential violation known to the Grantee, shall not bar the Grantee from taking subsequent legal action. The Grantee's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- (c) Without limiting the Landowner's liability, the Grantee shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, the Grantee shall apply any and all damages recovered to furthering the Purpose of this Easement.
- (d) Failure or refusal to exercise any rights under the terms of this Easement by the Grantee in the event of a violation by the Landowner of any term herein shall not constitute a waiver or forfeiture of the Grantee's right to enforce any term, condition, covenant, or purpose of this Easement.

18. *Transfer Fee.*

- (a) Grantor and Grantee recognize and agree that any transfer of the Property and any division of ownership will result in an additional burden on the monitoring and enforcement responsibilities of Grantee. Therefore, there shall arise, by virtue of any transfer for consideration of all or a portion of the Property, or interest therein (other than a lease for a total term, including any options to renew or extend, not exceeding thirty-five (35) years) a fee which is referred to herein as the "Transfer Fee." The Transfer Fee shall be the obligation of the seller of the Property and shall be payable to Grantee or subsequent holder of this Easement. The Transfer Fee shall be equal to one percent (1%) of the consideration paid in connection with the transfer of any interest in the Property and shall be paid to Grantee concurrently with the close of escrow or other consummation of the sale of the Property. For example, if the Property has a purchase price/consideration paid of two hundred fifty thousand dollars (\$250,000.00), the Transfer Fee would be two thousand five hundred dollars (\$2,500.00). The Transfer Fee shall be paid to Grantee at the address for giving notices to Grantee as set forth hereinbelow. Grantor and Grantee agree to execute and record along with this Easement a "NOTICE OF PAYMENT OF TRANSFER FEE REQUIRED" in accordance with California Civil Code section 1098.5 respecting the Transfer Fee.
- (b) Grantor or any subsequent purchaser shall provide reasonable written proof of the sales price of the Property, including but not limited to executed closing statements, contracts of sale, copies of deeds or other similar evidence satisfactory to Grantee. An exchange of properties pursuant to Internal Revenue Code section 1031, or similar statute, shall be deemed to be for consideration based on the appraised market value of the Property at the time of the exchange. Market value shall be determined by agreement of Grantor and Grantee, or in the absence of such agreement, by an appraiser selected by Grantee that is State certified, designated, and qualified to value the real property, whose appraisal fee shall be paid by Grantee.
- (c) Any of the following transfers, subsequent to the conveyance of this Easement, shall be exempt from the assessment of such Transfer Fee: (i) a transfer without consideration (e.g. an inter vivos gift, testamentary, inheritance or joint tenancy conveyance); (ii) any transfer of any portion of the Property made as a result of condemnation or eminent domain proceedings, including any negotiated transfer made to an entity with condemning authority in response to actual or threatened condemnation proceedings by that entity; (iii) a sale or other conveyance or exchange from one or more of the original Grantors or their issue to any other one or more of the original Grantors or their issue; or (iv) a sale or other conveyance or exchange to the issue of any Grantor or any trust established for the exclusive benefit of the issue of any Grantor.

- (d) In the event of non-payment of the Transfer Fee in accordance with this Section, Grantee shall have the right to record a lien against the Property in the amount equal to the unpaid Transfer Fee plus any and all reasonable costs and attorney's fees necessary to prepare and enforce the lien of the Transfer Fee. The lien shall be recorded in accordance with California Civil Code sections 2872 et seq. The lien shall be subordinate to this Conservation Easement and any other prior liens, encumbrances, mortgages and deeds of trust of record and any subsequent mortgages or deeds of trust. A copy of the lien shall be mailed via certified mail, return receipt requested, to the purchaser at his last known address upon recordation of the lien. After the expiration of thirty (30) days following the mailing of a copy of the lien, the lien may be enforced in any manner permitted by law, including without limitation a sale by the court or sale by the trustee designated by Grantee in the lien, in the sole exercise of its discretion, in accordance with the provisions of section 2924 of the California Civil Code.

19. *Transfer of Easement.*

- (a) This Easement may only be assigned or transferred to an entity authorized to hold such Easement as specified under Section 10211 of the Public Resources Code and has similar purposes to preserve, is capable of managing the Easement, and protecting the mitigation of the impacts to agricultural lands and open space. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on the Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the Purpose for which it was created. All assignment and assumption agreements transferring the Easement shall be recorded in Santa Clara County within thirty (30) days.
- (b) If the Grantee should desire to assign or transfer this Easement, the Grantee must obtain written permission from the Landowner, which permission shall not be unreasonably withheld.
- (c) If the Grantee or its successors ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, the City, in consultation with the Landowner, shall identify and select an appropriate private or public entity to whom this Easement shall be transferred.

20. *Perpetual Duration and No Merger of Title.*

- (a) Pursuant to California Civil Code at Part 2, Chapter 4, (commencing with section 815), which defines and authorizes perpetual conservation easements, and California Government Code Section 65966 (a) that requires conservation easements to be perpetual when created to satisfy a local or state mitigation requirement; this Easement shall run with the land in perpetuity. Every

provision of this Easement that applies to the Landowner or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

- (b) No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to the Grantee, or its successors or assigns. It is the express intent of the parties that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by the Grantee or its successors or assigns.

21. *Transfer of Property Interest.*

- (a) Any time the Property itself, or any interest in it, is transferred by the Landowner to any third party, the Landowner shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Property or interest, and the document of conveyance shall expressly incorporate by reference this Easement. Any document conveying a lease of the Property shall expressly incorporate by reference this Easement. Failure of the Landowner to do so shall not impair the validity of this Easement or limit its enforceability in any way.
- (b) Prior to any sale, lease, license or other transfer of any interest in the Property, the Landowner shall inform the prospective transferee of this Easement and its terms and provide them with a copy of this Easement. Any such subsequent owners, lessees, licensees, or transferees shall succeed to and be bound by the terms of the Easement.

22. *Amendment of Easement.*

- (a) This Easement may be amended only with the written consent of the Landowner, the Grantee and the City of Morgan Hill. Any such amendment shall be consistent with the Purpose of this Easement and with the Grantee's easement amendment policies, and shall comply with all applicable laws, including Section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with Section 815 et seq. of the California Civil Code, and the California Farmland Conservancy Program Act as codified in Section 10200 et seq. of the California Public Resources Code, and any regulations promulgated thereunder. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement, nor the status or rights of the Grantee under the terms of this Easement.
- (b) This Easement and any amendment to it shall be recorded in Santa Clara County.

23. *Termination of Easement and Eminent Domain.*

(a) Termination.

- (i) It is the intention of the parties that the Conservation Purpose of this Easement shall be carried out forever as provided in the Section 10211 of the California Public Resources Code, Section 815 et seq. of the California Civil Code and California Government Code Section 65966 (a). Pursuant to California Government Code Section 65966 (a), this Easement is established to satisfy a local or state mitigation requirement, and cannot be terminated pursuant to the administrative termination provision defined in Public Resources Code sections 10270 et seq.

Accordingly, Landowner expressly waives on behalf of Landowner and Landowner's successors and assigns all rights to terminate or extinguish this Easement, or request that this Easement be terminated or extinguished pursuant to the administrative termination provisions set forth in sections 10270 et. seq. of the Public Resources Code.

- (ii) If circumstances arise in the future that render all of the Purposes of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, on the initiative of the Grantee or the Landowner, but only by judicial proceedings in a court of competent jurisdiction. The Grantee shall give notice to the City of any prospective termination or extinguishment of this Easement not less than 60 business days before initiating such proceedings. The City may intervene in any such judicial proceedings to protect or retain this Easement.
- (iii) No inaction or silence by the Grantee shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural use, or that agricultural use is no longer possible, is not reason for termination or extinguishment of this Easement so long as any of the Purposes of this Easement remains possible to accomplish. Other than pursuant to eminent domain or an involuntary acquisition for a necessary public use by public agency, corporation, or other entity or individual with the power of eminent domain (Acquiring Entity), no other voluntary or involuntary sale, exchange, conversion, transfer, assignment, lease, mortgage or other encumbrance, alienation or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate or extinguish the provisions of this Easement.
- (iv) Should all or part of the Property or any interest in it be proposed for acquisition for a necessary public use by an Acquiring Entity, the Landowner and the Grantee shall join in appropriate actions to recover the full value of the proposed acquisition and all incidental or direct damages

resulting from the proposed acquisition as well as all other payments to which they may be entitled by law (Compensation). The Acquiring Entity shall pay Compensation directly to the Landowner and the Grantee. The Compensation of such proceeding of the Landowner and the Grantee shall be divided in accordance with the proportionate values of the Landowner's and the Grantee's interests as specified in this Section 22(b), unless otherwise provided by applicable law.

- (v) If the Landowner receives notice, formal or informal, that any Acquiring Entity intends to exercise its power of eminent domain as to the Property or any portion thereof or any interest therein, Landowner shall promptly, and in any event in not less than fifteen (10) business days after receipt of such notice, give written notice to the Grantee, and the City of such receipt together with a copy of any and all communications related to such prospective eminent domain proceedings. The Landowner shall thereafter promptly provide to the Grantee and the City copies of all further communications related to such proceedings and cooperate with the Grantee and the City in responding to such proceedings.
- (vi) Acquisition of the Easement through the power of eminent domain is subject to the requirements of Section 10261 of the California Public Resources Code, the eminent domain laws of the State of California, including Section 1240.510 or Section 1240.610 of the Code of Civil Procedure, federal law, and this Easement. The Property may not be taken by eminent domain or in lieu of eminent domain if the planned use is more than seven (7) years in the future (California Code of Civil Procedure section 1240.220). Purchase in lieu of condemnation, or settlement of an eminent domain proceeding, shall occur pursuant to applicable laws and procedures, including but not limited to California Government Code sections 7267.1 and 7267.2, and shall require approval of the Grantee and the City. The Grantee shall have an opportunity to accompany the appraiser for the Acquiring Entity when the appraiser goes on the Property with Landowner.
- (vii) Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement and reimbursement shall be pro-rated. In this event, all relevant related documents shall be updated and re-recorded by the Grantee to reflect the modified easement area. Encumbrances junior to this Easement shall remain subordinate to the Easement as amended.

(b) Compensation.

- (i) The grant of this Easement gives rise to a property right immediately vested in Grantee.

- (ii) Compensation of the Grantee shall proceed as follows. The Easement and Grantee's property right therein shall have a value equal to the difference between the current fair market value of the Property unencumbered by this Easement and the current fair market value of the Property encumbered by this Easement, each as determined on or about the date of termination. The values shall be determined by an appraisal performed by an appraiser jointly selected by Grantor and Grantee. The cost of the appraisal shall be paid by Grantor. The appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. Nothing herein shall prevent Grantor or Grantee from having an appraisal prepared at its own expense.
- (iii) If the Grantee obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be distributed as set forth this Section 22(b).

24. *Interpretation.*

- (a) This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.
- (b) References to specific authorities in this Easement shall be to the statute, rule, regulation, ordinance, or other legal provision that is in effect at the time this Easement becomes effective.
- (c) No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

25. *Notices.*

Any notices to the Landowner and the Grantee required by this Easement shall be in writing and shall be personally delivered or sent by First-Class Mail to the following addresses, unless a party has been notified by the other of a change of address:

To the Landowner:

To the Grantee:

26. *The Landowner's Environmental Warranty.*

- (a) Nothing in this Easement shall be construed as giving rise to any right or ability in the Grantee to exercise physical or management control over the day-to-day operations of the Property, or any of the Landowner's activities on the Property, or otherwise to become an "owner" or "operator" with respect to the Property as those words are defined and used in environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended or any corresponding state and local statute or ordinance.
- (b) The Landowner warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property. Moreover, the Landowner hereby promises to defend and indemnify the Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws. The Landowner's indemnification obligation shall not be affected by any authorizations provided by the Grantee to the Landowner with respect to the Property or any restoration activities carried out by the Grantee at the Property; provided, however, that the Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by the Grantee.
- (c) "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or any other material defined and regulated by Environmental Laws.
- (d) The Landowner warrants that it shall remain in compliance with, all applicable Environmental Laws. The Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.
- (e) "Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct

(including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

- (f) If at any time after the effective date of this Easement there occurs a release, discharge or other incident in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, the Landowner agrees to take any steps that are required of the Landowner with respect thereto under federal, state, or local law necessary to ensure its containment and remediation, including any cleanup.

27. The Landowner's Title Warranty; No Prior Conservation Easements.

The Landowner represents and warrants that it owns the entire fee simple interest in the Property, including the entire mineral estate except as otherwise expressly identified in this Easement, and hereby promises to defend this Easement against all claims that may be made against it.

Any and all financial liens or financial encumbrances with priority over this Easement existing as of the date of the recording of this Easement have been subordinated. Exhibit D (Prior Encumbrances) sets forth all prior encumbrances.

The Landowner represents and warrants that the Property is not subject to any other conservation easement whatsoever.

28. Granting Subsequent Easements, Interests in Land, or Use Restrictions.

- (a) With permission of the Grantee pursuant to Section 4, the Landowner may grant subsequent easements, including conservation easements, interests in land, or use restrictions on the Property. Under no circumstances shall the Grantee approve the granting of subsequent easements, interests in land, or use restrictions that might diminish or impair the agricultural productive capacity or open space character of the Property.
- (b) The Grantee's written approval shall be obtained at least thirty (30) days in advance of the Landowner's execution of any proposed subsequent easement, interests in land, or use restriction on the Property, and such subsequent easements, interests in land, and use restrictions shall make reference to and be subordinate to this Easement.

29. *Severability.*

If any term, provision, covenant, condition, or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of this Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

30. *Entire Agreement.*

This Easement, including the attached exhibits and the Baseline Report, is the final and complete expression of the agreement between the parties with respect to the subject matter contained herein. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superseded by this written instrument.

The exhibits attached to and included in this Easement are:

Exhibit A - Legal Description

Exhibit B - Vicinity Map

Exhibit C - Agricultural Building Envelope and Existing Improvements

Exhibit D - Prior Encumbrances

31. *Acceptance.*

As attested by the signature of its General Manager affixed hereto, as authorized by Grantee's Board of Directors, in exchange for consideration, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Agricultural Conservation Easement.

To Have and To Hold, this Deed of Agricultural Conservation Easement unto the Grantee, its successors and assigns, forever.

In Witness Whereof, the Landowner and the Grantee, intending to legally bind themselves, have set their hands on the date first written above.

LANDOWNER

[Landowner's Name].

By: _____

Name: _____

Title: _____

GRANTEE

By: _____

Name: _____

Title: _____

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 _____)

On _____ before me, _____, 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 _____

ACKNOWLEDGEMENT

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 _____)

On _____ before me, _____, 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 _____

Exhibit A
(Legal Description)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Exhibit B
(Vicinity Map)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Exhibit C
(Agricultural Building Envelope and Existing Improvements)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Exhibit D
(Prior Encumbrances)

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: John Baty, Principal Planner/Development Services

APPROVED BY: City Manager

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

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive the first and second reading of Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance; and
3. Introduce Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Background/Purpose

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

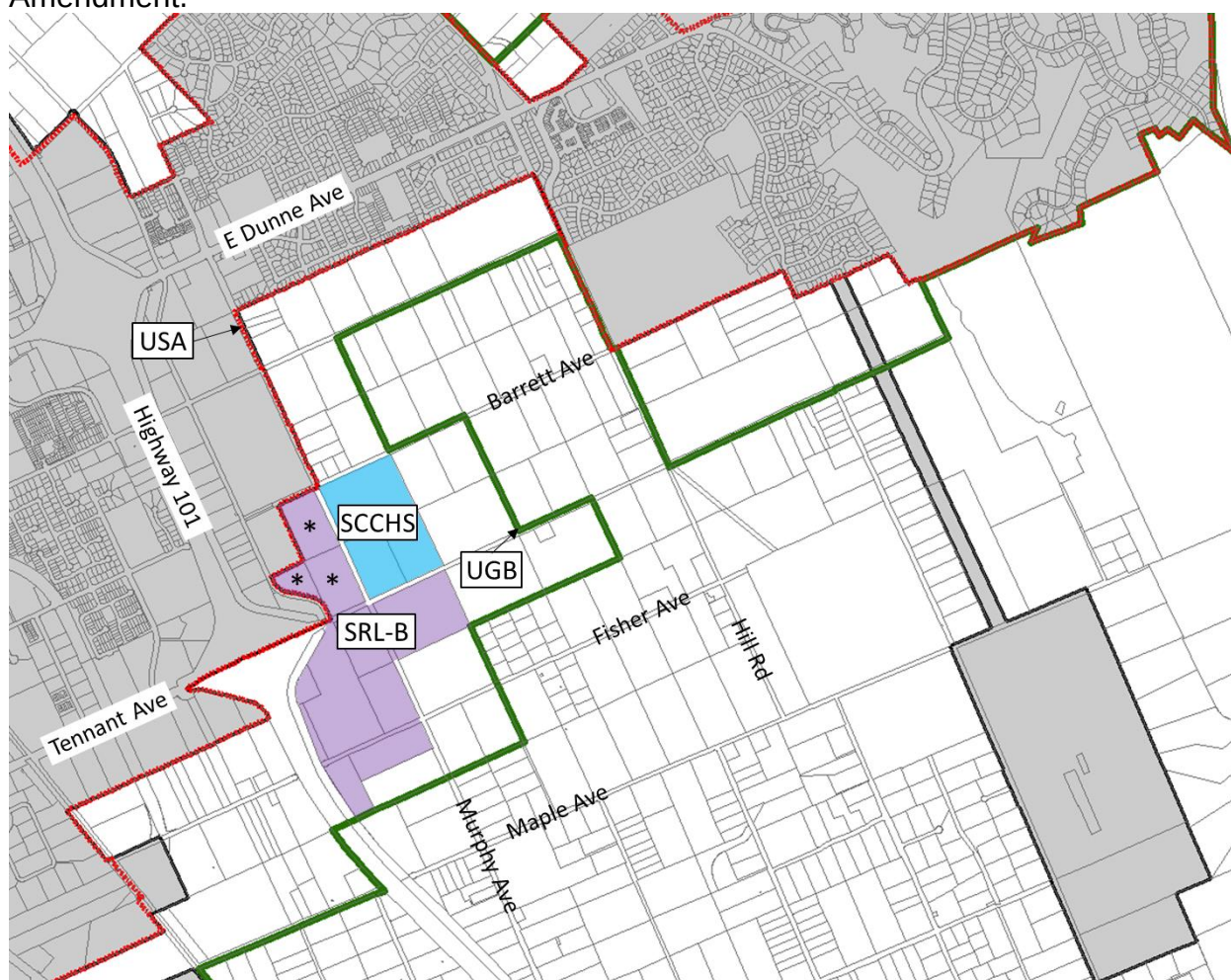
On August 5, 2015, the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B). These parcels,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

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

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

Rather than create a new zoning district (text amendment) and apply that new zoning district to the three specific parcels described above and shown on the map below (map amendment), staff recommends modifying the uses allowed in the existing SRL-B Zoning District (text amendment) that would then be applicable to all properties that are pre-zoned SRL-B. All properties, including the three specific parcels, that are pre-zoned SRL-B are currently located in the same general area (on both sides of Tennant Avenue east of Highway 101).

As described in the prior commission actions section below, at their October 9, 2018 meeting, the Planning Commission did not recommend approval of the proposed Zoning Amendment.



* = APNs 817-13-008, -011, and -037 / UGB = Urban Growth Boundary / USA = Urban Service Area

Project Description

The proposed Zoning Amendment consists of modifications to the uses allowed in the existing SRL-B Zoning District as shown in Exhibit A to the attached Draft Ordinance.

The following commercial uses would no longer be allowable:

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

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

Analysis

The City may approve Zoning Amendments only after finding that the proposed amendment is: consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and is internally consistent with other applicable provisions of the Zoning Code.

The amendment is consistent with the City of Morgan Hill's General Plan in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses that are allowed within the SRL General Plan Land Use designation. The proposed change would not create any non-conforming uses on the parcels within the existing zoning district.

The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City.

The proposed changes to the uses allowed within the SRL-B District do not affect internal consistency with other provisions of the Zoning Code.

COMMUNITY ENGAGEMENT: Inform

Notice of this hearing and the prior Planning Commission hearing was published in the newspaper and mailed notices were sent to potentially affected property owners.

ALTERNATIVE ACTIONS:

Direct staff to return with a Zoning Text Amendment to establish a new SRL Sports Recreation and Leisure Sub-zone (e.g., SRL-C) and a Zoning Map Amendment to apply that pre-zoning to APNs 817-13-008, -011, and -037. Like the existing SRL-B District, the SRL-C District would allow a range of lower intensity sports, recreation, leisure, agricultural and natural resources uses, but would not allow certain intensive commercial uses including: drive-through establishments; gas and service stations; hotels and motels; restaurants; retail that is sports-themed or sports/recreation serving;

day spas, barbershops, and hair salons; health and fitness clubs and indoor recreation centers oriented to local residents; and, indoor swimming pools.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The proposed Zoning Amendment was considered by the Planning Commission at their regular meeting held on October 9, 2018. The Planning Commission, on a 5-2 vote, did not recommend City Council approval of the proposed Zoning Amendment with the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant (SEQ) should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district (or a Planned Development (PD) Combining District) that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.
- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area

FISCAL AND RESOURCE IMPACT:

Not applicable.

CEQA (California Environmental Quality Act):

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

ORDINANCE NO. 2290, NEW SERIES

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

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

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

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

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

WHEREAS, rather than create a new zoning district and apply that new zoning district to three specific existing SRL-B pre-zoned parcels, staff advised that the desired modifications to the uses allowed in the existing SRL-B Zoning District be applicable to all properties currently pre-zoned SRL-B, which all exist in the same general area as the three specific parcels; and

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

WHEREAS, the SRL-B district will continue to not allow new residential land uses with the exception that one single-family detached dwelling on a legal lot of record established in the

County prior to August 1, 2014 remains a permitted use; and

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

WHEREAS, the City may approve Zoning Amendments only after finding that the proposed amendment is consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and, is internally consistent with other applicable provisions of the Zoning Code; and

WHEREAS, the Zoning Code Text Amendment complies with the City's Morgan Hill 2035 General Plan as required by Government Code Section 65860, in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses allowed within the SRL General Plan Land Use designation; and

WHEREAS, the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City; and

WHEREAS, the Zoning Amendment, was considered by the Planning Commission at their regular meeting of October 9, 2018 at which time the Planning Commission on a 5-2 vote did not recommended City Council approval of application ZA2018-0005: City of Morgan Hill for the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district or a Planned Development (PD) Combining District that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.

- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area.; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The Zoning Amendment is consistent with the Morgan Hill 2035 General Plan.

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

SECTION 3 The Zoning Amendment will be internally consistent with other applicable provisions of the Zoning Code as provided in Section 18.114.060.

SECTION 4. The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).

SECTION 5. The City Council hereby amends Title 18 – Zoning, Division I Zoning Code, Part 2 Zoning Districts, Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts to modify the uses allowed in the SRL-B – Sports Recreation and Leisure Sub-zone B Zoning District, of the Morgan Hill Municipal Code (File No. ZA2018-0005: City of Morgan Hill) as shown in the attached Exhibit A, incorporated herein by reference.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 24th DAY OF OCTOBER 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF NOVEMBER 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2290, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 7th day of November 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

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

Sections:

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

18.28.020 – Land Use Regulations

18.28.030 – Development Standards

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

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

18.28.020 –Land Use Regulations

A. Open Space and Public Facility Zones.

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

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

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

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

Notes:

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

- D. Additional Permits.** In addition to permits identified in Tables 18.28-1 and 18.28-2, development projects in the open space, public, and recreation zoning districts may also require a Design Permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60. (Historic Resources).
- E. Hillside Combining District.** Development on site with an average slope of 10 percent or greater are subject to the requirements of Section 18.30.040 (Hillside Combining District).

18.28.030 Development Standards

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

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

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

Notes:

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

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

- B. Performance Standards in OS Zoning District.** The following standards apply to all development and land uses in the OS zoning district.
1. **Stormwater Runoff.** In addition to requirements in Chapter 18.140 (Post Construction Stormwater Pollution Prevention), development shall comply with the following standards:
 - a. Permanent vegetation and improvements capable of carrying stormwater runoff in a safe manner shall be installed to the extent possible before the vegetative cover is removed from the area.

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

May 11, 2016

To Whom It May Concern:

RE: Vacant Industrial/Commercial Properties in Morgan Hill

It is my understanding that the LAFCO Commission and staff, at their March 2016 hearing, encouraged the City of Morgan Hill to change their land use strategy on some of their vacant industrial and commercial sites. I understand further that the Commission specifically denied an “option” to approve a proposed 38-acre Catholic High School because the Commission felt the high school should be located on a site within the City’s vacant commercial or industrial properties.

For the past 25 years I (working for Colliers International) have been one of the most active real estate brokers of industrial and commercial property in south Santa Clara County. I represent currently large, multi-parcel business parks as well as large-to-small individual parcels and industrial buildings in Morgan Hill and Gilroy.

As a professional who is active in this South County market, I think it is short-sighted and impractical to redirect these vacant sites to future uses as schools or baseball fields. The current vacant supply of industrial and commercially-zoned properties is part of the normal business cycle. In the early-to-mid 1990’s Morgan Hill started to realize its goal of having a balanced community with both jobs and housing. It did so with the creation of several attractive business parks. The new business parks were successful in attracting a number of new companies. In so doing, Morgan Hill began to balance its housing supply, which in prior years primarily served central and north Santa Clara County employment. The period between 1995 to about 2001 accounted for much of its new employment, on roughly 200 acres. Shortly thereafter all of Silicon Valley went through two significant economic downturns and Morgan Hill experienced little new industrial/office building. Finally, the overall market started to turn and the vacant sites are positioned for expansions or new companies.

Some of the current vacant parcels are being held specifically for expansion of the adjoining companies. A number of the vacant parcels are within special assessment finance districts, whose property-owners support the bonds used for the public improvements. These current property owners are relying on similar industrial or office neighbors for financial stability. They will resist potential conflicts from adjacent schools or playfields and unexpected safety or environmental regulations normally associated with such public uses.



May 11, 2016

Page 2 of 2

There are no remaining vacant 40-acre industrial/commercial sites in Morgan Hill – whether as individual or consolidated parcels. I represent two of Morgan Hill’s largest consolidated sites, both of which are located in Morgan Hill Ranch, a business park I have been associated with for over 20 years. Neither of these two sites is large enough for a high school nor are they well suited for such a use. The largest site (33-net acre/36.5 gross acres) is located at the southwest corner of Butterfield Boulevard and Jarvis Drive and is being actively marketed by the property owner for industrial development. The site’s current configuration is a result of a 2015 rezoning of an additional 19.5 gross acres from industrial to residential. This recent rezoning was opposed by some of the current business park companies. In making this rezoning, both the property owner and the Morgan Hill City Council committed that there would be no further industrial parcel reductions on the site.

The second Morgan Hill Ranch site I represent is a 20-acre commercial site and too small for a 40-acre high school. This site (3 contiguous parcels) is located at Cochrane Road and Butterfield and it now has a purchase contract of sale pending. Therefore, it is no longer available.

In summary, I can envision no circumstances under which either of these two larger sites would be available for a high school. (Of course, the various smaller (less than 5-10 acres) vacant industrial/commercial sites scattered throughout the City do not lend themselves for larger-scaled uses such as schools or playfields.) Therefore, the LAFCo proposal would be unworkable.

I would be pleased to provide additional information should it be helpful.

Sincerely,

COLLIERS INTERNATIONAL

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CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: October 17, 2018

PREPARED BY: Anthony Eulo, Program Administrator

APPROVED BY: City Manager

UPDATE ON AGRICULTURAL PRESERVATION STRATEGY AND POTENTIAL RELATED LAND USE CONSIDERATIONS

RECOMMENDATION(S)

1. Accept report on the City's Conservation Strategy; and
2. Provide policy direction to staff.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

POLICY CONSIDERATIONS:

1. Should the City consider contracting the City's current Urban Growth Boundary?
2. Should the City convert the property purchased for ballfields on Tennant Avenue from a recreational use to an agricultural use?

REPORT NARRATIVE:

The City of Morgan Hill has a long, successful history of preserving open space in the general Morgan Hill environs. With much of the hillside areas preserved via ownership, easements, or regulation, the City has been steadily shifting toward the preservation of key agricultural properties since the turn of the century. The purpose of this report is to provide the Council and the community with an update on the City's current agricultural protection strategy and to get the Council's direction on some key policy questions.

Agricultural Strategy

With the Council's adoption of the City's *Agricultural Lands Preservation Program* in 2014, the City was officially in the business of actively preserving agricultural lands in the Morgan Hill Priority Conservation Area (MHPCA) – not just on the surrounding hills and open space areas. This seminal program remains on the forefront of agricultural discussions in the County and the City's follow-up implementation actions have placed it at the head of the pack amongst Santa Clara County cities. Actions taken since 2014 include:

- Adopted an Agricultural Mitigation ordinance that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;

- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and identify potential and negotiate conservation easements;
- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development;
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal and allocated over \$1 million in funding;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the City's Agricultural Conservation Priority Areas and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

As described in the attached Conservation Strategy, the City plans the following activities in the coming months:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue;
- Collect mitigation fees or accompanying preservation easements for projects developed on agricultural lands;
- Begin to implement a Transfer of Development Credit program, as enacted by Measure S, to raise additional funding for agricultural preservation; and

- Identify additional parcels in the City's Priority Area that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

With all of the above planned activities, the City can expand its preserved acreage substantially in the coming years. However, some members of the community and others in Santa Clara County argue that the City can do more to preserve agriculture.

Policy Questions

Should the Urban Growth Boundary be contracted?

The City's current Urban Growth Boundary (UGB) is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur and includes land that is currently in agricultural production. By contracting the UGB, the City could signal that urban development in those agricultural production areas is not part of the City's long-term growth plans, which could reduce property values and increase the chance that the land will remain in agricultural production. If the Council wants to consider such a contraction, further direction on the size of the contraction and its associated timing is needed in order to enable staff to move forward.

This is a multifaceted policy question without a clear "science-based" answer. While it would seem that contracting the UGB could only help, not hurt, agricultural preservation efforts, it is also true that 58% of the agricultural land lost in the past two decades has been due to rural development in the County – not urban expansion. Given this statistic, one could argue, as the City unsuccessfully did in the past, that annexing the land into the City could be the best approach to preserving the majority of the land for agricultural purposes as the City could strategically allow some land to develop in order to permanently protect remaining lands. In the absence of the placement of a permanent conservation easement on a property, it remains at risk for development as a rural estate or other allowed use that is consistent with County zoning. In addition, the State's current housing crisis and the threat of "forced urbanization" through legislation only adds to the risk of agricultural land conversion on land that is not permanently preserved with an easement. Nonetheless, it is undeniable that contracting the UGB will reduce the potential for agricultural lands to be lost as a result of the urban expansion within the City.

If the Council is interested in contracting the UGB, staff will perform the necessary analyses and bring back an item for Council consideration detailing optional approaches.

Should the City consider placing an agricultural preservation easement on the ballfield property?

The 26-acre property that the City purchased on the southwest corner of Condit and Tennant is within the area of the UGB that would be considered for contraction. Since the City has long been working on a site for ballfields and both the baseball and softball

community are looking forward to the development of a ballfield site, vacating plans for the existing site only makes sense if an alternate site can be identified. Staff has reviewed opportunities within the City and it is highly unlikely that a site within the City will be available and within a price range near what was paid for the current site. A scenario may be possible where a smaller land acquisition tied with a shared-use agreement with the Saint John XXIII College Preparatory High School involving lands currently proposed to be annexed to the City could meet the needs of the community for ball fields. It should also be noted that the existing Ball Field site provides buy back rights to the former property owner for a small portion of the site for future commercial use if eventually annexed, which would need to be addressed. The freeway adjacency for this commercial along with the sports tourism benefits of another large recreation facility could provide future economic development benefits that may not be obtained if the site is converted.

If this property is retracted from the UGB, it is no longer appropriate or legal for the park impact funding to remain on the property and the park impact fund would need to be reimbursed for the purchase. One solution would be to place an agricultural easement on the property and then resell the land to a farmer or other entity interested in owning agricultural land. Since the City paid \$238,000 per acre for the land, this would be a very expensive agricultural conservation easement. The actual costs of the easement would not be known until the land is resold. In this scenario, the City would also solicit funding from the Santa Clara Valley Water District to use the land as a special “stormwater infiltration basin” that could accept local rainwater and hold it until it percolates into the groundwater aquifer.

If the Council is interested in repurposing the ballfield property, staff will perform the necessary analyses and bring back an item for Council consideration.

COMMUNITY ENGAGEMENT: Inform

As this report is requesting direction from the Council on potential future actions, an extensive community engagement effort was not implemented in advance. However, the City directly informed landowners in the area, via a letter, indicating that the Council may be considering changes to the land use policies affecting their property during tonight’s meeting.

ALTERNATIVE ACTIONS:

Not Applicable – this report involves accepting a report on current activities and providing policy direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On November 5, 2014, the City’s Agricultural Lands Preservation Program was adopted.
- On August 5, 2015, Agricultural Lands Mitigation Ordinance was adopted.
- On July 27, 2016, the current UGB was adopted as part of the City’s General Plan Update process.

FISCAL AND RESOURCE IMPACT:

None at this time, though actions potentially taken as a result of Council direction will have fiscal impacts. These actions will return to the Council and the fiscal impacts will be analyzed and presented at that time.

CEQA (California Environmental Quality Act):

Not a Project

Both the acceptance of a status report on an existing program and directing staff to conduct analyses and bring back reports for future Council action do not constitute projects under the CEQA guidelines.

LINKS/ATTACHMENTS:

1. Ag Conservation Strategy
2. 22 Supplement 1

Morgan Hill's Conservation Strategy



Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Morgan Hill's Conservation Strategy

Introduction

Morgan Hill is located within the southern part of Santa Clara County, 10 miles south of San Jose and 10 miles north of Gilroy. Morgan Hill is nestled between the Diablo Mountain Range and the Santa Cruz Mountains, and has a rich history of farming and manufacturing. While Morgan Hill is a part of the Silicon Valley in its business mix, rich entrepreneurial spirit and thirst for innovation, the city's natural geography and open space make it a unique place. The City has made many thoughtful decisions on open space preservation, water and agricultural land conservation, and environmental stewardship.

This whitepaper on Morgan Hill's Conservation Strategy outlines the City's approach to ensuring future open space and agriculture lands remain in South Santa Clara County. The white paper is broken down into policy and plan adoptions, tools that support those policies and plans, and finally challenges and key considerations on environmental stewardship for Morgan Hill.

Policies and Plan Adoptions

A. Agriculture Preservation

As community interest in preserving the agricultural open space areas on the valley floor grew and national interest in farmland preservation increased, the City spent several years evaluating strategies for protecting the agricultural lands surrounding the community. The culmination of this work, the City's *Agricultural Lands Preservation Program* (Program), was adopted by the City Council on November 5, 2014 ([Exhibit 1](#)). In concert with the Morgan Hill [2035 General Plan Update](#) ([Exhibit 2](#)), the City formally identified two Priority Conservation Areas (MHPCA) located adjacent to the City boundary, as the primary focus of future agricultural conservation easement acquisition. While located outside of City limits but within the City's Sphere of Influence, these lands had been the most significantly impacted by development pressure and conversion, and of growing concern to the preservation efforts.

In the years since the Program and General Plan update were adopted, the City has implemented the Program by engaging in the following tasks:

- Adopted an Agricultural Mitigation ordinance ([Exhibit 3](#)) that requires any new development on agricultural lands located within the City's boundaries to either directly mitigate acre for acre (1:1) the conversion of agricultural lands with the purchase of a conservation easement or pay a mitigation fee of \$14,960 per acre;
- Hired a noted agricultural lands conservation consultant (Tom Scharffenberger) to guide the City's efforts, contact local landowners on the City's behalf, and negotiate conservation easements;

Morgan Hill's Conservation Strategy

- Collaborated with the County and Open Space Authority to submit a grant to preserve 71 acres of the Fountain Oaks Ranch (in the MHPCA) including the City commitment and dedication of \$3 million in City preservation funds to be the primary source of matching funds for the grant;
- Offered over \$1.5 million for the purchase of a cherry orchard on Fisher Avenue which was, unfortunately, declined by the property seller;
- Identified all large vacant parcels in the MHPCA and their owners to prepare for additional transactions; and
- Participated in the development of the County and Open Space Authority's *Santa Clara Valley Agricultural Plan*.

To date, the outcomes from the Program have resulted in:

- Purchased a 12-acre parcel on Maple Avenue in the MHPCA for the purposes of agricultural lands preservation;
- Required the developers of the San Sebastian subdivision to secure a 99-acre agricultural conservation easement as a condition of their development; and
- Planned the purchase of an additional 20-acre parcel on Hill Road, completed a conservation easement appraisal, and allocated over \$1 million in funding.

In the coming months, the City of Morgan Hill plans the following:

- Either purchase one-half of the planned conservation easement on the Fountain Oaks Ranch solely with City funds or finalize the collaborative purchase of the entire easement with the County and Open Space Authority (if the County is able to secure funds) now that the State grant has been lost;
- Finalize the Hill Road conservation easement purchase;
- Negotiate with the Silicon Valley Land Trust to transfer stewardship/ownership of a conservation easement on the City's 12-acre Maple Avenue property and resell the property;
- Offer to purchase conservation easements with neighboring parcel owners on Maple Avenue; and
- Identify additional parcels in the MHPCA that are likely to participate in the City's Program and offer property owners compensation for the placement of conservation easements.

Morgan Hill's Conservation Strategy

B. Conservation of Open Space

The City of Morgan Hill has a long history of preserving open space in the important hillside areas that surround the community. Using a combination of purchases, dedications, regulations, incentives, and open space easements, nearly all of the important hillside areas (totaling more than 595 acres) surrounding the community are restricted from further development.

The City first established a Transfer of Development Credit (TDC) program in the Municipal Code in 1981 ([Exhibit 4](#)). A Transferable Development Credit allows the transfer of development credits from areas where development is restricted such as hillsides to sites in other areas of the City more appropriate for development. TDCs were originally created to help implement the City's hillside preservation activities. TDC acquisition is tied to the City development process where development allotments are competitively awarded based upon a project's public benefit contribution, including pledges to purchase TDCs. In 2001, there were no TDCs available in the market. As a result, the City created a TDC in-lieu fee which allowed projects pledging acquisition of TDC's to incrementally pay an in-lieu fee for that pledge, collected at the final of the building permit.

Morgan Hill Program Implementation Tools

A. Morgan Hill Priority Conservation Area (MHPCA)

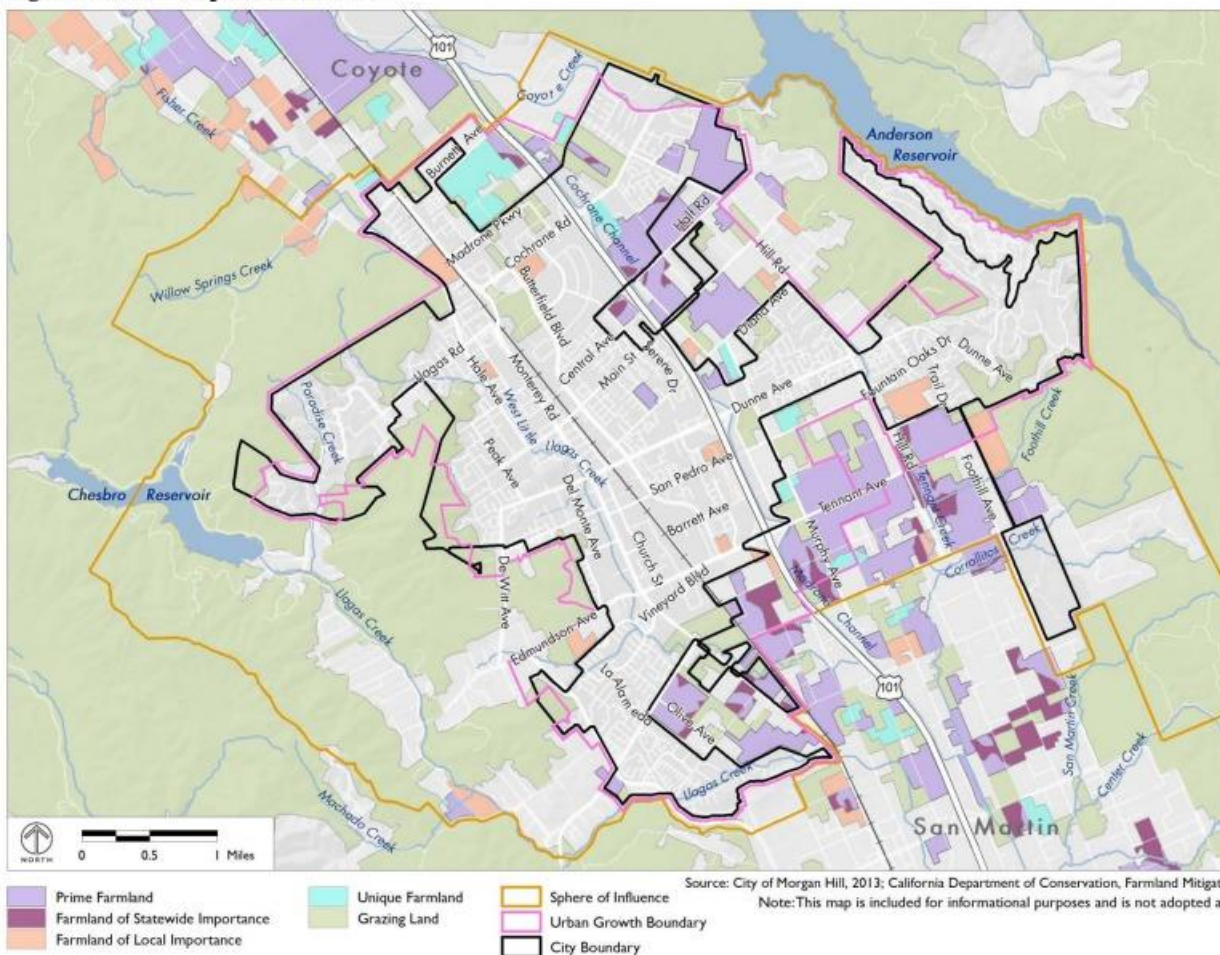
In Figure 1, the City's Priority Conservation Areas are focused in the areas shown in purple east of highway 101. These areas recognize the important farmland consistent with the subareas maps for Live Oak/Half Road and San Martin/Tennant in the recently adopted *Santa Clara Valley Agricultural Plan: Investing in our Working Lands for Regional Resilience* and the agriculture priority area shown in the City's Agricultural Mitigation Program. The MHPCA focuses on agri-hood development in the Live Oak/Half Road area that will benefit from Conservation Easements and larger agricultural land preservation in the areas south of Tennant.

Like most cities in Santa Clara County, Morgan Hill was developed on agricultural land. Agriculture is still an important asset to the region, as evident by surrounding vineyards, which boost the region's economy and tourism industry. However, local farmers continually describe constraints on the continued long-term viability of agriculture within the City's Urban Growth Boundary. Existing orchards and vineyards are experiencing urban encroachment that adversely affects the efficiency of farming operations due to restrictions on pesticide use, noise and dust complaints, trespass, vandalism, and theft. The goal of Morgan Hill's Priority Conservation Areas is to create larger areas of land permanently dedicated for agricultural uses.

Morgan Hill's Conservation Strategy

Figure 1: 9,848 acres of Agricultural Lands within Morgan Hill's Sphere of Influence

Figure NRE-2 Important Farmland



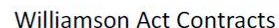
Designated farmlands within Morgan Hill Sphere of Influence

Farmland Classification	Within City Limit (Acres)	Total (Acres)
Prime Farmland	314	1,386
Farmland of Statewide Importance	22	196
Farmland of Local Importance	153	346
Unique Farmland	30	234
Grazing Land	1,265	7,686

Source: Source: Department of Conservation, Farmland Mapping and Monitoring Program GIS data, 2012.

The Williamson Act is one of the most widely used agricultural easement programs in the City of Morgan Hill, Santa Clara County, and the state of California. These areas are shown in the Figure 2. There are 1,703 acres of land that are under on-going Williamson Act contracts that are within the Morgan Hill's Sphere of Influence.

Figure 2. 1,703 acres of Williamson Act parcels in Morgan Hill's Sphere of Influence.



C. Approval of Measure S

Through recommendations contained within the Morgan Hill 2035 General Plan update, City voters approved Measure S, a new residential growth measure, to guide the pacing and total population of the community to mirror General Plan aspirations. In that voter approved measure, the community approved 300 Agricultural Preservation set-aside allotments, at the rate of up to 35 per year, to encourage and promote agricultural preservation in the Morgan Hill Priority Conservation Areas (MHPCA). The set-a-sides translate into Transfers of Development Credit (TDC) ([Exhibit 4](#)), whereby a developer purchases the TDC from the City, and receives the right to build “out-side” of the City’s Residential Development Control (RDCCS) process. The dollars raised through the sale

Morgan Hill's Conservation Strategy

of the TDC's are added to the City's Open Space/Agricultural Conservation fund to be utilized for the purchase of permanent agricultural easements in one of two MHPCA's.

Other important components of Measure S.

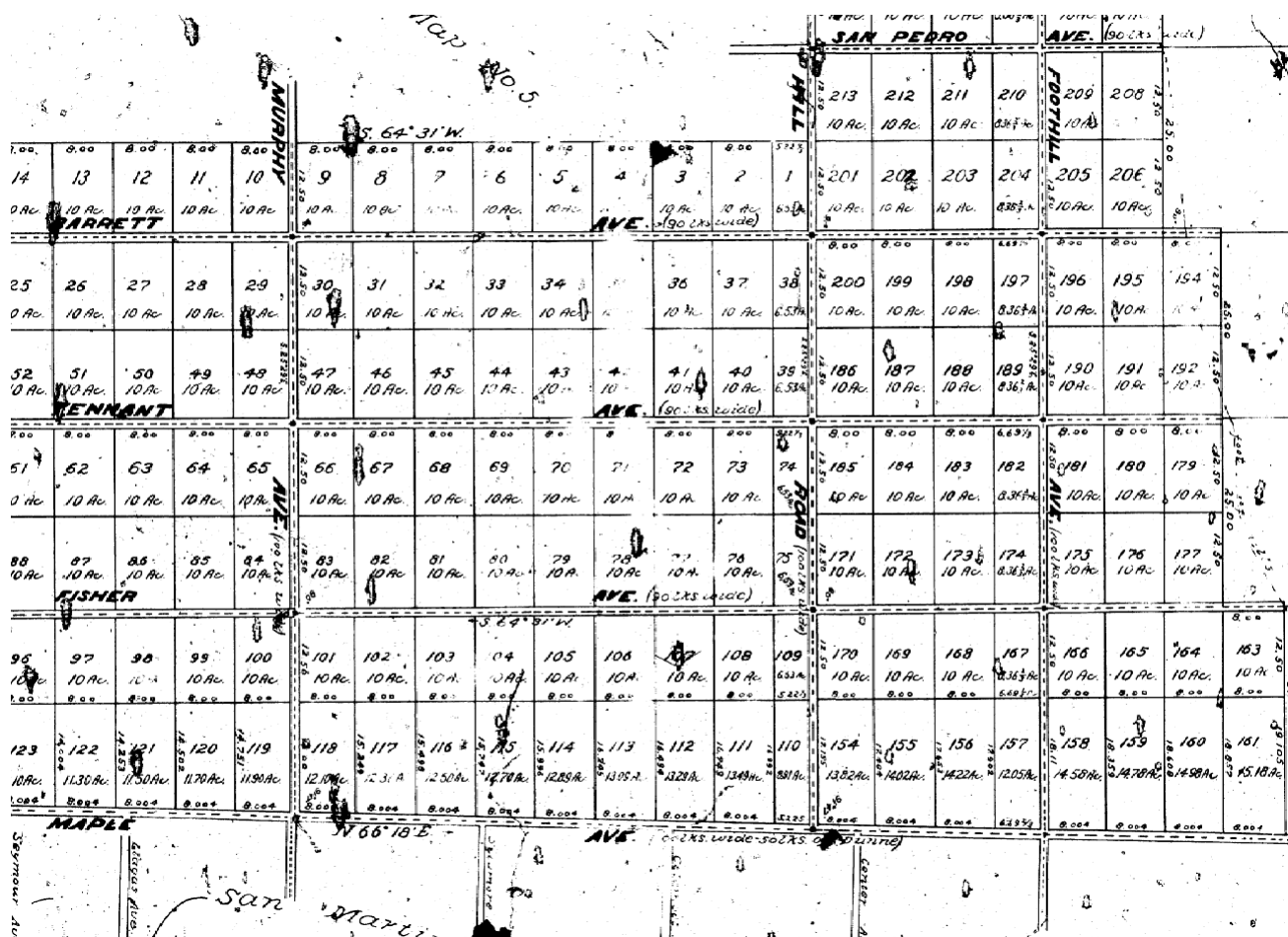
1. A minimum one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land change to a non-agricultural use.
2. Stay ahead provision – conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands.
3. Public benefit financial contributions/pledges made through Residential Development Control System (RDCS) can be used to purchase conservation easements.

Challenges and Key Considerations on Environmental Stewardship

- The majority of remaining farmland in Santa Clara County, including in the MHPCA, is unincorporated and therefore limited land use control.
- The soil in the Morgan Hill area is not highly-valued by farmers for its agricultural productivity. Many of the soils found nearby are considered marginal at best.
- Santa Clara County A-20ac Ag. Zoning requires 20-acre minimum lots, but there are no 20-acre lots that exist in the MHPCA today. Figure 3, Catherine Dunne Ranch Map No. 7 approved in 1905 established 10-acre lots. These lots are small enough to be easily converted into ranchettes. This creates a situation where the "highest and best" economic use of the land is residential estates - not agriculture and farmers continue to face pressure to sell land for nonagricultural development.
- Farming land near nonagricultural uses (homes, schools) is and has become increasingly challenging (dust, noise, traffic, etc.).
- Existing County General Plan and Zoning regulations haven't stopped the patchwork conversion of agricultural lands in the Morgan Hill Priority Conservation Area.

Morgan Hill's Conservation Strategy

Figure 3: Catherine Dunne Ranch Map No. 7



- Subsequent subdivision maps approved smaller lots, some as small as 1-acre. Many of these smaller lots are developed with single-family homes. Some undeveloped subdivisions are not apparent when looking at an aerial, but they include smaller legal lots of record that could be developed with uses that are not agricultural (typically single-family homes) (Figure 4)



Morgan Hill's Conservation Strategy

- In general, land in the County, including agricultural land is expensive, especially when compared with agricultural land outside of the County. Agricultural land in Morgan Hill's SOI, including the Morgan Hill Priority Conservation Area, is even more expensive (\$100,000 to ~\$1million/ac), which means Agricultural Conservation Easements in Morgan Hill's Sphere of Influence (SOI) are also expensive (\$50,000-\$100,000/ac).
- There aren't many available funding sources to support Agricultural Preservation. Where there is funding, it's difficult to compete with funding requests for larger/cheaper lands in other areas. According to a 2017 State Conservation Program funding report, the value of Agricultural Conservation Easements ranged from \$700/acre (Winters in Yolo Co.) to \$7,196/acre (Cotati in Sonoma Co.) to \$23,404/acre (Marina in Monterey Co.).
- For decades Morgan Hill has seen agricultural lands around its boundaries converted to nonagricultural uses¹. The adoption in 2015 of the City's Agricultural Preservation Program and subsequent adoption in 2016 of the Morgan Hill 2035 General Plan, provide a practical approach for how the City can help permanently preserve productive farmland in Santa Clara County, particularly within the City's SOI with a high priority placed on preservation of agricultural lands in the Morgan Hill Priority Conservation Area.

Conclusion

Through various policy mechanisms and tools, the City of Morgan Hill has taken a proactive role in establishing conservation efforts in South Santa Clara County. By adopting land use policies and funding mechanisms, Morgan Hill is working diligently to conserve agricultural land for open space, create opportunities for locally-grown food to be marketed and consumed locally, and preserve open areas that contribute to a unique cultural environment.

¹ 58% of farmland converted in Santa Clara County since 1994 was due to rural development in rural unincorporated areas. *Santa Clara Valley Agricultural Plan*, Page 26.

Exhibit 1: Agricultural Lands Preservation Program**City of Morgan Hill****Agricultural Lands Preservation Program****Adopted: November 5, 2014****Purpose**

The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill Sphere of Influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. To be effective for Morgan Hill, the agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.

The Morgan Hill Agricultural Lands Preservation Program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill Sphere of Influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting General Plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the City's Southeast Quadrant (SEQ) area, but also encourage preservation efforts throughout the City's SOI.

Definitions

Agricultural Land

For “Agricultural Land” that requires off-setting preservation/mitigation under this Agricultural Lands Preservation Program, Agricultural Land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that has not been subsequently developed for non-Agricultural Use prior to the adoption of this Program or subsequently developed per the provisions of this Program. Lands identified as Grazing Land are not subject to the offsetting preservation/mitigation requirements set forth in this Policy. The FMMP classifications reflect a finding by the California Department of Conservation of agricultural quality, which is based on a combination of soil quality as measured by the soil surveys of the United States Department of Agriculture (USDA) Natural Resource Conservation Service, together with recent agricultural-usage history.

Agricultural and grazing land definitions, as defined by the Department of Conservation mapping classifications include:

1. **Prime Farmland.** Prime farmland is land with “the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
2. **Unique Farmland.** Unique farmland is “farmland similar to prime farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
3. **Farmland of Statewide Importance.** Farmland of statewide importance is “farmland of lesser quality soils used for the production of the state’s leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.”
4. **Farmland of Local Importance.** Farmland of local importance is farmland identified as “land of importance to the local agricultural economy as determined by each county’s board of supervisors and a local advisory committee.”
5. **Grazing Land.** Grazing land, defined as “land on which the existing vegetation is suited to the grazing of livestock” is not included in this study’s use of the term Agricultural Land and is not considered as core to the proposed preservation program.

Agricultural Conservation Easement

An Agricultural Conservation Easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive Agricultural Use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting

development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.

Agricultural Mitigation Land

Agricultural Land (as defined above) that is encumbered by an Agricultural Conservation Easement or other farmland conservation mechanism acceptable to the City. If the Agricultural Land is also being used to meet Open Agricultural Land preservation goals, the easement or other mechanism must ensure that at least 90% of any property being used as Agricultural Mitigation Land remain as open space free of structures or other impervious surfaces so that it retains its value as Agricultural Land under the FMMP criteria. Uses allowed on Agricultural Mitigation Land shall be consistent with the Agricultural Use described below and pertaining land use regulations, and as further defined in the applicable Agricultural Conservation Easement or other farmland conservation mechanism.

Agricultural Priority Area

The Agricultural Priority Area is an area within the City's Southeast Quadrant (SEQ) that has been identified as the City's first priority for the acquisition of agricultural land conservation easements. This area was selected because it is the area within the Morgan Hill SOI where agriculture is considered to be the most viable over the long term. Conservation within this area will also contribute toward the City's goals of creating an open space buffer along its southern edge. Designating the Agricultural Priority Area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The Agricultural Priority Area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.

Agricultural Use

Agricultural Use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying Agricultural Use activities may include:

1. **Agricultural Processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
2. **Agriculturally Related Entertainment & Commercial Uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site Agricultural Uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
3. **Agricultural Research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.

4. Dairy: Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.
5. Feed Lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field Research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom Farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and Egg Farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife Refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to Type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the Type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.
12. Ancillary Uses: Uses conducted subordinate to the primary Agricultural Use being conducted upon a property and which do not occupy in total more than 10% of the property, including:
 - a) Direct sales of locally produced agricultural products.
 - b) One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c) Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d) Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

Agricultural Preservation In-lieu Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying

Entity and used by either agency solely for the purpose of acquiring Agricultural Conservation Easements. The Program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the City's ability to preserve open space Agricultural Lands within the Agricultural Priority Area.

Agricultural Lands Preservation Program Surcharge Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by either agency for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the easements. The Surcharge fee is either incorporated into the overall In-lieu Fee for projects that make use of this option, or charged directly to projects which independently establish an Agricultural Conservation Easement.

Open Agricultural Land

Open Agricultural Land is defined as Agricultural Land that is at least 90% free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other Agricultural Use. The City may make use of open space funding sources to acquire Agricultural Conservation Easements where that Easement specifies that the encumbered property be maintained as Open Agricultural Land. Because an Open Agricultural Land Conservation Easement would potentially reduce the economic potential for future agricultural uses, it would normally be more expensive to acquire than a standard Agricultural Conservation Easement. The City may however determine that at some locations an Open Agricultural Land Conservation Easement would better implement the City's land use objectives by preserving open space as well as agricultural activity.

Qualifying Entity

A government or nonprofit entity operating in Morgan Hill and/or the surrounding portions of Santa Clara County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The City favors the use of a local government or non-profit agricultural conservation entity, a statewide government or non-profit agricultural conservation entity or entities, or the regional branch of a nationally recognized non-profit agricultural conservation entity as the easement holder. The Qualifying Entity should have appropriate representation and/or participation from the farming community. The City will consider the following criteria when considering the non-profit agricultural conservation entity for these purposes, and when monitoring the performance of Qualifying Entities over time:

1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization whose principal purpose is holding and administering Agricultural Conservation Easements for the purposes of conserving and maintaining lands in agricultural production;
2. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
3. Whether the entity has a history of holding and administering easements in Santa Clara County for the foregoing purposes;
4. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards and Practices; and
5. Any other information that the City of Morgan Hill finds relevant under the circumstances.

Policies

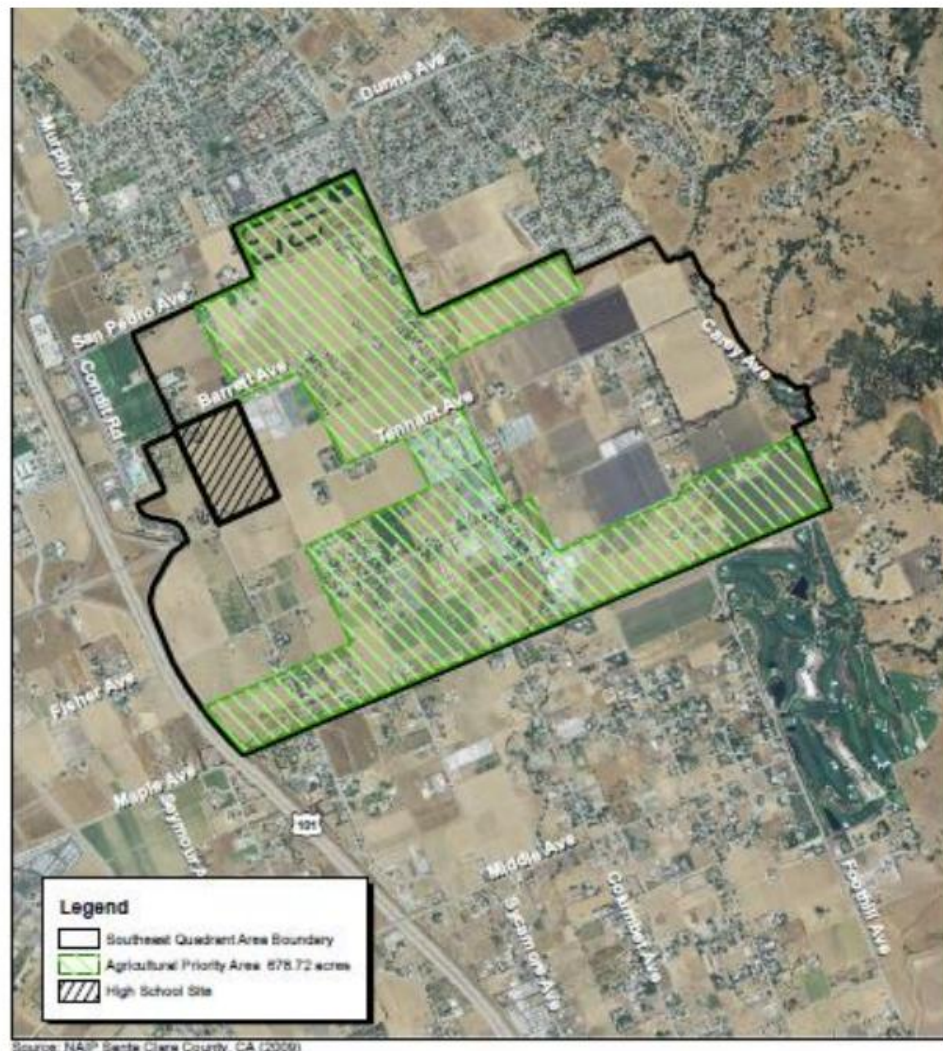
The City will implement the Program in accordance with the following policies:

1. **Agricultural Conservation Easements.** To achieve the Agricultural Lands Preservation Program objectives, activities converting Agricultural Land, such as new private or public development projects, are required to offset the conversion by directly preserving Agricultural Mitigation Land in perpetuity. Agricultural lands will be preserved through the recordation of permanent Agricultural Conservation Easements, which may be directly established by the land developer, obtained by the City or a Non-profit as an intermediary, or established through a developer-initiated transfer of development rights recorded within a development agreement. This offsetting preservation will serve as mitigation to satisfy the requirements for agricultural mitigation under the California Environmental Quality Act (CEQA) as well as to support the continuation of agriculture in and around the City of Morgan Hill consistent with community preferences and City policies.
2. **Alternate Mitigation.** The primary means of mitigation under this program are the direct recordation of conservation easements or the payment of in lieu fees which will be applied toward conservation easements. As an alternative, agricultural mitigation through Planned Development Zoning and/or a Development Agreement is allowed only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, such alternative mitigation shall still be required to achieve a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
3. **Applicability.** All new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of at least one acre of Agricultural Land (as defined above) will be required to mitigate loss of Agricultural Land per the provisions of this Policy. This includes projects within the existing City boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption of this Policy, including completion of the CEQA process, are not subject to this Policy unless specifically required as mitigation or a condition of project approval.
4. **Mitigation Ratio.** A minimum of one (1) acre of Agricultural Land (**1:1 mitigation ratio**) shall be preserved for each acre of Agricultural Land changed to a non-agricultural use. The required acreage of area to be protected through an Agricultural Conservation Easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.
5. **“Stay Ahead” Provision.** Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of Agricultural Lands. Development occurs with either the issuance of Grading Permit or Building Permits that would result in the loss of Agricultural Land. To meet this provision the City may utilize existing open space funding to establish Agricultural Conservation Easements, or individual projects may establish such easements in advance of development activity.

6. **Measurement of Affected Area.** Consistent with the Santa Clara Valley HCP/NCCP plan, the areas subject to agricultural mitigation requirements will be the developed footprint for properties with a General Plan land use designation of Open Space, Public Facilities, or SRL. These land use designations allow for and typically include a large portion of land reserved for “open space/open fields” that in the future could be put back into Agricultural Use. Areas proposed to be so reserved must have an aggregated area of at least 10 acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.
7. **Mitigation Mechanism.** Conversion of Agricultural Land will require off-setting acquisition and/or dedication of Agricultural Conservation Easements over approved Agricultural Mitigation Land, or payment to the City of the Agricultural Preservation In-lieu Fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the Agricultural Preservation In-lieu Fee, in either case developers are also required to pay an Agricultural Lands Preservation Program Surcharge Fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.
8. **Eligible Mitigation Lands.** In order to meet the goals of this Program, lands proposed to be used as agricultural mitigation shall conform to the above definitions for Agricultural Mitigation Land and/or Open Agricultural Land and shall meet the following criteria:
 - a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only;
 - b) The property is of adequate size, configuration and location to be viable for continued Agricultural Use;
 - c) The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing Agricultural Uses, and the water rights on the Agricultural Mitigation Land shall be protected in the Agricultural Conservation Easement;
 - d) Other considerations for appropriate conserved Agricultural Lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
 - e) The mitigation land shall be located within Santa Clara County; and
 - f) The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.
9. **Ineligible Mitigation Lands.** A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:
 - a) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or

- b) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the City or other public agency; or
- c) The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

10. **Agricultural Priority Area.** The Agricultural Priority Area within Morgan Hill's Southeast Quadrant, shown on the figure below, is the City's first priority geographic area for conservation. The Agricultural Priority Area encompasses approximately 650 acres of land. The City should use all available tools, including clustering of existing development rights within the SEQ, transfer of development rights (TDR) programs, collaborative land use planning with the County, partnering with local open space conservation agencies, and the use of available grant funding to achieve conservation within this area. Within the Agricultural Priority Area the City should focus on obtaining conservation easements first on land outside of the City's land use control, specifically focusing upon the sub-area located along the southern edge of the City's Sphere of Influence.



11. **Secondary Conservation Areas.** If it is not possible to obtain conservation easements within the Agricultural Priority Area, the City should obtain conservation easements within other areas within the Morgan Hill Sphere of Influence as the next priority. The City may also identify lands intended for conservation within these areas.
12. **Alternative Conservation Areas.** Only when conservation opportunities are not available within the Sphere of Influence will the City consider easements at other locations within the County. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'Eligible Mitigation Lands' above. Developers may independently establish an Agricultural Conservation Easement on Eligible Mitigation Lands within the County. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the Agricultural Lands Preservation Program Surcharge Fee .
13. **Agricultural Sustainability.** Prioritize acquisition of easements on land that is most viable for long-term agricultural use considering factors such as soil type, water supply and location. Promote agricultural uses within easement areas including the development of high-value crops which are compatible with an urban edge condition while also economically sustainable over the long-term.
14. **Responsibility for Easement Acquisition.** The City's preference is that developers pay the Agricultural Preservation In-lieu Fee so that conservation efforts will be focused within the Agricultural Priority Area and make use of funds from multiple sources. In such cases, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the In-lieu Fee and accompanying responsibility to a Qualifying Entity. However the City will need to be a party to easements obtained by the Qualifying Entity.
15. **Minimum Easement Size.** The minimum land area for an Agricultural Conservation Easement is 10 acres on a single parcel or on multiple adjoining parcels so that the easement area is contiguous. Developments providing less than 10 acres of agricultural mitigation land are thus required to pay the Agricultural Preservation In-lieu Fee on a per acre basis except that acquisition of Agricultural Conservation Easements of less than 10 acres may be allowed when located immediately adjacent to an existing Agricultural Conservation Easement area that when combined, exceeds 10 acres in size.
16. **Management and Monitoring Fee.** As with other agricultural mitigation/preservation programs, a number of responsibilities will come with holding the Agricultural Conservation Easements, including their management and monitoring. The developer will be required to pay a one-time per acre fee (Agricultural Lands Preservation Program Surcharge Fee) to cover the average cost of these activities along with administration of the program including any administrative costs of the Qualifying Entity. The City will establish the Surcharge Fee and monitor it periodically.
17. **Implementing Entity.** The City will hold the easements and collect management and monitoring fees until an alternative implementing entity (Qualifying Entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.
18. **Mitigation Timing and Implementation.** Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or

grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.

19. **Planned Developments / Development Agreements.** Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the City's SOI in which Agricultural Lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the Agricultural Priority Area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development agreement with the City specifying the terms of the agreement and the extraordinary benefits accruing to the City.
20. **Funding for Easements.** Given the City's policy objective of agricultural land preservation within the Morgan Hill Sphere of Influence and within the Southeast Quadrant in particular, it is anticipated that the City will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the City will use open space funds collected through administration of its Residential Development Control System (RDCS) to supplement the acquisition of conservation easements.
21. **Clustering of Development.** The City may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The City should allow such alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
22. **Educational Center.** Work with local property owners, non-profits, or other agencies to develop an agricultural educational center within the SEQ.

Implementation

Agricultural Conservation Easement Program

Agricultural conservation easements can be obtained via a number of different agricultural preservation tools through dedication, purchase, or donation. The City will focus its agricultural preservation efforts on in-perpetuity Agricultural Conservation Easements. These easements may be established by private developers either to directly off-set a specific project or as part of a transfer of development rights (provided that adequate restrictions are incorporated into the easement) or purchased by the City or Qualifying Entity as defined by this Policy (using either in-lieu fee monies or alternative revenue sources). The City has determined to focus its agricultural preservation efforts in the SEQ as the first priority area, then elsewhere within the Morgan Hill SOI as the second level of priority. This program will be implemented according to the following guidance:

6. Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management. Initially, the group responsible for managing mitigation funds and Agricultural Conservation Easements will be the City of Morgan Hill. However, it is the intent of the City to partner with an established organization or transfer the operational responsibilities for managing and maintaining the City's Agricultural Lands Preservation Program to a third party Qualifying Entity. The third party Qualifying Entity will need to include individuals with direct experience and knowledge of farming activities
7. Implementation of mitigation (whether via conservation easement or payment of fee) will be due prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.
8. The specific terms and acceptance of Agricultural Conservation Easements will be at the discretion of the City of Morgan Hill or Qualifying Entity.
9. Initially, the Agricultural Preservation In-Lieu Fee, including the Program Surcharge Fee, is anticipated to be approximately \$15,000 per acre (based upon the attached Nexus Study). The program will allow for annual adjustments to the fee based on an established index and changes in land values. The In-Lieu Fee should be based on the value of Agricultural Lands at the time of development and must be sufficient to ensure lands can be purchased to meet the City's adopted ratios.
10. The Agricultural Preservation In-Lieu Fee will only be used for the acquisition of Agricultural Conservation Easements. Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
11. The Agricultural Lands Preservation Program Surcharge Fee will be used for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of easements established through the Program.
12. The Agricultural Lands Preservation Program will allow for the use of the City's Open Space Fund for acquisition of Agricultural Conservation Easements. Agricultural Conservation Easements

acquired using Open Space funds must insure that the covered lands be protected as Open Agricultural Land.

13. It is the City's goal to acquire Agricultural Conservation Easements in the immediate future utilizing available Open Space Funds. Where possible, the City of Morgan Hill will partner with conservation entities for the acquisition of easement lands.
14. The following minimum requirements shall be incorporated into all Agricultural Conservation Easements or other instruments recorded to satisfy the requirements of the Agricultural Lands Preservation Program. Nothing in this section is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of the Agricultural Lands Preservation Program are achieved:
 - a) It is the intent of the City to transfer most, if not all, of the easements that are received from this program to a Qualifying Entity, as defined above, for the purpose of monitoring compliance with easement terms and taking any necessary enforcement and related actions.
 - b) All Agricultural Conservation Easements, or other farmland conservation mechanisms, shall be implemented through a legal instrument acceptable to City Council and the Qualifying Entity that will receive the easement, and signed by all owners with an interest in the mitigation land.
 - c) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land or that are otherwise inconsistent with the conservation purposes of this Agricultural Lands Preservation Program. The instrument shall protect the existing water rights and retain them with the Agricultural Mitigation Land; however, the instrument shall not preclude the limited transfer of water rights on a temporary basis (i.e., not to exceed two years in any ten-year period) to other Agricultural Uses within Santa Clara County, so long as sufficient water remains available to continue Agricultural Use of the mitigation land.
 - d) The instrument shall prohibit the presence of a residence, except an existing residence or construction of a comparable replacement for such a home or construction of a single new home of 3,000 square feet or less on a site that does not already include a residence provided that such residence is not located where it would interfere with agricultural activities. (Alternatively, a portion of the subject property of up to 1.5 acres in area may be excluded from the Agricultural Conservation Easement and developed with a single new home provided that no other home is located on the property).
 - e) Instruments that convey an interest in the mitigation land to a Qualifying Entity, shall name the City as a third party beneficiary with full enforcement rights.
 - f) Interests in Agricultural Mitigation Land shall be held in trust by a Qualifying Entity and/or the City in perpetuity. Except as provided below (g), the Qualifying Entity or the City shall not sell, lease, or convey any interest in Agricultural Mitigation Land which it acquires.

- g) The Agricultural Conservation Easement, or other conservation mechanism recorded pursuant to the Agricultural Lands Preservation Program, can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the Agricultural Mitigation Land is received and used or otherwise dedicated to acquire interests in other Agricultural Mitigation Land in Santa Clara County, as approved by the City and as provided for in this Program.
 - h) If any Qualifying Entity owning an interest in Agricultural Mitigation Land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City or other Qualifying Entity as acceptable and approved by the City.
 - i) The City may at its discretion terminate a relationship with a Qualifying Entity if that entity no longer satisfies the intent of this Program.
15. Utilize the City's Transfer Development Credit (TDC) program for agricultural preservation (Open Agriculture Land) in addition to the current goal of hillside preservation. The revenue comes from RDCS TDC In-Lieu fee paid by residential developers who do not purchase a TDC from a property owner.
16. Add Points to the Residential Development Control System (RDCS) scoring criteria that would be awarded to Projects that commit to support the Agriculture Preservation Program by paying a fee that could be used to pay for the residential development rights (TDR) or agriculture preservation easements for agricultural uses that could not meet the 90 percent open space requirement.

Clustering and Transfer of Development Rights

As opportunities arise, the City may utilize or develop additional methods of preserving agricultural lands through the land use entitlement process, including cooperatively working with property owners or developers to preserve agricultural lands through clustering or transfer of existing development rights. Such clustering or transferring can be implemented through the City's land use entitlement processes as described above. The City may also work with the County to develop a program that would allow transferring of development rights between the County and City in order to further preserve agricultural lands.

General Plan Policies

In addition to the preservation of Agricultural Land through Agricultural Conservation Easements and/or the clustering or transfer of development rights, a broader policy framework is important to support the Program's objectives. In particular, strengthening land use policies that define supporting land uses, limiting speculation associated with the conversion of Agricultural Land, and allowing for agriculture-supporting infrastructure will play an important role in the implementation of the Agricultural Lands Preservation Program. Accordingly, goals, policies, and actions that address the following objectives should be maintained within the General Plan:

- Continue Agricultural Land uses and production in and around the City of Morgan Hill to promote the City's identity and agricultural heritage.

- Support the development of urban agriculture, and the preservation of the existing Agricultural Lands within or adjacent to Morgan Hill to increase the supply of locally-grown, healthful foods.
- Strengthen the link between the community and local farms and farmers.
- Leverage Agricultural Lands to create and maintain a unique community character, provide open space, link to the region's history, support local agri-tourism, contribute to the local economy, and add to the quality of life.
- Identify potential sites within a centralized urban area of the City appropriate and suited for a community garden.

ATTACHMENT A – Background Information

The City engaged a consultant team to analyze the viability of agricultural activities in and around Morgan Hill and to make policy recommendations for how the City of Morgan Hill could best accomplish its goals of preserving viable agricultural lands. The consultant team, Economic & Planning Systems, Inc. and House Agricultural Consultants, submitted a report in December 2011 that provides background analysis and preliminary recommendations, much of which is incorporated into this Policy. Key findings from this Report are presented within the following Background information.

Agricultural Lands within Morgan Hill

As of 2010, the Morgan Hill SOI included approximately 9,894 acres of agricultural and grazing land, of which 7,739 acres was grazing land. The remaining 2,155 acres were irrigated or irrigable agricultural land uses, which are the focus of the Agricultural Lands Preservation Program (i.e., Farmland Mapping and Monitoring Program (FMMP) classifications of prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance). About two-thirds of this land, approximately 1,436 acres, was classified as prime farmland.

While the FMMP Map identified approximately 2,155 acres of irrigated or irrigable agricultural lands, some of this acreage had already been developed or committed for development at the time of this Policy's drafting.

The table below identifies the total acreage of agricultural and grazing land within the Morgan Hill SOI, City Limits, and unincorporated areas within the SOI based on the 2010 FMMP Map.

FMMP Classification	City Limits	Unincorporated Areas within SOI	Grand Total
Prime Farmland	320	1,116	1,436
Farmland of Statewide Importance	18	187	205
Farmland of Local Importance	153	184	337
Unique Farmland	25	152	177
Grazing Land	1,284	6,455	7,739
Grand Total	1,800	8,094	9,894

Long-term Viability of Agricultural Lands

A simple definition of *agricultural viability* is: agriculture that is economically feasible to maintain and continue. To be viable agricultural activity:

- Land continues to be farmed, returning a net profit, on a multi-year basis.
- Natural resources are stewarded for the long term.
- Agricultural operations are supported by the local community.

This definition makes no distinction as to the type or scale of viable agriculture, which may change along with national and international economic trends. Farmers can be either full-time or part-time. It does, however, exclude hobby farming, meaning farming that does not return a profit. “Supported by the local community” means that agricultural activities are accepted as part of the commerce of the area by the residents of the area, that housing is available to farm laborers and small farmers, that agriculture is integrated into the policies and regulations of the City, and that trade and commerce between the farming enterprises and the residents flourishes, through such means as local sales, including on-site direct sales, and farmers' markets.

Based on data provided by the United States Department of Agriculture (USDA) Economic Research Service (ERS) in 2008, approximately 43 percent of farmers nationally indicate that farming is their major occupation, while 42 percent state that work other than farming is their major occupation; 15 percent do not consider themselves to be in the workforce. In 2008, 88 percent of all farm household income nationally came from non-farm sources. USDA ERS data indicate a long-term trend toward increasing non-farm income and decreasing farm income among United States farmers.

According to a study by the University of California (UC) Davis Small Farm Center, an annual gross income level of approximately \$25,000 per farm business is a threshold for sustainability. A majority of California farm businesses grossing more than \$25,000 annually are profitable, based on data from the 2007 USDA Census of Agriculture. There is no implication that “a living” can be made if a farm grosses \$25,000. The study does imply, however, that since a profit can be expected in this situation, it is likely that small farming will continue to be an occupation, if perhaps only a part time one. Since small farming is profitable in a majority of cases if the gross revenues exceed \$25,000, it is implied that the small acreages in the Morgan Hill area will continue to be farmed.

Examples of small-scale agriculture are:

- Nursery and flowers.
- Farms emphasizing local sales and marketing.
- Community farms and education centers.

There are national trends supporting small farming:

- Urban peoples' interest in health, open space, and community encourages small farming.
- “Buy local” makes economic, social, and ecological sense.
- There is strong interest by college-age persons in farming.
- There is strong interest by government and nonprofits in small farms.
- Small organic farms have, for the most part, enjoyed economic success in recent years.

The Report indicated that while large-scale agriculture (agriculture generally conducted on 600+ acre farms with minimum lots of at least 40 acres and general separation from urban uses) is not viable in the Morgan Hill area, the outlook for small-scale agriculture is good.

The Report identified key threats to agricultural viability in the Morgan Hill SOI as:

1. High land market values difficult for strictly agricultural producers to afford.
2. Urban proximity conflicts with many farming operations.
3. The incompatibility of small parcel size with large-scale agribusiness.

Policy Context

The Report identified the following overarching contextual issues as important to the development of an agricultural program for the City of Morgan Hill:

- County and LAFCO Policies and Inter-agency Coordination.** For lands proposed to be annexed into the City of Morgan Hill, the successful preservation of agriculture in and around Morgan Hill will require collaboration and coordination with both the County and the Local Agency Formation Commission (LAFCO). Santa Clara County supports the continued agricultural use of lands in the unincorporated County through the use of large-lot agricultural zoning. Santa Clara LAFCO has developed a series of policies regarding agricultural mitigation and will play a critical role in the evolution of the Morgan Hill SOI in its review of boundary adjustment applications. It is important to note, though, that the City of Morgan Hill has the authority to enter into development agreements with property owners outside the Morgan Hill city limits for the purposes of preserving agricultural lands.
- Southeast Quadrant.** The SEQ of the City is of particular importance as the last major, contiguous area of agricultural land in the Morgan Hill SOI and due to its potential as a permanent “greenbelt” between Morgan Hill and the neighboring rural residential area of San Martin.
- Scale and Cost.** The City’s Agricultural Lands Preservation Program must recognize its unique circumstances, including: (1) the relatively small area in agricultural use in the Morgan Hill SOI; (2) the relatively high percentage of agricultural lands that are 10 acres or less in size; (3) the relatively high value of land relative to its potential for agricultural income due to rural-residential demand and speculative influences; and (4) the uncertainty in locating willing sellers of land for preservation purposes.
- Other Goals.** The City of Morgan Hill has multiple goals for its undeveloped land within its SOI in addition to agricultural preservation. Such goals include the establishment of a greenbelt, the development of sports, recreation and leisure (SRL) amenities and uses of public benefit within the SEQ, including a new high school, and the location of appropriate and consistent uses around the adjacent freeway interchange.

Agricultural Mitigation Costs

Agricultural mitigation requirements, whether through land dedications or mitigation fees, result in additional cost to any development that converts agricultural land. In combination with other agricultural land preservation policies, these mitigation requirements increase the costs to new development and could create feasibility challenges. Under a typical agricultural mitigation program, a project found to result in the loss of agricultural land must mitigate the loss through the preservation of agricultural land elsewhere. Preserving land for agriculture means acquiring land in fee title or purchasing a conservation easement that restricts uses on the property. The cost burden of the agricultural preservation required will primarily depend on the non-agricultural value component of the land being preserved.

Land sales for agricultural land in Santa Clara County and around Gilroy steadily averaged between \$15,000 and \$45,000 per acre based on a review of transactions and listings between 2006 and 2009.

Higher agricultural land values in and around Morgan Hill relative to other Santa Clara County areas indicate the greater development pressures in the Morgan Hill SOI than the other agricultural areas in the County. In addition, Morgan Hill's agricultural parcels tend to be smaller in size compared with other County locations.

A market analysis included within the 2011 Report estimated that the cost to preserve agricultural land through fee simple purchases would range from \$50,000 to \$80,000 per acre in Morgan Hill and that the unit cost of agricultural land preservation through easement acquisition would range from \$30,000 to \$48,000 per acre within Morgan Hill's SOI and from \$9,000 to \$27,000 per acre for land outside of the City's SOI. A quick survey of agricultural mitigation programs around the state indicated that most programs result in costs of less than \$30,000 per acre. The actual land costs that individual applicants will face could vary considerably depending on market conditions at the time of land purchase; the availability of willing sellers; and the size, location, and condition of land being preserved, etc. In addition, ongoing costs are incurred to manage and monitor the agricultural conservation easements.

Agricultural Mitigation Costs for Typical Projects:

- Preservation inside Morgan Hill SOI.** With mitigation required to take place within the Morgan Hill SOI, the mitigation cost associated with acquiring an easement was estimated to be \$30,000 to \$48,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$6,000 and \$9,600 per unit. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$2.30 and \$3.60 per building square foot.
- Preservation in Santa Clara County.** With mitigation allowed to occur anywhere in Santa Clara County, the mitigation cost associated with acquiring an easement was estimated to be \$9,000 to \$27,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$1,800 and \$5,400 per acre. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$0.70 and \$2.05 per building square foot.

ATTACHMENT B – Nexus Study

The Nexus Study supporting adoption of the Agricultural Preservation In-lieu fee is available at:
<http://www.morgan-hill.ca.gov/DocumentCenter/View/12622>

EXHIBIT – Draft Agricultural Preservation General Plan Policies for Consideration

The City of Morgan Hill will evaluate the current General Plan policies related to preservation of Agricultural Land and consider updates to those policies that address the following proposed policies and actions.

Policies and Actions

Agricultural Lands Preservation

- Preserve Agricultural Lands and prime soils in non-urban areas in order to provide local and regional fresh food supplies, reduce dependence on foreign products, conserve energy, and retain the aquifer recharge capacity of these lands. Give highest priority to the preservation of Agricultural Lands with the greatest long-term potential to support sustained Agricultural Use.
- Establish and/or maintain General Plan and Zoning land use designations to support Agricultural Uses.
- Encourage contractual protection for Agricultural Lands, such as Williamson Act contracts, Agricultural Conservation Easements, transfers of development rights, or other property tax relief measures as incentives for preservation of these lands.
- Implement the City's Agricultural Lands Preservation Program to preserve Agricultural Lands as part of new annexations or development projects.
- Offer landowners fair market value for their development rights on prime farmland.
- Allow alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
- Expand the City's Transfer Development Credit (TDC) program to include agricultural preservation as well as hillside preservation. Use the revenue from new purchases of TDCs, in part, to support the purchase of Agricultural Conservation Easements.
- Award points to projects that compete through the Residential Development Control System (RDCS) competition that commit to purchase TDCs for the purpose of agricultural preservation.
- Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management.
- Promote legislation to establish Countywide and Statewide agricultural preservation programs, including identifying sources of funding necessary for implementation of such programs.
- Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
- Amend existing General Plan Policy 2o in the Open Space and Conservation Element to be consistent with the provisions of this Program.

Sustainable Agricultural Industry

- Require ancillary non-Agricultural Land uses on Agricultural Lands to be ancillary and compatible with Agricultural Land uses, agricultural production, and the rural character of the area, and to enhance the economic viability of agricultural operations.
- Promote an agricultural support system including physical components (such as farm labor housing, retail sales, equipment supply and repair) and institutional components (such as agricultural education and training).
- Pursue additional funding available through State and federal grant programs sources for Agricultural Land preservation, educational/outreach programs, and other activities that support Agricultural Land use.
- Conduct outreach to farmers/landowners about Agricultural Conservation Easements and farming succession planning.
- Encourage Agricultural Uses which follow ecologically sound agricultural practices and minimize the use of chemicals and pesticides in order to promote healthy soils and ground water, provide healthful foods, reduce energy use, and reduce the resource demand attributed to local agricultural industry.
- Seek conservation program funding for farmers planning and implementing conservation practices that improve soil, water, plant, air and related resources on their land.
- Work with agricultural entities (e.g., farming industry, non-profits, land owners), the County, other Santa Clara County cities and the Local Agency Formation Commission and other stakeholders to promote public education to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

Local Agricultural – Economic Development

- Enhance viability and profitability of ongoing use of Agricultural Lands by supporting ancillary commercial uses such as produce stands, small-scale environmental and agricultural tourism, and the processing of agricultural products.
- Facilitate the long-term viability of farming within the City's SOI through educational, resource and mentoring programs, including partnerships with educational institutions (e.g. Gavilan College), industry organizations (e.g., California FarmLink), and financial institutions that provide business planning and mentoring for new farmers.
- Work with industry groups, business groups and other organizations to institute direct marketing programs, branding campaigns, and other incentives and programs that increase purchasing agreements between local farmers and local retailers, such as grocery stores, markets, restaurants and local institutional uses, and increase consumer awareness and purchases of local agriculture.
- Support partnerships between school districts and organizations to promote and implement farm to school programs.
- Incorporate agri-tourism destinations on City signage, e.g. farm stands and farms within the city's SOI.
- Encourage and support interested farmers to create public access opportunities through farming areas (e.g., school and public farm tours, roadside stands, and farm trails).

Urban Agriculture

- Maintain existing and support the development of new community gardens, farmer's markets and produce stands at suitable locations throughout Morgan Hill.
- Periodically review and amend the Zoning Code to streamline permit/use regulations to encourage and support the sale of agricultural products within the City.
- Support urban agriculture opportunities such as backyard gardens and edible landscapes that produce ecologically sound food for local consumption.
- Encourage developers of new development projects to incorporate food-producing areas within their project landscape plans.
- Encourage healthful food choices, exercise, and the production of locally grown agriculture for personal use by providing community garden facilities either on public lands or as part of new private developments.

Urban/Agriculture Interface

- Establish an agricultural buffer between urban and rural uses. The buffer's size, location and allowed uses must be sufficient to minimize urban edge conflicts, provide safety to urban residents, and allow the broadest possible farming practices on the urban edge boundary.
- Establish a minimum agricultural buffer requirement around new development adjacent to the City's Agricultural Priority Area and County land with an Agricultural land use designation.
- Restrict land uses within and adjacent to Agricultural Lands that would compromise the agricultural viability of these lands. Require new adjacent land uses to mitigate any impacts on the use of Agricultural Lands.
- When considering annexation applications involving land that is mapped or used for agricultural production, or is located adjacent to such land, implement land use designation(s) and pre-zoning(s) to minimize the potential conflict with surrounding Agricultural Uses in the area.
- Require new development projects to record an agricultural buffer easement on the land that will make up the buffer concurrently with the permitting of any development/grading.
- Strengthen zoning development standards, where necessary, to encourage development placement, scale, and design that are consistent with the preferred rural character adjacent to the City's edge.

Inter-agency Cooperation

- Cooperate with other jurisdictions to achieve agricultural preservation goals.
- Continue to identify opportunities to work with other jurisdictions and organizations in supporting Agricultural Land preservation and the agricultural industry in and around Morgan Hill. Work with the County as a critical partner in these efforts and outreach to other organizations where efforts and resources can be pooled to support agriculture.

Access to Healthy Foods

- Support an enhanced role for local Agricultural Land in providing community farms and local food sources.
- Promote broad access within the community to healthful food, as defined by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.
- Encourage and support the marketing, sale and consumption of locally-grown produce.

Exhibit 2: MH2035 General Plan Agriculture & Open Space Conservation Policies

Attachment: ResponseLetter_and_Attachments_11-2-2018.pdf ACE activity (2248 : Agricultural Conservation Program)

Agriculture and Open Space Conservation Policies

Morgan Hill 2035 General Plan

Vision (pg. VIS-4)

The overall combination of actions envisioned by the General Plan will help Morgan Hill grow and prosper while balancing quality of life, economic development, tourism, fiscal sustainability, high-quality planned development, and preservation of habitat, the natural environment, and viable agriculture, without compromising its historic and enduring rural charm.

Urban Growth Boundary (pg. CNF-4)

In 1996, Morgan Hill and Santa Clara County jointly adopted a long-term Urban Growth Boundary (UGB) and associated policies. The UGB is encompassed within the Sphere of Influence (SOI) and is intended to be the ultimate limit to urbanization within which all future urban development in Morgan Hill should occur. It is designed to encourage compact, efficient infill development and discourage more costly development at the edge of the City. The UGB also helps to ensure that urban services provided by the City to existing neighborhoods will not be reduced by service demands of new urban development at the City's fringe.

Rural Designations (pg. CNF-9)

Rural County. This designation applies to land outside the City limit, but in the SOI. Lots with the Rural County designation are generally 5 to 20 acres in size with one single-family home and/or agricultural operation per parcel. The minimum acceptable lot size for new development is generally 5 acres.

Open Space. This designation applies to land in the City limits and SOI, and includes public parks, private golf courses, and large parcels of land generally 50 acres or more in size. Land designated Open Space is generally meant to remain unimproved and devoted to the preservation of natural resources, managed production of resources, or public health and safety, as well as to complement adjacent, higher density residential and commercial development. Allowed uses include agriculture, outdoor recreation, and a secondary dwelling unit. One single-family home per parcel is allowed, with appropriate permit.

Agriculture. The Agriculture designation identifies lands intended for long-term preservation for agricultural use and intended for a variety of agricultural uses, including grazing, dairying, raising of livestock, orchards, row crops, nursery stock, flower growing, ancillary residential uses, ancillary commercial uses such as fruit stands, agricultural research and the storage and processing of agricultural products. This designation supports open space uses such as preservation of natural resources, outdoor recreation and public health and safety, including infrastructure (such as infiltration ponds) that is similar to other open space uses. The designation also supports agricultural commercial uses such as

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roadside stands, wineries, farm-based tourism, u-pick, rodeos, farmers markets and crop-based seasonal events. Building intensity in this designation will be greatly limited. The minimum parcel size in areas designated as Agriculture is generally 20 acres; the designation however supports the clustering of existing development potential in order to preserve larger agricultural sites. Please note at the time of publication of this General Plan, the Agriculture designation had not been applied to any parcels.

Overlays and Areas of Special Consideration

East of 101 Area Plan Overlay. The East of 101 Area Plan Overlay applies to the area roughly between Half Road and Diana Avenue to the north and south and Condit Road and Hill Road to the west and east. The purpose of this overlay is to require the preparation of a comprehensive master plan when new residential development is proposed to create well-planned, cohesive neighborhoods. Development within the East of 101 Area Plan Overlay shall:

- Employ high-quality site planning, architecture, and design that reflects the rural and agricultural history of the area, following traditional town design principles, and support green building methods that reduce the environmental impact of new development.
- Seek to preserve the agricultural heritage of the area and integrate ongoing agricultural uses into future development, as indicated by the Agriculture/Open Space overlay symbol.
- Include a variety of residential housing types as permitted by the underlying General Plan land use designation.
- Include services and amenities to serve new residents so daily needs can be met close to home.
- Provide an easily accessible, fully connected street and trail network that encourages walking and biking and provides access to existing community amenities such as Live Oak High School and Nordstrom Elementary School.

Open Space/Agriculture: This symbol indicates that open space and agricultural uses should be integrated into future development in areas with a strong agricultural heritage.

Southeast Quadrant. The Southeast Quadrant (SEQ) is approximately 1,300 acres, generally bounded by Condit Road and Highway 101 to the west, San Pedro Avenue to the north, Carey Avenue to the east, and Maple Avenue to the south, as shown in Figure CNF-5. The City has adopted an Agricultural Lands Preservation Program to permanently preserve agricultural lands with the SEQ and Citywide.

Land Use Policies

CNF-3.14 Agricultural Preservation Set-Asides. Set aside at least 300 allotments for housing that may be applied anywhere in the City through 2035. Recipient projects must directly establish permanent agricultural conservation easements within the City Limits or within the City's Priority Agricultural Conservation Area.

CNF-4.1 Future Growth Areas. Use the current Urban Service Area and Urban Growth Boundary to identify future urban development areas based on adequacy and availability of municipal services.

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- CNF-4.2 Urban Growth Boundary.** Maintain a long-term Urban Growth Boundary that:
- a) provides greater stability of future land use patterns than is currently provided by the existing "short term" urban service area (USA) boundaries;
 - b) indicates the preferred extent and direction of the City's future urban expansion and capital improvements planning;
 - c) encourages compact and concentric urban growth and development;
 - d) promotes fiscal responsibility, cost-effective service delivery, and the City's ability to plan for and adequately maintain urban services over time;
 - e) provides for an adequate land supply necessary for sustainable economic growth;
 - f) compensates for the impacts of the City's historical patterns of urban growth;
 - g) achieves greater compatibility of land use planning and decision-making for lands of mutual interest to the City and County; and
 - h) provide additional certainty to rural landowners needed for purposes of planning investments and maintaining viable agricultural operations.
- CNF-4.3 Prerequisites for Urban Development.** Consider land adjacent to the City as available for urban development only when it is included within the Urban Service Area and Urban Growth Boundary, can be developed in a manner that will be cost-effective to the City, and will be served by adequate public services and facilities.
- CNF-4.7 Urban Growth Boundary Modification Criteria.** Significant modifications to the UGB are strongly discouraged in order to ensure the long term stability of the boundary by directing urban growth to areas of the city that are urbanized or planned for urbanization.
- a) Significant modifications to the UGB, or significant modifications to the General Plan text supporting the boundary, will only be considered in the context of a major, comprehensive update of the General Plan which fully considers all of the implications of expanding the limits of urbanization.
 - b) Minor modifications to the UGB may be considered during an annual General Plan review. To qualify as a minor modification a proposed modification of the UGB must meet the following criteria:
 - Be no larger than 5 acres in size; or
 - If the modification includes both areas of expansion and areas of contraction, the net expansion area is no larger than five acres in size; and

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- The expansion area must be located contiguous to lands with an urban land use designation on the City's General Plan Land Use Map.
- c) All proposed modifications must:
 - Demonstrate consistency with the applicable goals and policies in the General Plan and the surrounding General Plan Land Use designations.
 - Demonstrate a fiscally neutral effect on City finances at the time of development in the future.
 - Be adequately served by public services and infrastructure without decreasing City adopted level of service standards.
 - Demonstrate a public benefits such as the preservation of sensitive habitat or prime farmland, provision of affordable housing, provision of public park or open space land, or a public benefit established by the Morgan Hill City Council.

- CNF-4.8 Land Supply.** Include enough land within the Urban Service Area to provide for a rate, amount, and type of development consistent with the General Plan; review and modify the Urban Service Area boundaries as needed.
- CNF-4.9 Orderly Growth.** Urban growth should occur in an orderly and contiguous pattern, within the designated Urban Service Area, encouraging infill of vacant urban land. (South County Joint Area Plan 1.09 & 1.10)
- CNF-4.10 Urban Service Area Expansions.** Base expansion of urban service areas and annexations on the General Plan, consistent with the City's schedules for development and extension of services. (South County Joint Area Plan 1.11 & 1.12)
- CNF-4.11 Urban Service Area Expansions Within UGB.** Allow Urban Service Area expansions only within the long-term UGB and for lands with urban designations; the timing and extent of Urban Service Area expansion shall remain consistent with established Urban Service Area expansion policies and ordinances.
- CNF-6.1 Services to Serve Growth.** Manage and schedule urban growth consistent with the ability to provide a full array of urban services and facilities, such as sewer capacity, water, transportation, schools, public safety and other urban services. (South County Joint Area Plan 1.08)
- CNF-7.1 County General Plan Policies.** Promote the maintenance of current County General Plan policies encouraging low-density uses, including large lots and agriculture, for County projects adjacent to the UGB. Encourage the County to retain large minimum parcel sizes, and promote agricultural and open space uses on unincorporated lands.

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- CNF-7.2 Rural Landowner Home Occupation.** Support the County's effort to promote the use of expanded home occupations for rural landowners and agriculturists, within the parameters of the County's zoning ordinance.
- CNF-7.3 Rural Land Uses.** Land uses in rural areas should be low-intensity and limited in number, and public services to rural areas should be appropriately limited. (South County Joint Area Plan 1.07)
- CNF-7.4 Agricultural Land Use Conflicts.** Work with Santa Clara County to minimize potential land use conflicts between urban uses within the UGB and rural lands adjacent to the growth boundary.
- CNF-7.5 Inter-Jurisdictional Support for Agriculture.** Coordinate measures to enhance the economic viability of agriculture in conjunction with other inter-jurisdictional planning in the South County.
- CNF-20.3 East of 101 Area Design.** Require new residential development to be designed to minimize adverse impacts on adjacent residential and agricultural uses.
- CNF-20.4 East of 101 Area Integrated Agriculture.** Strongly encourage new development to preserve existing agricultural uses as feasible and integrate agricultural features into new development to reflect the history of this area.

Open Space (pg. NRE-1)

The abundance of open space within and around Morgan Hill is a key contributor to quality of life for City residents and visitors. Preserving open space, including in conjunction with new development, is essential to maintaining the uniqueness and quality of life of Morgan Hill.

Greenbelts (pg. NRE-2)

The Natural Resources and Environment Element identifies a Greenbelt, which is intended to physically define the City and separate it from San Jose and San Martin. The Greenbelt includes both public open space and private properties as shown on Figure NRE-1. Identification of areas as "Greenbelt" does not change the development potential or restrictions imposed under Santa Clara County development policies and regulations. Rather, it indicates that the City will work with the County to minimize off-site visual impacts of new development. In addition, the Greenbelt is intended to identify areas where a targeted program of acquisition of open space easements or fee title to land may occur.

Areas outside of the Urban Growth Boundary that have been substantially subdivided into parcels smaller than 10 acres generally are not included in the identified Greenbelt areas. Many of the parcels in these areas are developed or are eligible for construction of single-family homes. The existing and potential density of development in these areas minimizes their value as Greenbelt areas. However, the

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rural character of these areas does help to define and distinguish the urbanized City area from other urban and rural county areas.

Agricultural Resources (pg. NRE-2)

Agriculture has been important to the City throughout its history as an industry and employment generator, in addition to contributing to the City's rural character. The City's economy once depended on the cultivation of stone fruits, pears, apples, and nuts. Although the local economy diversified, agriculture is still an important asset to the region, as evident by the surrounding nurseries, orchards, and vineyards, which boost the region's economy and the local tourism industry.

Supporting agriculture requires finding innovative ways to help farming and ranching operations become and remain competitive in an increasingly global economic environment. Agricultural development policies intend to retain the historic agricultural character of lands surrounding Morgan Hill, and to minimize conflicts between urban development and agricultural uses.

Agricultural land can be found within the Morgan Hill City limit and within the Sphere of Influence (SOI). The Morgan Hill area includes prime farmland, farmland of statewide importance, farmland of local importance, unique farmland, and grazing land, as classified by the State Department of Conservation. As shown in Figure NRE-2, most of the prime farmland is located on the eastern side of the City, east of Highway 101. However, the Department of Conservation's data reflect conditions as of 2010. Since the time the State published the data, some limited pieces of land may have been developed or may now be under development review. Nevertheless, the data provide a broad picture of the agricultural resources within Morgan Hill today.

The California Land Conservation Act of 1965, also known as the Williamson Act, provides tax relief for landowners who preserve their agricultural and open space property under Williamson Act contracts. Under contract, the tax on a Williamson Act property is assessed at a rate consistent with its actual use, rather than the potential value. These contracts run for 10 years, are automatically renewable on an annual basis, and may be terminated by the initiative of either the property owner or the legislative body. There are a number of parcels under Williamson Act contracts in and around Morgan Hill.

Conservation Policies

- NRE-1.1 Natural Features.** Preserve outstanding natural features, such as the skyline of a prominent hill and rock outcroppings.
- NRE-1.2 Large Open Space Areas.** Work with the County, the Open Space Authority, appropriate conservancy organizations and land trusts, and property owners to preserve large open space areas, such as agricultural lands and outdoor recreation areas, to conserve natural resources and retain the City's unique identity.
- NRE-1.3 Designated Open Space.** Maintain land designated as "Open Space" on the Morgan Hill General Plan Land Use Map (Figure CNF-3).

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- NRE-1.4 South County Open Space.** Preserve and maintain the wide variety of open spaces in the South County; including greenbelt areas, parks, and agricultural uses. (South County Joint Area Plan 16.00)
- NRE-1.5 Coordinated Action.** Continue to coordinate with Gilroy and Santa Clara County to implement South County open space goals and objectives and participate in the development of regional open space preservation programs. (South County Joint Area Plan 16.19 & 16.20)
- NRE-1.6 Open Space Preservation Tools.** Use a variety of open space preservation tools to protect open space, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development. (South County Joint Area Plan 16.17)
- NRE-1.7 Priority Areas for Preservation.** The South County includes a variety of open space areas, including the valley floor, stream corridors, lands around reservoirs, foothills, inter-mountain valleys, and mountain areas beyond the foothills. Of these geographic areas, stream corridors, lands around the reservoirs, lands which provide greenbelts, and significant hillside features should receive highest priority for preservation as open space and future regional park location. (South County Joint Area Plan 16.01 & 16.02)
- NRE-1.8 County Parks and Open Space Programs.** Support County programs to:
- a) acquire and develop regional parks in the South County, providing just compensation for the taking of private lands;
 - b) protect open space resources by prohibiting the introduction of uses incompatible with open space resource preservation, and preserve open space through planning, regulation, acquisition and/or development rights transfer programs;
 - c) plan and regulate land use to avoid hazardous areas and protect critical natural resources; and
 - d) continue to provide property tax relief via the Williamson Act to land owners who agree to maintain their lands in open space uses. (South County Joint Area Plan 16.21)
- NRE-2.1 Hillside and Ridgeline Views.** Protect views of hillsides, ridgelines, and prominent natural features surrounding the City. These features help define the City's historic rural character, sense of place, image and identity.
- NRE-2.2 El Toro Mountain as Landmark Feature.** Retain the City's unique identity by preserving its landmark natural feature, El Toro Mountain.

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- NRE-2.3 Scenic Hillside Preservation.** Preserve scenic hillsides around the City in an undeveloped state, wherever feasible. Provide for retention of hillside areas as open space through the dedication and/or purchase of scenic easements and/or open space easements, transfer of development rights and other appropriate measures.
- NRE-2.4 Building Distance below Ridgelines.** Limit all building pads located within the hillside areas to an elevation at or below the 80-foot vertical drop from the ridgeline.
- NRE-3.1 Greenbelt as a Community Separator.** Maintain a greenbelt to separate the northern and southern boundaries of the City from surrounding rural lands and the urbanized areas of San Jose and San Martin.
- NRE-3.2 San Jose Coyote Valley Greenbelt.** Work with the City of San Jose and Santa Clara County to ensure that the San Jose Coyote Valley Greenbelt, which includes the area south of Palm Avenue and north of the Morgan Hill City limits and is located within the San Jose Sphere of Influence, shall continue to provide the non-urban buffer for the north side of Morgan Hill.
- NRE-3.3 Greenbelt Easements.** Acquire easements on properties using an approach that would maintain some appropriate development potential, maximize the use of available funds for greenbelt and open space protection, and minimize land management and maintenance costs.
- NRE-3.4 Land in Fee Title for Greenbelts.** Acquire land in fee title when the City's objectives include allowing public access to the site for recreational or related activities.
- NRE-3.5 "Willing Seller" Greenbelt Acquisition.** Acquire properties and easements on a "willing seller" basis.
- NRE-3.6 No Commercial/Industrial Uses within Greenbelts.** Support County policies prohibiting commercial and industrial uses (excluding agricultural industry) in the unincorporated and greenbelt areas surrounding the City.
- NRE-3.7 Appropriate Greenbelt Land Uses.** Encourage land uses appropriate within a greenbelt, which might include: a) low-density residential development on lots 10 acres or more in size; b) public parks and recreational areas; c) privately operated recreation areas (e.g., golf courses and riding stables); and, d) agriculture. (South County Joint Area Plan 16.16)
- NRE-3.8 Appropriate Greenbelt Land Uses.** Require appropriate uses within Greenbelt areas such as parks and other designated open spaces, scenic/open space easements, golf courses, low intensity public facilities involving minimal permanent improvements and agricultural activities are appropriate uses. Existing residential may remain and new residential uses should be located and designed to have minimal visual and other environmental impacts.

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- NRE-3.9 Greenbelt Areas on Private Land.** Greenbelt areas which are privately owned are not intended for public recreational use.
- NRE-3.A Tools to Create a Greenbelt.** Use a variety of tools to create a greenbelt, including public acquisition, land use regulation, urban development policy, economic incentives to landowners, open space easements, transfer of development rights, planned cluster development, assessment districts, and dedication of additional lands upon development.
- NRE-3.B Greenbelt Acquisition Program.** Pursue a targeted program for acquisition of Greenbelt land in fee title or conservation easements. Prioritize undeveloped properties that are most threatened with development which, if acquired, would provide significant public benefit.
- NRE-4.1 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.2 Agriculture Retention and Transition to Urban Uses.** Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- NRE-4.3 Agriculture in the Sphere of Influence.** Support significant agricultural activity within the Sphere of Influence by providing a market for agricultural products (e.g., farmers' markets) and decreasing the costs associated with agriculture by allowing such uses to occur in the Sphere of Influence.
- NRE-4.4 Farming Cooperatives in Buffer Areas.** Support use of farming cooperatives within agricultural buffer areas.
- NRE-4.5 Local Agricultural Products.** Purchase locally-produced agricultural products for City functions and encourage Morgan Hill Unified School District and other local agencies to do the same, whenever feasible.
- NRE-4.6 Agricultural Education.** Support programs to foster agricultural education.
- NRE-4.7 Long-Term Maintenance of Agriculture.** Continue to support the long-term maintenance of agricultural land uses and agriculture, including vineyards and wineries, as an economic enterprise in South County. (South County Joint Area Plan 14.00)
- NRE-4.8 Policy Support for Agriculture.** Take positive action to encourage agriculture by supporting local, county, and State policies favorable to agriculture. (South County Joint Area Plan 14.01)

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- NRE-4.9 **Urban Encroachment.**** Require new urban development adjacent to an existing agricultural operation to create an appropriate buffer area, on land within the proposed development, between urban uses and agricultural activities.
- NRE-4.10 **Land Use to Support Agricultural Viability.**** Maintain the economic viability of agriculture using a variety of methods, such as:
- Designating land outside urban areas as agricultural;
 - Requiring minimum lot sizes in agricultural areas;
 - Requiring land uses that support agricultural activities;
 - Marketing the benefits of agricultural uses to the public. (South County Joint Area Plan 14.02)
- NRE-4.11 **Agricultural Mitigation.**** Enforce the agricultural mitigation requirement of requiring the preservation of a minimum of 1 acre of agricultural land for each acre of agricultural land changed to a non-agricultural use, consistent with the City's Agricultural Lands Preservation Program.
- NRE-4.12 **Permanent Preservation of Agriculture.**** Establish areas for the permanent preservation of agricultural lands and programs to accomplish that objective, such as exclusive agricultural zoning, transfer of development rights (TDR) programs, and right-to-farm legislation. (South County Joint Area Plan 14.03)
- NRE-4.13 **Urban Growth.**** Wherever existing development patterns and existing and planned roads and other public facilities permit, concentrate urban development adjacent to existing developed areas in order to minimize the impact of development on agricultural land. Plan for further urban growth to occur in areas which will avoid encroachment into those agricultural lands with the greatest long-term potential to remain economically viable. (South County Joint Area Plan 14.07)
- NRE-4.14 **LAFCO Policies.**** Support policies of the Local Agency Formation Commission (LAFCO) which would guide urban development away from those agricultural areas with the greatest potential for long-term economic viability. Use policies for Urban Service Area extensions and utility extensions to guide urban growth away from long-term agricultural areas. (South County Joint Area Plan 14.09 & 14.10)
- NRE-4.15 **Conversion to Urban Use.**** Convert agricultural land that has been designated for urban growth in an orderly manner to retain the stability and viability of remaining agricultural lands as long as possible. (South County Joint Area Plan 14.08)
- NRE-4.16 **Prioritization of Agricultural Land.**** Prioritize protection of existing agriculture lands in the Sphere of Influence, outside the Urban Growth Boundary.
- NRE-4.17 **Williamson Act Contracts.**** Support the preservation of land under Williamson Act contracts within the Morgan Hill Sphere of Influence.

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- NRE-4.18** **Agricultural Operations Disclosure.** In areas where residential development is adjacent to agricultural operations, require a disclosure to residents that agricultural operations happen nearby and that they will be exposed to impacts from such operations, such as dust, noise, and odors.
- NRE-4.19** **Agricultural Lands Preservation Program.** Use a wide variety of funding sources to support the Agricultural Lands Preservation Program, including land use regulation, urban development policy, conservation easements (with matching grant funds from appropriate agencies, where possible), transfer or purchase of development rights, increased transfer fees, Residential Development Control funds, or Homeowners Association fees for new development.
- NRE-15.4** **Sustainable Land Use.** Promote land use patterns that reduce the number and length of motor vehicle trips.

Exhibit 3: Municipal Code Chapter 18.152 Agricultural Mitigation

Chapter 18.152 – AGRICULTURAL MITIGATION

Sections:

- 18.152.010 – Agricultural Lands Preservation Program
- 18.152.020 – Purpose
- 18.152.030 – Definitions
- 18.152.040 – Applicability
- 18.152.050 – Mitigation Ratio
- 18.152.060 – "Stay Ahead" Provision
- 18.152.070 – Measurement of Affected Area
- 18.152.080 – Mitigation Mechanism
- 18.152.090 – Eligible Mitigation Lands
- 18.152.100 – Ineligible Mitigation Lands
- 18.152.110 – Agricultural Priority Area
- 18.152.120 – Responsibility for Easement Acquisition
- 18.152.130 – Management and Monitoring Fee
- 18.152.140 – Implementing Entity
- 18.152.150 – Mitigation Timing and Implementation
- 18.152.160 – Planned Developments/Development Agreements
- 18.152.170 – Funding for Easements
- 18.152.180 – Clustering of Development

18.152.010 – Agricultural Lands Preservation Program

The ordinance codified in this chapter shall be known and may be cited as the "Agricultural Lands Preservation Program" of the City of Morgan Hill.

18.152.020 – Purpose

- A. The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill sphere of influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. For Morgan Hill, an effective agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.
- B. The Morgan Hill agricultural lands preservation program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a

comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill sphere of influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting general plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the city's southeast quadrant

18.152.030 – Definitions

The following terms when used in this chapter shall have the following respective meanings:

- A. **Agricultural Land.** For "agricultural land" that requires off-setting preservation/mitigation under this agricultural lands preservation program, agricultural land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that was not subsequently developed for non-agricultural use prior to August 1, 2014 or subsequently developed per the provisions of this ordinance. Lands identified as grazing land are not subject to the offsetting preservation/mitigation requirements set forth in this policy.
- B. **Agricultural Conservation Easement.** An agricultural conservation easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive agricultural use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.
- C. **Agricultural Mitigation Land.** Agricultural land (as defined above) that is encumbered by an agricultural conservation easement or other farmland conservation mechanism acceptable to the city. If the agricultural land is also being used to meet open agricultural land preservation goals, the easement or other mechanism must ensure that at least ninety percent of any property being used as agricultural mitigation land remain as open space free of structures or other impervious surfaces so that it retains its value as agricultural

land under the FMMP criteria. Uses allowed on agricultural mitigation land shall be consistent with the agricultural use described below and pertaining land use regulations, and as further defined in the applicable agricultural conservation easement or other farmland conservation mechanism.

- D. **Agricultural Priority Area.** The agricultural priority area is an area within the SEQ that has been identified within the Agricultural Lands Preservation Program as a priority location to preserve and encourage the long-term viability of agriculture and open agricultural lands, recognizing both the vital contributions agriculture makes to the economy and quality of life within the county and the community preference for maintenance of open space areas. By designating this area, the program identifies those lands within the Morgan Hill SOI most suitable for agricultural production and related uses. Designating the agricultural priority area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The agricultural priority area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.
- E. **Agricultural Use.** Agricultural use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying agricultural use activities may include:
 - 1. **Agricultural processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
 - 2. **Agriculturally related entertainment and commercial uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site agricultural uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
 - 3. **Agricultural research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.
 - 4. **Dairy:** Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.

5. Feed lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and egg farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food paring, local agriculture and local history is also permitted.
12. Ancillary uses: Uses conducted subordinate to the primary agricultural use being conducted upon a property and which do not occupy in total more than ten percent of the property, including:
 - a. Direct sales of locally produced agricultural products.
 - b. One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c. Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d. Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

- F. **Agricultural Preservation In-lieu Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency solely for the purpose of acquiring agricultural conservation easements. The program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the city's ability to preserve open space agricultural lands within the agricultural priority area.
- G. **Agricultural Lands Preservation Program Surcharge Fee.** A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency for the purpose of administering the agricultural lands preservation program and/or to cover ongoing management and monitoring of the easements. The surcharge fee is either incorporated into the overall in-lieu fee for projects that make use of this option, or charged directly to projects which independently establish an agricultural conservation easement.
- H. **Open Agricultural Land.** Open agricultural land is defined as agricultural land that is at least ninety percent free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other agricultural use. The city may make use of open space funding sources to acquire agricultural conservation easements where that easement specifies that the encumbered property be maintained as open agricultural land.

18.152.040 – Applicability

The provisions of this chapter shall apply to all new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of agricultural land (as defined above) will be required to mitigate loss of agricultural land per the provisions of this policy. This includes projects within the existing city boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption August 1, 2014, including completion of the CEQA process, are not subject to this policy unless specifically required as mitigation or a condition of project approval.

18.152.050 – Mitigation Ratio

A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.

18.152.060 – "Stay Ahead" Provision

Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands. Development occurs with either the issuance of grading permit or building permits that would result in the loss of agricultural land. To meet this provision the city may utilize existing open space funding to establish agricultural conservation easements, or individual projects may establish such easements in advance of development activity.

18.152.070 – Measurement of Affected Area

Areas subject to agricultural mitigation requirements will be the developed footprint for properties with a general plan land use designation of open space, public facilities, or sports recreation/leisure. Areas proposed to be so reserved shall have an aggregated area of at least ten acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.

18.152.080 – Mitigation Mechanism

Conversion of agricultural land will require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the city of the agricultural preservation in-lieu fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the agricultural preservation in-lieu fee, in either case developers are also required to pay an agricultural lands preservation program surcharge fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.

18.152.090 – Eligible Mitigation Lands

In order to meet the goals of this chapter, lands proposed to be used as agricultural mitigation shall conform to the above definitions for agricultural mitigation land and/or open agricultural land and shall meet the following criteria:

- A. Agricultural conservation easements resulting from this program shall be acquired from willing sellers only; eminent domain will not be used to acquire lands for conservation;
- B. The property is of adequate size, configuration and location to be viable for continued agricultural use;
- C. The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing agricultural uses, and

the water rights on the agricultural mitigation land shall be protected in the agricultural conservation easement;

- D. Other considerations for appropriate conserved agricultural lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
- E. The mitigation land shall be located within Santa Clara County; and
- F. The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.

18.152.100 – Ineligible Mitigation Lands

A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

- A. The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or
- B. The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the city or other public agency; or
- C. The property is subject to conditions that practicably prevent utilizing the property for a viable agricultural use.

18.152.110 – Agricultural Priority Area

Dedications inside the Morgan Hill sphere of influence (SOI) will be strongly encouraged within the southeast quadrant (SEQ) as the first priority. The city has identified an agricultural priority area within the SEQ as the city's first priority for conservation. The city's secondary priority is the preservation of other rural county agricultural lands within the Morgan Hill SOI. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'eligible mitigation lands' above. The agricultural priority area encompasses approximately six hundred fifty acres of land.

18.152.120 – Responsibility for Easement Acquisition

- A. In cases where the mitigation fee is paid, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the in-lieu fee and accompanying responsibility to a qualifying entity.

- B. Developments requiring less than ten acres of agricultural mitigation are required to pay the agricultural preservation in-lieu fee on a per acre basis except that acquisition of agricultural conservation easements of less than ten acres may be allowed when located immediately adjacent to an existing agricultural conservation easement area that when combined, exceeds ten acres in size.
- C. Developers may independently establish an agricultural conservation easement on eligible mitigation lands within the county. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the agricultural lands preservation program surcharge fee.

18.152.130 – Management and Monitoring Fee

The developer shall pay a one-time per acre fee (agricultural lands preservation program surcharge fee) to cover the average cost administration of the program.

18.152.140 – Implementing Entity

The city will hold the easements and collect management and monitoring fees until an alternative implementing entity (qualifying entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.

18.152.150 – Mitigation Timing and Implementation

Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of agricultural lands, whichever occurs first.

18.152.160 – Planned Developments/Development Agreements

Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the city's SOI in which agricultural lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the agricultural priority area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development

agreement with the city specifying the terms of the agreement and the extraordinary benefits accruing to the city.

18.152.170 – Funding for Easements

Given the city's policy objective of agricultural land preservation within the Morgan Hill sphere of influence and within the southeast quadrant in particular, it is anticipated that the city will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the city will use open space funds collected through administration of its residential development control system (RDCS) to supplement the acquisition of conservation easements.

18.152.180 – Clustering of Development

The city may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The city should allow such alternate methods of agricultural mitigation through planned development zoning and/or a development agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an agricultural conservation easement shall be recorded over the agricultural mitigation lands subject to the planned development zoning and/or development agreement.

**Exhibit 4: Municipal Code Section 18.30.040 Hillside Combining District
and Transfer of Development Credits Program**

18.30.030 – Downtown Specific Plan Overlay Zone

- A. Purpose.** The Downtown Specific Plan (DTSP) overlay zone identifies areas where the requirements of the Downtown Specific Plan apply.
- B. Applicability.** The DTSP overlay zone applies to parcels within the boundary of the Downtown Specific Plan as shown on the Zoning Map.
- C. Effect of Downtown Specific Plan Overlay.**
 - 1. All proposed land uses and development within the DTSP overlay shall comply with the requirements of the Downtown Specific Plan.
 - 2. In the case of conflict between the Downtown Specific Plan and the requirements of the Zoning Code, the Downtown Specific Plan shall govern.

18.30.040 – Hillside Combining District

- A. Purpose of Hillside Combining District.** The purpose of the Hillside (H) combining district is to allow for the orderly development of hillside areas while preserving significant environmental features and protecting public safety in geologically unstable areas.
- B. Applicability.**
 - 1. The H combining district applies to all areas within the City having an average slope of ten percent or greater.
 - 2. A planned development overlay zoning district shall be required for all subdivisions in with an H combining district where five or more lots are proposed.
- C. Development Standards.**
 - 1. Building Restrictions on Steep Slopes.**
 - a. Buildings, private streets, and driveways may not be constructed on slopes greater than 20 percent except as allowed by subparagraph b below.
 - b. Minor encroachments onto slopes greater than 20 percent may be allowed when the review authority finds that the proposed encroachment will not conflict with the purpose and intent of the H combining district.
 - 2. Minimum Lot Area.**
 - a. The minimum lot size in the H combining district shall not be less than "A" as determined by the formula:

$$A = S \times 2,000$$

Where "S" is the average slope of the lot to be created in terms of percent.
 - b. For lots with an average slope greater than 50 percent, the minimum lot size is 5 acres.

- c. Lots with an average slope of ten percent or greater may be created in exception to the slope/area formula above if the lots to be created contain an area of slope less than ten percent which is equal to or greater than the minimum lot size required by the underlying zone. In such a case, a deed restriction must be recorded for such lots which restrict building to the area in which the average slope is ten percent or less.

3. **Calculating Ground Slope.**

- a. The average ground slope shall be calculated using the following formula:

$$S=0.00229IL/A$$

Where:

S= Average ground slope in percent

I=Contour interval in feet

L=Combined length of the contour lines in feet

A=The gross area in acres of the parcel or lot

- b. Measurements along contours shall be made at contour intervals not to exceed ten feet, and a horizontal map scale of one inch equals two hundred feet or larger.

4. **Land Modification Restrictions.**

- a. Areas on a lot with a slope exceeding 20 percent may not be altered by grading, altering natural features, removing natural vegetation, or by any activity related to the preparation of the lot for development.
- b. The Planning Commission may allow exceptions to the land modification restrictions above to protect the public health, safety, and welfare. Exceptions may be granted to:
 - (1) Install fire trails;
 - (2) Remove of poisonous or noxious vegetation;
 - (3) Remove or thin vegetation as part of a fire-protection program approved by the Fire Chief;
 - (4) Abate geologic or seismic hazard; or
 - (5) Protect public safety through other methods as approved by the Planning Commission.

- 5. **Open Space Requirements.** Table 18.30-1 identifies the minimum percentage of lot area to remain in open space with no grading or terrain alteration.

TABLE 18.30-1: OPEN SPACE REQUIREMENTS

Average Ground Slope (Percent)	Minimum Percent of Lot Area to Remain in Open Space
12.5 to 14.9	32.5%
15.0 to 17.4	40.0%
17.5 to 19.9	47.5%
20.0 to 22.4	55.0%
22.5 to 24.9	62.5%
25.0 to 27.4	70.0%
27.5 to 29.9	77.5%
30.0 and above	85.0%

6. One Dwelling Unit Allowed Per Lot.

- a. If no portion of a lot contains slopes of less than twenty percent, and the lot is a legally-established lot of record, one dwelling unit may be constructed on the lot.
- b. Development when allowed by this section shall conform with the recommendations in the engineering geologic or geotechnical report prepared by a qualified engineer geologist as required by the provisions of Chapter 18.70 (Geologic Hazards) and any other conditions of approval or mitigation measures adopted for the proposed project.

7. Ridgeline Development. Buildings are prohibited within 80 feet of a ridgeline unless the review authority for the proposed project finds that:

- a. There are no other feasible locations on the lot other than the proposed ridgeline building site which can accommodate the building;
- b. The proposed development is consistent with all other requirements of the applicable zone;
- c. The applicant has attempted a transfer of development credits (TDC) in accordance with Subsection F (Transfer of Development Credits) as an alternative to building on the proposed ridgeline site; and
- d. The applicant has exhausted all possible avenues to accommodate development in area away from the proposed ridgeline building site.

8. Cut-and-Fill Slopes. Cut-and-fill slopes shall not be steeper than two horizontal to one vertical (2:1) unless stabilized by a retaining wall or cribbing, as approved by the Building Official.

9. **Erosion-Control Plan.** The City shall approve an erosion-control plan prior to any physical development within the H combining district. The plan shall meet the standards contained in Municipal Code Chapter 13.30 – Urban Storm Water Quality Management & Discharge Control.

D. El Toro Mountain Open Space Preservation

1. The following hillside areas of El Toro Mountain shall be preserved as open space to the maximum extent possible:
 - a. Areas above the 600-foot elevation in Llagas Valley and Paradise Valley; and
 - b. Areas above the 500-foot elevation in all other areas.
2. Subdivisions proposed in areas specified above shall include open-space easement dedications to guarantee the permanent preservation of open space.
3. Prior to approving development in the areas specified above, the review authority shall find that the applicant made every reasonable effort to avoid the development in these areas, including a transfer of development credits (TDC) and/or the establishing of a Planned Development (PD) overlay.

E. Transfer of Development Credits. This section allows for the transfer development credits (TDCs) from "transferor sites" in areas where development is restricted by the H combining district to "recipient sites" in other areas of the city authorized to receive TDCs. The City Council may from time to time authorize by resolution a TDC from one lot to another lot, where such authorization is found to be consistent with the General Plan and this section.

1. **General Standards.**
 - a. **Permitted Recipient Sites.** Zones in which an increase in the number of dwelling units are permitted are restricted to the residential zones listed in Chapter 18.16 (Residential Detached Zoning Districts).
 - b. **Number of Units on a Site.** The number of dwelling units permitted on a site may not exceed ten percent of the maximum residential development credits transfer, exclusive of density bonuses provided by other sections of this title.
 - c. **Maximum Density Bonus.** The maximum density bonus on any site shall not exceed 25 percent, including affordable housing and TDC density bonuses.
 - d. **Environmental Study.** An environmental study shall be prepared to determine the carrying capacity of the property from which development credits are being transferred. If environmental findings determine that the site, or a portion thereof, is unbuildable due to environmental constraints, the development credits to be transferred shall be reduced accordingly, prior to determining the number of units permissible under the slope-density formula.
 - e. **Minimum Area.** The site to which the TDC is proposed shall be no less than one acre.

- f. **Setback Requirements.** All setback requirements of the more restrictive district found along the perimeter of the site shall apply to perimeter yards on the site to which the transfer of development credits is proposed, unless the site is zoned for PD zoning.
 - g. **Calculation of TDC Credits.** TDCs shall be calculated in accordance with the slope-density regulations of this section, base district minimum lot sizes and this section.
 - (1) In all hillside areas of the City, with the exception of El Toro Mountain, the number of TDCs shall be determined as provided in Section 18.30.040.D (El Toro Mountain Open Space Preservation).
 - (2) On El Toro Mountain, the number of TDCs available to property within the city limits shall be twice that determined as provided in Section 18.30.040.C.2 (Minimum Lot Area). The number of transferable development credits available to property on El Toro Mountain which is outside the city limits shall be twice that allowed by the Zoning Ordinance of Santa Clara County. The calculation of transferable development credits for El Toro Mountain shall be as follows:

$$(\text{Number of Acres/Minimum Lot Size}) \times 2 = \text{Number of transferable development credits}$$
 - (3) The number of TDCs available to properties on El Toro Mountain above that allowed to other hillside areas of the city may only be used for transfer to other properties of slopes less than twenty percent and may not be used to increase on-site development potential.
 - (4) In the calculation of TDCs, a fraction occurring at the end of a calculation which is 0.5 or larger shall be considered a full development credit. The City Council may also exclude from calculation any existing dwelling and appurtenant structures on the site to be preserved.
2. **Application.** An applicant for a TDC shall contain the following information and materials:
- a. A title report and any other documentation disclosing all existing interests or obligations against the transferor site property to be affected by the open space easement. If other interests exist, a subordination agreement (in a recordable form) acknowledging the reservation of the City of Morgan Hill's open space easement claim shall be submitted with the title report.
 - b. When known, the location and land area of the recipient site to which such credits are to be transferred, the projected total number of dwelling units that would result on the recipient site from such a transfer, and a statement of the character of the projected housing development.

- c. A legal description of the open space to be preserved on the transferor site by the transfer, accompanied by an open space (scenic) easement suitable for recordation and the applicable open-space policy to be implemented by the transfer.
 - d. The location, site area, and related residential development credits of the transferor site which the applicant proposes to transfer.
 - e. Where applicable, the number of building allotments granted to the recipient site under the Residential Development Control System (RDCS).
3. **City Action.** Upon approval of the Planning Commission and the City Council of a TDC application, the City Clerk shall issue a TDC certificate to the applicant in a form approved by the City Manager. The following actions must be taken prior to these development credits being effectively conveyed to and utilized by the recipient property:
- a. Approval by the Planning Commission of a detailed site plan of the recipient site to which the development credits are to be transferred;
 - b. Where recipient site is known, execution and recordation with the County Recorder's Office of an instrument legally sufficient both in form and content to effect conveyance of the TDC from the transferor to the recipient site. Such instrument shall specifically set forth the credits to be conveyed and the resultant total residential development credits assignable to the recipient site;
 - c. Execution and recordation with the County Recorder's office of an instrument legally sufficient in form and content to effect conveyance of a permanent open space easement in the transferor site dedicated to the City. Such open space easement shall be unencumbered by any prior interests or, if so encumbered, shall be accompanied by and recorded together with subordination agreement with evidence that all persons or entities having any interest in the transferor site have acknowledged the creation and transfer of development credits, consented to the terms and conditions of the open space easement, and waived the priority of any rights or claims they may have in the transferor site. Recordation of the executed open space easement and accompanying subordination agreement shall serve as notice of the dedication of open space in the transferor site and shall be incorporated in the deeds of the transferor site; and
 - d. Other requirements as established by the City Council.

18.30.050 – Planned Development Combining District

- A. Purpose of the Planned Development Combining District.** The purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD



CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: December 19, 2018

PREPARED BY: Leslie Little, Assistant City Manager for Community Development

APPROVED BY: City Manager

ADOPT POLICY FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) AGRICULTURAL PRESERVATION EXEMPT SET-ASIDES, TRANSFER OF DEVELOPMENT RIGHTS AND/OR AUCTION

RECOMMENDATION(S)

1. Adopt a policy for Agricultural Set-A-Sides, Transfer of Development Rights, and/or Auction process;
2. Establish number of Agricultural Set-A-Sides Available for Auction in 2019; and
3. Authorize 2019 Auction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

Preserving Our Cultural Heritage

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

1. Should the City Council establish an auction process for the disbursement of Agricultural Preservation Set-Asides allotments established by Measure S (RDCS), in years when no Transfer of Permitted Residential Development Rights (TDRs) occur, to provide a reliable revenue source with which to acquire Agriculture Conservation Easements (ACE) within the City's Priority Conservation Area (map attached) identified in the Morgan Hill 2035 General Plan and RDCS update?
2. The RDCS includes a set-aside of up to 35 competition-exempt allotments annually (300 total through 2035), in furtherance of the City's agricultural preservation goals. Should the City auction 2017 and 2018 allotments, for a total of 70?

REPORT NARRATIVE:

The TDR is a mechanism that the City has used successfully for many years to implement policies of the Open Space and Conservation Element of the General Plan. In 1981, the City established the transfer of development rights from hillside lots of considerable slope to affect the preservation of open space and view shed on the hills surrounding the community. The TDR provision is designed to ease the restriction of prohibited construction on slopes of over 20% by granting affected property owners development rights based upon the unused density afforded to them. The TDR policy allowed a developer to negotiate with property owners in other residential areas of town

to sell those development rights to increase the density permitted on those other properties.

In support of the City's agricultural preservation goals, Measure S established an annual set aside of up to 35 RDSCS competition-exempt allotments, up to a maximum of 300, to encourage the preservation of agricultural land in the City's Priority Conservation Area (Morgan Hill Municipal Code Section 18.78.060). Developers can negotiate and obtain ACE commitments by their own initiative within the Priority Conservation Area and receive allotments in return for those easements. This would occur on a first come, first served basis, up to 35 allocations per year. The City has created a Conservation Easement template, and once an agricultural easement seller is identified by the developer, the City will assist with the negotiation of the form of easement. All ACE's will have permanent stewardship provisions. In 2019, one ACE acre will yield 6 development allotments (or cost \$16,666 per allotment) with one allotment awarded to compensate for Agricultural Trust stewardship costs associated with ACE acquisition.

To accomplish the goals of the General Plan and provide the development community the opportunity to receive these exempt Agricultural Preservation Set-aside allotments, it is recommended that at the end of each calendar year, if the TDR's are unused via developer-initiated easement acquisition, that the City auction the unclaimed exempt allotments to provide funds to replenish the Open Space and Agricultural Conservation Fund, generating dollars for staff-initiated ACE acquisition.

It is proposed that each January, the City would auction unclaimed Preservation Set-Aside allotments. As with Downtown Exempt allotments, projects are exempt from RDSCS competition, but must achieve a minimum score required to receive allotments. To maximize revenue from the sale of the allotments, a base price shall be set, and a process created to allow for open bidding for the purchase of the allotments.

Terms of the sale would:

- Set a minimum base bid
- Set an auction and bidding schedule
- Limit the resale of the exempt allotments to unrelated entities
- Allow assignment of the allotments to entities substantially formed from the originating purchaser
- Require termination and re-purchase by the City if not used within 3 years from time of award
- TDR allotments do not provide credit for Ag Mitigation required by Ordinance; rather they are in addition to mitigation required by conversion of agricultural lands which include residential, commercial, and industrial properties within the City.

The process contemplated would:

- Require bidders to register with the City and receive a bidder Identification number
- Provide public view of auction process results on City Web Page
- Bidders will be given a deadline to submit bids, including the number of

- allotments requested; City will publicly post bids
- Bidders will be allowed to submit revised bids if desired by date certain, after which bidding closes
- City awards allotments to highest bidder
- City processes a TDR certificate, similar to the Open Space TDR certificate currently in use.

It is proposed that the City establish a base price of \$20,000 per allocation for auction. This price is based upon the following assumptions:

A one-acre ACE costs between \$85,000 and \$100,000, depending upon the development potential of the agricultural property that will be removed. One acre is 43,560 sf. Based upon a lot size of 7,500 square feet, a one-acre lot can yield a net of 5 residential lots. When using \$100,000 and dividing by 5 allotments the base price is \$20,000. (One acre divided by 5 is 8,712 sf; subtracting for streets and common space the assumption is that the land will net 5 – 7,500 sf lots.) If this price were held constant for the next 10 years, the set aside sale will raise \$6,000,000 for the Agriculture and Open Space Fund (306).

COMMUNITY ENGAGEMENT:

This report is intended to inform the community. Subsequently, a summary of the program will be created and circulated to the development community. Value consideration was made by consulting an agricultural appraisal expert and testing the price with a member of the local commercial real estate community.

ALTERNATIVE ACTIONS:

Measure S makes provisions for the use of agricultural preservation exempt allotments, with a limit of not more than 35 set-a side allotments available within a single year, up to a maximum of 300 allotments. The Council could choose to exercise these exemptions through developer-initiated ACE's alone as an alternative. This could limit the actual preservation of land and would limit the City's ability to acquire "at-risk" property or provide leverage to match other local preservation efforts. Assuming ACE easements utilize a constant valuation as proposed in this report, it is recommended that one ACE acre yield 6 development allotments instead of 5, to compensate for the cost associated with ACE acquisition with associated stewardship provision costs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Agricultural preservation and conservation are key policies contained within the City's General Plan. The City has created and adopted an Agricultural Preservation Program (Ordinance), requiring all agricultural land within the City to mitigate 1:1, created a stay-ahead provision to ensure that efforts are prospective and not reactive, and identified a Priority Conservation Area to target acquisition efforts.

FISCAL AND RESOURCE IMPACT:

It is proposed that the City establish a base price of \$20,000 per auction allotment. This price is based upon the assumptions described above. It is also proposed that the base price will be set each year, based upon the City's experience with appraisal and

acquisition of ACE's in the Priority Conservation Area. If the price were held constant for the next 10 years, the set aside sale will raise \$6,000,000 for the Agriculture and Open Space Fund (306).

CEQA (California Environmental Quality Act):

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15378 the administrative actions taken to implement this policy are exempt from California Environmental Quality Act requirements.

LINKS/ATTACHMENTS:

1. [PriorityAgriculturalConservationArea](#)
2. [Draft TDR Program Outline 4.0](#)

City of Morgan Hill

9.e

USA

Highway 101

E Dunne Ave

Tennant Ave

Murphy Ave

Barrett Ave

UGB

Fisher Ave

Hill Rd

Maple Ave

San Martin

Priority
Agricultural
Conservation
Area

33.6 ac

37 ac

12.5 ac

City ACE
Areas

Potential
ACE Area

AGRICULTURAL PRESERVATION TRANSFER OF DEVELOPMENT RIGHTS (TDRS)

Agricultural preservation and conservation are key policies contained within the City's General Plan. The City has created and adopted an Agricultural Preservation Program Ordinance, requiring all agricultural land within the City to mitigate 1:1, creating a stay-ahead provision to ensure that efforts are prospective and not reactive, created Agricultural Preservation Set-aside allotments through the Residential Development Control System (RDSCS) and identified a Priority Conservation Area to target agricultural conservation easement (ACE) acquisition efforts.

HISTORY

The Transfer of Permitted Residential Development Rights (TDRs) is a mechanism that the City has used successfully for many years to conserve open space. TDR's have been used by the City to implement policies of the Open Space and Conservation Element of the General Plan, preserving over 500 acres of open space and view shed. In 1981, the City established the transfer of development rights from hillside lots of considerable slope to effect the preservation of open space and view shed on the hills surrounding the community. These TDR provisions were designed to ease the City's restriction of prohibiting construction on slopes of over 20%. The TDR policy allowed a developer to negotiate with a property owner in the hillside areas of town to purchase the development rights on the hillside property in exchange for receiving the right to increase the density permitted on the developer's property.

2016 RDSCS MEASURE AUTHORIZATION

Use of the transfer of development rights tool was expanded from just open space to include agricultural conservation when Measure S was approved in 2016. To accomplish the agricultural conservation goals of the General Plan, Measure S set aside 35 annual Residential Development Control System (RDSCS) competition-exempt allotments, up to a maximum of 300 through 2035. The exemption is meant to encourage the transfer of development rights from agricultural land in the City's Priority Conservation Area for the preservation of agricultural land at risk of development near the City's urban edge (Morgan Hill Municipal Code Section 18.156.060).

There are two ways to use the exemption: Agricultural Conservation Easement acquisition and purchase of exempt allotments by auction.

AGRICULTURAL CONSERVATION EASEMENT ACQUISITION

Developers are encouraged to negotiate and obtain ACE commitments by their own initiative within the Priority Conservation Area (map attached) to receive allotments in return for those easements. This will occur on a first come, first served basis, up to 35 allocations per year. The City has created a Conservation Easement template, and once an agricultural easement seller is identified by the developer, the City will assist with the negotiation of the form of easement. All ACE's will have permanent stewardship provisions. In 2019, one ACE acre will yield 6 development allotments (or cost \$16,666 per allotment) with one allotment awarded to compensate for Ag Trust stewardship costs associated with ACE acquisition. Upon identification of ACE property, developer must specify development to which the TDR will be applied and present Easement in an execution ready form acceptable to the City Attorney, and/or deposit 10% of ACE value to hold allotment commitment for up to 3 years, in which case ACE must be executed prior to issuance of construction permits.

At the end of each calendar year, if Agricultural Preservation TDR's are unused by developer-initiated easement acquisition, the City will auction the unclaimed exempt allotments to provide funds to replenish the Open Space and Agricultural Conservation Fund, generating dollars for City-initiated ACE acquisition.

AUCTION

In January of each year, the City will hold an auction of unclaimed agricultural conservation exempt allotments. As with Downtown Exempt allotments, Ag TDR projects are exempt from competition, but must achieve the minimum score required to otherwise receive allotments. To maximize revenue from the sale of the allotments, a base price shall be set each January, and a process created to allow for open bidding for the purchase of the allotments.

Terms of the sale:

- Minimum base bid set by City for each allotment (Jan. 2019, \$20,000) or 5 allotments per acre.
- Auction and bidding schedule determined and posted by Jan. 5
- To mitigate speculation, resale of the exempt allotments to unrelated development entities will not be permitted. Purchasing developer must use allotments for projects which form an LLC or other legal entity in which developer is the controlling member.
- Assignment of allotments to entities substantially formed from the originating purchaser permitted
- Allotments terminate, and City required to refund deposit, minus a 10% administrative fee, if allotments not exercised with building permit within 3 years of time of deposit.
- TDR allotments do not provide credit for Ag Mitigation required by Ordinance; rather they are in addition to mitigation required by

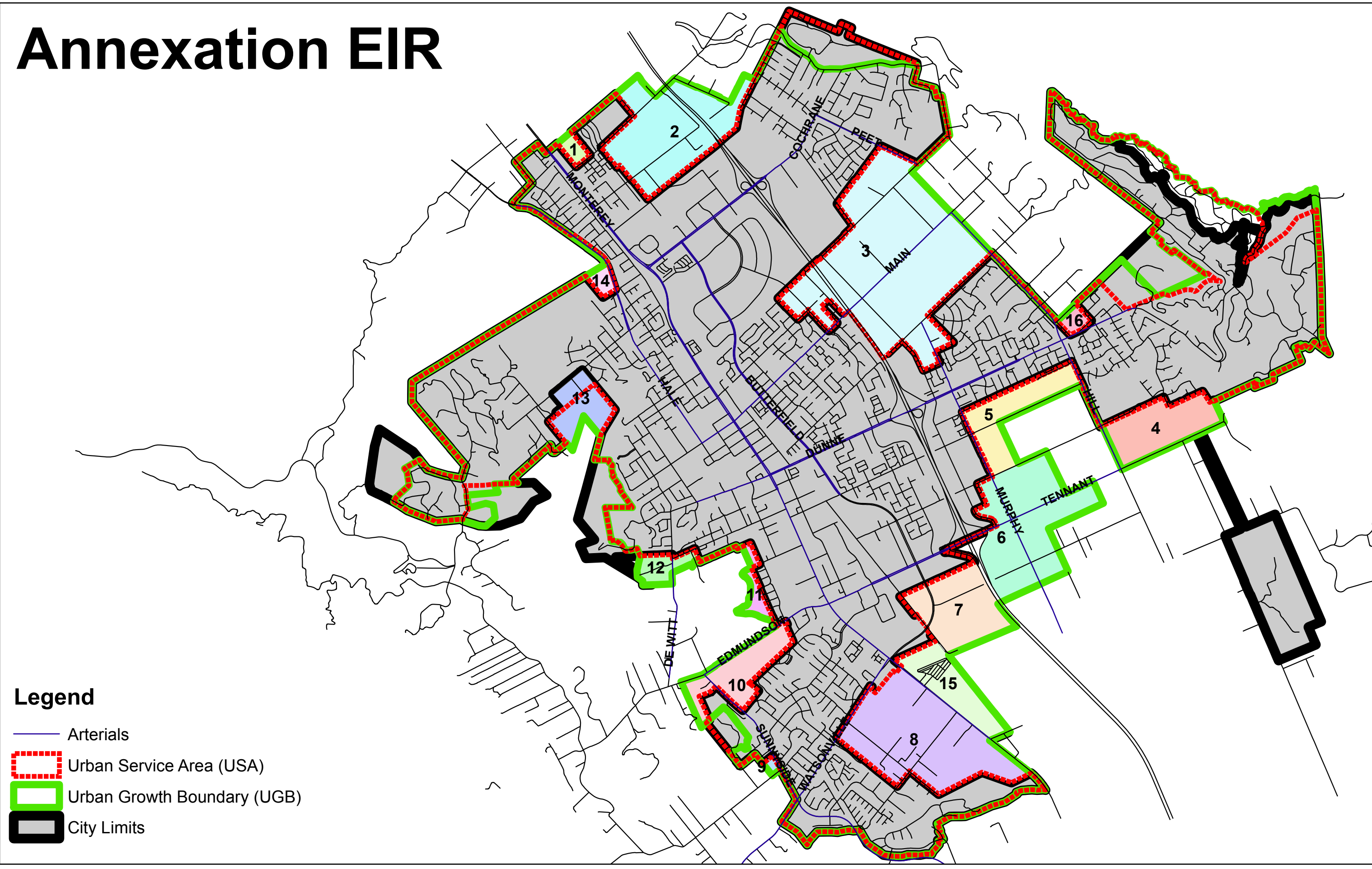
conversion of ag lands which include residential, commercial and industrial properties within the City.

- Unused allotments accrue to the pool of allotments to be available until 2035, but are subject to the RDCS limit of no more than 35 allotments available per year.

Process:

1. Bidders register with City and receive bidder identification number by January 15, 2019 and pick up simple bid form.
2. Bidders will be given a deadline (January 23) to submit bids on City simple bid form, including the number of allotments requested;
3. City will publicly post bid results on City Web Page by January 25, 2019
4. Bidders will be allowed to submit revised bids if desired by January 30, after which bidding closes. In the event of a tie high bid, one final round of bids will be taken from tied parties.
5. City awards allotments to highest bidder upon receipt of 10% of bid price no later than 30 days from January 30 or tie breaking bid round date. Should apparent high bidder fail to post deposit, allotments will be sold to second highest bidder.
6. City processes a TDR certificate, similar to the Open Space TDR certificate currently in use to memorialize bid. Successful bidder pays for balance of allotment upon issuance of building permit and TDR certificate is retired.

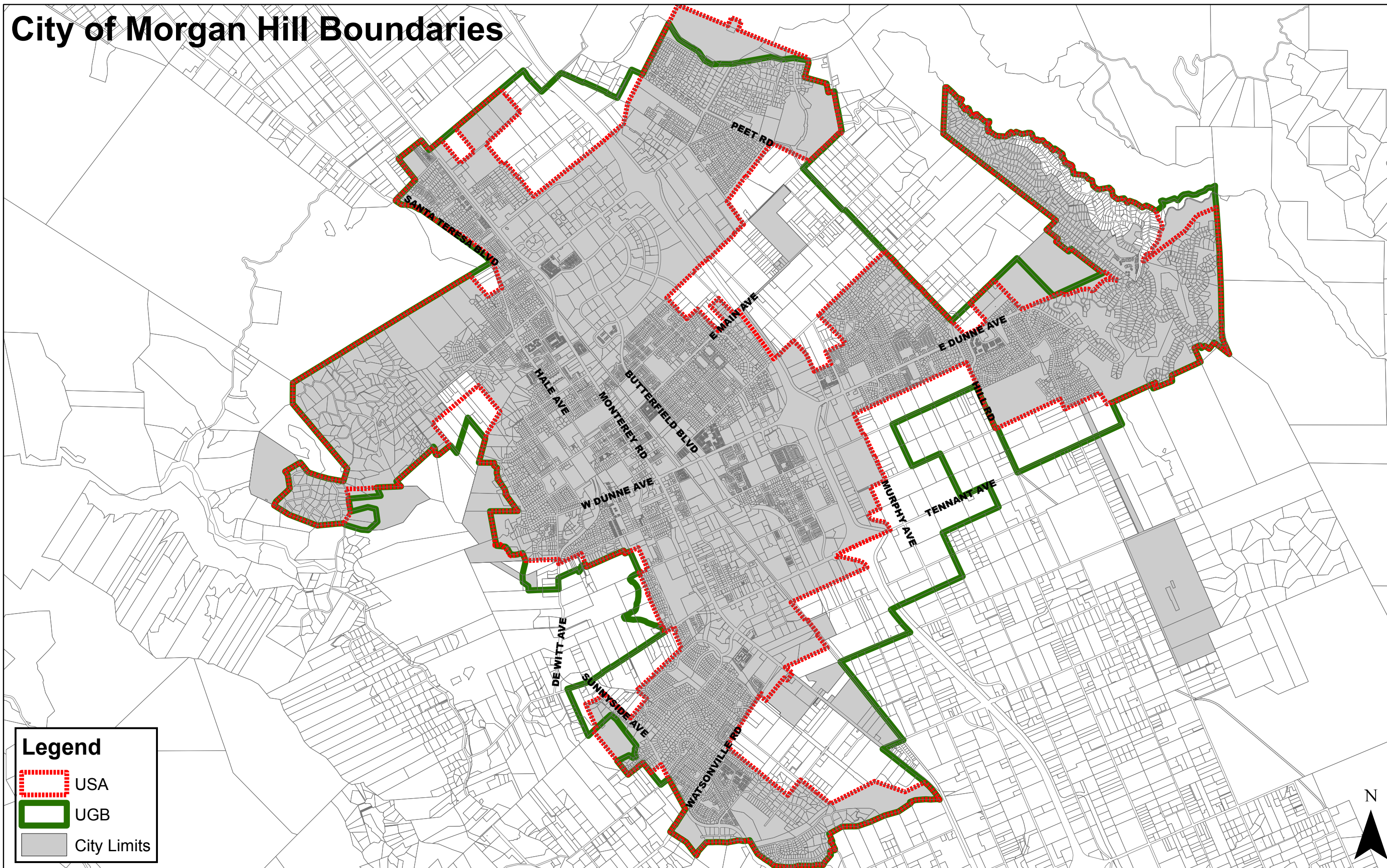
Annexation EIR



Legend

- Arterials
- Urban Service Area (USA)
- Urban Growth Boundary (UGB)
- City Limits

City of Morgan Hill Boundaries

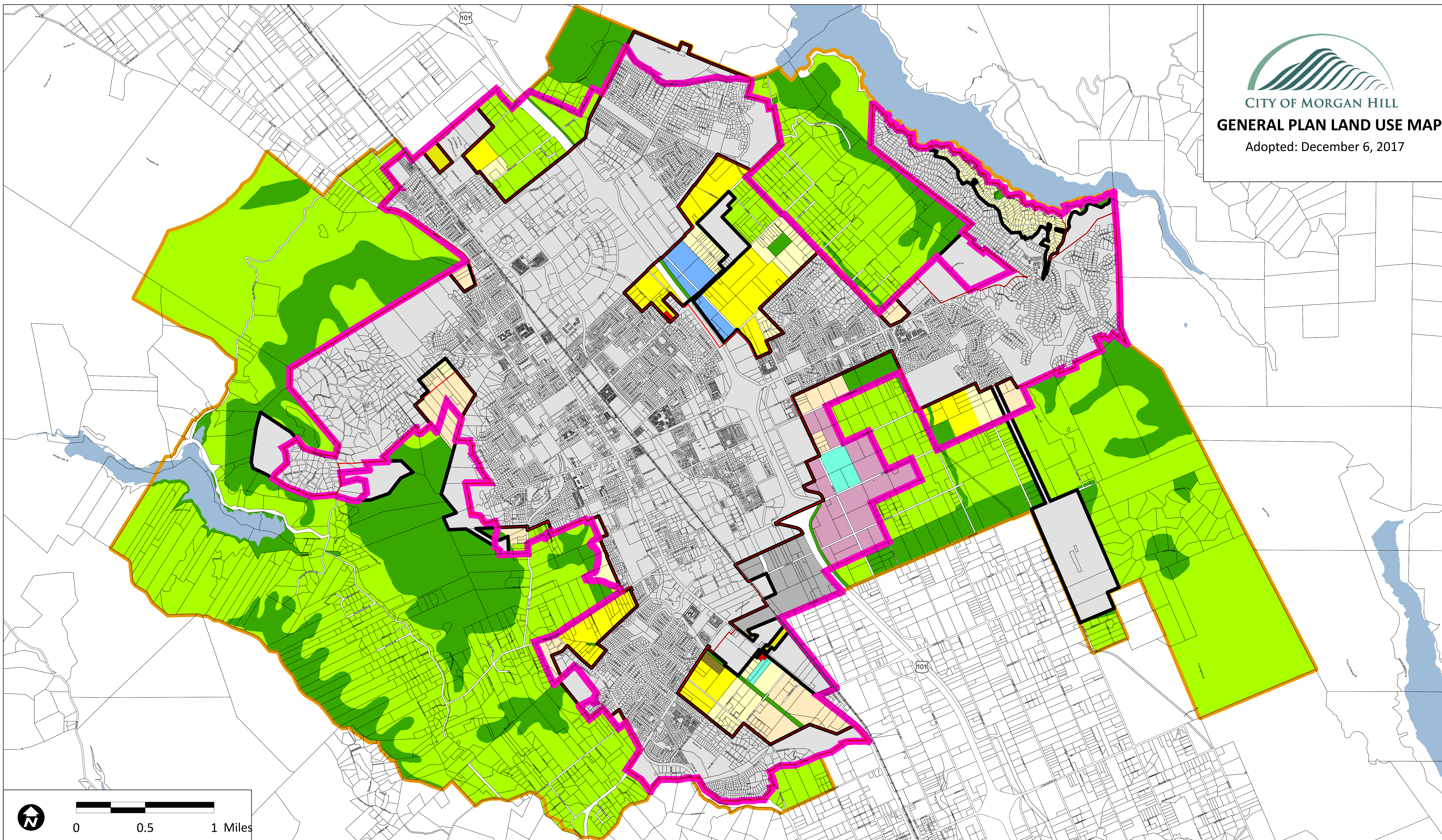


Legend

- USA
- UGB
- City Limits



CITY OF MORGAN HILL
GENERAL PLAN LAND USE MAP
Adopted: December 6, 2017



- | | | | | | | |
|---|---|-----------------------------|---------------------------|---------------------|--------------------|-----------------------|
| Residential Estate (up to 1 du/ac) | Residential Attached Low (6-16 du/ac) | Mixed Use Flex (7-24 du/ac) | Industrial | Rural County | Urban Service Area | Urban Growth Boundary |
| Residential Detached Low (up to 4 du/ac) | Residential Attached Medium (16-24 du/ac) | Commercial | Public Facilities | Agriculture | | City Boundary |
| Residential Detached Medium (up to 7 du/ac) | Residential Downtown (24-46 du/ac) | General Commercial | Sports Recreation/Leisure | Sphere of Influence | | |
| Residential Detached High (6-12 du/ac) | Mixed Use | Commercial/Industrial | Open Space | | | |



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Lang, Economic Development Manager
APPROVED BY: City Manager

APPROVE DESIGN STANDARDS FOR SMALL CELL ANTENNA IN THE PUBLIC RIGHT OF WAY AND AUTHORIZE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR SMALL CELL FACILITIES

RECOMMENDATION(S)

1. Approve the Small Cell Design Standards related to pole mounted facilities located in the public right of way;
2. Approve the Small Cell License Agreement; and
3. Authorize the City Manager to negotiate, amend, and execute Small Cell License Agreements consistent with the Small Cell Design Standards for up to Forty-Four City owned street light poles for each telecommunication provider.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Economic Development
Telecommunications

GUIDING DOCUMENTS

Economic Blueprint
General Plan/Housing Element

REPORT NARRATIVE:

A recent ruling (Small Cell Order) by the Federal Communications Commission (FCC) requires cities to identify Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this recent FCC Order, cities cannot require undergrounding and must provide objective, reasonable, deployable, and scalable design standards. Furthermore, the FCC Small Cell Order requires cities to approve wireless cell antennas within 60 days for existing poles and 90 days for new poles. Finally, the Order states that poles must be made available for small cell wireless and establishes a cost-based fee structure for review/permitting.

Small Cell antennae differ in many ways from the more traditional antennas and poles that you see currently deployed in Morgan Hill and beyond. Small cells generally are located on utility or street light poles which means the typical height is no taller than 30-40 feet which has a coverage area of 250 feet to 1,200 feet. On the other hand, Macro Cells (Towers) are typically installed on dedicated poles and will be at a minimum of 50 to 400 feet in the air and have a coverage area from one half a mile to 20 miles. Macro Cells are the basic back bone for telecommunications, and small cells will help supplement Macro cells.

The public right-of-way (streets, sidewalks, and areas owned by government agency providing public access) offer built-in infrastructure, such as street lights, traffic signals, and utility poles, which support wireless infrastructure. The California Public Utilities Commission (CPUC) has determined that wireless providers are a utility and, therefore, have the unfettered right to use the public right-of-way as any other utility. Therefore, Small Cell antennas and associated equipment can be placed on traffic signal or street light poles located in the public right-of-way.

Wireless Industry and Trends

The need for broadband is growing exponentially for both businesses and residents. Broadband can be delivered wirelessly (satellite/cellular) often through antennas or fixed (copper, coaxial, fiber) through an underground conduit or overhead cable. The City needs a strong telecommunications network to support its growing business community. Yet, the City of Morgan Hill has poor broadband availability. A 2016 study gave Morgan Hill a grade of “D” in terms of quality and access of broadband service. Morgan Hill is challenged by the limited number of providers and market models for return on investment (ROI).

In general, wireless providers are experiencing increased customer demand, particularly with respect to data capacity and speed. Because of this increasing data consumption, wireless providers are seeking rapid investment in the necessary infrastructure to meet not only current data demands with fourth generation (4G) technology but to prepare for consumer deployment of fifth generation wireless systems (5G) technology.

Unlike past approaches when wireless communication facility sites were predominately on leased private property; wireless providers are now interested in locating new facilities within public rights-of-way. Given the increasing costs for use permits, frequent public concern and resulting delay associated with leases on private property, wireless providers are seeking alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles or City-owned structures within the City’s rights-of-way.

Creation of a Small Cell License Agreement

A recent ruling by the FCC requires the City to identify Small Cell Design Standards for projects within the public right-of-way by April 15, 2019 and process applications within 90 days. To streamline this process, the City is proposing a two-part process to be compliant with the law and create certainty. The first step is to negotiate and execute a Small Cell License (SCL) Agreement with a telecommunication provider that outlines the number of city owned poles, specific location(s), and photo simulations of equipment on the poles. The second step allow providers to submit an encroachment permit to the Engineering Division for attachment of Small Cell antennas to a city owned pole(s).

The SCL agreement for the City of Morgan Hill was developed in collaboration with several Santa Clara County cities and is consistent with neighboring cities’ regulation of small cell deployments.

Basic terms of the Small Cell License Agreement are:

- Term: Five years
- Sites: Up to Forty-five (44) poles
- Options: One additional five-year extension
- Base Annual Rent: \$270 annually for each pole/cell site
- Increases: Annual rent adjustment by the Consumer Price Index, to increase by not less than 2.5% and not more than 5%, depending upon the prior year's CPI-U.

Staff recommends Council approve the proposed Small Cell Agreement and authorize the City Manager to negotiate, make minor amendments, and execute the agreement with telecommunication companies, for up to forty-four (44) pole sites.

City Standards

The City can influence investment or disinvestment in telecommunications through City's policies and regulations and/or through direct investment. Currently, the City lacks standards for either implementation (wireless or fixed) which meet Federal requirements. Furthermore, the industry is rapidly changing with federal mandates that severely limit the City's regulatory oversight authority.

The City of Morgan Hill is working diligently to comply with the FCC Declaratory Ruling and Third Report and Order FCC 18-133, which requires establishment of Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this recent FCC Order, cities cannot require undergrounding and must provide reasonable, deployable, and scalable design standards. As a result, staff is partnering with Joint Venture Silicon Valley on their Wireless Communications Initiative to work with industry professionals to develop best practices that provide clarity and encourage fiber installation and deployment of wireless antennas.

City staff has been actively engaged with telecommunication working groups, attended telecom conferences, and has identified and researched local best practices for small cell design standards. The proposed small cell design standards were then reviewed for consistency against the Small Cell License Agreement template, Title 18, Division 1, Chapter 18.96 of the Zoning Code and Public Works Design Standards.

On March 6, 2019, Telecommunications providers participated in a meeting to provide feedback on the City of Morgan Hill's Small Cell Design Standards. Telecommunication providers included: Extenet, Crown Castle, Verizon, and Mobility. These companies provided various comments regarding the proposed design standards, and subsequently the standards were reviewed and modified appropriately in response to this feedback.

The proposed Small Cell Design Standards are specific to City-owned poles, traffic signals and monopoles. Staff recommends the Council approve the proposed Small Cell Design Standards.

In order to create consistency between the FCC's Declaratory Ruling, the City's Small License Agreement, staff is also proposing text amendments to Title 18, Division 1, Chapter 18.96 of the Zoning code that removes language specific to small cells in the right of way on city owned street lights and traffic signals. The proposed Zoning amendment being heard on April 3, 2019 requires a public hearing and has been duly noticed as such. The proposed changes to the Zoning code are necessary in order to be consistent with the proposed Small Cell License Agreement and Small Cell Design Standards as outlined in this memorandum.

Other Background Legislation

a. Telecommunications Act

Section 253 of the Telecommunications Act (the Act) of 1996 guides the City's review of Wireless Communication Facilities (WCF). The Act states the City's review and approval or denial of WCF applications "shall not unreasonably discriminate among providers of functionally equivalent services," and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The Act requires the City to act on a permit application request within a reasonable period of time, and states that any decision to deny a request to "place, construct, or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record."

The Act also prohibits the City from regulating the "placement, construction, and modification of [WCFs] on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions." Title 18.96.050 of Morgan Hill's Municipal Code requires that WCF applications include a report, prepared by a qualified RF engineer, demonstrating that the WCF will comply with the FCC RF Guidelines.

b. Spectrum Act

Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) states that a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station and describes required timelines (60 days for modifications and 90 days for co-locations). The associated FCC Report and Order 14-153 provides guidance on what may be considered an eligible facility request and what constitutes substantial change.

c. FCC Declaratory Ruling and Third Report and Order FCC 18-133

The FCC adopted Report and Order FCC 18-133 (Small Cell Order) to accelerate the deployment of the next generation of wireless technology (known as 5G) using small cell antennas. Such antennas are typically placed on City streetlights or traffic signals in the right-of-way, although not exclusively. The Small Cell Order requires local

jurisdictions to process applications for co-location of small cells on existing structures within 60 days and on new structures within 90 days.

COMMUNITY ENGAGEMENT: Consult and Inform

City staff have been participating in Joint Venture Silicon Valleys' Wireless Communications Initiative for the past 18 months to learn about the evolving legislation and how other cities are addressing small cells. As part of Morgan Hill's on-going participation in the group, the City of Morgan Hill invited the telecommunications companies to provide comments on the small cell proposed design guidelines.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 12, 2019, Planning Commission conducted a public hearing on a proposed amendment to Title 18, Division 1, Chapter 18.96 (Wireless Communications) and approved a resolution to remove language from the Zoning Code specific to the Pole Mounted Facilities in the public right of way.

FISCAL AND RESOURCE IMPACT:

The Small Cell License Agreement establishes a minimum rent of \$270 annually, per pole, per small cell installation. The FCC Declaratory Ruling and Third Report and Order FCC 18-13 limits the City's ability to determine a fair market rent per pole. The agreement includes a rent escalator tied to the Consumer Price Index (CPI-U). With the escalator, over a 5-year period based upon an average CPI increases for San Francisco-Oakland-Hayward, CA Region, the total combined rent per pole the City would be expected to receive is approximately \$1,400. Rent revenue received under the Small Cell License Agreements, will be deposited into the City's General Fund (GL#: 010.37402).

An encroachment permit to allow for the installation of small cells on City owned poles will be required. The actual cost will depend on the number of installations and location as the encroachment permit fees are a cost recovery fee associated with inspections.

Pursuant to the City Manager's contract execution authority of \$60,000, staff determined the optimal number of poles to be permitted is forty four (44) per provider. Should a provider wish to install more small cells on City poles in excess of forty four (44), the contract will require City Council consideration.

CEQA (California Environmental Quality Act):

Small cell deployments on pole mounted facilities in the right-of-way are exempt from CEQA based on a Categorical Exemption pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project consists of the construction and location of a small facility, where only minor modifications are made to the exterior of the structure.

LINKS/ATTACHMENTS:

1. Morgan Hill Small Cell License Agreement
2. Morgan Hill Small Cell Guidelines-DRAFT

**SMALL CELL LICENSE
AGREEMENT**

BETWEEN

THE CITY OF MORGAN HILL, CALIFORNIA

AND

[Name of Company]

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SMALL CELL LICENSE AGREEMENT

This Small Cell License Agreement (“License”) is made and entered into as of _____, 2019, by and between the City of Morgan Hill, California, (“City” or “Licensor”) and [Name of Company], [corporate structure] (“Licensee”). Licensor and Licensee may be collectively referred to as “Parties.”

RECITALS

The following recitals are a substantive portion of this License:

- A. City is the owner of light poles, traffic signal poles or other poles (collectively “City Poles”) within the public right-of-way and owns or controls public right-of-way within the City of Morgan Hill located in Santa Clara County, State of California.
- B. Licensee is a [corporate structure] organized under the laws of the State of California, legally qualified to do business within the State of California whose business includes the installation of small cell cellular antenna sites.
- C. Licensee requests the use of certain City Poles as designated on the attached Exhibit “1”, for the installation and operation of small cell cellular antenna and radio sites.
- D. City is willing to permit Licensee to License the City Poles in accordance with the terms, conditions, and covenants of this License.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

City Poles and Improvements

- 1.1 License of City Poles. City hereby licenses to Licensee and Licensee licenses from City for the term, at the rental rate and upon all of the other terms and conditions set forth, the City Poles listed on Exhibit “1”, attached hereto and incorporated herein. The Parties acknowledge that they may amend Exhibit “1” if City and Licensee agree to additional City Pole sites.
- 1.2 Improvements. City licenses to Licensee the limited right to use City Poles only to locate a small antenna of the same or substantially similar initial design as previously approved by the City and shown on Exhibit “2”, attached hereto and incorporated herein. It is understood and agreed that the final antenna design will be shown in the plans submitted to the City in connection with the City’s encroachment permit process.

ARTICLE 2

Term

2.1 Term. The term of this License shall be for a period of five (5) years commencing on the Commencement Date and terminating on the fifth anniversary of the Commencement Date, unless earlier terminated ("Term").

2.2 Commencement Date. The Commencement Date of this License shall be the date this License is approved by the City Council.

2.3 Option to Extend. Provided Licensee is not in default, either at the time of exercise or at the time the extended Term commences, Licensee shall have the option to extend the Term of this Lease for a period of five (5) years ("Option Term") on the same terms and conditions provided. City shall not unreasonably deny this extension. Licensee shall exercise its option by giving City written notice ("Option Notice") at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration of the Term of this License.

ARTICLE 3

Rental

3.1 Base Rent. Licensee shall pay to City, as annual rent for the use of the City Poles, in advance on the first day of the calendar month during the Term and the Option Term, if any, of this License without deduction, offset, prior notice or demand, in lawful money of the United States, the sum of Two Hundred Seventy Dollars (\$270.00) ("Base Rent") for each City Pole. If the Commencement Date is not the first day of the month during the Term, the Base Rent shall be due on the first day of the calendar month after the Commencement Date of this License. The first year's rent shall be prorated as necessary, if the License does not commence upon the first day of the month. All payments, including Rent shall be mailed to: City Manager, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037.

3.2 Annual Increase. During the Term of this License, including the Option Terms, the Base Rent shall be increased annually by the San Francisco-Oakland-San Jose Consumer Price Index CPI-U ("CPI-U") for the prior year, beginning on the first anniversary of the Commencement Date, and effective each anniversary thereafter throughout the Term and Option Terms, if any. The Rent shall be increased by not less than 2.5% and not more than 5% depending upon the prior year's CPI-U. The sum shall be adjusted annually resulting in a compound rate of increase. For example, the Base Rent for the first year for one pole would be Two Hundred Seventy Dollars (\$270.00) per year and the new rate commencing on the first anniversary, assuming a CPI-U of 2.5% would be Two Hundred Seventy Six Dollars and Seventy Five Cents (\$276.75).

3.3 Transactional Costs. Licensee shall pay to City, as additional rent, any reasonable transactional costs, which shall include any reasonable attorneys' fees incurred by City because of the negotiation, preparation, execution, and delivery of this License, any amendment, any future consent of City required and the preparation and negotiation of an amendment to the License ("Transactional Costs"). City shall furnish Licensee with an invoice reflecting the

Transactional Costs due, and Licensee shall make full payment to City of these costs within thirty (30) days from the date of City's invoice.

3.4 Late Charge. Licensee acknowledges late payment by Licensee to City of rent will cause City to incur costs not contemplated by this License, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. If any installment of rent due from Licensee is not received by City within ten (10) days after the date rent is due, Licensee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur because of late payment by Licensee. Acceptance of any late charge shall not constitute a waiver of Licensee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

ARTICLE 4

Use

4.1 Permitted Uses. Licensee shall use the City Poles for purposes related to the small cell antenna and radio installation (collectively "Antenna") only. Licensee shall be solely responsible for all costs associated with the construction, installation, maintenance, and use of the Antenna.

4.2 Access. City grants Licensee reasonable foot access to the City Poles. Access shall be available to Licensee, Licensee's employees and invitees, during normal business hours, except if an emergency occurs. It is anticipated, after installation of the Antenna is completed, that Licensee shall require reasonable access once every month for the purpose of ordinary tuning of Licensee's equipment and appropriate maintenance of the Antenna. As a part of this License, City grants to Licensee reasonable access to the area adjacent to the City Poles ("City Property") for the purposes of installing or maintaining the Antennas.

4.3 Prohibited Uses. Licensee shall not use City Poles for any purpose not expressly permitted herein. Licensee shall not (a) create, cause, or permit any nuisance or waste in, on or about the City Poles or permit the City Poles to be used for any unlawful purpose, (b) do or permit to be done anything that unreasonably disturbs the City's use of the City Poles or the occupants of neighboring property. Specifically, and without limiting the above, Licensee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Antenna on the City Poles. No materials or articles of any nature shall be stored outside adjacent to any portion of the City Poles.

4.4 Approval by the City and Other Agencies. Licensee, at its sole cost and expense, may install the Antenna, subject to Licensee's obtaining all required permits, licenses, and approvals from the City and any other governmental agencies having jurisdiction. Licensee shall maintain permits, licenses, and approvals in force through the Term and the Option Term, if any. The revocation or expiration of any permit, license, or approval is a breach of this License. If Licensee replaces the Antenna, it shall not do so without the prior written approval of City, and all required permits, licenses, and approvals from the City and any other governmental agencies with

jurisdiction. If a change in the Antenna is approved, Licensee and City shall amend Exhibit “2” to reflect the change. Should Licensee change or expand any Antenna without the prior approval of City, City may require that Licensee remove the expansion at Licensee’s sole cost and expense. Licensee shall be solely responsible for conducting any environmental review required in association with Licensee’s use of the City Poles and for all reasonable costs associated, as well as all fees, charges or other reasonable expenses imposed by the City or other regulatory agencies in connection with Licensee’s use of the City Poles prior to the License commencement, or at any time during the Term of the License.

4.5 Compliance with Laws. Licensee shall not do or permit anything to be done in, on the City Poles, or bring or keep anything in or on the City Poles which will conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted.

4.6 Condition, Use of City Poles. Licensor makes no warranty or representation concerning the condition of City Poles, or the fitness of City Poles for the use intended by Licensee, and disclaims any personal knowledge. Licensee has personally inspected the City Poles, knows their condition, finds them fit for Licensee’s intended use, accepts them “as is”, and has ascertained that they can be used for the limited purposes specified in Section 4.1.

4.7 Hazardous Materials.

4.7.1 Hazardous Materials on City Poles. Licensee shall not introduce any Hazardous Materials (as defined below) to the City Property, (excluding any Hazardous Materials which are components of commercially available products) unless the Hazardous Materials are transported, obtained, handled, stored, and/or disposed of in accordance with all federal, state, and local laws, ordinances, rules, regulations, or policies.

4.7.2. Hazardous Materials Defined. The term “Hazardous Material(s)” shall mean any toxic or hazardous substance, material, or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of “hazardous substances,” “hazardous waste,” “hazardous chemical substance or mixture,” “imminently hazardous chemical substance or mixture,” “toxic substances,” “hazardous air pollutant,” “toxic pollutant” or “solid waste” in the (a) “CERCLA” or “Superfund” as amended by SARA, 42 U.S.C. Secs. 9601 et seq., (b) RCRA, 42 U.S.C. Secs. 6901 et seq., (c) CWA, 33 U.S.C. Secs. 1251 et seq., (d) CAA, 42 U.S.C. Secs. 7401 et seq., (e) TSCA, 15 U.S.C. Secs. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Secs. 407, (g) OSHA, 29 U.S.C. Secs. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Secs. 5101 et seq., (i) USDOT Table (49 CFR Sec. 172.101 App. A and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) Carpenter- Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code Secs. 25300 et seq., (k) California Hazardous Waste Control Act, Cal. Health & Safety Code Secs. 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Secs. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) “Proposition 65,” Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal.

Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Secs. 108100 et seq., (q) Air Resources Law, Cal. Health & Safety Code Secs. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500 et seq., (s) TPCA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

4.7.3 Hazardous Materials Indemnity. Licensee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold Licenser harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including, without limitation, diminution in value of the City Poles or City Property, damages for the loss or restriction on use of the rentable or usable space or of any amenity of City Poles or, damages arising from any adverse impact or marketing of the City Poles and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings, or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the License Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the City Poles by Licensee, Licensee's agents, employees, licensees or invitees or at Licensee's direction, of Hazardous Material, or by Licensee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the City Poles or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the License Term. For purposes of the indemnity, any acts or omissions of Licensee or its employees, agents, customers, assignees, contractors, or subcontractors of Licensee (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to Licensee.

4.7.4 City's Right to Perform Tests. At any time during the License Term, City shall have the right to enter upon City Poles in order to conduct tests of water and soil and to deliver to Licensee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Licensee's use of the City Poles. Licensee shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return the City Poles and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at Licensee's

expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the City Poles or the Project, which has been caused by or resulted from the activities of Licensee, its agents, employees, contractors, or invitees. Licensee shall demonstrate that the antenna meets or exceeds all appropriate FCC requirements. Licensee shall provide results of any test results on the antenna prepared for the FCC or any other testing body.

4.7.5 Survival. This entire Section 4.7 of this License shall survive termination of the License, as to any activities during the Term or Option Term of this License.

4.7.6 Termination of License. City shall have the right to terminate the Term of the License in City's sole and absolute discretion in the event that (i) any anticipated use of the City Poles or City Property by Licensee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) Licensee has been required to take remedial action in connection with Hazardous Material contaminating the City Poles or City Property, if the contamination resulted from Licensee's action or use of the City Poles or City Property; or (iii) Licensee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the City Poles or City Property.

4.7.7 Covenant of Non-Interference. Licensee shall be responsible for inspecting City Poles and finding adequate space at the site without moving or relocating any of City's Poles or equipment, or any other facility, or utility located at the City Property, at the time Licensee's facilities are installed. Licensee's equipment shall not negatively impact any other existing facility or antenna. In the event that Licensee's equipment does impact other facilities, Licensee shall be required to install, at its own expense, frequency filters or take other reasonable measures to correct the problem. Licensee shall be required to coordinate with other existing utilities located at the property, to ensure that Licensee's equipment does not interfere with the frequencies utilized by existing utilities or other parties.

4.7.8 Co-location. Licensee acknowledges that City has the right to license additional positions on City Poles to third parties. All operations by Licensee shall comply with all Federal Communications Commission ("FCC") requirements. If City adds new City Poles or other facilities in the future, Licensee will not electronically or physically interfere with City owned and operated equipment. Licensee shall reasonably cooperate with current and future City licensees. Licensors will not grant a license to any party for use of the City Pole site, if the new use would unreasonably interfere with Licensee's operation of its Antenna. Any future license of the City Pole site, which permits installation of Antennas, shall be conditioned upon the new Antennas not interfering with Licensee's Antenna.

4.7.9 Electromagnetic Emissions. Licensee's operations on the City Poles shall comply with all applicable federal laws and regulations regarding electromagnetic emissions. Licensee shall conduct all necessary tests after its improvements are constructed on the City Poles to ensure that its facilities comply with those laws and regulations. The tests shall be conducted by a licensed professional engineer, and the results shall be provided to the City.

4.8 Telecommunications Services. At any time that Licensee ceases to operate as a provider of telecommunications services under Federal law, the Licenser shall have the option, in its sole discretion and upon sixty (60) days written notice to Licensee, to terminate this License and to require the removal of Licensee's Antennas from City Poles, including the cost of any site remediation, at no cost to the Licenser, without any liability to Licensee related directly or indirectly to such termination.

4.9 Scope of Agreement. All rights expressly granted to Licensee under this License, which shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of the Licenser to use all parts of the public right-of-way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the right-of-way as of the date of this License.

ARTICLE 5

Maintenance, Repairs and Alterations

5.1 General. Licensee shall keep in good order, condition, and repair City Poles and the Antenna placed on the Poles. Licensee shall keep the City Poles clean and free of debris.

5.2 Surrender. On the last day of the Term, or of the Option Term, Licensee shall surrender City Poles to City in the same condition as when received, clean and free of debris. Licensee shall also remove all improvements and cables and wires located above ground or below ground that Licensee placed upon City Poles, and repair any damage to City Poles by the installation, maintenance, or removal of Licensee's improvements and any related cables, wires or other equipment, and shall restore City Poles to the same conditions as when Licensee received City Poles from City.

5.3 City's Rights. If Licensee is in default, subject to the applicable cure periods, City may (but shall not be required to) enter upon City Poles, (except in the case of an emergency, in which case no notice shall be required), to perform obligations on Licensee's behalf and put the City Poles and/or Antenna in good order, condition and repair, and the cost, together with interest at the maximum rate then allowable by law, shall become due and payable as additional rent to City with Licensee's next rental installment, provided, however, in the case of a non-emergency, City shall notify Licensee of City's intention to perform Licensee's obligations ten (10) days prior to performing any work on Licensee's behalf. If no rental installment is due to City, these costs shall become due and payable within thirty (30) days from the date of City's invoice.

5.4 City Repair Obligations. City shall have no obligation to repair and maintain the City Poles nor the Improvements and facilities. Licensee expressly waives the benefit of any statute now or hereinafter in effect which would afford Licensee the right to make repairs at City's expense or to terminate this License because of City's failure to keep City Poles in good order, condition, and repair.

5.5 Improvements.

5.5.1 Licensee Payment for Labor or Materials. Licensee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Licensee at or for use on the City Poles, which claims are or may be secured by any mechanic or material lien against the City Poles or any interest therein. Licensee shall give City not less than ten (10) days' notice prior to the commencement of any work on the City Poles, if City shall require a surety bond, Licensee shall furnish to City a surety bond satisfactory to City in an amount equal to the contested lien, claim indemnifying City against liability for and holding the City Poles free from the lien or claim. In addition, City shall have the right to require Licensee to pay City's attorneys' fees and costs in participating in the action if City decides to participate.

5.5.2 Conditions Precedent. Before construction of any improvements are commenced on City Poles, and before any building materials have been delivered to City Poles by Licensee or its agents, Licensee shall comply with the following conditions or procure City's written waiver of the conditions specified:

5.5.2.1 Protection of Adjacent Property, Indemnity of the City. Licensee shall protect the City Property and adjacent property against damage resulting from the performance of work undertaken by Licensee or Licensee's agents, employees, contractors (excluding any damage caused by gross negligence or the willful act of City) and shall indemnify the City against all liens or liability arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power.

5.5.2.2 Insurance. In addition to the insurance coverage otherwise required under this License, Licensee shall maintain workers' compensation insurance covering all persons employed in connection with the construction of any improvements, repair, or maintenance activities with respect to whom death or injury claims could be asserted against the City, Licensee, or the City Poles. City may require any third party(ies) contractor performing work at the City Poles to maintain workers' compensation insurance as contractor's sole cost and expense at all times when any work is in process and shall otherwise conform to the requirements of this License with respect to insurance.

5.5.2.3 Final Inspection. Licensee shall not provide service to its customers from the Antenna in any way without receiving a final inspection of the Antenna from the City.

5.5.2.3 Notice of Changes in Plans. Upon completion of the installation of any Antenna, Licensee shall give City notice of all changes in the plans and specifications made during the course of the work and at the same time deliver to City "as built" drawings accurately reflecting all changes, provided that no change that substantially alters the final plans last approved by the City shall be made without the City's prior written approval.

5.6 City Access. The City or its agents, may enter onto City Poles at all reasonable times during the term of this License Agreement to determine whether Licensee is complying with the terms and conditions or for any other purpose incidental to rights of the City.

5.7 Licensee Access. Licensee may enter onto City Poles during normal business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m. upon reasonable notice to the City. In the

event of an emergency, Licensee's access shall be 24/7. Licensee acknowledges that other licensees also have rights to access the City Poles, and that if multiple licensees or licensees request simultaneous access, the City may have to delay Licensee's access to the City Poles to accommodate others or vice versa.

5.8 Licensee Access During Security Alert. During times of high security alert by the Homeland Security Advisory System, Licensee must obtain City's consent to access City Poles.

5.9 Attachment to City Poles. Licensee will submit to the authorized representative of the Licensor, no more than two proposed designs for any proposed Antenna installations. Assuming that all of Licensor's requirements are met, Licensor will preapprove up to two acceptable designs for Antennas. Licensee may only install Antenna designs that are the same as the preapproved design. All installations shall, to the maximum extent possible, be placed behind equipment shrouds or located so as to minimize visual impacts to the City Engineer's satisfaction. The City Engineer may require a physical mock-up of the installation and photo simulations. If required the mock-up shall be the actual size of the equipment and include the actual color(s) to be used for the final installation. Licensee is prohibited from installing ground mounted cabinets. Licensee shall install all wires within the pole, any external wires that feed external equipment shall be hidden or shrouded from view. Any equipment (including but not limited to radio boxes, on poles shall be screened by street signs to City's Engineer's satisfaction and shall not exceed the preapproved size. Each antenna shall have identifying information on it including emergency contact numbers. No advertising may be placed on any equipment. Should any of these restrictions be technically infeasible Licensee shall provide City Engineer with documentation of the technical infeasibility and the provisions may be waived should the City Engineer reasonably determine that the requirements are technically infeasible.

5.10 Encroachment Permit. Subject to the conditions herein, Licensee shall submit an application for an encroachment permit ("Encroachment Permit") to the Licensor to enter upon the right-of-way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace the Antenna on City Poles in the public right-of-way for the purposes of providing telecommunications services. Licensor reserves the right to deny any application for an Encroachment Permit for the installation of an Antenna to City Poles at the sole discretion of the City Engineer. Licensee agrees to abide by decisions made by the City Engineer regarding Antenna placement.

5.11 Replacement Pole. If Licensee selects a Pole that is structurally inadequate to accommodate the Antenna, Licensee may at its sole cost and expense, and at the discretion of the City Engineer, replace the Pole (a "Replacement Pole") with one that is acceptable to and approved by the Licensor and dedicate such Replacement Pole to the Licensor. Ownership of Replacement Pole shall be transferred to City.

5.12 No Interference. Licensee shall not interfere in any manner with the existence and operation of any public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety, and other then existing telecommunications equipment, utility, or municipal property,

without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law or this License. However, the Licensors agree that the Licensors and/or any other tenants, licensees, or users of the public right-of-way who currently have, or in the future take possession of, space within the public right-of-way adjacent to any of Licensee's Antennas will be permitted to install only equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Licensee. Licensee shall act reasonably to accommodate future providers so that the public right-of-way may be used by additional providers.

5.13 No Authorization to Provide Other Services. Licensee represents, warrants, and covenants that the Antennas installed pursuant to this License will be utilized solely for providing the telecommunications services identified herein. Licensee is not authorized to and shall not use its Antennas to offer or provide any services not specified herein.

5.15 Payment to PG&E of Power Costs. Licensee shall cause a separate electric line to be run to its equipment. Licensee shall pay all electricity costs directly to Pacific Gas and Electric Company ("PG&E") or its other electric service provider. Licensee shall not use Licensors' electricity to power its equipment. Licensee shall make good faith efforts to negotiate a flat rate with PG&E to avoid above ground metering facilities where practicable. Should Licensee be unable to secure a flat rate service from PG&E then a ground mounted meter or pole mounted smart meters may be utilized with written approval by the City Engineer. All Equipment shall have a master cutoff switch installed which will allow power shut down to the Equipment in case of emergencies.

5.16 Commencement of Installation and Operation. Licensee shall commence installation of its initial Antenna no later than one (1) year after the mutual execution of an applicable Encroachment Permit. Licensee shall commence operation no later than six (6) months after Licensee commences installation, excepting delays due to any force majeure event. Failure of Licensee to commence installation or commence operation of the applicable telecommunications service as provided above shall afford Licensors the right to terminate the License upon thirty (30) days' notice to Licensee, unless within such thirty (30) day period, Licensee shall commence installation or commence operation, as applicable.

5.17 Relocation and Displacement of Equipment. From time to time, Licensors may require Licensee to relocate its equipment. Upon Licensors' sixty (60) days written notice to Licensee, Licensee shall relocate such equipment at Licensee's sole cost and expense when Licensors reasonably determines that the equipment relocation is necessary for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensors or other public agency project; (b) because the Antenna is interfering with, or adversely affecting proper operation of City Poles, traffic signals, communications, or other municipal facilities; or (c) to protect or preserve the public health or safety. Licensors shall use reasonable efforts to provide Licensee with a reasonably equivalent alternate location for its equipment. If Licensee shall fail to relocate any Antenna as requested by the Licensors in accordance with this provision, Licensors shall be entitled to remove or relocate the equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensors actual costs and expenses incurred by the Licensors in performing any removal work and

any storage of Licensee's property after removal within thirty (30) days of Licensors' written demand for such payment. If the City Pole is damaged or downed for any reason, and as a result is not able to hold the Antenna safely, the Licensors will have no obligation to repair or replace the City Pole for the use of Licensee's Antenna. Licensee shall bear all risk of loss because of damaged or downed City Poles, and may choose to replace City Poles pursuant to the provisions above.

5.18 Damages Caused by Licensee. Licensee shall, at its sole cost and expense and to the satisfaction of the Licensors: (a) remove, repair or replace any of its Antennas that are damaged or become detached; and/or (b) repair any damage to public right-of-way, City Property or other property, whether public or private, caused by Licensee, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of its Antennas. If Licensee does not remove, repair or replace such damage to its Antenna or to the public right-of-way, City Property or other property, the Licensors shall have the option, upon 30 days' prior written notice to Licensee, to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the Licensors. If such damage causes a public health or safety emergency, as reasonably determined by the Licensors, the Licensors may immediately perform reasonable and necessary repair or removal work on behalf of Licensee and will notify Licensee as soon as practicable; provided, such repair work involves reattachment of its Antennas to a Pole or repair of the Pole itself, and shall not include any technical work on Licensee's equipment. Upon the receipt of a demand for payment from the Licensors, Licensee shall within thirty (30) days of such receipt, reimburse the Licensors for such costs. The terms of this provision shall survive the expiration, completion, or earlier termination of this License.

5.19 Bond Requirement. Licensee shall provide a bond to Licensors in the amount of fifty thousand dollars (\$50000.00), for the first twenty five installed Antennas to protect Licensors in that event that Licensee fails to remove its Antennas upon termination of this License. The bonding company shall be a United States based entity with legal rights to issue bonds in the State of California. The bond forms shall be in a form approved by the City Attorney. City reserves the right to increase bond amount required depending upon the reasonable determination of the City Public Works Director.

5.20 As Built Plans. Licensee shall provide as built plans, to the City, for each Antenna installation within 30 days of the completion of the installation.

ARTICLE 6

Indemnity and Insurance

6.1 Indemnity. This License is made upon the express condition that Licensee shall indemnify and hold harmless City and its officers, agents and employees against any suits, claims or actions arising out of Licensee's use of City Poles or from any act permitted, or any omission to act, in or about the City Poles or City Property by Licensee or its agents, employees, contractors or invitees, including, but not limited to, any injury or injuries to, or death or deaths of, persons or property that may occur, or that may be alleged to have occurred from any cause or causes whatsoever, while in, upon, about or in any way connected with City Poles during the term of this License, or during any holdover tenancy thereof (except where caused solely by the active negligence or willful misconduct of City, its employees or agents). Licensee agrees to

defend any actions, suits or claims and pay all reasonable charges of attorneys and all other costs and expenses arising therefrom. If any judgment is rendered against the City or any of the other individuals enumerated above in any action (except to the extent the judgment arises from the active negligence or willful misconduct of the City, its employees or agents) Licensee shall, at its expense, satisfy and discharge same.

6.2 Insurance. During the term of this License, Licensee shall maintain in full force and affect the following insurance policies:

6.2.1 Commercial general liability policy (bodily injury and property damage);

6.2.2 Worker's Compensation, employer's liability policy; and

6.2.3 Comprehensive automobile liability insurance policy.

These policies shall be maintained with respect to employees and vehicles using the City Property with coverage amounts and including the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit "3" attached and incorporated by this reference. In the event that Licensee contracts with another entity to install, monitor or utilize or own the Antenna the other entity shall also provide the same insurance as required above and in Exhibit "3".

ARTICLE 7

Damage, Destruction and Termination

7.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the City Poles by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Licensee to terminate this License, unless City Poles are rendered unusable for the Antenna.

7.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Licensee, shall excuse the performance by Licensee for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to rent to be paid by Licensee pursuant to this License. In the event any work performed by Licensee or Licensee's contractor's results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Licensee of the provisions of this License.

7.3 Waiver. City and Licensee waive the provisions of any statutes, which relate to termination of Licenses when licensed property is destroyed and agree that such event shall be governed by the terms of this License.

ARTICLE 8

Taxes

8.1 Personal Property. Licensee shall pay, prior to delinquency, all taxes, license fees, and public charges assessed or levied against Licensee or Licensee's estate in this License or Licensee's improvements, trade fixtures, furnishings, equipment and other personal property.

8.2 Real Property. Licensee shall pay Licensee's share of all real property taxes (as defined in Section 8.3 below) which become due and payable to City on or before the later of ten (10) days prior to the delinquency, or three (3) days after the date on which Licensee receives a copy of the tax bill and notice of City's determination, including documentation reasonably supporting determination hereunder. Licensee's liability to pay real property taxes shall be prorated based on a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the License Term at the commencement or end of the License. Licensee is not responsible for taxes related to rental income to City under this License. Licensee specifically acknowledges it is familiar with Section 107.6 of the California Revenue and Taxation Code and realizes that a possessory interest subject to property taxes may be created, agrees to pay any tax, and waives any rights Licensee may have under Revenue and Taxation Code 107.6.

8.3 Definition. The term "real property taxes" as used herein shall mean:

8.3.1 All taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to (i) value, occupancy, use or possession of City Poles and/or the Improvements, (ii) any improvements, fixtures, equipment and other real or personal property of Licensee that are an integral part of City Poles, (iii) use of City Poles, improvements, public utilities, or energy within City;

8.3.2 All charges, levies, or fees imposed by reason of environmental regulation or other governmental control of City Poles and/or the improvements;

8.3.3 New excise, transaction, sales, privilege, or other taxes now or hereafter imposed upon City as a result of this License; and

8.3.4 All costs and fees (including attorneys' fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the City Poles. If at any time during the Term, the taxation or assessment of the City Poles and/or the improvements prevailing as of the commencement of this License shall be altered, then any tax or charge, however designated, shall be included within the meaning of the term "real property taxes." If any real property taxes are based upon property or rents unrelated to the City Poles and/or the improvements, then only that part of such tax that is fairly allocable to the City Poles and/or the improvements, as determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

ARTICLE 9

Utilities

9. Licensee shall pay for all power, telephone, and other utilities and services supplied to the Licensee's improvements or equipment, together with any taxes.

ARTICLE 10

Signs

10. Licensee shall not place any signs upon City Poles without prior written consent of City, except for those signs that are required by law.

ARTICLE 11

Assignment and Subletting

11.1 City's Consent Required. Licensee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Licensee's interest in this License or in City Poles, without City's prior written consent, which consent shall not be unreasonably withheld. City shall respond to Licensee's request for consent in a reasonably timely manner and any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this License.

11.2 Net Worth Requirements. Notwithstanding the foregoing, Licensee may not assign or sublet its equipment attached to the City Poles, or any portion thereof, without the City's consent, to any entity which controls, is controlled by, or is under the common control with Licensee, or to any entity resulting from any merger or consolidation with Licensee, or to any partner of Licensee or to any partnership in which Licensee is a general partner, or to any person or entity which acquires all of the assets of Licensee as a going concern, or to any entity which obtains a security interest in a substantial portion of Licensee's assets. Any entity listed in this paragraph shall have a net worth of not less than ten million dollars (\$10,000,000.00).

11.3 No Release of Licensee. No subletting or assignment as approved by City shall eliminate Licensee's obligation or alter the primary liability of Licensee to pay the rent and to perform all other obligations to be performed by Licensee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Licensee or any successor of Licensee in the performance of any of the terms hereof, City may proceed directly against Licensee without the necessity of exhausting remedies against said assignee.

ARTICLE 12

Defaults; Remedies

12.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this License by Licensee:

12.1.1 The abandonment of the City Poles by Licensee as defined by Civil Code §1951.3.

12.1.2 The failure by Licensee to make any payment of rent or any other payment required to be made by Licensee hereunder, as and when due, where the failure shall continue for a period of ten (10) business days after written notice from City to Licensee. In the event City serves Licensee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

12.1.3 The failure by Licensee to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by Licensee, where the failure shall continue for a period of thirty (30) days after written notice from City to Licensee; provided, however, that if the nature of Licensee's default is that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commences cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

12.1.4 The making by Licensee of any general arrangement or assignment for the benefit of creditors; Licensee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Licensee, it is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Licensee's assets located at or on City Poles or of Licensee's interest in this License where possession is not restored to Licensee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Licensee's assets located at the City Poles or of Licensee's interest in this License, where seizure is not discharged within thirty (30) days.

12.2 Remedies. In the event of any material default or breach by Licensee, City may at any time, thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of default or breach:

12.2.1 Terminate Licensee's right to possession of the City Poles by any lawful means, in which case this License shall terminate and Licensee shall immediately surrender possession of City Poles and improvements to City. In that event, City shall be entitled to recover from Licensee all damages incurred by City by reason of Licensee's default including, but not limited to, the cost of recovering possession of the City Poles, expenses of reletting, including if necessary, removal of improvements and restoration of the City Poles, reasonable attorneys' fees, the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this License and the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of such award exceeds the amount of rental loss for the same period that Licensee proves could be reasonably avoided;

12.2.2 Maintain Licensee's right to possession, in which case this License shall continue in effect whether or not Licensee shall have abandoned City Poles. In that event, City shall be entitled to enforce all of City's rights and remedies under this License, including the right to recover rent as it becomes due; and

12.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

12.3 No Relief from Forfeiture After Default. Licensee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event Licensee is evicted or City otherwise lawfully takes possession of the City Poles by reason of any default or breach of this License by Licensee.

ARTICLE 13 **Termination of License**

13.1 Termination by Licensee. Except as provided otherwise herein or by applicable law, Licensee may terminate this License for cause upon the giving of not less than thirty (30) days written notice to City if any of the following occur:

13.1.1 The failure by City to observe or perform any of the covenants, conditions, or provisions of this License in any material respect to be observed or performed by City, where the failure shall continue for a period of thirty (30) days after written notice from Licensee to City; provided, however, that if the nature of the City's default is such that more than thirty (30) days are reasonably required for its cure, then City shall not be deemed to be in default, if City commenced to cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion;

13.1.2 Licensee fails to obtain or loses any permits necessary for operation of the City Poles as a cellular telephone communications facility; or

13.1.3 Licensee determines that the site is inappropriate for technological reasons, beyond its control, including but not limited to signal interference.

13.2 Termination by City. Except as otherwise provided or by applicable law, City may terminate this License for cause upon giving thirty (30) days written notice if any of the following occur:

13.2.1 The City Council of City determines through credible scientific evidence collected with regard to the Antenna operated on the City Poles, that the facility is a threat to public health or safety; or

13.2.2 Licensee loses or fails to satisfy any condition of any permit required by City necessary for operation of City Poles as a location for the Antenna.

13.3 Condemnation of Licensed City Poles. Should all or part of the Licensed City Poles be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this License:

13.3.1 Either City or Licensee may terminate this License by giving the other thirty (30) days written notice of termination; and

13.3.2 Any damages and compensation awarded or paid because of the taking shall belong to the City, except for amounts paid Licensee for moving expenses or for damage to property owned by Licensee and the value of the unexpired Term of this License.

ARTICLE 14 **City's Liability**

14. The term "City" as used herein, shall mean the City only while the City is the owner of the fee title of City Poles. In the event of any transfer of title or interest, the City (and in case of any subsequent transfer, then the grantor) shall, after the date of such transfer, be relieved from all liability with respect to its obligations hereunder occurring after the transfer date, provided that any funds in the hands of City at the time of transfer, in which Licensee has an interest, shall be delivered to the City's grantee.

ARTICLE 15 **Interest on Past-Due Obligations**

15. Except as expressly provided, any overdue amount due to City shall bear interest at the lesser of ten percent (10%) per year or the maximum rate allowable by law from the date due.

ARTICLE 16 **Holding Over**

16. If Licensee remains in possession of City Poles or any part of City Poles after the expiration of the Term or Option Term, the occupancy shall be a tenancy from month to month. All the obligations of this License applicable to Licensee shall remain in effect. The monthly rental obligation shall be two (2) times the Base Rent in effect at the time of expiration.

ARTICLE 17 **City's Access**

17. City and City's agents shall have the right to access City Poles for the purpose of showing to prospective purchasers, lenders, or licensees, and making alterations, repairs, improvements, or additions to City Poles as City may deem necessary.

ARTICLE 18 **Prevailing Wage**

18. To the extent applicable by law to Licensee's activities under this Agreement, Licensee shall pay prevailing wages.

ARTICLE 19 Easements

19. City reserves to itself, the right, from time to time, to grant such easements, rights, and dedications that City deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as the easements, rights, dedications, maps and restrictions do not materially interfere with Licensee's use of the City Poles. Licensee shall sign any of the aforementioned documents upon request of City and failure to do so shall constitute a material breach of this License.

ARTICLE 20 General Provisions

20.1 Severability. The invalidity of any provision of this License as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision.

20.2 Time of Essence. Time is of the essence under this License.

20.3 Additional Rent. Any monetary obligations of Licensee to City under the terms of this License shall be deemed to be rent and all references herein to "rent" shall be deemed to include the Base Rent and all other sums paid or payable by Licensee to City.

20.4 Entire Agreement, Modification. This License contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding shall be effective. This License may be modified in writing only.

20.5 No Warranty. Except as otherwise stated in this License, Licensee hereby acknowledges that neither the City nor any employees or agents of the City has made any oral or written warranties or representations to Licensee relative to the condition or use by Licensee of the City Poles. Licensee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of City Poles, and compliance with all applicable laws and regulations in effect during the Term of this License.

20.6 Notices. Any notice required or permitted to be given, shall be in writing and may be given by personal delivery or by first class mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Licensee or to City at the address noted below:

Licensee:

Name of Company

Address

Address

Phone:

City:

City Manager

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

With Copy to:

Donald Larkin
City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037

Each notice shall specify the License provision pursuant to which it is given. Either Party may specify a different address or contact person. Notice given under this section shall be deemed in compliance with applicable statutory notice requirements, including Code of Civil Procedure §1162.

20.7 Waivers. No waiver by City or Licensee of any provision shall be deemed a waiver of any other provision or of any subsequent breach by City or Licensee of the same or any other provision. Licensors or Licensee's approval of any act shall not be deemed to render unnecessary obtaining of the other Party's consent for any subsequent act. The acceptance of rent by City shall not be a waiver of any preceding breach by Licensee of a provision, other than the failure of Licensee to pay the particular rent so accepted, regardless of City's knowledge of the breach at the time of acceptance of rent.

20.8 Cumulative Remedies. No remedy or election under this License shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.9 Choice of Law. This License shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a Party to this License, the Parties agree that trial of such action shall be conducted exclusively in the state courts of California, County of Santa Clara. The language of all parts of this License shall be construed with its fair meaning and not strictly for or against the City or Licensee.

20.10 Condition to Effectiveness of License. The approval of the City Council of City constitutes an express condition precedent to the effectiveness of this License.

20.11 Attorneys' Fees. If either party brings an action to enforce the terms or declare rights hereunder, the prevailing Party in any such action, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the other Party.

20.12 Brokers. Each Party represents that it has not had dealings with any real estate broker or finder, with respect to this License in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom the indemnifying Party has or purportedly has dealt.

20.13 Authority. Each individual executing this License on behalf of Licensee and City represents and warrants that he or she is duly authorized to execute and deliver this License on behalf of said Party.

20.14 Non-Liability of Officials and Employees of the City. No official or employee of City shall be personally liable for any default or liability under this License.

20.15 Non-Discrimination. Licensee covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry in any activity under this License.

20.16 Independent Contractor. It is agreed that Licensee shall act and be an independent contractor and not an agent nor employee of City.

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20.17 Conflict of Interest. Licensee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this License.

CITY OF MORGAN HILL, CALIFORNIA

APPROVED AS TO FORM:

City

DONALD LARKIN
City Attorney

CHRISTINA TURNER
City Manager

ATTEST:

City Clerk

Licensee
[Licensee's name]

By: _____

Title: _____

Licensee's Address:

Telephone: (____) ____-____

Facsimile: (____) ____-____

"Licensee"

Small Cell License Agreement Form Morgan Hill revised 12-12-18

Attachment: Morgan Hill Small Cell License Agreement (2240 : Small Cells in the Public Right of Way)

EXHIBIT “3” Insurance Requirements

1. **Insurance Requirements.** LICENSEE shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of LICENSEE, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. Any deductibles or self-insured retentions must be declared to and approved by City. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. **LICENSEE further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to LICENSEE, at any time as deemed necessary to protect the interests of the CITY.**

1.1. **Insurance Types and Amounts.**

- 1.1.1. **Commercial General Liability (CGL).** LICENSEE shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- 1.1.2. **Automobile Liability.** LICENSEE shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if LICENSEE does not own automobiles, then LICENSEE shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE 's combined insurance policies (including any excess or “umbrella” policies), whichever is greater.
- 1.1.3. **Workers’ Compensation Insurance and Employer’s Liability.** LICENSEE shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to LICENSEE under LICENSEE 's combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If LICENSEE is self-insured, LICENSEE shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- 1.2. **Endorsements.** LICENSEE shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

1.2.1. **General Liability.**

1.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

1.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

1.2.1.3. insurance shall be primary non-contributing.

1.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 1.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 1.4. **Certificates.** LICENSEE shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the LICENSEE's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

Federal Regulations

Telecommunications Act of 1996

Section 253 of the Telecommunications Act (the Act) of 1996 guides the City's review of Wireless Communication Facilities (WCF). The Act states the City's review and approval or denial of WCF applications "shall not unreasonably discriminate among providers of functionally equivalent services," and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The Act requires the City to act on a permit application request within "a reasonable period of time", and states that any decision to deny a request to "place, construct, or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record."

The Act also prohibits the City from regulating the "placement, construction, and modification of [WCFs] on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions." Title 18.96.050 of Morgan Hill's Municipal Code requires that WCF applications provide a report, prepared by a qualified RF engineer, demonstrating that the WCF will comply with the FCC RF Guidelines.

Spectrum Act

Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) states that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station" and describes required timelines (60 days for modifications, 90 days for collocations). The associated FCC Report and Order 14-153 provides guidance on what may be considered an "eligible facilities request" and what constitutes "substantial change".

FCC Declaratory Ruling and Third Report and Order FCC 18-133 – "Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" [WC Docket No. 17-84; WT Docket No. 17-79, FCC 18-111]

The FCC adopted Report and Order FCC 18-133 (the "Small Cell Order") to accelerate the deployment of both the current and next generations of wireless technology (known respectively 4G and 5G) using small cell antennas. Such antennas are typically placed on City streetlights or traffic signals in the right-of-way, although not exclusively. The Small Cell Order requires local jurisdictions to process applications for collocation of small cells on existing structures within 60 days and on new structures within 90 days. Right-of-way applications on City assets are reviewed by City staff and processed concurrently with a Small Cell License Agreement (SCLA).

The Small Cell Order also codifies processing timelines for non-small cell WCFs required by other federal policies: 90 days for collocations, and 150 days for new projects.

California State Regulations

Assembly Bill 57 (2015)

AB 57 added Section 65964.1 to the California Government Code, which “deems approved” applications for most types of wireless sites if the City does not act on an application within the FCC’s “shot clock” timeframe if the applicant has provided all required notices.

Shot Clocks and Processing Timelines

Federal laws and policies provide shot clocks for all types of WCF approved by the City of Morgan Hill. The City must decide on a project within the shot clock timeframes outlined below. Shot clocks are tolled while the City awaits resubmittal.

Required Shot clocks for WCF projects

Time Frame	Project Type(s)
60 days	• Small Cells proposed on existing City infrastructure
90 days	• All collocations and Small Cells proposed on new structures
150 days	• Non-Small Cell new projects (Third Report and Order Shot Clock)

The shot clocks codified by the Third Report and Order force the City to act quickly. Shot clocks do not require the City to approve an application, only to act on it. To facilitate project approval, the City needs a complete application early in the process. Otherwise, staff will be forced to deny an incomplete application to meet shot clock requirements. It is the applicant’s responsibility to ensure that they submit all the information that the City needs to decide on a project. This includes (but is not limited to) noise study, photo simulations, site development plans, evidence that the project complies with the Zoning code, engineering standards and requirements of these guidelines, etc.

Small Cells

This network of low-powered micro antennas provides cellular and data coverage to supplement the provider’s macro-cellular network. New small cell installations will improve the providers’ ability to meet current and future consumer cellular and data needs.

These design standards provide design and aesthetic requirements and specifications that all small wireless facilities installed within the right-of-way must meet prior to installation within Morgan Hill boundaries. Small cells installed within the right-of-way are bound to these design standards.

Providers shall consider the aesthetics of the existing street lights and other City infrastructure near proposed small cell locations, with special attention given to the details of neighborhoods with unique

street light assemblies. Unique assemblies may include mast arms, architectural luminaires, mounting heights, pole colors, etc.

SMALL CELL EQUIPMENT DESIGN STANDARDS FOR CITY OWNED POLES

AESTHETICS: Equipment should be of a color which reasonably matches the pole.

INTERNAL INSTALLS: Equipment shall be installed within an existing pole when technologically feasible. Any equipment installed within a pole may not protrude from the pole except to the extent technically necessary to connect to power or a wireline.

EXTERNAL SHROUDING: Whenever technically feasible, any pole mounted antenna shall be located at the top of the pole contained in an enclosure (ex. Radome Shroud), otherwise mounted as close to the pole as technically feasible in accordance with applicable standards. Any other equipment shall be contained in an enclosure on the pole, unless the visual impact can otherwise be reduced by its location on the pole including behind street signs on the pole. Maximum of 4 equipment enclosures are allowed on a single pole.

TESTED EQUIPMENT: Devices and associated equipment must be UL listed and FCC certified or authorized for the intended use.

INTERFERENCE: Antenna shall not cause any interference with operation of City facilities, including signs, banners and miscellaneous lighting or of any existing City telecommunication infrastructure.

DIMENSIONS: Individual antenna, excluding other associated wireless equipment, shall be no more than three (3) cubic feet in volume, and all other associated wireless equipment shall not cumulatively exceed 28 cubic feet in volume.

SIDEARM (OFF-SET) INSTALLS: May not allow the furthest point of the enclosure to extend more than 18 inches from the pole.

SOUND: Devices shall not emit audible sounds beyond 55 dB consistent with Municipal Code Chapter 8.28. In single family neighborhoods, noise limit to be 5dBA above ambient sound, not to exceed 30 dBA as measured at a property line.

CONDUITS: All cables shall be in conduits and shall be flush with the pole unless required to be installed inside the pole.

HARDWARE ATTACHMENT: All hardware attachments should be hidden. Welding onto existing equipment is not permitted.

COLOR: All equipment should be painted to match pole aesthetics. Paint should be powder coated over zinc paint. If a wood pole, the visible attachments and hardware shall match pole aesthetics.

CABLE: All cables should be clearly labeled for future identification.

POLE MOUNTED ANTENNA: Pole Mounted Antenna must be mounted directly on top of the pole, unless a side arm installation is required. A tapered transition between the upper pole and Antenna (including enclosure) is required when mounted on top of the pole. Antenna with enclosure shall not exceed 3 cubic feet in volume. Antenna and enclosure shall not exceed 40 inches in height when mounted on top of pole.

STICKERS/SIGNS: Any pole mounted enclosure or ground mounted utility box should be labeled a (1) RF warning sticker, background to match pole color, no larger than 4 x 6 inches. Facing to the street near the elevation of the antennae, (2) 4-inch by 6-inch (maximum) plate with the provider's name, location identifying information, and 24-hour emergency telephone number, and (3) no advertising, logos or decals, unless additional identification or signage is required by law.

LIGHTS: There shall be no lights on the equipment unless required by federal law.

GROUND MOUNTED EQUIPMENT: Must meet and follow existing City ordinances for ground mounted utility boxes and be attached to a concrete foundation. Ground mounted equipment must be placed in a location that does not obstruct pedestrian or vehicular traffic and in the least conspicuous location available within a reasonable distance from the pole. Ground mounted equipment should be installed within an existing or replacement street feature including, without limitation, bus stop shelters, trash bins, benches, kiosks, advertisement panels or other street furniture to conceal the equipment. Ground mounted equipment must comply with all ADA requirements.

HEIGHT OF EQUIPMENT ON POLE: The lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.

POWER METER: As required by PG&E and in a location that (1) minimizes its interference with other users of the public right-of-way including, but not limited to, pedestrians, motorists, and other entities with equipment in the right-of-way. Wireless meters are required where technically feasible.

POLE STYLE: Galvanized Steel Pole equal to Valmont DS30 8.0A300-8s-GV. City's Design Standards E-11.

POLE CONNECTION: Where technically feasible, attachment to the side of a pole must be placed perpendicular to the street away from the vehicular traffic.

INSTALLATION OF NEW OR REPLACEMENT STREETLIGHT POLES: Should new poles be needed; structural analysis will be per most recently adopted California Building code by City of Morgan Hill. Foundations requirements per City's Design Standards E-11. For City owned wood poles, if wood pole requires replacement to insure the pole can handle the load of the equipment, replacement wood poles will be allowed when served by existing overhead power. Should City owned wood pole have underground power and requires replacement, a new Galvanized Steel Pole equal to Valmont DS30 8.0A300-8s-GV. City's Design Standards E-11 will be the standard.

COLOR: A pole shall be painted to match existing street light aesthetics. Paint shall be powder coated over zinc paint (Pole shall be galvanized if metal pole).

HEIGHT: Any city owned metal and wood street light pole with collated small cell shall not exceed 35 feet including the equipment. Pole shall be measured from the top of the foundation to the top of the Pole Mounted Antenna.

DESIGN WIND VELOCITY: All structural components of small cell pole, standard, base, couplers, anchor bolts, luminaires, pole mounted antenna and other attachment to be used shall be designed for a minimum of 85 mph wind velocity.

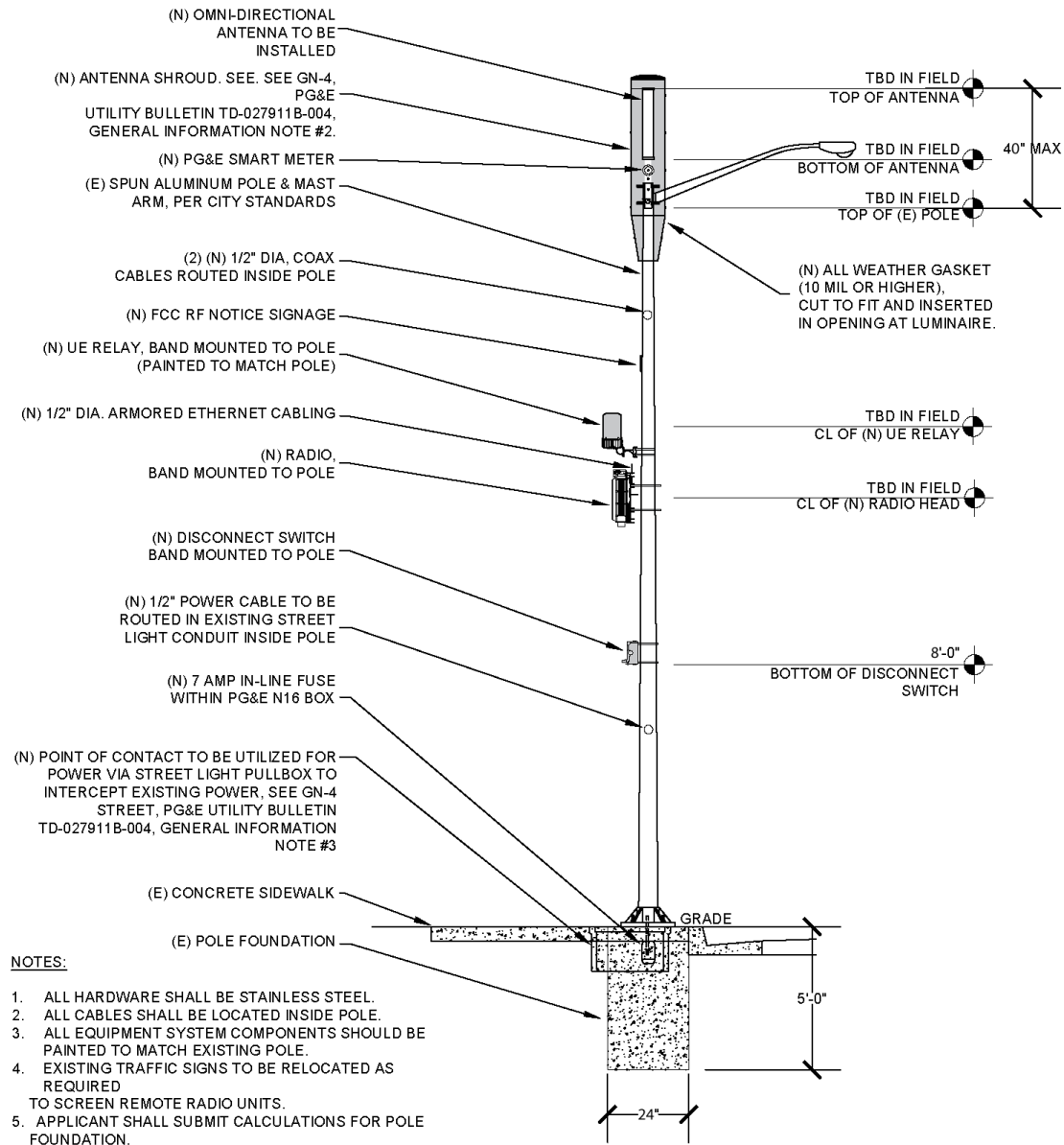
ELECTRIC SERVICE: If sharing service with City light pole, for each location, applicant shall: 1. Survey and document all loads connected to circuit involved, including any non-streetlight load. Circuit tracing shall be completed using proper circuit tracing equipment. 2. Conduct load analysis to evaluate loading level and voltage drop. Calculations shall be completed by an electrical engineer. 3. Reserve at minimum 40% of circuit load capacity (not breaker rating) for City's use. 4. Conductors shall be spliced at base of pole in pull box. If there is no existing pull box, installation of a new pull box will be required.

METERING: Applicant shall submit proof of approved service metering arrangements from PG&E (i.e. Absolving Service Agreement) to the City prior to acceptance.

COMMUNICATIONS/BACKHAUL SERVICE: Applicant shall secure their own communication/backhaul arrangements independent of City facilities.

ELECTRICAL CONDUIT: All new electrical conduit shall be separate.

CITY OWNED METAL AND WOOD POLES DESIGN STANDARDS



SMALL CELLS ON FREESTANDING POLES (MONOPOLES) DESIGN STANDARDS

AESTHETICS: Equipment should be of a color which reasonably matches surrounding poles.

POLE STYLE: Round.

INSTALLATION OF POLES: Structure analysis will be per most recently adopted California Building code by City of Morgan Hill. Foundations requirements per City's Design [City's Design Standards E-10](#)

COLOR: A pole and pole extension shall be painted to match existing street light aesthetics, paint shall be powder coated over zinc pain (Pole shall still be galvanized)

HEIGHT: Any pole with collated small cell shall not exceed 35 feet, pole shall be measured from the top of the foundation to the top of the antenna.

DESIGN WIND VELOCITY: All structural components of small cell pole, standard, base, couplers, anchor bolts, antenna and other attachment to be used shall be designed for a minimum of 85 mph wind velocity.

CONDUITS: All cables shall be in conduits within the pole.

STICKERS/SIGNS: Any pole, (1) RF warning sticker, background to match pole color, no larger than 4 x 6 inches. Facing to the street near the elevation of the antennae, (2) 4-inch by 6-inch (maximum) plate with the provider's name, location identifying information, and 24-hour emergency telephone number, and (3) No advertising, logos or decals. Additional stickers are only permitted if otherwise required by law.

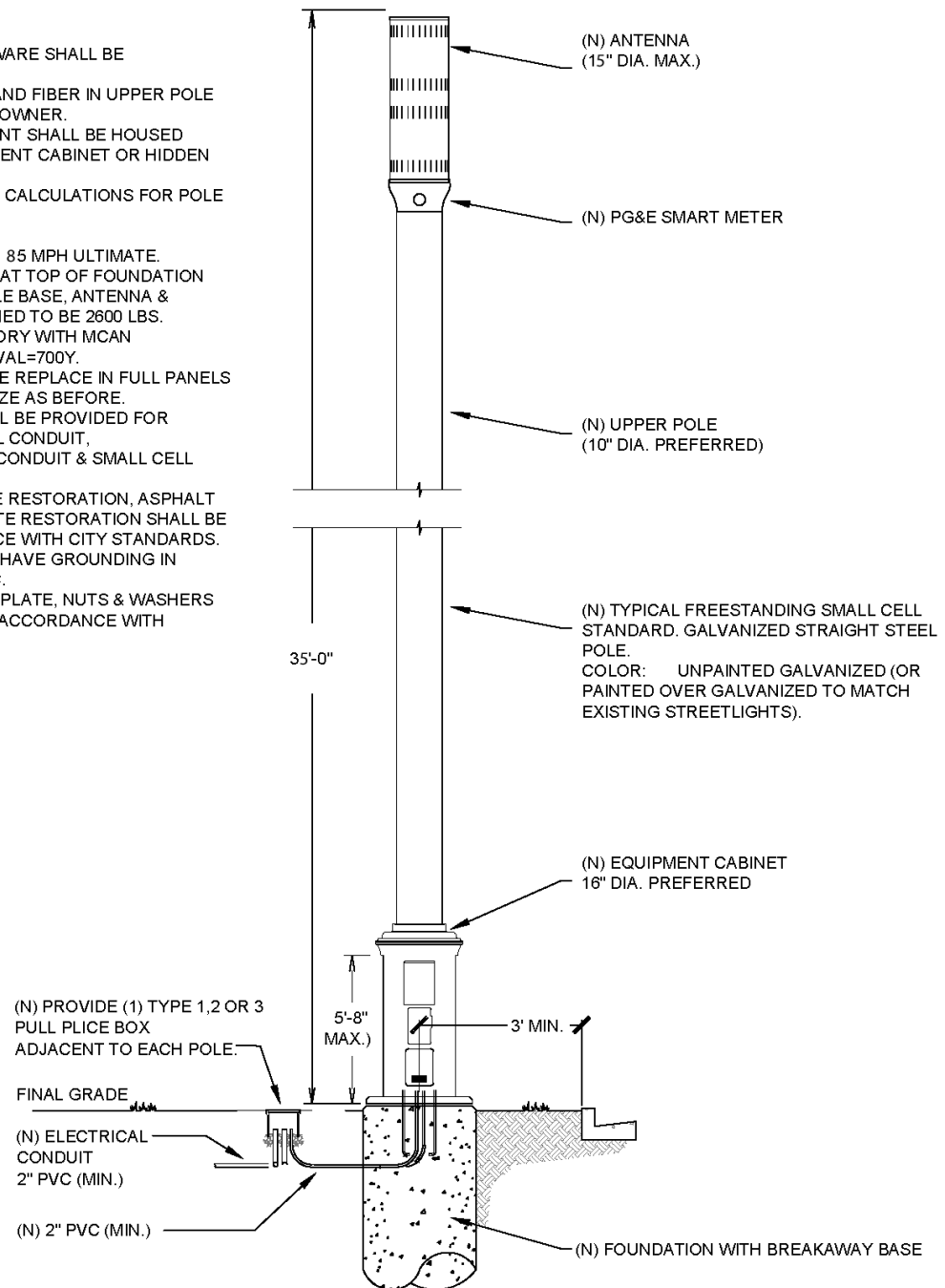
ELECTRIC SERVICE: Per PG&E requirements.

COMMUNICATIONS/BACKHAUL SERVICE: Applicant shall secure their own communication/backhaul arrangements independent of City facilities.

SMALL CELLS ON FREESTANDING POLES (MONOPOLES)

NOTES:

1. ALL ANCHOR BOLT HARDWARE SHALL BE CONCEALED.
2. ALL ELECTRICAL WIRING AND FIBER IN UPPER POLE SHALL BE SEPARATED BY OWNER.
3. ALL SMALL CELL EQUIPMENT SHALL BE HOUSED INTERNAL TO THE EQUIPMENT CABINET OR HIDDEN BEHIND THE ANTENNA.
4. APPLICANT SHALL SUBMIT CALCULATIONS FOR POLE FOUNDATION.
LOADS:
A. WIND LOAD SHALL BE 85 MPH ULTIMATE.
B. MAXIMUM DEAD LOAD AT TOP OF FOUNDATION (INCLUDING POLE, POLE BASE, ANTENNA & EQUIPMENT) IS ASSUMED TO BE 2600 LBS.
C. AASH TO RISK CATEGORY WITH MCAN RECURRENCE INTERVAL=700Y.
5. ANY HARDSCAPE SHALL BE REPLACE IN FULL PANELS OF SAME TYPE, COLOR, SIZE AS BEFORE.
6. SEPARATE CONDUIT SHALL BE PROVIDED FOR STREETLIGHT ELECTRICAL CONDUIT, SMALL CELL ELECTRICAL CONDUIT & SMALL CELL CARRIER FIBER.
7. ALL CONDUIT, LANDSCAPE RESTORATION, ASPHALT RESTORATION & CONCRETE RESTORATION SHALL BE INSTALLED IN ACCORDANCE WITH CITY STANDARDS.
8. ALL FOUNDATIONS SHALL HAVE GROUNDING IN CONFORMANCE WITH NEC.
9. ANCHOR BOLTS, ANCHOR PLATE, NUTS & WASHERS SHALL BE GALVANIZED IN ACCORDANCE WITH ASTM A153.



GENERAL APPLICABLE DESIGN STANDARDS

Any small cell facility must comply with the following requirements:

- All facilities should be installed and maintained in a workmanlike manner in compliance with the national Electric Safety Code and the National Electric Code, as applicable.
- So as not to obstruct vehicle or pedestrian sight lines in an unsafe manner
- Wherever possible, locate on poles at the intersection of property lines
- All facilities must have appropriate clearances from existing utilities.
- All equipment located within the public right-of-way shall be located such that it meets Americans with Disability Act (ADA) requirements and does not obstruct, impede, or hinder usual pedestrian or vehicular travel or interferes with the operation and maintenance of signal lights, signage, street lights, street furniture, fire hydrants, or business district maintenance.
- Any equipment within the public right-of-way that falls within the 100-year flood zone, needs to be protected from flood damage.

SMALL CELL EQUIPMENT SHALL BE MOUNTED ON OR HIDDEN INSIDE THE POLE AS FOLLOWS:

- Antenna: Where feasible inside an enclosure (ex. Radome Shroud).
- Utility poles and wood poles: All equipment located on poles if allowed by pole owner (City or PG&E), and anything not on the pole to be located in a ground mounted utility box. Fiber in conduits flush with pole.
- Traffic signal poles: All equipment in ground mounted utility box. Fiber inside pole in a conduit (if conduit is not available, pole cannot be used).
- New /replacement metal street light poles: all equipment inside pole in base cabinet.
- Decorative street lights – replace with equipment inside pole. Reusable deviations from these standards shall be approved by City of Morgan Hill prior to installation.
- Deviations from this guide may be approved if reasonable on a case-by-case basis by City of Morgan Hill prior to installation.
- Placed so as not to interfere with normal operation and maintenance of street light or other street appurtenances.
- City workers and contractors to have ability to easily shut off radio signals and power while working on pole. (And we have the right to turn off or disconnect for necessary operations).
- Attachments to a pole or any new or replacement pole should have a smooth transition between the small cell and the pole and shall not have any flat surface of more than 1.5 inches to prevent creation of a ledge.
- New small cell facility must be encased in a separate conduit than any City electronics.
- The specifications provided above are for single carrier with single technology installations within the right of way only. Dual carrier, dual technology installations, or small cell locations not in the public right of way need to conform to Zoning Code 18.96.

POWER AND GROUND MOUNTED UTILITY BOXES

- Back up batteries must be in a ground mounted utility box, or underground where feasible.
- A separate meter and disconnect is required for both the power and the cell signal that can be accessed and operated by street lighting maintenance personnel.
- Must have metered power.

LOCATION PREFERENCES:

- Attachment to city owned wood or metal street lights
- Attachment to traffic signal poles

PROCESS FOR SMALL CELLS LOCATED ON CITY OWNED POLES IN RIGHT OF WAY:

1. Contact the City about a Small Cell License Agreement:
 - Identify locations including poles within right of way
 - Provide renderings and simulations of equipment installation
2. Negotiate a Small Cell License Agreement
3. Agreement is executed by City Manager
4. Encroachment Permit is issued for Installation

PROCESS FOR SMALL CELLS LOCATED IN RIGHT OF WAY (MONOPOLE/TELECOMMUNICATION COMPANY OWNED)

1. Use Permit Application
2. Review in Conformance with Zoning Code 18.96 Wireless Communication Facilities

PROCESS FOR EXEMPTION OF SMALL CELL DESIGN STANDARDS

Any provider may apply for an exemption from design standards to the City Engineer. The provider must demonstrate to the reasonable satisfaction of the City Engineer that the design standard cannot be met due to technical infeasibility.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Alexandra Noble, Economic Development Fellow
APPROVED BY: City Manager

INTRODUCE ORDINANCE AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive first and second reading of Zoning Amendment ZA2019-0007: Wireless Communication Facilities; and
3. Introduce Zoning Amendment Ordinance ZA2019-0007: Wireless Communication Facilities.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

The public right-of-way (streets, sidewalks, and areas owned by government agency with access to the public) offer built-in infrastructure, such as utility poles, traffic signals, and street lights, which support wireless infrastructure. Small cell antennas and associated equipment are commonly placed on traffic signal or street lights located in the public right-of-way. The California Public Utilities Commission (CPUC) has determined that wireless providers are a utility and, therefore, have the right to use the public right-of-way as any other utility.

A recent ruling (Small Cell Order) by the Federal Communications Commission (FCC) requires cities to identify Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this FCC Order, cities cannot require undergrounding and must provide objective, reasonable, deployable, and scalable design standards. Furthermore, the FCC Small Cell Order requires cities to approve wireless cell antennas within 60 days for existing poles and 90 days for new poles. Finally, the Order states that poles must be made available for small cell wireless and establishes a cost-based fee structure for review/permitting.

In a separate report on tonight's Agenda, staff is bringing forward recommended design standards for small cell wireless telecommunication facilities in the public right-of-way

and a Small Cell Master Licensing Agreement. This report focuses on the proposed text amendments to Title 18, Division 1, Chapter 18.96 (Wireless Communications) in the Zoning Code.

PROJECT SUMMARY

Title 18, Division 1, Chapter 18.96 of the Zoning Code establishes standards and the permitting process for wireless communication facilities and regulates placement on private and public property. It is recommended the City Council approve an amendment to Chapter 18.96 (Wireless Communication Facilities), removing the requirement for an Administrative Use Permit for pole-mounted facilities within the public right-of-way in compliance with the FCC ruling. Other associated changes are recommended related to this amendment. On March 12, 2019, the Planning Commission recommended approval of the proposed changes to the Zoning Code.

ANALYSIS

The City of Morgan Hill has identified Telecommunications as one of the City's top priorities. A recent ruling by the FCC requires the City to identify Small Cell Design Standards for projects within the public right-of-way by April 15, 2019 and process these applications within 90 days. To streamline this process, an amendment to Chapter 18.96 (Wireless Communication Facilities) has been proposed (Attachment No. 1). The City would review new facilities within the public right-of-way through the encroachment permit process within the Engineering Division. A Small Cell License (SCL) agreement between the City and the wireless provider would be required.

The following sections of the report will provide additional background on the City's efforts to improve telecommunications, industry trends and additional background on State and Federal regulations.

1. Wireless Industry and Trends

The need for broadband is growing exponentially for both businesses and residents. Broadband can be delivered wirelessly (satellite/cellular) often through antennas or fixed (copper, coaxial, fiber) through an underground conduit or overhead cable. The City needs a strong telecommunications network to support its growing business community. Yet, the City of Morgan Hill has poor broadband availability. A 2016 study gave Morgan Hill a grade of "D" in terms of quality and access of broadband service. Morgan Hill is challenged by the limited number of providers and market models for return on investment (ROI).

In general, wireless providers are experiencing increased customer demand, particularly with respect to data capacity and speed. Because of this increasing data consumption, wireless providers are seeking rapid investment in the necessary infrastructure to meet not only current data demands but to prepare for consumer deployment of fifth generation wireless systems (5G) technology.

Unlike past approaches when wireless communications facilities were predominately on leased private property, wireless providers are now interested in locating new facilities

within public right-of-way. Given the increasing costs for use permits and frequent public concern and resulting delay associated with leases on private property, wireless providers are seeking alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles or City-owned structures in the City's right-of-way.

2. City's Telecommunication Efforts

The City can influence investment or disinvestment in telecommunications through City's policies and regulations and/or through direct investment. Currently, the City does not have clear City Standards for either implementation (wireless or fixed). Furthermore, the industry is rapidly changing with federal mandates that limit the City's regulatory oversight.

The City of Morgan Hill is working diligently to comply with FCC Declaratory Ruling and Third Report and Order FCC 18-133, which requires the City to identify Small Cell Design Standards for public right-of-way by April 15, 2019. Pursuant to this recent FCC Order, cities cannot require undergrounding and must provide reasonable, deployable, and scalable design standards. As part of this effort, staff is partnering with Joint Venture Silicon Valley on their Wireless Communications Initiative to work with industry professionals to develop best practices that provide clarity and encourage fiber installation and deployment of wireless antennas.

Other telecommunications efforts include developing a dig-once policy to incentivize installation of conduit when an open trench is available and identify opportunities to enhance connectivity amongst City facilities. This will be done through a Request for Proposals, expected to be issued in April 2019.

3. Legislative Background

a. Telecommunications Act

Section 253 of the Telecommunications Act (the Act) of 1996 guides the City's review of Wireless Communication Facilities (WCF). The Act states the City's review and approval or denial of WCF applications "shall not unreasonably discriminate among providers of functionally equivalent services," and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The Act requires the City to act on a permit application request within a reasonable timeframe, and states that any decision to deny a request to "place, construct, or modify a wireless communication facility shall be in writing and supported by substantial evidence contained in the written record."

The Act also prohibits the City from regulating the "placement, construction, and modification of [WCFs] on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the [FCC's] regulations concerning such emissions." Title 18.96.050 of Morgan Hill's Municipal Code requires

that WCF applications provide a report, prepared by a qualified RF engineer, demonstrating that the WCF will comply with the FCC RF Guidelines.

b. Spectrum Act

Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) states that a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station and describes required timelines (60 days for modifications and 90 days for collocations). The associated FCC Report and Order 14-153 provides guidance on what may be considered an eligible facility request and what constitutes substantial change.

c. FCC Declaratory Ruling and Third Report and Order FCC 18-133

The FCC adopted Report and Order FCC 18-133 (Small Cell Order) to accelerate the deployment of the next generation of wireless technology (known as 5G) using small cell antennas. Such antennas are typically placed on City streetlights or traffic signals in the right-of-way, although not exclusively. The Small Cell Order requires local jurisdictions to process applications for collocation of small cells on existing structures within 60 days and on new structures within 90 days. As proposed with the amendment, right-of-way applications on City assets would be reviewed by staff and processed concurrently with a SCL agreement.

COMMUNITY ENGAGEMENT: Inform

A hearing notice was published in the Morgan Hill Times ten (10) days prior to the Planning Commission hearing on March 12, 2019. Verizon Wireless provided public comment in favor of the zoning code amendments proposed. Another hearing notice was published ten (10) days prior to the City Council hearing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 12, 2019, Planning Commission conducted a public hearing on a proposed amendment to Title 18, Division 1, Chapter 18.96 (Wireless Communications) and adopted a resolution recommending City Council approve the Zoning Code amendment (Attachment No. 2).

FISCAL AND RESOURCE IMPACT:

The recommended actions amending Title 18, Division 1, Chapter 18.96 (Wireless Communications) are to comply with the new FCC Ruling. The work for this City initiated amendment was accommodated in the Economic Development and Planning Divisions' budget and workplan.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Small cell deployments on pole mounted facilities in the right-of-way are exempt from CEQA based on a Categorical Exemption pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project consists of the construction and location of a small facility, where only minor modifications are made to the exterior of the structure.

LINKS/ATTACHMENTS:

1. Ordinance-Wireless-Communication-Facilities
2. Planning Commission Staff Report Wireless Communication Facilities in the Public Right of Way March 12, 2019 (web link)

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 18.96.040 (REQUIRED PERMITS), 18.96.060 (SECTION 6409(a) MODIFICATIONS), 18.96.070 (PREFERRED SITING AND LOCATION), and 18.96.080 (DEVELOPMENT STANDARDS) OF CHAPTER 18.96 (WIRELESS COMMUNICATION FACILITIES) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING SMALL CELL DEPLOYMENTS ON POLE MOUNTED FACILITIES WITHIN THE CITY RIGHT-OF-WAY.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 18.96.040 (Required Permits) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.040 - Required permits.

- A. Conditional Use Permit. Planning commission approval of a conditional use permit is required for all new facilities and modifications ~~or collocation to existing facilities~~ outside the public right-of-way, except for facilities requiring an administrative use permit or a Section 6409(a) Permit as identified below.
- B. Administrative Use Permit. Community development director approval of an administrative use permit is required for the following facilities:
 - 1. A collocation to an existing facility that is not eligible for a Section 6409(a) permit.
 - 2. A modification to an eligible support structure that is not eligible for a Section 6409(a) permit.
 - 3. Building- and facade-mounted facilities in a non-residential zoning district where the facility is completely concealed from public view and architecturally integrated into the existing support structure.
 - ~~4. Pole-mounted facilities in the public right-of-way consistent with Section 18.96.080.D (Rights-of-Way Facilities).~~
 - 54. A micro wireless facility in a non-residential zoning district, including within the public right-of-way.
- C. Section 6409(a) Permit. Modifications to an existing facility that do not result in a substantial change as defined by FCC regulations may be eligible for a Section 6409(a) permit. See Section 18.96.060 (Section 6409(a) Modifications).

SECTION 2. Section 18.96.060 (Section 6409(a) modifications) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.060 - Section 6409(a) modifications.

- A. Purpose. This section describes the process and requirements for the approval of an "eligible facilities request" that does not cause a "substantial change" to an existing facility as defined by FCC regulations.
- B. Eligible Facilities Request Defined. "Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as a request for modification of an existing tower or base station that does not substantially change the physical dimensions of the tower or base station, involving
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment; or
 - 3. Replacement of transmission equipment.
- C. Substantial Change Defined. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, defined according to the facility type and location as follows:
 - 1. Towers Outside the Public Right-of-Way. For towers outside the public right-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
 - 2. ~~Towers~~ Monopoles in the Public Right-of-Way ~~and Base Stations~~. For ~~towers~~ monopoles in the public rights-of-way ~~and for all base stations~~, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than six feet from the edge of the wireless ~~tower or base station~~ monopoles; or
 - c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (ten percent) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

3. All Towers and Base Stations. In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the community development director; or
 - b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.
4. Interpretation of Thresholds.
 - a. The thresholds for a substantial change described above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur.
 - b. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).
- D. Permit Required. Approval of an eligible facilities request as defined above requires community development director approval of a Section 6409(a) Permit.
- E. Applications. Applications for a Section 6409(a) Permit shall contain all information and materials specified in Section 18.96.050.B (Application Contents) except as follows:
 1. Section 6409(a) Permit applications are not required to include a statement of purpose (Section 18.96.050.B.1) or an alternative sites analysis (Section 18.96.050.B.5).
 2. The application must include a detailed explanation as to why the applicant believes that the application qualifies as an eligible facilities request subject to a Section 6409(a) Permit.
 3. For applications involving a collocation or modification to an eligible support structure, the application must be accompanied by all prior approvals for the existing facility (including but not limited to all conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment), as well as all permit applications with required application materials for each separate permit required by the city for the proposed facility, including but not limited to a building permit and an encroachment permit (if applicable).
- F. Public Notice. Before the community development director may approve a Section 6409(a) Permit application, notice of the application shall be posted on site at least ten calendar days prior to the city taking action on the application and shall contain the following information:
 1. A general explanation of the proposed modification or collocation;
 2. A general description of the location of the real property that is the subject of the application; and

3. The following statement: "Federal law may require approval of this application pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a)."
- G. Basis for Approval.
1. This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a), and the applicable FCC and court decisions and determinations relating to the same. In the event that a court of competent jurisdiction invalidates all or any portion of Section 6409(a) or a FCC rule or regulation that interprets Section 6409(a), such that federal law would not mandate approval for any eligible facilities request, then all proposed modifications to existing facilities subject to this section must be approved by an administrative use permit, or conditional use permit, as applicable, and subject to the discretion of the community development director.
 2. The community development director shall approve a Section 6409(a) Permit upon finding that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change as defined above.
 3. In addition to any other alternative recourse permitted under federal law, the community development director may deny a Section 6409(a) permit upon finding that the proposed collocation or modification:
 - a. Violates any legally enforceable standard or permit condition reasonably related to public health and safety;
 - b. Involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification;
 - c. Involves the replacement of the entire support structure; or
 - d. Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
 4. A denial of a Section 6409(a) permit application shall be without prejudice to the applicant, the real property owner, or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, administrative use permit, or Section 6409(a) permit as appropriate.
- H. Appeals. Community development director decisions on a Section 6409(a) Permit are final and may not be appealed.
- I. No Permit Term Extension.
1. The approval of a Section 6409(a) permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station.
 2. A Section 6409(a) permit does not extend the permit term for any conditional use permit, administrative use permit, or other underlying regulatory approval and its term shall be coterminous with the underlying permit for the subject tower or base station.
- J. Applicant Notifications for Deemed Granted Remedies.
1. Under state and/or federal law, the city's failure to act on a wireless communications facility permit application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions, accounting for tolling, may result in the permit being deemed granted by operation of law.

2. To the extent federal or state law provides a "deemed granted" remedy for wireless communications facility applications not timely acted upon by the city, no such application shall be deemed granted unless and until the applicant satisfies the following requirements:
 - a. Submits a complete application package consistent with the application procedures specified in this chapter and applicable federal and state laws and regulations.
 - b. Following the date by which the city must take final action on the application (as determined in accordance with the time periods and procedures established by applicable FCC decisions and accounting for tolling), the applicant must provide notice to the city that the application is deemed granted by operation of law.
- K. Accelerated Permit Terms Due to Invalidation.
 1. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) permit, the permit or permits issued in connection with such 6409(a) modification(s) shall automatically expire one year from the effective date of the judicial order.
 2. A permit holder is not required to remove its improvements approved under the invalidated Section 6409(a) permit if the permit holder submits an application for a conditional use permit or administrative use permit for those improvements before the one-year period ends.
- L. No Waiver of Standing. The approval of a Section 6409(a) permit shall not be construed to waive any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) modification.

SECTION 3. Section 18.96.070 (Preferred siting and location) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.96.070 - Preferred siting and location.

The following siting and location preferences apply to all proposed new facilities and substantial changes to existing facilities. The community development director may require the applicant to submit an alternative sites analysis and evidence to demonstrate that a proposed facility could not be feasibly installed in a preferred site or location.

- A. Preferred Siting. To the extent possible, all proposed facilities should be sited according to the following preferences, ordered from most preferred to least preferred:
 1. Collocations on existing base stations outside the rights-of-way; then
 - ~~2. Collocations on eligible support structures in the rights-of-way; then~~
 - ~~3.~~ 2. Collocations on towers outside the rights-of-way; then
 - ~~4.~~ 3. New building-mounted facilities outside the rights-of-way; then
 - ~~5. New eligible support structures in the rights-of-way; then~~
 - ~~4.~~ 6. New towers outside the rights-of-way.

- B. Preferred Locations — General. All applicants should, to the extent possible, propose new facilities and substantial changes to existing facilities in non-residential zones.
- C. Preferred Locations — Non-Residential Zones. To the extent possible, all proposed facilities in non-residential zones should be located according to the following preferences, ordered from most preferred to least preferred:
 - 1. City owned or controlled parcels; then
 - 2. Parcels in the public facilities (PF) zone; then
 - 3. Parcels in the industrial (CI, IO, IC, IL, IG) zones; then
 - 4. Parcels in the commercial (CN, CG, CH, CS) zones;
 - 5. Parcels in the sports recreation leisure (SRL) zone.
 - 6. Parcels in the mixed use (MU-D, MU-N, MUF) zones.
- D. Preferred Locations -Residential and Open Space Zones. If a facility is proposed in a residential (RE, RDL, RDH, RAL, RAM, RAH)), a residential Planned Development, or open space (OS) zone, all facilities should be located according to the following preferences, ordered from most preferred to least preferred:
 - ~~1. In the public right-of-way abutting a residential zone; then~~
 - 2~~1~~. City owned or controlled parcels; then
 - 2~~3~~. Parcels that contain non-residential uses and do not contain residential uses; then
 - 3~~4~~. Parcels that contain non-residential conditional uses and do contain residential uses; then
 - 4~~5~~. Parcels that do not contain single-family homes; then
 - 5~~6~~. All other parcels.

SECTION 4. Section 18.96.080 (Development standards) of Chapter 18.96 (Wireless Communications Facilities) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):
 18.96.080 - Development standards.

- A. General Design Standards. All facilities must conform to the following design standards.
 - 1. Concealment. All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design. All ground-mounted equipment on private property must be completely concealed to the extent feasible according to the following preferences, ordered from most preferred to least preferred:
 - a. Within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse or dumpster corral; then
 - b. Within a new structure designed to integrate with or mimic the adjacent existing structure; then
 - c. Within an underground equipment vault if no other feasible above-ground design that complies with subsections (a) or (b) exists.
 - 2. Height.

- a. All new facilities and substantial changes to existing facilities must not exceed the height limit in the applicable zone except as allowed in Paragraph b below.
 - b. The review authority may approve a height exception up to 8 feet above the height limit when a proposed facility is (1) mounted on the rooftop of an existing building; (2) completely concealed; and (3) architecturally integrated into the underlying building. This exception does not apply to any towers or utility poles.
 3. Setbacks. All facilities must comply with all setback requirements in the applicable zone.
 4. Collocation. Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.
 5. Landscaping. In addition to any landscaping required by the city for concealment or screening purposes, the applicant shall install and maintain additional landscaping to replace any existing landscaping displaced during the construction or installation of the facility.
 6. Backup or Standby Power Sources and Generators. The city may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that the facility cannot feasibly achieve its power needs with batteries, fuel cells or other similarly non-polluting, low noise-level means.
 7. Lights.
 - a. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may exempt an applicant from this requirement when the applicant demonstrates a substantial public safety need.
 - b. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the city to the maximum extent feasible.
 8. Noise. All transmission equipment and other equipment (including without limitation air conditioners and sump pumps) associated with the facility must not emit sound that exceeds the applicable limit established in municipal code Chapter 8.28 (Noise).
 9. Signage.
 - a. A facility may not display any signage or advertisements unless expressly allowed by the city in a written approval, recommended under FCC regulations or required by law or permit condition.
 - b. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
 10. Code Compliance. A permit holder shall design and maintain all facilities in compliance with all applicable federal, state and local laws, codes, regulations, ordinances or other rules.
- B. Tower-Mounted Facilities.
1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new towers applications should be designed according to the following preferences, ordered from most preferred to least preferred:

- a. Faux architectural features (examples include, but are not limited to, bell towers, clock towers, lighthouses, obelisks and water tanks); then
 - b. Faux trees; then
 - c. Monopoles that do not conceal the antennas within a concealment device.
- 2. Tower-mounted Equipment. All tower-mounted equipment shall be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
- 3. Ground-mounted Equipment. Ground-mounted equipment shall be concealed with opaque fences or other opaque enclosures. The city may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
- 4. Concealment Standards for Faux Trees. All faux tree facilities shall comply with the following standards:
 - a. The canopy shall completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least eighteen inches.
 - b. The canopy shall be naturally tapered to mimic the particular tree species.
 - c. All tower-mounted equipment, including antennas, equipment cabinets, cables, mounts and brackets, shall be painted flat natural colors to mimic the particular tree species.
 - d. All antennas and other tower-mounted equipment cabinets shall be covered with broadleaf or pine needle "socks" to blend in with the faux foliage.
 - e. The entire vertical structure shall be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.
- C. Building and Facade Mounted Facilities.
 - 1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new building and facade mounted facilities should be designed according to the following preferences, ordered from most preferred to least preferred:
 - a. Completely concealed and architecturally integrated facade or rooftop mounted base stations which are not visible from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
 - b. Completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks); then
 - c. Facade-mounted facilities incorporated into "pop-out" screen boxes designed to be architecturally consistent with the original support structure; then
 - d. Exposed facade-mounted and rooftop antennas.
 - 2. Ground-mounted Equipment. Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible

to the public, outdoor ground-mounted equipment shall be concealed with opaque fences or landscape features that mimic the adjacent structures (including, but not limited to, dumpster corrals and other accessory structures).

D. ~~Rights-of-Way Facilities.~~

- ~~1. Concealment. All facilities in the public right-of-way shall be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.~~
- ~~2. Undergrounded Equipment. To conceal the non-antenna equipment, all non-antenna equipment shall be installed underground to the extent feasible. Additional expense to install and maintain an underground equipment enclosure shall not exempt applicants from this requirement, except where an applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.~~
- ~~3. Ground-mounted Equipment. Ground-mounted equipment shall be installed in a location that does not obstruct pedestrian or vehicular traffic. The review authority may require landscaping as a condition of approval to conceal ground-mounted equipment.~~
- ~~4. Pole-mounted Equipment. All pole-mounted equipment shall be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile, painted flat and non-reflective colors to match the underlying pole, placed behind existing signs, and oriented away from prominent views. All required or permitted signage in the right of way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.~~

Section 4. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 5. Effective Date; Posting. This Ordinance shall take effect on _____, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 2019, and adopted at a meeting held on the _____ day of _____, 2019, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Keri Russell, Maintenance Services Coordinator
APPROVED BY: City Manager

PUBLIC HEARING AND BALLOT TABULATION FOR PARSONS CORNER SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

RECOMMENDATION(S)

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to:

- Provide the public with a final opportunity to provide the City Council with input on the special ballot proceeding needed for detachment of Parsons Corner Subarea from the Morgan Hill Landscape Assessment District Number 1 (District);
- Call an official close to the submission of ballots;
- Tabulate the ballots; and
- Certify the results of the ballot proceeding.

The City has been administering the various subareas contained in Morgan Hill Landscape Assessment District Number 1 since the 1990s. Each of these subareas function as a “mini-district” in which the revenues garnered through the annual assessments must only be used to pay the administrative and direct service costs for that subarea. One of these subareas, Parsons Corner, has had a reduction in services over the last several years due to limited revenues and rising costs. The Homeowners Association (HOA) supplements some maintenance to the Common Area.

Over recent meetings, many of the residents in the Parsons Corner Subarea have expressed to the City that they would prefer to have the HOA solely maintain the Common Area. The Common Area is currently owned by the HOA, which has signed an agreement to take on future maintenance. The assessment district cannot be detached without an affirmative vote of the majority of the voting property owners.

The City Council adopted the resolution of intent needed to start this process at the February 6, 2019 City Council meeting. Immediately thereafter, City staff mailed the required public notice and ballot to all of the property owners in the Parsons Corner Subarea informing them about the ballot proceeding and their options to respond. The mailing included a special return envelope and the City Clerk's office has been receiving sealed ballots in the intervening weeks. These ballots will now be opened and tabulated at the close of the public hearing.

Once the ballots have been tabulated, the Deputy City Clerk will announce the results of the tabulation and the Council may adopt a resolution certifying the results of the ballot proceeding. If it is not possible to tabulate the ballots for some unforeseen reason, the City Council may continue the item to a future meeting in order to finalize the tabulation.

COMMUNITY ENGAGEMENT: Consult

Staff has had multiple meetings and communications over the past year with Parsons Corner residents and HOA, and the proposed detachment is the result of those requests. The proposed action empowers the residents to decide on detachment through a vote and to ultimately take on management of the area themselves.

ALTERNATIVE ACTIONS:

There are no reasonable alternative actions.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council adopted the resolution of intent needed to start this process at its meeting of February 6, 2019.

FISCAL AND RESOURCE IMPACT:

The detachment of the Parsons Corner Subarea will not result in a significant fiscal impact, as expenses and revenues will be reduced equally within the overall Landscape Assessment District budget. The annual process for the levy of assessments for the District will occur in the coming months. Administering and managing the District is included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project

The actions in this resolution are fiscal activities which do not directly involve a physical impact on the environment.

LINKS/ATTACHMENTS:

1. Maintenance Agreement

2. Resolution A
3. Resolution B

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("**Agreement**") dated as of this 25 day of February, 2019 ("**Date of Agreement**"), is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("**City**"), and PARSONS CORNER HOMEOWNERS ASSOCIATION, a California Common Interest Development Association ("**HOA**"). City and HOA are sometimes referred to herein individually as a "**Party**" or collectively as the "**Parties**".

RECITALS

The following Recitals are a substantive part of this Agreement:

A. HOA is the Homeowners Association for the ten residences known as Parsons Corner, created by Tract Number 8812, in Morgan Hill, California.

B. The Parsons Corner subdivision includes a common area designated as Lot 11 in Tract Number 8812, Morgan Hill, California (Common Area).

C. The City has established a landscape assessment District Sub-Area to provide maintenance to the Common Area. The HOA currently also provides maintenance to the Common Area. The HOA desires to provide all future maintenance to the Common Area and to dissolve the assessment district sub area by detaching Parsons Corner from the Fox Hollow/Murphy Springs Lighting and Landscaping Assessment District.

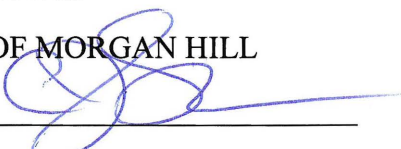
Now, therefore, City and HOA agree as follows:

1. The City shall initiate proceedings to detach Parsons Corner from the Fox Hollow/Murphy Springs Lighting and Landscaping Assessment District by June 30, 2019.
2. If the detachment proceeding is successful, the HOA agrees to immediately assume all responsibility for maintenance of Lot 11. City shall no longer be responsible for any future maintenance of the Common Area.
3. Any remaining funds within the assessment District Sub-Area account at the time of detachment shall be paid to the HOA for future maintenance of the Common Area.
4. HOA declares that it has proceeded as required by law to authorize this transaction.
5. Authority to Execute. Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.
6. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed

in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

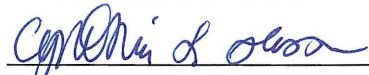
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF MORGAN HILL

By: 

Christina Turner, City Manager

APPROVED AS TO FORM:

By: 

 Donald Larkin, City Attorney

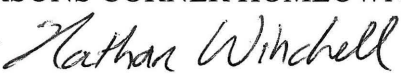
ATTEST:

By: 

 Irma Torrez, City Clerk

Homeowners Association:

PARSONS CORNER HOMEOWNERS ASSOCIATION

By:  1/27/19

Title: secretary of HOA

 1/28/19
President

Attachment: Maintenance Agreement (2242 : Parsons Corner Public Hearing)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE RESULTS OF THE BALLOT TABULATION FOR THE ASSESSMENT BALLOT PROCEEDING TO SUBMIT TO THE QUALIFIED PROPERTY OWNERS THE QUESTION OF THE PROPOSED DETACHMENT FOR THE PARSONS CORNER SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING JULY 1, 2019

The City Council of the City of Morgan Hill (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council has previously formed Landscape Assessment District No. 1 (District), previously the Fox Hollow/Murphy Springs Landscape Assessment District, to levy and collect assessments pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the “Act”) that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto;

WHEREAS, City representatives have met with residents of the Parsons Corner Subarea of Landscape Assessment District No. 1 who have expressed an interest for the Home Owner Association (HOA) to take over the maintenance of the Common Area;

WHEREAS, the City Council adopted a Resolution of Intent on February 6, 2019 initiating an assessment ballot proceeding for the detachment of the Parsons Corner Subarea from the Landscape Assessment District;

WHEREAS, immediately thereafter, the City mailed a notice and ballot to all property owners within the Parsons Corner Subarea; and

WHEREAS, the City Clerk has tabulated the ballots submitted in compliance with State law.

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO CHAPTER 2, SECTION 22587 OF THE ACT AND CALIFORNIA CONSTITUTIONAL ARTICLES XIIIIC AND XIID, AS FOLLOWS:

Results: The City Clerk has tabulated the ballots properly and legally submitted on the question of detaching the Parsons Corner Subarea and determined that a majority of “In Favor of Detachment” votes has been submitted. With a majority in favor of detachment, Parsons Corner will be detached from the Landscape Assessment District as of July 1, 2019.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of April 2019.

City of Morgan Hill
Resolution No.
Page 2 of 2

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution A (2242 : Parsons Corner Public Hearing)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CERTIFYING THE RESULTS OF THE BALLOT TABULATION FOR THE ASSESSMENT BALLOT PROCEEDING TO SUBMIT TO THE QUALIFIED PROPERTY OWNERS THE QUESTION OF THE PROPOSED DETACHMENT FOR THE PARSONS CORNER SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING JULY 1, 2019

The City Council of the City of Morgan Hill (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council has previously formed Landscape Assessment District No. 1 (District), previously the Fox Hollow/Murphy Springs Landscape Assessment District, to levy and collect assessments pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the “Act”) that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto;

WHEREAS, City representatives have met with residents of the Parsons Corner Subarea of Landscape Assessment District No. 1 who have expressed an interest for the Home Owner Association (HOA) to take over the maintenance of the Common Area;

WHEREAS, the City Council adopted a Resolution of Intent on February 6, 2019 initiating an assessment ballot proceeding for the detachment of the Parsons Corner Subarea from the Landscape Assessment District;

WHEREAS, immediately thereafter, the City mailed a notice and ballot to all property owners within the Parsons Corner Subarea; and

WHEREAS, the City Clerk has tabulated the ballots submitted in compliance with State law.

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO CHAPTER 2, SECTION 22587 OF THE ACT AND CALIFORNIA CONSTITUTIONAL ARTICLES XIII C AND XIII D, AS FOLLOWS:

Results: The City Clerk has tabulated the ballots properly and legally submitted on the question of detaching the Parsons Corner Subarea and determined that a majority protest of “Oppose Detachment” votes has been submitted. With a majority protest, Parsons Corner will continue to be a part of the Landscape Assessment District.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of April 2019.

City of Morgan Hill
Resolution No.
Page 2 of 2

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution B (2242 : Parsons Corner Public Hearing)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

RECOMMENDATION(S)

1. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services;
2. Open/close the public hearing; and
3. Adopt resolution updating the City's select Development Impact Fees.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
 Protecting the Environment
 Maintaining Fiscal Responsibility
 Supporting Our Youth
 Seniors
 and Entire Community
 Fostering a Positive Organizational Culture

2019 Strategic Priorities

Economic Development
 Financial Stewardship
 Infrastructure

GUIDING DOCUMENTS

Bikeways
 Trails
 Parks and Recreation Masterplan
 General Plan/Housing Element
 Public Safety Master Plan
 Sewer System Master Plan
 Vision Zero
 Water System Master Plan

REPORT NARRATIVE:

In 2016, the City of Morgan Hill adopted its updated General Plan, outlining a plan for the growth of the City through the year 2035. In 2017, the City adopted its:

- 1) Public Safety Master Plan, serving as a foundational document for service delivery decision well into the future;
- 2) Utilities Master Plan Documents to help the Council and the public understand the future build out of the City's water and wastewater systems; and
- 3) Bikeways, Trails, Parks, and Recreation Master Plan to guide the improvement and future development of the City's bikeways, trail, parks, and recreation system in Morgan Hill.

More recently, in 2018, the City adopted its Storm Drainage Master Plan to evaluate the capacity adequacy of the existing stormwater drainage system, recommending improvements to mitigate existing deficiencies and for servicing future growth. Growth brings the need for both new and expanded infrastructure. A key element of planning for growth is identifying the funding mechanism to pay for such infrastructures.

The City relies on various resources to fund new infrastructure; a portion of funding may come from outside sources, such as federal or state grants, but much of the funding, must be raised at the local level. Therefore, the City works to ensure that new development pays for the infrastructure needs it creates. The City has in place a development impact fee program, assessing various impact fees to new developments to fund infrastructure improvements. Such fee assessments are allowed under the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600).

The General Plan requires the City to update periodically the schedule of development impact fees authorized by AB 1600 to address the impacts of growth on City infrastructure.

On February 8, 2019, the 2019 Draft Development Impact Fee Update Study ("Update Study") (Attachment No. 1), prepared by Willdan Financial Services, was released to the community via eblast along with the posting on the City's website.

On February 20, 2019, the Update Study was introduced to the City Council. The City Council directed staff to proceed with updating the City's development impact fees as presented in the Update Study. In addition, Council agreed with staff's recommendation for the following items:

- Reduce the total Priority Bikeways projects to one-third or approximately \$4 million as the City realistically would only be able to raise \$3 million from outside sources for the projects, resulting in a lower than maximum justified traffic impact fee schedule.
- Reduce the new parks to be built by half due to lack of outside sources to fund the operating and maintenance (O&M), resulting in a lower than maximum justified park impact fee schedule.
- Full implementation on July 1, 2019, without phasing in the increases.

The table below shows the total maximum justified impact fee, amount, and percent increases from the current fee as per the Update Study, and proposed fees to the current City's total impact fee.

Land Use	Per Updated Study			Proposed		
	Maximum Justified Fee	Amount Change from Current Fee	Percentage Change from Current Fee	Proposed Amount	Amount Change from Current Fee	Percentage Change from Current Fee
<i>Residential (per dwelling unit)</i>						
Single Family	\$ 53,405	\$ 14,731	38%	\$ 45,998	\$ 7,324	19%
Multi-Family	41,551	9,174	28%	35,107	2,730	8%
Senior / Downtown / ADU	35,313	6,641	23%	30,476	1,804	6%
<i>Nonresidential (per KSF or per hotel room)</i>						
Commercial	\$ 19,544	\$ 6,067	45%	\$ 18,779	\$ 5,302	39%
Office	12,377	3,310	37%	12,070	3,003	33%
Industrial	8,481	2,390	39%	8,281	2,190	36%
Auto Dealership	15,371	3,698	32%	14,831	3,158	27%
Hotel	4,170	334	9%	4,046	210	5%

On March 21, 2019, two community meeting sessions were held at the Development Services Center – Grand Conference Room. A total of six (6) community members attended the meetings. Concerns raised included the phasing in of increases, and accessory dwelling unit (ADU) density. The majority of the community members that attended the meetings expressed that both in the dollar and percentage terms, the increases from the existing fees are high and the proposed amount does not include the Residential Development Control System (RDSCS) contributions which amounted to an average of approximately \$18,000 per allotment, based on the last RDSCS competition. As such, they requested that Council reconsider the phase in directive that the Council provided to the staff at the February 20, 2019 meeting.

As for the ADU, some community members believe the density factor used in the Update Study is high. Morgan Hill Municipal Code Chapter 18.84 and existing state law allow owners to build a maximum of 1,200 square feet for a detached structure. The Update Study uses a residential density factor of 2.0 residents per unit for this category. After further consultation with Planning staff, staff believes the factor used in the Update Study is appropriate and no further adjustment is recommended. In addition, this is the same factor that was used in prior studies.

COMMUNITY ENGAGEMENT: Inform

Public notice was published in the local newspaper on March 22, 2019, informing the community of the Development Impact Fees adjustment and adoption of the new fees. In addition, two community meeting sessions were held on March 21, 2019, to present the study, and to receive feedback from the community.

ALTERNATIVE ACTIONS:

The City Council could direct staff to make adjustment to the proposed impact fees, phase in the increases, or delay updating the impact fees.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 27, 2017, the City Council approved a consultant agreement with Willdan Financial Services to update the City's development impact fees.

On February 20, 2019, the Updated Study was introduced to the City Council.

FISCAL AND RESOURCE IMPACT:

The fiscal impact of preparing this report is included in the staff's annual workplan. The proposed impact fees would provide sufficient funding from new development for capital improvements related to that development.

CEQA (California Environmental Quality Act):

Project, Description of CEQA requirements.

These actions are exempt from CEQA under Section 15273 of Guidelines for CEQA, because they establish, modify, and approve rates and charges for the purposes of obtaining funds for capital projects.

LINKS/ATTACHMENTS:

1. Morgan Hill Development Impact Fee Update Study - Final Draft 1-31-19
2. Resolution
3. Letter from BIA

CITY OF MORGAN HILL

DEVELOPMENT IMPACT FEE UPDATE STUDY

FINAL DRAFT

JANUARY 31, 2019



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Seattle, WA

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Executive Summary

This report summarizes an analysis of the maximum justified development impact fees allowable to support future development in Morgan Hill through 2035. It is the City's intent that the costs representing future development's share of public facilities and capital improvements be imposed on that development in the form of a development impact fee, also known as a public facilities fee. The public facilities and improvements included in this analysis are divided into the fee categories listed below:

- General Public Facilities;
- Traffic Facilities;
- Library Facilities;
- Park Facilities;
- Water Facilities; and,
- Storm Drain Facilities.

Background and Study Objectives

The primary policy objective of a development impact fee program is to ensure that new development pays the capital costs associated with growth. Although growth also imposes operating costs, there is no similar system to generate revenue from new development for services. The primary purpose of this report is to calculate and present fees that will enable the City to expand its inventory of public facilities as new development creates increases in service demands.

The City imposes public facilities fees under authority granted by the *Mitigation Fee Act* (the *Act*), contained in *California Government Code* Sections 66000 *et seq.* This report provides the necessary findings required by the *Act* for adoption of the fees presented in the fee schedules contained herein.

All development impact fee-funded capital projects should be programmed through the City's six-year Capital Improvement Plan (CIP). Using a CIP can help the City identify and direct its fee revenue to public facilities projects that will accommodate future growth. By programming fee revenues to specific capital projects, the City can help ensure a reasonable relationship between new development and the use of fee revenues as required by the *Mitigation Fee Act*.

Facility Standards and Costs

There are three approaches typically used to calculate facilities standards and allocate the costs of planned facilities to accommodate growth in compliance with the *Mitigation Fee Act* requirements.

The **planned facilities** approach allocates costs based on the ratio of planned facilities that serve new development to the increase in demand associated with new development. This approach is appropriate when specific planned facilities that only benefit new development can be identified, or when the specific share of facilities benefiting new development can be identified. Examples include street improvements to avoid deficient levels of service or a water main extension to a previously undeveloped area. This approach is used for the traffic facilities, park facilities, water facilities and the storm drain facilities fees in this report.

The **existing inventory** approach is based on a facility standard derived from the City's existing level of facilities and existing demand for services. This approach results in no facility deficiencies attributable to existing development. This approach is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the fee

study. Future facilities to serve growth will be identified through the City's annual capital improvement plan and budget process and/or completion of a new facility master plan. This approach is used for the library facilities fees and general public facilities fees in this study.

The **system plan** approach is based on a master facilities plan in situations where the needed facilities serve both existing and new development. This approach allocates existing and planned facilities across existing and new development to determine new development's fair share of facility needs. This approach is used when it is not possible to differentiate the benefits of new facilities between new and existing development. Often the system plan is based on increasing facility standards, so the City must find non-impact fee revenue sources to fund existing development's fair share of planned facilities. This approach is not used in this report.

Use of Fee Revenues

Impact fee revenue must be spent on new facilities or expansion of current facilities to serve new development. Facilities can be generally defined as capital acquisition items with a useful life greater than five years. Impact fee revenue can be spent on capital facilities to serve new development, including but not limited to: land acquisition, construction of buildings and infrastructure, the acquisition of vehicles or equipment, information technology, software licenses and equipment.

Development Impact Fee Schedule Summary

Table E.1 summarizes the maximum justified development impact fees that meet the City's identified needs and comply with the requirements of the *Mitigation Fee Act*.

E.1: Maximum Justified Development Impact Fees

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Water	Storm Drainage	Total
<i><u>Residential (DU)</u></i>							
Single Family	\$ 3,638	\$ 3,313	\$ 2,413	\$ 14,402	\$ 8,914	\$ 1,513	\$ 34,193
Multi-Family	3,191	2,054	2,117	12,632	4,100	1,074	25,168
Senior / Downtown / Accessory Unit	2,417	828	1,603	9,570	4,635	726	19,779
<i><u>Nonresidential (per KSF or hotel room)</u></i>							
Commercial	\$ 936	\$ 12,291	-	-	\$ 2,139	\$ 937	\$ 16,303
Office	1,123	4,937	-	-	2,139	937	9,136
Industrial	936	3,214	-	-	1,516	575	6,241
Auto Dealership	374	8,680	-	-	2,139	937	12,130
Hotel	112	1,988	-	-	713	303	3,116

Sources: Tabs 3.6, 4.6, 5.6, 6.9, 7.5 and 8.5.

Other Funding Needed

Impact fees may only fund the share of public facilities related to new development in Morgan Hill. They may not be used to fund the share of facility needs generated by existing development or by development outside of the City. As shown in **Table E.2**, approximately \$73.7 million in additional funding will be needed to complete the projects the City currently plans to develop. Non-fee funding is needed because these facilities are needed partially to remedy existing deficiencies and partly to accommodate new development.

The City will need to develop alternative funding sources to fund existing development's share of the planned facilities. Potential sources of revenue include but are not limited to: existing or new general fund revenues, revenues to Residential Development Control System (RDCS) in-lieu accounts, existing or new taxes, special assessments, and grants.

Table E.2: Non-Impact Fee Funding Required

Fee Category	Total Project Cost	Development Fee Revenue	Additional Funding Required
General Public Facilities	\$ 34,631,883	\$ 18,111,540	\$ 16,520,343
Traffic Facilities	55,613,839	33,680,899	21,932,940
Library Facilities	5,580,000	10,755,600	-
Parks	64,236,000	64,236,000	-
Sewer	80,969,521	58,954,990	22,014,530
Water	46,296,126	33,110,593	13,185,533
Storm Drainage ¹	12,042,945	8,080,922	-
	<u>\$ 299,370,313</u>	<u>\$ 226,930,543</u>	<u>\$ 73,653,346</u>

¹ Existing fund balances fund the difference between total project cost and projected impact fee revenue.

Sources: City of Morgan Hill; Tables 3.3, 3.5, 4.3, 4.4, 4.5, 5.3, 5.5, 6.7, 7.3, 7.4, and 8.3.

1. Introduction

This report presents an analysis of the need for public facilities to accommodate new development in Morgan Hill. This chapter provides background for the study and explains the study approach under the following sections:

- Public Facilities Financing in California;
- Study Objectives;
- Morgan Hill Impact Fee Program;
- Fee Program Maintenance;
- Study Methodology; and
- Organization of the Report.

Public Facilities Financing in California

The changing fiscal landscape in California during the past 40 years has steadily undercut the financial capacity of local governments to fund infrastructure. Three dominant trends stand out:

- The passage of a string of tax limitation measures, starting with Proposition 13 in 1978 and continuing through the passage of Proposition 218 in 1996;
- Declining popular support for bond measures to finance infrastructure for the next generation of residents and businesses; and
- Steep reductions in federal and state assistance.

Faced with these trends, many cities and counties have had to adopt a policy of “growth pays its own way.” This policy shifts the burden of funding infrastructure expansion from existing ratepayers and taxpayers onto new development. This funding shift has been accomplished primarily through the imposition of assessments, special taxes, and development impact fees also known as public facilities fees. Assessments and special taxes require the approval of property owners and are appropriate when the funded facilities are directly related to the developing property. Development impact fees, on the other hand, are an appropriate funding source for facilities that benefit all development jurisdiction-wide. Development impact fees need only a majority vote of the legislative body for adoption.

Study Objectives

The primary policy objective of a public facilities fee program is to ensure that new development pays the capital costs associated with growth. Policy 16.4(c) of the Morgan Hill General Plan states that the City will “Fully utilize existing strategies to achieve an urban level of public services throughout the city, including require [ing] developers to dedicate land and/or pay to offset the costs relating to the provision and expansion of public services and facilities.” The primary purpose of this report is to update the City’s impact fees based on the most current available facility plans and growth projections. The proposed fees will enable the City to expand its inventory of public facilities as new development leads to increases in service demands.

The City imposes public facilities fees under authority granted by the Mitigation Fee Act (the Act), contained in California Government Code Sections 66000 et seq. This report provides the necessary findings required by the Act for adoption of the fees presented in the fee schedules presented in this report.

Morgan Hill is forecast to experience moderate growth through this study’s planning horizon of 2035. This growth will create an increase in demand for public services and the City facilities

required to deliver them. Given the revenue challenges described above, Morgan Hill has decided to use a development impact fee program to ensure that new development funds the share of facility costs associated with growth. This report makes use of the most current available growth forecasts and facility plans to update the City's existing fee program to ensure that the City's fee program is representative of the facility needs resulting from new development.

Morgan Hill Impact Fee Program

Morgan Hill currently charges impact fees to fund the expansion of general public facilities, water facilities, storm drain facilities, park facilities, recreation and community center facilities, library facilities, fire facilities, police facilities, traffic facilities, and sewer facilities to serve new development. Most of the fees were established in 2002 or 2003 and have since been comprehensively updated, in addition to periodic updates for inflation.

This study provides the documentation needed for a comprehensive update of the City's impact fee program, with the exception of the City's recreation facilities fee and the sewer facilities fee. Two former fee categories, fire and police facilities fees, will be incorporated into the general public facilities fee, and the individual categories discontinued. All existing revenue within these two restricted fee funds must be spent on the purpose for which it was collected.

Fee Program Maintenance

Once a fee program has been adopted it must be properly maintained to ensure that the revenue collected adequately funds the facilities needed by new development. To avoid collecting inadequate revenue, the inventories of existing facilities and costs for planned facilities must be updated periodically for inflation, and the fees recalculated to reflect the higher costs. The use of established indices for each facility included in the inventories (land, buildings, and equipment), such as the *Engineering News-Record*, is necessary to accurately adjust the impact fees. For a list of recommended indices, see Chapter 9.

While fee updates using inflation indices are appropriate for annual or periodic updates to ensure that fee revenues keep up with increases in the costs of public facilities, it is recommended to conduct more extensive updates of the fee documentation and calculation (such as this study) when significant new data on growth forecasts and/or facility plans become available. For further detail on fee program implementation, see Chapter 9.

Morgan Hill last completed comprehensive review of the general public facilities, library, park, storm drain, fire and police impact fees in 2010. The city last comprehensively updated the community recreation centers and traffic facilities fees in 2015. Impact fees must be adjusted for inflation to fund new development's fair share of planned facilities. If impact fees are not adjusted for inflation, then deficiencies will grow, since the impact fees will no longer fully fund new development's fair share of planned facilities.

Study Methodology

Development impact fees are calculated to fund the cost of facilities required to accommodate growth. The six steps followed in this development impact fee study include:

1. **Estimate existing development and future growth:** Identify a base year for existing development and a growth forecast that reflects increased demand for public facilities;
2. **Identify facility standards:** Determine the facility standards used to plan for new and expanded facilities;
3. **Determine facilities required to serve new development:** Estimate the total amount of planned facilities, and identify the share required to accommodate new development;

4. **Determine the cost of facilities required to serve new development:** Estimate the total amount and the share of the cost of planned facilities required to accommodate new development;
5. **Calculate fee schedule:** Allocate facilities costs per unit of new development to calculate the development impact fee schedule; and
6. **Identify alternative funding requirements:** Determine if any non-fee funding is required to complete projects.

The key public policy issue in development impact fee studies is the identification of facility standards (step #2, above). Facility standards document a reasonable relationship between new development and the need for new facilities. Standards ensure that new development does not fund deficiencies associated with existing development.

Types of Facility Standards

There are three separate components of facility standards:

- ♦ *Demand standards* determine the amount of facilities required to accommodate growth, for example, park acres per thousand residents, square feet of library space per capita, or gallons of water per day. Demand standards may also reflect a level of service such as the vehicle volume-to-capacity (V/C) ratio used in traffic planning.
- ♦ *Design standards* determine how a facility should be designed to meet expected demand, for example, park improvement requirements and technology infrastructure for city office space. Design standards are typically not explicitly evaluated as part of an impact fee analysis but can have a significant impact on the cost of facilities. Our approach incorporates the cost of planned facilities built to satisfy the City's facility design standards.
- ♦ *Cost standards* are an alternate method for determining the amount of facilities required to accommodate growth based on facility costs per unit of demand. *Cost standards* are useful when demand standards were not explicitly developed for the facility planning process. *Cost standards* also enable different types of facilities to be analyzed based on a single measure (cost or value) and are useful when different facilities are funded by a single fee program. Examples include facility costs per capita, cost per vehicle trip, or cost per gallon of water per day.

New Development Facility Needs and Costs

A number of approaches are used to identify facility needs and costs to serve new development. This is often a two-step process: (1) identify total facility needs, and (2) allocate to new development its fair share of those needs.

There are three common methods for determining new development's fair share of planned facilities costs: the **planned facilities method**, the **existing inventory method** and the **system plan method**. Often the method selected depends on the degree to which the community has engaged in comprehensive facility master planning to identify facility needs.

The formula used by each approach and the advantages and disadvantages of each method is summarized below:

Planned Facilities Method

The planned facilities method allocates costs based on the ratio of planned facility costs to demand from new development as follows:

$$\frac{\text{Cost of Planned Facilities}}{\text{New Development Demand}} = \$/\text{unit of demand}$$

This method is appropriate when planned facilities will entirely serve new development, or when a fair share allocation of planned facilities to new development can be estimated. An example of the former is a water main extension to a previously undeveloped area. An example of the latter is expansion of an existing library building and book collection, which will be needed only if new development occurs, but which, if built, will in part benefit existing development, as well. Under this method new development funds the expansion of facilities at the standards used in the applicable planning documents. This method is used to calculate the traffic facilities, park facilities, water facilities and the storm drain facilities fees in this study.

Existing Inventory Method

The existing inventory method allocates costs based on the ratio of existing facilities to demand from existing development as follows:

$$\frac{\text{Current Value of Existing Facilities}}{\text{Existing Development Demand}} = \$/\text{unit of demand}$$

Under this method new development funds the expansion of facilities at the same standard currently serving existing development. By definition the existing inventory method results in no facility deficiencies attributable to existing development. This method is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the fee study. Future facilities to serve growth are identified through an annual capital improvement plan and budget process, possibly after completion of a new facility master plan. This method is used to calculate the library facilities fees and general public facilities fees in this study.

System Plan Method

This method calculates the fee based on: the value of existing facilities plus the cost of planned facilities, divided by demand from existing plus new development:

$$\frac{\text{Value of Existing Facilities} + \text{Cost of Planned Facilities}}{\text{Existing} + \text{New Development Demand}} = \$/\text{unit of demand}$$

This method is useful when planned facilities need to be analyzed as part of a system that benefits both existing and new development. It is difficult, for example, to allocate a new fire station solely to new development when that station will operate as part of an integrated system of fire stations that together achieve the desired level of service.

The system plan method ensures that new development does not pay for existing deficiencies. Often facility standards based on policies such as those found in General Plans are higher than existing facility standards. This method enables the calculation of the existing deficiency required to bring existing development up to the policy-based standard. The local agency must secure non-fee funding for that portion of planned facilities required to correct the deficiency to ensure that new development receives the level of service funded by the impact fee. This method is not used in this report.

Organization of the Report

The determination of a public facilities fee begins with the selection of a planning horizon and development of growth projections for population and employment. These projections are used throughout the analysis of different facility categories, and are summarized in Chapter 2.

Chapters 3 through 8 identify facility standards and planned facilities, allocate the cost of planned facilities between new development and existing development, and identify the maximum justified development impact fee for each of the following facility categories:

- General Public Facilities;
- Traffic Facilities;

- Library Facilities;
- Park Facilities;
- Water Facilities; and,
- Storm Drain Facilities.

Chapter 9 details the procedures that the City must follow when implementing a development impact fee program. Impact fee program adoption procedures are found in *California Government Code* Sections 66016 through 66018.

The five statutory findings required for adoption of the proposed public facilities fees in accordance with the Mitigation Fee Act are documented in Chapter 10.

2. Growth Forecasts

Growth projections are used as indicators of demand to determine facility needs and allocate those needs between existing and new development. This chapter explains the source for the growth projections used in this study based on a 2018 base year and a planning horizon of 2035.

Estimates of existing development and projections of future growth are critical assumptions used throughout this report. These estimates are used as follows:

- The estimate of existing development in 2018 is used as an indicator of existing facility demand and to determine existing facility standards.
- The estimate of total development at the 2035 planning horizon is used as an indicator of future demand to determine total facilities needed to accommodate growth and remedy existing facility deficiencies, if any.
- Estimates of growth from 2018 through 2035 are used to (1) allocate facility costs between new development and existing development, and (2) estimate total fee revenues.

The demand for public facilities is based on the service population, dwelling units or nonresidential development creating the need for the facilities. The service population for general public facilities includes residents and workers. The service population for parks and libraries includes only residents. Demand for water facilities is based on flow generation factors that vary by land use. The demand for storm drain facilities is based on the ratio of impervious surface to non-impervious surface that a development will create. Water and storm drain demand factors are provided per dwelling unit, per thousand building square feet of nonresidential space and per hotel room.

Land Use Types

To ensure a reasonable relationship between each fee and the type of development paying the fee, growth projections distinguish between different land use types. The land use types that impact fees have been calculated for are defined below.

- **Single family:** Detached and attached one-unit dwellings. Per *Municipal Code Section 18.04.155*, a single family detached dwelling unit is defined as, “a dwelling designed to contain a single dwelling unit situated on a single lot.” Per *Municipal Code Section 18.04.154*, a single family attached dwelling unit is defined as, “a dwelling attached to another dwelling on at least fifty percent of the length of the attached side of the building, sometimes called a townhouse, duet, or row house.”
- **Multi-family:** All attached multi-family dwellings including duplexes and condominiums. Per *Municipal Code Section 18.04.150*, a multi-family unit is defined as, “a building designed and used as a residence for three or more families living independently of each other and containing three or more dwelling units. Per *Municipal Code Section 18.04.157*, a duplex is defined as, “a structure which is designed and used as a residence for two families living independently of each other and containing two dwelling units.”
- **Senior / Downtown / Accessory Units:** All senior housing units, any multi-unit residential development occurring in the downtown area (as defined by the Downtown Specific Plan) and any secondary dwelling units less than 900 square feet in size per unit.
- **Commercial:** All commercial, retail and educational development.
- **Office:** All general, professional, and medical office development.

- **Industrial:** All manufacturing and warehouse development.
- **Automobile Dealerships:** All land uses selling new or used automobile or other motor vehicles.
- **Hotel/Motel:** All lodging development, including hotels and motels.

Some developments may include more than one land use type, such as a mixed-use development with both multi-family and commercial uses. In those cases, the facilities fee would be calculated separately for each land use type.

The City has the discretion to determine which land use type best reflects a development project's characteristics for purposes of imposing an impact fee and may adjust fees for special or unique uses to reflect the impact characteristics of the use.

Existing and Future Development

Table 2.1 shows the estimated number of residents, dwelling units, employees, and building square feet in Morgan Hill, both in 2018 and in 2035. Existing residents and dwelling units are based on California Department of Finance (DOF) data. These estimates exclude "group quarters" resident populations, since they do not contribute to demand for facilities. Estimates of residents in 2035 also exclude group quarters residents and is based on Municipal Code Section 18.78.040 - Population Limit of the voter-approved Residential Development Control System (RDCS), which established a maximum population of 58,200.¹

Base year dwelling units for single family units are based on DOF data. Senior/downtown/accessory dwelling unit estimates are consistent with data from the City's 2015 Traffic Impact Fee study. Multifamily base year units estimated as the difference between total units, single family units from DOF and senior/downtown/ADU units from 2015 Traffic Impact Fee study. Total dwelling units in 2035 are calculated by dividing 2035 residents by the current density of 3.145 residents per household and assuming a 4.687% vacancy rate, consistent with current DOF estimates.

Base year employees are estimated based on data provided by the US Census' American Community Survey and exclude local government employees. Future employees are estimated based on data from the Association of Bay Area Governments (ABAG) used in the Morgan Hill General Plan. Estimates of base year and planning horizon building square feet come from the Morgan Hill 2035 Final EIR.

¹ 58,200 less existing Group Quarters Population of 386 = 57,814.

Table 2.1: Existing and New Development

	2018	2035	Increase
<u>Residents</u> ¹	44,130	57,814	13,684
<u>Dwelling Units</u> ²			
Single Family	11,320	13,000	1,680
Multi-family	2,302	4,687	2,385
Senior / Downtown /			
Accessory Dwelling Units	<u>1,100</u>	<u>1,600</u>	<u>500</u>
Total	14,722	19,287	4,565
<u>Employment</u> ³	16,446	21,520	5,074
<u>Building Square Feet (000s)</u> ⁴			
Commercial	2,610	3,727	1,117
Office	522	1,151	629
Industrial	5,935	7,715	1,780
Auto Dealership	<u>120</u>	<u>176</u>	<u>56</u>
Total	9,187	12,769	3,582
<u>Hotel Rooms</u>	919	1,134	215

¹ Excludes "group quarters" resident populations. Existing residents from DOF data. Estimates of residents in 2035 based on Section 18.78.040 - Population Limit of the voter-approved Residential Development Control System (RDCS), which established a maximum population of 58,200. 58,200 less existing Group Quarters Population 386 = 57,814.

² Base year dwelling units for single family based on DOF data. senior/downtown/ADU units consistent with data from 2015 Traffic Impact Fee study. Multifamily base year units estimated as the difference between total units, single family units from DOF and senior/downtown/ADU units from 2015 study. Total dwelling units in 2035 calculated by dividing 2035 residents by current density of 3.145 residents per household and assuming a 4.687% vacancy rate, consistent with current DOF estimates.

³ Estimate of 16,894 total workers from American Community Survey Table B08604. 448 local government workers are further excluded from that figure based on data from OnTheMap.ces.census.gov.

⁴ Building square feet data from 2035 horizon year projection summarized on page 5-2 of the responses to comments in the Morgan Hill 2035 Final EIR.

Sources: California Department of Finance (DOF) Table E-5, 2018; U.S. Census Bureau, LEHD Origin-Destination Employment Statistics (2002-2015) accessed at <https://onthemap.ces.census.gov>; City of Morgan Hill General Plan 2035 EIR; Willdan Financial Services.

Occupant Densities

The general public facilities, library facilities, and park facilities fees are based on allocating a cost per resident or employee to new development. Occupant density assumptions ensure a

reasonable relationship between the size of a development project, the increase in service population associated with the project, and the amount of the fee.

Occupant densities (residents per dwelling unit or workers per building square foot or hotel room) are the most appropriate characteristics to use for these impact fees. The fee imposed should be based on the land use type that most closely represents the probable occupant density or impervious surface (for storm drain fees) of the development.

The average occupant density factors used in this report are shown in **Table 2.2**. The residential density factors are based on data for Morgan Hill from the U.S. Census' American Community Survey. The nonresidential factors are based on data from the City of Morgan Hill General Plan 2035 EIR.

Table 2.2: Occupant Density

<u>Residential</u>		
Single Family	3.01	Residents per dwelling unit
Multi-family	2.64	Residents per dwelling unit
Senior / Downtown / Accessory Dwelling Units	2.00	Residents per dwelling unit
<u>Nonresidential</u>		
Commercial	2.50	Employees per 1,000 square feet
Office	3.00	Employees per 1,000 square feet
Industrial	2.50	Employees per 1,000 square feet
Auto Dealership	1.00	Employees per 1,000 square feet
Hotel/Motel	0.30	Employees per room

Sources: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates, Tables B25024 and B25033; City of Morgan Hill General Plan 2035 EIR; Willdan Financial Services.

3. General Public Facilities

This chapter documents the impact fee for general public facilities. The general public facilities in this fee category include a variety of facilities including City Hall, the Development Services Center, a corporation yard, police and fire facilities.

Service Population

General public facilities are used to provide services to both residents and businesses. The service population used to determine the demand for general public facilities includes both residents and workers.

Table 3.1 shows the existing and future projected service population for general public facilities. While specific data is not available to estimate the actual ratio of demand per resident to demand by businesses (per worker) for these services, it is reasonable to assume that demand for these services is less for one employee compared to one resident, because nonresidential buildings are typically occupied less intensively than dwelling units. The 0.31-weighting factor for workers is based on a 40-hour workweek divided by the total number of non-work hours in a week (128) and reflects the degree to which nonresidential development yields a lesser demand for general public facilities.

Table 3.1: General Public Facilities Service Population

	A Persons	B Weighting Factor	A x B = C Service Population
<u>Residents</u>			
Existing (2018)	44,130	1.00	44,130
New Development (2018-2035)	13,684	1.00	13,684
Total (2035)	57,814		57,814
<u>Workers</u>			
Existing (2018)	16,446	0.31	5,100
New Development (2018-2035)	5,074	0.31	1,600
Total (2035)	21,520		6,700
<u>Combined Residents and Weighted Workers</u>			
Existing (2018)			49,230
New Development (2018-2035)			15,284
Total (2035)			64,514

¹ Workers are weighted at 0.31 of residents based on a 40 hour work week out of a possible 128 non-work hours in a week (40/128 = 0.31)

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's general public facility inventory, the cost of planned facilities and facility standards.

Existing Inventory

Table 3.2 shows the existing inventory of general public facilities, along with the facilities' estimated replacement value. The estimated land value was developed based on data from four recent appraisals of City owned property and is used consistently throughout this report to value City-owned land. Building values are based on the estimated replacement cost of each facility. Building values were informed by the City's recent construction cost experience. The present value of debt service payment made to date on the police headquarters building is also listed as an owned asset. Likewise, the present value of remaining payments is subsequently listed as a planned facility in the next table. Table 3.2 also lists the replacement cost of the City's owned fleet of general public facilities vehicles, including police vehicles, fire apparatus, public works vehicles and other fleet vehicles.

Table 3.2: Existing General Public Facilities Inventory

	Inventory	Unit	Unit Cost	Replacement Cost
<u>Land (acres)</u>				
City Hall, with Villas	4.81	acres	\$ 790,000	\$ 3,800,000
Development Services Center	1.65	acres	790,000	1,304,000
Dunne Hill Fire Station	0.29	acres	790,000	229,000
El Toro Fire Station ¹	0.50	acres	790,000	395,000
Third Fire Station Land	1.78	acres	790,000	1,406,000
Police Station	3.71	acres	790,000	2,931,000
Public Works Corporation Yard	<u>2.07</u>	acres	790,000	<u>1,635,000</u>
Subtotal - Land	14.81			\$ 11,700,000
<u>Buildings (square feet)</u>				
City Hall, with Villas ²	16,800	sq. ft.	\$ 580	\$ 9,744,000
City Hall Improvements				2,051,000
Development Services Center ²	12,600	sq. ft.	580	3,603,000
Dunne Hill Fire Station	3,316	sq. ft.	1,000	3,316,000
El Toro Fire Station	5,180	sq. ft.	1,000	5,180,000
Police Headquarters Building - Present Value of Debt Payments			NA	7,640,000
Public Works Corporation Yard	<u>5,228</u>	sq. ft.	300	<u>1,568,000</u>
Subtotal - Buildings	43,124			\$ 33,102,000
<u>Vehicles</u> ³				<u>\$ 13,010,700</u>
<u>Existing Fund Balance</u> ⁴				<u>\$ 520,300</u>
Total Value - Existing Facilities				\$ 58,333,000

¹ Total site is 1.89 acres. Only 0.5 acres is utilized for fire department activities.

² City Hall and Development Services Center building unit costs are based on the actual construction cost of the Development Services Center.

³ The City owns 137 vehicles and pieces of public works equipment listed within the general public facilities category

⁴ Existing fund balance as of 6/30/2018.

Sources: City of Morgan Hill; Willdan Financial Services.

Planned Facilities

Table 3.3 shows the additional general public facilities the City plans to develop through the 2035 planning horizon. The City plans to replace and expand its City Hall annex with a larger permanent facility to accommodate future demand caused by new development. No land costs are included because the project will take place on property that the City currently owns.

In addition to the improvements to City Hall, the City plans on moving the existing corporation yard from its current site, to a larger facility. The City plans to expand an existing fire station, and to build a new fire station, in addition to buying new fire apparatus'. These facilities are required as a direct result of new fire service demands brought on by new development. Additionally, a

third fire station has been recommended per the City's Public Safety Master Plan. During the dissolution of the Redevelopment Agency, the settlement agreement provided for the City to retain property on Butterfield Boulevard for this third fire station. However, the agreement requires the property be constructed by 2024. In addition to the cost of the construction of the building, there would be approximately \$1.5 million in new equipment costs associated with outfitting the station. The project budget accounts for a facility approximately 5,000 feet in size. Design and construction would be timed for the building to be completed by the deadline established in the settlement agreement.

The City also plans to expand the police department and its inventory of police equipment that is required as a direct result of new police service demands brought on by new development. Also included in the list of planned facilities is the present value of outstanding debt payments for the Police Headquarters.

Table 3.3: Planned General Public Facilities

	Value
Corporation Yard Improvements and Expansion	\$ 15,000,000
Replace and Expand City Hall Annex With Permanent Structure	3,000,000
Total Debt Outstanding - Police Headquarters ¹	5,769,583
Police Department Expansion and Equipment ²	2,270,000
Existing Fire Station Expansion	2,000,000
New Fire Station ³	5,000,000
Quint 105' Aerial (Equipped) ⁴	1,032,600
Type 3 Engine (Equipped) ⁴	396,700
Pickup - F250 ³	65,200
Personal Protective Equipment (9 FTEs) ⁴	97,800
Total Cost of Planned Facilities	\$ 34,631,883

¹ Discounted to 2018\$. Discount rate assumed to be 3.5% per year.

² Includes equipment costs for 11 additional police officers.

³ New fire station consisting of 5,000 square foot building.

⁴ Adjusted from 2012 to current using the Consumer Price Index - All Urban Consumers – (CPI-U) 1913-2018.

Sources: City of Morgan Hill; Willdan Financial Services.

Cost Allocation

Table 3.4 calculates the existing cost per capita facility standard by dividing the value of the existing facilities inventory by the existing service population. The resulting cost per capita is the basis of the impact fee. Funding facilities at this level will ensure that as development occurs, new development will contribute to public use center facilities at the same standard that existing development has contributed thus far. By definition, using the existing standard methodology does not result in existing deficiencies.

Table 3.4: General Public Facilities Existing Standard

Value of Existing Facilities	\$ 58,333,000
Existing Service Population	<u>49,230</u>
Cost per Capita	\$ 1,185
Facility Standard per Resident	\$ 1,185
Facility Standard per Worker ²	367

¹ Based on a weighing factor of 0.31.

Sources: Tables 3.1, 3.2 and 3.3.

Revenue Projection

The City plans to use general public facilities fee revenue to construct improvements to add to the system of general public facilities to serve new development. **Table 3.5** details a projection of fee revenue, based on the service population growth increment identified in Table 3.1. To fully fund the planned facilities, the City will have to identify \$16.5 million of alternative through the planning horizon. However, because the existing standard was used to calculate the fees, the City will meet the requirements of the Mitigation Fee Act so long as the projected \$18.1 million of fee revenue is used to fund new or expanded facilities to serve new development.

The City can use any other funding source other than impact fees to fund the balance of the planned facilities. Potential sources of revenue include, but are not limited to, existing or new general fund revenues, existing or new taxes, special assessments, grants and donations.

Table 3.5: Revenue Projection - Existing Standard

Cost per Capita	\$ 1,185
Growth in Service Population (2018- 2035)	<u>15,284</u>
Fee Revenue	\$ 18,111,540
Net Cost of Planned Facilities	<u>34,631,883</u>
Non-Fee Revenue to Be Identified	\$ (16,520,343)

Sources: Tables 3.1, 3.3 and 3.4.

Use of Fee Revenue

The City can use general public facilities fee revenues for the construction or purchase of buildings, equipment and land that are part of the system of general public facilities serving new development. The City plans to use the fee revenues to fund the facilities shown in Table 3.3.

Fee Schedule

Table 3.6 shows the maximum justified general public facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit and employment densities (persons per dwelling unit or employees per 1,000 square feet of nonresidential building space). The total fee includes a two percent (2%) percent administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 3.6: General Public Facilities Fee - Existing Standard

Land Use	A		B	C = A x B		D = C x 0.02		E = C + D		F	G = E x F
	Cost Per		Density	Base Fee ¹	Admin Charge ^{1, 2}	Total Fee ¹	Nonres. KSF per Acre ³	Fee per Acre			
<u>Residential</u>											
Single Family	\$	1,185	3.01	\$ 3,567	\$ 71	\$ 3,638					
Multi-family		1,185	2.64	3,128	63	3,191					
Senior / Downtown / Accessory Dwelling Units		1,185	2.00	2,370	47	2,417					
<u>Nonresidential</u>											
Commercial	\$	367	2.50	\$ 918	\$ 18	\$ 936	21.78	\$20,386			
Office		367	3.00	1,101	22	1,123	21.78	24,459			
Industrial		367	2.50	918	18	936	26.14	24,467			
Auto Dealership		367	1.00	367	7	374	26.14	9,776			
Hotel		367	0.30	110	2	112	21.78	2,439			

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential, or per room for hotel.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Based on assumed floor-area-ratio from the General Plan. FAR for commercial and office assumed to be 0.5 based on the "General Office" land use. FAR for industrial and auto dealership assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 2.2 and 3.4.

4. Traffic Facilities

This chapter summarizes an analysis of the need for transportation facilities, including roadway segments, bike improvements and multimodal intersection improvements, to accommodate new development. The chapter documents a reasonable relationship between new development and the impact fee for funding of these facilities.

Trip Generation by Land Use

The share of roadway improvement costs allocated to each unit of new development is based on the relative amount of new trip demand generated by that development. Trip demand during the afternoon peak hour of traffic is used because this is generally the busiest time of day for traffic, and road improvements are needed to provide capacity to accommodate peak levels of traffic. The traffic study used for this analysis identified improvements needed to mitigate future deficiencies during the peak hour.

Table 4.1 shows trip generation rate assumptions used in this analysis (dwelling unit, 1,000 square feet of nonresidential development or hotel room). As new development generates increased vehicle trips for the City's transportation network, additional capacity in the system will be needed in the form of the improvements described in this report. Trip generation by major land use category allow the analysis to incorporate different estimates of demand for transportation facilities. Trip generation rates are applied to development projections to allocate improvement costs by land use type. The trip generation rates used for this analysis are based on years of study of major land use categories by the Institute of Transportation Engineers (9th Edition).

Table 4.1: PM Peak Hour Trip Rates

ITE Category		PM Peak Hour Trip Rate ¹
<i><u>Residential</u></i>		
Single Family	Single Family Housing (210)	1.00
Multi-family	Apartment (220)	0.62
Senior / Downton / ADU	Senior Adult Housing (252)	0.25
<i><u>Nonresidential</u></i>		
Commercial	Shopping Center (820)	3.71
Office	General Office Building (710)	1.49
Industrial	General Light Industrial (110)	0.97
Auto Dealership	New Car Sales (841)	2.62
Hotel Room (per room)	Hotel (310)	0.60

¹ Trips per dwelling unit or per 1,000 square feet of nonresidential building space, or per hotel room.

Source: Institute of Traffic Engineers, Trip Generation, 9th Edition.

Growth in Trip Demand Through 2035

Peak hour trip demand generated by new development is a reasonable measure of new development's demand for traffic facilities. The need for new or expanded roads and other facilities is typically determined based on peak-hour trip volumes because capacity needs are based on the busiest periods of the day. The trip generation rates from Table 4.1, multiplied by dwelling units for residential land use categories or by thousands of square feet of building space or hotel rooms for nonresidential categories from Table 2.1, equals the total peak hour trip demand generated by that land use type. **Table 4.2** shows the trip demand generated by existing development and anticipated new development in Morgan Hill through the 2035 planning horizon.

Table 4.2: Land Use Scenario and Total Trips

Land Use	PM Peak Hour Trip Rate	2018 Units / 1,000 SF	2018 Trips	Growth 2018 to 2035		Total - 2035	
				Units / 1,000 SF	Trips	Units / 1,000 SF	Trips
<u><i>Residential</i></u>							
Single Family	1.00	11,320	11,320	1,680	1,680	13,000	13,000
Multi-family	0.62	2,302	1,427	2,385	1,479	4,687	2,906
Senior / Downtown / Accessory Dwelling Units	0.25	1,100	275	500	125	1,600	400
Total		14,722	13,022	4,565	3,284	19,287	16,306
<u><i>Nonresidential</i></u>							
Commercial	3.71	2,610	9,682	1,117	4,145	3,727	13,827
Office	1.49	522	777	629	938	1,151	1,715
Industrial	0.97	5,935	5,757	1,780	1,727	7,715	7,484
Auto Dealership	2.62	120	314	56	147	176	461
Hotel Rooms	0.60	919	551	215	129	1,134	680
Subtotal		10,106	17,081	3,797	7,086	13,903	24,167
Total			30,103		10,370		40,473
			74.4%		25.6%		100%

Sources: Tables 2.1 and 4.1.

Traffic Impact Fee Project Costs

Table 4.3 shows the improvements needed to accommodate projected 2035 traffic volumes. Project costs were estimated by City Staff. Each project included in the fee program, was either included in the original fee program, or is needed as a direct result of trip demand from new development. Consequently, the entire cost of planned facilities, with no existing deficiencies is allocated to new development in this impact fee.

Consistent with the current fee program, this update assumes that developers will dedicate 36' of right-of-way, including (site work and landscaping) on each side. Developers will dedicate 26' of road improvements, including (curb, gutter & pavement) on each side. The impact fee will fund the remainder of the improvements.

Table 4.3: Project Cost Summary

No	Road	Location	Total Project Cost ¹	Cost Allocation to New Development	Allocation To Existing Deficiencies	Total Cost Allocated To New Development
1	Cochrane Road	Monterey Road to Hwy 101	\$ 408,972	100%	0%	\$ 408,972
2	Cochrane Road	Hwy 101 to Mission View Drive	546,336	100%	0%	546,336
3	Cochrane Road	Mission View Drive to Peet Road	816,223	100%	0%	816,223
4	Dunne Avenue	Hill Road to Gallop Drive	748,792	100%	0%	748,792
5	Dunne Avenue	Del Monte Avenue to Monterey Road	159,471	100%	0%	159,471
6	Hill Road/Peet Road	Half Road to Cochrane Road	-	100%	0%	-
7	Hill Road	Main Avenue to Barrett Avenue	1,160,963	100%	0%	1,160,963
8	Madrone Parkway	Hale Avenue to Monterey Road	2,000,000	100%	0%	2,000,000
9	Madrone Parkway	Monterey Road to Butterfield Blvd.	534,851	100%	0%	534,851
10	Main Avenue	Depot Street to Butterfield Blvd.	39,376	100%	0%	39,376
11	Main Avenue	Laurel Street to Condit Road	706,873	100%	0%	706,873
12	Main Avenue	Condit Road To Hill Road	-	100%	0%	-
13	Murphy/Mission View Dr.	Cochrane Road to Half Road	826,197	100%	0%	826,197
14	Murphy/Mission View Dr.	Half Road to Main Avenue	1,282,097	100%	0%	1,282,097
15	Murphy Avenue	Main Avenue to Diana Avenue	1,282,097	100%	0%	1,282,097
16	Murphy Avenue	Diana Avenue to Barrett Avenue	1,649,987	100%	0%	1,649,987
17	Hale Avenue ²	Various	22,000,000	56.8%	43.2%	12,500,000
25	Butterfield Blvd.	Madrone Parkway to Cochrane Road	553,719	100%	0%	553,719
26	Tennant Avenue	E HWY 101 to Murphy Avenue	1,394,388	100%	0%	1,394,388
27	Tennant Avenue	Juan Hernandez Drive to HWY 101	856,992	100%	0%	856,992
28	Watsonville Road	Monterey Road to La Alameda Drive	492,032	100%	0%	492,032
29	Monterey Road	Tilton Avenue to Cochrane Road	2,483,103	100%	0%	2,483,103
30	Monterey Road	Cochrane Road to Main Avenue	2,142,850	100%	0%	2,142,850
31	Monterey Road	Dunne Avenue to Middle Avenue	1,438,520	100%	0%	1,438,520
Total			\$ 43,523,839			\$ 34,023,839

¹ Total project costs increased 8.35% based on changes in ENR's Construction Cost Index from 2015 to December, 2017.

² This project includes former projects numbered 17 to 24 from existing fee program. Total project cost is \$22,000,000. VTA Measure B will contribute \$9,500,000 towards this project, so the net impact fee contribution is \$12,500,000.

Source: City of Morgan Hill.

Table 4.4 lists the priority bikeway projects and multimodal intersection improvement projects identified in Table 5-1 of the City's Bikeways, Trails, Parks and Recreation Master Plan (2017). A share of these projects is allocated to new development, based on new development's share of total trip demand in 2035, as identified in Table 4.2.

Table 4.4: Priority Bikeway Projects

Project Description	Location	Total Project Cost
Buffered Bike Lanes	Cochrane Rd and Malaguerra Ave from Monterey Rd to Coyote Creek Trailhead	\$ 1,200,000
Buffered Bike Lanes	Monterey Rd from Tilton Ave to Butterfield Blvd/Watsonville Rd	2,400,000
Buffered Bike Lanes	Burnett Rd from Monterey Rd to Coyote Creek (Sobrato School Access)	750,000
Buffered Bike Lanes	Santa Teresa Corridor, Hale Ave from Tilton Ave to W Main Ave	750,000
Buffered Bike Lanes	West Main Ave from Monterey Rd to Dewitt Ave	450,000
Protected Bike Lanes	E Main Ave from Monterey Rd to Hill Rd (Live Oak High School Access and Coyote Creek Connection) (Interim step Buffered Bike Lanes)	3,800,000
Bicycle Boulevard	Morning Star Dr/Peet Rd from Eagle View Dr to Cochrane Rd to Coyote Creek Trailhead	480,000
Bicycle Boulevard	Depot Street from E Main Ave to E Dunne Ave	380,000
Multi-Modal Intersection Improvements	Monterey Rd Downtown between E Main Ave and E Dunne Ave	790,000
Multi-Modal Intersection Improvements	E Main Ave and Butterfield Blvd	350,000
Multi-Modal Intersection Improvements	W Main Ave and Hale Ave	10,000
Multi-Modal Intersection Improvements	Cochrane Rd and Highway 101 (North & South ramps, Madrone Pkwy and Depaul Dr)	130,000
Multi-Modal Intersection Improvements	Monterey Rd and Cochrane Rd	350,000
Multi-Modal Intersection Improvements	Butterfield Blvd and Cochrane Rd	130,000
Multi-Modal Intersection Improvements	Monterey Rd and Tilton Ave/Burnett Ave	120,000
Total		\$12,090,000
Allocation to New Development		25.6%
Cost Allocated to New Development		\$ 3,095,040

Sources: Table 5-1, Bikeways, Trails, Parks and Recreation Master Plan, 2017; Table 4.2, Willdan Financial Services.

Cost Allocation

Based on the total improvement costs allocated to new development shown in Tables 4.3 and 4.4, and the anticipated new trip demand shown in Table 4.2, **Table 4.5** calculates new development's cost per trip demand unit. Existing fund balances are subtracted from the total project costs to ensure that the impact fee only funds new development's share of the improvements.

Table 4.5: Cost per Trip to Accommodate Growth

Fee Program Share of Planned Facilities Costs	\$ 34,023,839
New Development Allocation of Bike Project Costs	3,095,040
Less Existing Fund Balance	<u>(3,437,980)</u>
Net Costs	\$ 33,680,899
 Growth in Trip Demand	 <u>10,370</u>
 Cost per Trip	 \$ 3,248

Sources: Tables 4.2, 4.3 and 4.4; Willdan Financial Services.

Fee Schedule

Table 4.6 shows the maximum justified traffic facilities fee schedule. The cost per trip is multiplied by the PM peak hour trip rate for each land use to determine the fee per dwelling unit, on 1,000 square feet of nonresidential building space. The total fee includes a two-percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to City programs for legal, accounting, and other departmental and administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two-percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 4.6: Maximum Justified Traffic Impact Fee Schedule

Land Use	A	B	C = A x B		D = C x 0.02	E = C + D	E / 1,000
	Cost Per Trip	PM Peak Hour Trip Rate	Base Fee ¹	Admin Charge ^{1, 2}		Total Fee ¹	Fee per Sq. Ft.
<u><i>Residential</i></u>							
Single Family	\$ 3,248	1.00	\$ 3,248	\$ 65		\$ 3,313	
Multi-family	3,248	0.62	2,014	40		2,054	
Senior / Downtown / Accessory Dwelling Units	3,248	0.25	812	16		828	
<u><i>Nonresidential</i></u> ³							
Commercial	\$ 3,248	3.71	\$ 12,050	\$ 241		\$ 12,291	\$ 12.29
Office	3,248	1.49	4,840	97		4,937	4.94
Industrial	3,248	0.97	3,151	63		3,214	3.21
Auto Dealership	3,248	2.62	8,510	170		8,680	8.68
Hotel Room (per room)	3,248	0.60	1,949	39		1,988	1.99

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential or per hotel room.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Fee per trip of \$3,248 plus 2% administration cost totaling \$3,313 per trip can be used to calculate fee for any land use using the land use's PM peak hour trip rate.

Sources: Tables 4.1 and 4.5; Willdan Financial Services.

5. Library Facilities

The purpose of the library impact fee is to fund the library facilities needed to serve new development. A maximum justified fee is presented based on maintaining the existing standard of library facilities.

Service Population

Library facilities primarily provide services to residents. The service population used to determine the demand for library facilities only includes residents and excludes workers. The service area of the Morgan Hill Library is greater than just within the City limits. **Table 5.1** shows the current library facilities service population and the estimated service population at the planning horizon of 2035. Estimates of residents outside of the City are based on ABAG data.

Table 5.1: Library Facilities Service Population

	Residents
<i>Existing Service Population (2018)</i>	
City of Morgan Hill	44,130
Surrounding Unincorporated Area	9,400
Total	53,530
<i>New Development (2018-2035)</i>	
City of Morgan Hill	13,684
Surrounding Unincorporated Area ¹	11,200
Total	24,884
Total (2035)	78,414

¹ Based on annual growth rate of 1.03% estimated based on countywide Santa Clara County growth projections from 2010 to 2035 from ABAG (2013).

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's library facility inventory, facility standards, and cost of planned facilities.

Table 5.2 summarizes the City's current inventory of library facilities, including land, building and collections.

Table 5.2: Existing Library Facilities

	Inventory	Units	Unit Cost ¹	Value
<u>Existing Library</u>				
Land (acres)	4.57	acres	\$ 790,000	\$ 3,610,300
Building	27,909	square feet	900	25,118,100
Collection	166,000	items	36	<u>5,976,000</u>
Total Value - Existing and Planned Library Facilities				\$ 34,704,400

¹ Building cost costs based on recent bid for library expansion project. Cost per item based on data from similar jurisdictions.

² Planned increases in collection based on maintaining ratio of building space to items.

Source: City of Morgan Hill.

Table 5.3 lists the planned library facilities: an expansion to the building and collections.

Table 5.3: Planned Library Facilities

	Inventory	Units	Unit Cost ¹	Value
<u>Planned Expansion</u>				
Building	5,000	square feet	\$ 900	\$ 4,500,000
Collection ²	30,000	items	36	<u>1,080,000</u>
Total Cost - Planned Facilities				\$ 5,580,000

¹ Unit costs based on recent bid for library expansion project. Cost per item based on data from similar jurisdictions.

² Planned increases in collection based on maintaining ratio of building space to items.

Sources: City of Morgan Hill; Willdan Financial Services.

Cost Allocation

Table 5.4 calculates the existing cost per capita facility standard by dividing the value of the existing facilities inventory by the existing service population. The resulting cost per capita is the basis of the impact fee. Funding facilities at this level will ensure that as development occurs, new development will contribute to public use center facilities at the same standard that existing development has contributed thus far. By definition, using the existing standard methodology does not result in existing deficiencies.

Table 5.4: Library Facilities Existing Standard

Value of Existing Facilities	\$	34,704,400
Existing Service Population		<u>44,130</u>
Facility Standard per Resident	\$	786

Sources: Tables 5.1 and 5.2.

Use of Fee Revenue

The City can use library facilities fee revenues to purchase land, buildings, collections and equipment that are part of the system of library facilities serving new development. The City plans to use the fee revenues to fund the facilities shown in Table 5.3.

Revenue Projection

The library facilities fee revenue exceeds the cost of the planned facilities. The City will have to identify additional library facilities through 2035 to maintain its existing facility standard. **Table 5.5** projects library fee revenue through 2035 based on the cost per capita from Table 5.4, and the service population growth projections in Table 5.1.

Table 5.5: Revenue Projection - Existing Standard

Cost per Capita	\$	786
Growth in Service Population (2018- 2035)		<u>13,684</u>
Fee Revenue	\$	10,755,600
Net Cost of Planned Facilities		<u>5,580,000</u>
Future Facilities to Be Identified	\$	5,175,600

Sources: Tables 5.1, 5.3 and 5.4.

Fee Schedule

Table 5.5 shows the maximum justified library facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit densities (persons per dwelling unit). The total fee includes a two percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 5.6: Library Facilities Fee - Existing Standard

	A	B	C = A x B	D = C x 0.02	E = C + D
Land Use	Cost Per Capita	Density	Base Fee ¹	Admin Charge ^{1, 2}	Total Fee
<i>Residential</i>					
Single Family	\$ 786	3.01	\$ 2,366	\$ 47	\$ 2,413
Multi-family	786	2.64	2,075	42	2,117
Senior / Downtown / Accessory Dwelling Units	786	2.00	1,572	31	1,603

¹ Fee per dwelling unit.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification

Sources: Tables 2.2 and 5.4.

6. Park Facilities

The purpose of this fee is to generate revenue to fund the park facilities needed to serve new development. The impact fee is based on the parkland standards found in the Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan (2017).

Service Population

Facility standards for parks are typically expressed as a ratio of park acres per 1,000 residents. As residents are the primary users of parks in the City of Morgan Hill, demand for parks and associated facilities is based on the City's residential population, rather than a combined resident-worker service population. **Table 6.1** provides estimates of the City's current resident population and a projection for the year 2035.

Table 6.1: Parks Service Population

	Residents
Existing (2018)	44,130
New Development (2018 - 2035)	13,684
Total (2035)	57,814

Sources: Table 2.1; Willdan Financial Services.

Facility Inventories and Standards

This section describes the City's park facility inventory, facility standards, and park facility costs.

Existing Inventory

Table 6.2 summarizes the City's existing park and open space inventory. In addition to public parkland, there is also a significant amount of parkland and open space in the City that is privately owned and maintained. **Table 6.3** displays the privately-owned park and open space land in the City.

Table 6.2: Existing Parkland Inventory

	Developed Park Acres	Undeveloped Acres	Total Park/Open Space Acres
<u><i>Community Parks</i></u>			
Community Park	26.00	-	26.00
Galvan Park	7.50	-	7.50
Subtotal	33.50	-	33.50
<u><i>Neighborhood Parks</i></u>			
Diana Park	3.08	-	3.08
Jackson Park	1.30	-	1.30
Oak Creek Park	2.93	-	2.93
Nob Hill Trail Park	3.40	-	3.40
Nordstrom Park	4.57	-	4.57
Paradise Park	5.47	-	5.47
Railroad Park	1.10	-	1.10
Third Street Creek Park	1.10	-	1.10
Subtotal	22.95	-	22.95
<u><i>Mini Parks</i></u>			
21 Mile	0.65	-	0.65
Belle Estates Park	0.46	-	0.46
Civic Center	2.00	-	2.00
Conte Gardens Park	0.50	-	0.50
Diana Estates Park	0.50	-	0.50
Fox Hollow Park	0.20	-	0.20
Hamilton Square Park	0.57	-	0.57
Howard Weichert Park	0.90	-	0.90
Mill Creek Park	0.93	-	0.93
Murphy Springs Park	0.49	-	0.49
Sanchez Park	0.16	-	0.16
Stone Creek Park	0.95	-	0.95
Subtotal	8.31	-	8.31
<u><i>Community Recreation Facilities</i></u>			
Centennial Recreation Center	5.90	-	5.90
Community and Cultural Center	6.00	-	6.00
El Toro Youth Center	0.30	-	0.30
Aquatics Center	8.00	-	8.00
Outdoor Sports Center	38.00	-	38.00
Subtotal	58.20	-	58.20

Sources: City of Morgan Hill; City of Morgan Hill *Bikeways, Trails, Parks and Recreation Master Plan*, 2017.

Table 6.2: Existing Parkland Inventory Continued

	Developed Park Acres	Undeveloped Acres	Total Park/Open Space Acres
<u>Trails</u> ¹			
Butterfield Linear Park	2.09	-	2.09
San Pedro Percolation Ponds Trail	1.21	-	1.21
Madrone Channel Trail	6.00	-	6.00
West Llagas Creek Trail	1.10	-	1.10
Subtotal	10.40	-	10.40
<u>Open Space</u> ²			
El Toro	-	86.00	21.50
Jackson Oaks	-	170.00	42.50
Subtotal	-	256.00	64.00
<u>Joint Use Facilities</u> ³			
Villa Mira Monte	2.40	-	2.40
Subtotal	2.40	-	2.40
Total	135.76	256.00	199.76

¹ Area totals includes trail and landscaping adjacent to trail.

² According to the *Bikeways, Trails, Parks and Recreation Master Plan, 2017* only 25% of open space acreage counts towards the City's parkland standard.

³ The City has joint use agreements for these facilities.

Sources: City of Morgan Hill; City of Morgan Hill *City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017*.

Table 6.3: Private Parkland Inventory

HOA	Location	Park Acres	Open Space
			Acres
Alicante	Ventura Ct. & Ventura Dr.	2.00	-
Alicante	Espana Wy. & Katherine Dr.	0.60	-
Barrett Place	Barrett Ave. & Saint John Ct.	0.60	-
Brighton Oaks Community Association	Butterfield Blvd. & Main Avenue	-	0.21
Capriano	Curry Ave. & Hale Ave.	1.50	-
Carriage Square	East Main Ave. & Carriage Lamp Way	1.70	-
Central Park	East Central Ave & Calle Central	2.20	-
Central Park	Cil Hermosa & Calle Buena Vista	0.85	-
Cerro Verde HOA	Calle Mazatan & Main Ave.	-	0.40
Cerro Verde HOA	Central & Butterfield	-	0.20
Cerro Verde HOA	Calle Mazatan & Calle Cerro	0.30	-
Cerro Verde HOA	Calle Verde & CalleCerro	0.30	-
Cottage Green	San Pedro Ave. & San Ramon Dr.	0.70	-
Country Side Villas	Venetian Way and Shasta lane	0.25	-
Coyote Estates	Peet Rd. & Eagle View Dr.	0.70	-
Coyote Estates	Savanah Ct. & Morningstar Dr.	1.60	-
Creekside Village	E.Dunne Ave. & Creekside Cr.	2.10	-
Crescent Park	Belleto Dr. & Bentley Dr.	0.80	-
Del Monte Condominiums	Del mone Ave. & Del Monte Lane	0.85	-
Del Monte Village	Hale Ave & Del Monte Ave. (Private Road)	-	0.40
Diamond Creek	Rome Ave. and Monterey Road	-	0.25
Diamond Creek HOA	Valencia Avenue	-	-
East Dunne Park Owner's Association	Grapevine Ct. & Seville Drive	-	0.49
El Dorado	East Dunne Ave. & Tassajara Cir.	0.20	-
El Toro Oaks	Oak Park Drive and Dewitt Ave.	0.50	-
Esperanza Community Association	Diana Avenue & Cayman Street	0.74	0.07
Excalibur	Excaliber Court	-	0.60
Grand Prix / Calle Siena	Grande Prix Way \$ Calle Siena	0.95	-
Heatherwood HOA	Katybeth & Heatherwood	-	0.10
Heritage Greens	East Dunne Ave & Saddleback Dr.	0.60	-
Hidden Meadow Condos	Viewcrest Lane & Dunne Ave	-	0.50
Hillwood Lane	Hillwood Lane and Hale (behind houses)	-	3.25
Holiday Lake Estates	Btwn Holiday Dr & Copper Hill Dr	-	11.85
Jackson Oaks Clubhouse	390 Oak Hill Ct.	0.90	5.50
Jasper Park	Cory Dr. & San Benancio Way	0.80	-
Kelly Park Circle	Kelly Park Cr. & Murphey Ave	0.25	-
Kendall Hill	Denali Drive and Olympic Drive	0.45	-
Las Casas de San Pedro Condominiums	San Pedro Ln. & San Pedro Ave.	0.80	-
Laurel Oaks	San Marcos Ct. & San Ramon Dr.	0.40	-
Loan Oaks Farms	San Gabriel Ave. & San Vincent Dr.	0.85	-
Loden Place Community Corporation	Stoney Creek Way and Hale Avenue	0.29	0.47
Lone Oak Farm HOA	San Domingo Drive & San Meguel Drive	0.24	0.11
Madrone Parkway Retention Area	Madrone Pkwy. & Buttefield Blvd.	-	10.00
Madrone Plaza	Opal Ln. & Jarvis Dr	0.90	-
Milano	Murpphy Ave. & Mimosa Drive	1.10	-
Mission Ranch	Capastrano Wy. & San Antonio Wy.	2.80	-
Mission Ranch	Cochrane Rd. & Mission View Ave.	2.20	-
Mission Ranch (Phase 13)	Mission View Drive & Avenida Del Los Padres	8.92	0.50
Monte Villa	Llagas Rd. & Carriage Dr.	-	0.35
Montoya Circle	East Main Ave. & Mariposa Dr.	0.80	-
Morgan Hill Ranch Apartments	Cochrane Rd. & Butterfield Blvd.	0.50	-
Morgan Lane Phase 1	Central Ave. & Aston Ct.	4.20	-
Morgan Meadows	East Dunne Ave. & Hill Rd.	-	0.60
Morgan Meadows	Domaine Dr. & Cabernet Cr.	2.30	-

Source: City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017.

Table 6.3: Private Parkland Inventory - Continued

HOA	Location	Park Acres	Open Space Acres
Morgan Meadows	Malbek Dr. & Merlot Dr.	0.75	-
Morgan Ranch	East Dunne Ave. & Bayo Claros	2.25	-
Morgan Village	East Dunne Ave & Brega Lane	1.85	-
Park Place Condominiums	LaCrosse Drive and Village Way	0.40	-
Parkside at Capriano	Corriander Ave & Basil Ave.	1.40	-
Pear Tree Estates	Pear Dr. & Jean Ct.	0.75	-
Pine Tree Park	Olympia Drive and Bryce Drive	0.50	-
Pine Tree Park	Sugarpine Dr. & Pinecone Ct.	0.25	-
Quail Creek	Via Vivaldi and Santa Teresa Blvd	1.00	-
Quail Meadows	Secretariat Way	-	0.50
Rio Sereno	Calle Sueno and Via Narretto	0.20	-
Rooyal Court Apartments	Del Monte Ave. & Wright Ave.	0.30	-
Royal Court	Wright Ave. & Del Monte Ave.	-	0.20
San Benito and San Pablo	San Benito Pl. and San Pablo Ct.	0.45	-
San Gabriel Court	San Gabriel Court	0.60	-
San Pedro Gardens	Cory Dr. & San Pedro Ave.	0.45	-
San Pedro Gardens	Cory Dr. & San Pedro Ave.	0.25	-
San Pedro Villas	San Jose Dr & San Juan Dr	1.90	-
San Savigno	Bel Air Way	-	0.50
San Savigno	S side Main btw Calle Mazatan & Grand Prix	-	0.15
San Savigno	Calle Asta & Bell Air Way	0.60	-
Shadow Brooks Estates	Shadowbrook Wy & Llagas Creek Dr.	2.00	-
Sherial Park	Jarvis Dr. & Sutter Blvd.	0.48	-
Sherimar Ranch	Jasmine Way & Bradford Way	2.40	-
Siera Ct	Llagas Rd. & Siera Ct.	0.50	-
Sonora Ranch	Peppertree & East Dunne Ave	0.25	-
Sorrento	Via Sorrento and Watsonville Road	0.25	-
St James Place	St. Timothy Pl. and St. Lawrence Dr.	1.75	-
Stonebridge Neighborhood Association	Hale Ave & Clove Avenue	3.06	4.69
Tilton Park Owner's Associatioin	Tilton Avenue & Monterey Road	2.56	0.15
Tuscany Meadows	Shafer Ave. & Katybeth Way	1.00	-
Twin Oaks	Llagas Creek Dr. & ril Marianna Dr.	-	0.60
Ventura of Morgan Hill Home Owners	Cochrane Road & St. Mark's Avenue	-	0.84
Viento	Calle Viento & Calle Viento Ct.	1.30	-
Village Avante Apartments	Cosmo Dr. & Del Monte Ave.	0.50	-
Walnut Grove	San Pedro Ave. & Walnut Grove	-	1.00
Westmoreland Park	Piazza Way	0.25	-
Total		78.93	44.47

Source: City of Morgan Hill, Bikeways, Trails, Parks and Recreation Master Plan, 2017.

Parkland Unit Costs

Table 6.4 shows the estimated cost per acre for parkland. Land acquisition costs are consistent with those used throughout this study. Improvement costs are based on cost estimates provided in the City of Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan (2017). The cost per acre is based on assumed community park improvement costs from Master Plan of \$8,000,000 for the improvement of 10 acres.

Table 6.4: Parkland Unit Costs

	Cost per Acre	Share of Parkland Costs
Standard Park Improvements ¹	\$ 800,000	50%
Land Acquisition	790,000	50%
Total Cost per Acre	\$1,590,000	100%

Note: Figures have been rounded.

¹ Based on assumed community park improvement costs from Master Plan @ \$8,000,000 for the improvement of 10 acres.

Sources: *City of Morgan Hill Bikeways, Trails, Parks and Recreation Master Plan, 2017, Table 5-3*; Willdan Financial Services.

Park Facility Standards

The Master Plan sets forth park facility standards for the City. The Master Plan specifies a Citywide park standard of 5.0 acres per thousand residents. Per the Master Plan, private parkland counts towards the standard, but only at 50% of total acreage. Open space acreage is counted towards the standard, but only at 25% of total acreage. Private open space is not included in the calculation of the standard. The City's existing parkland facilities standard exceeds the standard recommended by the Master Plan.

Table 6.5 shows the existing parkland standards based on including discounted private parks and open space as described above. As shown, the City currently provides park facilities above the Master Plan standard, with no deficiencies. Impact fees cannot fund private parks, and the City does not intend to use impact fee revenue to purchase future open space. As such park standards are shown three ways:

- Existing Master Plan Standard: Calculated including discounted private parks and open space.
- Existing Parks Standard (Impact Fee): Calculated only including public parkland
- Existing Other Parks Standard: Calculated only including discounted open space, and discounted private parks.

Table 6.5: Parkland Standards

Type of Acreage	Total Developed Acreage	Total Undeveloped Acreage	Existing Master Plan Standard ¹	Existing Parks Standard (Impact Fees) ²	Existing Other Parks Standard
Community Parks	33.50	-	33.50	33.50	-
Neighborhood Parks	22.95	-	22.95	22.95	-
Mini Parks	8.31	-	8.31	8.31	-
Community Recreation Facilities	58.20	-	58.20	58.20	-
Trails	10.40	-	10.40	10.40	-
Schools	2.40	-	2.40	2.40	-
Open Space	-	256.00	64.00	-	64.00
Private Parkland	78.93	-	39.47	-	39.47
Private Open Space	44.47	-	-	-	-
Total	259.16	256.00	239.23	135.76	103.47
Current Population			44,130	44,130	44,130
Standard			5.42	3.08	2.34

¹ The Master Plan recommends a citywide (including public and private) parks standard of 5.0 acres per 1,000 population. Per the Master Plan, private parkland counts towards the standard, but only at 50% of total acreage. Open space acreage is counted towards the standard, but only at 25% of total acreage. Private open space is not included in the calculation of the standard. The City's existing parkland facilities standard exceeds the standard recommended by the Master Plan.

² For the purposes of calculating a parks standard to base impact fees on, only publicly owned parkland is included. Open space, and privately owned parkland are excluded from the standard. It is assumed that the existing ratio of public to private parkland will be maintained through the planning horizon as additional private parkland is added.

Sources: City of Morgan Hill; Tables 6.1 - 6.4, Willdan Financial Services.

Facilities Needed to Accommodate New Development

Table 6.6 shows the park facilities needed to accommodate new development at the “impact fee” standard. To achieve the General Plan standard by the planning horizon, new development must fund the improvement of existing undeveloped parkland, and fund the purchase and development of 42.15 additional parkland acres. The existing park impact fee fund balance is \$2,787,306. This fund balance is converted into equivalent developed acres and credited against the total parkland needs. As such, the City only needs to develop 40.40 acres of parkland to achieve the desired standard at the planning horizon. This translates to the need for new development to contribute at a standard of 2.95 acres per 1,000 residents through this impact fee.

Table 6.6: Parkland Facility Needs

	Calculation	Amount	Unit
Existing City Owned Park Standard	A	3.08	Acres per 1,000 Capita
Growth in Service Population	B	13,684	Residents
Acres needed at Buildout to Maintain Standard	$C = A \times (B / 1,000)$	42.15	Acres
Existing Fund Balance	D	\$ 2,787,306	
Cost per Acre (Land and Improvements)	E	1,590,000	
Fund Balance Developed Park Acreage Equivalent ¹	$F = D / E$	1.75	Acres
Net Developed Parkland Needs	$G = C - F$	40.40	Acres
Growth in Service Population	H	13,684	Residents
Acres per 1,000 new residents needed to achieve standard	$I = G / (H / 1,000)$	2.95	Acres per 1,000 Capita

¹ Existing fund balance converted to equivalent developed park acreage by dividing fund balance by the cost per developed park acre developed in Table 6.4 (\$1,590,000).

Sources: Tables 6.1, 6.4 and 6.5; Willdan Financial Services.

Table 6.7 shows the calculation of the cost of purchasing and improving 40.40 acres. This cost is approximately \$64.2 million through 2035.

Table 6.7: Cost of Planned Parkland Facilities Needs

	Calculation	Total
Acres needed to meet Standard	A	40.40
Cost per acre - Land	B	\$ 790,000
Cost per acre - Improvements	C	800,000
Total Parkland and Improvement cost Per Acre	$D = B + C$	\$ 1,590,000
Land Needs	$E = A \times B$	\$ 31,916,000
Improvements Needs	$F = A \times C$	32,320,000
Net Cost of Planned Park Facilities to Serve New Development	$G = E + F$	\$ 64,236,000

Sources: Tables 6.6 and 6.4; Willdan Financial Services.

Parks Cost per Capita

Table 6.8 shows the cost per capita of providing new parkland and park facilities at a 2.95 acre per 1,000 capita facility standard. The per acre unit costs are multiplied by the acreage standards to determine the total amount of costs needed to serve 1,000 residents for each type of parkland, respectively. Then, those costs are divided by 1,000 to determine the cost needed to serve one resident.

Table 6.8: Park Improvements Cost per Capita

Parkland Investment Cost (per acre)	\$ 1,590,000
Facility Standard (acres per 1,000 residents)	2.95
Total Investment Per 1,000 capita	\$ 4,691,000
Investment Per Resident	\$ 4,691

Sources: Tables 6.6, and 6.8; Willdan Financial Services.

Use of Fee Revenue

The City plans to use park facilities fee revenue to acquire parkland and construct improvements to add to the system of park and recreation facilities that serves new development. The City may only use impact fee revenue to provide facilities needed to serve new development. The City may not use impact fee revenue for the portion of park facilities needed to meet the Master Plan standards for private parkland.

Fee Schedule

Table 6.9 shows the maximum justified park facilities fee schedule. The maximum justified fees are based on the costs per capita shown in Table 6.8. The cost per capita is converted to a fee per unit of new development based on the average number of residents per dwelling unit, as shown in Table 2.2. The total fee includes a two percent (2%) administrative charge to fund costs that include: a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 6.9: Park Facilities Fee Schedule

	A	B	C = A x B	D = C x 0.02	E = C + D
Land Use	Cost per Capita	Density	Base Fee	Admin Charge ¹	Total Fee
Single Family	\$ 4,691	3.01	\$ 14,120	\$ 282	\$ 14,402
Multifamily	4,691	2.64	12,384	248	12,632
Senior / Downtown / Accessory Dwelling Units	4,691	2.00	9,382	188	9,570

¹ Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Sources: Tables 2.2 and 6.8; Willdan Financial Services.

7. Water Facilities

This chapter summarizes an analysis of the need for water facilities to accommodate growth within the City of Morgan Hill. It documents a reasonable relationship between new development and an impact fee to fund water facilities that serve new development.

Water Demand

Estimates of new development and its consequent increased water demand provide the basis for calculating the water facilities fee. The need for water facilities improvements is based on the water demand placed on the system by development. A reasonable measure of demand is a flow generation rate, expressed as the number of gallons per day generated by a specific type of land use. Flow generation rates are a reasonable measure of demand on the City's system of water improvements because they represent the average rate of demand that will be placed on the system per land use designation.

Table 7.1 shows the calculation of water demand flow generation factors by land use category. The data is based the *City of Morgan Hill Water System Plan (2017)*. Water demand for a given land use is related to the demand for a single-family unit to calculate equivalent dwelling units (EDU).

Table 7.1: Water Demand by Land Use

Land Use Type	Flow Generation (GDP/NA) ¹	Density ²	Average Flow Generation/ DU, KSF, Room	Equivalent Dwelling Unit (EDU)
<u><i>Residential</i></u>				
Single Family	1,266	5.00	253.20	1.00
Multi-family	1,856	16.00	116.00	0.46
Senior / Downtown /				
Accessory Dwelling Units	3,130	24.00	130.42	0.52
<u><i>Nonresidential</i></u>				
Commercial	1,350	21.78	61.98	0.24
Office	1,350	21.78	61.98	0.24
Industrial	1,120	26.14	42.85	0.17
Auto Dealership	1,350	21.78	61.98	0.24
Hotel	1,350	67.02	20.14	0.08

¹ Gallons per day per net acre.

² Dwelling units per acre for residential, thousand square feet per acre for nonresidential or hotel rooms per acre. Nonresidential based upon the maximum floor area ratio (FAR) assumption of 0.5 for commercial, 0.5 for office, 0.6 for industrial, 0.5 for auto dealership, and 0.5 for hotel.

Sources: City of Morgan Hill General Plan 2035, Table CNF-2; City of Morgan Hill Water System Master Plan, 2017, Table 3.4; Willdan Financial Services.

Equivalent Dwelling Unit Growth

Table 7.2 calculates the existing and projected equivalent dwelling units (EDU) based on each land use's water demand factors displayed in Table 7.1. An equivalent dwelling unit represents the demand of all other land uses equivalent to one single family unit. Also displayed is the total existing and future EDUs for water facilities by land use.

Table 7.2: Water Facilities Equivalent Dwelling Units

	EDU Factor ¹	Existing (DU/KSF)	Projected Growth (DU/KSF)	Existing EDUs	Growth in EDUs	Total
<i><u>Residential</u></i>						
Single Family	1.00	11,320	1,680	11,320	1,680	13,000
Multi-family	0.46	2,302	2,385	1,059	1,097	2,156
Senior / Downtown / Accessory Dwelling Units	0.52	1,100	500	572	260	832
Subtotal		14,722	4,565	12,951	3,037	15,988
<i><u>Nonresidential</u></i>						
Commercial ²	0.24	2,610	1,117	626	268	894
Office	0.24	522	629	125	151	276
Industrial	0.17	5,935	1,780	1,009	303	1,312
Auto Dealership	0.24	120	56	29	13	42
Hotel	0.08	919	215	74	17	91
Subtotal		10,106	3,797	1,863	752	2,615
Total				14,814	3,789	18,603
Percent of Total				79.6%	20.4%	100.0%

¹ Per dwelling unit (residential) or thousand building square feet (nonresidential), or hotel room.

Sources: Tables 2.1 and 7.1, Willdan Financial Services.

Facility Needs and Costs

The City recently completed a water system master plan that identified necessary improvements to its water system. The Morgan Hill Water System Master Plan (2017) also identified the share of improvements needed to serve existing development, and the share needed to serve new development. **Table 7.3** lists the water projects, costs and allocation to existing and new development, based on Table ES.3 of the Master Plan.

Table 7.3: Costs to Serve New Development

Improv. No.	Alignment	Baseline Constr. ¹ Costs	Estimated Const. Costs ²	Capacity Improv. Cost ³	Allocation -----			
					Existing Users (%)	Future Users (%)	Existing Users (\$)	Future Users (\$)
<i>Pipeline Improvements</i>								
BR-P1	ROW	\$ 351,714	\$ 457,229	\$ 594,397	0%	100%	\$ -	\$ 594,397
BR-P2	Cochrane Rd	373,697	485,806	631,548	0%	100%	-	631,548
BR-P3	Half Rd	763,719	992,835	1,290,685	0%	100%	-	1,290,685
BR-P4	Mission View Dr	98,920	128,596	167,174	100%	0%	167,174	-
BR-P5	Mission View Dr	509,145	661,889	860,455	0%	100%	-	860,455
BR-P6	Half Rd	400,043	520,055	676,072	0%	100%	-	676,072
NH-P1	Hale Ave Extension	1,103,149	1,434,094	1,864,322	100%	0%	1,864,322	-
NH-P2	Spring Ave	181,191	235,549	306,213	100%	0%	306,213	-
NH-P3	San Pedro Ave	160,906	209,178	271,932	100%	0%	271,932	-
NH-P4	Railroad Ave	102,395	133,114	173,048	0%	100%	-	173,048
NH-P5	Railroad Ave	175,534	228,194	296,653	0%	100%	-	296,653
NH-P6	San Pedro Ave	703,429	914,457	1,188,795	0%	100%	-	1,188,795
NH-P7	Hill Rd	725,411	943,035	1,225,945	0%	100%	-	1,225,945
NH-P8	Tennant Ave	1,066,134	1,385,975	1,801,767	0%	100%	-	1,801,767
NH-P9	Monterey Rd	516,580	671,555	873,021	0%	100%	-	873,021
NH-P10	ROW	593,519	771,575	1,003,047	0%	100%	-	1,003,047
RP-7	First St	101,721	132,238	171,909	100%	0%	171,909	-
HL-P1	Dunne Ave	160,906	209,178	271,932	40%	60%	108,773	163,159
HL-P2	Dunne Ave	133,347	173,351	225,357	40%	60%	90,143	135,214
HL-P3	Dunne Ave	594,003	772,204	1,003,865	0%	100%	-	1,003,865
HL-P4	Oak Leaf Dr	557,636	724,926	942,404	0%	100%	-	942,404
HL-P5	Lake View Dr	690,984	898,279	1,167,763	0%	100%	-	1,167,763
RP-1	Shady Ln	432,316	562,011	730,614	100%	0%	730,614	-
RP-4	Holiday Tank Site	152,582	198,357	257,864	100%	0%	257,864	-
RP-5	Manzanita Dr	279,734	363,654	472,750	100%	0%	472,750	-
RP-6	Raccoon Ct	288,211	374,674	487,076	100%	0%	487,076	-
RP-2	Hill Top Ct	104,900	136,370	177,281	100%	0%	177,281	-
RP-3	Oak View Ct	133,509	173,562	225,631	100%	0%	225,631	-
RP-8	Oak Canyon Dr	114,437	148,768	193,398	100%	0%	193,398	-
Subtotal		\$ 11,569,774	\$ 15,040,706	\$ 19,552,918			\$ 5,525,080	\$ 14,027,838

¹ Cost estimates are adjusted to September 2018 costs based on the Engineering News Record (ENR) construction cost index (CCI).

² Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.

³ Estimated construction costs plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Water System Master Plan, 2017, Table ES.3; Engineering News Record, Construction Cost Index; Willdan Financial Services.

Table 7.3: Costs to Serve New Development Continued

Improv. No.	Alignment	Baseline Constr. ¹ Costs	Estimated Const. Costs ²	Capacity Improv. Cost ³	Allocation			
					Existing Users (%)	Future Users (%)	Existing Users (\$)	Future Users (\$)
<u>Storage Reservoir Improvements</u>								
BR-T1	Demolish existing 0.55 MG Boys Ranch tank and replace with 1.20 MG tank	\$ 2,186,387	\$ 2,842,303	\$ 3,694,994	30%	70%	\$ 1,108,498	\$ 2,586,496
GA-T1	Demolish existing 0.10 MG Glen Ayre tank and replace with 0.25 MG tank	569,372	740,183	962,238	80%	20%	769,791	192,448
ED-T1	Existing Edmundson tank site	2,049,738	2,664,659	3,464,057	0%	100%	-	3,464,057
WD-T1	Demolish existing 0.03 MG Woodland tank and replace with 0.25 MG tank	569,372	740,183	962,238	70%	30%	673,567	288,671
HL-T1	Dunne Ave approx 500' ne/o Flaming Oak Ln	<u>1,935,864</u>	<u>2,516,623</u>	<u>3,271,610</u>	40%	60%	<u>1,308,644</u>	<u>1,962,966</u>
Subtotal		\$ 7,310,732	\$ 9,503,952	\$ 12,355,137			\$ 3,860,499	\$ 8,494,638
<u>Groundwater Well Improvements</u>								
BR-W1	Burnett Ave	\$ 2,479,459	\$ 3,223,297	\$ 4,190,285	0%	100%	\$ -	\$ 4,190,285
NH-W2	Butterfield Blvd	<u>2,479,459</u>	<u>3,223,297</u>	<u>4,190,285</u>	0%	100%	<u>-</u>	<u>4,190,285</u>
Subtotal		\$ 4,958,918	\$ 6,446,593	\$ 8,380,571			\$ -	\$ 8,380,571
<u>Pump Station Improvements</u>								
NH-PS1	Dunne Ave and Magnolia Wy	\$ 1,378,042	\$ 1,791,454	\$ 2,328,891	40%	60%	\$ 931,556	\$ 1,397,334
HL-PS1	Dunne Ave approx 500' ne/o Flaming Oak Ln	<u>1,179,827</u>	<u>1,533,775</u>	<u>1,993,908</u>	90%	10%	<u>1,794,517</u>	<u>199,391</u>
Subtotal		\$ 2,557,869	\$ 3,325,230	\$ 4,322,799			\$ 2,726,073	\$ 1,596,725
<u>Pressure Reducing Valve Improvements</u>								
HL-PRV1	Thomas Gr approx 1,100' w/o Gnarled Oak Ln	\$ 50,119	\$ 65,155	\$ 84,701	40%	60%	<u>\$ 33,880</u>	<u>\$ 50,821</u>
Subtotal								
<u>Comprehensive Plan Updates</u>								
	Water System Master Plan Updates (Years 2021, 2026, 2031, 2036)	\$ -	\$ -	\$ 800,000	65%	35%	\$ 520,000	\$ 280,000
	Urban Water Management Plan Updates (Years 2021, 2026, 2031, 2036)	-	-	400,000	65%	35%	260,000	140,000
	Water Rate Study Updates (Years 2021, 2026, 2031, 2036)	<u>-</u>	<u>-</u>	<u>400,000</u>	65%	35%	<u>260,000</u>	<u>140,000</u>
Subtotal		\$ -	\$ -	\$ 1,600,000			\$ 1,040,000	\$ 560,000
Total		\$ 26,447,412	\$ 34,381,635	\$ 46,296,126			\$ 13,185,533	\$ 33,110,593

¹ Cost estimates are adjusted to September 2018 costs based on the Engineering News Record (ENR) construction cost index (CCI).

² Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.

³ Estimated construction costs plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Water System Master Plan, 2017, Table ES.3: Engineering News Record, Construction Cost Index; Willdan Financial Services.

Table 7.4 calculates a cost per EDU associated by dividing the total cost of projects allocated to new development identified in Table 7.3, by the growth in EDUs identified in Table 7.2

Table 7.4: Cost per EDU

Cost Allocated to New Development	\$33,110,593
Growth in EDUs	3,789
Cost per EDU	\$ 8,739

Sources: Tables 7.2 and 7.3.

Fee Schedule

The maximum justified fee for water facilities is shown in **Table 7.5**. The cost per EDU is converted to a fee per unit of new development based on the EDU factors shown in Table 7.1. The total fee includes an administrative charge to fund costs that include: (1) a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, (2) capital planning, programming, project management costs associated with the share of projects funded by the facilities fee, and (3) fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Table 7.5: Water Facilities Impact Fee

	A	B	C = A x B D = C x 0.02		E = C + D	E / 1,000	F	G = E x F
	Cost Per EDU	EDU Factor	Base Fee ¹	Admin Charge ^{1, 2}	Total Fee ¹	Fee per Sq. Ft.	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 8,739	1.00	\$ 8,739	\$ 175	\$ 8,914			
Multi-family	8,739	0.46	4,020	80	4,100			
Senior / Downtown / Accessory Dwelling Units	8,739	0.52	4,544	91	4,635			
<u>Nonresidential</u>								
Commercial	\$ 8,739	0.24	\$ 2,097	\$ 42	\$ 2,139	\$ 2.14	21.78	\$46,587
Office	8,739	0.24	2,097	42	2,139	2.14	21.78	46,587
Industrial	8,739	0.17	1,486	30	1,516	1.52	26.14	39,628
Auto Dealership	8,739	0.24	2,097	42	2,139	2.14	21.78	46,587
Hotel	8,739	0.08	699	14	713	0.71	n/a	n/a

¹ Fee per dwelling unit or per 1,000 square feet of nonresidential or hotel room.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

³ Based on assumed floor-area-ratio (FAR) from the General Plan. FAR for commercial, office and auto dealerships assumed to be 0.5 based on the "General Commercial" land use. FAR for Industrial assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 7.1 and 7.4; Willdan Financial Services.

8. Storm Drain Facilities Fee

This chapter summarizes an analysis of the need for storm drain facilities to accommodate growth within the City of Morgan Hill. It documents a reasonable relationship between new development and a storm drain fee to fund storm drain facilities that serve new development.

Storm Drain Demand

Most new development generates storm water runoff. This runoff must be controlled through storm drain facilities. Storm drain demand is measured by impervious surface. The more impervious surface a land use creates, the more demand for storm drain facilities it creates. **Table 8.1** shows the calculation of equivalent dwelling unit (EDU) demand factors for storm drain facilities based on impervious surface area by land use category. Dwelling unit and thousand square feet per acre assumptions are from the City's General Plan. The area percent impervious factors are derived from the September 2018 *Storm Drainage System Master Plan*, by Akel Engineering Group, Inc.

Table 8.1: Equivalent Dwelling Units

	A	B	$C = (43,560 / A) \times B$	$D = C / \text{Single Family}$
	DU, KSF or Rooms per acre ¹	Average Percent Impervious per Acre	Impervious Square feet per DU, KSF or Room	Equivalent Dwelling Unit (EDU) ²
<u>Residential</u>				
Single Family ³	5.00	35%	3,049	1.00
Multi-Family ³	16.00	80%	2,178	0.71
Senior / Downtown / Accessory Dwelling Unit ³	24.00	80%	1,452	0.48
<u>Nonresidential</u>				
Commercial	21.78	95%	1,900	0.62
Office	21.78	95%	1,900	0.62
Industrial	26.14	70%	1,167	0.38
Auto Dealership ⁴	21.78	95%	1,900	0.62
Hotel ⁴	67.02	95%	618	0.20

Note: Figures have been rounded.

¹ Dwelling units for residential and thousand building square feet for non-residential. Density based on estimated development and acreage for each land use type in the City of Morgan Hill *General Plan*. Nonresidential densities are based on floor-area-ratios of 0.5 for commercial, office, hotel and auto dealerships, 0.6 for industrial.

² EDUs per dwelling unit for residential development and per thousand square feet for nonresidential development.

³ Percent impervious for single family based on the "Single Family Medium" land use category from the *Storm Drainage System Master Plan*. Multi-Family based on "Multi-Family Medium." Senior / Downtown / Second Unit also based on

⁴ Percent impervious for auto dealership and hotel based on the "Commercial" land use category from *Storm Drainage System Master Plan*.

Sources: *Storm Drainage System Master Plan*, Akel Engineering Group, Inc., September 2018; Morgan Hill General Plan; Willdan Financial Services.

Equivalent Dwelling Unit Growth

Table 8.2 calculates the existing and projected equivalent dwelling units (EDU) based on each land use's demand factors displayed in Table 8.1. An equivalent dwelling unit represents the demand of all other land uses equivalent to one single family unit. Also displayed is the total existing and future EDUs for storm drain facilities by land use.

Table 8.2: Storm Drain Facilities Equivalent Dwelling Units

EDU Factor ¹	----- DU or KSF-----		----- EDU -----		
	Existing	Projected Growth	Existing	Growth	Total
<u><i>Residential</i></u>					
Single Family	1.00	11,320	1,680	11,320	13,000
Multi-Family	0.71	2,302	2,385	1,634	3,327
Senior / Downtown / ADU	0.48	<u>1,100</u>	<u>500</u>	<u>528</u>	<u>768</u>
Subtotal		14,722	4,565	13,482	17,095
<u><i>Nonresidential</i></u>					
Commercial	0.62	2,610	1,117	1,618	2,311
Office	0.62	522	629	324	714
Industrial	0.38	5,935	1,780	2,255	2,931
Auto Dealership	0.62	<u>120</u>	<u>56</u>	<u>74</u>	<u>109</u>
Subtotal		9,187	3,582	4,271	6,065
Hotel Rooms	0.20	919	215	184	227
Total				17,937	5,450
Percent of Total				77%	23%
					100%

¹ Per dwelling unit (residential), thousand building square feet (nonresidential), or hotel room.

Sources: Tables 2.2 and 8.1, Willdan Financial Services.

Planned Facilities

The City of Morgan Hill had the September 2018 *Storm Drainage System Master Plan*, completed by Akel Engineering Group, Inc. The plan identified storm drain projects, and allocated shares of each project to existing and new development. **Table 8.3** shows the storm drain capital improvement plan and cost allocation for storm drain facilities from the *Storm Drainage System Master Plan*.

Table 8.3: Storm Drain Master Plan Improvements

				Allocation						
				Baseline	Estimated	Capital	Existing	Future	Existing	
No.	Type of Improvement	Description/Street	Description/Limits	Constr. Costs	Const. Costs ¹	Improv. Cost ²	Users (%)	Users (%)	Users (\$)	Future Users (\$)
Butterfield Drainage Basin										
BTR-P1	Pipeline	Juan Hernandez Dr	From 150' s/o Saint James Dr to Tennant Ave	\$ 214,401	\$ 278,722	\$ 362,338	0%	100%	\$ -	\$ 362,338
Subtotal				\$ 214,401	\$ 278,722	\$ 362,338			\$ -	\$ 362,338
Coyote Drainage Basin										
COY-P1	Pipeline	Eagle View Dr	From 310' s/o Peet Rd to Peet Rd	\$ 99,302	\$ 129,092	\$ 167,820	0%	100%	\$ -	\$ 167,820
COY-P2	Pipeline	Eagle View Dr	From 1,400 ft s/o Peet Rd to 310' s/o Peet Rd	300,162	390,211	507,274	0%	100%	-	507,274
COY-P3	Pipeline	Peet Rd	From Eagle View Dr to Morningstar Dr	364,106	473,338	615,340	100%	0%	615,340	-
Subtotal				\$ 763,570	\$ 992,641	\$ 1,290,434			\$ 615,340	\$ 675,094
Madrone Drainage Basin										
MAD-P1	Pipeline	Half Rd	From Condit Rd to NB US 101	\$ 174,530	\$ 226,889	\$ 294,956	0%	100%	\$ -	\$ 294,956
MAD-P2	Pipeline	Half Rd	From Peet Rd to Condit Rd	958,412	1,245,936	1,619,716	0%	100%	-	1,619,716
MAD-P3	Pipeline	Dunne Ave	From Condit Rd to NB US 101	180,549	234,713	305,127	100%	0%	305,127	-
MAD-P4	Pipeline	Aspen Wy	From Bluebonnet Wy to Pine Wy	128,641	167,233	217,403	100%	0%	217,403	-
MAD-P5	Pipeline	Bluebonnet Ct	From Almond Wy to Percheron Ct	39,119	50,855	66,111	100%	0%	66,111	-
MAD-P6	Pipeline	Percheron Ct	From Bluebonnet Ct to 170' s/o Bayo Claros Cir	252,768	328,598	427,178	100%	0%	427,178	-
MAD-P7	Pipeline	San Pedro Ave	From Condit Rd to NB US 101	195,594	254,273	330,554	60%	40%	198,332	132,222
Subtotal				\$ 1,929,613	\$ 2,508,497	\$ 3,261,045			\$ 1,214,151	\$ 2,046,894
Little Llagas Drainage Basin										
LLL-P1	Pipeline	Wright Ave	From Monterey Rd to Hale Ave	\$ 414,509	\$ 538,862	\$ 700,521	50%	50%	\$ 350,261	\$ 350,261
LLL-P2	Pipeline	Wright Ave	From 450' sw/o Crest Ave to Hale Ave	276,841	359,893	467,862	50%	50%	233,931	233,931
LLL-P3	Pipeline	Main Ave	From Crest Ave to Hale Ave	234,713	305,127	396,665	50%	50%	198,333	198,333
LLL-P4	Pipeline	Main Ave	From Peak Ave to Crest Ave	248,254	322,731	419,550	50%	50%	209,775	209,775
LLL-P5	Pipeline	Del Monte Ave	From Main Ave to 2nd St	214,401	278,722	362,338	50%	50%	181,169	181,169
LLL-P6	Pipeline	Main Ave	From Del Monte Ave to Monterey Rd	200,108	260,140	338,183	50%	50%	169,092	169,092
LLL-P7	Pipeline	Lone Hill Dr	From Spring Ave to Chargin Wy	168,512	219,066	284,785	20%	80%	56,957	227,828
LLL-P8	Pipeline	La Crosse Dr	From La Baree Dr to 200' se/o intersection of the Vineyard Blvd and La Crosse Dr	546,159	710,007	923,009	100%	0%	923,009	-
LLL-P9	Pipeline	Alamo Dr	From La Rocca Dr to 80' n/o Unnamed St	385,923	501,699	652,209	100%	0%	652,209	-
Subtotal				\$ 2,689,420	\$ 3,496,247	\$ 4,545,122			\$ 2,974,735	\$ 1,570,388

¹ Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.² Estimated construction cost plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

Source: Morgan Hill Storm Drainage Master Plan, 2018, Table ES.3; Engineering News Record; Willdan Financial Services.

Table 8.3: Storm Drain Master Plan Improvements - Continued

				Allocation							
	Type of			Baseline	Estimated	Capital	Existing	Future	Existing		
No.	Improvement	Description/Street	Description/Limits	Constr.	Const.	Improv.	Users	Users	Users	Future Users	
				Costs ¹	Costs ²	Cost ³	(%)	(%)	(\$)	(\$)	
Llagas Drainage Basin											
LLA-P1	Pipeline	Middle Ave	From Olive Ave to Gallant Fox Wy	\$ 204,622	\$ 266,008	\$ 345,811	0%	100%	\$ -	\$ 345,811	
LLA-P2	Pipeline	Gallant Fox Wy	From Middle Ave to 1,200' e/o Middle Ave	<u>397,207</u>	<u>516,369</u>	<u>671,280</u>	<u>20%</u>	80%	<u>134,256</u>	<u>537,024</u>	
Subtotal				\$ 601,829	\$ 782,377	\$ 1,017,091			\$ 134,256	\$ 882,835	
Butterfield Drainage Basin											
BTR-D1	Basin		Approx. 900' nw/o Pollard Ave and Seymour Ave	\$ 1,171,894	1,523,462	1,980,500	50%	50%	\$ 990,250	\$ 990,250	
Fisher Drainage Basin											
FIS-D1	Basin		Approx 1,000' sw/o Sutter Blvd and Butterfield Blvd	\$ 609,641	792,534	1,030,294	50%	50%	\$ 515,147	\$ 515,147	
Other Storm Drainage Improvements											
Hale	Misc	Hale Ave	From Hillwood Lane to Spring Avenue and Dewitt Avenue	\$ 5,000,000	5,000,000	5,000,000	0%	100%	\$ -	\$ 5,000,000	
Total									\$ 6,443,879	\$ 12,042,945	
Less Existing Fund Balance ³										<u>3,962,023</u>	
Net Cost of Planned Facilities										\$ 8,080,922	

¹ Baseline construction costs plus 30% to account for unforeseen events and unknown conditions.

² Estimated construction cost plus 30% to cover other costs including: engineering design, project administration (developer and City staff), construction management and inspection, and legal costs.

³ Existing fund balance of \$10,405,902 as of June 30, 2018. \$3,962,023 remaining after funding existing user costs.

Source: Morgan Hill Storm Drainage Master Plan, 2018, Table ES.3; Engineering News Record; Willdan Financial Services.

Allocation of Facilities to New Development

Table 8.4 allocates new development's share of storm drain facilities to new development. New development's share of the costs is equal to the total cost of the projects net of the existing fund balances. The facility standard, in this case a planned facilities standard, is calculated by dividing new development's share of planned facilities by the growth in EDUs.

Table 8.4: Cost per Equivalent Dwelling Unit

Cost Allocated to New Development	\$ 8,080,922
Growth in EDUs (2018-2035)	<u>5,450</u>
Cost per EDU	\$ 1,483

Sources: Tables 8.2 and 8.3; Willdan Financial Services.

Non-Fee Funding Required

No non-fee funding will be required to fund the facilities, as existing storm drain fund balances are sufficient to fully fund existing development's share of those facilities. Impact fee revenue will fully fund new development's share of the facilities.

Fee Schedule

The impact fee for storm drain facilities is shown in **Table 8.5**. The cost per EDU is converted to a fee per unit of new development based on the EDU factors shown in Table 8.1. The total fee includes a two percent (2%) administrative charge to fund costs that include: (1) a standard overhead charge applied to all City programs for legal, accounting, and other departmental and citywide administrative support, (2) fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. The administrative charge should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 8.5: Storm Drain Facilities Fee

	A	B	C = A x B D = C x 0.02		E = C + D		F	G = E x F
	Cost Per EDU	EDU	Base Fee ¹	Admin Fee ^{1,2}	Total Fee ¹	Fee per Sq. Ft.	Nonres. KSF per Acre ³	Fee per Acre
<u>Residential</u>								
Single Family	\$ 1,483	1.00	\$ 1,483	\$ 30	\$ 1,513			
Multifamily	1,483	0.71	1,053	21	1,074			
Senior / Downtown / Accessory Dwelling Unit	1,483	0.48	712	14	726			
<u>Nonresidential</u>								
Commercial	\$ 1,483	0.62	\$ 919	\$ 18	\$ 937	\$ 0.94	21.78	\$ 20,408
Office	1,483	0.62	919	18	937	0.94	21.78	20,408
Industrial	1,483	0.38	564	11	575	0.58	26.14	15,031
Auto Dealership	1,483	0.62	919	18	937	0.94	21.78	20,408
Hotel	1,483	0.20	297	6	303	NA	n/a	n/a

Note: KSF = 1,000 Square Feet

¹ Fee per dwelling unit, per 1,000 square feet of nonresidential, or per room for hotel.

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analysis.

³ Based on assumed floor-area-ratio (FAR) from the General Plan. FAR for commercial, office and auto dealerships assumed to be 0.5 based on the "General Commercial" land use. FAR for Industrial assumed to be 0.6 based on the "Industrial" land use.

Sources: Tables 8.1 and 8.4; Willdan Financial Services.

9. Implementation

Impact Fee Program Adoption Process

Impact fee program adoption procedures are found in the *California Government Code* section 66016. Adoption of an impact fee program requires the City Council to follow certain procedures including holding a public hearing. Data, such as an impact fee report, must be made available at least 10 days prior to the public hearing. The City's legal counsel should be consulted for any other procedural requirements as well as advice regarding adoption of an enabling ordinance and/or a resolution. After adoption there is a mandatory 60-day waiting period before the fees go into effect.

Inflation Adjustment

The City has kept its impact fee program up to date by periodically adjusting the fees for inflation. Such adjustments should be completed regularly to ensure that new development will fully fund its share of needed facilities. We recommend that the following indices be used for adjusting fees for inflation:

- Buildings – Engineering News-Record's Construction Cost Index (CCI)
- Equipment – Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)

The indices recommended can be found for local jurisdictions (state, region), and for the nation. With the exception of land, we recommend that the national indices be used to adjust for inflation, as the national indices are not subject to frequent dramatic fluctuations that the localized indices are subject to.

Due to the highly variable nature of land costs, there is no particular index that captures fluctuations in land values. We recommend that the City adjust land values based on recent land purchases, sales or appraisals at the time of the update.

While fee updates using inflation indices are appropriate for periodic updates to ensure that fee revenues keep up with increases in the costs of public facilities, the City will also need to conduct more extensive updates of the fee documentation and calculation (such as this study) when significant new data on growth forecasts and/or facility plans become available.

Reporting Requirements

The City complies with the annual and five-year reporting requirements of the *Mitigation Fee Act*. For facilities to be funded by a combination of public fees and other revenues, identification of the source and amount of these non-fee revenues is essential. Identification of the timing of receipt of other revenues to fund the facilities is also important.

Programming Revenues and Projects with the CIP

The City maintains a five-year Capital Improvement Program (CIP) to plan for future infrastructure needs. The CIP identifies costs and phasing for specific capital projects. The use of the CIP in this manner documents a reasonable relationship between new development and the use of those revenues.

The City may decide to alter the scope of the planned projects or to substitute new projects if those new projects continue to represent an expansion of the City's facilities. If the total cost of facilities varies from the total cost used as a basis for the fees, the City should consider revising the fees accordingly.

10. Mitigation Fee Act Findings

Public facilities fees are one-time fees typically paid when a building permit is issued and imposed on development projects by local agencies responsible for regulating land use (cities and counties). To guide the widespread imposition of public facilities fees the State Legislature adopted the *Mitigation Fee Act* (the *Act*) with Assembly Bill 1600 in 1987 and subsequent amendments. The *Act*, contained in *California Government Code* Sections 66000 through 66025, establishes requirements on local agencies for the imposition and administration of fee programs. The *Act* requires local agencies to document five findings when adopting a fee.

The five statutory findings required for adoption of the public facilities fees documented in this report are presented in this chapter and supported in detail by the preceding chapters. All statutory references are to the *Act*.

Purpose of Fee

- ♦ *Identify the purpose of the fee (§66001(a)(1) of the Act).*

Development impact fees are designed to ensure that new development will not burden the existing service population with the cost of facilities required to accommodate growth. The purpose of the fees proposed by this report is to provide a funding source from new development for capital improvements to serve that development. The fees advance a legitimate City interest by enabling the City to provide municipal services to new development.

Use of Fee Revenues

- ♦ *Identify the use to which the fees will be put. If the use is financing facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in §65403 or §66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the facilities for which the fees are charged (§66001(a)(2) of the Act).*

Fees proposed in this report, if enacted by the City, would be used to fund expanded facilities to serve new development. Facilities funded by these fees are designated to be located within the City's sphere of influence. Fees addressed in this report have been identified by the City to be restricted to funding the following facility categories: general public facilities, traffic facilities, library facilities, parks, water facilities and storm drain facilities.

Benefit Relationship

- ♦ *Determine the reasonable relationship between the fees' use and the type of development project on which the fees are imposed (§66001(a)(3) of the Act).*

The City will restrict fee revenue to the acquisition of land, construction of facilities and buildings, and purchase of related equipment, furnishings, vehicles, and services used to serve new development. Facilities funded by the fees are expected to provide a citywide network of facilities accessible to the additional residents and workers associated with new development. Under the *Act*, fees are not intended to fund planned facilities needed to correct existing deficiencies. Thus, a reasonable relationship can be shown between the use of fee revenue and the new development residential and non-residential use classifications that will pay the fees.

Burden Relationship

- ♦ *Determine the reasonable relationship between the need for the public facilities and the types of development on which the fees are imposed (§66001(a)(4) of the Act).*

Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. For each facility category, demand is measured by a single facility standard that can be applied across land use types to ensure a reasonable relationship to the type of development. For most facility categories service population standards are calculated based upon the number of residents associated with residential development and the number of workers associated with non-residential development. To calculate a single, per capita standard, one worker is weighted less than one resident based on an analysis of the relative use demand between residential and non-residential development.

The standards used to identify growth needs are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.

Chapter 2, Growth Forecasts provides a description of how service population and growth forecasts are calculated. Facility standards are described in the *Facility Standards* sections of each facility category chapter.

Proportionality

- ♦ *Determine how there is a reasonable relationship between the fees amount and the cost of the facilities or portion of the facilities attributable to the development on which the fee is imposed (§66001(b) of the Act).*

The reasonable relationship between each facilities fee for a specific new development project and the cost of the facilities attributable to that project is based on the estimated new development growth the project will accommodate. Fees for a specific project are based on the project's size. Larger new development projects can result in a higher service population resulting in higher fee revenue than smaller projects in the same land use classification. Thus, the fees ensure a reasonable relationship between a specific new development project and the cost of the facilities attributable to that project.

See *Chapter 2, Growth Forecasts*, or the *Service Population*, or *Equivalent Dwelling Units* sections in each facility category chapter for a description of how service populations or other factors are determined for different types of land uses. See the *Fee Schedule* section of each facility category chapter for a presentation of the maximum justified facilities fees.

Appendix

Table A.1: Police: Lease Payments for Police Building

Date	Payment (nom. dollars)	Discount Factor ¹	Payment (real dollars)
<i>Past Payments</i>			
Jan-05	\$ 122,132	1.564	\$ 191,009
Jul-05	328,156	1.564	513,222
Jan-06	155,606	1.511	235,132
Jul-06	295,606	1.511	446,681
Jan-07	153,506	1.460	224,114
Jul-07	298,506	1.460	435,810
Jan-08	151,331	1.411	213,468
Jul-08	301,331	1.411	425,057
Jan-09	148,706	1.363	202,671
Jul-09	303,706	1.363	413,920
Jan-10	145,994	1.317	192,246
Jul-10	305,994	1.317	402,935
Jan-11	143,194	1.272	182,182
Jul-11	308,194	1.272	392,109
Jan-12	140,306	1.229	172,472
Jul-12	310,306	1.229	381,446
Jan-13	136,906	1.188	162,602
Jul-13	311,906	1.188	370,447
Jan-14	133,844	1.148	153,589
Jul-14	313,844	1.148	360,143
Jan-15	130,694	1.109	144,902
Jul-15	320,694	1.109	355,559
Jan-16	127,131	1.071	136,186
Jul-16	322,131	1.071	345,075
Jan-17	123,475	1.035	127,797
Jul-17	328,475	1.035	339,972
Jan-18	119,375	1.000	119,375
Subtotal	\$ 5,981,051		\$ 7,640,121

¹Discount rate assumed to be 3.5% per year.

Source: City of Morgan Hill.

Table A.1: Police: Lease Payments for Police Building - Continued

Date	Payment (nom. dollars)	Discount Factor¹	Payment (real dollars)
<i>Future Payments</i>			
Jul-18	329,375	1.000	329,375
Jan-19	115,175	0.966	111,280
Jul-19	335,175	0.966	323,841
Jan-20	110,638	0.934	103,281
Jul-20	340,638	0.934	317,989
Jan-21	105,750	0.902	95,380
Jul-21	345,750	0.902	311,847
Jan-22	100,500	0.871	87,580
Jul-22	350,500	0.871	305,441
Jan-23	94,875	0.842	79,882
Jul-23	354,875	0.842	298,795
Jan-24	89,025	0.814	72,422
Jul-24	359,025	0.814	292,067
Jan-25	82,950	0.786	65,198
Jul-25	367,950	0.786	289,205
Jan-26	76,395	0.759	58,015
Jul-26	371,395	0.759	282,042
Jan-27	69,463	0.734	50,967
Jul-27	379,463	0.734	278,423
Jan-28	62,178	0.709	44,079
Jul-28	387,178	0.709	274,477
Jan-29	54,540	0.685	37,357
Jul-29	394,540	0.685	270,238
Jan-30	46,550	0.662	30,806
Jul-30	401,550	0.662	265,739
Jan-31	38,119	0.639	24,373
Jul-31	413,119	0.639	264,150
Jan-32	29,213	0.618	18,047
Jul-32	419,213	0.618	258,982
Jan-33	19,950	0.597	11,908
Jul-33	429,950	0.597	256,633
Jan-34	10,213	0.577	5,890
Jul-34	440,213	0.577	253,873
Subtotal	\$ 7,525,438		\$ 5,769,583

¹Discount rate assumed to be 3.5% per year.

Sources: City of Morgan Hill; Willdan Financial Services.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADJUSTING THE SELECTED DEVELOPMENT IMPACT FEES

WHEREAS, new development within the City of Morgan Hill ("City") will continue to result in additional population and business growth, and such growth will continue to place additional burdens on various City facilities, infrastructure and services, requiring construction of expanded and/or new City facilities and services; and

WHEREAS, all development within the City should bear a proportionate financial burden in the construction and improvement of public facilities and services necessary to service the growth engendered by such development; and

WHEREAS, the imposition of development impact fees is the preferred method of ensuring that new development bears its proportionate share of the cost of public facilities and service improvements; and

WHEREAS, imposition of impact fees to finance public facilities and service improvements required by new development is necessary in order to avoid adversely impacting existing facilities and services; and

WHEREAS, consistent with these principles, Chapter 3.56 of the City's Municipal Code establishes Development Impact Mitigation Fees; and

WHEREAS, Municipal Code Section 3.56.060 provides for revision of established fees, including increases, by resolution; and

WHEREAS, the City Council has received and duly considered the report authored by Willdan Financial Services ("Willdan") entitled "Development Impact Fee Update Study" dated January 31, 2019 (the "Willdan Report"), and presented to the City Council on February 20, 2019; and

WHEREAS, the Willdan Report analyzed the City's existing land use patterns and zoning, and the goals and objectives of the City's General Plan 2035, 2017 Public Safety Master Plan, 2017 Utilities Master Plans, 2017 Bikeways, Trails, Parks, and Recreation Master Plan, and 2018 Storm Drainage Master Plan; and

WHEREAS, the Willdan Report determined the public facilities and system improvements engendered by anticipated development in light of those various plans and existing and projected land use patterns and zoning; and

WHEREAS, the Willdan Report demonstrates, the development impact fees adjusted by this resolution are based upon estimated costs for new public facilities and service improvements that will be required, incrementally, by new development within the City's sphere of influence; and

WHEREAS, the Willdan Report demonstrates, the development impact fees adjusted by this resolution do not exceed the reasonable cost of providing public facilities and service improvements occasioned by development projects within the City; and

WHEREAS, the fees recommended by the Willdan Report rationally relate to the reasonable cost of providing public facilities occasioned by the development projects and service improvements within the City's sphere of influence; and

WHEREAS, the Willdan Report and all background data referenced in the report were available for public inspection and review at the City Clerk's office of the City of Morgan Hill; and

WHEREAS, City staff emailed information regarding the proposed adoption of and public hearing on the fees and a copy of the Willdan Report to all known regular real estate and development firms and individuals who have done business in the City in the recent past; and

WHEREAS, on March 21, 2019, Willdan and City staff hosted two special briefing sessions on the Willdan Report for those firms and individuals to provide them an opportunity to query the consultant and staff on how the development impact fees were calculated; and

WHEREAS, a public hearing on adoption of this resolution and the fees attached hereto as Exhibit A and incorporated herein by reference, was noticed pursuant to and in compliance with Government Code section 6062(a), and set as part of a regular City Council meeting held on April 3, 2019, in the Council Chamber located at City Hall, 17555 Peak Avenue; and

WHEREAS, the City Council has received and duly considered all written and oral comments provided to it by staff and the public, which comments are hereby incorporated into the record on this matter; and

WHEREAS, the City Council deems it necessary that the development impact fees be adjusted to ensure that new development in the City continues to pay its proportionate share of public facilities and service improvements necessary to accommodate such development in order to promote the public health, safety and welfare; and

WHEREAS, the City Council hereby incorporates the findings made in Municipal Code Section 3.56.010 and applies them in support of the adoption of this Resolution; and

WHEREAS, the Projects approved pursuant hereto are exempt from the California Environmental Quality Act (CEQA) under Section 15273 of Guidelines for CEQA and Public Resources Code Section 21080(b)(8) because they establish, modify and approve rates and charges for the purposes of obtaining funds for capital projects; and

WHEREAS, further reasons supporting the adjustment of the development impact fees described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Adopt a Resolution Updating the City's Select Development Impact Fees" submitted for City Council consideration at its meeting of April 3, 2019, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference.

THEREFORE, BE IT RESOLVED by the City Council of the City of Morgan Hill that:

Section 1. The recitals, findings and determinations set forth above are true and correct and are incorporated by reference herein.

Section 2. The City Council hereby further finds as follows, with respect to the requirements of California Government Code sections 66000 through 66025:

- A. *Purpose of Fee.* The purpose of the fees recommended in the Willdan Report is to provide a funding source from new development for capital improvements to serve that development. The fees advance a legitimate City interest by enabling the City to provide municipal services to new development.
- B. *Use of Fee Revenues.* The proposed fees would be used to fund expanded facilities to serve new development. Facilities funded by these fees are designated to be located within the City's sphere of influence. Fees addressed in the Willdan Report are restricted to funding the following facility categories: general public facilities, traffic, library, parks, water, and storm drainage.
- C. *Benefit Relationship.* Use of fee revenue will be restricted to the acquisition of land, construction of facilities and buildings, and purchase of related equipment, furnishings, vehicles, and services used to serve new development. Facilities funded by the fees are expected to provide a City-wide network of facilities accessible to the additional residents and workers associated with new development. Fees are not intended to fund planned facilities needed to correct existing deficiencies. Thus, a reasonable relationship can be shown between the use of fee revenue and the new development of residential and non-residential use classifications that will pay the fees.
- D. *Burden Relationship.* Facilities need is based on a facility standard that represents the demand generated by new development for those facilities. For each facility category, demand is measured by a single facility standard that can be applied across land use types to ensure a reasonable relationship to the type of development. The standards used to identify growth needs are also used to determine if planned facilities will partially serve the existing service population by correcting existing deficiencies. This approach ensures that new development will only be responsible for its fair share of planned facilities, and that the fees will not unfairly burden new development with the cost of facilities associated with serving the existing service population.
- E. *Proportionality.* The reasonable relationship between each facilities fee for a specific new development project and the cost of the facilities attributable to

that project is based on the estimated new development growth the project will accommodate. Fees for a specific project are based on the project's size. Larger new development projects can result in a higher service population resulting in higher fee revenue than smaller projects in the same land use classification. Thus, the fees ensure a reasonable relationship between a specific new development project and the cost of the facilities attributable to that project.

Section 3. The City Council hereby adjusts the selected development impact fees as stated in Exhibit A, which is attached hereto and incorporated by this reference. Except as modified herein, Resolution No 5592 and its attached fee schedule, along with the corresponding automatic annual adjustments pursuant to Municipal Code Section 3.56.050, shall remain in full force and effect.

Section 4. The City Council hereby orders that all adjustments in the selected development impact fees be effective 60 days following adoption of this ordinance.

Section 5. The City Council hereby finds the approval of the adjustments in the selected development impact fees of the City of Morgan Hill to be exempt from CEQA.

Section 6. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this resolution is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivision, sentences, clauses, phrases, words, or portions thereof be declared invalid.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 3rd day of April 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Rich Constantine, MAYOR

∞ **CERTIFICATION** ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. XX-XXX, adopted by the City Council at a regular meeting held on April 3, 20219.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution (2249 : Updating Development Impact Fees)

Exhibit A

SELECTED DEVELOPMENT IMPACT FEE ADJUSTMENTS

Land Use	General Public Facilities	Traffic Facilities	Library Facilities	Parks	Water	Storm Drainage
<u>Residential (DU)</u>						
Single Family	\$ 3,638	\$ 3,107	\$ 2,413	\$ 7,201	\$ 8,914	\$ 1,513
Multi-Family	3,191	1,926	2,117	6,316	4,100	1,074
Senior / Downtown / ADU	2,417	776	1,603	4,785	4,635	726
<u>Nonresidential (per KSF or per hotel room)</u>						
Commercial	\$ 936	\$ 11,526	-	-	\$ 2,139	\$ 937
Office	1,123	4,630	-	-	2,139	937
Industrial	936	3,014	-	-	1,516	575
Auto Dealership	374	8,140	-	-	2,139	937
Hotel	112	1,864	-	-	713	303



March 27, 2019

Mayor Constantine and City Councilmembers
City of Morgan Hill
VIA EMAIL

RE: Council Meeting April 3, 2019: Development Impact Fees

Dear Mayor Constantine and Councilmembers,

BIA Bay Area (BIA), representing hundreds of home builders throughout the Bay Area, respectfully submits the following comments regarding City of Morgan Hill (City) development impact fee increases that are before you for action on the April 3, 2019 agenda. BIA appreciates that the City Council has directed Staff to recommend residential impact fees for traffic and parks lower than the maximum legally justifiable levels because the City will not be able to build and maintain the corresponding facilities. Nevertheless, we oppose the recommended residential development impact fee increases as unjustifiably high and they are a factor in driving higher housing costs in Morgan Hill and Santa Clara County.

BIA remains very concerned by the spiraling cost of development and construction, including impact fees assessed by government. Affordable housing requirements, park fees, traffic fees, facility fees, sewer and water fees, school fees, etc., etc., all add tens of thousands of dollars to the cost to build a new home, pricing thousands of California families out of the market each day. Rising impact fees must be administered more judiciously.

The Turner Center for Housing Innovation at UC Berkeley has concluded in its March 2018 report, "It All Adds Up: The Cost of Housing Development Fees in Seven California Cities", individual fees add up and substantially increase the cost of building housing. Findings from this report show that development impact fees have significant implications for the cost and delivery of new housing in California. For example, Turner Center research found that total fees can amount to anywhere from 6 percent to 18 percent of the median price of a new home depending on location.

BIA also strongly recommends that the City assess whether any new or increased fee would individually or cumulatively represent a constraint to new housing and whether that action could trigger HCD action on the City's adopted housing element under AB 72. Here is a brief explanation of AB 72 from the HCD website:

"AB 72 grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

In addition, HCD may notify the California Office of the Attorney General that the local jurisdiction is in violation of state law for non-compliance with housing element law, the Housing Accountability Act, "no net loss" law, density bonus law or anti-discrimination law."

Attachment: Letter from BIA (2249 : Updating Development Impact Fees)

Other BIA concerns regarding the development impact fee increases include:

- Fee assessment and payment requirements – The City should confirm that fees are set for all residential projects at time of application with payment due at building permit for single family homes or due at certificate of occupancy for multifamily projects;
- Total fee load – The total fee load before and after adoption of the development impact fee, including BMR inclusionary or linkage fees, should be clearly communicated. The staff report and supporting document omit important parts of this information;
- Feasibility Study – A feasibility study should analyze all development product types before recommending fee levels;

While BIA acknowledges the City Council's direction to reduce the 2019 development impact fee increase for traffic and parks below the maximum justifiable levels, we feel it is vital to point out that impact fees create serious impediments to addressing the housing affordability crisis the region is facing. BIA Bay Area looks forward to working with the City of Morgan Hill on development issues.

Thank you for your attention to these concerns.

Yours truly,

Dennis Martin
BIA Bay Area



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK ONE (EAST SIDE OF MONTEREY ROAD NORTH OF BURNETT AVE) SR2019-0009

RECOMMENDATION(S)

1. Provide a determination on SR2019-0009 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block One; and
2. Provide feedback on SR2019-0009 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development

Housing

GUIDING DOCUMENTS

Economic Blueprint

General Plan/Housing Element

REPORT NARRATIVE:

Purpose of Preliminary Plan Review

The Preliminary Plan Review for Monterey Corridor Block One (File No. SR2019-0009) serves two primary purposes:

1. To determine the Preliminary Plan's consistency with the approved Monterey Corridor Block One Block-Level Master Plan (BLMP).

On March 8, 2019 the applicant, North Corridor Investors, LLC, submitted an application for the 2018/2019 Residential Development Control System (RDSCS) competition. With City Council's determination that the Preliminary Plan Review is consistent with the adopted Block One BLMP (Ordinance No. 2297n.s., Attachment 1), the applicant will be allowed to continue in the current RDSCS competition.

2. To allow for feedback on the Preliminary Plan's consistency with the City's Planned Development (PD) Master Plan findings.

After the RDSCS competition, if the applicant is awarded allotments, the applicant would submit for a Zoning Amendment to establish a PD Master Plan for the entire

block, which would provide specific details for the applicant's proposed project and demonstrate how the project will integrate with future development on any remaining portions of the block.

The Preliminary Plan Review provides the City Council with an opportunity to provide early feedback on the proposal's consistency with the City's required PD Master Plan Findings.

Attached is an updated tentative schedule illustrating how the Preliminary Plan Review/PD Master Plan process could progress in parallel with the current RDCS schedule (Attachment 2).

Background

Mixed Use Flex General Plan Land Use Designation

On July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan and Morgan Hill 2035 General Plan Land Use Map that designates certain properties Mixed Use Flex (MU-F).

The MU-F designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The MU-F designation allows 7 to 24 units per acre (residential) and a maximum Floor Area Ratio (FAR) of 0.5 (commercial). The density of residential and intensity of non-residential uses should transition from higher near Downtown to lower at the ends of the Monterey Road corridor.

The General Plan requires that, prior to development of residential or mixed-use projects within the MU-Flex designation, a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other.

Monterey Road Corridor Block One Block-Level Master Plan (BLMP)

Following City Council meetings on November 28, December 5, and December 19, 2018, the City Council directed the Development Services Director to initiate a Zoning Amendment to establish a Block-Level Master Plan (BLMP) for Monterey Road Corridor Block One, which includes the approximately 8.55 acres of property located at the northeast corner of Monterey Road and Burnett Avenue.

The Planning Commission held a study session and public hearing on January 22, 2019 to evaluate the draft guidelines and standards for the proposed BLMP Ordinance (File No. ZA2019-0001: Monterey Corridor Block One) and recommended the City Council approve, with two modifications, the proposed Zoning Amendment.

On February 6, 2019 the City Council introduced Ordinance No. 2297n.s. (Attachment 1), which was adopted on February 20, 2019, establishing a BLMP for Monterey Corridor Block One.

ANALYSIS:

The proposed Preliminary Plan Review was analyzed with respect to consistency with 1) the adopted Block-Level Master Plan for Block One; and, 2) the City's required Planned Development (PD) Master Plan Findings.

1. Block One Block-Level Master Plan (BLMP) Consistency

The adopted BLMP Ordinance for Block One established the basic expectations and specific requirements for future development within the block in the form of a diagram (Attachment 1-Exhibit A) and land use regulations (Attachment 1-Exhibit B).

Consistent with the BLMP diagram (Attachment 1-Exhibit A), the proposal shows:

- A setback buffer along the northerly property line (adjacent to Coyote Greenbelt) and along the Monterey Road frontage
- The Tilton Avenue extension through the block
- Preservation of the existing historic building on the commercial/mixed-use portion of the block
- Residential development on the residential or commercial portion of the block

In terms of consistency with land use regulations (Attachment 1-Exhibit B), the project is proposing:

- A density of 12.06 dwelling units per acre; within the allowable 7 to 24 units per acre
- To transition from four-plex to tri-plex to duplex units and three story to two story units from south to north
- Perimeter setbacks greater than required by the MU-F Mixed Use Flex Zoning District
- Visual and future physical connections with the adjacent commercial/mixed-use portion of the block
- Primary (front) building entrances oriented toward the street or pedestrian paseos with parking accessed off the rear via alleys
- No separate/new driveway access off Monterey Road
- Accessible and visible public gathering places, including at the new Tilton Avenue intersection and adjacent to commercial/mixed-use portion of block

The applicant has provided letters and plans (Attachments 3, 4, and 5) that demonstrate how their proposal meets each of the standards of the adopted BLMP Ordinance.

2. Planned Development (PD) Master Plan Findings

In addition to providing feedback to the applicant regarding their Preliminary Plan's consistency with the adopted BLMP, the City Council should also provide preliminary input on the proposal's consistency with the Planned Development (PD) Master Plan findings in Section 18.30.050.H.7 of the Zoning Code.

18.30.050.H.7 PD Master Plans / Findings

- a. The proposed development is consistent with the General Plan, Zoning Code and any applicable specific plan or area plan adopted by the City Council.

- b. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.
- c. The proposed project will provide a substantial public benefit(s) as defined in Paragraph 8 Substantial Public Benefit Defined (Attachment 6). The public benefit provided shall be of sufficient value as determined by the Planning Commission to justify deviation from the standards of the zoning district that currently applies to the property.
- d. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.
- e. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.
- f. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.
- g. Findings required for the concurrent approval of a Zoning Map Amendment can be made.

Summary of Planning Commission Feedback on Preliminary Plan Review

On March 12, 2019, the Planning Commission discussed and provided feedback on the Preliminary Plan Review for Monterey Corridor Block One (SR2019-0009). While the Commission did not express significant concerns regarding the Preliminary Plan's overall consistency with the adopted BLMP for Block One, the Commission was concerned about how the commercial/mixed-use portion of the block would develop in the future, particularly since the applicant does not control that part of Block One.

The Commission advised the applicant at the subsequent PD Master Plan (Zoning Amendment) stage to develop a more detailed concept plan or plans for how the commercial/mixed-use portion of the block could develop, which will help the City establish more specific expectations and requirements for items such as the amount and design of retail, live/work, residential, open space, connections, and public gathering spaces.

Otherwise the Commission particularly appreciated how the project provided and designed around the Tilton Avenue extension and the amount of proposed open space, including the paths around the project and the wide paseo/promenade that extends from the northern property line (next to Coyote Greenbelt) through the project site to the adjacent commercial/mixed-use property.

Conclusion

The Preliminary Plan Review has demonstrated consistency with the adopted Block One BLMP and should allow the applicant to continue in the current RDCS competition.

If the applicant is awarded residential allotments, they will submit a Zoning Amendment application to establish a Planned Development (PD) Master Plan for all of Block One. In addition to refining the specific details of the portion of the block that the applicant controls, the PD Master Plan should include, as recommended by Planning Commission, a more detailed concept plan (or plans) for how the remaining commercial/mixed-use portion of the block would develop.

COMMUNITY ENGAGEMENT: Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission discussed and provided feedback on the Preliminary Plan Review for Monterey Corridor Block One (SR2019-0009) at a public hearing on March 12, 2019.

FISCAL AND RESOURCE IMPACT:

Not Applicable.

CEQA (California Environmental Quality Act):

Statutory Exemption

Pursuant to CEQA Guidelines Section 15262 a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

Although this Preliminary Plan Review is exempt from CEQA, the future adoption of a Zoning Amendment to establish a Planned Development Master Plan for Monterey Corridor Block One will be subject to additional CEQA review.

LINKS/ATTACHMENTS:

1. Ordinance No. 2297n.s. Block One BLMP
2. BLMP/PD Master Plan and RDCS Tentative Schedules
3. Manzanita Park Preliminary PD Letters
4. Manzanita Park Preliminary Plans
5. Surrounding Land Use Plan
6. Substantial Public Benefit Defined (18.30.050.H.8)

ORDINANCE NO. 2297, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT FROM THE PLANNED UNIT DEVELOPMENT (PUD) AND SERVICE COMMERCIAL (CS) ZONING DISTRICTS TO THE MIXED USE FLEX (MU-F)/ PLANNED DEVELOPMENT (PD) COMBINING DISTRICT ESTABLISHING A BLOCK-LEVEL MASTER PLAN FOR MONTEREY ROAD CORRIDOR BLOCK ONE, AN APPROXIMATELY 8.55-ACRE SITE LOCATED ON THE NORTH EAST CORNER OF MONTEREY ROAD AND BURNETT AVENUE (APN 725-01-018, 725-01-032, AND 725-01-033)

WHEREAS, on July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan; and

WHEREAS, the Morgan Hill 2035 General Plan Land Use Map designates certain properties, including the subject property, Mixed Use Flex; and

WHEREAS, the Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The Mixed Use Flex designation allows 7 to 24 units per acre (residential) and a maximum FAR of 0.5 (commercial) and density should transition from higher near Downtown to lower at the ends of the Monterey Road corridor; and

WHEREAS, the Morgan Hill 2035 General Plan requires that, prior to development of residential or mixed-use projects within the Mixed Use Flex designation a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other; and

WHEREAS, the Block-Level Master Plan requirement applies to those segments of the Monterey Road Corridor north and south of Downtown that include properties that have a Mixed Use Flex General Plan Land Use designation. Blocks may include properties with a variety of General Plan designations (e.g., Commercial, Residential Attached Low, Public Facilities, Mixed Use Flex, etc.) and Zoning Districts (e.g., CG General Commercial, RAL 3,500, PF Public Facilities, MU-F Mixed Use Flex, etc.);

WHEREAS, Section 18.22.010 B3 of the Zoning Code states that the purpose of the Mixed Use Flex (MU-F) zoning district is to accommodate a mixture of residential and commercial uses typically along the Monterey Road corridor north and south of Downtown. New mixed use development may be vertical (residences above ground floor commercial) or horizontal (separate buildings with different uses on a single site). Development in the MU-F zoning district creates attractive gateways into Morgan Hill, provides a range of housing options, and creates new centers

of activity to serve surrounding neighborhoods;

WHEREAS, Section 18.30.050 of the Zoning Code states that the purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD combining district provides land owners with enhanced flexibility to take advantage of unique site characteristics and develop projects that will provide public benefits for residents, employees, and visitors; and

WHEREAS, Section 18.114.020 of the Zoning Code states that the City Council, Planning Commission, or Community Development Director may initiate Zoning Map and Text amendments; and

WHEREAS, on December 19, 2018 the City Council directed staff to draft Zoning amendments to establish a Block-Level Master Plan (BLMP) Planned Development (PD) for Monterey Road Corridor Block One and Block Four; and

WHEREAS, in addition to the underlying base zoning district requirements, specific requirements are shown/listed in **Exhibit A: Block-Level Master Plan Map – Block One** and **Exhibit B: Block-Level Master Plan Land Use Regulations - Block One**; and

WHEREAS, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074) was prepared April 4, 2018 for the City of Morgan Hill Zoning Code Update project pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164, and the City of Morgan Hill determined, pursuant to CEQA Guidelines Section 15183, that the proposed zoning amendment shall not require additional environmental review in that the project will not result in any new impacts that were not already identified in the Morgan Hill 2035 EIR and subsequent Addendum or any impacts of greater severity than were already addressed; and

WHEREAS, a visioning and goal setting workshop was held on September 25, 2018 where members of the public and various stakeholders provided feedback that facilitated the crafting of preliminary guiding principles for the development of the Monterey Corridor; and

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

WHEREAS, the Block-Level Master Plan Planned Development (BLMP PD) ordinance for Monterey Corridor Block One, was considered by the Planning Commission at their study session and regular meeting of January 22, 2019, at which time the Planning Commission recommended City Council consider the Addendum to the Morgan Hill 2035 EIR in accordance with the California Environmental Quality Act (CEQA) and approval of the Zoning Amendment to establish a BLMP PD for Monterey Corridor Block One; and

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

- SECTION 1.** As provided in Section 18.114.060 of the Municipal Code the proposed Monterey Road Corridor Block-Level Master Plan Planned Development (BLMP PD) with an underlying base zoning district of Mixed Use Flex:
- A.** Is consistent with the Morgan Hill 2035 General Plan; and
 - B.** Is required in order to serve the public convenience, necessity, and general welfare; and
 - C.** The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the Zoning Code and General Plan and contribute to the health, safety, and welfare of the property, surrounding properties, and the community at large.
- SECTION 2.** The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).
- SECTION 3.** There hereby is attached hereto as **Exhibit A: Block-Level Master Plan Map – Block One** and made a part of this ordinance.
- SECTION 4.** There hereby is attached hereto as **Exhibit B: Block-Level Master Plan Land Use Regulations - Block One** and made a part of this ordinance.
- SECTION 5.** The underlying base zoning district is designated Mixed Use Flex (MU-F).
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 7.** Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF FEBRUARY 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF FEBRUARY 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rene Spring, Yvonne Martinez Beltran, John McKay, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:


RICH CONSTANTINE, Mayor

ATTEST:


IRMA TORREZ, City Clerk

DATE: 2/25/2019

Effective March 23, 2019

❧ CERTIFICATION ❧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2297, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 20th day of February 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 2/25/2019



IRMA TORREZ, City Clerk

Exhibit A: Block-Level Master Plan Map – Block One



- Block
- Tilton Ave / Burnett Ave Re-Alignment
- H Preserve Historic Building for Commercial Use
- Residential or Commercial
- Commercial or Mixed-Use
- Open Space Buffer

Exhibit B: Block-Level Master Plan Land Use Regulations - Block One

I. Land Use Regulations

- A. **Permitted Uses.** Zoning Code Table 18.22-1 identifies permitted uses in the MU-F Mixed Use Flex Zoning District. Specific uses allowed for Block One are further described on Exhibit A and below.
- B. **Development Standards.** Zoning Code Tables 18.22-2 and 18.22-3 identify development standards for the MU-F Mixed Use Flex Zoning District.
 1. Residential Density. 7 to 24 du/ac. Consistent with General Plan Policy CNF-9.2 and CNF-13.2, residential uses shall be feathered toward the northern Sphere of Influence (SOI) boundary with San Jose. Feathering can be achieved through a combination of measures including lowering the density and stories/height of the residences and including substantial open space setbacks closest to the SOI boundary.
 2. Floor Area Ratio. For non-residential and vertical mixed-use projects, the maximum floor area ratio (FAR) is 0.5.
 3. Setbacks. The setbacks identified in Zoning Code Table 18.22-3 are required setbacks around the project perimeter.
 4. Residential Development Standards. A medium density residential development project may use the development standards specified in Zoning Code Section 18.40.050 and through the subsequent PD Master Plan process establish deviations from those standards.
- C. **Commercial Requirements**
 1. Corner Lot Commercial/Non-Residential. Commercial uses (retail, services, office) and/or other non-residential (public/quasi-public) uses are required at the northeast corner of Burnett Avenue and Monterey Road. These commercial or non-residential uses may be accommodated within a standalone building(s) or in vertical mixed-use building(s).
 2. Historic Preservation. The existing building located on the northeast corner of Burnett Avenue and Monterey Road (19500 Monterey Road) constructed c. 1929 shall be preserved/retained for commercial or non-residential use.
 3. Connections. Ensure a strong connection between the commercial/non-residential, residential, and public gathering places within the block.
- D. **General Specifications**
 1. Primary entrances for new buildings should be oriented toward the street.
 2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
 3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
 4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.

5. Building depth for non-residential uses: 35-feet minimum.
 6. Urban Form Characteristics:
 - a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space
 7. Reasonable accommodations shall be provided, as appropriate, to provide relief from any physical standards that make meeting accessibility requirements challenging for a particular project.
 8. Future development must accommodate the extension/realignment of Tilton Avenue with Burnett Avenue.
 9. Future development must address potential shifting east of Monterey Road to accommodate future High-Speed Rail.
 10. Future development must provide adequate buffer to Coyote Greenbelt and Monterey Road.
 11. Incorporate design feature(s) that reflect project's location at a northern entrance to the City.
- E. **Public Gathering Places.** Residential or mixed-use project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards, and parks.
1. Location. The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.
 2. Activity. For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located along the edge of a courtyard and plazas.
 3. Visibility and Access. Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
 4. Seating. Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
 5. Year-round Use. Open space must be usable year-round with features such as

awnings, wind breaks, sun shades, and umbrellas, or other similar features that provide shelter from the elements.

- F. **Temporary Uses.** In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

II. Subsequent Approvals

- A. **Zoning Amendment/PD Master Plan.** Pursuant to the requirements of Zoning Code Section 18.30.050 – Planned Development Combining District, a Zoning Amendment to establish a PD Master Plan is required. The PD Master Plan shall be consistent with the approved BLMP PD and must plan for the future development and integration of all parts of the block.
- B. **Design Review.** A proposed development must receive a Design Permit as required by Zoning Code Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.

Tentative Schedule - BLMPs / PD Master Plans for Blocks 1 and 4 / RDCS 2018/2019

	Block-Level Master Plan / Planned Development Master Plan	Residential Development Control System (RDCS) 2018/2019
4	Jan. 22, 2019 — Planning Commission Study Session & Hearing (BLMPs)	
5	Feb. 6, 2019 — City Council Hearing (Introduce BLMP Ordinances)	
6	Feb. 8, 2019 — Block 1 and 4 Applicants Submit Preliminary Plan Reviews for PD Master Plans	
7	Feb. 20, 2019 — City Council Hearing (Adopt BLMP Ordinances)	
8		Mar. 8, 2019 — RDCS Application Date
9	Mar. 12, 2019 — Planning Commission Review of Preliminary PD Master Plans for Consistency with BLMPs	
10	Mar. 22, 2019, Planned Development Zonings (BLMP Ordinances Effective)	Mar. 25, 2019 — Staff GP & Zoning Consistency Determination
11	Apr. 3, 2019 - City Council Review of Preliminary PD Master Plans for Consistency with BLMPs	Apr. 4, 2019 - Deadline to File GP & Zoning Consistency Appeal to City Council
12		May 1, 2019 – GP & Zoning Appeal City Council
13		May 3, 2019 - Staff Scoring of Applications / Recommendations to Planning Commission
14		Jun. 11, 2019 - Planning Commission Finalize Scores
15		Jun. 21, 2019 - Deadline to File Scoring Appeal to City Council
16		Jul. 17, 2019 - Scoring Appeal Heard by City Council
17		Jul. 19, 2019 - Staff Recommendations Award of Allotments
18		Jul. 23, 2019 - Planning Commission Award of Allotments
19		Aug. 2, 2019 - Deadline to File Allotment Appeal to City Council
20		Aug. 21, 2019 - Allotment Appeal Heard by City Council
21	Late 2019/2020 Applicants Submit Zoning Amendment Applications for Block 1 and Block 4 PD Master Plans	

Attachment: BLMP/PD Master Plan and RDCS Tentative Schedules (2253 : SR2019-0009 Preliminary Plan Review: Monterey - Block One)

NORTH CORRIDOR INVESTORS LLC
385 Woodview Ave., #100
Morgan Hill, CA 95037

February 26, 2019

Mr. John Baty
City of Morgan Hill, Planning Department
17575 Peak Ave
Morgan Hill, CA 95037

Re: Block One Preliminary PD Master Plan Consistency. APN 725-01-018 and 725-01-32

Dear Mr. Baty:

We have worked with all our consultants to accomplish the more difficult, but very critical (at least as expressed by both city council and planning commission members) provisions for the PD Master Plan for Block One:

1. Connectivity between the residential portion and commercial portion (existing and more important, future) and to the public gathering places and plaza.
2. Public gathering places that function for both the residential and commercial (existing and more important, future) with an integrated pathway (which creates some difficulty to separate what is public and what is private for the residential project) which are preserving by committed by recording easements and CC&R's on the residential portion for the future connectivity and the intended public walkways.
3. The concept of buffering and feathering, in relation to the adjoining and nearby projects and future development of the adjoining properties.
4. Attempting to satisfy all the other guidelines/requirements (set forth in Exhibit B), including historic and tree preservation and future Tilton-Burnett connection (a significant public benefit), while at the same time meeting BMR requirements and complying with State goals to meet housing densities.
5. It should be noted that the High-Speed RR is now likely off the radar and in any event if pursued in the future, could be accommodated in the existing ROW on the west side of Monterey Road
6. Although the northern property is identified as the Coyote Valley Greenbelt that property is owned by San Jose(given to the city by the Sobrato family); and, it has indicted to some that the city might be considering other uses for the property. The land has not been farmed for many years. Sobrato High ball fields exist in similarly situated land. We have buffered with community gardens maintained by the HOA.
7. Feathering should take into account the R1-4500 GP designation for the property to the east of the project. Methods other than density should be considered, to avoid being contrary to the State's emphasis on meeting higher general plan densities.

It was our goal to incorporate a large central park area fronting on Tilton Ave. We also wanted to create wide paseos (in excess of 60 feet) which results in an unobstructed open space view corridor from the northern property line to the southern property line, which could then be connected to an unobstructed view through a future public gathering place and plaza and promenade on the adjoining commercial property all the way to Burnett Avenue. This view corridor through both the residential and commercial properties is the key concept of our land plan and overcomes the significant hurdle of having the residential property bifurcated by extending Tilton for future connection to Burnett; and, together these two features create the public benefits to support the PD.

To that end, I believe that we have indicated on the submitted plans both a realistic, and doable residential project that will be very livable for future residents and at the same time will preserve the real possibility for the commercial site. We believe both the residential and commercial sites meet all of the above stated objectives, the Land Use Regulations, the Development Standards, the Commercial Requirements and the General Specifications set forth in the Draft Ordinance, Exhibit "B" to the Block-Level Master Plan Use Regulations for consistency.

Richard B. Oliver
C.P.

Attachment: Manzanita Park Preliminary PD Letters (2253 : SR2019-0009 Preliminary Plan Review: Monterey - Block One)

DRAFT ORDINANCE – MONTEREY ROAD CORRIDOR BLOCK ONE

Exhibit B: Block-Level Master Plan Land Use Regulations - Block One**I. Land Use Regulations**

- A. **Permitted Uses.** Zoning Code Table 18.22-1 identifies permitted uses in the MU-F Mixed Use Flex Zoning District. Specific uses allowed for Block One are further described on Exhibit A and below.
- B. **Development Standards.** Zoning Code Tables 18.22-2 and 18.22-3 identify development standards for the MU-F Mixed Use Flex Zoning District.
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 4. Residential Development Standards. A medium density residential development project may use the development standards specified in Zoning Code Section 18.40.050 and through the subsequent PD Master Plan process establish deviations from those standards.

C. Commercial Requirements

1. Corner Lot Commercial/Non-Residential. Commercial uses (retail, services, office) and/or other non-residential (public/quasi-public) uses are required at the northeast corner of Burnett Avenue and Monterey Road. These commercial or non-residential uses may be accommodated within a standalone building(s) or in vertical mixed-use building(s).
2. Historic Preservation. The existing building located on the northeast corner of Burnett Avenue and Monterey Road (19500 Monterey Road) constructed c. 1929 shall be preserved/retained for commercial or non-residential use.
3. Connections. Ensure a strong connection between the commercial/non-residential, residential, and public gathering places within the block.

D. General Specifications

1. Primary entrances for new buildings should be oriented toward the street.
2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.

DRAFT ORDINANCE – MONTEREY ROAD CORRIDOR BLOCK ONE

5. Building depth for non-residential uses: 35-feet minimum.
 6. Urban Form Characteristics:
 - a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space
 7. Reasonable accommodations shall be provided, as appropriate, to provide relief from any physical standards that make meeting accessibility requirements challenging for a particular project.
 8. Future development must accommodate the extension/realignment of Tilton Avenue with Burnett Avenue.
 9. Future development must address potential shifting east of Monterey Road to accommodate future High-Speed Rail.
 10. Future development must provide adequate buffer to Coyote Greenbelt and Monterey Road.
 11. Incorporate design feature(s) that reflect project's location at a northern entrance to the City.
- E. **Public Gathering Places.** Residential or mixed-use project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards, and parks.
1. Location. The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.
 2. Activity. For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located along the edge of a courtyard and plazas.
 3. Visibility and Access. Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
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 5. Year-round Use. Open space must be usable year-round with features such as awnings, wind breaks, sun shades, and umbrellas, or other similar features that

DRAFT ORDINANCE – MONTEREY ROAD CORRIDOR BLOCK ONE

provide shelter from the elements.

- F. **Temporary Uses.** In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

II. Subsequent Approvals

- A. **Zoning Amendment/PD Master Plan.** Pursuant to the requirements of Zoning Code Section 18.30.050 – Planned Development Combining District, a Zoning Amendment to establish a PD Master Plan is required. The PD Master Plan shall be consistent with the approved BLMP PD and must plan for the future development and integration of all parts of the block.
- B. **Design Review.** A proposed development must receive a Design Permit as required by Zoning Code Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.

EXISTING ON COMMERCIAL
PORTION OF BLOCK ONE

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
PRIMARY RECORD

Primary #
HRI #
Trinomial
NRHP Status Code 7R

Other Listings
Review Code

Reviewer

Date

Page 1 of 1

*Resource Name or #: 4

P1. Other Identifier:

***P2. Location:** ☐ Not for Publication ☒ Unrestricted

*a. County: SANTA CLARA COUNTY and (P2b and P2c or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad:

Date: T ; R ; _ of _ of Sec ; M.D. B.M.
City: MORGAN HILL Zip: 95037

c. Address: 19500 MONTEREY RD

d. UTM: Zone: 10 ; mE/ mN (G.P.S.)

e. Other Locational Data: (e.g., parcel #, directions to resource, elevation, etc., as appropriate) Elevation:
APN: 72501017

P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

19500 Monterey Road is a one-story, wood frame commercial building. The building has an irregular floor plan, is clad with stucco and has a flat roof. The center volume is flanked at each side by a recessed circular entry tower and adjacent rectangular wing. The center volume has a band of five windows separated by slender ionic columns and the rectangular wings exhibit a decorative stucco recess with central window openings flanked by spiral columns. Long rectangular vents with ornamental sills ornament the towers and an arched opening provides access to the main entries. Other distinguishing characteristics include modern plate glass windows, attached stucco planters and circular tile vents. There are several rear additions to the building that appear to be of later construction. The property also includes two mature conifers at the front of the property. The building appears to be in fair condition. This property should be evaluated prior to any changes or alterations.

***P3b. Resource Attributes:** HP6 - 1-3 Story Commercial Building

***P4. Resources Present:** ☒ Building ☐ Structure ☐ Object ☐ Site ☐ District ☐ Element of District ☐ Other (Isolates, etc.)



P5b. Description of Photo: Front View

***P6. Date Constructed/Age and Sources:**

☒ Historic
☐ Prehistoric ☐ Both
Not Available (Assessor Records)

***P7. Owner and Address:**
Not Available

***P8. Recorded by:**

Sheila McElroy
Circa: Historic Property
Development
One Sutter Street, Suite 910
San Francisco, CA 94104

***P9. Date Recorded:** 12/13/2006

***P10. Survey Type:**
Reconnaissance Survey

***P11. Report Citation:** Morgan Hill Citywide Survey

***Attachments:** ☒ NONE ☐ Location Map ☐ Sketch Map ☐ Continuation Sheet ☐ Building, Structure, and Object Record
☐ Archaeological Record ☐ District Record ☐ Linear Feature Record ☐ Milling Station Record ☐ Rock Art Record
☐ Artifact Record ☐ Photograph Record ☐ Other (List):
DPR 523A (1/95)

*Required information

Attachment: Manzanita Park Preliminary PD Letters (2253 : SR2019-0009 Preliminary Plan Review: Monterey - Block One)

NORTH CORRIDOR INVESTORS LLC
385 Woodview Ave., #100
Morgan Hill, CA 95037

March 7, 2019

Mr. John Baty
City of Morgan Hill, Planning Department
17575 Peak Ave
Morgan Hill, CA 95037

Re: Block One Preliminary PD Master Plan Consistency. APN 725-01-018 and 725-01-32
Letter of Justification

Dear Mr. Baty:

We have worked with all our consultants to accomplish the more difficult, but very critical (at least as expressed by both city council and planning commission members) provisions for the PD Master Plan for Block One, as set forth in Exhibit B to the existing approvals. The plans (comprising four sheets: Sheet 1 showing the residential portion of Block One, Sheet 2 showing a portion of the residential and all of the commercial portion, Sheet 3 (not numbered) showing expanded easements and walkways to provide the connectivity between the residential and commercial portions of Block One and Sheet 4 (not numbered) showing in highlights the interconnected public and private (proposed and future) and a highlighted open space view corridor for the entire Block One. These plans indicate with letter and number locations relating to the requirements set forth in Exhibit B Block-Level Master Plan Land Use Regulations-Block One. There are a few minor deviations from the zoning (e.g. we are a few parking spaces short), which are indicated in the PD Plans, which were necessitated by having a new public street bifurcate the project and to otherwise comply with all the requirements of Exhibit B. The resulting public benefits more than compensate for any deviations reflected in the submitted plans.

- a. The proposed residential portion of the PD plan is otherwise consistent with the General Plan, the Zoning Ordinance and with the requirements set forth in Exhibit B. The future commercial development will be consistent.
- b. The proposed residential incorporates the critical "connectivity" to the existing and future commercial portion of Block One and is superior to that which could be occur without a PD. There is no other existing zoning district that could allow for the provisions of Exhibit B to be met. The PD zoning amendment is consistent with the existing GP and Zoning and provides for the orderly and reasonable development as envisioned by the city in adopting the Mixed-Use Flex designation for the Monterey Corridor and allows us to meet the goals and objectives of the Block Level Plan and thereby serve the public health, general welfare and convenience as provided for in the General Plan and Municipal Code of the City

The proposed residential project, including the future commercial portion meets the provision of Mixed-Use Flex General Plan and zoning designations for Block One

- c. The proposed project will provide the following substantial public benefits:

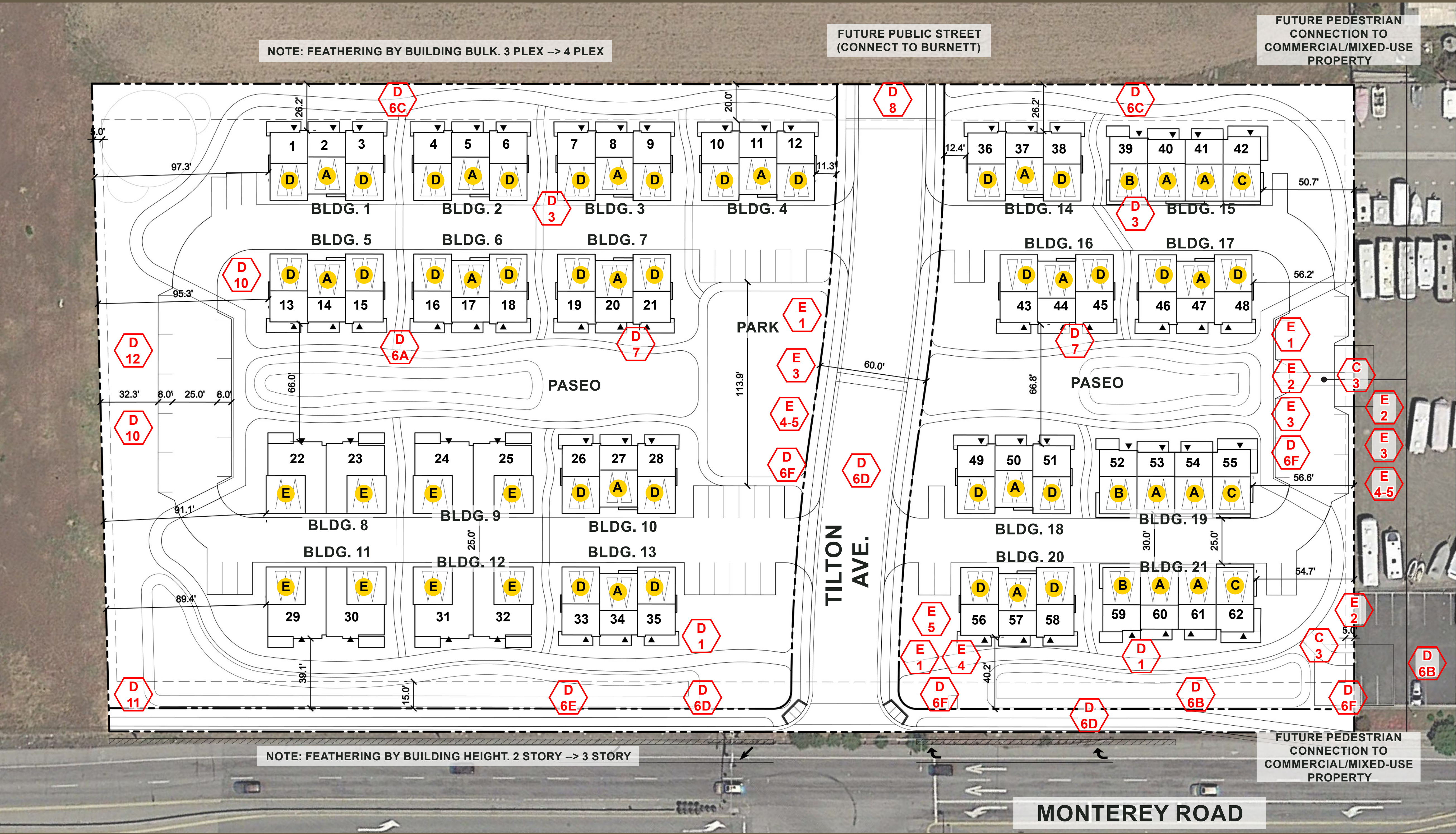
- (i) Tilton Ave. will be extended right through the project to provide for a future connection to Barrett Avenue, which has long been a City goal.
 - (ii) A buffered bike lane will be provided along the Monterey Road frontage of the residential project (funding for such bike lanes were omitted from the recent impact fee provisions because of the lack of matching-funds)
 - (iii) Interconnected public and private pathways are provided for to assure the connectivity between the residential and commercial portions of Block One
 - (iv) An open space view corridor, at least 60' wide, has been created from the northern property line to Barrett Avenue, runs through the entire Block One. (reference is made to Sheet 4 (not numbered) showing this view corridor.
 - (v) There will be two public gathering plazas on the residential property. One of which will be expanded with future commercial development and a third major plaza with outdoor dining will be part of the future commercial development. These public gathering places/plazas will serve both the general public and the new residents of the residential project.
 - (vi) The preservation of the historic building housing Josephine's restaurant and bakery will be encouraged by the approvals and development of the residential portion of the Block One.
 - (vii) The new project and new public/private pathways will improve the accessibility and connectivity within Block One. The residential project will also provide an increase in current patrons to the existing commercial (Josephine's bakery and restaurant) thereby enhancing its economic viability.
 - (viii) The project will encourage and enhance the long-awaited future development of the Monterey Corridor in the northern part of Morgan Hill.
- d. The residential project site, even with the loss of land for including a new public street thru the site, is of adequate size and shape to accommodate the proposed project, which is consistent with the General Plan and existing Mixed-Use Flex zoning.
- e. The proposed residential project will be installing additional water, sanitary and storm facilities to facilitate the residential portion, and provide additional storm facilities for the area. The existing commercial project has sufficient infrastructure, with any additional improvements being provided when the commercial site proposed additional improvements.
- f. The proposed development will not have any substantial adverse effect on adjacent property. In fact, the vacant land to the east (which has not been annexed into the City) will be benefited by having a second access to the Tilton Ave. extension that the residential project will provide.
- g. There is no reason why the appropriate findings cannot be made for the approval of the PD Zoning Amendment.

Very truly yours,

North Corridor Investors, LLC



By: Richard B. Oliver, VP



DEVELOPMENT SUMMARY & STANDARDS:
ZONING: MIXED USE FLEX/PLANNED DEVELOPMENT (MU/F-PD)
TOTAL PROJECT AREA: 5.83 AC
NET PROJECT AREA: 5.14 AC
UNIT COUNT: 62 DU
ALLOWABLE DENSITY: 7 - 24 DU/AC
PROPOSED DENSITY: 12.06 DU/AC (NET)
ALLOWABLE BLDG. COVERAGE: 50%
PROPOSED BLDG. COVERAGE: 26.5%
ALLOWABLE HEIGHT: 45' (MIN 10' ROOF)
PROPOSED HEIGHT:
3-STORIES (37' MAX.)
2-STORIES (27' MAX.)

PARKING SUMMARY
PARKING REQUIRED: 172 SPACES
(PER RES. ATTACHED MEDIUM GUIDELINES)
MULTI-FAMILY (54 UNITS):
2.5 SPACES / UNIT (1 COVERED)
+ 1 GUEST SPACE / 3 UNITS
153 (135 + 18 GUEST)

DUPLEXES/DUETS (8 UNITS)
2.0 COVERED SPACES / UNIT
+ 1 GUEST SPACE / 3 UNITS
19 (16 COVERED + 3 GUEST)

PARKING PROVIDED: 170 SPACES
124 GARAGE SPACES
46 GUEST SPACES

BUILDING SETBACKS
(REFER ALSO TO PD PLAN)
FRONT: 15' MINIMUM
SIDE: 5' MINIMUM
REAR: 20' MINIMUM

ARCHITECTURAL SUMMARY
PLAN A, 2-BEDROOM: 20 DU (3-STORY)
PLAN B, 3-BEDROOM: 3 DU (3-STORY)
PLAN C, 4-BEDROOM: 3 DU (3-STORY)
PLAN D, 4-BEDROOM: 28 DU (3-STORY)
PLAN E, 4-BEDROOM: 8 DU (2-STORY)

Block One PD Plan (“BLMP”)– list of Specifications:
D. General Specifications (refer to circled number on PD Plan)
D-1: Entrances to street
D-2: Parking for new uses: N/A
D-3: Access via driveways (Not on Monterey Road)
D-4 and D-5: Commercial, N/A
D-6 a. Architectural design to be met
D-6b: Building re-use being met In Jeffries’ existing building
D-6c: Setbacks provided on east for future lower density, (Min. of 25’)
D-6d: Added bike lane on Mry. Rd, Tilton extension complies
D-6e: Consistent Street Trees to be included
D-6f: Publically accessible open space provided (easements will be provided for future)
D-7: Internal project will have accessible units. No major issues

D-8: Tilton Ave. extended for future connect to Burnett
D-9: Existing ROW and setbacks west of Monterey Rd. are sufficient for High Speed alternates
D-10: Buffer on North is in minimum of 90’ to buildings with a minimum 30’ of landscaping area
D-11: Location of architectural feature denoting Northern Entrance to the City
D-12: Community Gardens
E. Public Gathering Places - plaza, courtyards, paseos, open space, parks (Details shown on L/S drawings)
E-1: Locations close to park on Tilton, and internal paseos and paths
E-2: Future commercial plaza/courtyard access to internal pathways by easement and existing Bakery by easement for future gathering spot.
E-3: Visibility and access: future commercial visible from paseos which have clear view for entire length of the project, with pathway connections assured by easements and at corner of Mry. & Tilton. Include easement for access to existing Josephine’s Bakery from internal path and gathering place.
E-4: Seating in open space will meet the requirement, set forth on L/S drawings
E-5: Year-round use assured by appropriate shelters set forth in L/S drawings

Note: Two types of feathering required: On eastern series of units, by building bulk, with larger 4- plex buildings to the south and smaller 3-plex buildings to the north; on the western series of buildings by building height: three story 4-plex and 3 plex buildings toward the south, reducing to 4 sets of two - story duplex buildings on the north.
C. Commercial Provision - Apply to the adjacent corner Parcel (separate sheet)
C-1: Corner Lot/Non-Residential. Commercial Uses (retail, services, office) and/or public/quasi-public uses are required. May be within a standalone building(s) or vertical mixed use building(s)
C-2: Preserve the existing historic building
C.3. Connection between the commercial, residential, and public gathering places
F. Temporary use shall be a condition applied to the re-development of the commercial site
II. Subsequent Approvals are required for Zoning/PD Master Plan and Design Review, including E4-5.
1. The BLMP PD must plan for the future development and integration of all parts of the block. (refer to indicated items above: E-2, E-3, E-4 and E-5.

MANZANITA PARK IN MORGAN HILL, CA
NORTH CORRIDOR INVESTORS, LLC

BLOCK ONE P.D. PLAN (“BLMP”)

DATE02-22-2019

JOB NO.297-081

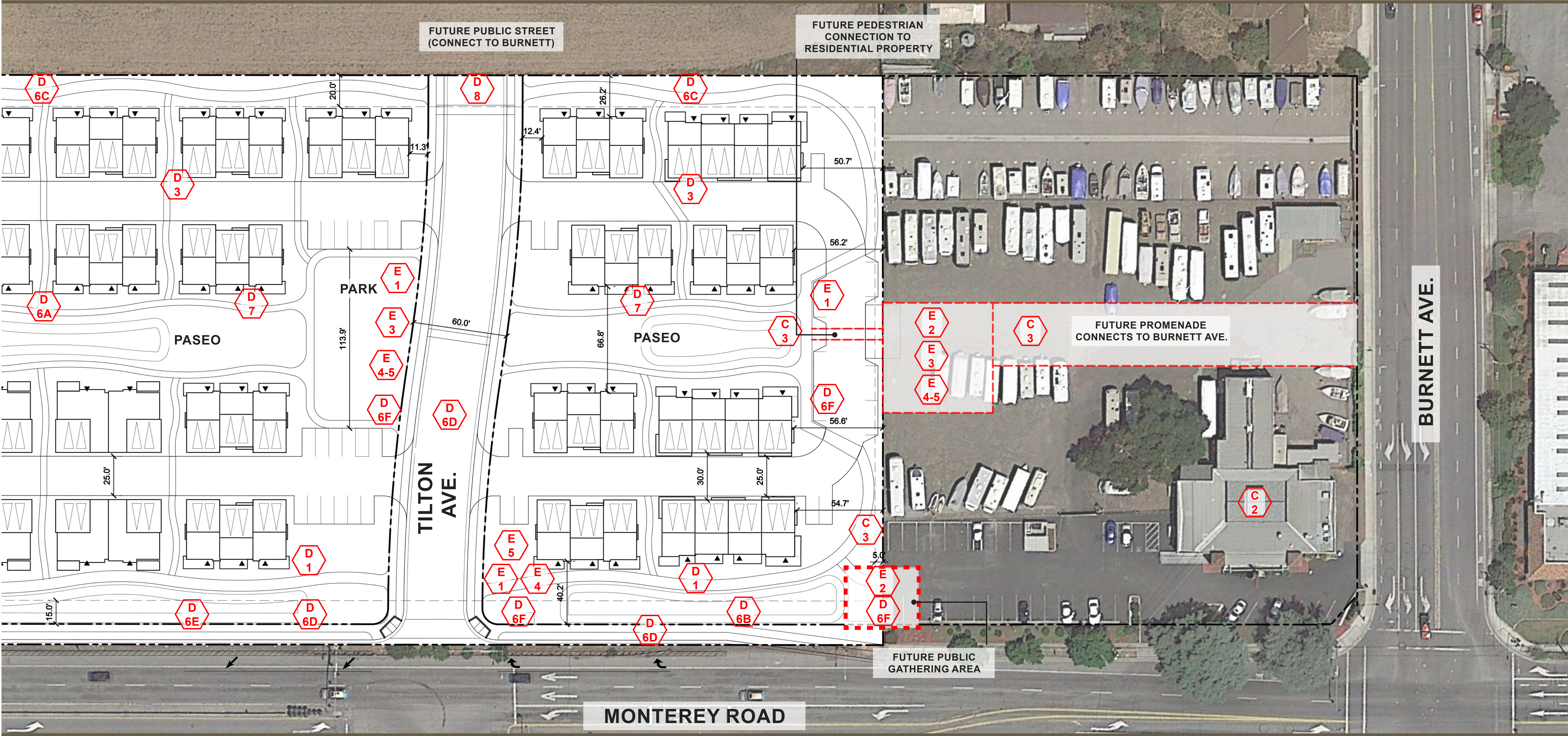
5865 Owens Drive

Pleasanton, CA 94588

925-251-7200

DAHLIN

SHEET1 OF 2



Block One PD Plan (“BLMP”)– list of Specifications:
D. General Specifications (refer to circled number on PD Plan)

- D-1: Entrances to street
- D-2: Parking for new uses: N/A
- D-3: Access via driveways (Not on Monterey Road)
- D-4 and D-5: Commercial, N/A
- D-6 a. Architectural design to be met
- D-6b: Building re-use being met In Jeffries’ existing building
- D-6c: Setbacks provided on east for future lower density, (Min. of 25’)
- D-6d: Added bike lane on Mry. Rd, Tilton extension complies
- D-6e: Consistent Street Trees to be included
- D-6f: Publically accessible open space provided (easements will be provided for future)
- D-7: Internal project will have accessible units. No major issues

- D-8: Tilton Ave. extended for future connect to Burnett
- D-9: Existing ROW and setbacks west of Monterey Rd. are sufficient for High Speed alternates
- D-10: Buffer on North is in minimum of 90’ to buildings with a minimum 30’ of landscaping area
- D-11: Location of architectural feature denoting Northern Entrance to the City
- D-12: Community Gardens
- E. Public Gathering Places - plaza, courtyards, paseos, open space, parks** (Details shown on L/S drawings)
- E-1: Locations close to park on Tilton, and internal paseos and paths
- E-2: Future commercial plaza/courtyard access to internal pathways by easement and existing Bakery by easement for future gathering spot.
- E-3: Visibility and access: future commercial visible from paseos which have clear view for entire length of the project, with pathway connections assured by easements and at corner of Mry. & Tilton. Include easement for access to existing Josephine’s Bakery from internal path and gathering place.
- E-4: Seating in open space will meet the requirement, set forth on L/S drawings
- E-5: Year-round use assured by appropriate shelters set forth in L/S drawings

- Note:** Two types of feathering required: On eastern series of units, by building bulk, with larger 4- plex buildings to the south and smaller 3-plex buildings to the north; on the western series of buildings by building height: three story 4-plex and 3 plex buildings toward the south, reducing to 4 sets of two - story duplex buildings on the north.
- C. Commercial Provision - Apply to the adjacent corner Parcel** (separate sheet)
- C-1: Corner Lot/Non-Residential. Commercial Uses (retail, services, office) and/or public/quasi-public uses are required. May be within a standalone building(s) or vertical mixed use building(s)
 - C-2: Preserve the existing historic building
 - C.3. Connection between the commercial, residential, and public gathering places
- F. Temporary use shall be a condition applied to the re-development of the commercial site**
- II. Subsequent Approvals are required for Zoning/PD Master Plan and Design Review, including E4-5.
1. The BLMP PD must plan for the future development and integration of all parts of the block. (refer to indicated items above: E-2, E-3, E-4 and E-5.

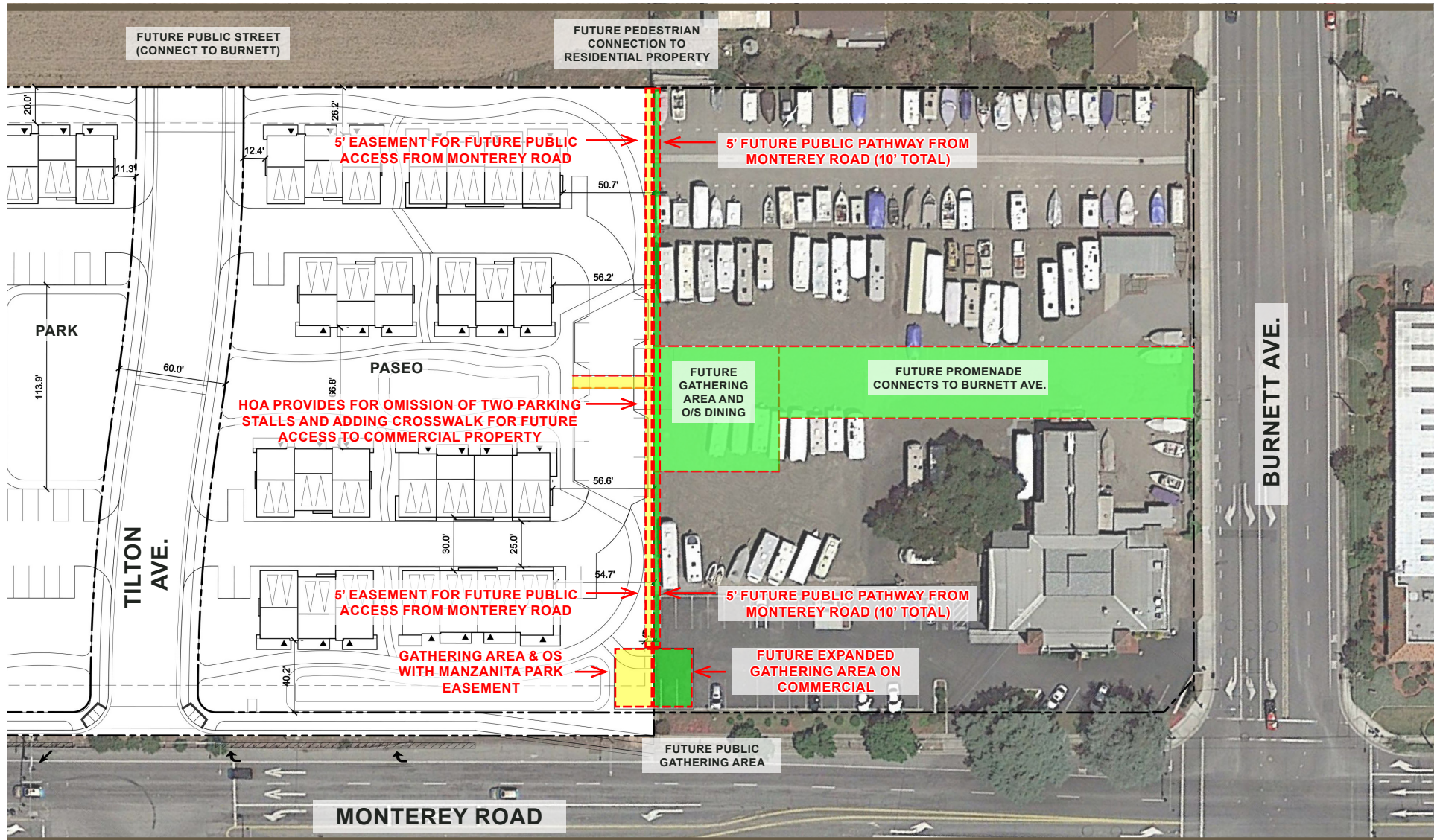
MANZANITA PARK IN MORGAN HILL, CA
NORTH CORRIDOR INVESTORS, LLC

BLOCK ONE COMMERCIAL/ MIXED USE LOT

DAHLIN

DATE 02-22-2019
JOB NO. 297-081
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

SHEET
2 OF 2



Note: HOA CC&R's will provide for future omission of two parking stalls and adding a cross walk to provide access for owners from the project to the future public gathering area and outside dining on the commercial property. This area will include a "transition zone" from private to public at the proposed easement area.

MANZANITA PARK IN MORGAN HILL, CA
NORTH CORRIDOR INVESTORS, LLC

BLOCK ONE COMMERCIAL LOT



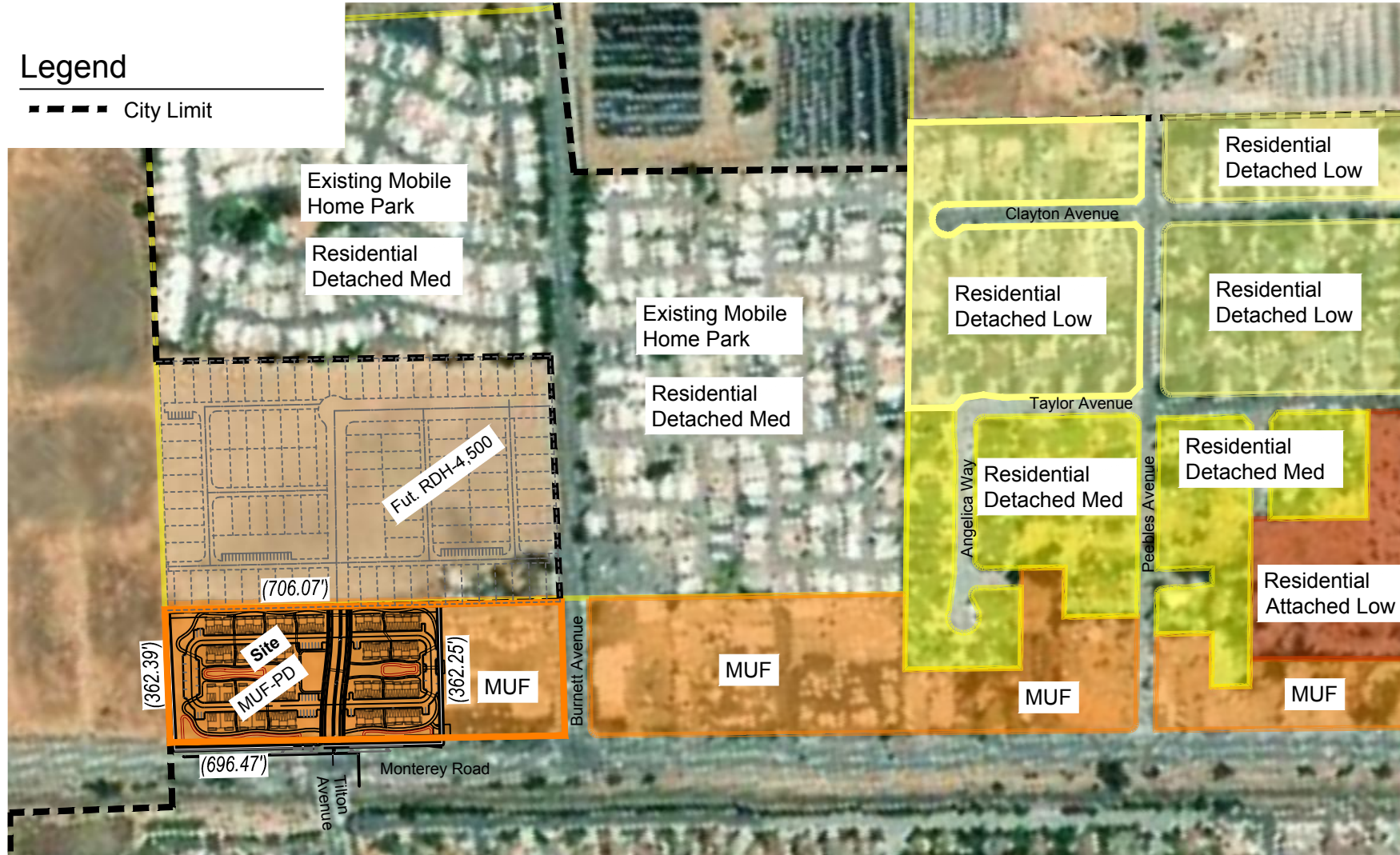
DATE 02-22-2019
JOB NO. 297-081

5865 Owens Drive
Pleasanton, CA 94588
925-251-7200

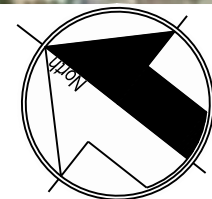


Legend

--- City Limit



Total Project Boundary Length = $706.07' + 362.25' + 696.47' + 362.39' = 2,127.18'$
Project Boundary Length Adjacent to Existing Development = $696.47'$
% Project Boundary Adjacent to Existing Development = $696.47' / 2,127.18' \times 100 = 32.74\%$



Substantial Public Benefit Defined

18.30.050.H. PD Master Plans

8. **Substantial Public Benefit Defined.** When used in this section, “substantial public benefit” means a project feature not otherwise required by the Zoning Code or any other provision of local, state, or federal law that substantially exceeds the City’s minimum development standards and significantly advances goals of the General Plan. A project must include one or more substantial public benefits to be rezoned as a planned development. The public benefit provided shall be of sufficient value as determined by City Council to justify deviation from the standards of the zoning district that currently apply to the property. Examples of substantial public benefits include but are not limited to:
- a. Housing that is affordable to lower-income households.
 - b. Public plazas, courtyards, open space, and other public gathering places that provide opportunities for people to informally meet and gather.
 - c. New or improved pedestrian and bicycle pathways that enhance circulation within the property and connectivity to the surrounding neighborhood.
 - d. Green building and sustainable development features that substantially exceed the city’s minimum requirements.
 - e. Preservation, restoration, or rehabilitation of a historic resource.
 - f. Increased transportation options for residents and visitors to walk, bike, and take public transit to destinations and reduce greenhouse gas emissions.
 - g. Publicly accessible parks and open space beyond the minimum required by the city or other public agency.
 - h. Habitat restoration and or protection of natural resources beyond the minimum required by the city or other public agency.



CITY COUNCIL STAFF REPORT

MEETING DATE: April 3, 2019

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK FOUR (EAST SIDE OF MONTEREY ROAD SOUTH OF OLD MONTEREY ROAD) SR2019-0008

RECOMMENDATION(S)

1. Provide a determination on SR2019-0008 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block Four; and
2. Provide feedback on SR2019-0008 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development

Housing

GUIDING DOCUMENTS

Economic Blueprint

General Plan/Housing Element

REPORT NARRATIVE:

Purpose of Preliminary Plan Review

The Preliminary Plan Review for Monterey Corridor Block Four (File No. SR2019-0008) serves two primary purposes:

1. To determine the Preliminary Plan's consistency with the approved Monterey Corridor Block Four Block-Level Master Plan (BLMP).

On March 8, 2019 the applicant, City Ventures, submitted an application for the 2018/2019 Residential Development Control System (RDCS) competition. With City Council's determination that the Preliminary Plan Review is consistent with the adopted Block Four BLMP (Ordinance No. 2298n.s., Attachment 1), the applicant will be allowed to continue in the current RDCS competition.

2. To allow for feedback on the Preliminary Plan's consistency with the City's Planned Development (PD) Master Plan findings.

After the RDCS competition, if the applicant is awarded allotments, the applicant would submit for a Zoning Amendment to establish a PD Master Plan for the entire

block, which would provide specific details for the applicant's proposed project and demonstrate how the project will integrate with future development on any remaining portions of the block.

The Preliminary Plan Review provides the City Council with an opportunity to provide early feedback on the proposal's consistency with the City's required PD Master Plan findings.

Attached is an updated tentative schedule illustrating how the Preliminary Plan Review/PD Master Plan process could progress in parallel with the current RDCS schedule (Attachment 2).

Background

Mixed Use Flex General Plan Land Use Designation

On July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan and Morgan Hill 2035 General Plan Land Use Map that designates certain properties Mixed Use Flex (MU-F).

The MU-F designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The MU-F designation allows 7 to 24 units per acre (residential) and a maximum Floor Area Ratio (FAR) of 0.5 (commercial). The density of residential and intensity of non-residential uses should transition from higher near Downtown to lower at the ends of the Monterey Road corridor.

The General Plan requires that, prior to development of residential or mixed-use projects within the MU-F designation, a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other.

Monterey Road Corridor Block Four Block-Level Master Plan (BLMP)

Following City Council meetings on November 28, December 5, and December 19, 2018, the City Council directed the Development Services Director to initiate a Zoning Amendment to establish a Block-Level Master Plan (BLMP) for Monterey Road Corridor Block Four, which includes the approximately 7.58 acres of property located at the east side of Monterey Road opposite Old Monterey Road.

The Planning Commission held a study session and public hearing on January 22, 2019 to evaluate the draft guidelines and standards for the proposed BLMP Ordinance (File No. ZA2019-0002: Monterey Corridor Block Four) and recommended the City Council approve, with two modifications, the proposed Zoning Amendment.

On February 6, 2019 the City Council introduced Ordinance No. 2298n.s. (Attachment 1), which was adopted on February 20, 2019, establishing a BLMP for Monterey Corridor Block Four.

ANALYSIS:

The proposed Preliminary Plan Review was analyzed with respect to consistency with 1) the adopted Block-Level Master Plan for Block Four; and 2) the City's required Planned Development (PD) Master Plan Findings.

1. Block Four Block-Level Master Plan (BLMP) Consistency

The adopted BLMP for Block Four established the basic expectations and specific requirements for future development within the block in the form of a diagram (Attachment 1 - Exhibit A) and land use regulations (Attachment 1 - Exhibit B).

Consistent with the BLMP diagram (Attachment 1 - Exhibit A), the proposal shows:

- The east leg of the Old Monterey Road / Monterey Road intersection
- Commercial/mixed-use at the southeast corner of the new intersection
- Preservation of the existing specimen tree
- Connection options through the adjacent existing single-family site to Granada Street

In terms of consistency with land use regulations (Attachment 1 - Exhibit B), the project is proposing:

- A density of between 18 and 24 dwelling units per acre; allowed density is 7 to 24 dwelling units per acre
- A non-residential Floor Area Ratio (FAR) less than the maximum 0.5 FAR
- Perimeter setbacks that comply with the MU-F Zoning District standards or are within allowable deviations
- An accessible and visible public gathering place adjacent to commercial that incorporates existing specimen tree as a key feature
- Buildings with primary entrances to streets and pedestrian paseos with parking accessed from alleys

The applicant has provided a letter of justification, land use regulation compliance table, and exhibits/plans (Attachments 3, 4, and 5) that demonstrate how their proposal meets each of the standards of the adopted BLMP Ordinance.

2. Planned Development (PD) Master Plan Findings

In addition to providing feedback to the applicant regarding their Preliminary Plan's consistency with the adopted BLMP, the City Council should also provide preliminary input on the proposal's consistency with the Planned Development (PD) Master Plan findings in Section 18.30.050.H.7 of the Zoning Code.

18.30.050.H.7 PD Master Plans / Findings

- a. The proposed development is consistent with the General Plan, Zoning Code and any applicable specific plan or area plan adopted by the City Council.
- b. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

- c. The proposed project will provide a substantial public benefit(s) as defined in Paragraph 8 Substantial Public Benefit Defined (Attachment 6). The public benefit provided shall be of sufficient value as determined by the Planning Commission to justify deviation from the standards of the zoning district that currently applies to the property.
- d. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.
- e. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.
- f. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.
- g. Findings required for the concurrent approval of a Zoning Map Amendment can be made.

Summary of Planning Commission Feedback on Preliminary Plan Review

On March 12, 2019 the Planning Commission discussed, identified a number of concerns, and provided positive feedback on the Preliminary Plan Review for Monterey Corridor Block Four (SR2019-0008).

Planning Commission Concerns

- Site is awkward and prominent
- Proposed railroad buffer is marginal – KB Monterey Parque has landscaping and street separating homes from railroad
- Limited open space – type of housing proposed needs more open space
- Is the project too dense or not dense enough – reducing the proposed units and/or changing part of the proposal to a denser product type (perhaps next to railroad) could allow for more open space
- Size of commercial space not specified – commercial study recommended if commercial is required, that between 3,000 and 4,000 square feet could be sustainable
- Depth of retail too shallow for maximum flexibility
- Transition to KB Monterey Parque – detached townhouse style units fronting Granada Street
- Homes right on curve of Monterey Road are elevated – how could height/appearance be mitigated
- One driveway, if extended to adjacent property, appears to require removal of a specimen tree
- Residents must cross a lot of driveways, possibly competing with cars, to access open space areas and commercial area – not well-connected by pedestrian walkways
- Although the Block Four BLMP does not include a specific requirement for “feathering” like with the Block One BLMP at the northern end of the Monterey

Corridor, the Commission discussed the appropriateness of a proposed density between 18 and 24 units/acre when the Monterey Parque project to the south is approximately 14.2 units/acre

Planning Commission Positive Feedback

- Prominent, visible commercial area at corner of new intersection that includes a public community gathering area with a large specimen tree as a key element
- Commercial area is part of the block that is controlled by the applicant, so there is more certainty that it will be completed as part of the project
- Preliminary Plan has made great strides since proposed 2017 Zoning Amendment application and with some re-working, could become even better through the subsequent Zoning Amendment/PD Master Plan process.

To address the feedback received from the Planning Commission, the applicant has provided a revised Preliminary Plan (Attachment 4) that:

- 1) Increases the proposed railroad buffer with buildings re-oriented to the buffer and allowing for a future connection through the adjacent property to the Monterey Parque project
- 2) Provides interconnected open space areas along the railroad buffer
- 3) Increases the amount of common open space
- 4) Reduces massing along the Monterey Road frontage – smaller grouping of units and 2-story homes
- 5) Enhanced connectivity between public plaza and on-site/resident open space areas
- 6) Reduced density from approximately 20 units/acre to approximately 17.8 units/acre
- 7) The specimen tree located on the parcel between the applicant's site and the Monterey Parque development will be preserved as part of any future development proposed on the intervening parcel

Conclusion

The Preliminary Plan Review has sufficiently demonstrated consistency with the adopted Block Four BLMP, which would allow the applicant to continue in the current RDCS competition.

If the applicant is awarded residential allotments, through the subsequent Zoning Amendment process, they are committed to developing a more detailed PD Master Plan for Block Four that will continue to be consistent with the adopted Block Four BLMP and address the Planning Commission's concerns and any feedback provided by the City Council.

The future Zoning Amendment process will provide an opportunity for the Planning Commission and City Council to evaluate the detailed Block Four PD Master Plan for consistency with the Block Four BLMP and required PD Master Plan findings.

COMMUNITY ENGAGEMENT: Inform

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission discussed and provided feedback on the Preliminary Plan Review for Monterey Corridor Block Four (SR2019-0008) at a public hearing on March 12, 2019.

FISCAL AND RESOURCE IMPACT:

Not Applicable.

CEQA (California Environmental Quality Act):

Statutory Exemption

Pursuant to CEQA Guidelines Section 15262 a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors.

The Environmental Impact Report (EIR) for the Morgan Hill 2035 General Plan, which envisioned the transformation of the Monterey Corridor north and south of Downtown into a vibrant mixed-use corridor, was prepared in accordance with CEQA and certified by the Morgan Hill City Council on July 27, 2016 (SCH#2015022074).

Although this Preliminary Plan Review is exempt from CEQA, the future adoption of a Zoning Amendment to establish a Planned Development Master Plan for Monterey Corridor Block Four will be subject to additional CEQA review.

LINKS/ATTACHMENTS:

1. Ordinance No. 2298n.s. Block Four BLMP
2. BLMP/PD Master Plan and RDCS Tentative Schedules
3. Applicant's Justification Letter
4. Preliminary Plans
5. Applicant's BLMP Compliance Table
6. Substantial Public Benefit Defined (18.30.050.H.8)

ORDINANCE NO. 2298, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ADD A PLANNED DEVELOPMENT (PD) COMBINING DISTRICT ESTABLISHING A BLOCK-LEVEL MASTER PLAN FOR MONTEREY ROAD CORRIDOR BLOCK FOUR, AN APPROXIMATELY 7.58-ACRE SITE LOCATED ON THE EAST SIDE OF MONTEREY ROAD OPPOSITE OLD MONTEREY ROAD (APN 726-25-006 AND 726-25-005)

WHEREAS, on July 27, 2016 the City Council adopted the Morgan Hill 2035 General Plan, a comprehensive update of the City's 2001 General Plan; and

WHEREAS, the Morgan Hill 2035 General Plan Land Use Map designates certain properties Mixed Use Flex; and

WHEREAS, the Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of Downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). The Mixed Use Flex designation allows 7 to 24 units per acre (residential) and a maximum FAR of 0.5 (commercial) and density should transition from higher near Downtown to lower at the ends of the Monterey Road corridor; and

WHEREAS, the Morgan Hill 2035 General Plan requires that, prior to development of residential or mixed-use projects within the Mixed Use Flex designation a Block-Level Master Plan is required to: A) identify how commercial uses will be incorporated within the development of the block, and B) how individual development projects will connect with each other; and

WHEREAS, the Block-Level Master Plan requirement applies to those segments of the Monterey Road Corridor north and south of Downtown that include properties that have a Mixed Use Flex General Plan Land Use designation. Blocks may include properties with a variety of General Plan designations (e.g., Commercial, Residential Attached Low, Public Facilities, Mixed Use Flex, etc.) and Zoning Districts (e.g., CG General Commercial, RAL 3,500, PF Public Facilities, MU-F Mixed Use Flex, etc.);

WHEREAS, Section 18.30.050 of the Zoning Code states that the purpose of the Planned Development (PD) combining district is to allow for high quality development that deviates from standards and regulations applicable to base zoning districts in Morgan Hill. The PD combining district is intended to promote creativity in building design, flexibility in permitted land uses, and innovation in development concepts. The PD combining district provides land owners with enhanced flexibility to take advantage of unique site characteristics and develop projects that will provide public benefits for residents, employees, and visitors; and

WHEREAS, Section 18.114.020 of the Zoning Code states that the City Council, Planning Commission, or Community Development Director may initiate Zoning Map and Text amendments; and

WHEREAS, on December 19, 2018 the City Council directed staff to draft a Zoning amendment to establish a Block-Level Master Plan (BLMP) Planned Development (PD) for Monterey Road Corridor Block One and Block Four; and

WHEREAS, in addition to the underlying base zoning district requirements, specific requirements are shown/listed in **Exhibit A: Block-Level Master Plan Map – Block Four** and **Exhibit B: Block-Level Master Plan Land Use Regulations - Block Four**; and

WHEREAS, Exhibit A includes, by reference, the existing 58-unit residential development on an approximately 4.37-acre site zoned R3(PD) Planned Development (Ordinance No. 2169, New Series adopted October 7, 2015) and that existing development will remain subject to that Ordinance unless subsequently amended; and

WHEREAS, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074) was prepared for the Zoning Code Update project pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164, and the Addendum concludes that the proposed project will not result in any new impacts that were not already identified in the Morgan Hill 2035 EIR or any impacts of greater severity than were already addressed; and

WHEREAS, a visioning and goal setting workshop was held on September 25, 2018 where members of the public and various stakeholders provided feedback that facilitated the crafting of preliminary guiding principles for the development of the Monterey Corridor; and

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

WHEREAS, the Block-Level Master Plan Planned Development (BLMP PD) ordinance for Monterey Corridor Block Four, was considered by the Planning Commission at their study session and regular meeting of January 22, 2019, at which time the Planning Commission recommended City Council consider the Addendum to the Morgan Hill 2035 EIR in accordance with the California Environmental Quality Act (CEQA) and approval of the Zoning Amendment to establish a BLMP PD for Monterey Corridor Block Four; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The proposed Monterey Road Corridor Block-Level Master Plan Planned Development (BLMP PD) is consistent with the Morgan Hill 2035 General Plan.

SECTION 2. The Amendment to establish this BLMP PD is required in order to serve the public convenience, necessity, and general welfare as provided in Section 18.114.060 of the Municipal Code.

SECTION 3. The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).

SECTION 4. There hereby is attached hereto as **Exhibit A: Block-Level Master Plan Map – Block Four** and made a part of this ordinance.

SECTION 5. There hereby is attached hereto as **Exhibit B: Block-Level Master Plan Land Use Regulations - Block Four** and made a part of this ordinance.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF FEBRUARY 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF FEBRUARY 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

AYES: **COUNCIL MEMBERS:** Larry Carr, Rene Spring, Yvonne Martinez Beltran, John McKay, Rich Constantine

NOES: **COUNCIL MEMBERS:** None

ABSTAIN: **COUNCIL MEMBERS:** None

ABSENT: **COUNCIL MEMBERS:** None

APPROVED:


RICH CONSTANTINE, Mayor

ATTEST:


IRMA TORREZ, City Clerk

DATE: 2/25/2019

Effective March 23, 2019

Attachment: Ordinance No. 2298n.s. Block Four BLMP (2254 : SR2019-0008 Preliminary Plan Review: Monterey Block Four)

❧ CERTIFICATION ❧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2298, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 20th day of February 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 2/25/2019


IRMA TORREZ, City Clerk

Exhibit A: Block-Level Master Plan Map – Block Four

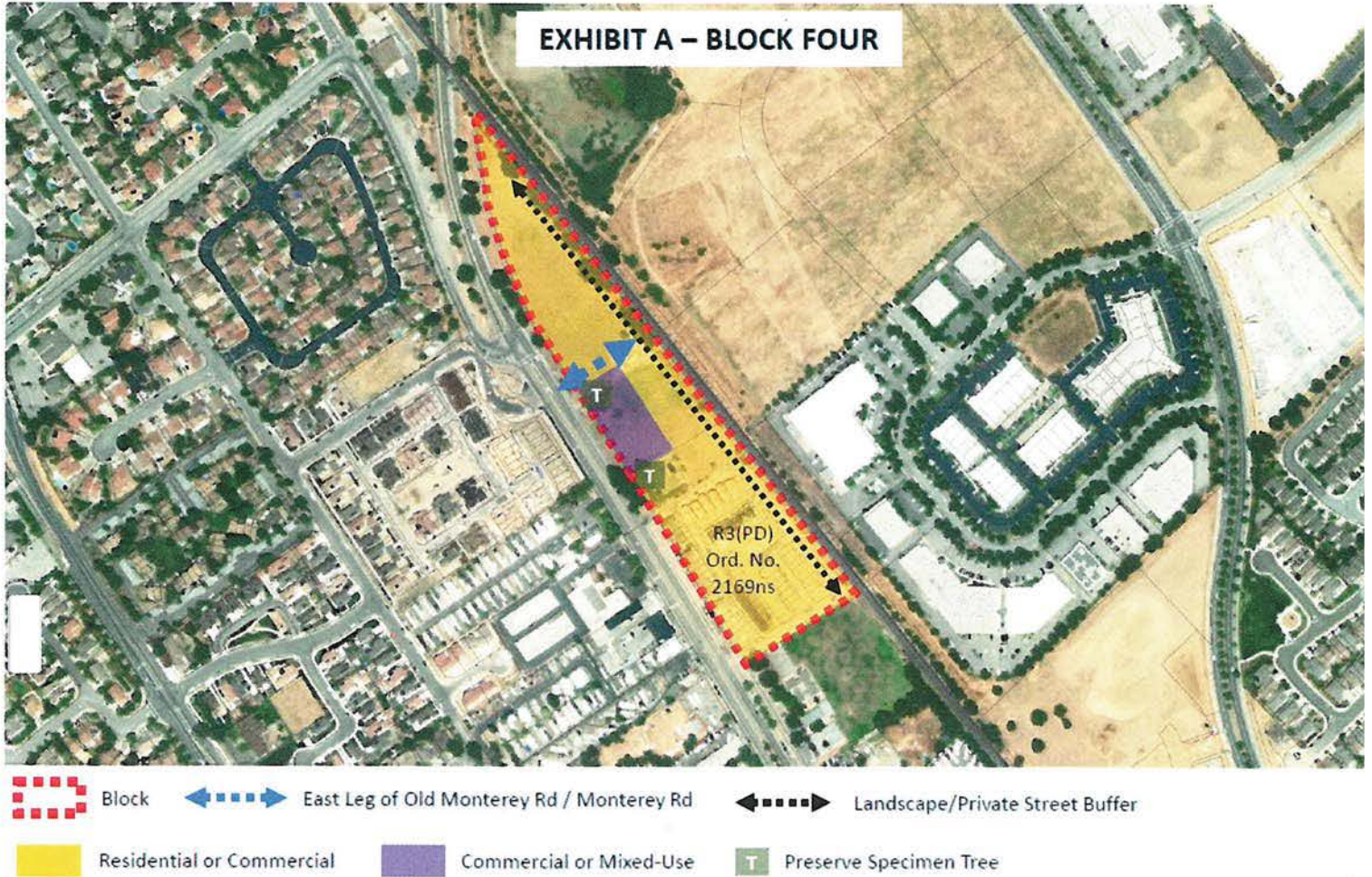


Exhibit B: Block-Level Master Plan Land Use Regulations - Block Four

I. Land Use Regulations

- A. **Permitted Uses.** Zoning Code Table 18.22-1 identifies permitted uses in the MU-F Mixed Use Flex Zoning District. Specific uses allowed for Block Four are further described on Exhibit A and below.
- B. **Development Standards.** Zoning Code Tables 18.22-2 and 18.22-3 identify development standards for the MU-F Mixed Use Flex Zoning District.
 1. Residential Density. 7 to 24 du/ac.
 2. Floor Area Ratio. For non-residential and vertical mixed-use projects, the maximum floor area ratio (FAR) is 0.5.
 3. Setbacks. The setbacks identified in Zoning Code Table 18.22-3 are required setbacks around the project perimeter.
 4. Residential Development Standards. A medium density residential development project may use the development standards specified in Zoning Code Section 18.40.050 and through the subsequent PD Master Plan process establish deviations from those standards.
- C. **Commercial Requirements**
 1. Corner Lot Commercial/Non-Residential. Commercial use(s) (retail, services, office) and/or other non-residential (public/quasi-public) use(s) are required at the southeast corner of Monterey Road and the new intersection opposite Old Monterey Road. Commercial or non-residential use(s) may be accommodated within a standalone building(s) or in vertical mixed-use building(s).
 2. Tree Preservation. The existing specimen trees located in/adjacent to the commercial/mixed-use area shall be preserved in place as a key/public feature of any future project. Preserve all other significant trees to the greatest extent practicable, as defined in Municipal Code Chapter 12.32 – Restrictions on Removal of Significant Trees.
 3. Connections. Ensure a strong connection between the commercial/non-residential, residential, and public gathering places within the block.
- D. **General Specifications**
 1. Primary entrances for new buildings should be oriented toward the street.
 2. Parking for new uses should be located behind buildings with limited or no visibility from streets.
 3. Primary access to/from rear parking areas shall be provided via driveways (including shared driveways) located at side streets (i.e., not from Monterey Road) to the greatest extent possible.
 4. First floor floor-to-ceiling clear height for non-residential uses: 14-feet minimum.

5. Building depth for non-residential uses: 35-feet minimum.
6. Urban Form Characteristics:
 - a. Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways
 - b. Adaptive reuse where existing buildings may have desirable characteristics
 - c. Higher intensity development designed with sensitivity to adjacent lower intensity residential development
 - d. Street design balancing pedestrian and bicycle use with vehicular circulation
 - e. Consistent planting of street trees to provide shade and enhance character and identity
 - f. Well-designed, publicly-accessible open space
7. Reasonable accommodations shall be provided, as appropriate, to provide relief from any physical standards that make meeting accessibility requirements challenging for a particular project.
8. Future development must accommodate and complete the fourth leg of the intersection with Monterey Road / Old Monterey Road.
9. Future development must provide a buffer to the adjacent railroad right-of-way and internal connection between developments within the block.
10. Future development must provide commercial/non-residential component at new intersection to support new and existing residential.
- E. **Public Gathering Places.** Residential or mixed-use project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards, and parks.
 1. Location. The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.
 2. Activity. For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located along the edge of a courtyard and plazas.
 3. Visibility and Access. Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
 4. Seating. Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
 5. Year-round Use. Open space must be usable year-round with features such as awnings, wind breaks, sun shades, and umbrellas, or other similar features that provide shelter from the elements.
 6. Specimen Trees. Incorporate existing specimen trees into design of public gathering space(s).

- F. **Temporary Uses.** In addition to the temporary uses allowed and requirements established in Section 18.92.150, the temporary use of private parcels for community events, food vending, and pop-up parks may be allowed with the issuance of a Temporary Use Permit.

II. Subsequent Approvals

- A. **Zoning Amendment/PD Master Plan.** Pursuant to the requirements of Zoning Code Section 18.30.050 – Planned Development Combining District, a Zoning Amendment to establish a PD Master Plan is required. The PD Master Plan shall be consistent with the approved BLMP PD and must plan for the future development and integration of all parts of the block.
- B. **Design Review.** A proposed development must receive a Design Permit as required by Zoning Code Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.

Tentative Schedule - BLMPs / PD Master Plans for Blocks 1 and 4 / RDCS 2018/2019

	Block-Level Master Plan / Planned Development Master Plan	Residential Development Control System (RDCS) 2018/2019
4	Jan. 22, 2019 — Planning Commission Study Session & Hearing (BLMPs)	
5	Feb. 6, 2019 — City Council Hearing (Introduce BLMP Ordinances)	
6	Feb. 8, 2019 — Block 1 and 4 Applicants Submit Preliminary Plan Reviews for PD Master Plans	
7	Feb. 20, 2019 — City Council Hearing (Adopt BLMP Ordinances)	
8		Mar. 8, 2019 — RDCS Application Date
9	Mar. 12, 2019 — Planning Commission Review of Preliminary PD Master Plans for Consistency with BLMPs	
10	Mar. 22, 2019, Planned Development Zonings (BLMP Ordinances Effective)	Mar. 25, 2019 — Staff GP & Zoning Consistency Determination
11	Apr. 3, 2019 - City Council Review of Preliminary PD Master Plans for Consistency with BLMPs	Apr. 4, 2019 - Deadline to File GP & Zoning Consistency Appeal to City Council
12		May 1, 2019 – GP & Zoning Appeal City Council
13		May 3, 2019 - Staff Scoring of Applications / Recommendations to Planning Commission
14		Jun. 11, 2019 - Planning Commission Finalize Scores
15		Jun. 21, 2019 - Deadline to File Scoring Appeal to City Council
16		Jul. 17, 2019 - Scoring Appeal Heard by City Council
17		Jul. 19, 2019 - Staff Recommendations Award of Allotments
18		Jul. 23, 2019 - Planning Commission Award of Allotments
19		Aug. 2, 2019 - Deadline to File Allotment Appeal to City Council
20		Aug. 21, 2019 - Allotment Appeal Heard by City Council
21	Late 2019/2020 Applicants Submit Zoning Amendment Applications for Block 1 and Block 4 PD Master Plans	

Attachment: BLMP/ID Master Plan and RDCS Tentative Schedules [Revision 1] (2254 : SR2019-0008 Preliminary Plan Review: Monterey Block



2/1/19

John Baty
Principal Planner
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Dear John,

Please find below City Ventures' Letter of Justification for the proposed PD Permit for 18110 Monterey Road in Morgan Hill. We appreciate your consideration of our proposal. Please let me know if there is any additional information you need to complete your staff report.

Best wishes,

Jason Bernstein
City Ventures

- a. The proposed development is consistent with the general plan, zoning code and any applicable specific plan or area plan adopted by the city council.

The proposed development is located within a Mixed Use Flex General Plan designation and Mixed Use Flex zoning district. The City of Morgan Hill has also adopted a Block Level Master Plan land use regulation to comply with the General Plan requirements for mixed use projects within the Mixed Use Flex designation. The Mixed Use Flex designation allows for all commercial, all residential, or a combination of the two only if a Block Level Master Plan has been approved. The Block Level Master Plan that was approved for this block requires a mixed use development or all commercial development.

The proposed project meets all requirements of the General Plan, Zoning and Block Level Master Plan land use regulations. As such, the development plan established by this zoning amendment will define an orderly and logical development plan and establish uses that are supportive of the surrounding development and future development permitted in the Morgan Hill Mixed Use Flex zone. The proposed amendments are required in order to achieve the goals of the Block Level Master Plan and to serve the public health, convenience and general welfare as provided by the Morgan Hill Municipal Code.

- b. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

Development of the project site is subject to compliance with the adopted Block Level Master Plan land use regulation for development of mixed use or all residential projects in the Monterey Corridor. The Block Level Master Plan requires a PD Permit to develop mixed use projects; therefore, to ensure compliance with the Block Level Master Plan the project is



City Ventures

requesting approval of a PD Permit.

- c. The proposed project will provide a substantial public benefit as defined in Paragraph 8 (Substantial Public Benefit Defined) below. The public benefit provided shall be of sufficient value as determined by the planning commission to justify deviation from the standards of the zoning district that currently applies to the property.

The Block Level Master Plan includes several public benefits that make a PD Permit appropriate for this site. The project will incorporate a public plaza which will interface with new commercial to create a community-oriented space that will benefit the existing neighborhood along with the future development. The project also commits to improving pedestrian and bike connectivity and ensuring that the new public plaza is designed to promote walking and biking as an alternative to driving. Finally, the project commits to exceeding the City's minimum Build It Green checklist minimums to ensure that it serves as an example of sustainable building and design.

- d. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The proposed project will incorporate the underlying development standards from the Mixed Use Flex zoning, and can adequately accommodate the proposed Mixed Use development.

- e. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.

The project proponent has verified that existing infrastructure is sufficient to serve the proposed development. Currently, the project proponent plans to extend a new sewer line into the project as part of the proposed development, but all other public infrastructure is sufficient in its current configuration to serve the site.

- f. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.

The proposed development conforms with the General Plan designation and is compatible with the existing and planned land use character of the surrounding area.

- g. Findings required for the concurrent approval of a zoning map amendment can be made.

The requested PD Permit is consistent with all applicable land use policy and regulatory documents, including the General Plan and Block Level Master Plan. All findings for zoning amendment and associated map amendment can be made.



Monterey Gateway

Block Level Master Plan Consistency & Preliminary Plan Review

Morgan Hill City Council
April 3, 2019

Monterey Gateway: Block Level Master Plan Consistency & Preliminary Plan Comments

City Ventures is pleased to provide this Monterey Gateway conceptual plan to the City Council for review and comments at this “Preliminary Review” stage of the project.

- 1) The project is consistent with the Block Level Master Plan, Block Four
- 2) We are seeking preliminary feedback on the conceptual plan to help shape and guide the project as it moves through the City’s entitlement review process.

The following narrative and attached plan set is provided to assist in the Council’s review of these two items.

Monterey Corridor BLMP Block Four Consistency

The City of Morgan Hill adopted the Block Level Master Plan (BLMP) for Block Four to guide and shape development along the Monterey Corridor. The Monterey Gateway project is in Block Four of the Monterey Corridor BLMP. The BLMP established basic expectations and specific requirements for future development of Block Four, with the specific intent of meeting with the following 5 primary objectives:

BLMP Block Four Objectives

1. Complete the fourth leg of the **intersection** with Monterey Road / Old Monterey Road
2. Provide a **buffer to the adjacent railroad right-of-way**
3. Provide internal **connection between developments** within the block
4. Preserve specimen **trees**
5. Provide **commercial/non-residential component** at new intersection to support new and existing residential

In addition to these specific land use objectives, the BLMP includes Exhibit A, Block Level Master Plan – Map Block 4, which lays out the general land use pattern anticipated for the Block.

City Ventures and the Monterey Gateway design team relied on the BLMP objectives and Exhibit A of the BLMP Block Four to design the Monterey Gateway project.

As discussed below and shown in the attached plan sheets, the Monterey Gateway conceptual plan is entirely consistent with the BLMP for Block Four and the land use pattern in Exhibit A.

1. Intersection. Vehicular access to the project is lined up with the intersection with Monterey Road/Old Monterey Road and includes completion of the fourth leg of this existing intersection. Completion of the fourth leg of the intersection is integrated into the project design as envisioned by the BLMP as shown on Sheet 3.

2. Railroad Buffer. Monterey Gateway provides a buffer along the railroad right of way that ranges between 18 and 42 feet and all structures proposed along the railroad right of way are oriented to either rear or side-onto right of way. As shown on Sheet 4, half the project is buffered within an internal paseo and the other half is buffered with an internal roadway. Additionally, several large trees are preserved within the railroad buffer area. Please see Conceptual Site Plan for reference. The BLMP does not include a specific setback dimension that must be met; however, the BLMP does call for an “adequate buffer” from the railroad right of way. City Ventures has experience building adjacent to railroad tracks and is well-aware of the design benefits of adequate buffers needed to provide for a high-quality living environment for future residents. The proposed setbacks together with the orientation of buildings, location of access roads, installation of sound attenuated windows, and the use of walls and vegetation, all of which is proposed as part of the Monterey Gateway concept plan, will contribute to providing an adequate buffer along the railroad right of way.

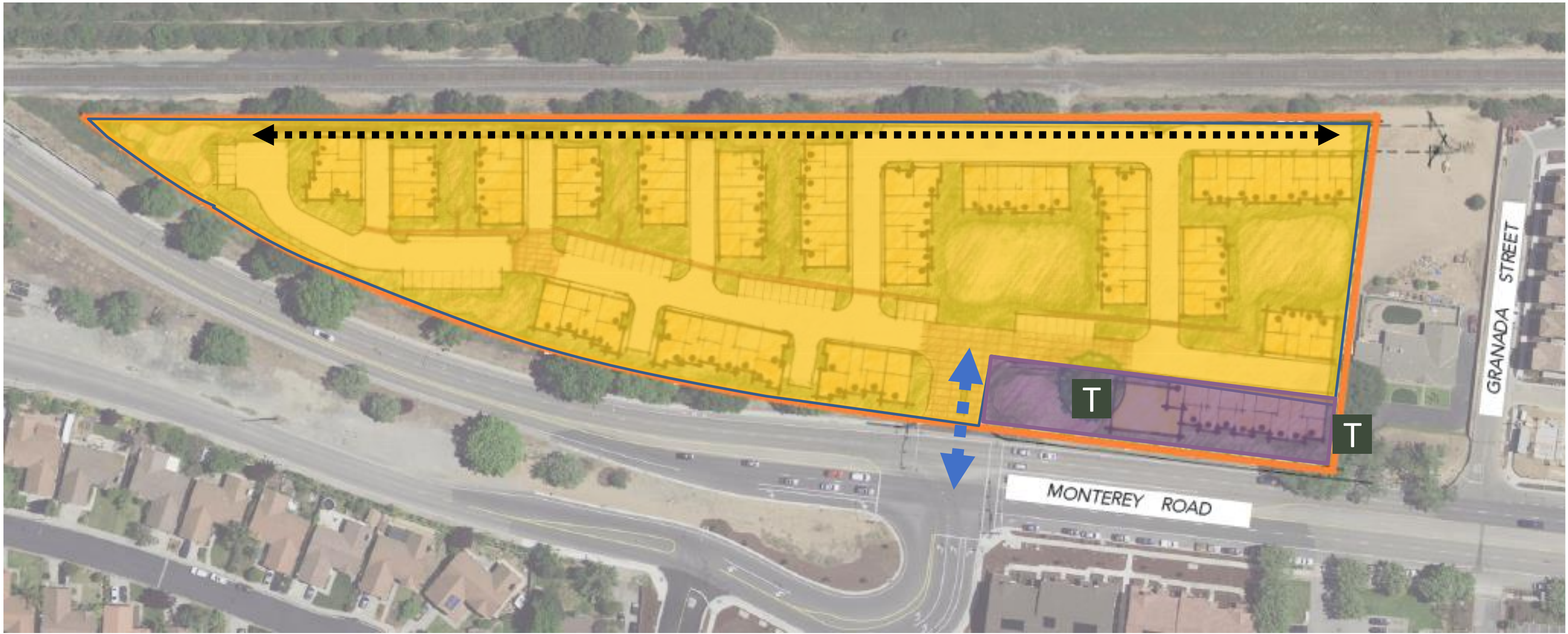
3. Internal Connectivity within the Block. The BLMP envisioned an internal connection between developments within Block Four, particularly along the railroad right of way at the ‘rear’ of the block. Monterey Gateway provides multiple options for internal connection points, including an internal connection of the roadway along the rear of the property along the railroad right of way and an open space connectivity directly adjacent to the southern boundary. These two potential internal connectivity options allow for multiple ways in which Monterey Gateway allows for seamless integration of pedestrian, bicycle and vehicular connectivity within the block. Please see Sheet 4 for connectivity.

4. Preserve Specimen Trees. The focal point of Monterey Gateway is preservation of the existing Oak specimen tree located south of the project entrance. Consistent with the BLMP objectives, the project is designed to incorporate this important Oak tree, as well as other existing trees that exist along the railroad right of way. Please see Sheet 3 for location of preserved trees.

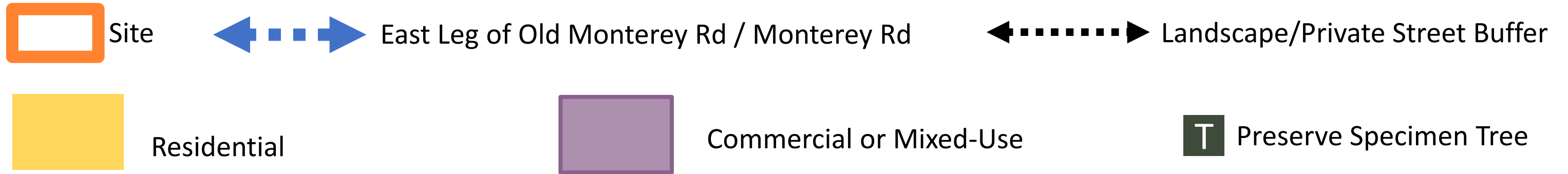
5. Commercial Use & Public Gathering Place. The BLMP requires a commercial or mixed-use building and a public gathering space at the southeast corner of the new Old Monterey Road/Monterey Road intersection. Monterey Gateway includes approximately 3,000 square feet of neighborhood serving commercial (with a minimum building depth of 50 feet) and public plaza gathering place at the southwest corner of the new intersection. The plaza is immediately adjacent to the proposed commercial uses. The public plaza incorporates preservation of the large specimen Oak tree and is also linked to the project’s open space area via pedestrian connections. Pedestrian connections are also located to and through the project area to link both existing and future residents to the public plaza. Consistent with the intent of the BLMP, the commercial uses and public plaza are located at the entrance to Monterey Gateway, and connected to the internal green plaza, allowing for these uses to best serve existing and future residents who will patronize the neighborhood serving uses and public plaza.

For all the reasons described above, the Monterey Gateway concept plan is consistent with the BLMP.





Attachment: Preliminary Plans [Revision 1] (2254 : SR2019-0008 Preliminary Plan Review: Monterey Block Four)



BLMP Block Four Exhibit A Consistency



Internal green plaza at project entrance

4th leg of intersection complete

Specimen Tree Preserved

Connectivity of plaza to internal green & commercial space

Neighborhood retail 50-foot depth





Preliminary Plan Review & Comment

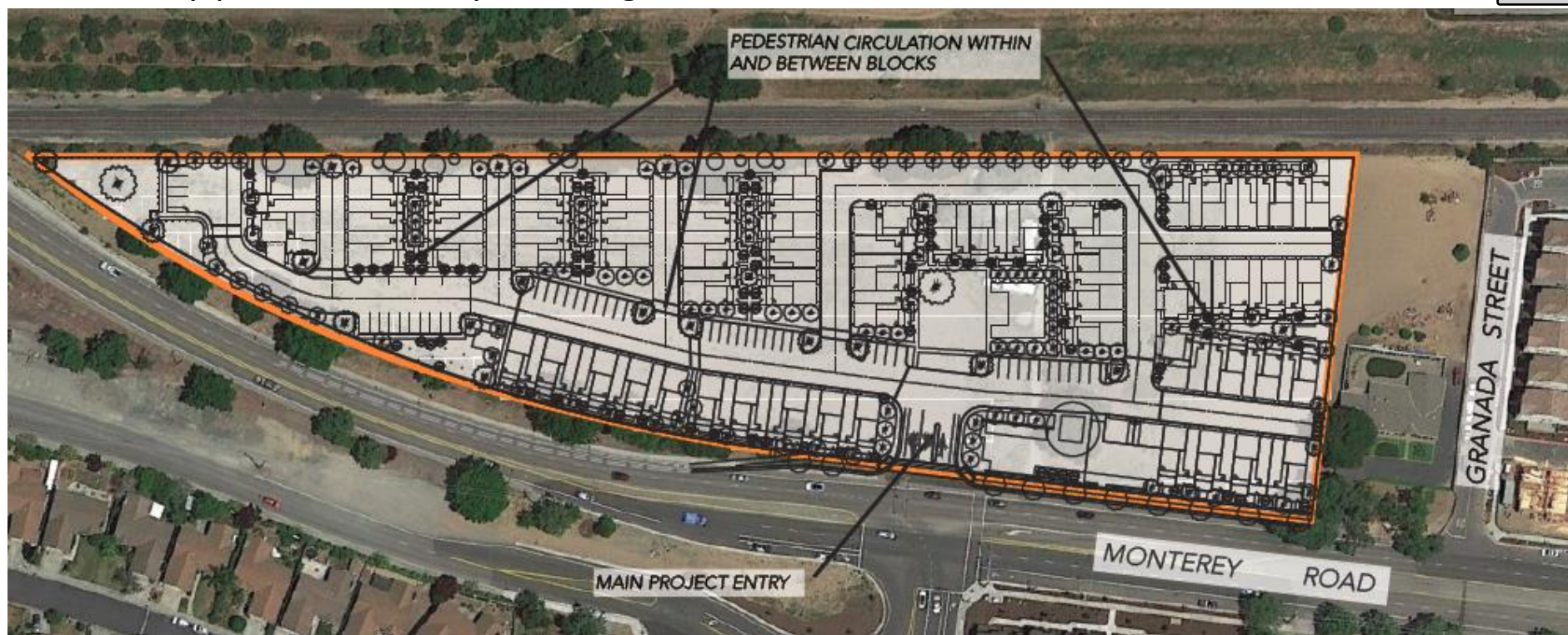
In addition to BLMP consistency, City Ventures is also seeking general feedback on the Monterey Gateway concept plan. Any feedback provided by the City Council will help shape and guide the project as it moves through the City's entitlement review process.

City Ventures submitted an initial concept plan package for review by the Planning Commission at their hearing on March 12, 2019. The Planning Commission provided very useful feedback and City Ventures has iterated the Monterey Gateway concept plan to address the comments received. **The Monterey Gateway concept plan included in this package has been updated to address the comments received by the Planning Commission on March 12, 2019.** A copy of the preliminary plan that Commission reviewed is included here for your reference.

In summary, the Planning Commission provided comments related to the railroad buffer, the massing of the buildings on Monterey Avenue, the location of potential accessways for future development of the south, and type and size of open space within the project. City Ventures took this feedback and made changes to: 1) increase the railroad buffer; 2) re-orient buildings along the railroad buffer; 3) provide an interconnected open space along the railroad buffer; 4) reduce massing along the Monterey Avenue frontage to include 2- and 3-story homes; 5) increase connectivity between the public plaza and on-site open space; and 6) reconfigure building placement at the southern boundary to allow for future connectivity along the railroad buffer. Additionally, the updated concept plan included in this packet reduced the density from 116 (20 units/acre) to 101 units (17.8 units/acre).

City Ventures was founded on the concept of working alongside stakeholders to ensure the best possible design for our new home communities. At its best, development is an iterative process that is informed along the way by all parties. City Ventures is committed to working with Morgan Hill to ensure that development of Monterey Gateway exceeds expectations of current and future residents. We look forward to any City Council comments to help inform our Monterey Gateway development plans and future entitlement submittal package.

Preliminary plan reviewed by Planning Commission on March 12, 2019



Preliminary plan for City Council review on April 3, 2019 (updated to address PC comments)



Land Use Regulation Compliance Table
Block 4, 18110 Monterey Road, Morgan Hill

I. Land Use Regulations	Land Use Regulation	Proposed Project
A. PERMITTED USE	Use restrictions – comply with Table 18.22-1	Commercial uses will be restricted to comply with table 18.22-1 using CC&Rs. Residential uses will be entitled via the PD Permit.
B. DEVELOPMENT STANDARDS	1. Residential Density – 7 to 24 du/ac.	Density will be between 18 and 24 dwelling units per acre.
	2. Floor Area Ratio (FAR) – maximum of .5 for non-residential or mixed-use areas.	All non-residential uses will have a maximum FAR of .5.
	3. Setback – comply with Table 18.22-3.	Table 18.22-3 setbacks will be implemented. All setbacks will comply with the municipal codes within allowed deviances.
	4. Residential Development Standards – comply with Section 18.40.050	Multi-family standards will be applied under a PD permit to comply with Section 18.40.050.
C. COMMERCIAL REQUIREMENTS	1. Commercial or non-residential use is required at the southeast corner of the new intersection.	A mixed-use building featuring a commercial use at the southeast corner of the new intersection is proposed.
	2A. Tree Preservation – existing tree adjacent to the mixed-use area shall be preserved in place.	The existing Oak tree adjacent to the mixed-use area will be preserved in place.
	2B. Preserve trees as described in Municipal Code Chapter 12.32.	Trees preservation will comply with Chapter 12.32 of the municipal code.
	3. Ensure strong connection between commercial/non-residential and public gathering place.	A publicly accessible plaza will be designed to interface and integrate with the commercial space.
D. General Specifications	1. Primary entrances for new buildings should be oriented toward street.	Building adjacent to Monterey Road will have front doors facing the street.
	2. Parking for new uses should be located behind buildings with limited or no visibility from streets.	Parking for the new uses will be located within the project and will be screened from Monterey Road.
	3. Primary access to/from rear parking shall be provided via driveways located at side streets to the greatest extent possible.	Parking will be located throughout the project, and it will be focused on side streets to the greatest extent possible.
	4. First floor floor-to-ceiling clear heights for non-residential uses will be 14 feet minimum.	First floor floor-to-ceiling clear heights for non-residential uses will be 14 feet minimum.
	5. Building depth for non-residential uses will be 35 feet.	Building depth for mixed use building at the southeast corner of the new intersection will be 35 feet.
D6. Urban Form Characteristics	6A. Signature design qualities and attractive architectural features, including articulated facades,	High quality design and architecture including facades, articulations and projections that create

Attachment: Applicant's BLMP Compliance Table (2254 : SR2019-0008 Preliminary Plan Review: Monterey Block Four)

Land Use Regulation Compliance Table
Block 4, 18110 Monterey Road, Morgan Hill

	projections and recessed entryways.	an attractive built environment will be implemented.
	6B. Adaptive reuse where existing buildings may have desirable characteristics.	Not applicable.
	6C. Higher intensity developments designed with sensitivity to adjacent lower intensity residential development.	Existing built environment, including the single-family home to the south, will be considered when designing new buildings along Monterey Road.
	6D. Street design balancing pedestrian and bicycle use with vehicular circulation.	A balance of pedestrian and bicyclist experience will be considered in the design of the road layout, particularly to create connections to the Public Gathering Place.
	6E. Consistent planting of street trees to provide shade and enhance character and identity.	Street tree plan will be provided.
	6F. Well designed, publicly-accessible open space.	A publicly accessible open space / plaza will be prominently featured at the entry of the project.
	7. Future development must accommodate and complete the fourth leg of the intersection with Monterey Road / Old Monterey Road.	The development will complete the 4 th leg of the intersection.
	8. Future development must provide a buffer to the adjacent railroad right of way.	An appropriate buffer to the railroad right of way is part of the design. Proposed examples can be found on sheet 3.
	9. Future development must provide internal connection between development with the block.	This development has been designed to allow for future connections throughout the block. Proposed examples can be found on sheet 4.
	10. Future development must provide commercial/non-residential component at new intersection to support new and existing residential.	A commercial component will interface with a proposed public gathering space to support new and existing residential.
E. Public Gathering Places	Project sites over 1.5 acres must provide one or more public gathering places such as plazas, courtyards and parks.	A public gathering space, in the form of a public plaza, is proposed adjacent to the mixed-use building and the new intersection. See proposed design on Sheet 2.
	1. <u>Location</u> : The public gathering space must be located close to pedestrian activity, along streets, or where pathways intersect.	The public plaza will feature prominently at the southeast corner of the new intersection which is where paths and roads connect to create a highly visible and accessible gathering place
	2. <u>Activity</u> : For public gathering places incorporated into mixed use development with ground floor commercial uses, active ground	The plaza will be designed to interface with the ground floor commercial space and will help to activate the plaza as a gathering place for the block.

Land Use Regulation Compliance Table
Block 4, 18110 Monterey Road, Morgan Hill

	floor uses must be located along the edge of a courtyard and plazas.	
	3. <u>Visibility and Access:</u> Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.	The plaza will open to a public sidewalk and the commercial space along the project frontage.
	4. <u>Seating:</u> Usable open spaces must include well designed seating, such as seat walls, free standing elements, fixed and moveable seating, and other seating options.	The plaza will be designed as a gathering place with well-designed seating.
	5. <u>Year Round Use:</u> Open spaces must be usable year-round with features such as awning, wind breaks, sun shades and umbrellas or other similar features that provide shelter from the elements.	The plaza will be designed for year-round use with design features meant to encourage the use of the plaza throughout the year.
	6. <u>Specimen Tree:</u> Incorporate existing specimen trees into design of public gathering space.	The plaza will incorporate the existing Live Oak tree specimen.
II. Subsequent Approvals	A1. Zoning Code Section 18.30.050 requires a Zoning Amendment to establish a PD Master Plan to be required.	The project will establish a PD Master Plan as required.
	A2. The PD Master Plan shall be consistent with the approval of BLMP PD and must plan for the future development and integration of all parts of the block.	The project will plan for future developments and be consistent with the BLMP PD.
	B. A proposed development must receive a Design Permit as required by Section 18.108.040. All development and land uses within the BLMP PD shall be consistent with the approved PD Master Plan.	The project will obtain a Design Permit.

Substantial Public Benefit Defined

18.30.050.H. PD Master Plans

8. **Substantial Public Benefit Defined.** When used in this section, “substantial public benefit” means a project feature not otherwise required by the Zoning Code or any other provision of local, state, or federal law that substantially exceeds the City’s minimum development standards and significantly advances goals of the General Plan. A project must include one or more substantial public benefits to be rezoned as a planned development. The public benefit provided shall be of sufficient value as determined by City Council to justify deviation from the standards of the zoning district that currently apply to the property. Examples of substantial public benefits include but are not limited to:
- a. Housing that is affordable to lower-income households.
 - b. Public plazas, courtyards, open space, and other public gathering places that provide opportunities for people to informally meet and gather.
 - c. New or improved pedestrian and bicycle pathways that enhance circulation within the property and connectivity to the surrounding neighborhood.
 - d. Green building and sustainable development features that substantially exceed the city’s minimum requirements.
 - e. Preservation, restoration, or rehabilitation of a historic resource.
 - f. Increased transportation options for residents and visitors to walk, bike, and take public transit to destinations and reduce greenhouse gas emissions.
 - g. Publicly accessible parks and open space beyond the minimum required by the city or other public agency.
 - h. Habitat restoration and or protection of natural resources beyond the minimum required by the city or other public agency.



**CITY AGRICULTURAL PRESERVATION
PROGRAM POLICIES, PRIORITIES,
AND POTENTIAL TRANSFER OF
DEVELOPMENT RIGHTS (TDRs)
ITEM 9**



Considerations for City Council



- Continue acquiring ACEs in Priority Conservation Area
- Focus ACE acquisition – large farms and greenbelt
- Amend UGB – establish community planning process
- Suspend stay-ahead provision until UGB / ACE prioritization process concludes
- Reconsider implementation of Ag TDR program

History of Preservation and Conservation



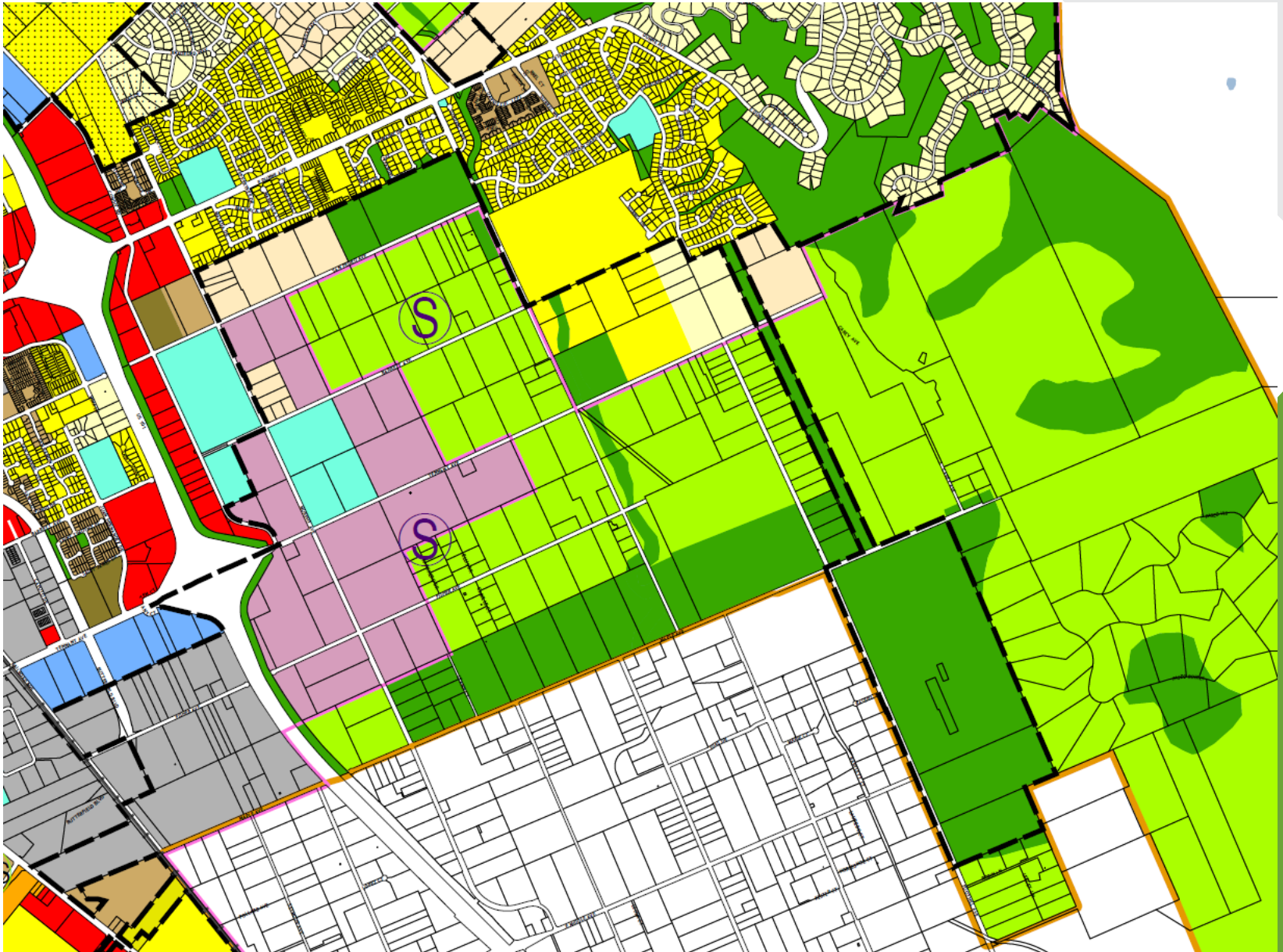
1. Transfer of Development Rights since 1981; over 500 acres of hillside and viewshed preserved from development
2. One of only 3 cities, countywide, member of Habitat Conservation Plan raising significant funding for wildlife habitat conservation
3. Ag Preservation program; requiring conversion mitigation, Ag Conservation easement acquisition; over \$4 Million committed
4. Model Water conservation program

Ag Preservation Key Policies



- Priority conservation area; General Plan
- 1:1 mitigation for any ag conversion of ag land inside of City
- Ag Mitigation in-lieu fee established via appraisal and adopted
- Stay-Ahead conservation effort required
- Exempt Ag Preservation Set-aside allotments created by Measure "S"; 300 total, 35 per year max

Greenbelt



City of Morgan Hill

E Dunne Ave

USA

Highway 101

Tennant Ave

UGB

Barrett Ave

Murphy Ave

Fisher Ave

Hill Rd

Maple Ave

San Martin

**Priority
Agricultural
Conservation
Area**

33.6 ac

37 ac

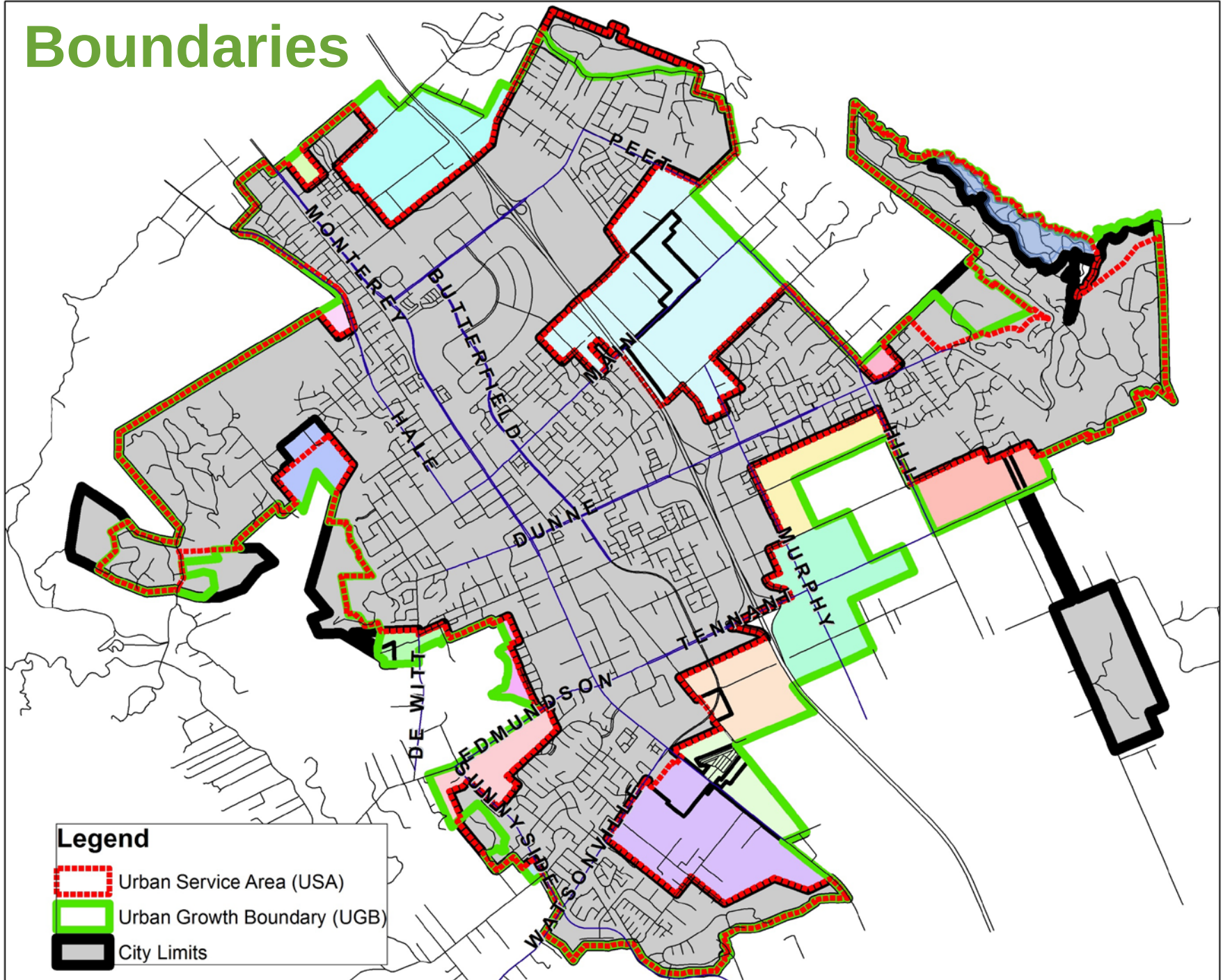
12.5 ac

City ACE
Areas

Potential
ACE Area

UGB = Urban Growth Boundary USA = Urban Service Area ACE = Agricultural Conservation Easement

Boundaries



Ag Conservation Easement (ACE) TDR Program



- Up to 35 per year (already assumed in allotment competition process for 2019)
- Developer identifies eligible farm land in Priority Conservation area and agrees to acquire easement
- City assists to provide conservation easement document
- Easement requires “stewardship fee” to benefit permanent “Ag Trust” entity
- City recognizes Transfer of Development Rights (TDRs) to Developer inside of City boundary
- City awards 6 allotments per ACE acre; City gains 6 acres annually

Ag TDR Auction



- Auction unused allotments at the end of each calendar year to raise dollars for City initiated ACE acquisition (approx. \$700,000 per year/35 allotments)
- Set base bid, and allow bidding to produce maximum benefit
- Mitigate speculation to limit resale of exempt allotments
- Allotments expire within 3 years if not used to limit spiking
- Credits cannot be used to mitigate for Ag land conversion

Considerations for City Council



- Continue acquiring ACEs in Priority Conservation Area
- Focus ACE acquisition – large farms and greenbelt
- Amend UGB – establish community planning process
- Suspend stay-ahead provision until UGB / ACE prioritization process concludes
- Reconsider implementation of Ag TDR program

Questions





COMMITTEE FOR
GREEN FOOTHILLS

Item # 9
AGENDA DATE: 04/03/19
SUPPLEMENT # 1

Wednesday, April 3, 2019

Mayor Rich Constantine and City Council Members
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

Re: Agenda Item 9 – Provide Direction Regarding Agricultural Conservation Program

Dear Mayor Constantine and Council Members,

At your Annual Goal Setting Workshop and at your February 6, 2019 meeting, Council indicated its desire to continue working with your regional partners on the City's agricultural mitigation program¹ and preservation strategy as well as the future of the Agricultural Priority Conservation Area (i.e. the Southeast Quadrant).

It is our understanding from some of those partners that an initial discussion has taken place and that further discussions are planned. Committee for Green Foothills (CGF) applauds this initial effort to improve collaboration with these key stakeholders. On-going, good faith discussions could result in Council actions helping to address these partners concerns with the City's agricultural mitigation program and preservation strategy. Ultimately, the collaboration could enhance the City's agricultural preservation endeavors, one of your 2019-2020 strategic priorities.

To this end, CGF urges you to continue with these discussions before taking any further action related to your agricultural mitigation program, agricultural preservation strategy, and the Agricultural Priority Conservation Area. This will ensure a more grounded framework and approach to future decisions on these major issues that will be most beneficial to the City in the

¹ The City Staff Report erroneously states that the City's Agricultural Mitigation Program is the only agricultural mitigation program in Santa Clara County. The City of Gilroy adopted an [Agricultural Mitigation Program](#) in 2004. It was revised in 2016 to remove the option of the in-lieu fee as it did not reciprocate in equivalency to the City and its residents, and to attain 1:1 equivalency via this option would be infeasible and posed the highest burden on staff to implement among the Policy's options.

long-term. Should the City wish to continue acquiring agricultural parcels in the interim, it should do so in full consultation and participation from the outset with the regional land trusts.

Thank you for your consideration of these comments.

Sincerely,

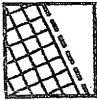
A handwritten signature in dark ink, appearing to read "Julie Hutcheson", with a stylized flourish at the end.

Julie Hutcheson
Director of Impact

**POLICY REGARDING
URBAN GROWTH BOUNDARIES AND OTHER LONG TERM BOUNDARIES**

1. LAFCO shall recognize any urban growth boundary, urban limit line, greenline, greenbelt boundary, or other boundary adopted by a city and/or approved by voter initiative to define the limits of its urban development.
2. LAFCO shall consider these boundaries when reviewing relevant proposals, including: city annexations or reorganizations which LAFCO retains the authority to review pursuant to Government Code Section 56826, urban area amendments, sphere of influence amendments, and "out-of-agency" extension services.
3. LAFCO shall discourage proposals which are inconsistent with an adopted urban growth boundary.

Adopted April 12, 1999



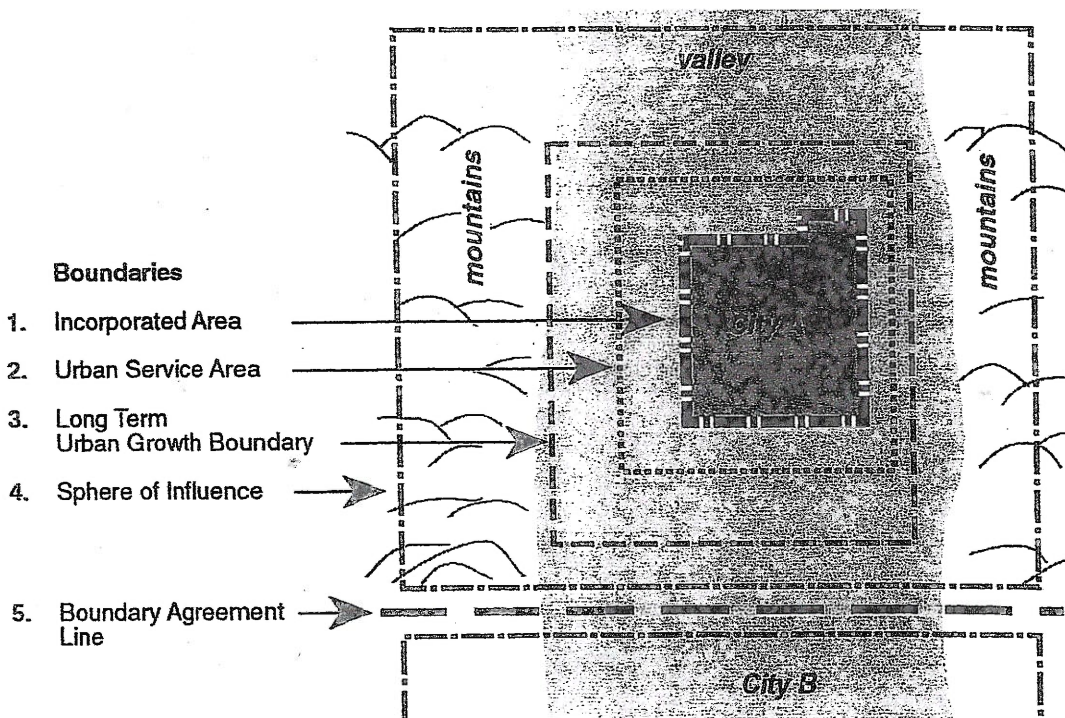
Growth and Development

Countywide Issues and Policies

Glossary of Jurisdictional and Growth Management Boundary Terms

Boundary	Definition / Description
1. Incorporated Area Boundary	"City limits"; Delineates lands currently annexed to city
2. Urban Service Area (USA) Boundary	Delineates areas currently provided with urban services, facilities, and utilities or proposed to receive such services within 5 years
3. Long Term Urban Growth Boundary (UGB)	Delineates areas appropriate for and likely to be needed for urban purposes within the next 20 years
4. Sphere of Influence (SOI) Boundary	In Santa Clara County, generally defined as city's planning area (i.e. area covered by general plan); often includes hillside areas the city has designated for non-urban uses and does not intend to provide with urban services. (State defines as the probable ultimate physical boundaries and service area of the city.)
5. Boundary Agreement Line	Delineates limits beyond which a city will not be allowed to annex territory.

Hypothetical Relationships Among Jurisdictional and Growth Management Boundaries





Small Cell Design Standards

Item #10



Recommendations



- Approve Small Cell License Agreement
- Approve Small Cell Design Standards
- Authorize the City Engineer to amend the standards as necessary

Public Hearing item (#11) related to recommendations

- Approve Zoning Code amendments related to Pole Mounted Facilities in the Right-of-Way

Background



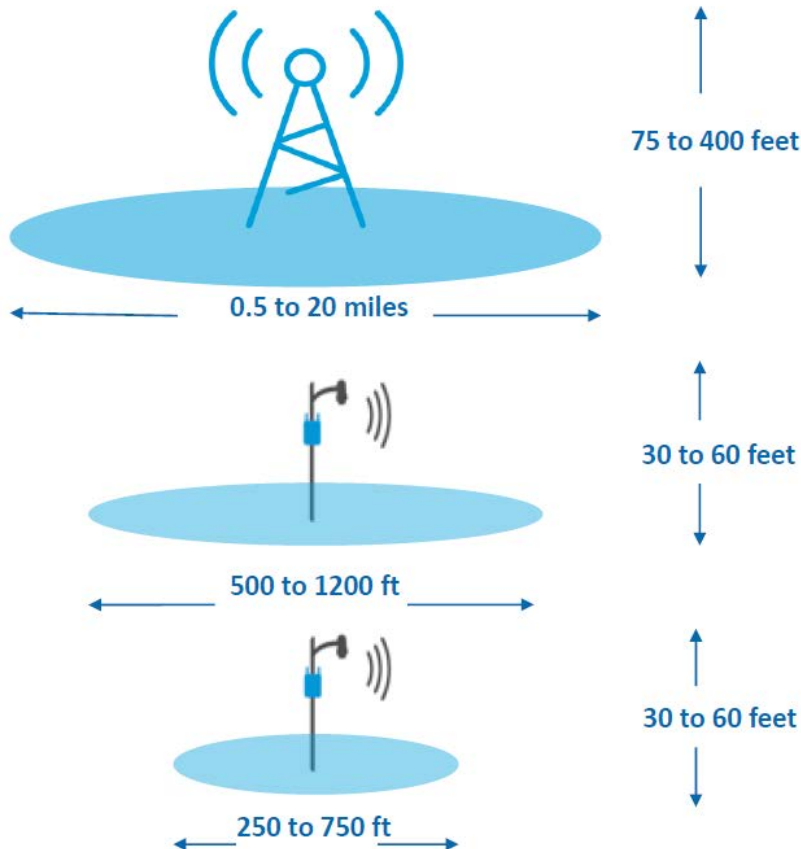
FCC Small Cell Order



Key Provisions

- Cost Based Fee Structure
- Aesthetics Standard (April 15, 2019)
 - Reasonable, deployable and scalable
- New Shot Clocks

What are Small Cells



Macrocell

Higher Height and lower frequencies, generally cover large service area

Current Small Cells (4G)

Lower height, footprint is small, increases capacity and coverage in target areas

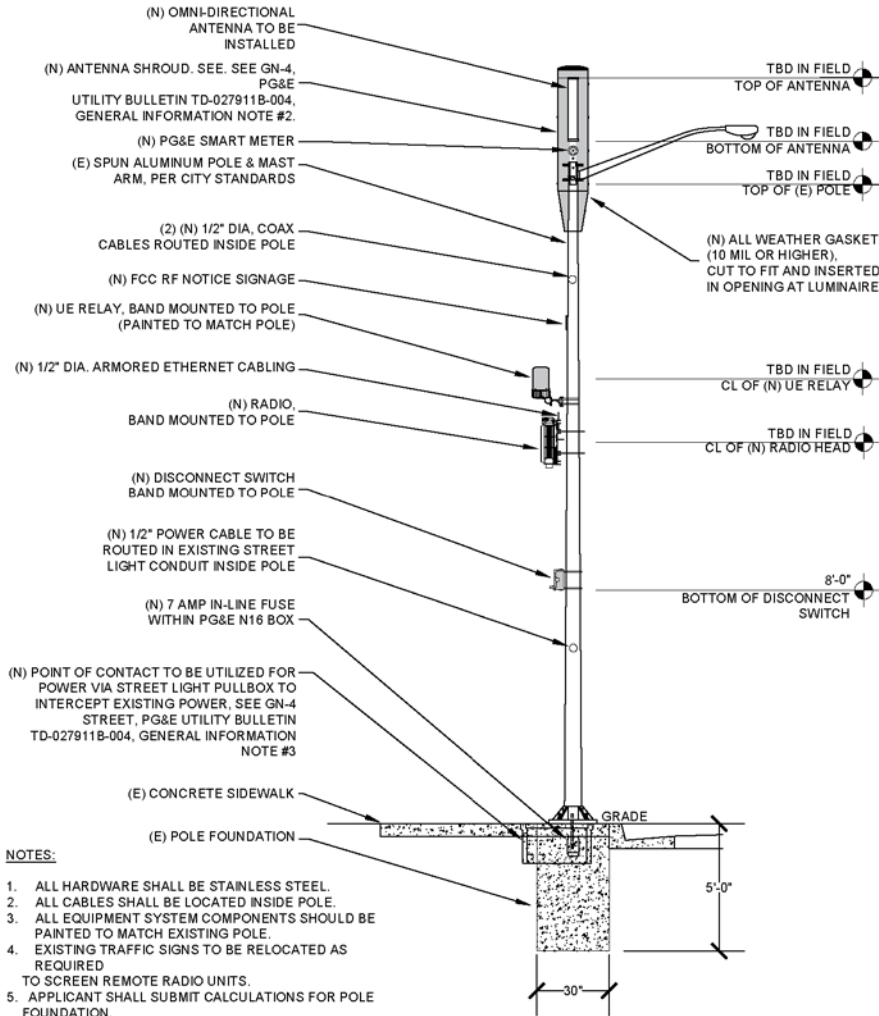
Future Small Cells (5G)

Lower height, higher frequency, footprint is smaller, will accommodate future data demand

Small Cell vs Monopole



Small Cell vs Monopole

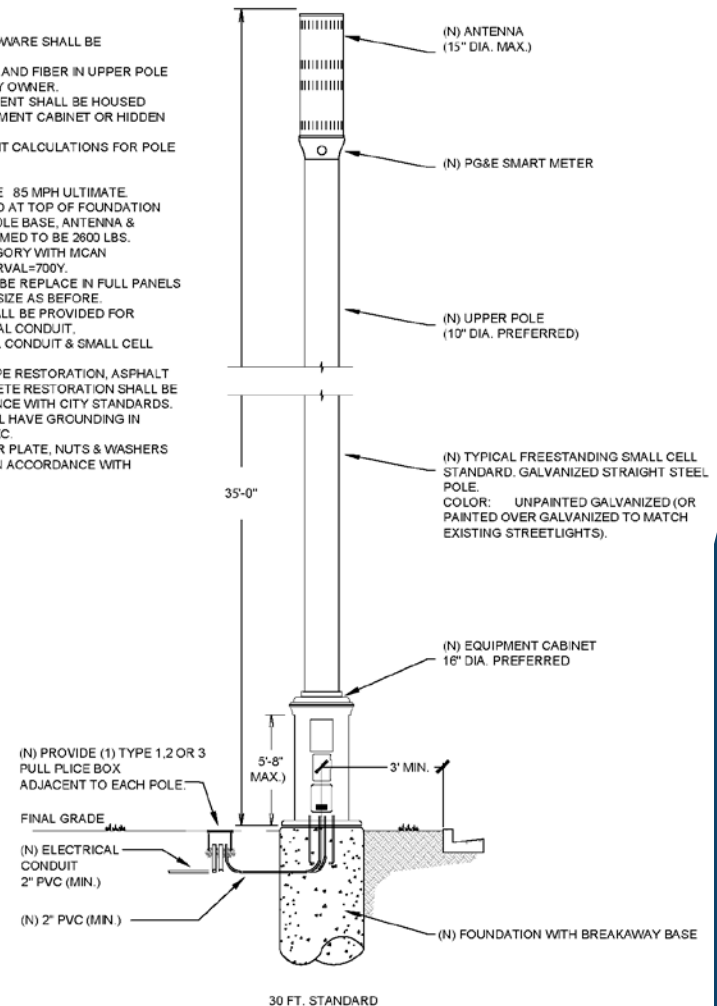


NOTES:

1. ALL HARDWARE SHALL BE STAINLESS STEEL.
2. ALL CABLES SHALL BE LOCATED INSIDE POLE.
3. ALL EQUIPMENT SYSTEM COMPONENTS SHOULD BE PAINTED TO MATCH EXISTING POLE.
4. EXISTING TRAFFIC SIGNS TO BE RELOCATED AS REQUIRED TO SCREEN REMOTE RADIO UNITS.
5. APPLICANT SHALL SUBMIT CALCULATIONS FOR POLE FOUNDATION.

NOTES:

1. ALL ANCHOR BOLT HARDWARE SHALL BE CONCEALED.
2. ALL ELECTRICAL WIRING AND FIBER IN UPPER POLE SHALL BE SEPARATED BY OWNER.
3. ALL SMALL CELL EQUIPMENT SHALL BE HOUSED INTERNAL TO THE EQUIPMENT CABINET OR HIDDEN BEHIND THE ANTENNA.
4. APPLICANT SHALL SUBMIT CALCULATIONS FOR POLE FOUNDATION.
LOADS:
A. WIND LOAD SHALL BE 85 MPH ULTIMATE.
B. MAXIMUM DEAD LOAD AT TOP OF FOUNDATION (INCLUDING POLE, POLE BASE, ANTENNA & EQUIPMENT) IS ASSUMED TO BE 2600 LBS.
C. AASH TO RISK CATEGORY WITH MCAN RECURRENCE INTERVAL-700Y.
5. ANY HARDSCAPE SHALL BE REPLACE IN FULL PANELS OF SAME TYPE, COLOR, SIZE AS BEFORE.
6. SEPARATE CONDUIT SHALL BE PROVIDED FOR STREETLIGHT ELECTRICAL CONDUIT, SMALL CELL ELECTRICAL CONDUIT & SMALL CELL CARRIER FIBER.
7. ALL CONDUIT, LANDSCAPE RESTORATION, ASPHALT RESTORATION & CONCRETE RESTORATION SHALL BE INSTALLED IN ACCORDANCE WITH CITY STANDARDS.
8. ALL FOUNDATIONS SHALL HAVE GROUNDING IN CONFORMANCE WITH NEC.
9. ANCHOR BOLTS, ANCHOR PLATE, NUTS & WASHERS SHALL BE GALVANIZED IN ACCORDANCE WITH ASTM A153.



Small Cell Design Standards



Purpose: Provide clarity and guidance on pole attachments

- Size of equipment
- Color aesthetics
- Noise
- Consistency with Americans with Disabilities Act
- Establish maximum heights
- Appropriate warning labels
- Power shut-off

Small Cell License Agreement



Formalizes

- Term
 - 1 year option available
- Location(s)
- Rent

New Process for Small Cells



1. Contact Community Services regarding Small Cell License Agreement
 - Identify pole(s) for Small Cells
 - Applicant provide photo simulations and drawing for small cell pole mounting
2. Engineering Reviews using Small Cell Design Standards
3. Execute a Small Cell License Agreement
4. Applicant submits for Encroachment Permit for installation

Recommendations



- Approve Small Cell License Agreement
- Approve Small Cell Design Standards
- Authorize the City Engineer to amend the standards as necessary

Public Hearing item directly related

- Approve Zoning Code amendments related to Pole Mounted Facilities in the Right-of-Way

What's Next



Telecommunications Work Program



Policy

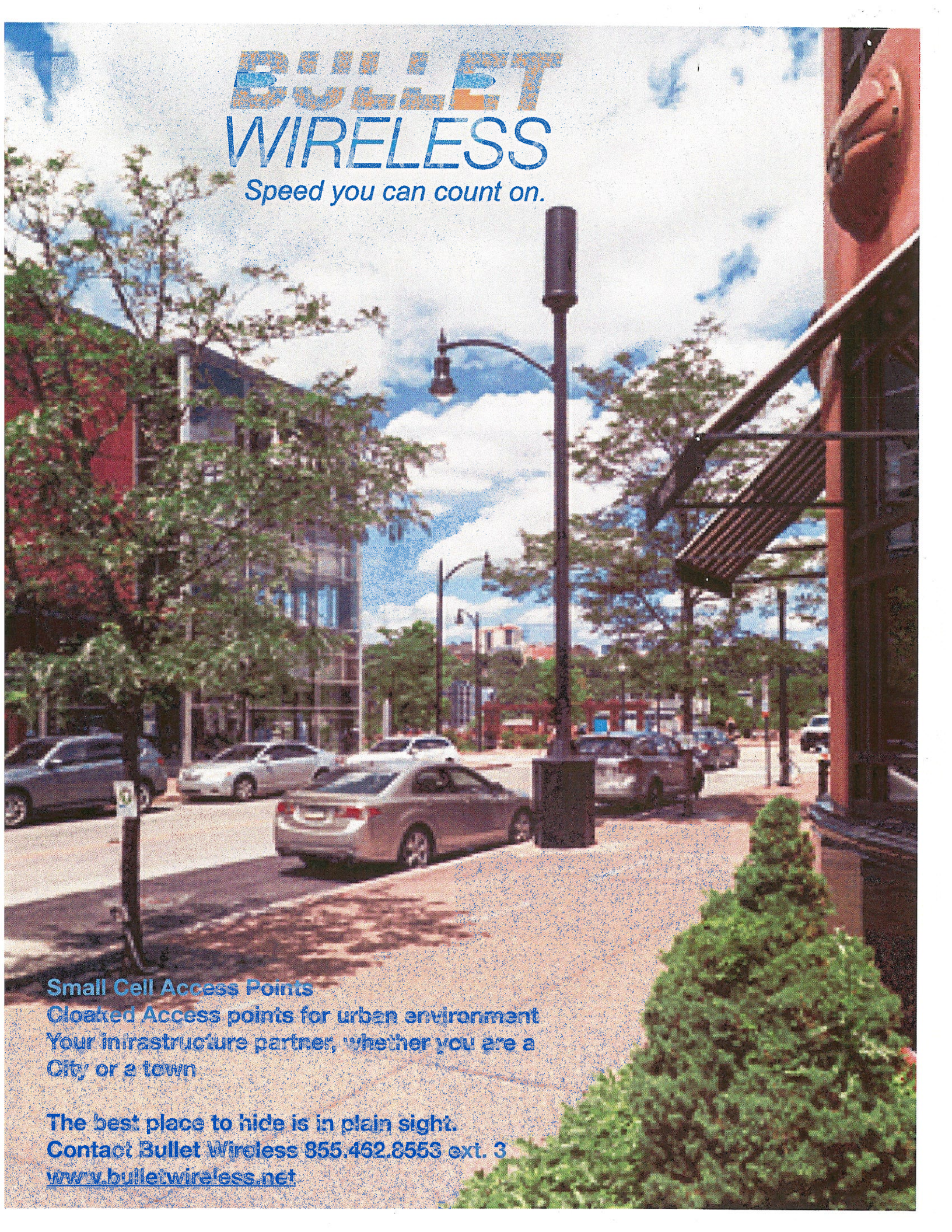
- *Acceptance of Design Standards*
- *Amend Zoning Code related to Wireless Communications Facilities*
- Dig Once Policy Adoption

Program

- *Small Cell License Agreement*
- *Encroachment Permit for Small Cells in Public Right of Way*

Action

- Request for Proposals (RFP)



BULLET WIRELESS

Speed you can count on.

Small Cell Access Points

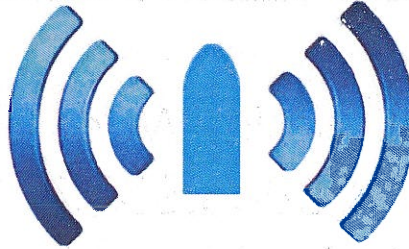
**Cloaked Access points for urban environment
Your infrastructure partner, whether you are a
City or a town**

The best place to hide is in plain sight.

Contact Bullet Wireless 855.462.8553 ext. 3

www.bulletwireless.net

NOTICE



SITE NAME: Downtown Morgan Hill
SITE NUMBER: 20-19
FCC TOWER ID: N/A

Owned By: Bullet Wireless, Inc.
Telephone: 855.462.8553

www.bulletwireless.net
sales@bulletwireless.net
operations@bulletwireless.net

NO TRESPASSING

BULLET WIRELESS

Speed you can count on.



Small Cell Access Points

**Cloaked Access points for urban environment
Your infrastructure partner, whether you are a
City or a town**

**The best place to hide is in plain sight.
Contact Bullet Wireless 855.462.8553 ext. 3**



Item #11

ZA2019-0007: Pole-Mounted Wireless Communications Facilities in the Public Right-of-Way



Recommendation



Adopt an Ordinance amending regulations
for Wireless Communications Facilities
regarding Pole Mounted Wireless
Communication Facilities in the
Public Right of Way



Additional Changes

Outlining substantial change definition for
monopoles in the public right-of-way



Additional Changes



Removing development standards for wireless facilities in the public right-of-way

Recommendation



Adopt an Ordinance amending regulations for
Wireless Communications Facilities regarding
Pole Mounted Wireless Communication
Facilities in the Public Right of Way

Questions?



MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

April 2, 2019

VIA EMAIL

Mayor Rich Constantine
Mayor Pro Tem Rene Spring
Council Members Larry Carr,
Yvonne Martinez Beltran and John McKay
City Council
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Re: City of Morgan Hill Draft Small Cell Guidelines
Council Agenda Item 11, April 3, 2019

Dear Mayor Constantine, Mayor Pro Tem Spring and Council Members:

We write on behalf of Verizon Wireless regarding the draft *Small Cell Guidelines* dated March 20, 2019 (the “Draft Guidelines”). Verizon Wireless appreciates numerous revisions to the Draft Guidelines by staff in response to prior comments. However, several provisions contradict state law, including Public Utilities Code Section 7901 granting telephone corporations the right to place their equipment in the right-of-way. The City should continue to work with Verizon Wireless to ensure that small cell design standards are technically feasible, as required by the recent Federal Communications Commission (“FCC”) order addressing small cell approval criteria.

The FCC allows cities until April 15, 2019 to publish their small cell standards, and Verizon Wireless is willing to hold any small cell applications until after April. We urge the Council to defer action on the Draft Guidelines, and direct staff to make needed revisions.

To expedite deployment of small cells and new wireless technology, the FCC adopted its September order to provide guidance on appropriate approval criteria for small cells. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018). Among other topics, the FCC addressed aesthetic criteria for approval of qualifying small cells, concluding that they must be: “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3)

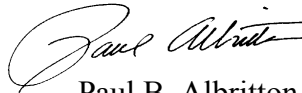
objective and published in advance.” *Id.*, ¶ 86. “Reasonable” standards are “technically feasible” and meant to avoid “out-of-character deployments.” *Id.*, ¶ 87. “Objective” standards must “incorporate clearly-defined and ascertainable standards, applied in a principled manner.” *Id.*, ¶ 88.

The Draft Guidelines impose a major permit hurdle for new poles (monopoles owned by a telecommunication company) by requiring a use permit and conformance with Zoning Code standards. Draft Guidelines, p. 10. However, as the use of the right-of-way is already granted by Public Utilities Code Section 7901, a use permit is inappropriate. Use permits also introduce subjectivity to the process through notice, public comment, hearings and discretionary findings, whereas the FCC requires objective review of small cells. Zoning Code Chapter 18.96, *Wireless Communications Facilities*, includes numerous standards that are subjective, or technically infeasible and unreasonable for small cells, and those standards cannot apply as they would be preempted by the FCC’s order. Further, the Draft Guidelines make no provision for permitting small cells on joint utility poles. A discretionary use permit cannot be required for any right-of-way facility, and the appropriate approval is an encroachment permit issued administratively. The Draft Guidelines should be revised accordingly.

With respect to location, the Draft Guidelines prefer attachment to City-owned street light or traffic signal poles, and require only an encroachment permit for these installations. Draft Guidelines, p. 10. However, this preference contradicts California Government Code Section 65964(c) barring the City from limiting wireless facilities to sites owned by particular parties. It also overlooks Verizon Wireless’s right to use existing joint utility poles as a member of the Northern California Joint Pole Authority. Section 7901 grants telephone corporations a statewide right to use the right-of-way, including joint poles and new poles. Location preferences should simply favor existing structures of any ownership over new poles. We suggest a standard that new poles are allowed only if there is no existing infrastructure within 200 feet that can support a small cell.

Verizon Wireless appreciates the City’s collaborative approach to revising the Draft Guidelines. The provisions regarding permitting and location preferences must be revised to avoid conflict with state and federal law. We urge the Council to decline action on the Draft Guidelines, and direct staff to make needed revisions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul Albritton", written in a cursive style.

Paul B. Albritton

cc: Donald Larkin Esq.
John Lang



KRISTINA D. LAWSON
PARTNER
DIRECT DIAL (925) 746-8474
DIRECT FAX (925) 746-8490
E-MAIL klawson@hansonbridgett.com

April 2, 2019

VIA ELECTRONIC MAIL

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rene.spring@morganhill.ca.gov
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Honorable Mayor Constantine and Members
of the City Council
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Request for Postponement; April 3, 2019 City Council Agenda Item No. 13: Resolution
Updating the City's Select Development Impact Fees

Dear Honorable Mayor Constantine and City Councilmembers:

This office represents a broad coalition of public and private home builders as well as local land owners. On behalf of our client, we have reviewed the Staff Report prepared for Agenda Item No. 13 for the City Council's April 3, 2019 meeting, to (1) adopt of the Development Impact Fee Update Study prepared by Willdan Financial Services and dated January 31, 2019 ("Nexus Study") and (2) adopt a resolution "updating the City's select Development Impact Fees." We have also preliminarily reviewed the Nexus Study.

To be clear, and what the Staff Report fails to simply state, the proposed fee "update" to "select" Development Impact Fees proposed for adoption are in fact, substantial fee increases that include for single family dwellings, increases for public facilities from \$552 to \$3638, for water from \$3,902 to \$8,914, and for parks from \$5,790 to \$7,201 (the originally proposed increase based on the Nexus Study was to \$14,402). Traffic impact fees will increase from \$2,006 to \$3,107.

Also omitted from the Staff Report and Nexus Study is a direct comparison of the total proposed fee amounts and maximum justified fee amounts, against the current fees, thereby minimizing the effect of the proposed actions. Significantly, the Nexus Study purports to justify maximum increases of even more, reflecting an increase above current fees by 38% for single family dwelling units and 28% for multi-family dwelling units. The total maximum residential fee justified by the Nexus Study is \$53,405 for a single family dwelling unit, \$41,551 for a multi-family dwelling unit, and \$35,313 for a senior/downtown/accessory unit.

We write to respectfully request that you postpone this item until such time as this council, all affected stakeholders and members of the public have had a meaningful opportunity to closely

examine the legal adequacy of the justification for the fee increases provided by the Nexus Study and as necessary, require additional data and analysis. In light of the current housing crisis, it is vital that the City also evaluate the long-term effect the proposed fee increases will have on the feasibility of developing any new housing as envisioned under the General Plan, and on the ever-increasing costs of existing housing. When combined with the recent increase in Below Market Rate requirements, which now require 15% (up from 8%) of residential projects to be affordable units, and the increase in the In-Lieu Housing Fee from \$12.92 to \$19.70 per habitable square foot of residential building area of market-rate housing (also ignored in the Staff Report), the proposed development impact fee increases will have a devastating impact on the ability to develop any new housing whatsoever.

As summarized below, it is clear from even a preliminary review of the Nexus Study that it does not adequately establish and evidence an equitable relationship between the services and facilities to be funded by the proposed fees and the impacts resulting from future development, and therefore, does not satisfy the requirements of the Mitigation Fee Act, Government Code Section 61000 *et seq.*

The legal requirements for the enactment of development impact fees are set forth in the Mitigation Fee Act and were established by the Legislature specifically “in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects.” (*Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 691.) To increase development impact fee amounts, the Mitigation Fee Act requires the City to satisfy all of the following requirements: (1) Identify the purpose of the fee; (2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified; (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

First, the Nexus Study lacks basic information to support the requisite need for the proposed fees. More specifically, the Nexus Study does not adequately identify the new facilities and facility improvements to be funded from the fee increases, and demonstrate that such facilities and improvements will be required as a result of new development. For example, the parks fee analysis does not specifically identify the 40.40 acres of parkland to be acquired improved to justify the fee. In addition, the planned facilities listed in Table 3.3 of the Nexus Study are described as those planned through the 2035 planning horizon but the Nexus Study fails to establish that the additional facilities and improvements are required to accommodate future growth. It appears to assume, without any support, that existing facilities have no additional capacity to accommodate growth.

At a minimum, the Nexus Study must be supplemented and revised to identify the current and projected level of service for each public facility and how the additional facilities or improvements will be needed to accommodate future growth. This should be done by quantifying the projected burden that new development will place on the City's infrastructure, and allocating the costs of providing the needed public services between the existing and new populations

Second, it is not clear that the Nexus Study utilizes accurate growth projections to serve as the basis of the City's anticipated future public facilities and infrastructure needs. The Nexus Study appears to rely on imprecise data to derive population and land use assumptions. Without

additional supporting information, and evidence of consistency with the City's existing plans, the City's speculative determinations regarding future growth cannot support the required finding of the anticipated need created by new development. The drastic increases purportedly justified by the Nexus Study, warrant a closer examination of the assumptions relating to residential development densities, land uses, and populations.

As a practical matter, while the Nexus Study is generally based on the projected development to 2035 under the General Plan, the effect of the fee increase will essentially render those projections unachievable—particularly when combined with the recently increased BMR requirements—and exacerbate existing impediments to housing development, contrary to every statewide and regional policy and mandate on housing.

Finally, we note that due to the lack of outside sources to fund the operation and maintenance of the new parks, the park impact fee as initially proposed was reduced by half. The Nexus Study indicates that non-fee funding is also needed for Public Facilities and yet no corresponding reduction appears to be proposed for the proposed Public Facilities fee. Once adopted, the Nexus Study presumably will provide the basis for further increases up to the maximum amounts established therein and yet it is not clear when, how and on what basis the City may adopt further increases.

Accordingly, we urge the council to postpone its consideration of the proposed increase in development impact fees to allow additional time to ensure the legal adequacy of the Nexus Study.

We appreciate your time and consideration, and look forward to providing detailed comments once we have had an opportunity to fully evaluate the Nexus Study.

Very truly yours,



Kristina D. Lawson

KDL:rsc

EXHIBIT A – BLOCK ONE

3.c



Attachment: Exhibit A - Block One - Land Use Map (2133 : ZA2019-0001: Monterey Corridor Block One)

-  Block  Tilton Ave / Burnett Ave Re-Alignment  Preserve Historic Building for Commercial Use
-  Residential or Commercial  Commercial or Mixed-Use  Open Space Buffer

Untitled Map

Write a description for your map.

Legend

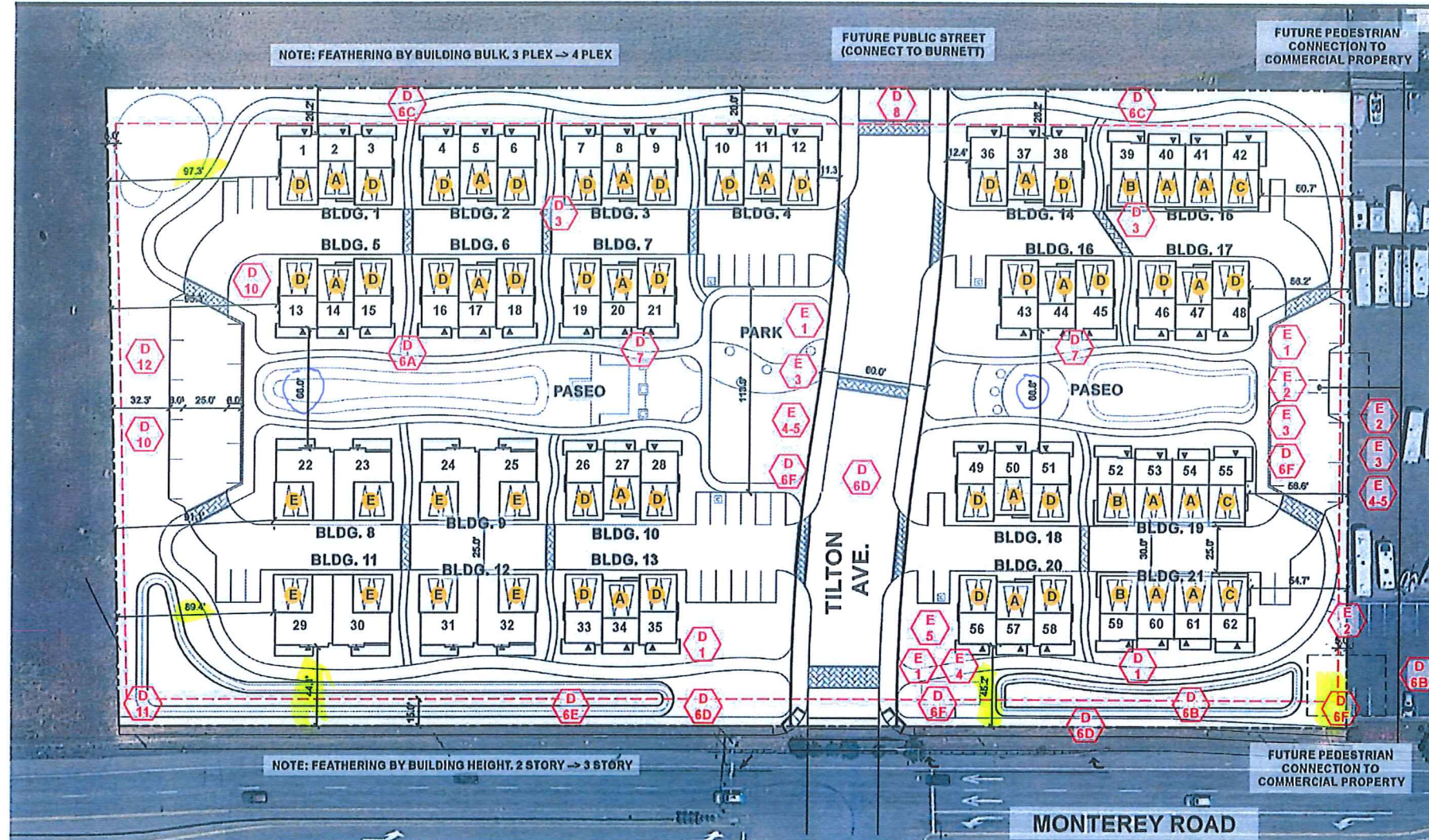
-  Ann Sobrato High School
-  D.R. Horton, America's Builder
-  Feature 1
-  Kawahara Nursery Inc
-  Recreational Vehicle Services
-  Tilton Ave

Google Earth

 Tilton Ave

2000 ft





DEVELOPMENT

SUMMARY & STANDARDS:

CURRENT ZONING: PUD-559
 PROPOSED ZONING: MU-F
 GROSS SITE AREA: 5.70 AC
 NET SITE AREA: 5.21 AC
 UNIT COUNT: 62 DU
 DENSITY: 11.89 DU/AC (NET)
 BLDG. COVERAGE: 26.61%
 BLDG. HEIGHT: 3-STORIES (37' MAX.)
 2-STORIES (27' MAX.)

PARKING SUMMARY

PARKING REQUIRED: 172 SPACES
 (PER RES. ATTACHED MEDIUM GUIDELINES)
 MULTI-FAMILY (54 UNITS):
 2.5 SPACES / UNIT (1 COVERED)
 + 1 GUEST SPACE / 3 UNITS
 153 (135 + 18 GUEST)

DUPLEXES/DUETS (8 UNITS)
 2.0 COVERED SPACES / UNIT
 + 1 GUEST SPACE / 3 UNITS
 19 (16 COVERED + 3 GUEST)

PARKING PROVIDED: 170 SPACES
 124 GARAGE SPACES
 46 GUEST SPACES

BUILDING SETBACKS

(REFER ALSO TO PD PLAN)
 FRONT: 15' MINIMUM
 SIDE: 5' MINIMUM
 REAR: 20' MINIMUM

ARCHITECTURAL SUMMARY

PLAN A, 2-BEDROOM: 20 DU (3-STORY)
 PLAN B, 3-BEDROOM: 3 DU (3-STORY)
 PLAN C, 4-BEDROOM: 3 DU (3-STORY)
 PLAN D, 4-BEDROOM: 28 DU (3-STORY)
 PLAN E, 4-BEDROOM: 8 DU (2-STORY)

Block One PD Plan ("BLMP") - list of Specifications:

D. General Specifications (refer to circled number on PD Plan)

D-1: Entrances to street

D-2: Parking for new uses: N/A

D-3: Access via driveways (Not on Monterey Road)

D-4 and D-5: Commercial, N/A

D-6 a. Architectural design to be met

D-6b: Building re-use being met In Jeffries' existing building

D-6c: Setbacks provided on east for future lower density, (Min. of 25')

D-6d: Added bike lane on Mry. Rd, Tilton extension complies

D-6e: Consistent Street Trees to be included

D-6f: Publicly accessible open space provided

D-8: Tilton Ave. extended for future connect to Burnett

D-9: Existing ROW and setbacks west of Monterey Rd. are sufficient for High Speed alternates

D-10: Buffer on North is in minimum of 90' to buildings with a minimum 30' of landscaping area

D-11: Location of architectural feature denoting Northern Entrance to the City

D-12: Community Gardens

E. Public Gathering Places - plaza, courtyards, paseos, open space, parks (Details shown on L/S drawings)

E-1: Locations close to park on Tilton, and internal paseos and paths

E-2: Future commercial plaza/courtyard access to internal pathways by easement and existing Bakery by easement for future gathering spot.

E-3: Visibility and access: future commercial visible from paseos which have clear view for entire length of the project, with pathway connections assured by easements and at corner of Mry. & Tilton. Include easement

Note: Two types of feathering required: On eastern series of units, by building bulk, with larger 4-plex buildings to the south and smaller 3-plex buildings to the north; on the western series of buildings by building height: three story 4-plex and 3 plex buildings toward the south, reducing to 4 sets of two - story duplex buildings on the north.

C. Commercial Provision - Apply to the adjacent corner Parcel (separate sheet)

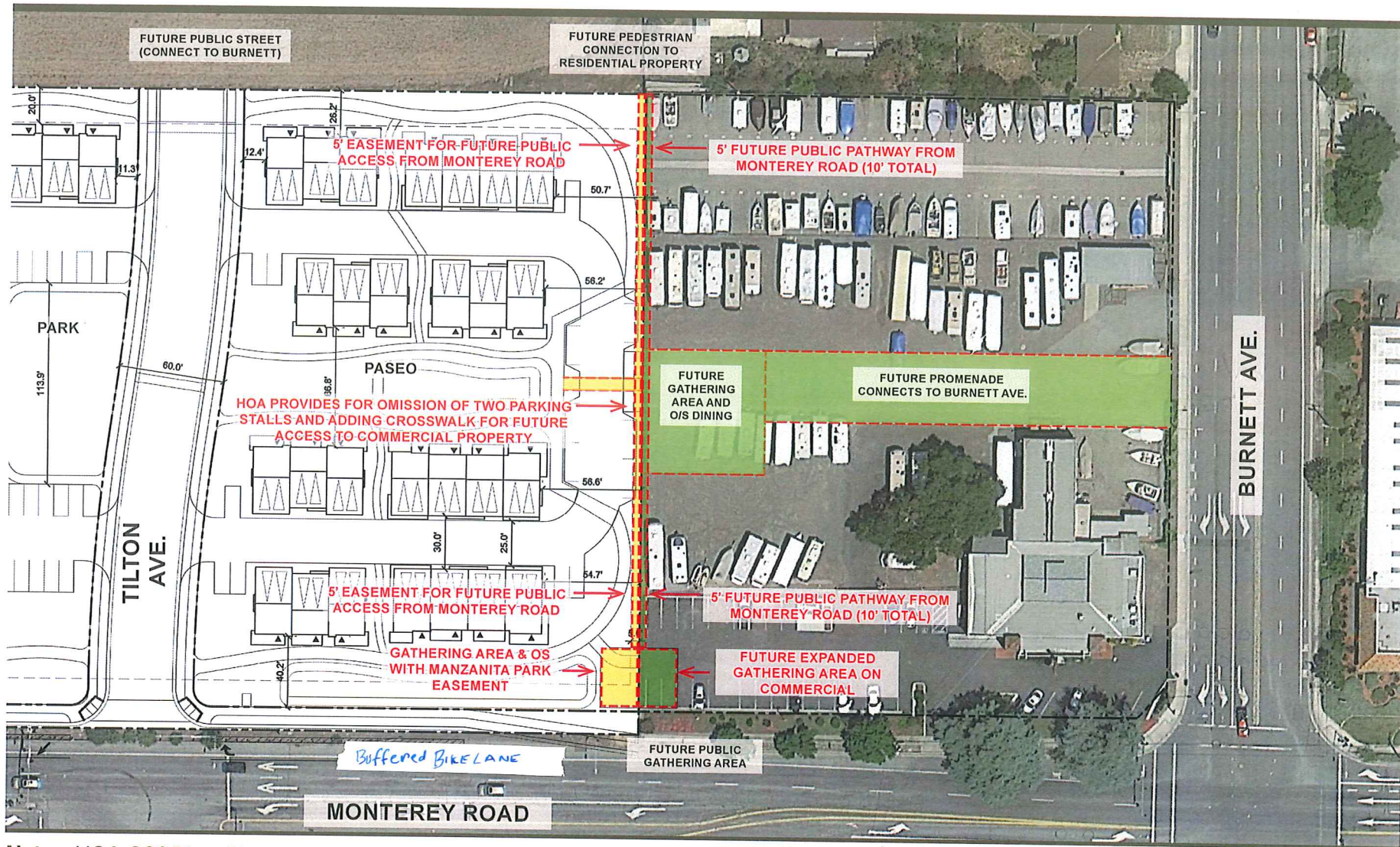
C-1: Corner Lot/Non-Residential. Commercial Uses (retail, services, office) and/or public/quasi-public uses are required. May be within a standalone building(s) or vertical mixed use building(s)

C-2: Tree Preservation: Retain existing specimen trees shall be preserved.

C-3: Preserve the existing historic building

F. Temporary use shall be a condition applied to the re-development of the commercial site

II. Subsequent Approvals are required for Zoning/PD Master Plan and Design Review, including E4-5.



Note: HOA CC&R's will provide for future omission of two parking stalls and adding a cross walk to provide access for owners from the project to the future public gathering area and outside dining on the commercial property. This area will include a "transition zone" from private to public at the proposed easement area.

MANZANITA PARK IN MORGAN HILL, CA
NORTH CORRIDOR INVESTORS, LLC

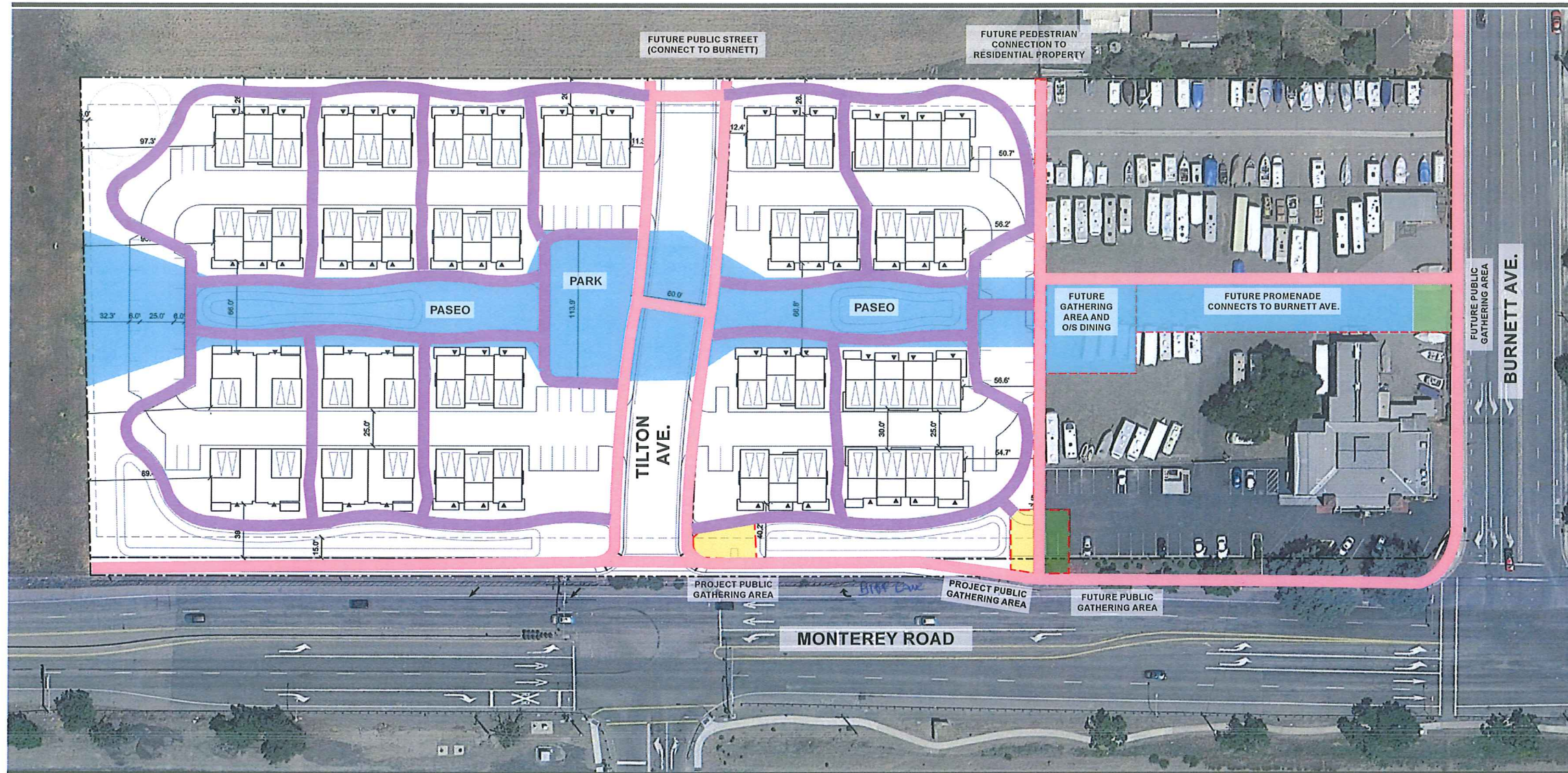
BLOCK ONE COMMERCIAL LOT

DAHLIN

DATE 02-19-2019
JOB NO. 297-051

5865 Owens Drive
Pleasanton, CA 94568
925-251-7200





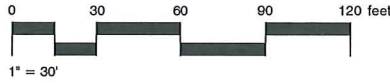
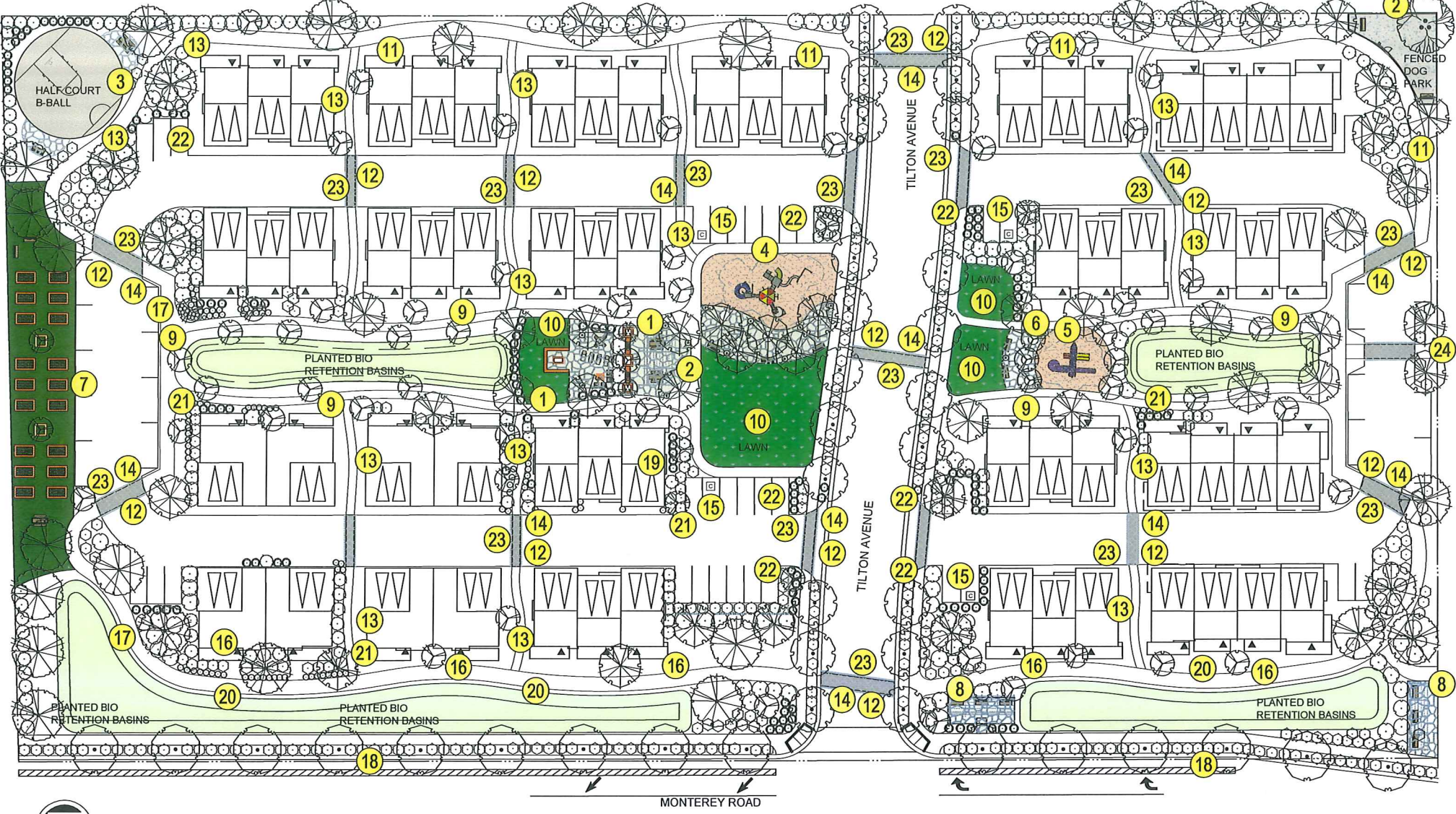
- | | | | |
|---|-------------------------------|---|-----------------|
|  | VIEW CORRIDOR |  | PUBLIC PATHWAY |
|  | PROJECT PUBLIC GATHERING AREA |  | PRIVATE PATHWAY |
|  | FUTURE PUBLIC GATHERING AREA | | |

RDCS PROJECT NARRATIVE

Note: See RDCS Project Narrative Questionnaire for evaluation and full description of each category item

SITE AMENITIES LEGEND

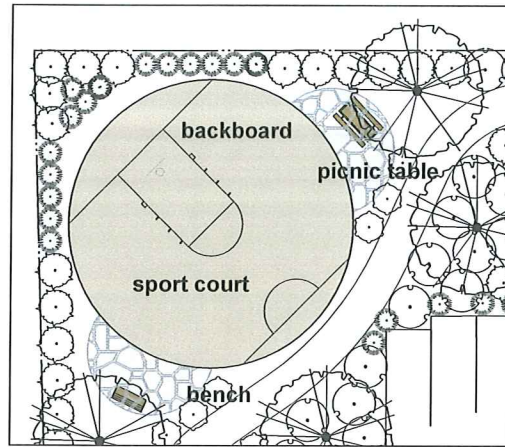
KEY	REF #	ITEM DESCRIPTION
1	6b	TIER I AMENITY: PICNIC AREA WITH BBQ GRILLS AND PICNIC TABLES
2	6b	TIER II AMENITY: SHADE ARBOR/TOT LOT AND GATHERING AREA ALONG MONTEREY ROAD
3	6b	TIER II AMENITY: HALF COURT BASKETBALL WITH TWO SEATING AREAS FOR PICNIC TABLE AND BENCH
4	6b	TIER III AMENITY: PRE-TEEN (AGES 10-12) PLAY AREA WITH 5 ACTIVITIES
5	7	AGE RELATED: KIDS (AGE 2-6) TOT LOT
6	7	AGE RELATED: SENIOR SEATING AREA ADJACENT TO TOT LOT WITH SHADE ARBORS AND BENCHES
7	7	AGE RELATED: SENIOR/ADULT COMMUNITY GARDEN WITH EIGHTY RAISED BEDS, BENCHES AND TABLES
8	8	GATHERING PLACES ALONG MONTEREY ROAD WITH SHADE ARBOR AND TRAILER BENCHES
9	10b	PRIVATE OPEN SPACE ON FRONT PORCHES OF UNITS OPENING TO PASEO
10	4a, 4b	LESS THAN 50% OF LANDSCAPE AREA CONTAINS NATURAL TURF
11	5c	7' WIDE INTERNAL BIKE PATH WITH PROJECT WITH DESIGNATED CROSSWALKS
12	6b	ENHANCED BIKE/PEDESTRIAN CROSSINGS USING TEXTURED/COLORFUL CONCRETE PAVING
13	6c	DIRECT PEDESTRIAN ACCESS TO COMMON AREA OPEN SPACE
14	6d	TRAFFIC CALMING FOR CAR AND BICYCLE SAFETY USING TEXTURED/COLORFUL CONCRETE PAVING
15	7g	4 ELECTRIC VEHICLE CHARGING STATIONS
16	1a	PRIVATE YARDS FOR FRONT PORCHES OPENING INTO PASEO AND ALONG SETBACK
17	1f	LANDSCAPE AT CORNERS OF BUILDINGS
18	3a	LANDSCAPE FRONTAGE ON MONTEREY ROAD AND TILTON AVENUE WITH STREET TREES AND PEDESTRIAN SCALE BOLLARD STYLE LIGHTS
19	3b	LANDSCAPING TO MINIMIZE BULK AND MASS OF BUILDINGS
20	3e	PUBLIC TO PRIVATE TRANSITION THROUGH LANDSCAPING
21	3f	TYPICAL LANDSCAPING OR LOW WALL SCREENING OF MECHANICAL AND UTILITIES IN FRONT YARDS
22	4f	LANDSCAPING USED TO SCREEN PARKING AREAS FROM STREETS
23	4h	SPECIAL PAVEMENT USED FOR PEDESTRIAN CIRCULATION
24	BLMP	LOCATION OF FUTURE PUBLIC GATHERING AREA



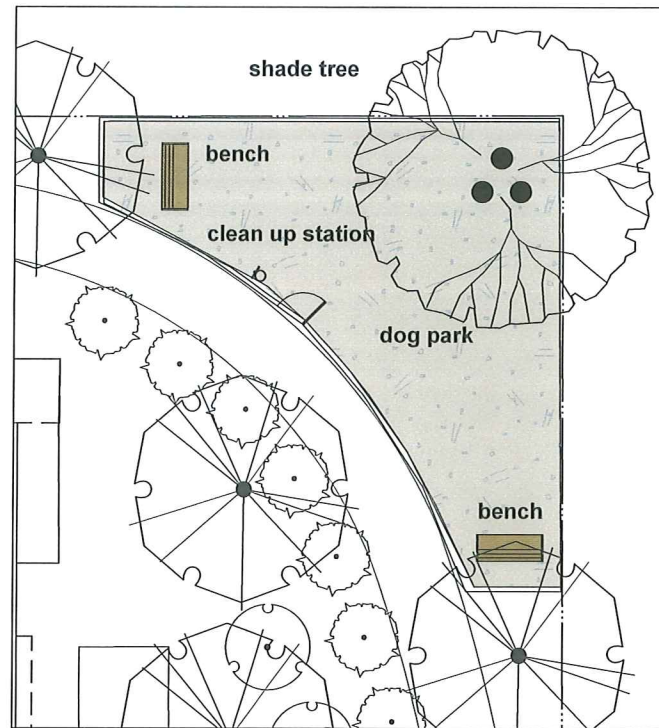
SITE AMENITIES HIGHLIGHTS

- 2010 SQ FT PLAY SPACE WITH CLIMBING STRUCTURE AND FIVE ACTIVITIES FOR 6 TO 12 YEAR OLD
- 1,340 SQ FT SEATING AREA ADJACENT TO PRE-TEEN PLAY AREA
- 900 SQ FT TOT LOT WITH 5 ACTIVITIES SUITABLE FOR 2 TO 6 YEAR OLD
- 490 SQ FT SEATING AREA ADJACENT TO TOT LOT (ALSO SENIOR AMENITY)
- 960 SQ FT OUTDOOR DINING AREA WITH TWO BBQ GRILLS AND TWO PICNIC TABLES
- 1,100 SQ FT DOG PARK
- 2,300 SQ FT HALF COURT BASKETBALL
- 460 SQ FT SEATING AREAS NEAR B-BALL COURT
- 742 SQ FT FIRE PIT AND SEATING AREA WITH TABLES/CHAIRS
- 5,560 SQ FT LAWNS AT FOUR LOCATIONS FOR FREE PLAY ACTIVITIES
- 5,700 SQ FT COMMUNITY GARDEN WITH 18 RAISED BEDS
- SHADE ARBORS FOR OUTDOOR DINING AREA
- SHADE ARBORS FOR TWO GATHERING AREAS ALONG MONTEREY ROAD
- LIGHTED BOLLARD FOR COMMON AREA ACTIVITY SPACES
- STREET TREES AND ORNAMENTAL LANDSCAPE PLANTING

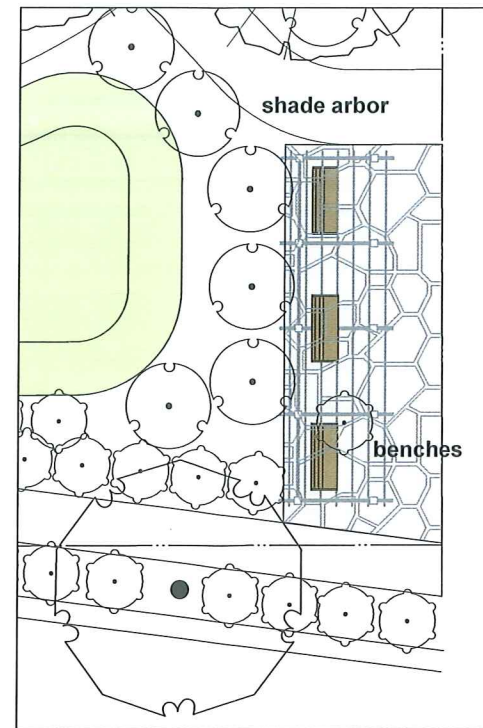




5 SMALL COURT BASKETBALL
scale $\frac{1}{16}" = 1' - 0"$



6 DOG PARK
scale $\frac{1}{8}" = 1' - 0"$

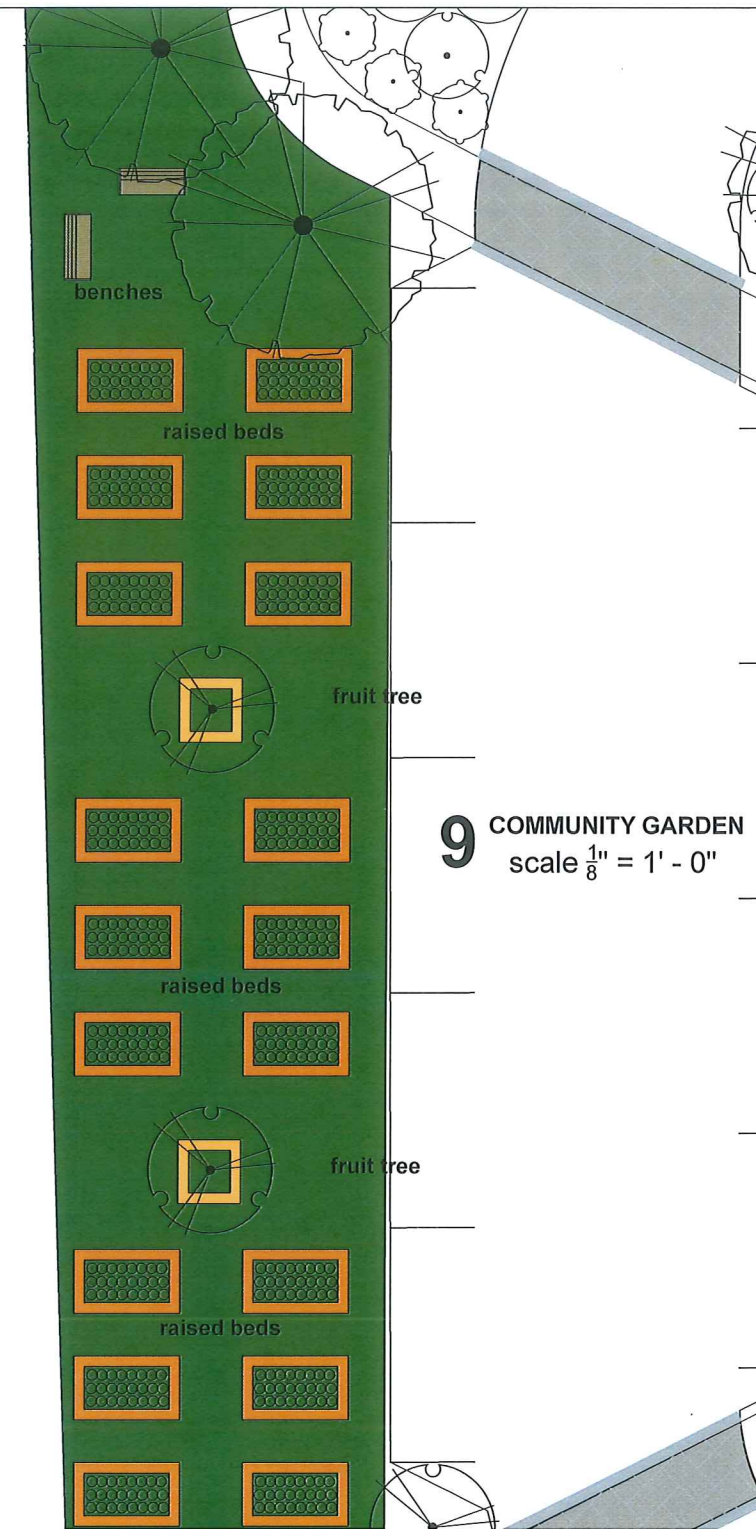
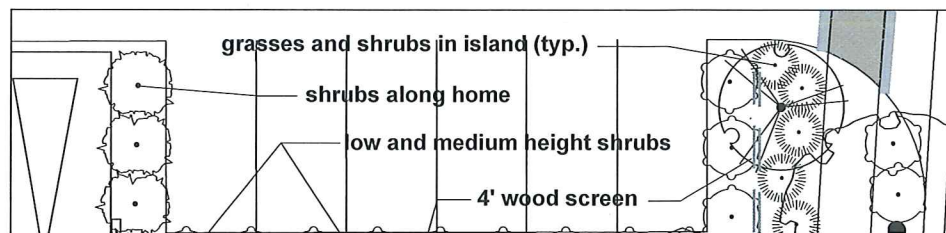
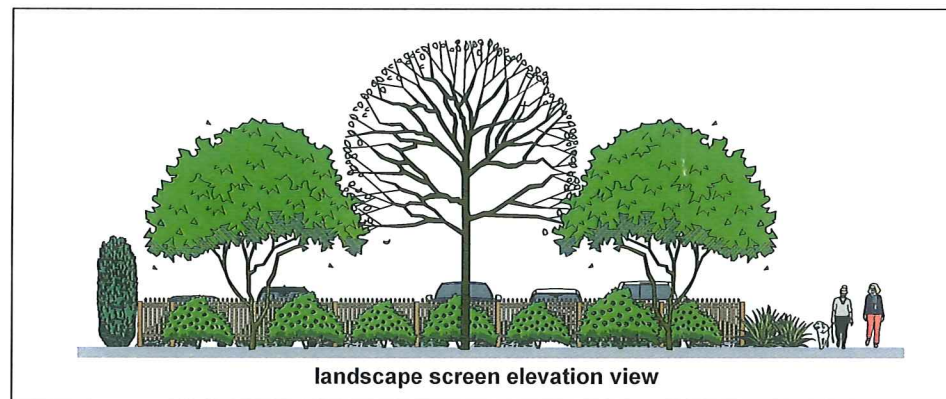


7 ENTRY GATHERING SPACE
scale $\frac{1}{8}" = 1' - 0"$

- 5**
1. 2,300 SF basketball court surface with key and backboard
 2. Two seating areas with special paving
 3. Two picnic tables
 4. Shade trees and privacy screen landscaping

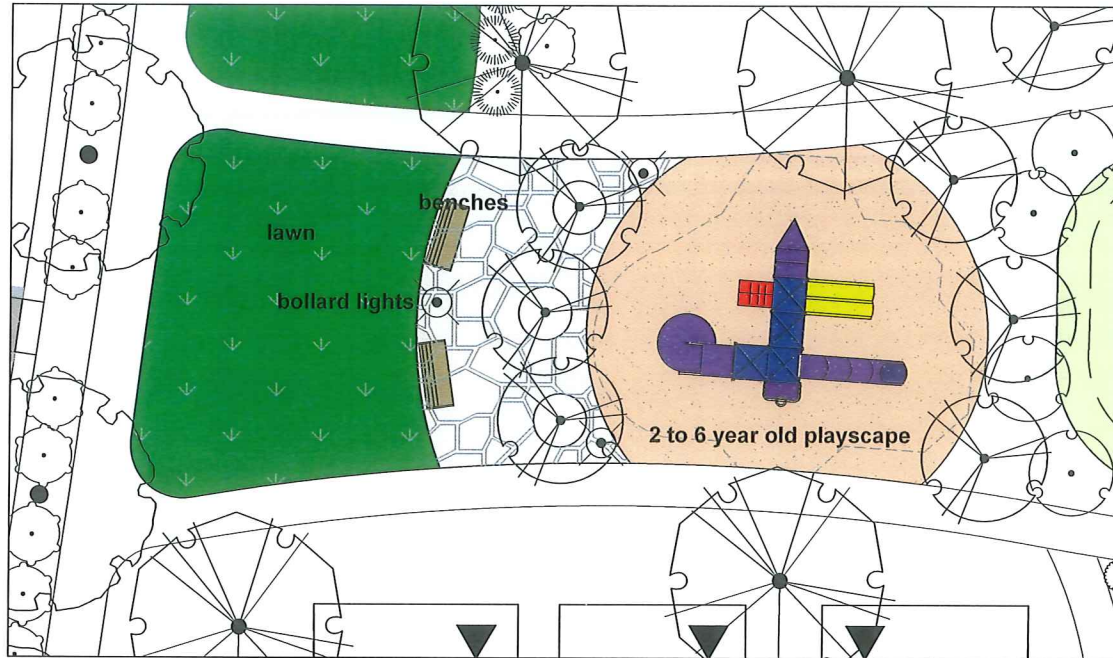
- 6**
1. 1,100 SF fenced dog park
 2. Dog friendly ground bark surface
 3. Two metal benches
 4. Pet cleanup station
 5. Shade trees

- 7**
1. Future gathering area at Monterey Road and neighboring development with decorative paving
 2. Shade arbor over benches
 3. Trees and water conserving landscaping

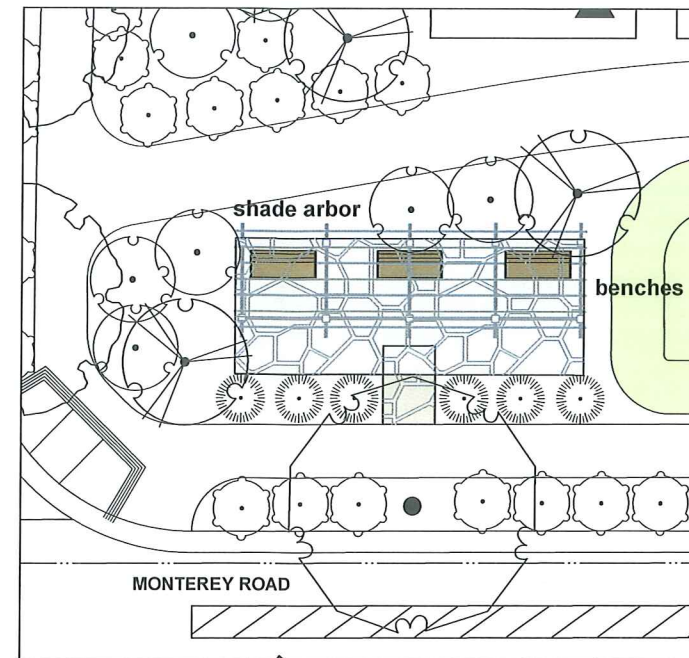


9 COMMUNITY GARDEN
scale $\frac{1}{8}" = 1' - 0"$

- 9**
1. Mix of shrubs and ornamental grasses to



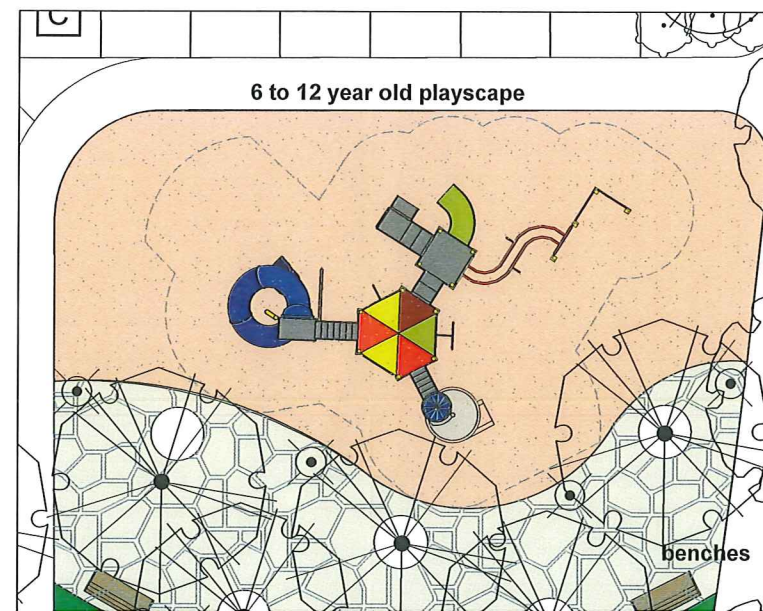
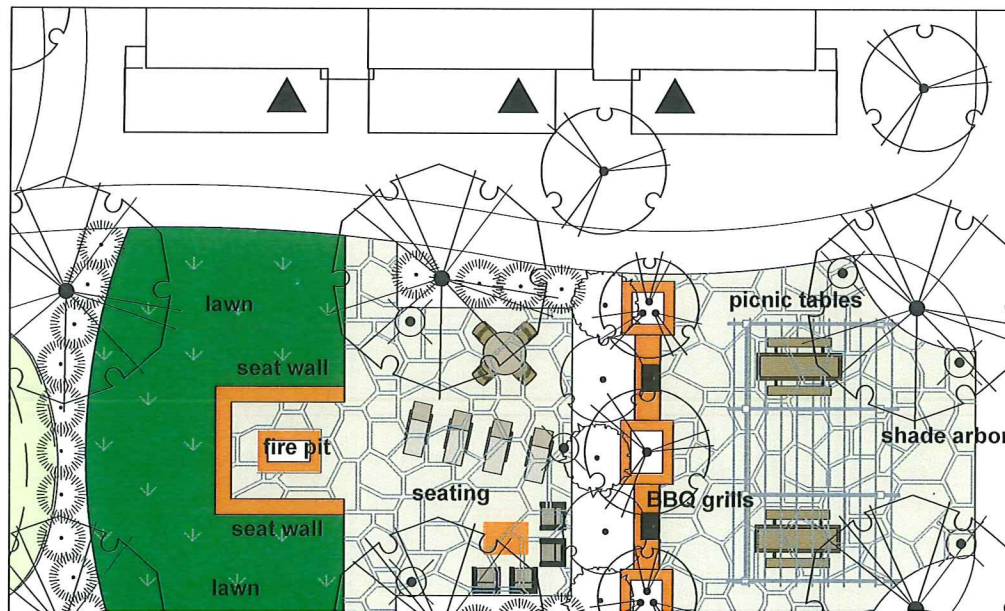
1 2-6 YEAR OLD TOT LOT 1 AND SEATING FOR PARENTS AND GRANDPARENTS
scale $\frac{1}{8}" = 1' - 0"$



2 ENTRY GATHERING SPACE
scale $\frac{1}{8}" = 1' - 0"$

- 1**
1. Play structure for 2-6 year olds to be selected with 5 activities
 2. Safety zone surrounding play equipment
 3. Seating area for toddler parents with benches, decorative paving and shade trees
 4. Lawn for free play activities
 5. Lighted bollards
 6. Trees and water conserving landscaping

- 2**
1. Gathering area at Monterey Road and Tilton Avenue with decorative paving
 2. Shade arbor over benches
 3. Trees and water conserving landscaping



- 3**
1. Gas fire pit with wrap around seat wall
 2. Seating area with tables, chairs and lounge chairs
 3. Lawn for free play activities
 4. Raised concrete planters for flowering and specimen trees
 5. Two cooking islands with drop-in gas BBQ grills and counter space
 6. Dining area on decorative concrete paving with two picnic tables and large shade arbor
 7. Lighted bollards
 8. Trees and water conserving landscaping

- 4**
1. Play structure for 6-12 year olds to be selected with 5 activities

BLOCK ONE LEVEL MASTER PLAN – PUBLIC BENEFITS

- (i) Tilton Ave. will be extended right through the project to provide for a future connection to Barrett Avenue, which has long been a City goal.
 - (ii) A buffered bike lane will be provided along the Monterey Road frontage of the residential project (funding for such bike lanes were omitted from the recent impact fee provisions).
 - (iii) Interconnected public and private pathways are provided for to assure the connectivity between the residential and commercial portions of Block One
 - (iv) An open space view corridor, at least 60' wide, has been created from the northern property line to Barrett Avenue, runs through the entire Block One.
 - (v) There will be two public gathering plazas on the residential property. One of which will be expanded with future commercial development and a third major plaza with outdoor dining will be part of the future commercial development. These public gathering places/plazas will serve both the general public and the new residents of the residential project.
 - (vi) The preservation of the historic building housing Josephine's restaurant and bakery will be encouraged by the approvals and development of the residential portion of the Block One.
 - (vii) The new project and new public/private pathways will improve the accessibility and connectivity within Block One. The residential project will also provide an increase in current patrons to the existing commercial (Josephine's bakery and restaurant) thereby enhancing its economic viability.
 - (viii) The project will encourage and enhance the long-awaited future development of the Monterey Corridor in the northern part of Morgan Hill.
1. The residential project site, even with the loss of land for including a new public street thru the site, is of adequate size and shape to accommodate the proposed project, which is consistent with the General Plan and existing Mixed-Use Flex zoning.
 2. The proposed residential project will be installing additional water, sanitary and storm facilities to facilitate the residential portion, and provide additional storm facilities for the area. The existing commercial project has sufficient infrastructure, with any additional improvements being provided when the commercial site proposed additional improvements.
 3. The proposed development will benefit the adjacent property with a second access.
 4. Appropriate findings can be made for the approval of the proposed PD Zoning.



Preliminary Plan Review: Monterey – Block One SR2019-0009



April 3, 2019 Item #14

Background



- Morgan Hill 2035 General Plan (July 2016)
 - Mixed Use Flex designation
 - 7 to 24 du/ac (residential) and 0.5 FAR (non-res)
 - Block-Level Master Plan before residential – identify commercial areas and how projects connect within block
- Block-Level Master Plan Block One (Feb. 2019)
 - Basic expectations for future development:
 - Setback buffer
 - Tilton Avenue extension
 - Preserve historic building
 - Commercial / mixed-use / residential
 - Land use regulations

Monterey Block One BLMP



Block



Tilton Ave / Burnett Ave Re-Alignment



Preserve Historic Building for Commercial Use



Residential or Commercial



Commercial or Mixed-Use



Open Space Buffer

Preliminary Plan Review: Block One



- Land Use Regulation Consistency
 - Proposed density: 12.06 du/ac (7 to 24 du/ac allowed)
 - Feathering: four-plex to tri-plex to duplex and three to two story units from south to north
 - Greater perimeter setbacks than required
 - Visual and physical connections w/ adjacent commercial/mixed-use portion of block
 - Primary (front) entrances oriented toward street or pedestrian paseos w/ parking accessed via alleys
 - No separate/new driveways off Monterey Road
 - Accessible and visible public gathering places

Preliminary Plan Review: Block One



- PD Master Plan Findings
 - Consistent w/ General Plan and Zoning Code
 - Superior to development that could occur under existing zoning
 - Provides a substantial public benefit
 - Site is adequate size and shape
 - Adequate transportation, infrastructure, and public services
 - No substantial adverse effect on surrounding property

Planning Commission – March 12th



- Concerns / Advice

- At PD Master Plan (Zoning Amendment) stage, develop more detailed concept plan(s) for how commercial/mixed-use portion of block could develop

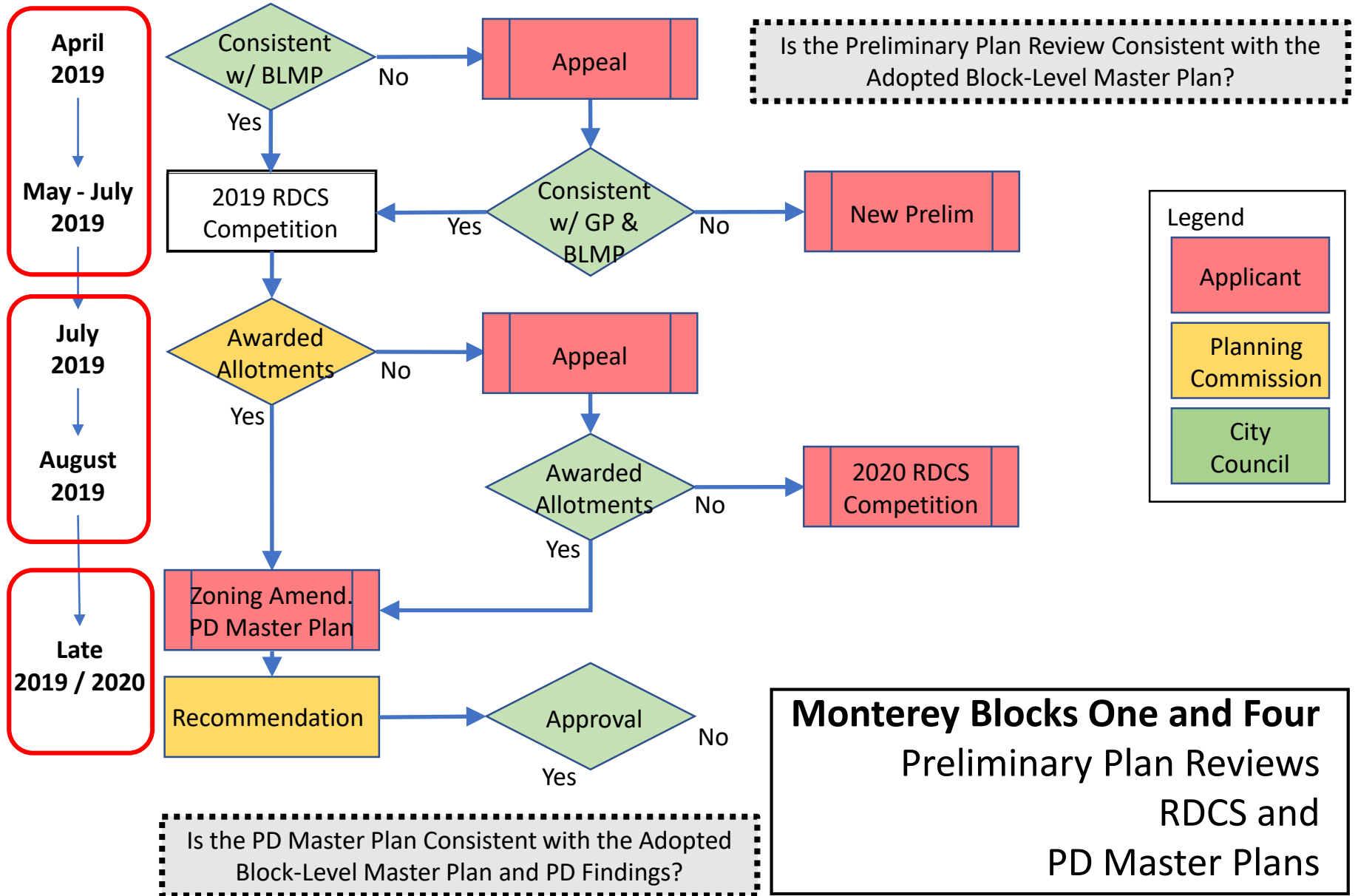
- Positive Feedback

- How project designed around Tilton Ave extension
- Amount of open space, connected paths around the project, and wide paseo/promenade extending from north to south

Preliminary Plan Review: Block One



- Applicant's Presentation



Next Steps

- May 1, 2019 City Council
RDCS General Plan and Zoning Appeal Hearing
- Late 2019/2020 Applicant submits
Zoning Amendment application for
Block One PD Master Plan
(if awarded RDCS allotments August 2019)

Thank You



CITY OF MORGAN HILL



Monterey Gateway

Block Level Master Plan Consistency & Preliminary Plan Review

**Morgan Hill City Council
April 3, 2019**

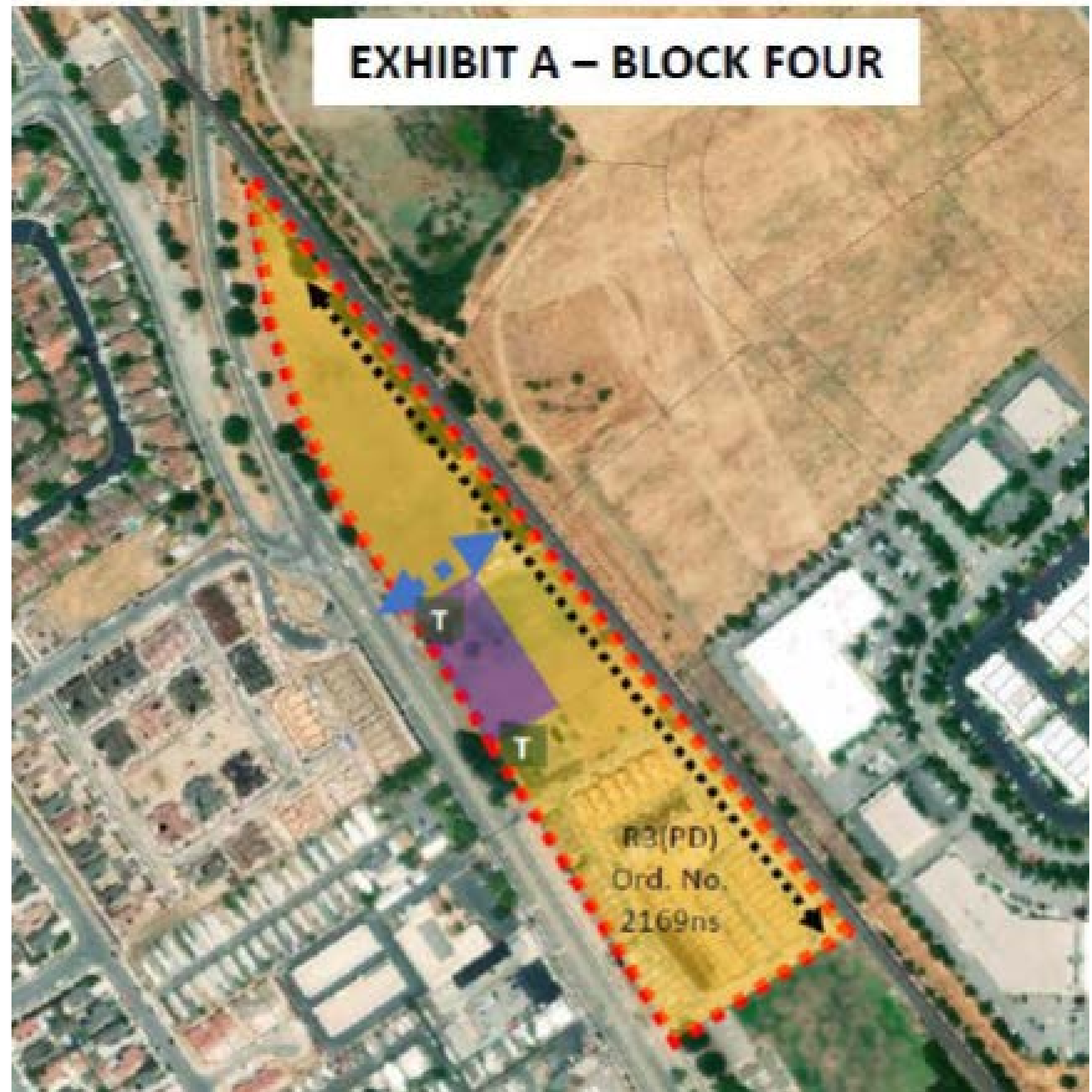
Purpose of Today's Hearing

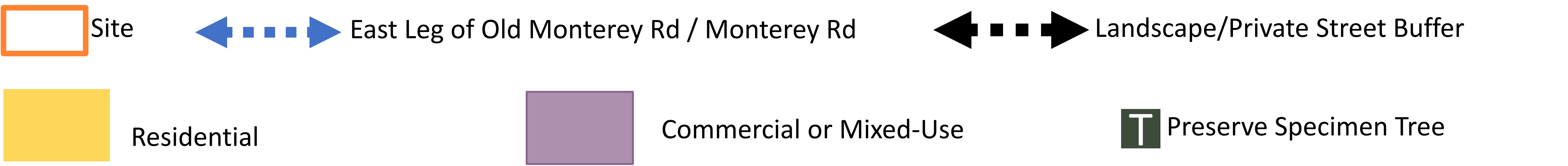
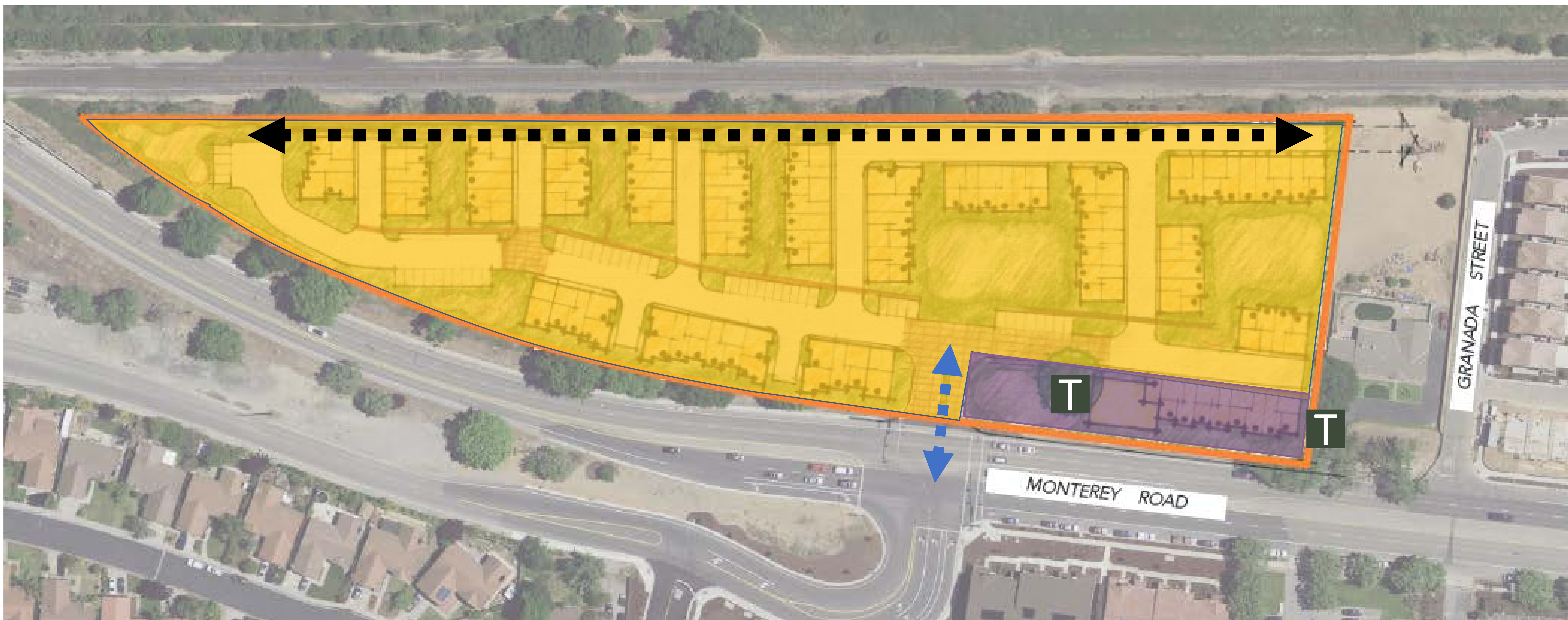
- Block Level Master Plan Consistency
- Preliminary PD Comment



BLMP Block Four Objectives

1. Complete the fourth leg of the intersection with Monterey Road / Old Monterey Road
2. Provide a buffer to the adjacent railroad right-of-way
3. Provide internal connection between developments within the block
4. Preserve specimen trees
5. Provide commercial/non-residential component at new intersection to support new and existing residential





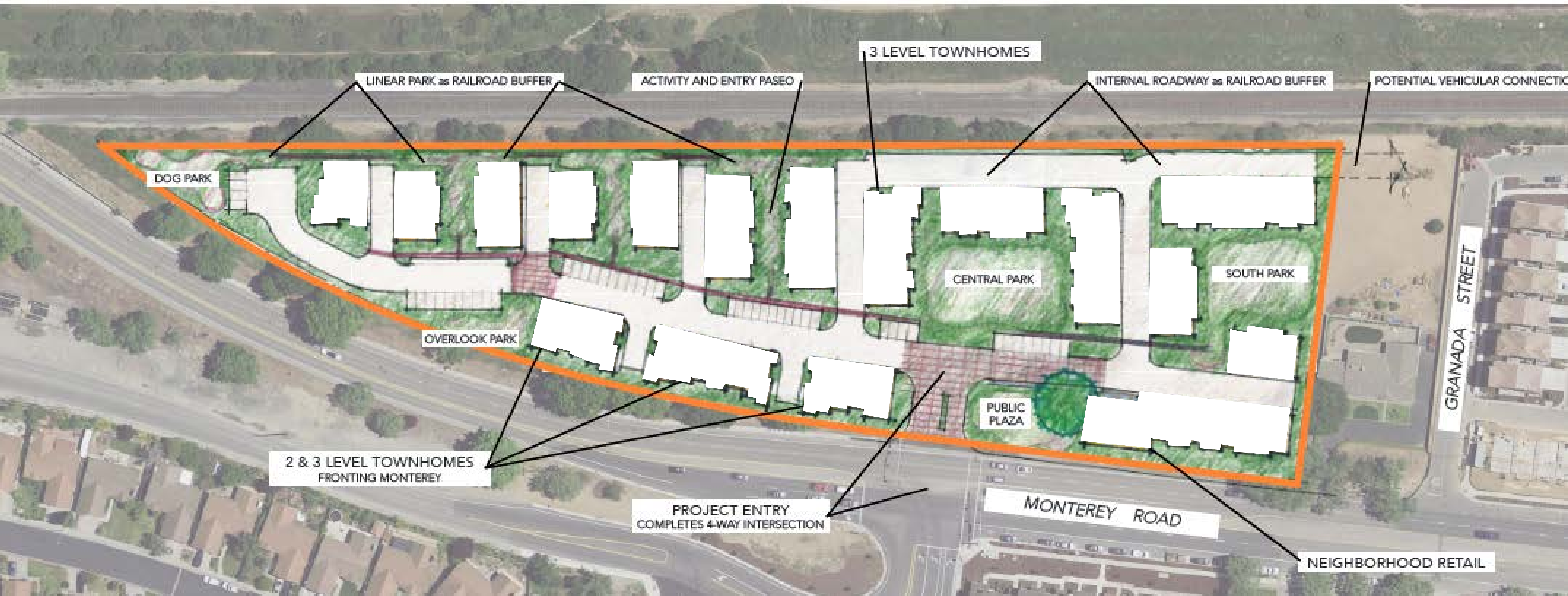
Purpose of Today's Hearing

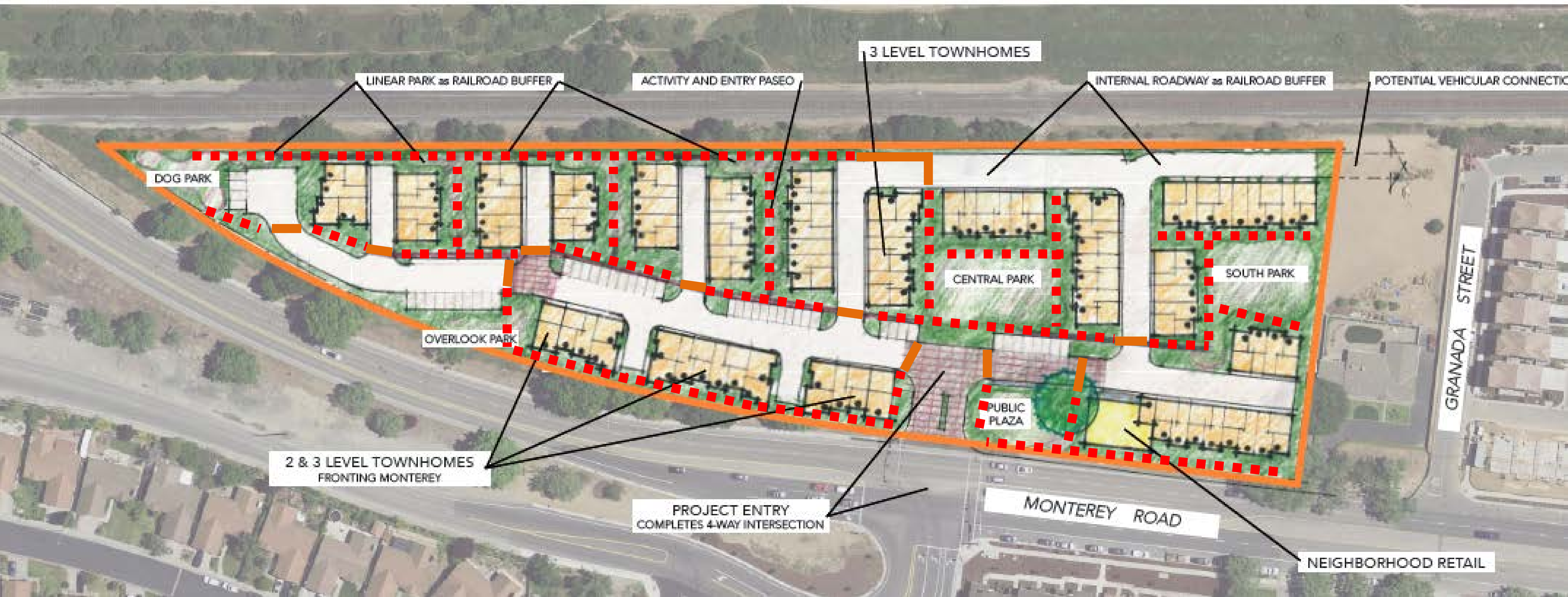
✓ Block Level Master Plan Consistency

- Preliminary PD Comment











Internal green
plaza at
project entrance

4th leg of intersection
complete

Specimen Tree
Preserved

Connectivity of plaza
to internal green &
commercial space

Neighborhood retail
50-foot depth



Getting More People Downtown



WALKABILITY

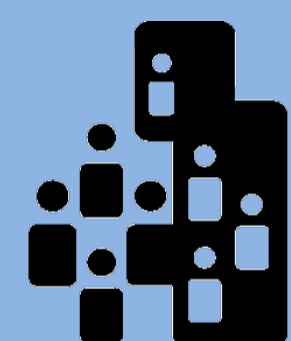
.3mi Neighborhood Retail – Wright Avenue

.6mi Edge of downtown – Main Street

1.1mi Edge of downtown – Dunne Avenue

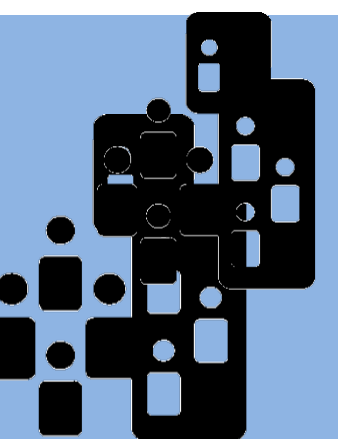
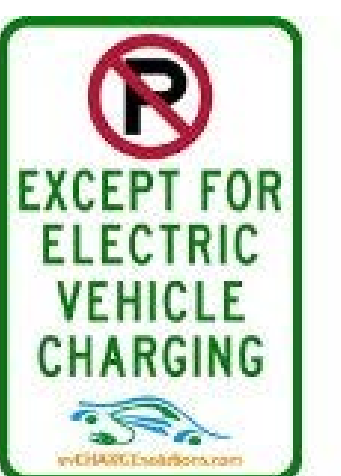
BIKEABILITY

1.15mi Morgan Hill Caltrans



City Ventures

- Bay Area Builder
- Creates communities in **urban infill & transit oriented** sites
- All-electric, **solar-powered** homes. Panels come standard.
- **Energy Efficient** Building Materials, Heating & Cooling, & Appliances
- Pre-wiring for **electric car chargers** in every home
- **Low Impact** Landscaping and **low flow water fixtures**



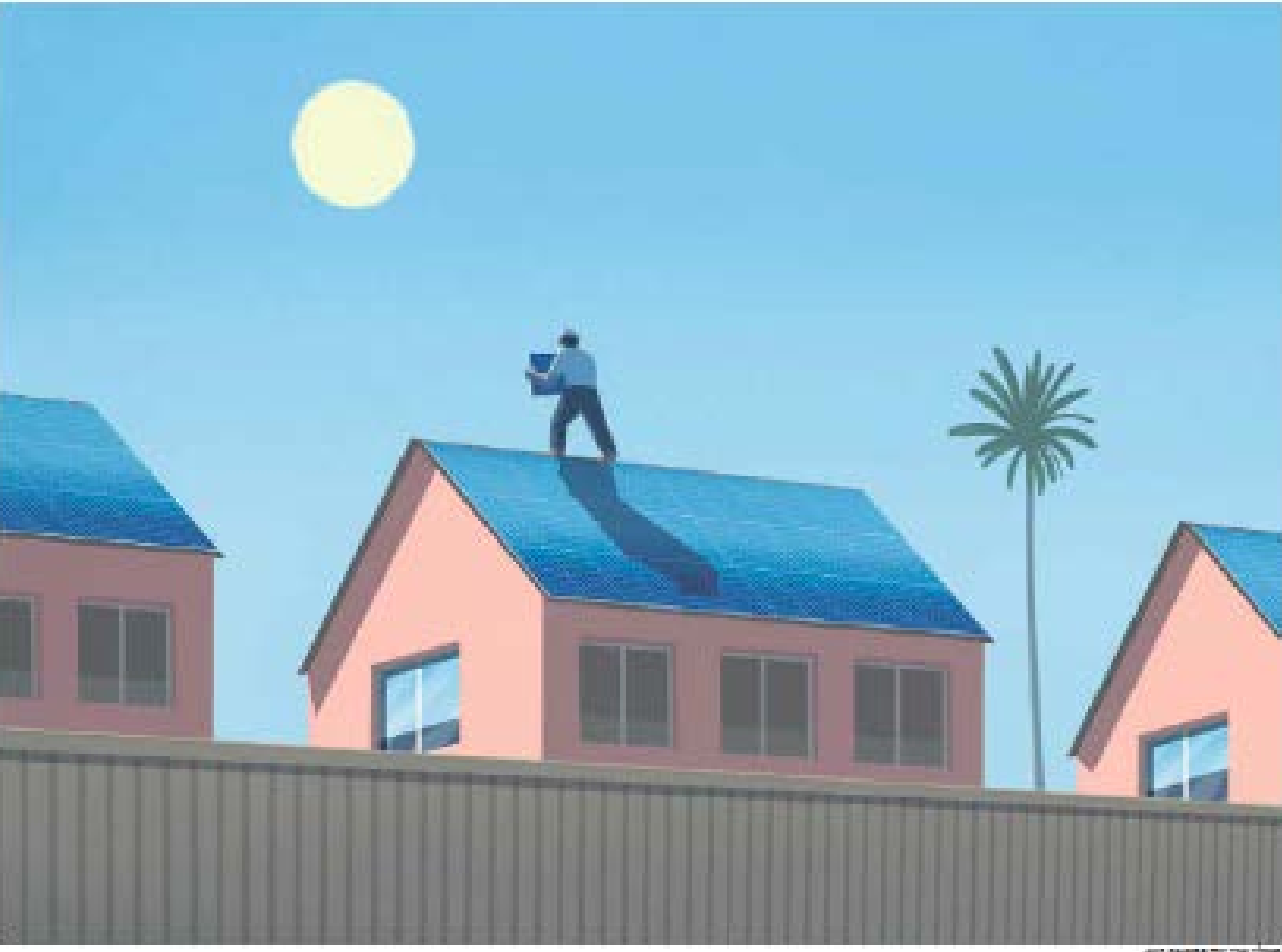
Los Angeles Times

BUSINESS

SUNDAY, DECEMBER 16, 2018 - LATIMES.COM/BUSINESS

Travel Briefcase: Delta's new price-based boarding policy. 8

MONEY TALKS - PERSONAL FINANCE - HOW I MADE IT - WORSE LIVES



FOLLOW THE SUN

California is set to become the first state to require that all new homes be solar-powered. Builders are looking for affordable options.

BY JACK FLEMMING

When Irvine-based City Ventures started sticking solar panels on all of its homes six year ago, the builder emerged as a front-runner in the race toward energy-efficient home building. Soon it will be joined on the track by every developer in California.

In 2020, California will become the first state in the nation to require all newly built homes to be solar-powered. And many developers are figuring out how to comply with the new rules while keeping their houses affordable.

The California Building Standards Commission approved the mandate this month, finalizing a unanimous vote from the California Energy Commission in May as part of the state's ongoing battle against climate change. The rule applies to all single-family and multifamily residences of three stories or fewer.

"Too many home builders provide these features as an add-on, but that gives buyers a complicated choice," City Ventures Chief Executive Phil Kerr said. "We felt it best to make solar power a standard part of the home, like bedrooms or countertops. Why wait until 2020?"

The Energy Commission estimates that solar panels will save homeowners an average of \$19,000 over 30 years but add roughly \$8,400 to the upfront cost of a sin-

2020

The year all new homes in California must come with solar panels

\$8,400

The average increase in a home's cost because of the solar mandate

\$19,000

The projected amount a homeowner would save in energy costs over 30 years

\$35

The average monthly savings in energy costs after accounting for higher mortgage payments

Source: California Energy Commission

gle-family home — probably pricing many potential buyers out of the market.

According to a study from the National Assn. of Home Builders, every \$1,000 increase to the cost of a home makes 52,903 households unable to afford a house. At that rate, a jump of \$8,400 would keep about 1.28 million households from buying a home.

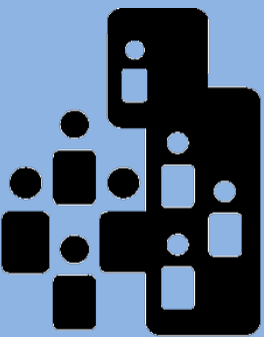
Affordability is the main concern for the California Building Industry Assn., which represents around 3,100 builders across the state and 85% of all new single-family and multifamily housing production.

"For \$2-million homes, these mandates might not be a big deal," Chief Executive Dan Dunmoyer said. "But in markets like San Bernardino, this will be a factor for thousands of families trying to buy homes."

The Energy Commission worked closely with developers over the last five or six years to give the industry some flexibility.

"Our hope is that this didn't blindside anyone," said commission spokeswoman Amber Beck, adding that the agency held meetings and took comments from stakeholders.

A decade ago, the state set a goal to reach net-zero energy use in residential homes by 2020, meaning homes produce enough energy to offset all their electric and natural gas needs. The [See Solar, C6]



- Respectfully request that the City Council:
- ✓ 2) Determine consistency with Block Level Master Plan
 - 2) Provide comments on Preliminary Plan

Thank You



Respectfully request that the City Council 1) determine consistency with Block Level Master Plan 2) provide comments on Preliminary Plan

Thank You





DENSITY
FEATHERING



3 Story
townhomes
on East side
of Monterey

West/East - Two Story
Detached to two story
attached to three story
attached



“Signature design qualities and attractive architectural features, including articulated facades, projections, and recessed entryways”



 **Mixed Use Flex.** The Mixed Use Flex designation, which is primarily applied to properties along the Monterey Road corridor north and south of downtown, allows for a mix of residential, commercial, and office uses applied either vertically (i.e., one structure with multiple uses) or horizontally (i.e., structures with different land uses located adjacent to one another). Density should transition from higher to lower at the ends of Monterey corridor. The Mixed Use Flex designation allows 7 to 24 units per acre and a maximum FAR of 0.5 and a maximum commercial building height of 35 feet. Prior to development of Residential or Mixed-Use projects within the Mixed Use Flex designation a block level master plan is required to identify how commercial uses will be incorporated within the development of the block and how individual development projects will connect with each other. Commercial development may process without preparation of a block level master plan consistent with the Commercial designation.



Loden Place



Solera Ranch



Depot Station



Monterey Collection



Preliminary Plan Review: Monterey – Block Four SR2019-0008



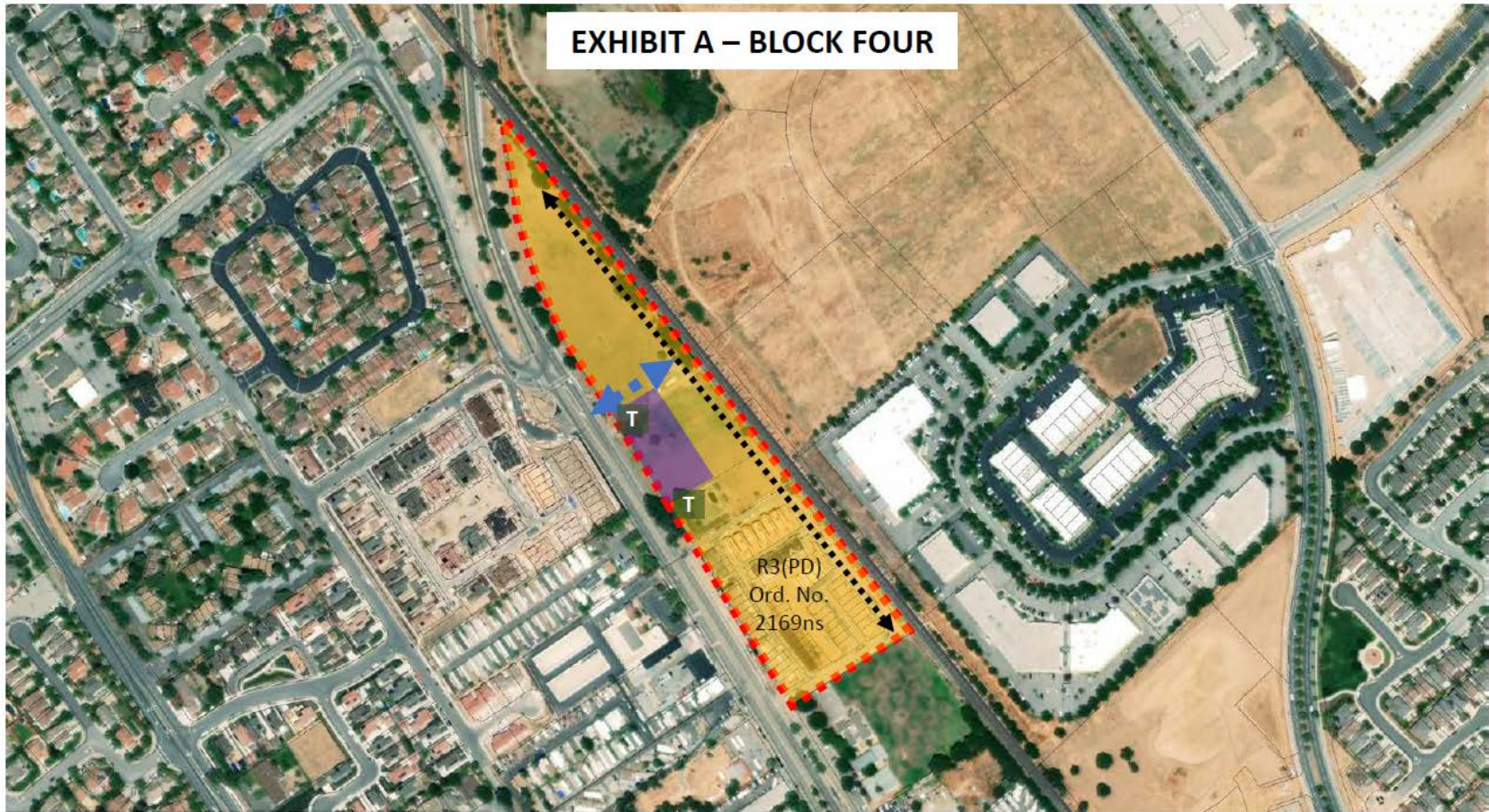
April 3, 2019 Item #15

Background



- Morgan Hill 2035 General Plan (July 2016)
 - Mixed Use Flex designation
 - 7 to 24 du/ac (residential) and 0.5 FAR (non-res)
 - Block-Level Master Plan before residential – identify commercial areas and how projects connect within block
- Block-Level Master Plan Block Four (Feb. 2019)
 - Basic expectations for future development:
 - Complete Old Monterey/Monterey intersection
 - Commercial/mixed-use at southeast corner of new intersection with public gathering place
 - Preserve existing specimen trees
 - Connect through adjacent parcel to Granada St.

Monterey Block Four BLMP



Block



East Leg of Old Monterey Rd / Monterey Rd



Landscape/Private Street Buffer



Residential or Commercial



Commercial or Mixed-Use



Preserve Specimen Tree

Preliminary Plan Review: Block Four



- Land Use Regulation Consistency
 - Proposed density: between 18 and 24 du/ac (7 to 24 du/ac allowed)
 - Non-residential FAR less than maximum 0.5
 - Perimeter setbacks that comply or w/in allowable deviations
 - Accessible and visible public gathering place adjacent to commercial that incorporates existing specimen tree as key feature
 - Primary (front) entrances oriented toward street or pedestrian paseos w/ parking accessed via alleys
 - No separate/new driveways off Monterey Road

Preliminary Plan Review: Block Four



- PD Master Plan Findings
 - Consistent w/ General Plan and Zoning Code
 - Superior to development that could occur under existing zoning
 - Provides a substantial public benefit
 - Site is adequate size and shape
 - Adequate transportation, infrastructure, and public services
 - No substantial adverse effect on surrounding property

Planning Commission – March 12th



- Concerns / Advice

- Proposed railroad buffer is marginal
- Limited open space
- Commercial Study – 3,000 to 4,000 sf commercial could be sustainable
- 35-foot depth of retail too shallow for flexibility
- Homes on Monterey elevated – how to mitigate appearance of height
- One driveway, if extended, appears to remove specimen tree
- Density between 18 and 24 units/acre – too high next to Monterey Parque (14.2 units/acre)?

Planning Commission – March 12th

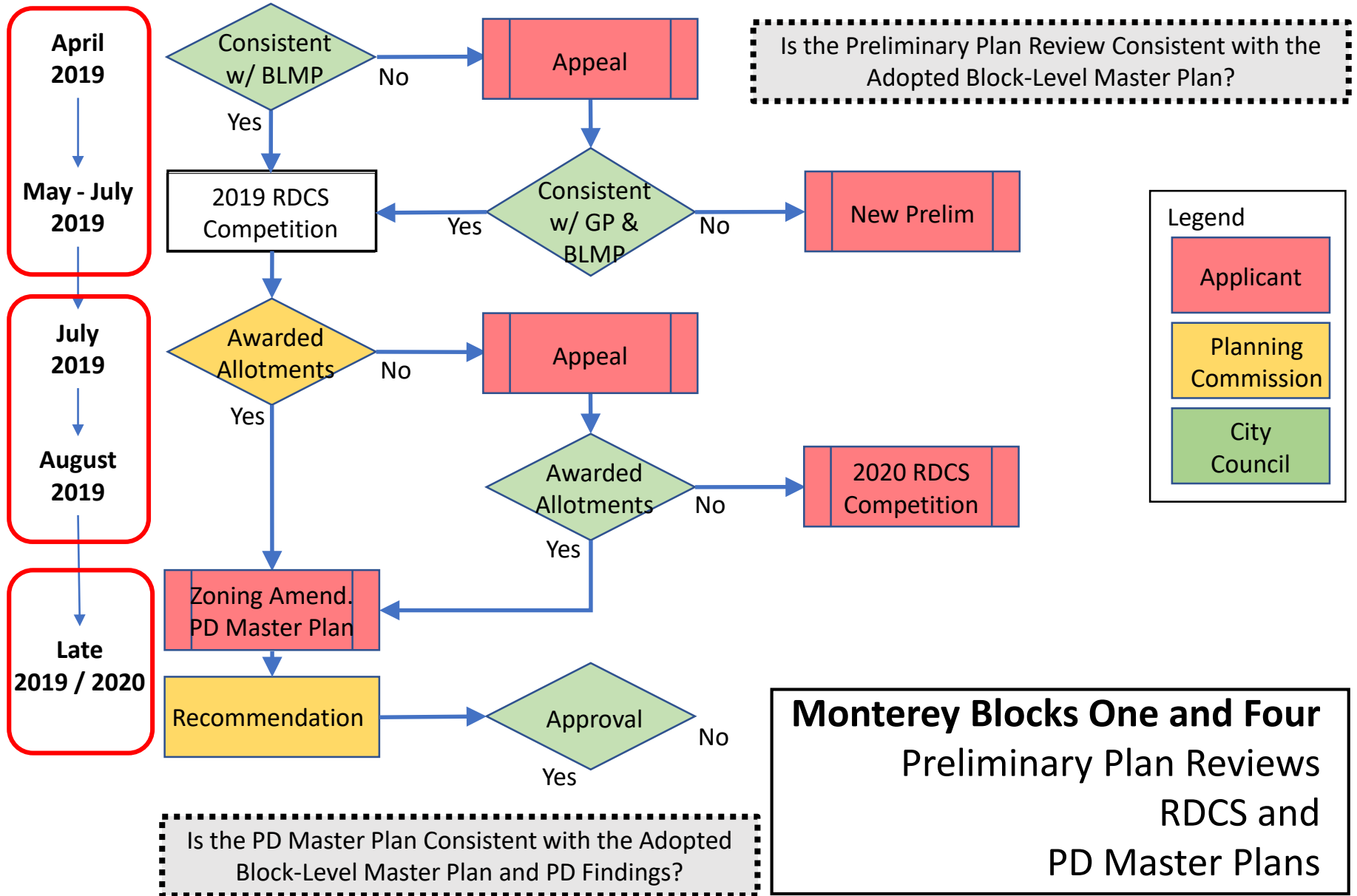


- Positive Feedback
 - Prominent, visible commercial at corner that includes public community gathering area w/ large specimen tree as key element
 - Commercial area is part of block controlled by applicant = more certainty that it will be completed with residential
 - Prelim Plans have made great strides since proposed 2017 Zoning Amendment – with re-working at PD Master Plan stage could be even better
- Revised Preliminary Plans
 - Addresses Commission feedback

Preliminary Plan Review: Block Four



- Applicant's Presentation



Next Steps / Tentative Schedule



- May 1, 2019 City Council
RDCS General Plan and Zoning Appeal Hearing
- Late 2019/2020 Applicant submits
Zoning Amendment application for
Block Four PD Master Plan
(if awarded RDCS allotments August 2019)

Thank You





Special - Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, April 3, 2019 6:00 pm

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

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 p.m. for the purpose of conducting a closed session.

6:00 p.m. Closed Session

7:00 p.m. Regular Meeting

TELECONFERENCE

Council Member Spring will be participating in the regular meeting via teleconference as follows:

Crowne Plaza, Greater Noida
Institutional Green 1, Surajpur Chowk
Greater Noida, Uttar Pradesh -201306

Public comment from the teleconference location shall be allowed.

SPECIAL MEETING

6:00 P.M.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Michelle Clerk Bigelow

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION (CA Govt Code Section 54956.9(a)
Patton et al. v. City of Morgan Hill, et al. Case No. 16-CV-303044

RECONVENE

REGULAR MEETING

7:00 P.M.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PRESENTATIONS

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council 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)

ADOPTION OF AGENDA

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. **APPROVE FUNDING AGREEMENT WITH THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE 2016 MEASURE B LOCAL STREETS AND ROADS PROGRAM**

Recommendation:

Authorize the City Manager to execute a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

2. **APPROVE CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. (DJPA) FOR PREPARATION OF THE MORGAN HILL TECHNOLOGY PARK & MIXED-USE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT (EIR)**

Recommendation:

Authorize the City Manager to execute and administer a Consultant Agreement with David J. Powers & Associates, Inc. (DJPA) for preparation of the Morgan Hill Technology Park & Mixed-Use Residential Project Environmental Impact Report (EIR) for a total contract amount not to exceed \$252,828 for the term through December 31, 2019.

3. **APPROVE SECOND AMENDMENT TO MORGAN HILL JET ELECTRIC ON-CALL MAINTENANCE SERVICE AGREEMENT**

Recommendation:

Approve the Second Amendment to the on-call maintenance service agreement with Morgan Hill JET Electric, Inc. for an additional \$15,000 in services increasing the total contract amount to \$100,000 for the term through June 30, 2019.

4. **RATIFY CITY POSITION ON PENDING LEGISLATION AB 1783 H-2A WORKER HOUSING: STATE FUNDING: STREAMLINED APPROVAL PROCESS FOR AGRICULTURAL EMPLOYEE HOUSING DEVELOPMENT**

Recommendation:

1. Receive legislative correspondence in support of AB 1783 (R. Rivas) "H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development"; and
2. Ratify City's position.

5. **RESOLUTION SUPPORTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

Recommendation:

Adopt resolution supporting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

6. ADOPT ORDINANCE 2300 NEW SERIES, APPROVING DEPOT-LATALA DEVELOPMENT AGREEMENT TO CONFIRM RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PUBLIC BENEFIT COMMITMENTS FOR 49 DOWNTOWN RDCS BUILDING ALLOTMENTS. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-13-049, IS LOCATED ON THE EAST SIDE OF DEPOT STREET, NORTH OF EAST DUNNE AVENUE

Recommendation:

Waive the reading, adopt Ordinance No. 2300, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. APPROVE MEMORANDUM OF UNDERSTANDING ACCEPTING FAMILY JUSTICE CENTER GRANT FUNDS FROM COMMUNITY SOLUTIONS

Recommendation:

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with Community Solutions to accept grant funds as a sub-recipient of the California Office of Emergency Services grant for a total amount of \$50,000 over three fiscal years; and
2. Amending the City's adopted FY2018-19 and FY2019-20 biennial budget to recognize grant revenue of \$12,500 in FY2018-19 and \$25,000 in FY2019-20, in the General Fund (010).

8. APPROVE THE MARCH 20, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. PROVIDE DIRECTION REGARDING AGRICULTURAL CONSERVATION PROGRAM

Recommendation:

Provide direction to staff regarding next steps in the City's agricultural mitigation program.

Estimated Time: 45 Minutes

10. APPROVE DESIGN STANDARDS FOR SMALL CELL ANTENNA IN THE PUBLIC RIGHT OF WAY AND AUTHORIZE CITY MANAGER TO EXECUTE LICENSE AGREEMENTS FOR SMALL CELL FACILITIES

Recommendation:

1. Approve the Small Cell Design Standards related to pole mounted facilities located in the public right of way;
2. Approve the Small Cell License Agreement; and
3. Authorize the City Manager to negotiate, amend, and execute Small Cell License Agreements consistent with the Small Cell Design Standards for up to Forty-Four City owned street light poles for each telecommunication provider.

Estimated Time: 20 Minutes

PUBLIC HEARING

11. INTRODUCE ORDINANCE AMENDING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES REGARDING POLE-MOUNTED WIRELESS COMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of Zoning Amendment ZA2019-0007: Wireless Communication Facilities; and
3. Introduce Zoning Amendment Ordinance ZA2019-0007: Wireless Communication Facilities.

Estimated Time: 10 Minutes

12. PUBLIC HEARING AND BALLOT TABULATION FOR PARSONS CORNER SUBAREA OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open public hearing;
2. Accept public input on ballot proceeding;
3. Announce close of public hearing is pending – Any property owner wishing to withdraw their ballot must do so now;
4. Announce close of public hearing is pending – Any property owner wishing to submit a ballot must do so now;
5. Close public hearing;
6. Take ten-minute recess for ballot tabulation;
7. Accept verbal report from Deputy City Clerk on ballot tabulation results; and
8. Adopt Resolution A or B certifying the ballot proceeding results.

Estimated Time: 15 Minutes

13. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services;
2. Open/close the public hearing; and
3. Adopt resolution updating the City's select Development Impact Fees.

Estimated Time: 30 Minutes

14. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK ONE (EAST SIDE OF MONTEREY ROAD NORTH OF BURNETT AVE) SR2019-0009

Recommendation:

1. Provide a determination on SR2019-0009 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block One; and
2. Provide feedback on SR2019-0009 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Estimated Time: 30 Minutes

15. PRELIMINARY REVIEW OF MONTEREY CORRIDOR - BLOCK FOUR (EAST SIDE OF MONTEREY ROAD SOUTH OF OLD MONTEREY ROAD) SR2019-0008

Recommendation:

1. Provide a determination on SR2019-0008 Preliminary Plan Review's consistency with the adopted Block-Level Master Plan (BLMP) for Monterey Corridor Block Four; and
2. Provide feedback on SR2019-0008 Preliminary Plan Review's consistency with the Planned Development (PD) Master Plan Findings.

Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council 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 Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council 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 Council, 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 City Council 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 City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council 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 City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, 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 City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



Vision:

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill:

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational
Culture · Preserving and Cultivating Public Trust · Preserving Our Community History ·
Enhancing Diversity and Inclusiveness · Advancing Regional Initiatives

2019-2020 STRATEGIC PRIORITIES

Agricultural Preservation
Cannabis Policy
Community Engagement and Messaging
Economic Development
Financial Stewardship
High Speed Rail
Homelessness
Housing Infrastructure
Telecommunications
Traffic/Transportation