



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, November 20, 2019 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC PRESENTATION- ASSET #41- POSITIVE CULTURAL IDENTITY

CITY COUNCIL REPORTS

Council Member McKay

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. ADOPT RESOLUTION AUTHORIZING GRANT APPLICATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE GRANT RELATED AGREEMENTS AND DOCUMENTS

Recommendation:

Adopt resolution:

1. Authorizing staff to prepare and submit a 2019 Planning Grants Program Application to the State of California, Department of Housing and Community Development for an amount not to exceed \$160,000 for the development of a proposed Form-Based Code for the Monterey Road Corridor; and
2. Authorizing the City Manager to negotiate and execute the City of Morgan Hill Planning Grants Program application, the Planning Grants Program grant documents, and any amendments thereto as required by the Department of Housing and Community Development for receipt of the grant.

2. APPROVE SECOND AMENDMENT TO SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR LAND DEVELOPMENT REVIEW PROGRAM SUPPORT

Recommendation:

1. Approve the Second Amendment to the professional services agreement with CSG Consultants, Inc. for land development review services for an additional \$136,300, for a total not-to-exceed amount of \$346,250 with the term of the agreement unchanged;
2. Authorize the City Manager to execute the Second Amendment; and
3. Adopt resolution amending the City's Fiscal Year 2019-20 budget to appropriate an additional \$136,300 within the Community Development Fund (Fund No. 206) for related professional services.

3. APPROVE SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE HILL MEADOWS – TRACT NO. 10378

Recommendation:

1. Approve Second Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Second Amendment to the Subdivision Improvements Agreement with Mission Pacific Homes, LLC; and
3. Authorize the recordation of the Second Amendment to the Subdivision Improvements Agreement.

4. APPROVE SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE MURPHY – TRACT NO. 10387

Recommendation:

1. Approve Second Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Second Amendment to the Subdivision Improvements Agreement with Nordstrom Cal Homes, LLC; and
3. Authorize the recordation of the Second Amendment to the Subdivision Improvements Agreement.

5. APPROVE CITY COUNCIL MEETING SCHEDULE FOR CALENDAR YEAR 2020

Recommendation:

1. Review and adjust the 2020 City Council meeting schedule as deemed appropriate; and
2. Approve 2020 City Council meeting schedule.

6. APPROVE THE NOVEMBER 6, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

7. ADOPT RESOLUTION OF INTENT TO HOLD SPECIAL BALLOT PROCEEDING FOR JACKSON MEADOWS #6 AND MILL CREEK SUBAREAS OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open/Close public hearing for Jackson Meadows #6 subarea;
2. Open/Close public hearing for Mill Creek subarea; and
3. Adopt resolutions declaring intent and authorizing the special ballot proceeding required to increase the maximum assessment rate for the Jackson Meadows #6 and the Mill Creek subareas of the City's Landscape Assessment District Number 1, effective Fiscal Year (FY) 2020-21.

Estimated Time: 10 Minutes

PUBLIC HEARING

8. **INTRODUCE ORDINANCES TO ADOPT A ZONING AMENDMENT AND TO APPROVE A DEVELOPMENT AGREEMENT FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT, INCLUDING PUBLIC ACCESS ROADS, AND A PRIVATE PARK. RATIFY THE PLANNING COMMISSION APPROVAL OF THE TENTATIVE SUBDIVISION MAP, MITIGATED NEGATIVE DECLARATION, AND THE MITIGATION MONITORING AND REPORTING PROGRAM. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-09-001 AND 726-09-002, ARE LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY. (DIANA-MANA HANAIEI - MONTECITO ESTATES PROJECT)**

Recommendation:

1. Open and close public hearing;
2. Adopt resolution ratifying Planning Commission Resolutions 19-18 and 19-19;
3. Waive first and second reading of Zoning Amendment Ordinance;
4. Introduce Zoning Amendment Ordinance;
5. Waive first and second reading of Development Agreement Ordinance; and
6. Introduce Development Agreement Ordinance.

Estimated Time: 20 Minutes

9. **APPROVE REQUEST FOR A WATER SERVICE CONNECTION OUTSIDE OF THE CITY'S URBAN SERVICE AREA BOUNDARY WHICH WILL ALLOW FOR THE CONSTRUCTION OF A 7,000 SQUARE FOOT BUDDHA HALL AT THE METTA TAM TU BUDDHIST TEMPLE APPROVED BY SANTA CLARA COUNTY. THE PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 817-07-024, IS LOCATED ON SOUTHEAST CORNER OF THE INTERSECTION OF BUTTERFIELD BOULEVARD AND FISHER AVENUE (LIEU QUAN BUDDHIST CULTURAL CENTER, OWNER). OA2019-0001/EA2019-0011**

Recommendation:

1. Open/close public hearing; and
2. Adopt resolution approving the water service request and directing staff to file an application with the Local Agency Formation Commission for Out of Agency service request.

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 cityclerk@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

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

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





NOVEMBER

Developmental Asset #41

POSITIVE CULTURAL IDENTITY

Young person feels proud of her/his cultural background.

Cultural Identity Within Our Community

- Hispanic Heritage Month: Latin Cultural Dance Show/Concert
- Mushroom Mardi Gras
- Taste Of Morgan Hill
- 4th of July Parade
- Holiday Parades



How this Relates to YAC

- A variety of diverse members
- Respect each other's cultures, values, and opinions
- Foster environment of personal positive cultural identity
- Expand and learn about different cultures through food, stories, and music.





NOVEMBER COMPLEMENTARY

Asset #2

Positive Family Communication

Young person and her or his parents(s) communicate positively and young person is willing to seek advice and counsel from parent(s).

How Can Adults Share Their Heritage With Their Children?

- Games/Activities they Played When they Were Younger
- Religious Traditions –Holiday Shopping
- Traditional Foods
- Practice Ethnic Holidays: Día de Los Muertos
- Show Old Family Pictures
- Tell Interesting Stories: Songs, Jokes, etc.



How did your parents convey their culture to you, and how do you integrate that into your daily life?





CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Adam Paszkowski, Principal Planner
APPROVED BY: City Manager

ADOPT RESOLUTION AUTHORIZING GRANT APPLICATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE GRANT RELATED AGREEMENTS AND DOCUMENTS

RECOMMENDATION(S)

Adopt resolution:

1. Authorizing staff to prepare and submit a 2019 Planning Grants Program Application to the State of California, Department of Housing and Community Development for an amount not to exceed \$160,000 for the development of a proposed Form-Based Code for the Monterey Road Corridor; and
2. Authorizing the City Manager to negotiate and execute the City of Morgan Hill Planning Grants Program application, the Planning Grants Program grant documents, and any amendments thereto as required by the Department of Housing and Community Development for receipt of the grant.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

Economic Development
Housing

GUIDING DOCUMENTS

Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element

REPORT NARRATIVE:

Staff recommends adoption of a grant resolution (Attachment 1) authorizing the submittal of a 2019 Planning Grants Program Application (Attachment 2) to the State of California, Department of Housing and Community Development for an amount not to exceed \$160,000 for the development of the proposed Form-Based Code for the Monterey Road Corridor.

The State of California, Department of Housing and Community Development (HCD) is accepting grant applications through the Planning Grants Program (PGP) provisions of Senate Bill 2 (Chapter 364, Statutes of 2017). The PGP program is intended to fund the preparation, adoption, and implementation of plans that streamline housing approvals and accelerate housing production.

HCD has released approximately \$123 million in funding available to all local governments in California under Senate Bill 2 (SB 2). Funds are initially available to eligible applicants on a noncompetitive basis. Applications are due by November 30, 2019. HCD determined maximum award amounts for large, medium, and small localities, based on population estimates from the Department of Finance. Small Localities are defined as a population of $\leq 60,000$ people. The maximum award amount that Morgan Hill can apply for is \$160,000.

SB 2 (2017) is part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, SB 2 established a permanent source of revenue intended to increase the affordable housing stock in California. SB 2 created a new per-document recording fee on all real estate transactions. The revenues from SB 2 vary from year to year, as they are dependent on a variety of real estate transactions with fluctuating activity. The fees are currently estimated to generate approximately \$250 million per year based on available recording document data from the last decade.

The PGP is a one-time component of SB 2 that, among other provisions, provides financial and technical assistance to local governments to update planning documents in order to:

- Accelerate housing production;
- Streamline the approval of housing development affordable to owner and renter households at all income levels;
- Facilitate housing affordability, particularly for all income groups;
- Promote development consistent with the State Planning Priorities; and
- Ensure geographic equity in the distribution and expenditure of allocated funds.

The SB 2 application provides "Priority Policy Areas" that automatically deem the application to accelerate housing production without any additional documentation required for the application. The projects funded by SB 2 must be based in one of the Priority Policy Areas. Pursuant to the application, Priority Policy Areas include the following:

1. Rezone to Permit By-right;
2. Objective Design and Development Standards;
3. Specific Plans or Form-Based Codes Coupled with CEQA Streamlining;
4. Accessory Dwelling Units or Other Low-Cost Building Strategies;
5. Expedited Processing; and
6. Housing Related Infrastructure Financing and Fee Reduction Strategies.

The Notice of Funding Availability for the SB2 PGP further clarifies and defines Specific Plans or Form-Based Codes Coupled with CEQA Streamlining as designating and rezoning for additional housing capacity or preparing specific plans or form codes that include zoning and development standards and plan-level environmental analysis that can be used to streamline future housing projects and facilitate affordability.

The Morgan Hill 2035 General Plan, adopted in July 2016, envisions the transformation of the Monterey Road corridor north and south of Downtown from its current predominantly strip commercial character to a vibrant mixed-use corridor that encourages walking and biking with buildings fronting onto the street and a range of commercial and office uses located in close proximity to new and existing residential development.

In January 2017, the City of Morgan Hill contracted with Lisa Wise Consulting, Inc. (LWC) for the preparation of a market and land use capacity study for the Monterey Road corridor. The Market Analysis Report (Report) provided a summary of demographic and socio-economic conditions in the City of Morgan Hill as they relate to economic performance, as well as a high-level analysis of the commercial market, and a land use capacity assessment for the corridor. The Report was used to inform the development of implementation plan options for the Monterey Corridor. The Market Analysis indicated, among other key findings, that the Monterey Corridor has a theoretical market demand of 215,000 square feet of commercial (retail and office) with development capacity for between 150 and 890 residential units.

The Report summarized five options:

- 1.1 Comprehensive Form-Based Code;
- 1.2 Scaled-Down Form-Based Code;
2. Conventional Code with Updates to Standards;
3. Specific Plan for the Study Area;
4. Guidelines for "Block-Level Master Plans"; and,
5. Streetscape Improvement Plan and a Façade Incentive Program.

As indicated by LWC, the two form-based code options (1.1 Comprehensive Form-Based Code and 1.2 Scaled-Down Form-Based Code) would, in their experience, be most effective in helping to realize the General Plan's vision for the Monterey Corridor.

On April 4, 2018, City Council discussed the Monterey Corridor Study Report, Implementation Memo, and Planning Commission's recommendations. Several implementation measures were discussed, and staff was directed at that time to proceed with the preparation of a Block-Level Master Plan (BLMP) for the Monterey Road corridor, which would fulfill the General Plan requirement that such a plan be adopted prior to development of residential or mixed-use projects within the Mixed-Use Flex land use designation. Block-Level Master Plans for Monterey Corridor Block One and Monterey Corridor Block Four were approved by the City Council on February 6, 2019. The Block-Level Master Plan also served as the foundation for a future Monterey Corridor Form-Based Code or Specific Plan. The Form-Based Code work that could be accomplished with this grant will be the basis for a future Specific Plan. It is recommended that the City also consider the expansion of the Downtown Priority Development Area (PDA) to include Monterey Road to the north and south. Looking further down the road, if the Downtown PDA is also expanded, the Form Based Code and PDA expansion combined will position the City to obtain additional grant funding to complete a specific plan for Monterey.

COMMUNITY ENGAGEMENT: Collaborate

A public stakeholder meeting was held on June 15, 2017 to gather local input regarding the priorities, preferences, challenges and opportunities along the Monterey Road Corridor in the City of Morgan Hill. Approximately 20 stakeholders attended and participated in a group exercise.

A meeting was held on November 8, 2017 with a panel of retail experts and members of the public to discuss the evolving retail landscape.

The February 27, 2018 Planning Commission meeting was open to the public with an opportunity for community members to provide feedback.

Additional opportunities to engage the community will occur during the development of the Form-Based Code planning process. In addition, adoption of a Form-Based Code will include noticed Planning Commission and City Council public hearings.

ALTERNATIVE ACTIONS:

The City Council could direct staff not to submit the grant application. This would eliminate the opportunity for grant funding for this cycle and provide opportunities for other jurisdictions to receive Morgan Hill's allotted grant monies that streamline housing approvals. HCD has indicated that all future grant opportunities will be competitive.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 27, 2018 – Planning Commission reviewed and discussed the Monterey Corridor Analysis Report and Implementation Options Memo and recommended both a near-term (Block-Level Master Plan) and long-term implementation option (Specific Plan) for City Council consideration.

On April 4, 2018 – City Council considered and supported the Planning Commission recommendation to prepare a near-term Block-Level Master Plan for the Monterey Corridor that would serve as the foundation for a future Specific Plan.

On July 25, 2018 – City Council approved a consultant agreement with Lisa Wise Consulting and scope of work/budget for preparation of a Block-Level Master Plan.

On October 17 and 24, 2018 – City Council and Planning Commission held a workshop to discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor and to discuss and provide feedback on the results and recommendations of a block-level commercial analysis.

November 28, December 5 and 19, 2018 – City Council meetings to discuss next steps in master planning for the Mixed-Use Flex designated portions of the Monterey Corridor.

January 22, 2019 – Planning Commission Study Session and Public Hearings on ZA2019-0001 Monterey Corridor Block One and ZA2019-0002 Monterey Corridor Block Four.

February 6, 2019 – City Council adopt zoning amendment for ZA2019-0001 Monterey Corridor Block One and ZA2019-0002 Monterey Corridor Block Four.

FISCAL AND RESOURCE IMPACT:

To complete the grant application process, limited staff resources from the Development Services Department are required and expected to be accommodated within the existing workplan. The preliminary cost estimate to develop a Form-Based Code for the Monterey Corridor is \$160,000 which will be funded by the grant in which a consultant will be selected to prepare the Form-Based Code. The grant is a reimbursement formula, meaning the City must front the costs and then expense phases of work to the State for reimbursement.

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 the submittal of a grant application is exempt from CEQA, the future adoption of a Form-Based Code will be subject to additional CEQA review.

LINKS/ATTACHMENTS:

1. Attachment 1: Resolution
2. Attachment 2 – 2019 SB 2 Planning Grants Program Application

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING APPLICATION FOR, AND RECEIPT OF, SB 2 PLANNING GRANTS PROGRAM FUNDS

WHEREAS, the State of California, Department of Housing and Community Development (Department) has issued a Notice of Funding Availability (NOFA) dated March 28, 2019, for its Planning Grants Program (PGP); and

WHEREAS, the City Council of the City of Morgan Hill (City) desires to submit a project application for the PGP program to accelerate the production of housing and will submit a 2019 PGP grant application as described in the Planning Grants Program NOFA and SB 2 Planning Grants Program Guidelines released by the Department for the PGP Program; and

WHEREAS, the Department is authorized to provide up to \$123 million under the SB 2 Planning Grants Program from the Building Homes and Jobs Trust Fund for assistance to Counties (as described in Health and Safety Code Section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)) related to the PGP Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL RESOLVES AS FOLLOWS:

Section 1. The City Council is hereby authorized and directed to apply for and submit to the Department the 2019 Planning Grants Program application released March 28, 2019 in the amount of \$160,000.

Section 2. In connection with the PGP grant, if the application is approved by the Department, Christina Turner, City Manager, is authorized to enter into, execute, and deliver a State of California Agreement (Standard Agreement) for the amount of \$160,000, and any and all other documents required or deemed necessary or appropriate to evidence and secure the PGP grant, the City's obligations related thereto, and all amendments thereto (collectively, the "PGP Grant Documents").

Section 3. The City shall be subject to the terms and conditions as specified in the Standard Agreement, the SB 2 Planning Grants Program Guidelines, and any applicable PGP guidelines published by the Department. Funds are to be used for allowable expenditures as specifically identified in the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application will be enforceable through the executed Standard Agreement. The City Council hereby agrees to use the funds for eligible uses in the manner presented in the application as approved by the Department and in accordance with the Planning Grants NOFA, the Planning Grants Program Guidelines, and 2019 Planning Grants Program Application.

Section 4. The City Manager or designee is authorized to execute the City of Morgan Hill Planning Grants Program application, the PGP Grant Documents, and any amendments thereto on behalf of the City as required by the Department for receipt of the PGP Grant.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 20th day of November 2019.

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. 19-xxx, adopted by the City Council at a regular meeting held on November 20, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

SB 2 Planning Grants Program Application



**State of California
Governor Gavin Newsom**

**Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency**

**Ben Metcalf, Director
Department of Housing and Community Development**

2020 West El Camino, Suite 500
Sacramento, CA 95833

Website: <http://www.hcd.ca.gov/grants-funding/active-funding/planning-grants.shtml>

Email: sb2planninggrant@hcd.ca.gov

March 28, 2019

Revised July 10, 2019

SB 2 Planning Grants Application

Planning Grants Program Application Packaging Instructions

The applicant is applying to the Department of Housing and Community Development (Department) for a grant authorized underneath the Planning Grants Program (PGP) provisions of SB 2 (Chapter 364, Statutes of 2017). The PGP program is intended for the preparation, adoption, and implementation of plans that streamline housing approvals and accelerate housing production. Please refer to the SB 2 Planning Grants Program Guidelines and Notice of Funding Availability (NOFA) for detailed information on eligible activities, applicants, and awards. If you have questions regarding this application or the PGP, email sb2planninggrant@hcd.ca.gov.

If approved for funding, this grant application will be a part of your Standard Agreement with the Department. In order to be considered for funding, all sections of this application, including attachments and exhibits if required, must be complete and accurate.

Pursuant to Section X of the NOFA, all applicants must submit a complete, signed, original application package and an electronic copy on CD or USB flash drive containing the following documentation, in the order listed below, to the Department by the specified due date in the Notice of Funding Availability (NOFA) in order to be considered for award:

- 1) A complete, signed, original application (the Department will only accept this **fillable pdf** as the application) with the following attachments:
 - a. **Attachment 1: State and Other Planning Priorities** (All applicants must submit this form to self-certify compliance)
 - b. **Attachment 2: Nexus to Accelerating Housing Production - NOTE:** if the applicant is proposing only Priority Policy Areas (PPA), as defined in section VIII, subsection (3) of the NOFA, do not fill out Attachment 2. However, if the applicant is proposing to fund PPAs AND other activities that are not considered PPAs, the application must demonstrate how these other activities have a nexus to accelerating housing production by filling out Attachment 2 of this application.
- 2) A fully executed resolution authorizing application for, and receipt of, PGP funds (see Attachment 3: Sample Resolution).
- 3) A fully executed Government Agency Taxpayer ID Form (available as a download from the SB 2 Planning Grants webpage at <http://www.hcd.ca.gov/grants-funding/active-funding/planning-grants.shtml>).
- 4) If the applicant is partnering with another local government or other entity pursuant to Article II, Section 200 of the SB 2 Planning Grant Program Guidelines (the "Guidelines"), include a copy of the legally binding agreement.
- 5) Other documentation (e.g., letters of support, scope of work, etc.) if needed.

NOTE: All local governments must submit a separate, signed application package, notwithstanding whether it will partner with another form of government or entity. Only one application per locality will be accepted by the Department. Joint applications are not allowed.

SB 2 Planning Grants Application

A. Applicant Information

Pursuant to Article II, Section 200 of the Guidelines, local governments may partner through legally binding agreements with other forms of governments or entities. However, all local governments must submit separate, signed application packages that identify their respective responsibilities and deliverables, even if partnering with other entities.

Is the applicant partnering with another eligible local government entity?		
☐	*Yes	*If Yes, the application package must include a fully executed copy of the legally binding agreement. Provide the partners' name(s) and type(s) below for reference only.
☐	No	

Complete the following Applicant information			
Applicant's Name		Y. S. ± ⁰ Ó± ⁰¹ ¿ ² Ø."	
Applicant's Agency Type		Y. S.	
Applicant's Mailing Address		íëëëë Ð»¿µ ß ^a » ² «»	
City		Ó± ⁰¹ ¿ ² Ø."	
State	California	Zip Code	çëðíé
County		Í ¿ ² ¿ Y' ¿ ⁰ ¿	
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Authorized Representative Name		Y, ò, - °. ² ¿ Ì « ⁰² » ⁰	
Authorized Representative Title		Y. S. Ó ¿ ² ¿ ¹ » ⁰	
Phone	øìðè÷ éëëóëìèð	Fax	øìðè÷ ééçóéííê
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Contact Person Name		ß¼¿ ³ Ð¿ - Ìµ±© - µ.	
Contact Person Title		Ð ⁰ , ² ½, ° ¿' Ð' ¿ ²² » ⁰ ó Ó± ²¹ Í ¿ ²¹ » Ð' ¿ ²² , ²¹	
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Partner(s) Name (if applicable)		² ñ¿	
Partner Agency Type		² ñ¿	
Partner(s) Name (if applicable)		² ñ¿	
Partner Agency Type		² ñ¿	
Proposed Grant Amount	\$	ïêððððð	

B. Applicant Certification

As the official designated by the governing body, I hereby certify that if approved by HCD for funding through the Planning Grants Program (PGP), the Y. S. ±⁰ Ó±⁰¹ ¿² Ø." assumes the responsibilities specified in the 2019 Notice of Funding Availability and PGP guidelines, and certifies that the information, statements, and other contents contained in this application are true and correct.

Signature: _____ Name: Y, ò, - °. ² ¿ Ì «⁰² »⁰

Date: _____ Title: Y. S. Ó ¿² ¿¹ »⁰

SB 2 Planning Grants Application

C. Threshold Requirements

Pursuant to Section 201(a) through (d) of the Guidelines, all applicants must meet the following threshold criteria in items 1-4 below to be eligible for an award.

1. Does the applicant have an adopted housing element found to be in substantial compliance by the Department on or before the date of the applicant's submission of their SB 2 Planning Grant application?		
☒	Yes	Date of HCD Review Letter: 11/11/18
☐	No	
☐	The Applicant requests HCD to consider housing element compliance threshold as met due to significant progress achieved in meeting housing element requirements.	

2. Has the applicant submitted to the Department the Annual Progress Report (APR) for the current or prior year on or before the date of submission of their SB 2 Planning Grant application?			
☒	Yes	APR	Date Submitted
☐	☒	2017 CY Report	11/11/18
☐	☒	2018 CY Report	11/11/18
☐	No		

3. Is the applicant utilizing one of the Priority Policy Areas listed below (as defined in section VIII, subsection (3) of the NOFA)?							
☒	*Yes	*If the applicant is proposing <u>only</u> Priority Policy Areas, <u>do not fill out Attachment 2</u> . However, if the applicant is proposing to fund PPAs AND other activities that are not considered PPAs, the application must demonstrate how these other activities have a nexus to accelerating housing production by filling out Attachment 2 of this application.					
		Rezone to permit by-right	Objective design and development standards	Specific Plans or form based codes coupled with CEQA streamlining	Accessory Dwelling Units or other low-cost building strategies	Expedited processing	Housing related infrastructure financing and fee reduction strategies
		☐	☐	☒	☐	☐	☐
☐	No	If an applicant is not proposing Priority Policy Areas, the application must include an explanation and document the plans or processes' nexus and impact on accelerating housing production based on a reasonable and verifiable methodology and must submit Attachment 2 in the Application pursuant to section VIII, subsection (3) of the NOFA.					
☐	The applicant is proposing PPAs and other activities not considered PPAs and is demonstrating how these activities have a nexus to accelerating housing production by submitting Attachment 2.						

4. Does the applicant demonstrate that the locality is consistent with State Planning or Other Priorities, as certified in Attachment 1?	Yes	☒	*No	☐
*If No, consistency may be demonstrated through activities (not necessarily proposed for SB 2 funding) that were completed within the last five years, as certified in Attachment 1.				

5. Is a completed and signed resolution included with the application package? See Attachment 3, "Sample Resolution"	Yes	☒	No	☐
--	-----	-------------------------------------	----	--------------------------

SB 2 Planning Grants Application

D. Proposed Activities Checklist (Section VI, items (1) through (17) of the NOFA)

Check all activities the locality is undertaking for their PGP efforts below. Activities must match **Section E. Project Description**, and **Section F. Timeline and Budget**.

1	☐	updates to general plans, community plans, specific plans, local planning related to implementation of sustainable communities strategies, or local coastal plans
2	☒	updates to zoning ordinances
3	☐	environmental analyses that eliminate the need for project-specific review
4	☒	local process improvements that improve and expedite local planning
5	☒	a smaller geography with a significant impact on housing production including an overlay district, project level specific plan or development standards modifications proposed for significant areas of a locality, such as corridors, downtown or priority growth areas
6	☐	the creation or enhancement of a housing sustainability district pursuant to AB 73 (Chapter 371, Statutes of 2017)
7	☐	workforce housing opportunity zone pursuant to SB 540 (Chapter 369, Statutes of 2017)
8	☐	zoning for by-right supportive housing, pursuant to Government Code section 65651 (Chapter 753, Statutes of 2018)
9	☐	zoning incentives for housing for persons with special needs, including persons with developmental disabilities
10	☐	rezoning to meet requirements pursuant to Government Code Section 65583.2(c) and other rezoning efforts to facilitate supply and affordability
11	☐	rezoning for multifamily housing in high resource areas (according to Tax Credit Allocation Committee/Housing Community Development Opportunity Area Maps)
12	☐	pre-approved architectural and site plans
13	☐	regional housing trust fund plans
14	☐	funding plans for SB 2 Year 2 going forward
15	☐	infrastructure financing plans
16	☐	environmental hazard assessments; data collection on permit tracking; feasibility studies, site analysis, or other background studies that are ancillary and part of a proposed activity with a nexus to accelerating housing production
17	☒	Other activities demonstrating a nexus to accelerating housing production

F. Project Timeline and Budget

***Priority Policy Area (PPA)**

SB 2 Planning Grants Application

G. Legislative Information

District	#	Legislator Name
Federal Congressional District	1	1
State Assembly District	2	2
State Senate District	3	3

Applicants can find their respective State Senate representatives at <https://www.senate.ca.gov/>, and their respective State Assembly representatives at <https://www.assembly.ca.gov/>.

SB 2 Planning Grants Application

Attachment 1: State and Other Planning Priorities Certification (Page 1 of 3)

Pursuant to Section 201(d) of the Guidelines, all applicants must demonstrate that the locality is consistent with State Planning or Other Planning Priorities by certifying that at least one activity was completed in 1) State Planning Priorities (i.e., Infill and Equity, Resource Protection, Efficient Development Patterns) or 2) Other Planning Priorities (i.e., Affordability, Conservation, or Climate Change). Consistency may be demonstrated through activities (not necessarily proposed for SB 2 funding) that were completed within the last five years.

Complete the following self-certification by selecting one or more of the policy areas in the following tables by inserting the date completed for each applicable action, briefly describing the action taken, and certifying.

State Planning Priorities

Date Completed	Brief Description of the Action Taken
Promote Infill and Equity	
	Rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas.
	Seek or utilize funding or support strategies to facilitate opportunities for infill development.
	Other (describe how this meets subarea objective)
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Promote Resource Protection	
	Protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands; natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands; recreation lands such as parks, trails, greenbelts, and other open space; and landscapes with locally unique features and areas identified by the state as deserving special protection.
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	Actively seek a variety of funding opportunities to promote resource protection in underserved communities.
	Other (describe how this meets subarea objective)
Encourage Efficient Development Patterns	
	Ensuring that any infrastructure associated with development, other than infill development, supports new development that does the following:
	(1) Uses land efficiently.
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SB 2 Planning Grants Application

Attachment 1: State and Other Planning Priorities Certification (Page 3 of 3)

Conservation of Existing Affordable Housing Stock	
<i>Policies, programs or ordinances to conserve stock such as an at-risk preservation ordinance, mobilehome park overlay zone, condominium conversion ordinance and acquisition and rehabilitation of market rate housing programs.</i>	
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<i>Policies, programs and ordinances to protect and support tenants such as rent stabilization, anti-displacement strategies, first right of refusal policies, resources to assist tenant organization and education and "just cause" eviction policies.</i>	
Other (describe how this meets subarea objective)	
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Climate Adaptation	
<i>Building standards, zoning and site planning requirements that address flood and fire safety, climate adaptation and hazard mitigation.</i>	
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<i>Long-term planning that addresses wildfire, land use for disadvantaged communities, and flood and local hazard mitigation.</i>	
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<i>Community engagement that provides information and consultation through a variety of methods such as meetings, workshops, and surveys and that focuses on vulnerable populations (e.g., seniors, people with disabilities, homeless, etc.).</i>	
	Ñ²ó¹±.²¹ Í»².± Í«°± Ì»ª.½»-ð Û³ »¹»²½§ ð»»º ç»¼²»- - Í»³ .² ç-ñ' ç- - - ç²¼ ÿ±³ ³ «².¬§ Û³ »¹»²½§ Í»- °±²- » Ì»ç³ ðÿÛ Ì ÷ ¾ ç- ½ ðç.².²¹
Other (describe how this meets subarea objective)	

State and Other Planning Priorities Certification

I certify under penalty of perjury that all of the information contained in this PGP State Planning and Other Planning Priorities certification form (pages 9, 10, and 11 of this application) is true and correct.

Certifying Officials Name: ß¼ ç³ Ðç- Ìµ±©-µ

Certifying Official's Title: Ð.²½.º ç' Ð' ç²²»ó ó Ò±²¹ î ç²¹ » Ð' ç²².²¹

Certifying Official's Signature: _____

Certification Date: _____

SB 2 Planning Grants Application

Attachment 2: Application Nexus to Accelerating Housing Production

Fill out Attachment 2 only if the applicant answered “No” to item 3 in Section C or is utilizing Policy Priority Areas AND other activities not designated as such. Applicants answering “Yes” to question 3 in Section C and utilizing ONLY Priority Policy Areas are automatically deemed to demonstrate a nexus to accelerating housing production, and do not need to complete this form.

Pursuant to section VIII, subsection (4) of the NOFA, applicants shall demonstrate how the application includes a nexus to accelerating housing production. Please complete the following chart by providing information about the current conditions and expected outcomes with respect to the planned activity and housing production. Please attach documentation as necessary and see the NOFA for additional details.

Quantify how the activity accelerates production below and use Appendix B to explain the activity and its nexus to accelerating housing production if necessary.

Type (Select at least one)	*Baseline	**Projected	***Difference	Notes
Timing (e.g., reduced number of processing days)				
Development cost (e.g., land, fees, financing, construction costs per unit)				
Approval certainty and reduction in discretionary review (e.g., prior versus proposed standard and level of discretion)				
Entitlement streamlining (e.g., number of approvals)				
Feasibility of development				
Infrastructure capacity (e.g., number of units)				
Impact on housing supply and affordability (e.g., number of units)				

*** Baseline – Current conditions in the jurisdiction**

(e.g. 6-month development application review, or existing number of units in a planning area)

****Projected – Expected conditions in the jurisdiction because of the planning grant actions**

(e.g. 2-month development application review)

*****Difference – Potential change resulting from the planning grant actions**

(e.g., 4-month acceleration in permitting, creating a more expedient development process)

SB 2 Planning Grants Application

Attachment 3: Sample Resolution

RESOLUTION NO. 2019-XX
A RESOLUTION OF THE [CITY COUNCIL/COUNTY BOARD OF SUPERVISORS] OF
____[CITY, COUNTY NAME]____
AUTHORIZING APPLICATION FOR, AND RECEIPT OF,
SB 2 PLANNING GRANTS PROGRAM FUNDS

WHEREAS, the State of California, Department of Housing and Community Development (Department) has issued a Notice of Funding Availability (NOFA) dated March 28, 2019, for its Planning Grants Program (PGP); and

WHEREAS, the [City Council/County Board of Supervisors] of _____ (City/County) desires to submit a project application for the PGP program to accelerate the production of housing and will submit a 2019 PGP grant application as described in the Planning Grants Program NOFA and SB 2 Planning Grants Program Guidelines released by the Department for the PGP Program; and

WHEREAS, the Department is authorized to provide up to \$123 million under the SB 2 Planning Grants Program from the Building Homes and Jobs Trust Fund for assistance to Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 ([SB 2](#))) related to the PGP Program.

NOW, THEREFORE, THE [CITY COUNCIL/COUNTY BOARD OF SUPERVISORS] OF _____
 RESOLVES AS FOLLOWS:

SECTION 1. The [City Council/County Board of Supervisors] is hereby authorized and directed to apply for and submit to the Department the 2019 Planning Grants Program application released March 28, 2019 in the amount of \$_____.

SECTION 2. In connection with the PGP grant, if the application is approved by the Department, the [insert designee title, e.g. City Manager, Executive Office, etc] is authorized to enter into, execute, and deliver a State of California Agreement (Standard Agreement) for the amount of \$_____, and any and all other documents required or deemed necessary or appropriate to evidence and secure the PGP grant, the [City/County's] obligations related thereto, and all amendments thereto (collectively, the "PGP Grant Documents").

SECTION 3. The [City/County] shall be subject to the terms and conditions as specified in the Standard Agreement, the SB 2 Planning Grants Program Guidelines, and any applicable PGP guidelines published by the Department. Funds are to be used for allowable expenditures as specifically identified in the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application will be enforceable through the executed Standard Agreement. The [City Council/County Board of Supervisors] hereby agrees to use the funds for eligible uses in the manner presented in the application as approved by the Department and in accordance with the Planning Grants NOFA, the Planning Grants Program Guidelines, and 2019 Planning Grants Program Application.

SECTION 4. The [insert the title of City Council/County Board of Supervisors Executive or designee] is authorized to execute the [City/County] of _____ Planning Grants Program application, the PGP Grant Documents, and any amendments thereto, on behalf of the [City/County] as required by the Department for receipt of the PGP Grant.

ADOPTED _____, 2019, by the [City/County] Board of Supervisors of the County of _____
 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____, County Executive

ATTEST: APPROVED AS TO FORM:

 County Clerk County Attorney

SB 2 Planning Grants Application

Appendix A

Use this area for additional information if necessary.

SB 2 Planning Grants Application**Appendix B**

Use this page to explain the nexus to accelerating housing production or for project description.



CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Charlie Ha, Supervising Civil Engineer
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR LAND DEVELOPMENT REVIEW PROGRAM SUPPORT

RECOMMENDATION(S)

1. Approve the Second Amendment to the professional services agreement with CSG Consultants, Inc. for land development review services for an additional \$136,300, for a total not-to-exceed amount of \$346,250 with the term of the agreement unchanged;
2. Authorize the City Manager to execute the Second Amendment; and
3. Adopt resolution amending the City's Fiscal Year 2019-20 budget to appropriate an additional \$136,300 within the Community Development Fund (Fund No. 206) for related professional services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

The City has a current contract with CSG Consultants, Inc. (CSG) for staff augmentation services to assist with land development engineering review and stormwater and floodplain management program support. The services performed by CSG are on an as-needed basis and include the following: plan check review of engineering plans, mapping reviews, stormwater plan reviews and stormwater compliance support, and floodplain management support functions. CSG plays a vital role in augmenting the land development engineering team for timely processing of development applications and program management support. The original contract with CSG was for a two-year term that will expire on June 30, 2020 with a contract amount of \$161,500. A subsequent First Amendment (Attachment 1) was approved by the City Manager to increase the contract by \$48,450, which resulted in a total not-to-exceed contract amount of \$209,950. Staff projects the current contract amount will be fully utilized through December 14, 2019.

The purpose of this Second Amendment (Attachment 1) is to increase the total not-to-exceed contract amount by \$136,300 for the remainder of FY 2019-20 from December 15, 2019 to June 30, 2020 which will result in a total not-to-exceed contract amount of

\$346,250. This new amendment will not change the other terms of the agreement. CSG services will focus on stormwater program support, plan check review of engineering plans, and floodplain management support functions through June 30, 2020.

CSG has provided a total of 300 hours of stormwater program support, about 460 hours of plan check review of engineering plans, and about 40 hours of floodplain management support, from January to June of 2019. Since July 2019, CSG's weekly average work hours were increased from 30 to 36 hours per week, due to an increase in workload for Stormwater Program support and an increase in the number of land development projects projected for the balance of FY 2019-20. The projected hours and cost for CSG to provide the needed staff augmentation for the balance of the fiscal year from December 15, 2019 to June 30, 2020 is provided in the following table with an increase in hours, based on an average of 36 work hours per week.

Activity	Hourly Rate	Hours	Total Cost
Stormwater Program Support	\$145.00	360	\$52,200.00
Plan Check Review	\$145.00	540	\$78,300.00
Floodplain Management Support	\$145.00	40	\$5,800.00
Totals			\$136,300.00

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended amendment to the CSG contract for land development review and program support services.

ALTERNATIVE ACTIONS:

The Council could decide to not approve this amendment. This will result in no project review nor stormwater program support services by CSG until a new consultant contract is approved. This alternative is not recommended as it will delay project approvals for the remainder of FY 2019-20 as the land development engineering team will have to perform the required review and program tasks. Staff will be preparing a new Request for Proposal (RFP) in early Spring 2020 for the next biennial budget cycle for staff augmentation services which will include land development engineering review and stormwater program support.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On July 18, 2018, City Council approved two agreements: one with CSG Consultants Inc. and one with Harris & Associates, Inc. for \$161,500 each, with a \$48,450 contingency to be specifically authorized by the City Manager, for a total contract amount not to exceed \$209,950 each.

FISCAL AND RESOURCE IMPACT:

The current agreement with CSG expires on June 30, 2020 and has a total not-to-exceed amount of \$209,950. If the requested appropriation (Attachment 2) and Second Amendment are approved, the total not-to-exceed amount will be increased to \$346,250, an increase of \$136,300. The additional \$136,300 will be funded from

Community Development Fund (206), in the Land Development Engineering Division. Services rendered by CSG are paid for by developer fees.

CEQA (California Environmental Quality Act):

Not a Project: Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The contract is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

LINKS/ATTACHMENTS:

1. CSG Second Amendment
2. Budget Resolution

SECOND AMENDMENT TO AGREEMENT CSG CONSULTANTS, 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 CSG CONSULTANTS, INC., a California Corporation ("CONSULTANT").

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 CONSULTANT entered into that "Consultant Agreement" made as of August 10, 2018, for consultant services for a maximum compensation of One Hundred Sixty-One Thousand Five Hundred Dollars (\$161,500.00) ("CONSULTANT AGREEMENT").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of October 15, 2019, under which the maximum compensation under the CONSULTANT AGREEMENT, as amended, was increased to Two Hundred Nine Thousand Nine-Hundred Fifty Dollars (\$209,950.00). The CONSULTANT 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 CONSULTANT 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. Compensation under this Agreement shall not exceed THREE HUNDRED FORTY-SIX THOUSAND TWO-HUNDRED FIFTY AND NO/00 DOLLARS (\$346,250.00) 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."

///

Signatures on the Next Page

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 CONSULTANT AGREEMENT or any earlier 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

 Michelle Bigelow, City Clerk

Date: _____

 Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

CSG CONSULTANTS, INC.

 Donald A. Larkin, City Attorney

Date: _____

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: _____

**FIRST AMENDMENT TO AGREEMENT
CSG CONSULTANTS, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on October 15, 2019 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and CSG CONSULTANTS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of August 10, 2018, for consultant services for a maximum compensation of One Hundred Sixty-One Thousand Five Hundred Dollars ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS"). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS is attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, 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. Paragraphs 4.1 and 4.1.1. shall be amended and replaced in their entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed TWO-HUNDRED NINE THOUSAND NINE-HUNDRED FIFTY AND NO/100 DOLLARS (\$209,950.00) 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."

B. Paragraph 5 shall be amended and replaced in its entirety by the following:

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

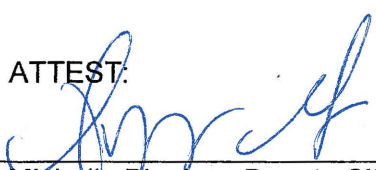
Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

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 SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

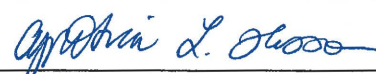
- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:


 Michelle Bigelow, Deputy City Clerk

Date: 10/22/19

APPROVED AS TO FORM:


 Donald A. Larkin, City Attorney

Date: 10-14-19

CITY OF MORGAN HILL


 Christina J. Turner, City Manager

Date: 10-15-19

CSG CONSULTANTS, INC.

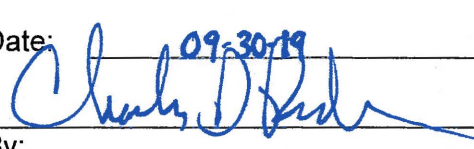
By: 

Title: Cyrus Kianpour, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 09-30-19

By: 

Title: Charles D. Rider, Secretary

Print Name and Title of Signer.

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

Date: 09-30-19

EXHIBIT 1

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
CSG CONSULTANTS, INC.

THIS AGREEMENT is entered into and becomes effective on 8/10/18 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and CSG Consultants, 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 action of the Morgan Hill City Council taken on July, 18, 2018.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 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 for On-Call Engineering Plan Review & Technical Support for the Land Development Engineering Division as further described in Exhibit A.

4. **Compensation.** CONSULTANT shall be compensated as follows:

4.1. **Amount.** \$161,500.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Sixty One Thousand Five Hundred dollars, except as provided in Section 4.1.1 of this Agreement, "Additional Compensation", 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 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.

4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceed the compensation amount listed in Section 4.1 of this Agreement may be approved through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve the additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of Two Hundred Nine Thousand Nine Hundred Fifty dollars (\$209,950.00).

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 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 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 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 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:

Mr. Hatem Ahmed, Senior Principal Engineer
CSG Consultants, Inc.
3150 Almaden Expressway #255
San Jose, CA 95118

Address of CITY is as follows:

Maria Angeles
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

with a copy to:
City Clerk
City of Morgan Hill
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. **Maintenance of Records.**

- 15.1. 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.
- 15.2. 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.
- 15.3. 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.
16. 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.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. 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.
19. 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.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, 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 negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.

- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, 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").
- 20.3. 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, active negligence or willful misconduct of the CITY.
- 20.4. 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.
- 20.5. 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 (20) 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.
- 20.6. 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.
21. 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.
22. 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.
23. 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.

24. **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.

25. **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 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.

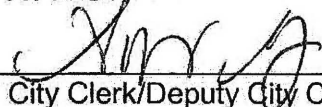
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

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

Michelle Bigelow

Print Name

Date: 8/10/18

APPROVED AS TO FORM:



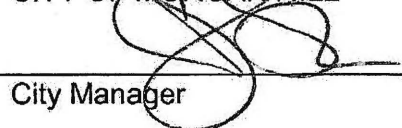
City Attorney

Donald A. Larkin

Print Name

Date: 7/31/2018

CITY OF MORGAN HILL



City Manager

Christina J. Turner

Print Name

Date: 8/10/18

CSG CONSULTANTS, INC.



By:

Nourdin Khayata, Vice President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 07-09-18



By:

Charles D. Rider, Secretary

Print Name and Title of Signer.

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

Date: 07-09-18

EXHIBIT A SCOPE OF SERVICES

Under the direct supervision of the Land Development Engineering staff, the CONSULTANT will provide On-Call Engineering Plan Review & Technical Support Services for a two-year period (Fiscal Years 2018-19 and FY 2019-20).

The following are the types of tasks that are included in the CONSULTANT's scope of services:

1. Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice.
2. Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice.
3. Review the civil engineering and site planning aspects of tentative maps and/or land development applications for conformance with City standards as part of the City's entitlement process.
4. Review and management of Stormwater Pollution Prevention Plans (SWPPPs) and Post-Construction Stormwater Runoff Management Plans (SWRMPs) submitted by private development projects, and other functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.
5. Prepare flood studies, review floodplain proposals, Flood Program management support, and other related functions as needed.
6. Train City staff in specific engineering review and/or stormwater reviews as requested.
7. Other general engineering services as needed.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

	2018 Hourly Rate	2019 Hourly Rate
Administrative Assistant	\$70	\$75
Analyst	\$120	\$125
Engineering Designer	\$130	\$135
Construction Inspector	\$135	\$140
Senior Analyst	\$145	\$150
Assistant Resident Engineer	\$160	\$165
Assistant Engineer	\$140	\$145
Associate Engineer	\$160	\$165
Senior Construction Inspector	\$150	\$155
Senior Engineer	\$185	\$190
Resident Engineer	\$190	\$195
Structure Representative	\$190	\$195
Senior Structural Engineer	\$200	\$205
Senior Project Manager	\$200	\$205
Principal Engineer	\$210	\$215
Senior Principal Engineer	\$230	\$235
Two-Person Survey Crew	\$310	\$320

All hourly rates include overhead costs including, but not limited to, salaries, benefits, Workers Compensation Insurance, travel and office expenses.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

CONSULTANT'S services will be on an as-needed, on-call basis.

The scope of work will vary and will be requested on a task order basis as the need arises. Task orders may be in the form of a written or verbal request. The CONSULTANT is responsible for acknowledging receipt of requests within two (2) working days. Task orders may vary significantly in size and scope and will be determined in greater detail as each task order is assigned. The CITY will discuss the scope of services and schedule of performance with the CONSULTANT prior to issuing a task order.

The CONSULTANT will be responsible for preparing a detailed scope and fee estimate for each task order and will provide an estimated date of completion. The CITY may accept the CONSULTANT'S scope and fee or negotiate with the CONSULTANT, as appropriate.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 ADOPTED BUDGET TO APPROPRIATE \$136,300 IN THE COMMUNITY DEVELOPMENT FUND (206) FOR ENGINEERING CONTRACT SERVICES

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 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 City's previously adopted Fiscal Year 2019-20 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
- b. 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 Year 2019-20 Budget of City.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 20th day of November 2019.

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. 19-xxx, adopted by the City Council at a regular meeting held on November 20, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

011

FUND:

DEPARTMENT:

OBJECT:

206	Community Development Fund
5410	PW Engineering
42231	CONTRACT SERVICES

AGENDA DATE:

AGENDA ITEM TITLE:

11/20/19
CSG Contract

	07/01/19 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/20 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,392,941	5,263,435	5,847,332	809,044
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		-	136,300	(136,300)
RESULT OF RECOMMENDED ACTION	<u>1,392,941</u>	<u>5,263,435</u>	<u>5,983,632</u>	<u>672,744</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Charlie Ha, Supervising Civil Engineer
APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE HILL MEADOWS – TRACT NO. 10378

RECOMMENDATION(S)

1. Approve Second Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Second Amendment to the Subdivision Improvements Agreement with Mission Pacific Homes, LLC; and
3. Authorize the recordation of the Second Amendment to the Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Dunne Hill Meadows – Tract No. 10378 (the “Project”) is a 6-lot subdivision located on the northeasterly corner of East Dunne Avenue and Hill Road (Attachment 1). The Final Map for the Project was recorded on December 4, 2017.

The original owner of the Project, Hanalei Land Co., LLC, executed a Subdivision Improvements Agreement (SIA) with the City, requiring the public improvements of the Project be complete within eighteen (18) months from the date of the recording of the Final Map. The SIA also allows the City Manager to extend the Agreement by not more than six (6) months.

In June 2018, the Project was bought by Mission Pacific Homes, LLC, and the SIA was subsequently assigned to Mission Pacific Homes, LLC.

Mission Pacific Homes, LLC requested a six (6) month extension of the SIA. The extension request was approved by the City Manager, via the first amendment, which extended the SIA expiration to December 4, 2019.

Since assuming ownership of the Project, Mission Pacific Homes, LLC has not obtained the necessary building permits per the Design Review Approval, project number SR15-13. The Design Review Approval expired on February 7, 2019. Moreover, in order to

start the required public improvement work, a building permit for grading of the private lots needs to be issued.

Mission Pacific Homes, LLC has re-applied for Design Review Approval which is currently under review. Until the Project's design review is approved by the Planning Division, the Building and Engineering Divisions cannot authorize the issuance of a building permit for grading and an encroachment permit for the public improvements, respectively.

Planning staff anticipates Design Review Approval to occur in late December 2019 or early January of 2020. Therefore, Mission Pacific Homes, LLC has requested for a second amendment to the Subdivision Improvements Agreement to allow for an extension of time to complete the public improvements by eighteen (18) months, with a new expiration date of June 4, 2021.

Staff recommends that City Council authorize the City Manager to sign and record the second amendment to the Subdivision Improvements Agreement (Attachment 2) on behalf of the City.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended Amendment to the Project's Subdivision Improvements Agreement.

ALTERNATIVE ACTIONS:

There is no feasible alternative action at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

September 27, 2017 – City Council approved the Final Map and Subdivision Improvements Agreement for Dunne Hill Meadows – Tract 10378.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

Categorical Exemption

Section 15332 of the State CEQA Guidelines – Infill Development Projects.

LINKS/ATTACHMENTS:

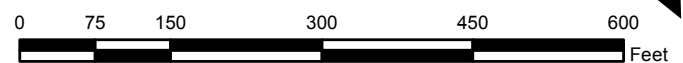
1. Site Map - Tract 10378
2. Second Amendment To Subdivision Improvements Agreement



CITY OF MORGAN HILL

**Development Services Department
Land Development Engineering Division**

**SITE PLAN
TRACT 10378
DUNNE HILL MEADOWS**



RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT

DUNNE HILL MEADOWS – TRACT NO. 10378

THIS SECOND AMENDMENT TO THE SUBDIVISION IMPROVEMENTS AGREEMENT ("SECOND AMENDMENT") is dated as of this _____ day of _____, 2019, is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("CITY"), and Mission Pacific Homes, LLC, a California limited liability company ("SUBDIVIDER"). CITY and SUBDIVIDER are collectively referred to as the "Parties".

RECITALS

The following recitals are a substantive portion of this SECOND AMENDMENT:

1. The CITY and Hanalei Land Company, LLC (ORIGINAL SUBDIVIDER) entered into that Subdivision Improvements Agreement ("ORIGINAL AGREEMENT") on September 28, 2017 to develop the property located on the northeast corner Hill Road and Dunne Avenue in Morgan Hill, California (APNs 728-11-045 thru 728-11-050), as a 6-lot residential development project designated as Tract No. 10378 ("Project"). The ORIGINAL AGREEMENT was recorded on November 30, 2017 with Santa Clara County Recorder as document number 23816197.
2. On December 4, 2017, the final map for Tract No. 10378 ("Tract") was recorded with Santa Clara County Recorder in Book 909 of Maps, at Pages 3 through 5.
3. Pursuant to the ORIGINAL AGREEMENT, the SUBDIVIDER is required to perform and complete all public improvements within eighteen (18) months from the date of the recording of the Final Map (no later than June 4, 2019).
4. On May 3, 2019, an Assignment and Assumption of Subdivision Improvement Agreement ("Assignment and Assumption") by and among the City of Morgan Hill, a municipal corporation ("City"), Hanalei Land Company, LLC, a California limited liability company ("Assignor") and Mission Pacific Homes, LLC, a California limited

liability company ("Assignee") was recorded with the Santa Clara County Recorder as document number 24170951, transferring and assigning to Assignee all of Assignor's rights, title, and interest in and to, and obligations under the Original Agreement.

5. On September 6, 2019, an Amendment to Subdivision Improvements Agreement (First Amendment) was approved by the City Manager pursuant to Section 6 of the ORIGINAL AGREEMENT, extending the deadline for completion to December 4, 2019 (by not more than six (6) months) at her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. The First Amendment was recorded on September 18, 2019 with the Santa Clara County Recorder as document number 24283243.
6. Pursuant to Section 17.32.270 of the Morgan Hill Municipal Code (Chapter 17.32, Improvements and Improvement Agreements), the completion date may further be extended by the City Council upon written request by the SUBDIVIDER not less than thirty days prior to expiration of the subdivision improvement agreement and the submittal of adequate evidence to justify the extension.
7. On October 10, 2019, the SUBDIVIDER submitted a written request to extend the deadline by an additional eighteen (18) months (no later than June 4, 2021) to complete the public improvements due to delays in obtaining a construction loan and expiration of permits due to the change in ownership.
8. The City Council deemed that the extension of the deadline by an additional eighteen (18) months is necessary to allow the SUBDIVIDER to continue working on the project's building permit submittal that is currently under review by the CITY.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. All terms and conditions of the ORIGINAL AGREEMENT, as amended shall remain in full force and effect, except that the following amendments shall be made as set forth below.

The first paragraph of Section 6 of the ORIGINAL AGREEMENT is further amended to read as follows:

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within forty-two (42) months from the date of the recording of the Final Map. The Subdivider may request the City Council to further extend the deadline for completion upon written request by the Subdivider and the submittal of adequate evidence to justify the extension.

2. Those individuals who are signing this SECOND AMENDMENT 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 SECOND AMENDMENT.

IN WITNESS THEREOF, the parties have executed this AMENDMENT on the day and year shown below:

ATTEST:

CITY OF MORGAN HILL

By: _____

By: _____

Michelle Bigelow, Deputy City
Clerk

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

"Subdivider"

By: _____

Mission Pacific Homes, LLC

Donald A. Larkin, City Attorney

By: _____

Date: _____


Jenny Huang/manager
Print Name and Title

Date: 11/06/19

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.

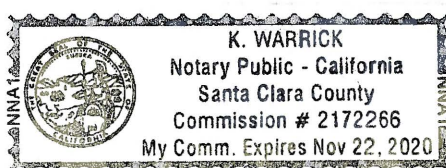
State of **California**
County of **Santa Clara**

On November 6, 2019, before me, K. WARRICK a Notary Public in and for said County and State, personally appeared Jenny Huang proved to me on the basis of satisfactory evidence to be the person 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]
SIGNATURE OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY 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**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person 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 OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Charlie Ha, Supervising Civil Engineer

APPROVED BY: City Manager

APPROVE SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE MURPHY – TRACT NO. 10387

RECOMMENDATION(S)

1. Approve Second Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Second Amendment to the Subdivision Improvements Agreement with Nordstrom Cal Homes, LLC; and
3. Authorize the recordation of the Second Amendment to the Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Dunne Murphy – Tract No. 10387 (the “Project”) is a 14-lot subdivision (12 project lots, 2 private lots) located on the southeast corner of East Dunne Avenue and Murphy Avenue (Attachment 1). The Final Map for the Project was recorded on December 18, 2017.

The original owner of the Project, Live Oak Investment Corporation, executed a Subdivision Improvements Agreement (SIA) with the City, requiring the public improvements of the Project be complete within eighteen (18) months from the date of the recording of the Final Map. The SIA also allows the City Manager to extend the Agreement by not more than six (6) months.

In August 2018, the Project was bought by Nordstrom Cal Homes, LLC, and the SIA was subsequently assigned to Nordstrom Cal Homes, LLC.

Nordstrom Cal Homes, LLC requested a six (6) month extension of the SIA. The extension request was approved by the City Manager, via the first amendment, which extended the SIA expiration to December 18, 2019.

Since assuming ownership of the Project, Nordstrom Cal Homes, LLC has not obtained the necessary building permits per the Design Review Approval, project number SD2017-0003. The Design Review Approval expired on May 31, 2019. Moreover, in

order to start the required public improvement work, a building permit for grading of the private lots needs to be issued.

Nordstrom Cal Homes, LLC has re-applied for Design Review Approval which is currently under review. Until the Project's design review is approved by the Planning Division, the Building and Engineering Divisions cannot authorize the issuance of a building permit for grading and an encroachment permit for the public improvements, respectively.

Planning staff anticipates Design Review Approval to occur in late December 2019 or early January of 2020. Therefore, Nordstrom Cal Homes, LLC has requested for a second amendment to the Subdivision Improvements Agreement to allow for an extension of time to complete the public improvements by eighteen (18) months, with a new expiration date of June 18, 2021.

Staff recommends that City Council authorize the City Manager to sign and record the second amendment to the Subdivision Improvements Agreement (Attachment 2) on behalf of the City.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended Amendment to the Project's Subdivision Improvements Agreement.

ALTERNATIVE ACTIONS:

There is no feasible alternative action at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

May 3, 2017 – City Council approved the Final Map and Subdivision Improvements Agreement for Dunne Murphy – Tract 10387.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid for from development processing fees.

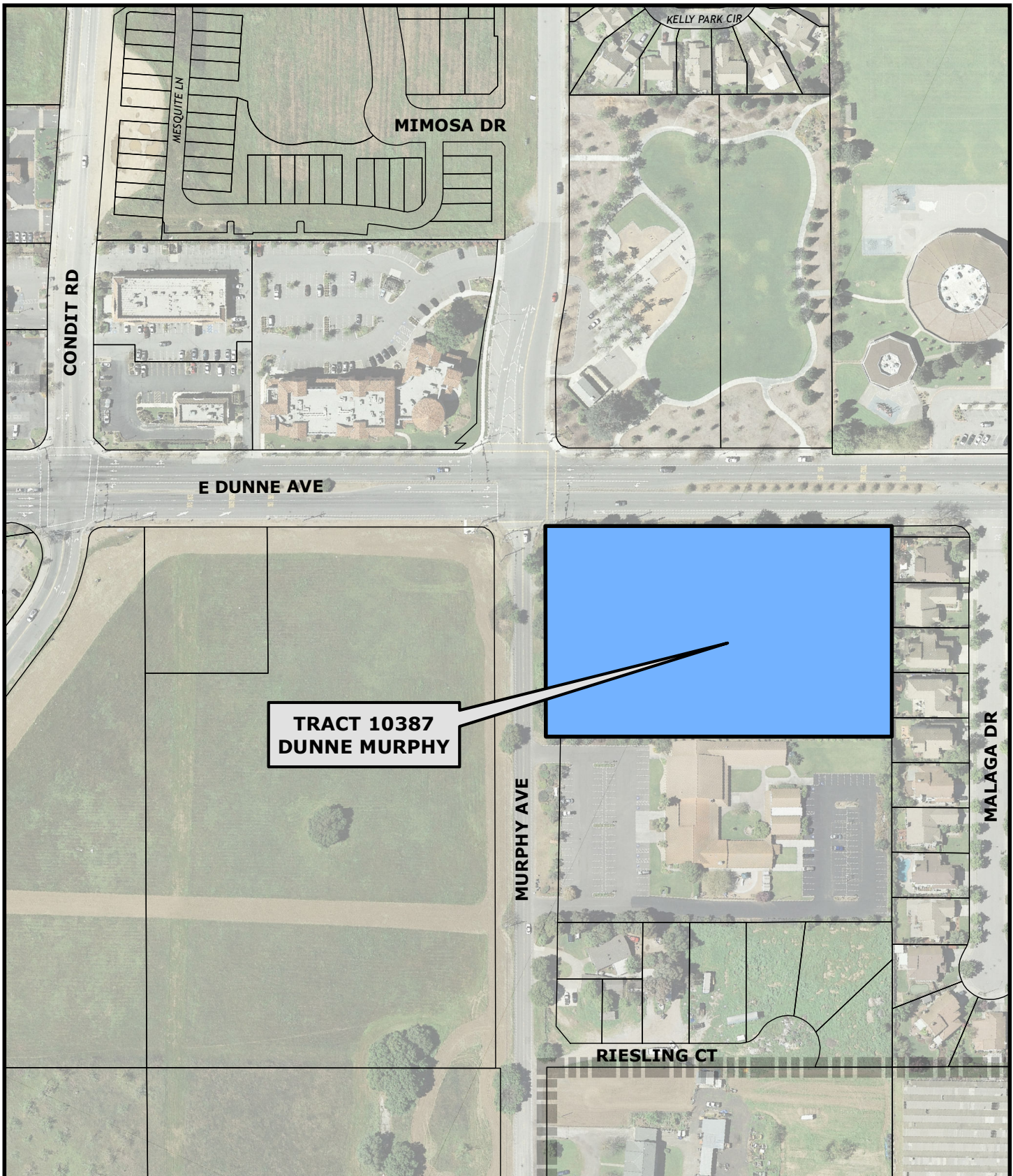
CEQA (California Environmental Quality Act):

Project.

Mitigated Negative Declaration was adopted on February 9, 2016.

LINKS/ATTACHMENTS:

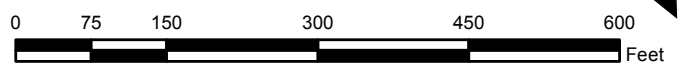
1. Site Map - Tract 10387
2. Second Amendment To Subdivision Improvements Agreement For Dunne Murphy - Tract 10387



CITY OF MORGAN HILL

**Development Services Department
Land Development Engineering Division**

**SITE PLAN
TRACT 10387
DUNNE MURPHY**



RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT

DUNNE MURPHY – TRACT NO. 10387

THIS SECOND AMENDMENT TO THE SUBDIVISION IMPROVEMENTS AGREEMENT ("SECOND AMENDMENT") is dated as of this _____ day of _____, 2019, is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("CITY"), and Nordstrom Cal Homes, LLC, a California limited liability company ("SUBDIVIDER"). SUBDIVIDER and CITY are collectively referred to as the "Parties".

RECITALS

The following recitals are a substantive portion of this SECOND AMENDMENT:

1. The CITY and Live Oak Investment Corporation (ORIGINAL SUBDIVIDER) entered into that Subdivision Improvements Agreement ("ORIGINAL AGREEMENT") on October 25, 2017 to develop the property located on the southeast corner of Murphy Avenue and Dunne Avenue in Morgan Hill, California (APNs 817-78-005 thru 817-78-012 and 817-78-014 thru 817-78-017), as a 12-lot residential development project designated as Tract No. 10387 ("Project"). The ORIGINAL AGREEMENT was recorded on December 18, 2017 with Santa Clara County Recorder as document number 23830275.
2. A Final Map for Tract 10387 was recorded on December 18, 2017 in Book 910 of Maps, at Pages 13 through 16 with Santa Clara County Recorder.
3. Pursuant to the ORIGINAL AGREEMENT, the SUBDIVIDER is required to perform and complete all public improvements within eighteen (18) months from the date of the recording of the Final Map (no later than June 18, 2019).
4. On October 21, 2019, an Assignment and Assumption of Subdivision Improvement Agreement ("Assignment and Assumption") by and among the City of Morgan Hill, a municipal corporation ("City"), Live Oak Investment Corporation, a California

Corporation ("Assignor") and Nordstrom Cal Homes. LLC, a California limited liability company ("Assignee") was recorded with the Santa Clara County Recorder as document number 24309117, transferring and assigning to Assignee all of the Assignor's rights, title, and interest in and to, and obligations under the Original Agreement.

5. On October 28, 2019, an Amendment to Subdivision Improvements Agreement was approved by the City Manager pursuant to Section 6 of the ORIGINAL AGREEMENT, extending the deadline for completion to December 18, 2019 (not more than six (6) months) at her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. This Amendment was recorded on October 30, 2019 with the Santa Clara County Recorder as document number 24316601.
6. Pursuant to Section 17.32.270 of the Morgan Hill Municipal Code (Chapter 17.32, Improvements and Improvement Agreements), the completion date may further be extended by the City Council upon written request by the SUBDIVIDER not less than thirty days prior to expiration of the subdivision improvement agreement and the submittal of adequate evidence to justify the extension.
7. On October 10, 2019, the SUBDIVIDER submitted a written request to extend the deadline by an additional eighteen (18) months (no later than June 18, 2021) to complete the public improvements due to delays in obtaining a construction loan and expiration of permits due to the change in ownership.
8. The City Council deemed that the extension of the deadline by an additional eighteen (18) months is necessary to allow the SUBDIVIDER to continue working on the project's building permit submittal that is currently under review by the CITY.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. All terms and conditions of the ORIGINAL AGREEMENT, as assigned and amended shall remain in full force and effect, except that the following amendments shall be made as set forth below.

The first paragraph of Section 6 of the ORIGINAL AGREEMENT is amended to read as follows:

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within Forty-Two (42) months from the date of the recording of the Final Map. The Subdivider may request

the City Council to further extend the deadline for completion upon written request by the Subdivider and the submittal of adequate evidence to justify the extension.

2. Those individuals who are signing this SECOND AMENDMENT 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 SECOND AMENDMENT.

IN WITNESS THEREOF, the parties have executed this SECOND AMENDMENT on the day and year shown below.

ATTEST:

CITY OF MORGAN HILL

By:

By:

Michelle Bigelow, Deputy City
Clerk

Christina J. Turner, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

"Subdivider"

By:

Nordstrom Cal Homes, LLC

Donald A. Larkin, City Attorney

By:



Date: _____

Jenny Huang, Manager

Date:

11/06/19

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.

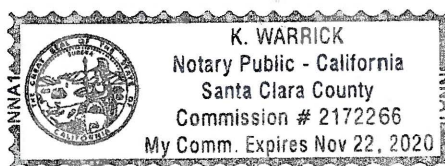
State of **California**
County of **Santa Clara**

On November 6 2019, before me, K WARRICK a Notary Public in and for said County and State, personally appeared Jenny Huang proved to me on the basis of satisfactory evidence to be the person 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 OF NOTARY PUBLIC



(ABOVE AREA FOR NOTARY 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**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person 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 OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

APPROVE CITY COUNCIL MEETING SCHEDULE FOR CALENDAR YEAR 2020

RECOMMENDATION(S)

1. Review and adjust the 2020 City Council meeting schedule as deemed appropriate; and
2. Approve 2020 City Council meeting schedule.

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
Preserving and Cultivating Public Trust
Preserving Our Community History
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

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

REPORT NARRATIVE:

The City Council has adopted policy CP 06-02 regarding its meeting schedule. The team requests that the City Council review its meeting schedule for the months of January 2020 through December 2020. The following meetings are proposed to be canceled and/or scheduled:

1. January 1st regular meeting of the City Council canceled per Council Policy CP-06-02. **(Cancel)**
2. January 24th at 9:00 a.m. and January 25th at 9:00 a.m. Special City Council Goal Setting Workshop. **(Schedule)**
3. May 15th at 9:00 a.m. Special City Council Budget and CIP Workshop. **(Schedule)**
4. July 1st regular meeting of the City Council canceled pursuant to Council Policy CP-06-02 **(Cancel)**
5. July 24th at 9:00 a.m. Special City Council Mid-Year Goal Review Workshop. **(Schedule)**

6. August 19th, 26th, and September 2nd regular meetings of the City Council for the summer break. The meeting on August 26th canceled pursuant to Council Policy, CP-06-02. **(Cancel)**
7. October 7th regular meeting of the City Council canceled to allow the City Council and staff to attend the League of California Cities Annual Conference. **(Cancel)**
8. November 25th regular meeting of the City Council canceled pursuant to Council Policy CP-06-02. **(Cancel)**
9. December 9th Special City Council Meeting for Certification of Election Results (if needed). **(Schedule)**
10. December 23rd regular meeting of the City council canceled for the holiday break. **(Cancel)**

Given the above information, the City Council may wish to retain, adjust, and/or cancel regularly scheduled meetings.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the 2020 City Council meeting schedule.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council reviews the meeting schedule annually.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with this action.

CEQA (California Environmental Quality Act):

Not a Project. Administrative activities of governments that do not result in direct physical changes in the environment do not qualify as a project for purposes of CEQA.

LINKS/ATTACHMENTS:

1. Council Policy -06-02
2. Draft 2020 City Council Meeting Schedule

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-06-02

SUBJECT: CITY COUNCIL MEETING SCHEDULE

EFFECTIVE DATE: March 22, 2006, Revised November 20, 2013,
Revised October 21, 2015

ORIGINATING DEPT: City Clerk

The City Council has ordained that regular meetings are to be held on the first, third, and fourth Wednesdays of every month at 7:00 p.m. In the event of a legal holiday occurring on a regular City Council meeting day, the meeting(s) will be canceled. Should the Mayor and City Manager determine that the third meeting of the month is not necessary, they shall have the authority to cancel the meeting.

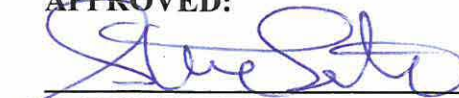
The City Council desires to take official legislative recesses, at various times, to accommodate community and civic commitments, vacations, and the City's operations schedule. As such, the following meeting schedule will apply for the months of January, July, August, September, October, November and December of every year:

- For the month of January, should the City furlough its employees the last week in December, the first meeting in January shall be canceled. The Council will hold its annual Goal Setting retreat the last Friday and Saturday of the month.
- The Council will hold its annual Budget Workshop during the month of May.
- For the month of July, the first Wednesday meeting is to be canceled.
- For the month of August, the third Wednesday meeting is to be canceled.
- For the months of September and October, regular meetings will be held on the first, third, and fourth Wednesdays, beginning at 7:00 p.m.; unless the meeting date falls on Rosh Hashanah or Yom Kippur. In which case, said meeting will be canceled.
- For the month of November, regular meetings will be held on the first, third, and fourth Wednesdays, beginning at 7:00 p.m.; unless the Wednesday meeting date falls the day before the Thanksgiving Holiday. In which case, said meeting will be canceled.
- For the month of December, regular meetings will be held on the first, third, and fourth Wednesdays, beginning at 7:00 p.m.; unless the Wednesday meeting date(s) fall on the Christmas Holiday and/or during the Holiday furlough. In which case, said meeting(s) will be canceled.

The City Council shall have the ability to adjust and/or add other meeting dates, as deemed appropriate.

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

APPROVED:


STEVE TATE, Mayor

Attachment: Council Policy -06-02 (2517 : 2020 CC Meeting Schedule)

2020 City Council Meeting Schedule

Note: Should a scheduled City Council meeting be cancelled, the Council Member reporting will be rotated to avoid a lapse in reporting of a Council Member.

Special meetings that are added during the year will not have City Council Member reporting.

Meeting Date	Type of Meeting	Notes	Council Member Report
01/01/2020 Wednesday	Regular CC	Cancelled per Council Policy (CP 06-02)	
01/15/2020 Wednesday	Regular CC		
01/22/2020 Wednesday	Regular CC		
01/24/2020 Friday	Special CC	9:00 a.m. – 5:00 p.m. Goal Setting Workshop	
01/25/2020 Saturday	Continued from 01/24/2020	9:00 a.m. Continued Goal Setting Workshop	
02/05/2020 Wednesday	Regular CC		
02/19/2020 Wednesday	Regular CC		
02/26/2020 Wednesday	Regular CC		
03/04/2020 Wednesday	Regular CC		
3/11/2020 Wednesday		State of the City Address	
03/18/2020 Wednesday	Regular CC		
03/25/2020 Wednesday	Regular CC		
04/01/2020 Wednesday	Regular CC		
04/15/2020 Wednesday	Regular CC		
04/22/2020 Wednesday	Regular CC	Introduction to Recommended Biennial Budget/Community Meeting	
05/06/2020 Wednesday	Regular CC		
05/15/2020 Friday	Special CC	9:00 a.m. – 5:00 p.m. Budget Workshop	
05/20/2020 Wednesday	Regular CC		

Attachment: Draft 2020 City Council Meeting Schedule (2517 : 2020 CC Meeting Schedule)

2020 City Council Meeting Schedule

Meeting Date	Type of Meeting	Notes	Council Member Report
5/27/2020 Wednesday	Regular CC		
06/03/2020 Wednesday	Regular CC		
06/17/2020 Wednesday	Regular CC		
06/24/2020 Wednesday	Regular CC		
07/01/2020 Wednesday	Regular CC	Cancelled per Council Policy (CP 06-02)	
07/15/2020 Wednesday	Regular CC		
07/22/2020 Wednesday	Regular CC		
07/24/2020 Friday	Special CC	9:00 a.m. – 5:00 p.m. Mid-Year Goal Review Workshop	
08/05/2020 Wednesday	Regular CC		
08/19/2020 Wednesday	Regular CC	Cancelled Summer Recess	
08/26/2020 Wednesday	Regular CC	Cancelled per Council Policy (CP 06-02)	
09/02/2020 Wednesday	Regular CC	Cancelled Summer Recess	
09/16/2020 Wednesday	Regular CC		
09/23/2020 Wednesday	Regular CC		
10/07/2020 Wednesday	Regular CC	Cancelled League of California Cities Annual Conference	
10/21/2020 Wednesday	Regular CC		
10/28/2020 Wednesday	Regular CC		
11/04/2020 Wednesday	Regular CC		

Attachment: Draft 2020 City Council Meeting Schedule (2517 : 2020 CC Meeting Schedule)

2020 City Council Meeting Schedule

Meeting Date	Type of Meeting	Notes	Council Member Report
11/18/2020 Wednesday	Regular CC		
11/25/2020 Wednesday	Regular CC	Cancelled per Council Policy (CP 06-02)	
12/02/2020 Wednesday	Regular CC		
12/09/2020 Wednesday	Special CC	Tentative Special Meeting for Certification of Election Results	
12/16/2020 Wednesday	Regular CC		
12/23/2020 Wednesday	Regular CC	Cancelled Holiday Break	

Attachment: Draft 2020 City Council Meeting Schedule (2517 : 2020 CC Meeting Schedule)

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, November 6, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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.

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:01 pm.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Present	
Yvonne Martinez Beltran	Council Member	Late	7:31 PM
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	

Minutes Acceptance: Minutes of Nov 6, 2019 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

None.

CITY MANAGER'S REPORT

City Manager Christina Turner mentioned the evening's supplements and presentations. She asked that Item 4, Award of the Centennial Recreation Center Generator project, be deferred to a future meeting as we are awaiting additional information. She shared that the Speaker Series on Healthcare is coming up tomorrow November 7th from 11:30 am to 1:00 pm at the Granada Theatre.

CITY ATTORNEY'S REPORT

None.

OTHER REPORTS

None.

DECLARATION OF POSTING AGENDA

Deputy City Clerk Bigelow declared the posting of the agenda.

PUBLIC COMMENT

PUBLIC COMMENT 01

The public comment was opened at 7:04 pm. The following people were called to speak:

Steve Chappell

Danielle Jennings

Ron Kirkish

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:	Rene Spring, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Carr, McKay
ABSENT:	Martinez Beltran

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 3, 6, 7, and 9. Item 4 was pulled from the agenda.

Minutes Acceptance: Minutes of Nov 6, 2019 7:00 PM (CONSENT CALENDAR)

RESULT: APPROVED [UNANIMOUS]
MOVER: Rene Spring, Mayor Pro Tem
SECONDER: John McKay, Council Member
AYES: Constantine, Spring, Carr, McKay
ABSENT: Martinez Beltran

1. REPORT REGARDING UPCOMING 2020 COMMISSION VACANCIES - PER MADDY ACT

Recommendation:

Receive report.

2. APPROVE APPROPRIATION FOR FIRE DEPARTMENT REPLACEMENT VEHICLE

Recommendation:

1. Accept insurance settlement for approximately \$66,948;
2. Adopt resolution amending the adopted Fiscal Year 2019-20 Budget appropriating \$76,100 from the Equipment Replacement Fund (790) for the purchase of a replacement 2020 Ford F250 Truck for the Fire Department; and
3. Declare the collision-damaged 2013 F150 to be salvage for disposal in accordance with the City Municipal Code.

3. APPROVE CALIFORNIA CLIMATE INVESTMENTS - DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S (CAL FIRE) FIRE PREVENTION GRANT APPLICATION RESOLUTION

Recommendation:

Adopt resolution authorizing an application for the California Climate Investments-Department of Forestry and Fire Protection's (CAL FIRE) Fire Prevention Grant Program funded with Cap-and-Trade auction proceeds appropriated by the California Legislature.

4. ITEM PULLED FROM AGENDA

5. ITEM PULLED FOR DISCUSSION

6. ADOPT ORDINANCE AMENDING CHAPTERS 15.08 (BUILDING CODE), 15.12 (ELECTRICAL CODE), 15.16 (MECHANICAL CODE), 15.20 (PLUMBING CODE), 15.24 (HOUSING CODE), 15.25 (PROPERTY MANAGEMENT) AND 15.44 (FIRE CODE) TO ADOPT BY REFERENCE THE 2019 CALIFORNIA STATE BUILDING STANDARDS CODES KNOWN AND DESIGNATED AS CALIFORNIA CODE OF REGULATIONS, TITLE 24 AND TO AMEND, DELETE, AND ADD CERTAIN OTHER BUILDING AND CONSTRUCTION STANDARDS AND TO MAKE MINOR CHANGES TO SECTIONS IN CHAPTERS 15.40 (BUILDING SECURITY) AND 15.64 (WOOD-BURNING APPLIANCES) OF TITLE 15 (BUILDING AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2307, 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 THE OCTOBER 2, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE OCTOBER 9, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

MOTION:

Approving the recommended action.

9. APPROVE THE OCTOBER 23, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM PULLED FROM AGENDA**4. AWARD CENTENNIAL RECREATION CENTER GENERATOR PROJECT**

Recommendation:

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to appropriate an additional \$98,800 from the Recreation Center Impact Fund (360), for the Centennial Recreation Generator Project (CIP#229018);
2. Approve the Centennial Recreation Center Generator plans and specifications;
3. Award contract to PC Inc. for the Centennial Recreation Center Generator Project in the amount of \$243,000;
4. Authorize expenditure of construction contingency funds not to exceed \$24,300; and
5. Authorize the City Manager to execute and administer the construction contract with PC Inc. pending review and approval by the City Attorney.

RESULT: CONTINUED TO A FUTURE MEETING

ITEMS PULLED FOR DISCUSSION**5. ADOPT ORDINANCE ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE PROHIBITING NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE MARCH 1, 2020**

Recommendation:

Waive the reading, adopt Ordinance No. 2306, 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.

The public comment was opened at 7:12 pm. The following people were called to speak:

Mark van Wyk

Dave Wendt

Linda Hutchins-Knowles

Rocke Garcia

There being no further requests to speak, the public comment was closed.

Program Administrator Anthony Eulo and John Supp with Silicon Valley Clean Energy answered questions.

MOTION:

Waive the reading, adopt Ordinance No. 2306, 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.

RESULT:	ADOPTED [3 TO 2]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Spring, Martinez Beltran, Carr
NAYS:	Constantine, McKay

OTHER BUSINESS

10. INTRODUCE ZONING ORDINANCE AMENDMENT TO CONDITIONALLY PERMIT CANNABIS USES IN NON-RESIDENTIAL ZONES AND PROVIDE DIRECTION REGARDING CANNABIS LICENSING REGULATIONS ORDINANCE

Recommendation:

1. Receive report on Planning Commission recommendation regarding number of retail cannabis licenses and land use recommendations;
2. Open and close the public hearing;
3. Proceed with allowing commercial cannabis in City limits by:
 - a. Waiving the first and second reading of the zoning ordinance amendment;
 - b. Introducing the zoning ordinance amendment;
 - c. Providing direction regarding cannabis licensing regulations ordinance;
- OR
4. Continue maintaining Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis.

Police Chief David Swing, Community Development Director Jennifer Carman, and David McPherson with HdL provided the presentation.

The meeting recessed at 8:09 pm.

The meeting reconvened at 8:16 pm.

The public comment was opened at 8:33 pm. The following people were called to speak:

Mike Robinson
 Nanette Donohue
 Ron Kirkish
 Alex Aasen
 Steve Betando
 Glen Webb
 Fawn Meyers
 Neva Peterson
 David Parent
 Rae Goldstein
 Steve Chappell
 Allison Margolin
 Ryan Leary
 John Warren
 Lorraine Bursese

Sean Kali-Rai
Doug Chloupek
Edesa Bitbadal

There being no further requests to speak, the public comment was closed.

Council Member Martinez Beltran made a motion to deny the recommendation made by the Planning Commission and to amend the recommendation to bring forward an ordinance allowing non-storefront retail only.

Motion failed for lack of a second.

RESULT: LACK OF SECONDER

MOTION:

Continuing to maintain Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis.

RESULT: APPROVED [3 TO 2]
MOVER: Yvonne Martinez Beltran, Council Member
SECONDER: Larry Carr, Council Member
AYES: Martinez Beltran, Carr, McKay
NAYS: Constantine, Spring

Council Member Spring made a motion to re-refer the item back to the Planning Commission.

The motion failed for lack of a second.

RESULT: LACK OF SECONDER

The meeting recessed at 10:15 pm.
The meeting reconvened at 10:22 pm.

11. REVENUE MEASURES POLLING RESULTS

Recommendation:

1. Accept report on polling results; and
2. Direct staff to continue with the Engage Morgan Hill process and provide any additional direction.

Police Chief David Swing and Charles Hester with Godbe Research provided the presentation. Brian Sullivan, Rick Kent, and Nick Gaich with the Engage Morgan Hill Community Advisory Group also provided a report.

MOTION:

Extending the meeting to 12:00 am.

RESULT: EXTENDED [UNANIMOUS]
MOVER: John McKay, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, Spring, Martinez Beltran, Carr, McKay

The public comment was opened at 11:28 pm.
Caitlin Jachimowicz was called to speak.
There being no requests to speak, the public comment was closed.

Council provided direction to staff.

12. PROVIDE DIRECTION REGARDING RATE OF RETURN VERSUS LONG TERM AFFORDABILITY POLICY CHANGE TO THE BELOW MARKET RATE (BMR) OWNERSHIP PROGRAM - REQUEST OF MADRONE HOMEOWNER TO AMEND RESTRICTED RESALE CONTRACT BY REPLACING THE EXISTING RESALE FORMULA THAT USES AREA MEDIAN INCOME WITH CONSUMER PRICE INDEX

Recommendation:

1. Receive a report on the request made to consider changing the focus of the BMR program to be Rate of Return for owners versus long-term affordability by modifying the Madrone Restricted Resale Contract; replacing the existing resale formula that uses Area Median Income with Consumer Price Index; and
2. Maintain existing affordable housing ownership contract and not shift the focus of the affordable ownership program.

Assistant City Manager Leslie Little, Housing Manager Rebecca Garcia, and Julius Nyanda with House Keys provided a presentation.

The public comment was opened at 12:11 am. The following people were called to speak:

Rhonda Wohler

Jeff Bernstein

There being no further requests to speak, the public comment was closed.

MOTION:

Extending the meeting to 12:30 am.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Rene Spring, Mayor Pro Tem
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

MOTION:

Extending the meeting to 1:00 am.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Rene Spring, Mayor Pro Tem
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

Council provided direction to staff.

RESULT:	DIRECTION PROVIDED TO STAFF
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PUBLIC HEARING

13. ADOPT UPDATED DEVELOPMENT USER FEE SCHEDULE

Recommendation:

1. Open/Close Public Hearing; and
2. Adopt resolution updating Development User Fee Schedule.

Finance Director Dat Nguyen provided the presentation.

The public hearing was opened at 12:39 am.

There being no requests to speak, the public hearing was closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Rene Spring, Mayor Pro Tem
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested that staff bring back a cannabis ordinance for non-storefront retail, meaning delivery only.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:40 am.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Keri Russell, Maintenance Services Coordinator
APPROVED BY: City Manager

ADOPT RESOLUTION OF INTENT TO HOLD SPECIAL BALLOT PROCEEDING FOR JACKSON MEADOWS #6 AND MILL CREEK SUBAREAS OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

RECOMMENDATION(S)

1. Open/Close public hearing for Jackson Meadows #6 subarea;
2. Open/Close public hearing for Mill Creek subarea; and
3. Adopt resolutions declaring intent and authorizing the special ballot proceeding required to increase the maximum assessment rate for the Jackson Meadows #6 and the Mill Creek subareas of the City's Landscape Assessment District Number 1, effective Fiscal Year (FY) 2020-21.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this report is to provide the Council with an opportunity to consider and adopt a resolution declaring intent and authorizing the special ballot proceeding needed to increase the maximum level of assessment in the Jackson Meadows #6 and Mill Creek Subarea of Morgan Hill Landscape Assessment District Number 1 (District).

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. Two of these subareas, Jackson Meadows #6 and Mill Creek, are experiencing significant funding issues. Jackson Meadows #6 is projected to have a negative fund balance at the end of FY 2019-20 and Mill Creek is projected to have a negative fund balance by the following fiscal year due to inflationary factors on the expense side and no increases in assessments over the last ten years.

As a result of Proposition 218, the assessment level cannot be increased above the maximum permitted level without an affirmative vote of the majority of the voting property owners.

City staff have tried to meet with residents from Jackson Meadows #6 several times in the last year and only a very small number of homeowners have attended or been responsive to letters. Those that have attended were in favor of the increase.

City staff have also met with some of the residents in the Mill Creek Subarea. During that meeting, the residents in attendance indicated that they would prefer to vote to increase their maximum assessment level in order to maintain their level of service rather than a reduction to services.

Adopting the attached recommended resolutions (Attachment 1 and 2) is the first required step for the City to hold the special ballot proceeding needed to raise the assessment limit. If the Council adopts these resolutions, a mail notice will be issued and a public meeting on January 15, 2020, and a public hearing on February 5, 2020 will follow. A Supplemental Engineer's Report is included for both subareas (Attachment 3 and 4).

COMMUNITY ENGAGEMENT: Consult

Staff recently held meetings with both Jackson Meadows #6 and Mill Creek residents to discuss the budget deficit in both subareas. City staff also sent letters informing residents of the funding issues and inviting them to participate in the meetings or connect with City staff by phone or email. Staff proposed an increase in the maximum assessment as the alternative would be a reduction in services. Residents present at the meetings supported the increase.

ALTERNATIVE ACTIONS:

The Council could decline to adopt the resolution which would cause a reduction of service level to Jackson Meadows #6 and the Mill Creek Subarea. The City will be required to maintain some minimum level of service for safety and this may ultimately result in an impact to the City's General Fund.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has not had prior actions for Jackson Meadows #6 or the Mill Creek Subarea. The Council approves the levee of assessments on all subareas within the Landscape Assessment District annually.

FISCAL AND RESOURCE IMPACT:

This item does not have a fiscal impact as the ballot proceeding will only raise the legally permissible maximum assessment limit - it will not actually increase the assessment. The actual annual assessments for the entire District will be set by a separate Council action scheduled for a meeting later in the Spring. Administering 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. Mill Creek Resolution of Intent
2. Jackson Meadows #6 Resolution of Intent
3. Jackson Meadows #6 Supplemental Engineers Report
4. Mill Creek Supplemental Engineer's Report

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS INTENTION AND CALLING AN ASSESSMENT BALLOT PROCEEDING TO SUBMIT TO THE QUALIFIED PROPERTY OWNERS THE QUESTION OF THE PROPOSED INCREASE IN THE MAXIMUM ASSESSMENT RATE FOR THE MILL CREEK SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING IN FISCAL YEAR 2020/21

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; and

WHEREAS, City representatives have met with residents of the Mill Creek Subarea of Landscape Assessment District No. 1 who have expressed an interest in increasing the level of maintenance in the Mill Creek Subarea in order to continue to provide adequate maintenance service.

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, AS FOLLOWS:

Section 1 Intention: The City Council hereby declares its intention to increase assessments in the Mill Creek Subarea of the District over and including the land within the Mill Creek Subarea boundary, and to levy and collect increased assessments on all such land to pay the annual costs of the maintenance described herein. The City Council has determined at this time to call an assessment ballot proceeding therein to authorize the increased assessments to pay the costs and expenses of the maintenance contained specifically and exclusively in the Mill Creek Subarea of the District as further described in Section 5 of this resolution. The City Council finds that the public’s best interest requires such increase, levy and collection.

Section 2 Calling a special ballot proceeding: Pursuant to Proposition 218, now California Constitutional Articles XIIC and XIID, (hereafter referred to as the “Proposition 218”) approved by the California voters in November 1996, an assessment ballot proceeding is hereby called on behalf of the Mill Creek Subarea of the District on the proposition of levying the increased assessments and the assessment range formula to allow for reasonable increases within the Mill Creek Subarea of the District.

Section 3 Assessment Ballot: The assessment ballot proceeding for the Mill Creek Subarea of the District on the proposition of authorizing the increased assessments and the assessment range formula to allow for reasonable increases, pursuant to Proposition 218 consists of a ballot, included with the mailed notice required by California Government Code Section 53750 *et seq.*, distributed by mail, to the property owners of record within the Mill Creek Subarea as of the county's last equalized secured property tax assessment roll. Each property owner's vote is weighted by the amount of their proposed assessment and property owners may return the ballot by mail or in person to the City Clerk not later than the conclusion of the **Public Hearing on Wednesday, February 5th, 2020.** At the Public Hearing, pursuant to Proposition 218 the agency shall tabulate the ballots to determine if a majority protest exists. The ballots shall be weighted according to the proportional financial obligation of the affected property. A majority protest exists if, upon the conclusion of the Public Hearing, ballots submitted in opposition to the assessments exceed the ballots submitted in favor of the assessments.

Section 4 District Boundaries: The boundaries of the Mill Creek Subarea of the District are described as the boundaries previously defined in the formation documents of the original Mill Creek Subarea of the District, within the boundaries of the City of Morgan Hill, within the County of Santa Clara, State of California.

Section 5 Description of Maintenance: The maintenance which shall be provided for the property included in the Mill Creek Subarea of the District by and through the assessments and the proposed increased assessments levied annually thereon shall include, but are not limited to: maintenance of the turf, shrubs, plants and trees, landscaping, playground, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Services provided include all necessary service, operations, administration and maintenance required to maintain the assessment district at this current condition or better.

Section 6 Notice of Public Hearing: Notice is hereby given that a Public Meeting will be held on **Wednesday, January 15th, 2020 at 7:00 p.m.** and a **Public Hearing** on these matters will be held by the City Council on **Wednesday, February 5th, 2020 at 7:00 p.m.** or as soon thereafter as feasible in the City Council Chambers, located at 17555 Peak Avenue, Morgan Hill.

Section 7 Notice of Hearing and Ballots: The City Clerk of the City Council shall mail notice of the proposed increased assessments and of the time and place of the public hearing, as specified in Section 6 hereof, to the record owner of each assessable parcel of property identified in the Engineer's Report. Such notice shall specify the total amount of the increased assessments chargeable to all the property within the Mill Creek Subarea of the District, the amount chargeable to each owner's particular parcel, the duration of the assessments, the reason for the assessments and the basis upon which the amount of the proposed assessments was calculated, together with the date, time and location of the public hearing on the proposed assessments as specified in Section 6 hereof. The notice shall include, in a conspicuous place, thereon, a summary of the procedures applicable to the completion, return and tabulation of the assessment ballots, which will accompany the notice and shall include a statement that the existence of a majority protest will result in the assessments not being levied, and that a majority protest will exist if, upon the conclusion of the hearing, ballots submitted in opposition to the assessments exceed the ballots submitted in favor of the assessments. Each such notice mailed to owners of identified parcels within the Mill Creek Subarea of the District shall contain a ballot which includes the City's

City of Morgan Hill
Resolution No.
Page 3 of 3

address for receipt of any ballot when completed by any owner receiving such notice whereby each such owner may indicate his or her name, reasonable identification of the parcel and support or position to the proposed assessments.

Section 8 The City Clerk is hereby authorized and directed to give notice of such hearing as provided by law.

Section 9 The Engineer's report of November 20, 2019 complies with applicable State statutes authorizing the assessment or its increase and with the California Constitution and may, therefore, be approved by the City Council.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 20th Day of November, 2019 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: 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. _____, adopted by the City Council at a Regular Meeting held on November 20, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING ITS INTENTION AND CALLING AN ASSESSMENT BALLOT PROCEEDING TO SUBMIT TO THE QUALIFIED PROPERTY OWNERS THE QUESTION OF THE PROPOSED INCREASE IN THE MAXIMUM ASSESSMENT RATE FOR THE JACKSON MEADOWS #6 SUBAREA OF LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT NUMBER 1 BEGINNING IN FISCAL YEAR 2020/21

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; and

WHEREAS, City representatives have tried to meet with residents of the Jackson Meadows #6 Subarea of Landscape Assessment District No. 1 and very few have attended. Those that were present have expressed an interest in increasing the assessment for the Jackson Meadows #6 Subarea in order to adequately provide maintenance service including weed abatement for fire prevention.

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, AS FOLLOWS:

Section 1 Intention: The City Council hereby declares its intention to increase assessments in the Jackson Meadows #6 Subarea of the District over and including the land within the Jackson Meadows #6 Subarea boundary, and to levy and collect increased assessments on all such land to pay the annual costs of the maintenance described herein. The City Council has determined at this time to call an assessment ballot proceeding therein to authorize the increased assessments to pay the costs and expenses of the maintenance contained specifically and exclusively in the Jackson Meadows #6 Subarea of the District as further described in Section 5 of this resolution. The City Council finds that the public’s best interest requires such increase, levy and collection.

Section 2 Calling a special ballot proceeding: Pursuant to Proposition 218, now California Constitutional Articles XIIC and XIID, (hereafter referred to as the “Proposition 218”) approved by the California voters in November 1996, an assessment ballot proceeding is hereby called on behalf of the Jackson Meadows #6 Subarea of the District on the proposition of levying the increased assessments and the assessment range formula to allow for reasonable increases within the Jackson Meadows #6 Subarea of the District.

Section 3 Assessment Ballot: The assessment ballot proceeding for the Jackson Meadows #6 Subarea of the District on the proposition of authorizing the increased assessments and the assessment range formula to allow for reasonable increases, pursuant to Proposition 218 consists of a ballot, included with the mailed notice required by California Government Code Section 53750 *et seq.*, distributed by mail, to the property owners of record within the Jackson Meadows #6 Subarea as of the county's last equalized secured property tax assessment roll. Each property owner's vote is weighted by the amount of their proposed assessment and property owners may return the ballot by mail or in person to the City Clerk not later than the conclusion of the **Public Hearing on Wednesday, February 5th, 2020.** At the Public Hearing, pursuant to Proposition 218 the agency shall tabulate the ballots to determine if a majority protest exists. The ballots shall be weighted according to the proportional financial obligation of the affected property. A majority protest exists if, upon the conclusion of the Public Hearing, ballots submitted in opposition to the assessments exceed the ballots submitted in favor of the assessments.

Section 4 District Boundaries: The boundaries of the Jackson Meadows #6 Subarea of the District are described as the boundaries previously defined in the formation documents of the original Jackson Meadows #6 Subarea of the District, within the boundaries of the City of Morgan Hill, within the County of Santa Clara, State of California.

Section 5 Description of Maintenance: The maintenance which shall be provided for the property included in the Jackson Meadows #6 Subarea of the District by and through the assessments and the proposed increased assessments levied annually thereon shall include, but are not limited to: maintenance of the turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, weed abatement for the retention pond and channel and associated appurtenances within the public right-of-ways or specific easements. Services provided include all necessary service, operations, administration and maintenance required to maintain the assessment district at this current condition or better.

Section 6 Notice of Public Hearing: Notice is hereby given that a Public Meeting will be held on **Wednesday, January 15th, 2020 at 7:00 p.m.** and a **Public Hearing** on these matters will be held by the City Council on **Wednesday, February 5th, 2020 at 7:00 p.m.** or as soon thereafter as feasible in the City Council Chambers, located at 17555 Peak Avenue, Morgan Hill.

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City of Morgan Hill
Resolution No.
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within the Jackson Meadows #6 Subarea of the District shall contain a ballot which includes the City's address for receipt of any ballot when completed by any owner receiving such notice whereby each such owner may indicate his or her name, reasonable identification of the parcel and support or position to the proposed assessments.

Section 8 The City Clerk is hereby authorized and directed to give notice of such hearing as provided by law.

Section 9 The Engineer's report of November 20, 2019 complies with applicable State statutes authorizing the assessment or its increase and with the California Constitution and may, therefore, be approved by the City Council.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 20th Day of November, 2019 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: 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. , adopted by the City Council at a Regular Meeting held on November 20, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Jackson Meadows #6 Resolution of Intent (2526 : Jackson Meadows #6 and Mill Creek Resolution of Intent)

Supplemental Engineer's Report

Subarea Jackson Meadows #6 of City of Morgan Hill Landscape Assessment District No. 1



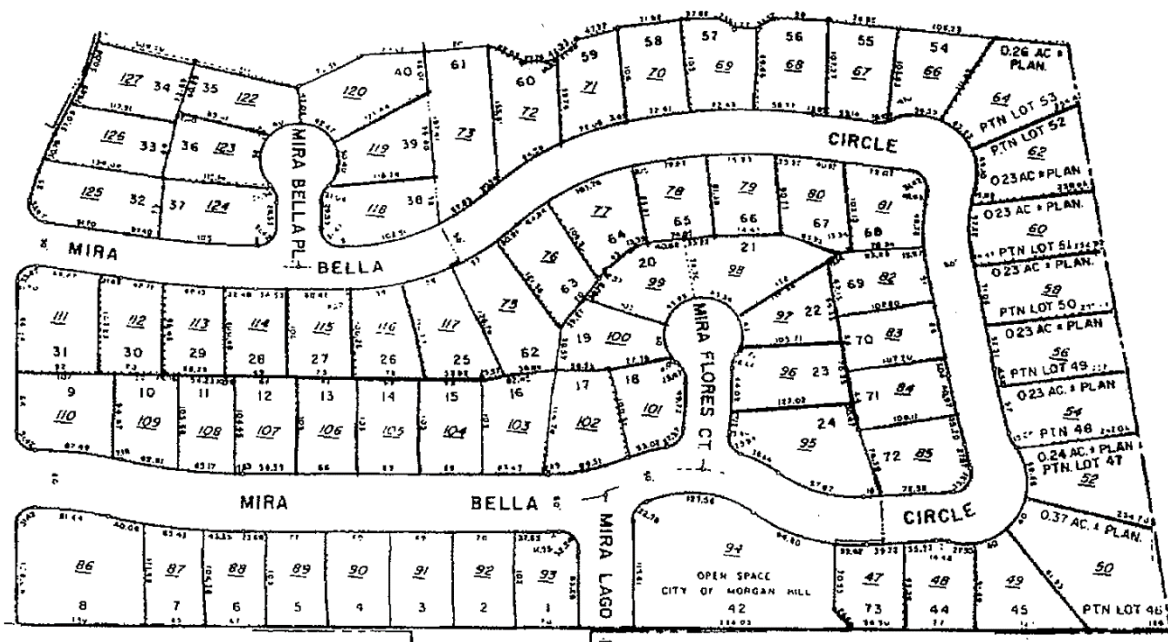
CITY OF MORGAN HILL

November 20, 2019

Introduction and Overview

This Supplemental Engineer's Report is intended as a supplement to the Engineer's Report that the City of Morgan Hill will prepare for the entire Landscape Assessment District No. 1 in advance of the 2020/2021 Fiscal Year. The sole subject of this report is the Jackson Meadows #6 of the District.

In 1991, the City Council created the Fox Hollow/Murphy Springs Landscape Assessment District, under the Act, and in 2010 chose to rename it to the City of Morgan Hill Landscape Assessment District No. 1. The District was formed in order to provide for the continued maintenance, operation, and administration of various improvements within the boundaries of the District. Following the initial formation, additional territory was annexed to the District as separate Zones. Currently, the District is comprised of 19 Zones or Subareas. The Jackson Meadows #6 Subarea of Landscape Assessment District No. 1 consists of seventy parcels located on Jackson Meadows #6 as depicted below.



JACKSON MEADOWS #6 ZONE

Exhibits from the Engineer's Report at the formation of the District define the boundaries and maintenance areas of each Zone within the District. These exhibits are on file and available for review at the office of the City Engineer and, in conjunction with the County of Santa Clara (the "County") Assessor's maps of the areas annexed, comprise the assessment diagrams for the respective annexations. The Assessor's maps are on file in the office of the County Assessor and are, by reference, made a part of this Report.

The improvements include the construction, operation, maintenance, and servicing of landscaping and appurtenant facilities; including, but not limited to, personnel, electrical energy, utilities such as water and gas, materials, contracting services, and other items necessary for the satisfactory operation of the following services:

"Landscape within the District may include, but are not limited to: ground cover, shrubs, plants and trees, irrigation and drainage systems, graffiti removal, and weed abatement in both the retention pond and channel. Services provided include all necessary service, operations, administration, and maintenance required to keep the above-mentioned improvements in a healthy, vigorous, and satisfactory condition."

Estimate of Costs

Definition of Budget Terms

Direct Expenses:

Monthly Maintenance: Includes all regularly scheduled labor, material (i.e. pipe, fertilizer, insecticides, paint, etc.) and equipment required to properly maintain and ensure the satisfactory condition of all landscaping, irrigation and drainage systems, and appurtenant facilities.

Extra Contract Costs: Includes all labor, equipment, and material costs associated with unscheduled repairs and improvements needed to ensure the satisfactory condition of all landscaping, irrigation and drainage systems, and appurtenant facilities.

Water/Sewer: Includes the furnishing of water required for the operation and maintenance of the landscaping facilities.

Electricity Costs: Includes the furnishing of electricity required for irrigation systems for the operation and maintenance of the landscaping facilities.

Other Supplies: Includes costs that are generally unforeseen and not normally included in the yearly maintenance contract costs. This may include repair of damaged amenities due to vandalism, storms, heavy frost, etc. Also included may be planned upgrades that provide a direct benefit to the District. These upgrades could include replacing plant materials and/or renovation of irrigation systems.

Administrative Expenses:

Salaries: Includes the cost to particular departments and staff of the City to provide the coordination of District services, operations, and maintenance of the improvements, response to public concerns and education, and procedures associated with the levy and collection of assessments.

Postage/Advertising: Includes the cost of providing any mailed notice to the property owners and publishing and posting the Resolution of Intention as required by the Act.

Internal Services: Includes overhead costs allocated to the District for various City staff services.

Administrative/Engineering Contract: Includes the costs associated with contracting with professionals to provide services specific to the administration of the levy.

Contingency/Capital Replacement Fund Balance (Reduction)/Reserve:

Positive amounts are collected for various reasons that include, but are not limited to, any or all of the following:

- To maintain reserves which enable the City to pay for costs associated with the District during the first six months of the fiscal year,
- To reduce the current fund balance deficit (if any) that exists as of the beginning of the fiscal year, and
- To plan for the replacement of capital improvements in the future.

Zone Budget for Fiscal Year 2019/20

DIRECT EXPENSES

Monthly Maintenance	\$1,725.00
Extra Contract Costs	-
Water/Sewer	400.00
Electricity	380.00
Other Supplies	-
Subtotal Direct Expenses	\$2,505.00

ADMINISTRATIVE EXPENSES

Salaries	\$3,431.62
Postage/Advertising	19.50
Internal Services	1,424.82
Administrative/Engineering Contract	689.54
Subtotal Administrative Expenses	\$5,565.48

TOTAL SUBAREA COSTS	\$8,070.48
FUND BALANCE (REDUCTION) RESERVE	(510.48)
TOTAL BALANCE TO LEVY	7,560.00
NUMBER OF ACCESSABLE UNITS	70.00
ASSESSMENT RATE PER UNIT	108.00
ESTMATED BEGINNING FUND BALANCE JULY 1, 2019	\$1.77
FUND BALANCE CHANGE	(510.48)
ESTIMATED ENDING FUND BALANCE JUNE 30, 2020	(\$508.70)

Assessments

Method of Apportionment

The assessments are levied in accordance with the assessment methodology adopted and approved by the City Council at the time of District formation.

Pursuant to the Act and Article XIII D of the Constitution of the State of California, all parcels that have special benefit conferred upon them as a result of the maintenance and operation of improvements shall be identified and the proportionate special benefit derived by each identified parcel shall be determined in relation to the entire cost of the maintenance and operation of the improvements. Only parcels that receive direct special benefit are assessed, and each parcel is assessed in proportion to the estimated benefit received.

Several Zones have been annexed into the District and it has been determined that by reason of variations in the nature, location, and extent of the improvements, those areas will receive differing degrees of benefit from the improvements.

Within the Zones, each parcel is allocated a number of units, where each such unit is deemed to receive the same proportional special benefit from the maintenance and operation of the improvements within that Zone. The typical parcel, with a single family residential use, will have one unit assigned. If the use or nature of a parcel confers special benefit in a greater or lesser degree than that typical use, that parcel may have greater than or less than one unit assigned

Specific Proposed Increase

The assessment rate originally approved at the time of annexing this Zone into the District was \$108.00 per unit. There is currently no inflator associated with the Jackson Meadows #6 Zone assessments.

This Supplemental Engineer's Report is being prepared specifically for consideration as a component of the process for the Jackson Meadows #6 property owners to consider an increase in the maximum assessment rate per unit. The increase is being considered in order to retire the debt accumulated in the zone and prepare for future anticipated maintenance needs that benefit the entire zone.

There are currently 70 parcels within this Zone, and the total Zone costs are spread to each of the 70 units as follows:

Estimated Fiscal Year 2020/21 Costs and Fund Adjustment

Total Units	70
Fiscal Year 2020/21 Proposed Assessment Per Unit	\$200.00
Fiscal Year 2020/21 Proposed Maximum Assessment Per Unit	\$200.00
Fiscal Year 2019/20 Actual Assessment Per Unit	\$108.00
Proposed Change in Assessment Rate Per Unit	\$92.00

Assessment Roll

Jackson Meadows #6	817-26-047	200.00	1.00	200.00
Jackson Meadows #6	817-26-048	200.00	1.00	200.00
Jackson Meadows #6	817-26-049	200.00	1.00	200.00
Jackson Meadows #6	817-26-066	200.00	1.00	200.00
Jackson Meadows #6	817-26-067	200.00	1.00	200.00
Jackson Meadows #6	817-26-068	200.00	1.00	200.00
Jackson Meadows #6	817-26-069	200.00	1.00	200.00
Jackson Meadows #6	817-26-070	200.00	1.00	200.00
Jackson Meadows #6	817-26-071	200.00	1.00	200.00
Jackson Meadows #6	817-26-072	200.00	1.00	200.00
Jackson Meadows #6	817-26-073	200.00	1.00	200.00
Jackson Meadows #6	817-26-075	200.00	1.00	200.00
Jackson Meadows #6	817-26-076	200.00	1.00	200.00
Jackson Meadows #6	817-26-077	200.00	1.00	200.00
Jackson Meadows #6	817-26-078	200.00	1.00	200.00
Jackson Meadows #6	817-26-079	200.00	1.00	200.00
Jackson Meadows #6	817-26-080	200.00	1.00	200.00
Jackson Meadows #6	817-26-081	200.00	1.00	200.00
Jackson Meadows #6	817-26-082	200.00	1.00	200.00
Jackson Meadows #6	817-26-083	200.00	1.00	200.00
Jackson Meadows #6	817-26-084	200.00	1.00	200.00
Jackson Meadows #6	817-26-085	200.00	1.00	200.00
Jackson Meadows #6	817-26-086	200.00	1.00	200.00
Jackson Meadows #6	817-26-087	200.00	1.00	200.00
Jackson Meadows #6	817-26-088	200.00	1.00	200.00
Jackson Meadows #6	817-26-089	200.00	1.00	200.00
Jackson Meadows #6	817-26-090	200.00	1.00	200.00

Jackson Meadows #6	817-26-091	200.00	1.00	200.00
Jackson Meadows #6	817-26-092	200.00	1.00	200.00
Jackson Meadows #6	817-26-093	200.00	1.00	200.00
Jackson Meadows #6	817-26-095	200.00	1.00	200.00
Jackson Meadows #6	817-26-096	200.00	1.00	200.00
Jackson Meadows #6	817-26-097	200.00	1.00	200.00
Jackson Meadows #6	817-26-098	200.00	1.00	200.00
Jackson Meadows #6	817-26-099	200.00	1.00	200.00
Jackson Meadows #6	817-26-100	200.00	1.00	200.00
Jackson Meadows #6	817-26-101	200.00	1.00	200.00
Jackson Meadows #6	817-26-102	200.00	1.00	200.00
Jackson Meadows #6	817-26-103	200.00	1.00	200.00
Jackson Meadows #6	817-26-104	200.00	1.00	200.00
Jackson Meadows #6	817-26-105	200.00	1.00	200.00
Jackson Meadows #6	817-26-106	200.00	1.00	200.00
Jackson Meadows #6	817-26-107	200.00	1.00	200.00
Jackson Meadows #6	817-26-200	200.00	1.00	200.00
Jackson Meadows #6	817-26-109	200.00	1.00	200.00
Jackson Meadows #6	817-26-110	200.00	1.00	200.00
Jackson Meadows #6	817-26-111	200.00	1.00	200.00
Jackson Meadows #6	817-26-112	200.00	1.00	200.00
Jackson Meadows #6	817-26-113	200.00	1.00	200.00
Jackson Meadows #6	817-26-114	200.00	1.00	200.00
Jackson Meadows #6	817-26-115	200.00	1.00	200.00
Jackson Meadows #6	817-26-116	200.00	1.00	200.00
Jackson Meadows #6	817-26-117	200.00	1.00	200.00
Jackson Meadows #6	817-26-118	200.00	1.00	200.00
Jackson Meadows #6	817-26-119	200.00	1.00	200.00
Jackson Meadows #6	817-26-120	200.00	1.00	200.00

Jackson Meadows #6	817-26-122	200.00	1.00	200.00
Jackson Meadows #6	817-26-123	200.00	1.00	200.00
Jackson Meadows #6	817-26-124	200.00	1.00	200.00
Jackson Meadows #6	817-26-125	200.00	1.00	200.00
Jackson Meadows #6	817-26-126	200.00	1.00	200.00
Jackson Meadows #6	817-26-127	200.00	1.00	200.00
Jackson Meadows #6	817-26-129	200.00	1.00	200.00
Jackson Meadows #6	817-26-130	200.00	1.00	200.00
Jackson Meadows #6	817-26-131	200.00	1.00	200.00
Jackson Meadows #6	817-26-132	200.00	1.00	200.00
Jackson Meadows #6	817-26-133	200.00	1.00	200.00
Jackson Meadows #6	817-26-134	200.00	1.00	200.00
Jackson Meadows #6	817-26-135	200.00	1.00	200.00
Jackson Meadows #6	817-26-136	200.00	1.00	200.00

Supplemental Engineer's Report

Subarea Mill Creek Zone of City of Morgan Hill Landscape Assessment District No. 1



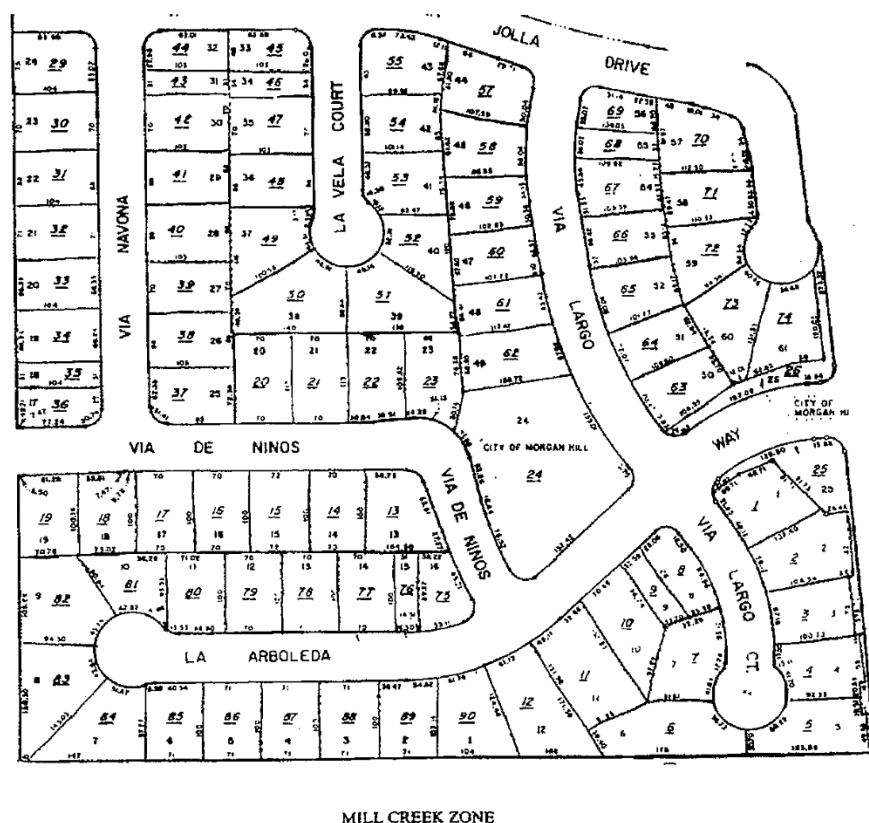
CITY OF MORGAN HILL

November 20, 2019

Introduction and Overview

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"Landscape improvements provided within the District may include, but are not limited to: ground cover, shrubs, plants and trees, playground, irrigation and drainage systems, graffiti removal, entry monuments, and associated appurtenant facilities. Services provided include all necessary service, operations, administration, and maintenance required to keep the above-mentioned improvements in a healthy, vigorous, and satisfactory condition."

Estimate of Costs

Definition of Budget Terms

Direct Expenses:

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Extra Contract Costs: Includes all labor, equipment, and material costs associated with unscheduled repairs and improvements needed to ensure the satisfactory condition of all landscaping, irrigation and drainage systems, and appurtenant facilities.

Water/Sewer: Includes the furnishing of water required for the operation and maintenance of the landscaping facilities.

Electricity Costs: Includes the furnishing of electricity required for irrigation systems for the operation and maintenance of the landscaping facilities.

Other Supplies: Includes costs that are generally unforeseen and not normally included in the yearly maintenance contract costs. This may include repair of damaged amenities due to vandalism, storms, heavy frost, etc. Also included may be planned upgrades that provide a direct benefit to the District. These upgrades could include replacing plant materials and/or renovation of irrigation systems.

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- To plan for the replacement of capital improvements in the future.

Zone Budget for Fiscal Year 2019/20

DIRECT EXPENSES

Monthly Maintenance	\$5,500.00
Extra Contract Costs	500.00
Water/Sewer	3,000.00
Electricity	200.00
Other Supplies	-
Subtotal Direct Expenses	\$9,200.00

ADMINISTRATIVE EXPENSES

Salaries	\$4,117.94
Postage/Advertising	23.40
Internal Services	1,709.79
Administrative/Engineering Contract	827.45
Subtotal Administrative Expenses	\$6,678.57

TOTAL SUBAREA COSTS	\$15,878.57
FUND BALANCE (REDUCTION) RESERVE	(185.69)
TOTAL BALANCE TO LEVY	15,692.88
NUMBER OF ACCESSABLE UNITS	84.00
ASSESSMENT RATE PER UNIT	186.82
ESTMATED BEGINNING FUND BALANCE JULY 1, 2019	\$573.70
FUND BALANCE CHANGE	(185.69)
ESTIMATED ENDING FUND BALANCE JUNE 30, 2020	\$388.01

Assessments

Method of Apportionment

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Pursuant to the Act and Article XIII D of the Constitution of the State of California, all parcels that have special benefit conferred upon them as a result of the maintenance and operation of improvements shall be identified and the proportionate special benefit derived by each identified parcel shall be determined in relation to the entire cost of the maintenance and operation of the improvements. Only parcels that receive direct special benefit are assessed, and each parcel is assessed in proportion to the estimated benefit received.

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Specific Proposed Increase

The assessment rate originally approved at the time of annexing this Zone into the District was \$186.82 per unit. There is currently no inflator associated with the Mill Creek Zone assessments.

This Supplemental Engineer's Report is being prepared specifically for consideration as a component of the process for the Mill Creek property owners to consider an increase in the maximum assessment rate per unit. The increase is being considered in order to retire the debt accumulated in the zone and prepare for future anticipated maintenance needs that benefit the entire zone.

There are currently 84 parcels within this Zone, and the total Zone costs are spread to each of the 84 units as follows:

Estimated Fiscal Year 2020/21 Costs and Fund Adjustment

Total Units	84
Fiscal Year 2020/21 Proposed Assessment Per Unit	\$285.00
Fiscal Year 2020/21 Proposed Maximum Assessment Per Unit	\$285.00
Fiscal Year 2019/20 Actual Assessment Per Unit	\$186.82
Proposed Change in Assessment Rate Per Unit	\$98.18

Assessment Roll

Mill Creek	767-47-001	285.00	1.00	285.00
Mill Creek	767-47-002	285.00	1.00	285.00
Mill Creek	767-47-003	285.00	1.00	285.00
Mill Creek	767-47-004	285.00	1.00	285.00
Mill Creek	767-47-005	285.00	1.00	285.00
Mill Creek	767-47-006	285.00	1.00	285.00
Mill Creek	767-47-007	285.00	1.00	285.00
Mill Creek	767-47-008	285.00	1.00	285.00
Mill Creek	767-47-009	285.00	1.00	285.00
Mill Creek	767-47-010	285.00	1.00	285.00
Mill Creek	767-47-011	285.00	1.00	285.00
Mill Creek	767-47-012	285.00	1.00	285.00
Mill Creek	767-47-013	285.00	1.00	285.00
Mill Creek	767-47-014	285.00	1.00	285.00
Mill Creek	767-47-015	285.00	1.00	285.00
Mill Creek	767-47-016	285.00	1.00	285.00
Mill Creek	767-47-017	285.00	1.00	285.00
Mill Creek	767-47-018	285.00	1.00	285.00
Mill Creek	767-47-019	285.00	1.00	285.00
Mill Creek	767-47-020	285.00	1.00	285.00
Mill Creek	767-47-021	285.00	1.00	285.00
Mill Creek	767-47-022	285.00	1.00	285.00
Mill Creek	767-47-023	285.00	1.00	285.00
Mill Creek	767-47-029	285.00	1.00	285.00
Mill Creek	767-47-030	285.00	1.00	285.00
Mill Creek	767-47-031	285.00	1.00	285.00
Mill Creek	767-47-032	285.00	1.00	285.00
Mill Creek	767-47-033	285.00	1.00	285.00
Mill Creek	767-47-034	285.00	1.00	285.00
Mill Creek	767-47-035	285.00	1.00	285.00

Attachment: Mill Creek Supplemental Engineer's Report (2526 : Jackson Meadows #6 and Mill Creek Resolution of Intent)

Mill Creek	767-47-036	285.00	1.00	285.00
Mill Creek	767-47-037	285.00	1.00	285.00
Mill Creek	767-47-038	285.00	1.00	285.00
Mill Creek	767-47-039	285.00	1.00	285.00
Mill Creek	767-47-040	285.00	1.00	285.00
Mill Creek	767-47-041	285.00	1.00	285.00
Mill Creek	767-47-042	285.00	1.00	285.00
Mill Creek	767-47-043	285.00	1.00	285.00
Mill Creek	767-47-044	285.00	1.00	285.00
Mill Creek	767-47-045	285.00	1.00	285.00
Mill Creek	767-47-046	285.00	1.00	285.00
Mill Creek	767-47-047	285.00	1.00	285.00
Mill Creek	767-47-048	285.00	1.00	285.00
Mill Creek	767-47-049	285.00	1.00	285.00
Mill Creek	767-47-050	285.00	1.00	285.00
Mill Creek	767-47-051	285.00	1.00	285.00
Mill Creek	767-47-052	285.00	1.00	285.00
Mill Creek	767-47-053	285.00	1.00	285.00
Mill Creek	767-47-054	285.00	1.00	285.00
Mill Creek	767-47-055	285.00	1.00	285.00
Mill Creek	767-47-057	285.00	1.00	285.00
Mill Creek	767-47-058	285.00	1.00	285.00
Mill Creek	767-47-059	285.00	1.00	285.00
Mill Creek	767-47-060	285.00	1.00	285.00
Mill Creek	767-47-061	285.00	1.00	285.00
Mill Creek	767-47-062	285.00	1.00	285.00
Mill Creek	767-47-063	285.00	1.00	285.00
Mill Creek	767-47-064	285.00	1.00	285.00
Mill Creek	767-47-065	285.00	1.00	285.00
Mill Creek	767-47-066	285.00	1.00	285.00
Mill Creek	767-47-067	285.00	1.00	285.00
Mill Creek	767-47-068	285.00	1.00	285.00

Mill Creek	767-47-069	285.00	1.00	285.00
Mill Creek	767-47-070	285.00	1.00	285.00
Mill Creek	767-47-071	285.00	1.00	285.00
Mill Creek	767-47-072	285.00	1.00	285.00
Mill Creek	767-47-073	285.00	1.00	285.00
Mill Creek	767-47-074	285.00	1.00	285.00
Mill Creek	767-47-075	285.00	1.00	285.00
Mill Creek	767-47-076	285.00	1.00	285.00
Mill Creek	767-47-077	285.00	1.00	285.00
Mill Creek	767-47-078	285.00	1.00	285.00
Mill Creek	767-47-079	285.00	1.00	285.00
Mill Creek	767-47-080	285.00	1.00	285.00
Mill Creek	767-47-081	285.00	1.00	285.00
Mill Creek	767-47-082	285.00	1.00	285.00
Mill Creek	767-47-083	285.00	1.00	285.00
Mill Creek	767-47-084	285.00	1.00	285.00
Mill Creek	767-47-085	285.00	1.00	285.00
Mill Creek	767-47-086	285.00	1.00	285.00
Mill Creek	767-47-087	285.00	1.00	285.00
Mill Creek	767-47-088	285.00	1.00	285.00
Mill Creek	767-47-089	285.00	1.00	285.00
Mill Creek	767-47-090	285.00	1.00	285.00



CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Joey Dinh, Associate Planner
APPROVED BY: City Manager

INTRODUCE ORDINANCES TO ADOPT A ZONING AMENDMENT AND TO APPROVE A DEVELOPMENT AGREEMENT FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT, INCLUDING PUBLIC ACCESS ROADS, AND A PRIVATE PARK. RATIFY THE PLANNING COMMISSION APPROVAL OF THE TENTATIVE SUBDIVISION MAP, MITIGATED NEGATIVE DECLARATION, AND THE MITIGATION MONITORING AND REPORTING PROGRAM. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-09-001 AND 726-09-002, ARE LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY. (DIANA-MANA HANAIEI - MONTECITO ESTATES PROJECT)

RECOMMENDATION(S)

1. Open and close public hearing;
2. Adopt resolution ratifying Planning Commission Resolutions 19-18 and 19-19;
3. Waive first and second reading of Zoning Amendment Ordinance;
4. Introduce Zoning Amendment Ordinance;
5. Waive first and second reading of Development Agreement Ordinance; and
6. Introduce Development Agreement Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Community Engagement and Messaging
Infrastructure
Housing

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Mana Hanalei, LLC, for the project Montecito Estates, proposes a Tentative Subdivision Map and Zoning Amendment to establish a Planned Development (PD) Combining District and Planned Development (PD) Master Plan to subdivide a 4.84-acre parcel into 24 residential lots and construct 24 single family residences, public access roads, a private park, and associated improvements. The proposed project involves the demolition of an existing house and associated residential structures with no historic or cultural implications and the development of 24 residential units on the project site. The lots would vary in size, from 3,862 square feet (duets) to 9,228 square

feet. Most of the single-family lots would be sized between 7,000 and 8,000 square feet. The project would include 12 single-story and 12 two-story units, distributed throughout the site to create height variation and a visually interesting appearance within the neighborhood. All the proposed residential units would include attached garages for two vehicles.

The project site fronts Diana Avenue and Lotus Way. Dakota Drive would be extended to connect with the new Juliann Way extension. Juliann Way will extend through and connect with Weichert Way. A new cul-de-sac (Lotus Court) would extend from Lotus Way. (Attachment 1)

A Development Agreement is proposed to incorporate 23 RDCS building allotments and to memorialize the RDCS public benefit commitments. The Development Agreement specifies the duration and permitted uses of the subject property, and the general location and density or intensity of uses. It also contains provisions concerning its transferability to any successor owners of the property. The Development Agreement clearly outlines the benefits provided to the City by entering into the agreement. The findings required to approve the Development Agreement are fully analyzed in the Planning Commission report. (Attachment 2 and 8)

The applicant is also requesting a Zoning Amendment to establish a Planned Development (PD) Combining District and PD Master Plan. Approving the PD Master Plan would allow setback deviations creating a project with additional room for an extra bedroom, office, or living space. The additional space would also allow the project to be of higher design standards such as varied and distinct architectural details. The findings required to approve the Zoning Amendment are fully analyzed in the Planning Commission report. (Attachment 3 and 8)

Planning Commission Action

The Planning Commission reviewed the project on October 22, 2019. During the review of the project, the Commission requested further information regarding the finding of substantial public benefits provided by the project in order to approve the Zoning Amendment request for a PD Combining District and PD Master Plan. Some Planning Commissioners did not consider the RDCS public benefits to be enough to make the findings for the PD approval.

There are several examples of public benefits listed in Morgan Hill Municipal Code Section 18.30.050.H.8 such as building affordable housing, improved circulation through pedestrian pathways, and connectivity to the surrounding neighborhood, and green building design. The applicant is not limited to this list but is proposing to provide public benefits from these categories. The project is proposing building two BMRs incorporated within the project in addition to contributing to the City's Affordable Housing Fund at an 110% rate of baseline contributions. Off-site improvements are proposed along Diana Avenue and Weichert Drive for roadway connectivity, consistency of pedestrian walking facilities (attached/detached sidewalks), and traffic calming and safe circulation. The applicant is also obtaining additional dedicated ROW along Dakota Drive to help supplement the circulation and connectivity. Through various

measures such as sustainable design and water efficient landscaping, the project is anticipated to be 19 points over the minimum requirement for “Build It Green” points, exceeds the CA Title 24 energy efficiency standards by 15%, and anticipates using 48% less outdoor water than is allowed by water efficiency standards.

Following a lengthy discussion of the project and the proposed environmental mitigation measures, the Planning Commission approved Resolution No. 19-18 (Attachment 4 – Exhibit A) approving the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project. After reviewing the public benefit commitments in detail, the Planning Commission approved Resolution No. 19-20 (Attachment 5), recommending City Council approval of the PD Combining District and PD Master Plan. In addition, the Planning Commission approved Resolution No. 19-19 (Attachment 4 – Exhibit B), approving the Tentative Subdivision Map.

City Council Review

Following the Planning Commission meeting, it was determined that revisions to the subdivision Conditions of Approval and minor changes to the Initial Study (IS), Mitigated Negative Declaration (MND), and Mitigation Monitoring and Reporting Program (MMRP) were necessary, requiring the preparation of Errata Sheet (Attachment 4 – Exhibit C). The Errata Sheet presents revisions to the IS/MND and MMRP and do not affect the adequacy of the previous environmental analysis. The revisions include updating minor project details such number of existing dwellings in the IS, minor edits and removal of Standard Measures from the MND, including noise standard measures for consistency in the Conditions of Approval, and minor edits in the MMRP. Standard measures were removed from the MND because they are not mitigation measures. All standard measures such as the City’s Best Management Practices can be found in the Conditions of Approval for the project. Recirculation of the IS/MND is not necessary.

Because of the changes that occurred following Planning Commission approval, it is being requested that the City Council ratify (Attachment 4) the Planning Commission approval of the Tentative Subdivision Map, Mitigated Negative Declaration, and the Mitigation Monitoring Reporting Program, in addition to approving a Zoning Amendment to establish a Planned Development (PD) Combining District and PD Master Plan and Development Agreement.

Weblinks to the Planning Commission staff report and other related plans, studies, and reports are also included (Attachment 6 through 15).

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 and a sign was posted on the project site pursuant to the Planning Division Requirements. The project was also publicly heard at the October 22, 2019 Planning Commission meeting.

ALTERNATIVE ACTIONS:

In addition to denial of the Zoning Amendment, the City Council could direct staff to make changes to the request.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

An application was submitted for the 2017 Residential Development Control System (RDSCS) competition requesting 23 building allotments for the project site. At the May 22, 2018 Planning Commission meeting, the Commission adopted Resolution No. 18-13 awarding the project 23 Fiscal Year 2019-20 building allotments. On June 20, 2018, the City Council approved Resolution No. 18-050, reaffirming the distribution of the RDSCS allotments for Fiscal Year 2019-20.

On October 8, 2019, the public hearing was continued to October 22, 2019 to allow time for staff to complete the necessary documentation for the project. The Planning Commission voted to approve the Tentative Subdivision Map and adopted the Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring Reporting Program. The Planning Commission also approved resolutions to recommend that the City Council approve the Development Agreement and Zoning Amendment request to establish a PD Combining District and PD Master Plan.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act):

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project by Geier & Geier Consulting, Inc. dated July 2019 in conformance with the California Environmental Quality Act (CEQA), and adopted by the Planning Commission on October 22, 2019. As explained above, non-substantive changes were made for clarification purposes only and do not affect the environmental analysis.

LINKS/ATTACHMENTS:

1. Location Map
2. DA Ordinance
3. ZA Ordinance
4. Ratifying Resolution
5. PC: Planned Development Resolution 19-20
6. Diana-Mana Mitigated Negative Declaration-rev11.8.19
7. Diana Avenue - Mana Draft MMRP - Rev11.08.19
8. Planning Commission Staff Report & Related Attachments (Weblink)
9. Architectural Plans (Weblink)
10. Landscape Plans (Weblink)
11. Tentative Map (Weblink)
12. Tree Report (Weblink)
13. Native American Heritage Commission Comment Letter (Weblink)
14. Noise Assessment (Weblink)
15. Initial Study (Weblink)

Location Map (Montecito Estates)



Attachment: Location Map (2537 : ZA/DA : Diana - Mana Hanalei (Montecito Estates))

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2018-
0003: DIANA-MANA HANAIEI (MONTECITO ESTATES)
FOR A 24-LOT RESIDENTIAL SUBDIVISION ON A 4.84-
ACRE SITE LOCATED ON THE NORTHWEST CORNER
OF DIANA AVENUE AND LOTUS WAY (APN 726-09-001 &
726-09-002)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS
FOLLOWS:**

- SECTION 1.** The Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded 23 building allotments for application RDCS 2017-0015: Diana-Mana Hanalei for Fiscal Year (FY) 2019-20.
- SECTION 2.** The City Council of the City of Morgan Hill enacted Ordinance number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code.
- SECTION 3.** Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.
- SECTION 4.** The Development Agreement request was considered by the Planning Commission at its regular meeting of October 22, 2019 at which time the Planning Commission recommended approval of Development Agreement DA2018-0003: Diana-Mana Hanalei (Montecito Estates) based on the findings described below;
- SECTION 5.** 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 6. The Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.

The project would subdivide the property into 24 residential lots, with 24 new single-family dwelling unit. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 7. The Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located.

The proposed residential use is permitted within the RDM-7,000 zoning district and would be compatible with the surrounding residential uses.

SECTION 8. The Development Agreement duly considers city mitigation programs in effect at the time of execution of the agreement.

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

SECTION 9. The Development Agreement will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.

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

SECTION 10. The Development Agreement complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The City has completed an Initial Study and a Mitigated Negative Declaration, along with a Mitigation Monitoring and Reporting Program, which the Planning Commission considered and adopted as part of the Tentative Subdivision Map approval.

SECTION 10. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

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

SECTION 11. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 12. 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 13. 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 96933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF NOVEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF DECEMBER 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 TOREZ, City Clerk

RICH 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.XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 20th day of November 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: DA Ordinance [Revision 1] (2537 : ZA/DA: Diana - Mana Hanalei (Montecito Estates))

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT
[DA#2018-0003: Diana – Mana]
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
MONTECITO ESTATES MH LLC
REGARDING
THE DIANA-MANA HANAIEI RESIDENTIAL DEVELOPMENT PROJECT

Attachment: DA Ordinance [Revision 1] (2537 : ZA/DA: Diana - Mana Hanalei (Montecito Estates))

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 MONTECITO ESTATES MH LLC
 REGARDING THE
 DIANA-MANA HANAIEI PROJECT

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

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

RECITALS

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

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

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

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

1. 23 Fiscal Year (FY) 2019-20 Building Allotments Approved Pursuant to RDCS Application: RDCS2017-0015, and conditions attached to the award of such allotments;

2. **Environmental Assessment Application EA 2018-0004;**

3. **Zoning Amendment Application ZA 2019-0006;**
4. **Tentative Subdivision Map Application SD2018-0006;**

The Existing Approvals are more particularly described in the Administrative Initial Study/Mitigated Negative Declaration for the Diana-Mana Hanalei or “Montecito Estates” project and the resolutions adopting the Existing Approvals.

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

F. On May 22, 2018, the Morgan Hill Planning Commission awarded allotments for the Project and on June 20, 2018, the City Council reaffirmed and approved the distribution as set forth in the Developer’s application for residential allotments pursuant to Chapter 18.156 (“**Residential Development Control System**”, or “**RDCS**”) of the Morgan Hill Municipal Code (“**Code**”). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer’s application as required under Section 18.156.120.J of the Code.

G. On October 22, 2019, following a duly noticed and conducted public hearing, the Planning Commission of the City (“**Planning Commission**”) considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City’s procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

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

1.02 Definitions.

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

- (1) **"Allotments"** shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) **"Applicable Law"** shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) **"Commitments"** shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) **"Director"** shall mean the Director of Development Services, and his or her designee.
- (5) **"Existing Approvals"** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.
- (8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.
- (10) **"Project"** means the development containing 24 units in a residential subdivision project, as more particularly described in the RDCS Application RDCS2017-0015 as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 4.84 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (15) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.

(16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

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

1.03 Term.

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

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

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

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

- (1) *All the provisions, terms and conditions of this Agreement.*
- (2) *Existing Approvals.*

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

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

2.02 Vested Right to Applicable Law.

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

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

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

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

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

2.03 Project Impacts and Costs.

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

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

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

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

2.04 RDCS and Other Specific Project-Specific Requirements.

(i) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments ("**Commitments**") voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or

federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

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

(k) The Developer's RDCS application – RDCS2017-0015: Diana - Hanalei and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission on March 13, 2018, March 27, 2018, and May 22, 2018) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

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

2.06 Timing of Development.

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

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

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

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

2.07 Improvements.

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

2.08 Overcapacity, Oversizing.

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

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

2.09 New City Laws.

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

(s) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the

Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

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

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

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

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

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

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

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

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

ARTICLE 3

PROCESSING

3.01 Processing.

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

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

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

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

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

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

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

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

3.04 Amendments.

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

3.05 Administrative Amendment

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

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

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

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

4.02 Actions During Cure Period.

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

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

4.03 Resolution of Disputes.

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

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

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

4.04 Periodic Review.

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

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

4.05 Force Majeure Delay, Extension of Times of Performance.

(h) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the

validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

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

4.06 Third Party Legal Actions.

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

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

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

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

4.07 Estoppel Certificate.

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

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

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

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

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

4.08 Assignment/Covenants Run with the Land.

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

(r) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant

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

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

4.09 Encumbrances on the Property.

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

4.10 Obligations and Rights of Mortgage Lenders.

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

(u) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if

City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

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

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

4.11 Termination.

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

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

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

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

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant

to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

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

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

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

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

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

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

(h) Notices.

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

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	Scott Murray or Orville Power Montecito Estates MH, LLC 5927 Balfour Court Carlsbad, CA 92008 Tel: (408) 406-6000
<u>With a Copy To:</u>	Vince McCarrie D.R. Horton 6683 Owens Drive Pleasanton, CA 94588 Tel: (925) 225-7490

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

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

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

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

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

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

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

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

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

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

Signatures of all parties are on the following page.

///

///

///

//

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

CITY OF MORGAN HILL:

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

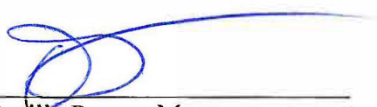
s/ _____

Donald A. Larkin
City Attorney

Date: _____

DEVELOPER:

Montecito Estates MH, LLC



Orville Power, Manager

Date: 11/7/19

Corporate entities must provide a second signature:

s/ _____

Name/Title [print]

Date: _____

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

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

CIVIL CODE § 1189

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

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND BEING A PORTION OF LOT 50, AS SHOWN UPON "MORGAN HILL RANCH MAP NO. L ", FILED IN BOOK 'G' OF MAPS, PAGES 2 & 3, ON JUNE 1, 1892 AT THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, BEING MORE PARTICULARLY DESCRIBED IN THE INDIVIDUAL QUIT CLAIM DEED, DOC. NO. 20061479, RECORDED ON DECEMBER 08, 2008 AT THE OFFICIAL RECORDS OF SAID COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Attachment: DA Ordinance [Revision 1] (2537 : ZA/DA: Diana - Mana Hanalei (Montecito Estates))

All of PARCEL ONE and PARCEL TWO as described in Exhibit 'A' of said deed.

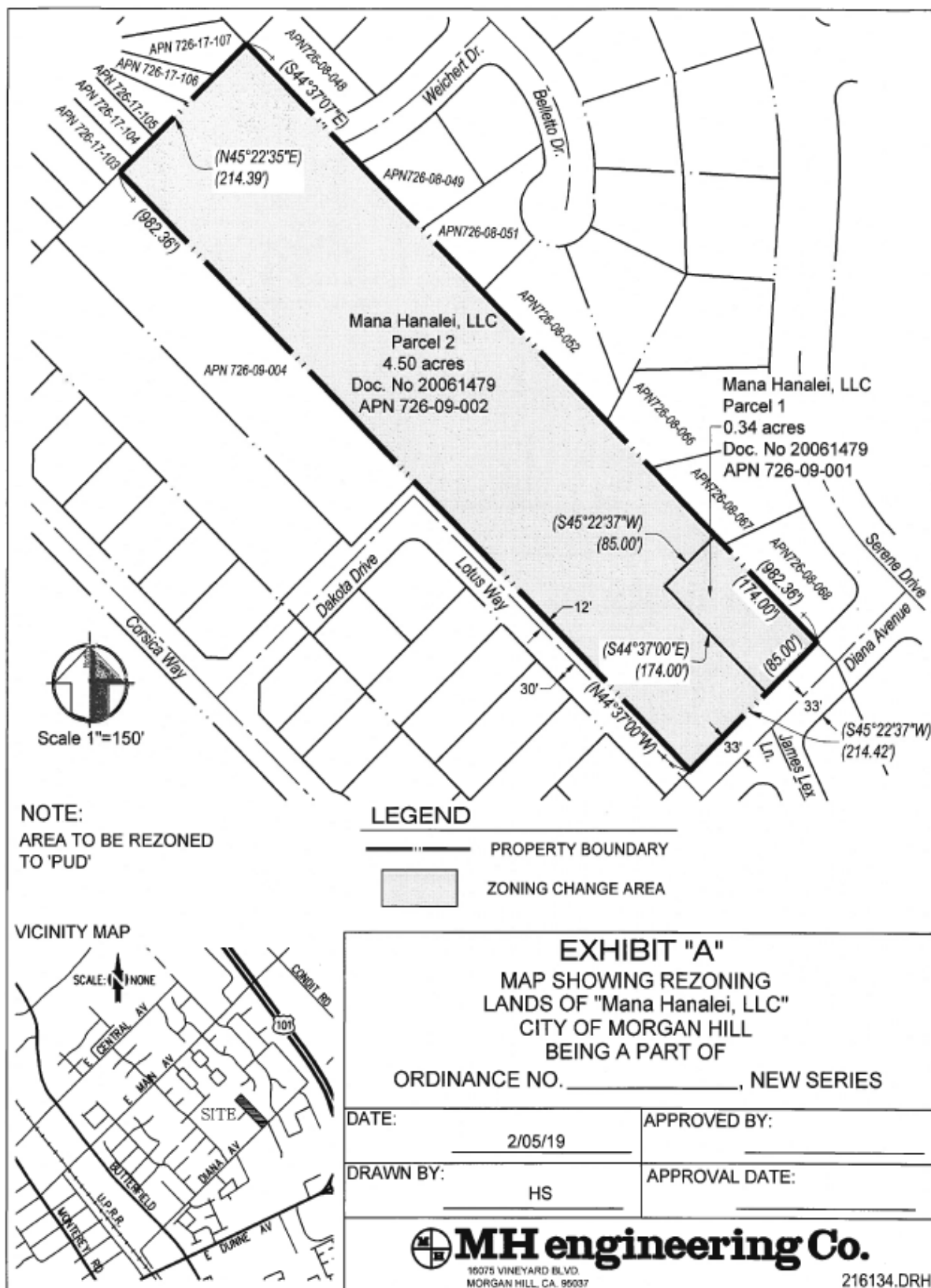


EXHIBIT B
DESCRIPTION OF PROJECT

**RDCS APPLICATION NO. RDCS2017-0015: DIANA-HANALEI FOR A
RESIDENTIAL DEVELOPMENT PROJECT THAT SUBDIVIDES THE PROJECT SITE
INTO 24 RESIDENTIAL LOTS AND INCLUDES DEVELOPMENT OF 24 NEW
SINGLE-FAMILY RESIDENCES, PUBLIC ACCESS ROADS, AND A PRIVATE PARK.**

Attachment: DA Ordinance [Revision 1] (2537 : ZA/DA: Diana - Mana Hanalei (Montecito Estates))

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.	Schools			
4.	Student Transportation Improvements	Applicant shall contribute \$5000 per unit to contribute to the City's Safe Access to Schools Fund to be used to construct physical improvements to enhance safe student access to MHUSD Schools.	Prior to the issuance of building permit	\$5,000 per unit
3.	Affordable Housing			
2.	Voluntary Contribution to Housing Fund	Project commits to contributing to the City's Affordable Housing Fund at a rate of 110 percent of baseline contribution. Total Livable Area: 62,100 square feet Per square foot fee: \$ 12.92 Baseline fee: \$ 802,332.00 (total) 10 percent additional fee: \$ 80,233.20 110 percent Fee: \$882,565.20 Baseline fee per unit: \$38,372.40 In-lieu of voluntarily contributing the 110	Inclusionary Housing Agreement required 60 days following Development Agreement approval	\$882,565.20 voluntary contribution based on estimated in-lieu fee for project. Fee to be partially off-set by the development of two on-site Below Market Rate units with

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		percent to the Housing Fund, the applicant shall build two Below Market Rate (BMR) units with each having a BMR Value of \$436,050. The applicant shall contribute the balance of the voluntary fund commitment in the amount of \$10,454.20 (454.53 per unit) for a total Affordable Housing Commitment of 110 percent.		a value of \$872,100.00.
3.	Development of Affordable Units	To satisfy the City's Inclusionary Housing requirement specified in Chapter 14.04 (Inclusionary Housing) of the City's Municipal Code, the applicant shall incorporate Below Market Rate (BMR) units within the project for a mixed income community with two units within the project designated as deed restricted for sale affordable units. The designated affordability limits shall be 80 percent AMI for one unit and 90-120 percent AMI for one unit.	Inclusionary Housing Agreement required 60 days following Development Agreement approval	N/A
4.	Housing Diversity			
2.	Diversity of Housing Types	The project shall provide at least 10% of the 3 different housing types (duet, SFD single story, and SFD multi story). 6 units will be duets, 12 units will be SFD single story, and 6 units will be SFD multi story.	Prior to Design Review Permit approval	N/A
3.	Variation in Housing Size	The projects variation between largest and smallest units is at least 35% (each floor plan varies by 200 square feet) The project consists of 4 housing sizes.	Prior to Design Review Permit approval	N/A
6.	Single-Story Homes	The project shall build at least 50% (12 units) single story units.	Prior to Design Review Permit approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
5.	Parks and Open Space			
1.	Park Fund Contribution	In addition to standard park impact fees, project shall pay \$2,000 per unit.	Prior to building permit issuance	\$2,000 per unit
2.	Excess Park Land	Project shall provide a minimum of 10% more dedicated open space that the minimum level mandated by the Municipal Code.	Prior to Design Review Permit approval	N/A
5.	Agricultural Preservation or Open Space Fund Contribution	In addition to standard fees, project shall contribute to single unit rate per unit to the agricultural preservation and open space fund. This fee adjusts annually.	Prior to building permit issuance	Fee to be determined at time of payment
6.	On-Site Recreational Amenities	Project shall provide: a horseshoe pit, a passive recreation area and/or garden, and a tot lot with a minimum of three age appropriate activities.	Prior to Design Review Permit approval	N/A
7.	Amenities for Age Group	Project shall provide a tot lot (children) and BBQ area (adults).	Prior to Design Review Permit approval	N/A
10.	Open Space Design	The size of the park shall be 10% larger than the size required by the Municipal Code; fences shall surround the open space for edges; landscaping shall be enhanced and a total of 5 different amenities shall be offered within the park well beyond the minimum.	Prior to Design Review Permit approval	N/A
6.	Environmental Protection			
1.	Energy Efficiency	The project shall exceed the minimum building energy efficiency requirement by the California Energy Code by 15 percent.	Prior to issuance of building permit	N/A
4.a	Natural Turf	Less than 50 percent of the landscaped area shall contain natural turf.	Prior to issuance of building permit	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.d	Exceeds Outdoor Water Efficiency 20%	Project shall exceed outdoor water efficiency standards by 20%.	Prior to issuance of building permit	N/A
4.e	Exceeds Outdoor Water Efficiency 30%	Project shall exceed outdoor water efficiency standards by 30%.	Prior to issuance of building permit	N/A
5.	Sustainable Site and Building Design	The project commits to score 108 points or 19 points over the minimum 89 points required by the City of Morgan Hill Municipal Code.	Prior to the issuance of building permit	N/A
7.	Transportation			
3.	Off-Site Street and Parking Improvements or Fund Contribution	The project shall fund off-site street roadway and/or parking improvements that are outside of the project boundaries in the amount of \$3,000 per unit. Improvements to be determined by City Engineer.	Prior to issuance of building permit	\$3,000 per unit
4.a	Transportation Demand Management fund	The project shall contribute \$2,000 per unit to the City's transportation fund to be used to provide city-wide TDM programs	Prior to issuance of building permit	\$2,000 per unit
5.a	Aligns and connects streets	The project shall align and connect streets intersecting the project boundary with all adjoining streets.	Prior to Design Review Permit approval	N/A
5.b	Extends Streets	The project shall extend streets to adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	Prior to Design Review Permit approval	N/A
5.c	Off-street bicycle and pedestrian connections	The project shall provide detached sidewalks offering a shorter connection from surrounding neighborhoods to adjacent destinations including parks, open space, transit facilities and commercial areas.	Prior to Design Review Permit approval	N/A
6.a	Complete Streets	The project shall incorporate "complete streets" that will meet the needs of multiple	Prior to Design Review	N/a

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities as required by the City Engineer.	Permit approval	
6.c	Direct pedestrian connections	The project shall provide direct pedestrian connections from all units to common open space, recreational facilities, and other project amenities.	Prior to Design Review Permit approval	N/A
6.d	Neighborhood traffic management techniques	The project shall incorporate a variety of neighborhood traffic management techniques, such as a knuckle and bulbout designed to City standards, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	Prior to Design Review Permit approval	N/A
8.	Municipal Infrastructure			
3.a	Reduces off-site storm water flows	The project shall reduce the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques.	Prior to issuance of building permit	N/A
4.	Infrastructure and Services Fund Contribution	The project shall contribute \$3,000 per unit to the City's infrastructure and Services Fund.	Prior to issuance of building permit	\$3,000 per unit
5.a	Installs broadband conduit in public right-of-way	The project shall install broadband conduit in the public right-of-way along the project frontages.	Prior to issuance of building permit	N/A
5.b	Installs broadband conduit to home/buildings	The project shall install broadband conduit from the public right-of-way to each home within the project.	Prior to issuance of building permit	N/A
5.c	Pre-installs indoor conduit	The project shall pre-install indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to	Prior to issuance of building permit	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		each unit.		
9.	Project Quality			
1.a	Front Porches	The criteria requires that a minimum of 50 percent of homes facing a street or common interior courtyard include a front porch that is part of the home's primary entrance. The porch is required to be a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard. Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
1.d	Façade Articulation and Finishes	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
1.e	360-degree Architecture	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
1.f	Corner Treatments	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
1.g	Colors and Materials	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
2.a	Entrance Orientation-Collector and Residential Streets	The majority of the project is creating streets (not facing existing streets or collectors); however, 3 homes are facing along Diana Avenue, the existing collector. Due to the narrowness of the lot, the project has maximized the number of lots that can face Diana Avenue. The project shall comply with the stated criteria.	Prior to Design Review Permit approval	N/A
2.c	Variation in Building Height	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
2.d	Variation in Building Placement	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
2.e	Roof Line Variation	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
2.f	Upper Floor Setback-Detached Homes	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.b	Landscaping-Visual Relief	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.c	Exterior Lighting	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.d	Entrance Pathways	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.e	Public/Private Transitions	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
3.f	Mechanical Equipment	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.b	Garage Door Design-Minimizing Visual Dominance	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.c	Garage Door Design-Detailing	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.h	Setback Areas	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
4.i	Pavement Design	Project shall demonstrate compliance with the stated criteria.	Prior to Design Review Permit approval	N/A
5.	Public Art	The applicant shall provide \$3,000 per unit for public art.	Prior to issuance of building permit	\$3,000 per unit

ORDINANCE NO. NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A ZONING MAP AMENDMENT ZA2019-0006 FOR AN RDM-7,000/PLANNED DEVELOPMENT COMBINING DISTRICT AND PLANNED DEVELOPMENT MASTER PLAN FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY (DIANA MANA HANAIEI PROJECT/MONTECITO ESTATES) (APN 726-09-001 & 726-09-002).

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The proposed amendment is consistent with the general plan and any applicable specific plan as provided by Government Code Section 65860.

The project complies with the allowed density range for units on the site in accordance with the General Plan.

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

The project is a housing project that would provide an opportunity for those seeking housing in the current housing market.

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

The project is a residential housing development with lot sizes similar to the surrounding residential developments. The proposed circulation will provide connectivity and complete circulation patterns to adjoining neighborhoods.

SECTION 4. 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 consistent with the policies established by the General Plan and Zoning Code.

- SECTION 5.** The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

The development will be of high design standards with varied and distinct architecture and details.

- SECTION 6.** The proposed project will provide a substantial public benefit. 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.

There are several examples of public benefits listed but are not limited to in MHMC 18.30.050.H.8 such building affordable housing, improved pedestrian pathways, circulation, and connectivity to the surrounding neighborhood, and also green building design. The project is proposing several public benefits including building two BMRs incorporated within the project in addition to contributing to the City's Affordable Housing Fund at an 110% rate of baseline contributions. Off-site improvements are proposed along Diana Avenue and Weichert Drive for roadway connectivity, consistency of pedestrian walking facilities (attached/detached sidewalks), and traffic calming and safe circulation. The applicant is also obtaining additional dedicated ROW along Dakota Drive to help supplement the circulation and connectivity. Through various measures such as sustainable design and water efficient landscaping, the project is anticipated to be 19 points over the minimum requirement for "Build It Green" points, exceeds the CA Title 24 energy efficiency standards by 15%, anticipates using 48% less outdoor water than is allowed by water efficiency standards.

- SECTION 7.** The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The project site is 4.84-acres and will have a density of 4.95 dwelling units per acre. The size and shape of the site will accommodate the proposed residential and open space uses.

- SECTION 8.** Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.

The site fronts Diana Avenue and Lotus Way. Roadway extensions will be made on Dakota Drive, Juliann Way, and Weichert Drive. A new cul-de-sac will be constructed off Lotus Way. There are wet and dry utilities and infrastructure in the surrounding area that will support the project. See Exhibit A.

SECTION 9. 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 project is compatible with the surrounding single-family residential uses and will not have a substantial adverse effect with conditions of approval and mitigation measures included.

SECTION 10. The request was considered by the Planning Commission at its regular meeting of October 22, 2019, at which time the Planning Commission recommended approval of Zoning Amendment application, ZA2019-0006: Diana-Mana Hanalei. The City Council accepts the recommendation of the Planning Commission.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 20th DAY OF NOVEMBER 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF _____, 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

RICH CONSTANTINE, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

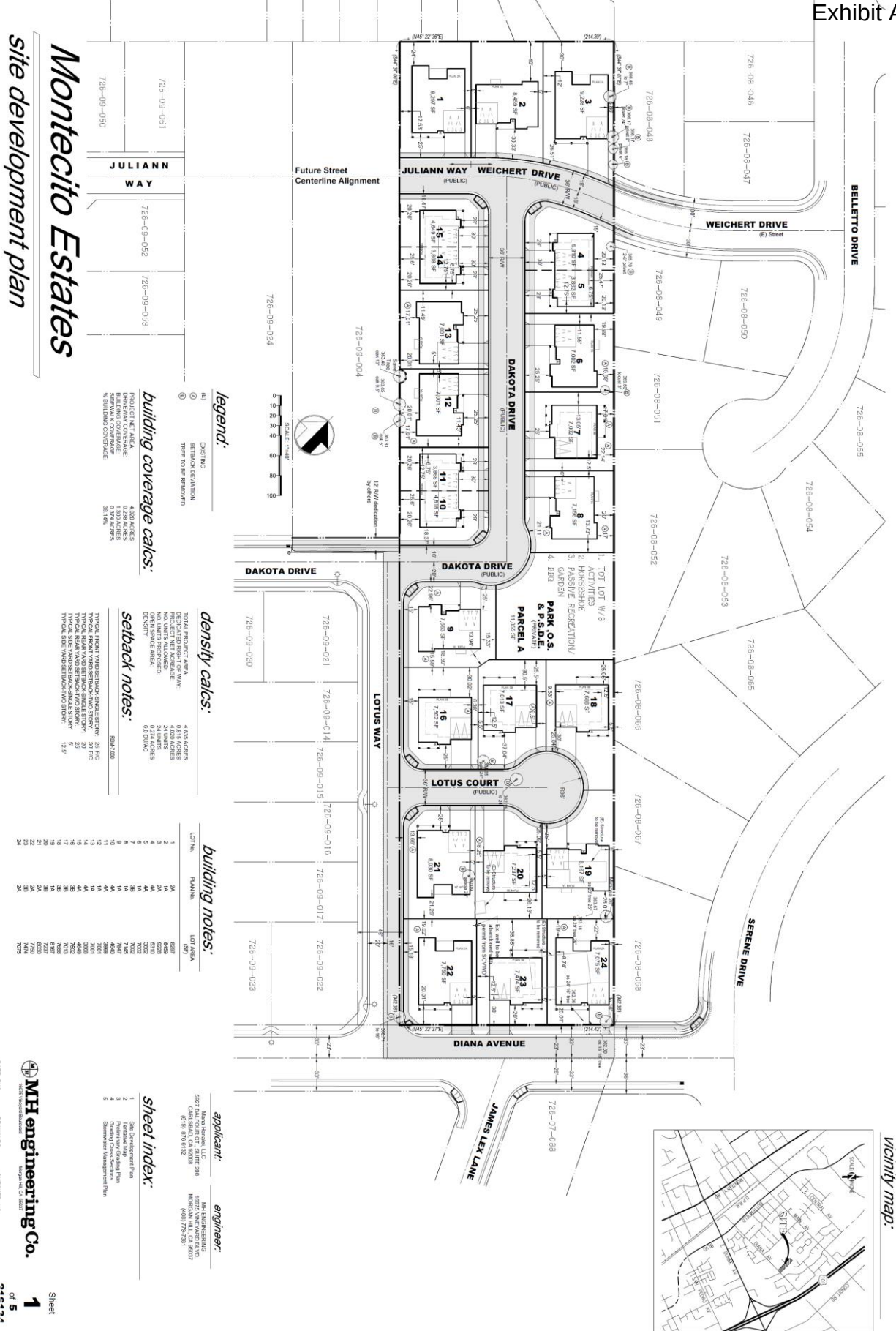
I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 20th day of November 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A



RESOLUTION NO. 19-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL RATIFYING PLANNING COMMISSION ADOPTION OF THE RESOLUTIONS 19-18 AND 19-19 RELATED TO THE MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM AND SUBDIVISION MAP FOR A 24-UNIT RESIDENTIAL DEVELOPMENT ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY (DIANA MANA HANAIEI PROJECT/MONTECITO ESTATES) (APN 726-09-001 & 726-09-002).

WHEREAS, Mana Hanalei, LLC proposes to develop the property (Montecito Estates) located on the northwest corner of the intersection of Diana Avenue and Lotus Way, identified by Assessor Parcel Number(s) 726-09-001 and 726-09-002, with a single-family residential project with 24 single-family dwelling units on a 4.84-acre site;

WHEREAS, the Planning Commission held a public hearing on the project at their meeting of October 22, 2019;

WHEREAS, the Planning Commission adopted Resolution No. 19-18, Exhibit A, adopting the Initial Study (IS)/Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for the project in accordance with the California Environmental Quality Act (CEQA);

WHEREAS, the Planning Commission adopted Resolution No. 19-19, Exhibit B, approving a Tentative Subdivision Map for a 24-lot residential subdivision;

WHEREAS, the environmental assessment performed by the City correctly identified all environmental impacts, but not all of the standard measures were incorporated into Resolution No. 19-19;

WHEREAS, the Conditions of Approval for the Tentative Subdivision Map was updated to include additional noise standard measures/best management practices as identified in the noise study attached to the initial study;

WHEREAS, an Errata Sheet, Exhibit C, was prepared by the City to address necessary revisions to the IS/MND and MMRP.

WHEREAS, such request was considered by the City Council at its regular meeting of November 20, 2019; and

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

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

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

SECTION 2. The City Council does further resolve as follows:

- a) That all the changes to the Subdivision Map Resolution 19-19 “Exhibit A: Conditions of Approval” and the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program presented in the Errata Sheet, incorporated by this reference as though fully set forth herein, are necessary.
- b) The revisions presented in the Subdivision Map Resolution 19-19 “Exhibit A: Conditions of Approval” and the Errata Sheet do not affect the adequacy of the previous environmental analysis and therefore recirculation of the Initial Study/Mitigated Negative Declaration is not necessary.

SECTION 3. This resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 20th day of November 2019.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

Attachment: Ratifying Resolution [Revision 2] (2537 : ZA/DA: Diana - Mana Hanalei (Montecito Estates))

∞ **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. 19-xxx, adopted by the City Council at a regular meeting held on November 20, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ratifying Resolution [Revision 2] (2537 : ZA/DA : Diana - Mana Hanalei (Montecito Estates))

RESOLUTION NO. 19-18**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ADOPTING THE MITIGATED NEGATIVE DECLARATION THAT WAS PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE DIANA-MANA HANAIEI PROJECT (MONTECITO ESTATES) (APN 726-09-001 & 726-09-002)**

WHEREAS, prior to the adoption of this Resolution, the Planning Division of the City of Morgan Hill prepared an Initial Study and a Mitigated Negative Declaration for the Diana-Mana Hanalei Project (Planning File No's. ZA2019-0006, DA2018-0003, SD2018-0006, EA2018-0023) in accordance with the requirements of the California Environmental Quality Act of 1970, as amended ("CEQA"), and state and local guidelines implementing CEQA; and

WHEREAS, the Diana-Mana Hanalei Project ("Project") analyzed under the Initial Study/Mitigated Negative Declaration consisted of the request to subdivide the property into 24 residential lots, and Planned Development Master Plan for property located on the northwest corner of the intersection of Diana Avenue and Lotus Way (APN: 726-09-001 & 726-09-002); and

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

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

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

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

City of Morgan Hill
Resolution No. 19-18
Page 2 of 3

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

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

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

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

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

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

PASSED AND ADOPTED THIS 22nd DAY OF OCTOBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	MUNOZ-MORRIS, HABIB, MUELLER, TANDA, GONZALEZ-ESCOTO, KUMAR, DOWNEY
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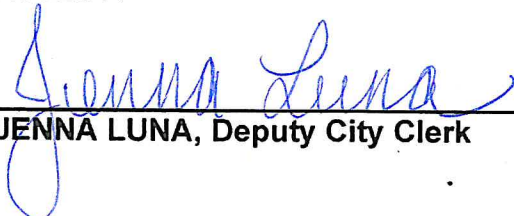
NOES:	COMMISSIONERS:	NONE
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ABSTAIN:	COMMISSIONERS:	NONE
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City of Morgan Hill
Resolution No. 19-18
Page 3 of 3

ABSENT: COMMISSIONERS: NONE

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


JUAN MIGUEL MUNOZ MORRIS, Chair

AFFIDAVIT

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

By: _____

Date: _____

RESOLUTION NO. 19-19

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL APPROVING A TENTATIVE
SUBDIVISION MAP FOR A 24-LOT RESIDENTIAL
SUBDIVISION ON A 4.84-ACRE SITE LOCATED NORTH
OF THE INTERSECTION OF DIANA AVENUE AND LOTUS
WAY (DIANA MANA HANAIEI PROJECT/MONTECITO
ESTATES) (APN 726-09-001 AND 726-09-002)**

WHEREAS, on October 9, 2018, Mana Hanalei, LLC submitted an application for a tentative subdivision map (SD2018-0006: Diana-Mana Hanalei) for the Montecito Estates project;

WHEREAS, such request was considered by the Planning Commission at its regular meeting of October 22, 2019;

WHEREAS, in accordance to the California Environmental Quality Act (CEQA) the City has completed an Initial Study to determine the project could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures are included in the project and therefore a Mitigated Negative Declaration has been prepared; and

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

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

SECTION 1. The Tentative Subdivision Map, together with its provisions for its design and improvements, is consistent with the General Plan.

SECTION 3. The Tentative Subdivision Map as described herein is hereby approved. The proposed project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit A, and by this reference incorporated herein, as well as all mitigation measures identified in the Mitigated Negative Declaration and Mitigation Monitoring Reporting Program incorporated by this reference as though fully set forth herein.

PASSED AND ADOPTED THIS 22nd DAY OF OCTOBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	MUNOZ-MORRIS, HABIB, MUELLER, TANDA, GONZALEZ-ESCOTO, KUMAR, DOWNEY
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City of Morgan Hill
 Resolution No. 19-19
 Page 2 of 31

NOES: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ATTEST:

APPROVED:

 JENNA LUNA, Deputy City Clerk

 JUAN MIGUEL MUNOZ-MORRIS, Chair

A F F I D A V I T

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

By: _____

Date: _____

Attachment: Ratifying Resolution [Revision 2] (2537 : ZA/DA: Diana - Mana Hanalei (Montecito Estates))

EXHIBIT A

CONDITIONS OF APPROVAL

THE FOLLOWING ARE STANDARD CONDITIONS OF APPROVAL THAT MUST BE MET PRIOR TO THE ISSUANCE OF BUILDING PERMITS AND/OR SITE DEVELOPMENT PERMITS EXCEPT AS MAY BE SPECIFIED IN THE CONDITIONS. THE APPROVAL REQUIREMENTS INCLUDE THESE REQUIREMENTS AND ANY SPECIAL CONDITIONS THAT ARE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS. APPLICANTS ARE REQUIRED TO SIGN THE APPROVAL CERTIFICATE/RESOLUTION FORM INDICATING THEY UNDERSTAND AND AGREE TO IMPLEMENT THESE STANDARD CONDITIONS AND ANY SPECIAL CONDITIONS APPLIED TO THEIR PERMIT APPROVAL.

ACRONYMS:

MHMC – Morgan Hill Municipal Code

MHARH – Morgan Hill Architectural Review Handbook

PLANNING DIVISION

I. TIME LIMITS

- A. The Tentative Subdivision Map approval granted under this Resolution shall remain in effect for two years to October 22, 2021. Failure to apply for Final Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Development Services Department/Planning Commission prior to the expiration date. **(MHMC 17.20.170; 17.24.110)**

II. MITIGATION MEASURES

Air Quality

- A. **MM AQ-1: Basic Construction Measures.** To limit the project's construction-related dust and criteria pollutant emissions, the following BAAQMD-recommended Basic Construction Mitigation Measures shall be included in the project's grading plan, building plans, and contract specifications:
 - a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

Biological Resources

- A. **MM BIO-1: Special-Status Bats.** Prior to the removal of mature trees or the demolition or renovation of structures, the measures outlined below ~~should~~ shall be performed.
 - a. A pre-construction survey shall be conducted by a qualified biologist to identify suitable bat roosting sites.
 - b. Any trees or structures determined to support or potentially support maternal roosting sites ~~may~~ shall only be removed or demolished after coordination with the CDFW and/or the USFWS. Passive exclusion of roosting bats will be required and this may only be performed during the non-breeding season (i.e., between October 1 and March 30).
 - c. Any trees or structures determined to provide suitable bat day or night roosting sites ~~should~~ shall be identified and marked on site plans. Such roosting sites include snags, rotten stumps, and decadent trees with broken limbs, exfoliating bark, cavities, openings leading to interior portions of any structures. If no suitable roost sites or evidence of bat roosting are identified, impact minimization measures are not warranted. If suitable roosting sites or evidence of bat roosting are identified, the following measures ~~should~~ shall be conducted:

- i. A qualified biologist ~~should~~ shall survey suitable roost sites immediately prior to the removal or significant pruning of any of the larger trees, or demolition or significant renovation of any structures.
- ii. If the project biologist identifies suitable day or night roost sites or evidence of bat occupation, the following steps ~~should~~ shall be followed to discourage use of the sites by bats and to ensure that any bats present are able to safely relocate.

For trees:

- o Tree limbs smaller than 7.6 cm (3 in) in diameter ~~should~~ shall be removed and any loose bark should be peeled away.
- o Any competing limbs that provide shelter around the potential roost site ~~should~~ shall be removed to create as open of an area as possible.
- o The tree ~~should~~ shall then be ~~alone~~ undisturbed for 48 hours to allow any bats using the tree/snag to find another roost during their nocturnal activity period.
- o The project biologist ~~should~~ shall re-survey the trees a second time 48 hours after trimming.
- o If no bats are present, work may proceed.
- o If bats remain on-site, additional measures ~~would~~ shall be prescribed by the biologist.

For structures:

- o Depending on the location of potential roost sites and the nature of bat occupation, partial dismantling of a suspect structure may be performed to discourage use by bats. Partial dismantling may consist of the removal of siding, roof sections, and roof gables to permit air flow and exposure to sunlight. This work ~~should~~ shall be performed under the supervision and direction of a qualified biologist.
- o The project biologist ~~should~~ shall re-survey the structures a second time 48 hours after performance of the partial dismantling work.
- o If no bats are present, work may proceed.

- o If bats remain on-site, additional measures shall be prescribed by the biologist.

B. MM BIO-2: Special-Status Animal Species with Suitable Site Habitat. Prior to site preparation for project construction, including the removal of mature trees, demolition of structures, and grading, the measures outlined below shall be performed.

- a. If demolition, site clearing, grading or shrub removal or pruning are to be conducted outside of the breeding season (i.e., September 1 through January 31), no preconstruction surveys for nesting migratory birds is necessary.
- b. If demolition, site clearing, grading or shrub removal or pruning are to be conducted during the breeding season (i.e., February 1 through August 31), a preconstruction nesting bird survey shall be conducted. The survey shall be performed by a qualified biologist no more than two weeks prior to the initiation of work. If no nesting or breeding activity is observed, work may proceed without restrictions. To the extent allowed by access, all active nests identified within 92 meters (300 feet) for raptors and 31 meters (100 feet) for passerines shall be mapped.
- c. For any active nests found near the construction limits (i.e., 92 meters [300] feet for raptors and 31 meters [100 feet] for passerines) the project biologist shall make a determination as to whether or not construction activities are likely to disrupt reproductive behavior. If it is determined that construction is unlikely to disrupt breeding behavior, construction may proceed. If it is determined that construction may disrupt breeding, the no-construction buffer zone shall be expanded; avoidance is the only mitigation available. The ultimate size of the no-construction buffer zone may be adjusted by the project biologist based on the species involved, topography, lines of site between the work area and the nest, physical barriers, and the ambient level of human activity. If it is determined that construction activities are likely to disrupt raptor breeding, construction activities within the no-construction buffer zone may not proceed until the project biologist determines that the nest is long longer occupied.
- d. If maintenance of a no-construction buffer zone is not feasible, the project biologist shall monitor the nest(s) to document breeding and rearing behavior of the adult birds. If it is determined that construction activities are likely to cause nest abandonment, work shall cease immediately and the CDFW and/or the USFWS Division of Migratory Bird Management shall be contacted for guidance.

Hazards and Hazardous Materials

- A. **MM HAZ-1: Implement Buyer Education Program for Household Hazardous Waste:** The project sponsor, working with the City of Morgan Hill and County of Santa Clara Household Hazardous Waste program, shall implement a Buyer Education Program for Household Hazardous Waste, providing materials and/or direction to sources of information, (e.g. <https://www.morgan-hill.ca.gov/432/HouseholdHazardous-Waste>) to educate project buyers about the identification of household hazardous wastes, environmental hazards associated with mishandling of the wastes, appropriate disposal methods, and how to make an appointment for disposal.
- B. **MM HAZ-2: Hazardous Building Materials Removal.** Prior to demolition of the existing buildings at the project site, the project applicant shall require that the contractor(s) have a hazardous building materials survey completed by a Registered Environmental Assessor or a registered engineer. This survey shall be completed prior to any demolition activities associated with the project. If any friable asbestos-containing materials or lead-containing materials are identified, adequate abatement practices, such as containment and/or removal, shall be implemented in accordance with applicable laws prior to demolition. Specifically, asbestos abatement shall be conducted in accordance with Section 19827.5 of the California Health and Safety Code, as implemented by the BAAQMD, and 8 CCR Section 1529 and Sections 341.6 through 341.14, as implemented by Cal/OSHA. Lead-based paint abatement shall be conducted in accordance with Cal/OSHA's Lead in Construction Standard.

Any PCB-containing equipment, fluorescent light tubes containing mercury vapors, and fluorescent light ballasts containing DEHP shall also be removed and legally disposed of in accordance with applicable laws including 22 CCR Section 66261.24 for PCBs, 22 CCR Section 66273.8 for fluorescent lamp tubes, and 22 CCR Division 4.5, Chapter 11 for DEHP.

Hydrology and Water Quality

- A. **MM HYD-1: Properly Abandon Site Well.** The project sponsor shall determine the location of the site's water well, if present, prior to the start of project construction. The applicant shall retain a licensed well driller to destroy or abandon the water well at the project site in accordance with the standards specified in Santa Clara Valley Water District Ordinance 90-1, by the Santa Clara County Environmental Health Department, and the California Water Well Standards developed by the California Department of Water Resources. Documentation of appropriate disposal shall be submitted to the City of Morgan Hill Building Inspection Department prior to issuance of a demolition permit.

(http://www.water.ca.gov/groundwater/well_info_and_other/california_well_standards/well_standards_content.html).

III. SITE DEVELOPMENT

- A. TREE PROTECTION: Unless tree removal has been previously approved, all trees located within the project shall be protected using the following minimum protection measures (these guidelines shall be included with all site development plans):
1. Mark all trees to be saved with a survey flag or ribbon. Do not nail or staple directly to the tree.
 2. Erect a temporary fence enclosing an area equal to at least the dripline of the tree (or as far from the trunk as possible). This tree protection zone shall not be used for parking, storage of building materials, or other equipment or the placement of temporary or permanent fill. Signs should be posted identifying the restriction of uses in the tree protection zone.
 3. Locate structures, grade changes, and other ground or surface disturbances (e.g. concrete pours) as far as feasible from the “dripline” area of the tree.
 4. Avoid root damage through grading, trenching, and compaction, at least within an area 1.5 times the dripline area of the tree. Where root damage cannot be avoided, roots encountered over 1 inch in diameter should be exposed approximately 12 inches beyond the area to be disturbed (towards the tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw and immediately back-filled with soil. Avoid tearing or otherwise disturbing that portion of the roots to remain.
 5. The addition of plant or other landscaping materials shall remain outside of the dripline of all trees.
 6. All trees proposed to be removed from the project site shall be replaced at a 1:1 ratio. Replacement trees shall be consistent with the City of Morgan Hill Master Street Tree Plan and shall be approved by the Development Services Director along with a landscape plan. All replacement trees shall be a minimum of 15-gallons in size.
 7. Prior to site preparation for project construction, the arborist's report recommends the implementation of a detailed Tree Protection Plan for the project.
- B. FINAL SITE DEVELOPMENT PLANS: Final site development plans shall be reviewed for conformance with Morgan Hill Municipal Code Section 18.108.040

and approved by the Development Services Department prior to issuance of a building permit. All such plans shall include:

1. Detail depicting all concrete curbs as full formed.
 2. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 3. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building.
- C. FINAL MAP: Recordation of a final map shall be in accordance with the number of building allotments granted through the Residential Development Control System (RDSCS) for this project. Should a portion of the project's building allotment expire prior to final map approval, the number of lots on the final map shall be reduced to correspond to the remaining allotment. **(MHMC 18.156.150)**
- D. DUST, NOISE, VIBRATION, AND MATERIALS MANAGEMENT PLAN: A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties. **(MHMC 18.76)**

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

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California

- airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 8. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
 9. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
 10. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
 11. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
 12. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
 13. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
 14. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
 15. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.
 16. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
 17. Minimizing the idling time of diesel powered construction equipment to two minutes.
 18. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average

- 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
19. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
 20. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.
 21. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines.
- E. STREET NAMES: Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval. Proposed street names shall comply with the Street Naming Policy approved by City Council (Res No. 4601)

IV. LANDSCAPING

- A. Planting and irrigation working drawings: Detailed landscape planting and irrigation working drawings shall be submitted to the Development Services Department for approval prior to issuance of building permits as part of the master building site and improvement plans. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.
- B. Trees and shrubs minimum size: All trees within approved landscape plans shall be of a minimum 15 gallon size. All shrubs shall be minimum 5 gallon size unless otherwise approved by the Development Services Director.
- C. Maintenance of landscaping: The landscaping installed and accepted with this project shall be maintained on the site as per the approved plans. Any alteration or modification to the landscaping shall not be permitted unless otherwise approved by the Development Services Director or Design Review Board.
- D. Water Conserving Landscape Ordinance: The landscape plans shall be in conformance with the City's Water Conserving Landscape Ordinance that was developed in accordance with California law. This Ordinance restricts landscaping turf to certain areas, specifies plant selection, requires certain types of irrigation equipment, and calls for the development of comprehensive water use calculations as an aspect of the submitted landscape plans. It is strongly suggested that the project's landscape designer refer to the City's Ordinance prior to beginning development of the project's landscape plans. **(MHMC 18.64)**

V. HABITAT PLAN

- A. The approved project is covered under the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. Prior to issuance of building permits the project shall complete and submit a Habitat Plan Application Package. All fees must be paid prior to issuance building permits or grading permits. **(MHMC 18.132)**
- C. Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt). **(MHMC 18.132)**

VI. OTHER CONDITIONS

- A. This Tentative Map approval is limited to the plan set dated June 3, 2019 and stamped July 16, 2019 on file SD2018-0006 with the Development Services Department. These documents, as amended by Design Review approval, show the location and sizes of all lots in this development, the location and dimensions of all vehicle and pedestrian circulation ways (ingress/egress), common areas, and other easement areas. The final map shall be in substantial compliance with the approved tentative map as determined by the City Engineer and Development Services Director.
- B. Recordation of Map: The recordation of the final map shall not be completed until approval of the Design Review Permit is completed.
- C. Defense and Indemnity: Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this application or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent

on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are the Applicant or are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by Applicant to be bound by such conditions.

- D. Mitigation Fee Act: Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun.
- E. Signed copies of Resolution: Submit two (2) signed copies of Resolution 19-xx to the Planning Division prior to issuance of building permits.
- F. Signed Development Agreement: Prior to approval of the final map (or issuance of a building permit where no map is required), the property owner shall submit to the Planning Division two (2) signed notarized copies of the Development Agreement for the proposed project.

VII. BEST MANAGEMENT PRACTICES

A. Cultural Resources

1. **Discovery of Archaeological Resources.** If prehistoric or historic-period cultural materials are unearthed during ground-disturbing activities, all work within 100 feet of the find shall halt until a qualified archaeologist and Native American representative can assess the significance of the find. If the find is determined to be potentially significant, the archaeologist, in consultation with the Native American representative, will develop a treatment plan that could include site avoidance, capping, or data recovery.

2. Discovery of Human Remains. In the event of the discovery of human remains during construction or demolition, there shall be no further excavation or disturbance of the site within a 50-foot radius of the location of such discovery, or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
3. The proposed project would be subject to the provisions of City of Morgan Hill Municipal Code Section 18.60.090. This section requires that if a project is located within or adjacent to a known archaeological site, the CEQA review shall consider potentially significant impacts on archaeological resources. If appropriate, mitigation measures shall be included. In addition to the standard conditions identified in subsection B of Section 18.60.090. Subsection B stipulates that if the project is not located within or adjacent to a known archaeological site, then the project applicant has the option to complete an archaeological survey of the property to determine the appropriate mitigation to be used as conditions of project approval or comply with the Standard Conditions of Approval which shall conclusively reduce potentially significant impacts to less than significant level.

~~C. Construction Hours~~

- ~~a. Construction activities shall be limited to the hours between 7:00 a.m. and 8:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays. No construction activities should occur on Sundays or federal holidays (Consistent with Section 8.28.040 of the Morgan Hill Municipal Code).~~

B. Stormwater Management Requirements

1. In order to be consistent with the City's requirements for storm runoff control, the proposed project design ~~would need to~~ must include the development of a storm water detention basin or other drainage control structures on the subject property. The storm drainage facilities proposed for the project ~~would need to~~ must be consistent with provisions the City's Storm Drainage System Master Plan and the stormwater-related conditions of project approval. The incorporation of the Stormwater Conditions for construction activities, post-construction operation of the project, and LID would reduce the potentially significant impacts of the project on stormwater quality to less than significant levels.

2. The project shall comply with the requirements of the Municipal Regional Permit as well as other local, state, and federal requirements. Specifically, the project shall comply with provision C.3 of the MRP, which provides enhanced performance standards for the management of stormwater for new development.
3. The project shall comply with all City of Morgan Hill ordinances, policies, and processes regarding the construction treatment of stormwater runoff. Specifically, a Stormwater Management Plan (SWMP) will be developed prior to issuance of building permits for project construction, to ensure compliance with City of Morgan Hill and MRP requirements. The SWMP will meet the criteria for stormwater protection outlined in the City's Environmental Compliance Program.
4. Construction BMPs shall be implemented for reducing the volume of runoff and pollution in runoff to the maximum extent practicable during site excavation, grading, and construction. All measures shall be included in the project's SWMP and printed on all construction documents, contracts, and project plans. These would include:
 - a. Restrict grading to the dry season or meet City requirements for grading during the rainy season.
 - b. Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
 - c. Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff. Cover stockpiles with secure plastic sheeting or tarp.
 - d. Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
 - e. Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
 - f. Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.

C. Geology and Soils

1. As a Standard Condition of Approval, the project applicant would be required to implement an erosion control plan. The proposed erosion control measures would include use of fiber rolls or silt fences along the perimeter of all proposed private drives, installation of a sediment barrier at the site's principal storm drain inlet, provision of gravel bag check dams on the proposed public street, and hydroseeding of designated areas.
2. As a Standard Condition of Approval, the project applicant is required to prepare a geotechnical engineering report, which includes soil classifications and foundation design recommendations in conformance with the CBSC. The geotechnical investigation was completed in response to this requirement and recommends use of post-tensioned slab-on-grade foundations to minimize the adverse effects of expansive soils.
3. The applicant shall be required to conform to the 2019 California Building Standards Code (CBSC) along with site-specific seismic design parameters specified in the geotechnical report required by the City to reduce potentially significant ground shaking hazards to less than significant.

D. Construction Hours

- a. Construction activities shall be limited to the hours between 7:00 a.m. and 8:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays. No construction activities should occur on Sundays or federal holidays (Consistent with Section 8.28.040 of the Morgan Hill Municipal Code).
- b. All construction noise control measures currently imposed on the project shall be maintained unless the measures outlined herein are more restrictive.
- c. No material deliveries are allowed on Sundays or Federal Holidays.
- d. Cranes shall be located at least 100 ft. from any neighboring residential property line with the exception of cranes or lifts necessary to dismantle scaffolding.
- e. Minimize material movement along the west, north and east sides of the site.
- f. Locate stockpiles adjacent to residential neighbors as much as possible to help shield residences from on-site noise generation.
- g. Music shall not be audible off site.
- h. Dirt berming and stockpiling materials whenever possible can also help reduce noise to sensitive receptor locations.

- i. Place long-term stationary equipment as far away from the residential areas as possible.
- j. Keep mobile equipment (haul trucks, concrete trucks, etc.) off of local streets near residences as much as possible.
- k. Keep vehicle paths graded smooth as rough roads and paths can cause significant noise and vibration from trucks (particularly empty trucks) rolling over rough surfaces. Loud bangs and ground- borne vibration can occur.
- l. Limit the extent of heavy diesel engine equipment work to less than 10 consecutive days when working within 40 ft. of residential property lines.
- m. For interior work, the windows of the interior spaces facing neighboring residences where work is being performed shall be kept closed while work is proceeding.
- n. Noise generating equipment indoors should be located within the building to utilize building elements as noise screens.
- o. Earth Removal: Use scrapers as much as possible for earth removal, rather than the noisier loaders and hauling trucks.
- p. Backfilling: Use a backhoe for backfilling, as it is less costly and quieter than either dozers or loaders.
- q. Ground Preparation: Use a motor grader rather than a bulldozer for final grading. Wheeled heavy equipment is less noisy than track equipment. Utilize wheeled equipment rather than track equipment whenever possible.
- r. Building Construction: Nail guns should be used where possible as they are less noisy than manual hammering.
- s. Generators and Compressors: Use generators, compressors and pumps that are housed in acoustical enclosures rather than weather enclosures or none at all.
- t. Utilize temporary power service from the utility company in lieu of generators wherever possible.
- u. Circular saws, miter/chop saws and radial arm saws shall be used no closer than 50 ft. from any residential property line unless the saw is screened from view by any and all residences using an air- tight screen material of at least 2.0 lbs./sq. ft. surface weight, such as 3/4" plywood.
- v. Use electrically powered tools rather than pneumatic tools whenever possible.

- w. The greatest potential for noise abatement of current equipment should be the quieting of exhaust noises by use of improved mufflers.
- x. It is recommended that all internal combustion engines used at the project site be equipped with a type of muffler recommended by the vehicle manufacturer.
- y. All equipment should be in good mechanical condition so as to minimize noise created by faulty or poorly maintained engines, drive-trains and other components. Worn, loose or unbalanced parts or components shall be maintained or replaced to minimize noise and vibration.
- z. Utilize wheeled equipment rather than tracked equipment whenever possible.
- aa. Diesel vibrating compaction equipment shall not be used within 100 ft. of a residential structure.
- bb. For Noise Complaint Management, the following standard measures are recommended:
 - (a) Designate a noise complaint officer. The officer shall be available at all times during construction hours via both telephone and email. Signs shall be posted at site entries.
 - (b) Notify, in writing, all residents within 300 ft. of the site of construction. The notification shall contain the name, phone number and email address of the noise complaint officer. A flyer may be placed at the doors of the residences.
 - (c) A log of all complaints shall be maintained. The logs shall contain the name and address of the complainant, the date and time of the complaint, the nature/description of the noise source, a description of the remediation attempt or the reason remediation could not be attempted.

ENGINEERING CONDITIONS

The following conditions shall apply to the project/application.

1. The project has made commitments in the 2017 Residential Development Control System (RDCS) project application. Prior to submitting any improvement plans, the Developer shall meet with the Land Development Engineering Division to go over the RDCS commitments to be addressed. Part of the RDCS work shall include obtaining the right of way frontage of APN 726-

09-004 along the Dakota Drive frontage and improving the balance to widen Dakota Drive.

2. The right of way frontage of APN 726-09-004 shall record before or concurrently with the Final Map.
3. Weichert Drive shall not be re-named; Weichert Drive shall extend into the intersection to lot 1, with lots 2 and 3 having the Weichert Address; revised all sheets as needed. NOTE: Lot 1 shall have the Julian Way address.

II. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall have a Final Map prepared by a registered engineer (licensed prior to 01/01/1982: registration number 33,965 or lower) or licensed land surveyor delineating all parcels and easements created. There shall be concurrence in writing by PG & E, Telephone, Cable TV and any other affected agencies to all improvements and easements which are applicable to them. The number and locations of monuments shall be set as required by the Public Works Department. **(MHMC 17.20.200 A; 17.20.290; 17.24.010)**
- C. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the subdivision and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the Director of Public Works prior to submittal of Final Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- D. Obtain necessary encroachment permits from:
 - ☒ City of Morgan Hill
 and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- E. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.
- F. Enter into a
 - ☒ Subdivision Improvement Agreement (SIA)

with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**

- G. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- H. **IMPACT FEE INCREASE**-The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City Public Works Department maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

III. STREET IMPROVEMENTS

- A. The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the Director of Public Works. All street improvements shall be constructed to the satisfaction of the Director of Public Works. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. Dedication of a total of (provide width) feet from center line of public right-of-way on (provide street name). **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.90; 12.02.100; 17.28.010)**
- D. Dedication of the required corner cutoff at the intersection of (provide street intersection). **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010)**

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

IV. SANITARY SEWER SYSTEM

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

V. STORM DRAIN SYSTEM

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

17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)

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

(CMH Design Standards and Standard Details for Construction)

- E. BMP Tree protection shall be part of the SWPPP inspections.
- F. As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number to will be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WDID number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.
- G. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:
1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
 2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.

4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors respectively.
6. Prior to rain events, BMPs* not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24 hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.

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

VI. WATER SYSTEM

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

VII. OTHER CONDITIONS

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

- H. State Water Resources Control Board Post Construction Requirements (PCRs): Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml).

A copy of the guidance manual can be obtained through the Department of Public Works internet site. Project shall provide Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:

1. Performance Requirement 1: Site Design and Runoff Reduction
 2. Performance Requirement 2: Water Quality Treatment
 3. Performance Requirement 3: Runoff Retention
 4. Performance Requirement 4: Peak Management
- I. **Peak Storm Water Runoff Discharge Rates** - Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.
- J. **Conserve Natural Areas** - If applicable, the following items are required and must be implemented in the site layout during the subdivision design and approval process, consistent with applicable General Plan and Local Area Plan policies:
1. Concentrate or cluster Development on portions of a site while leaving the remaining land in a natural undisturbed condition.
 2. Limit clearing and grading of native vegetation at a site to the minimum amount needed to build lots, allow access, and provide fire protection.
 3. Maximize trees and other vegetation at each site by planting additional vegetation, clustering tree areas, and promoting the use of native and/or drought tolerant plants.

4. Promote natural vegetation by using parking lot islands and other landscaped areas. Preserve riparian areas and wetlands.

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

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

1. [California Stormwater Quality Association \(CASQA\) Handbook: BMPs for New Development and Redevelopment](#)
2. [Bay Area Stormwater Management Agencies Association \(BASMAA\) Design Guidance Manual for Stormwater Quality Protection: Start at the Source 1999](#)
3. [California Storm Water Best Management Practices Handbooks](#)
4. [Caltrans Storm Water Quality Handbook: Planning and Design Staff Guide](#)

L. **Provide Storm Drain System Stenciling and Signage** - Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: “NO DUMPING – DRAINS TO CREEK”) and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.

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

1. Volumetric Treatment Control BMP

- a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

2. Flow Based Treatment Control BMP

- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
- b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

N. Stormwater Runoff Management Plan (SWRMP) required - The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
2. The chief engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.

3. Each certifying civil engineer shall establish to the city's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

O. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' or homeowners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

P. Stormwater BMP operation and Maintenance Agreement (SWBOMA)

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

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

3. The stormwater BMP operation and maintenance agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.

Q. Stormwater BMP inspection responsibility

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

- R. Records of maintenance and inspection activities** - On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the chief engineer or designee with records of all inspections, maintenance and repairs.

- S. Annual Certification of SWRMP** – On or before September 30th of each year a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

HOUSING CONDITIONS

1. Project has committed to pay 110% of the baseline Affordable Housing contribution which equates to \$38,017.10 per unit. Fee is subject to change based on actual livable square footage amount and Housing In-Lieu fee amount in place at the time of permit issuance. This fee will be paid prior to final Blue Card signoff per unit.

BUILDING CONDITIONS

1. A separate submittal to the Building Department will be required to obtain building permits. The project will be reviewed for compliance with the California Code of Regulations and City of Morgan Hill Municipal Code during the building permit review process.
2. Park elements need to be accessible complying to California Building Code 11B

FIRE CONDITIONS

1. **Preliminary Review Only.** The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete plan submittal application that clearly shows all intended grading, demolition, construction or building modifications.
2. **Proposal limited to.** Review of this Development proposal is limited to acceptability of site access as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.
3. **Fire Apparatus (Engine) Access Roads Required.** Prior to the commencement of combustible construction, an access roadway with a paved all weather surface and a minimum unobstructed width of 20 feet, vertical clearance of 13 feet, 6 inches shall be provided, with minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%, unless otherwise approved in writing by the Fire Marshal. Installations shall conform to the City of Morgan Hill Standard Details and Specifications 11-B. **(CFC section 503 as amended by MHMC 15.44.140)**
4. **Fire Hydrant Location Identifier.** Prior to project final inspection, the general contractor shall ensure that an approved ("Blue Dot") fire hydrant location identifier has been placed in the roadway, as directed by the fire department.
5. **Fire Lane Marking Required.** Provide marking for all roadways within the project. Markings shall be per fire department specifications. Installations shall also

conform to Local Government Standards and the City of Morgan Hill Standard Details and Specifications 11-F. **(CFC section 503)**

6. **Automatic Fire Sprinkler System Required (SFD).** New homes located within the hazardous fire area, and in the non hazardous fire area homes shall be protected throughout by an approved, automatic fire sprinkler system, hydraulically designed per National Fire Protection Association (NFPA) Standard #13D (CFC Chapter 9 as amended by MHMC 15.44.170)

**Diana Avenue – Mana Residential Development Project
Initial Study/Mitigated Negative Declaration**

**Errata Sheet
November 15, 2019**

This errata sheet presents, in ~~strike-through~~ and double-underline format, the revisions to the Initial Study/Mitigated Negative Declaration (IS/MND) for the Diana Avenue – Mana Residential Development Project (proposed project). The revisions to the IS/MND reflected in this errata sheet do not affect the adequacy of the previous environmental analysis contained in the IS/MND. Because the changes presented below would not result in any new significant impacts or a substantial increase in the severity of an environmental impact identified in the IS/MND, recirculation of the IS/MND is not required.

Text Changes to the Initial Study (IS)

The “Project Description/Existing Setting” on page 1 of the IS indicates that there are two homes on the project site. However, the City’s Residential Development Control System (RDCS) process, which is Morgan Hill’s voter-approved growth management system that limits the total amount and pace of new residential construction, only credited the project with one existing home for the project site. Further, examination of the records of Santa Clara County’s Assessor’s Office also indicate that there is only one house on the subject parcel. Consequently, the IS identification of existing residential uses on the project site occurring on pages 1, 5, 13, 37, 47, and 54 is changed to show that only one residence is located on the project site. The proposed text changes to the IS text has no bearing on the conclusions of the IS regarding the number or extent of environmental impacts resulting from the proposed project, nor affects the required mitigation measures identified in the IS.

The following text changes are required on the above-listed IS pages:

Page 1:

Paragraph 1

“Existing Setting. *The 4.84-acre project site is located immediately north of the intersection of Diana Avenue and Lotus Way within an urbanized portion of Morgan Hill. **Figure 1** shows the location of the project site. The subject property consists of two parcels (APNs 726-09-001 and 726-09-002) that have been historically used for agricultural purposes. The southern portion of the property has been improved with ~~two homes~~ one home, four sheds, a concrete-paved parking pad, two gravel driveways and associated gravel parking areas. A significant portion of the site has remained undeveloped.”*

Paragraph 3

“Regional access to the project site is available from U.S. Highway 101, East Dunne Avenue, Butterfield Boulevard, and Diana Avenue. Diana Avenue adjoins the project site and provides local access to the property. Access to the site is available from two driveways that serve the ~~two homes~~ one home on the subject property. Residential uses generally surround the project site with homes fronting on Diana Avenue, Lotus Way, Weichert Drive, Belletto Drive, Serene Drive, and Carriage Lamp Way.

Page 5:

“Proposed Residential Development. *The project applicant is requesting approval for the following on the 4.84-acre site (APNs 726-09-001 and 726-09-002):*

- *Demolition of ~~two~~ one residential units and associated outbuildings;”*

Page 13:

“1a. Scenic Vistas

The project site consists of 4.84 acres of relatively level land north of the intersection of Diana Avenue and Lotus Way within an urbanized portion of Morgan Hill. The southern portion of the property has been improved with ~~two~~ one homes.”

Page 37:

“Site History and Description. *The project site is comprised of two parcels. There are ~~two~~ one homes and various outbuildings located on the property. Normal household chemicals were observed within the...”*

Page 47, Column 2, Project Consistency:

“Consistent. The proposed project is consistent with the City’s objective of providing a variety and mix of housing types with an emphasis on encouraging single-family development in the community. The project also promotes the rehabilitation of single-family neighborhoods through the replacement of existing substandard housing with housing constructed to current building codes. The 24 new residential units would replace ~~two~~ one homes presently occupying the site. The 24 proposed residences include both one- and two-story residences in one of four various plan types.”

Page 54:

“13b, 13c. Displacement of Housing or Residents

The subject property contains an open, fallow grass field on 93 percent of the site and ~~two~~ one homes. The displacement of the ~~two~~ one homes as a result of project development would be offset by the development of 24 new single-family detached

dwellings. The proposed project would provide 22 additional residential units on the project site to serve the community's future housing needs."

Text Changes to the Mitigated Negative Declaration (MND)

The preparation of the City's environmental documentation generally does not include standard measures in the Mitigated Negative Declaration as they are not mitigation measures. In order to avoid confusion, the project's standard measures can be found in the Conditions of Approval as "Attachment A" to the Tentative Subdivision Resolution (Resolution 19-19) for the project.

On page 1 of the MND, the header is changed as follows:

~~"COMMUNITY DEVELOPMENT SERVICES~~ DEPARTMENT, PLANNING DIVISION

17575 Peak Avenue Morgan Hill CA 95037 (408) 779-7247 Fax (408) 779-7236

Website Address: www.morgan-hill.ca.gov

The MND text would include changes in the Project Description as reflected in the revisions listed for the IS above.

"Project Description: The project applicant is requesting approval for the following on the 4.84-acre site (APNs 726-09-001 and 726-09-002):

- Demolition of ~~two~~ one residences and associated outbuildings;"

On page 5, the text is revised as follows:

~~"SM BIO-1: Tree Replacement.~~ Pursuant to the Morgan Hill Municipal Code, replacement planting is required at a one-to-one (1:1) ratio, subject to the approval of the Community Development Services Director.

~~SM BIO-2: Tree Protection Plan.~~ Prior to site preparation for project construction, the arborist's report recommends the implementation of a detailed Tree Protection Plan for the project."

On pages 5-6, the Cultural Resources SM is revised as follows:

~~"C. Cultural Resources~~

~~The following standard measures will reduce potential impacts from site preparation and construction grading on unknown cultural resources that could occur on the project site.~~

~~SM CUL-1:~~ The proposed project would be subject to the provisions of City of Morgan Hill Municipal Code Section 18.60.090. This section requires that if a project is located within or adjacent to a known archaeological site, the CEQA review shall consider

~~potentially significant impacts on archaeological resources. If appropriate, mitigation measures shall be included, in addition to the standard conditions identified in subsection B of Section 18.60.090. Subsection B stipulates that if the project is not located within or adjacent to a known archaeological site, then the project applicant has the option to complete an archaeological survey of the property to determine the appropriate mitigation to be used as conditions of project approval or comply with the Standard Conditions of Approval which shall conclusively reduce potentially significant impacts to less than significant level.~~

~~A Noise Assessment Study prepared as part of the IS for the proposed project also identified SM that would be required for the proposed project to preclude or minimize the noise effects potentially generated by project development; there were no noise-related MM required for the proposed residential development, as the project's potential noise impacts would not be considered significant with the application of the required SM."~~

Page 6 of the MND is changed as follows:

~~"D. ——— Geology and Soils~~

~~The project site, like other surrounding developed areas in Morgan Hill, will be subject to very strong ground shaking from future strong earthquakes in the site vicinity.~~

~~SM GEO-1: Conformance with the 2019 California Building Standards Code (CBSC) along with site-specific seismic design parameters specified in the geotechnical report required by the City will be adequate to reduce potentially significant groundshaking hazards to less than significant.~~

~~SM GEO-2: As a Standard Condition of Approval, the project applicant would be required to implement an erosion control plan. The proposed erosion control measures would include use of fiber rolls or silt fences along the perimeter of all proposed private drives, installation of a sediment barrier at the site's principal storm drain inlet, provision of gravel bag check dams on the proposed public street, and hydroseeding of designated areas.~~

~~SM GEO-3: As a Standard Condition of Approval, the project applicant is required to prepare a geotechnical engineering report, which includes soil classifications and foundation design recommendations in conformance with the CBSC. The geotechnical investigation was completed in response to this requirement and recommends use of post-tensioned slab-on-grade foundations to minimize the adverse effects of expansive soils."~~

Pages 7-8 of the MND is changed as follows:

~~“SM-HYD-1: In order to be consistent with the City’s requirements for storm runoff control, the proposed project design would need to include the development of a storm water detention basin or other drainage control structures on the subject property. The storm drainage facilities proposed for the project would need to be consistent with provisions the City’s Storm Drainage System Master Plan and the stormwater-related conditions of project approval. The incorporation of the Stormwater Conditions for construction activities, post-construction operation of the project, and LID would reduce the potentially significant impacts of the project on stormwater quality to less than significant levels.~~

~~G. Land Use~~

~~The proposed zoning for the project site includes a Planned Development (PD) 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.~~

~~SM-LUP-1: The review and approval of the PD Combining District is subject to the provisions of Chapter 18.30.050 of the City of Morgan Hill Municipal Code.~~

~~H. Tribal Cultural Resources~~

~~SM-TCR-1: The City will require monitoring of ground-disturbing activities for archaeological resources and the reporting of appropriate treatment and disposition of such resources that may be uncovered. In the event that undocumented human remains or unknown significant historic or archaeological resources are discovered, subsection B.2. in Section 18.75.110 provides a specific protocol for the treatment of the uncovered human remains and/or resources. The protocol entails the process of identifying the human remains and the contact of appropriate parties such as the Native American Heritage Commission (NAHC) and the NAHC-designated Tribe to determine Most Likely Descendant for further consultation on the disposition of the remains. As noted in the City’s ordinance, the completion of the standard conditions of approval would reduce potentially significant impacts on archaeological resources to a less than significant level.”~~

Page 8 is changed as follows:

“III. FINDING

The City of Morgan Hill Community and Economic Development Services Director hereby finds that the...

 Jennifer Carman
 Community Development Services Director

Date: _____”

Text Changes to the Mitigation Monitoring and Reporting Program (MMRP)

The cover page is corrected as follows:

“Prepared for the:



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

The Table of Contents, page i, is corrected as follows:

“TABLE OF CONTENTS

	Page
Mitigation Monitoring and Reporting Program	1
Introduction	1
Summary of Mitigation Measures	2
Mitigation Measures	4
Air Quality	<u>64</u>
Biological Resources	<u>64</u>
Hazards and Hazardous Materials	<u>96</u>
Hydrology and Water Quality	<u>117</u>
Noise	<u>12</u>
<u>Finding</u>	<u>8</u>

Page 1 is corrected as follows:

“Contact Information:

City of Morgan Hill
~~Community Planning Development Services~~ Department
 17575 Peak Avenue
 Morgan Hill, CA 95037
 408.778.6480”

In addition, as with the MND, all references in Table 1 and on page 10 of the MMRP to the “Community Development Department” are changed to reflect the Department’s current name, “Development Services Department.”

On page 2, in Table 1 of the MMRP, the following text changes are required:

“BIO-1: A qualified biologist ~~should~~ shall conduct a pre-construction survey for suitable bat roosting...”

On page 2, in Table 1 of the MMRP, the following text changes are required:

“HYD-1: The project sponsor shall determine the location of the site’s water well, if present, prior to the start of project construction. The project sponsor shall retain a licensed well driller to destruct or abandon the former irrigation well at the project site in accordance with the standards specified in Santa Clara Valley Water District Ordinance 90-1, Santa Clara County Environmental Health Department, and the California Water Well Standards.

City of Morgan Hill ~~Community Development~~ Services Department and ~~City of Morgan Hill Public Works Department~~

On page 3, in Table 1 of the MMRP, the following text changes are required:

~~“HYD-1: The applicant shall retain a licensed well driller to destroy or abandon the water well at the project site in accordance with the standards specified in Santa Clara Valley Water District Ordinance 90-1 and the California Water Well Standards developed by the California Department of Water Resources. Documentation of appropriate disposal shall be submitted to the City of Morgan Hill Building Inspection Department prior to issuance of a demolition permit.
(http://www.water.ca.gov/groundwater/well_info_and_other/california_well_standards/well_standards_content.html).~~”

On pages 6-8, the following text changes are also required:

“MM BIO-1: Special-Status Bats. Prior to the removal of mature trees or the demolition or renovation of structures, the measures outlined below ~~should~~ shall be performed.

- a. A pre-construction survey ~~should~~ shall be conducted by a qualified biologist to identify suitable bat roosting sites.
- b. Any trees or structures determined to support or potentially support maternal roosting sites may only be removed or demolished after coordination with the CDFW and/or the

USFWS. Passive exclusion of roosting bats will be required and this may only be performed during the non-breeding season (i.e., between October 1 and March 30).

- c. Any trees or structures determined to provide suitable bat day or night roosting sites ~~should~~ shall be identified and marked on site plans. Such roosting sites include snags, rotten stumps, and decadent trees with broken limbs, exfoliating bark, cavities, openings leading to interior portions of any structures. If no suitable roost sites or evidence of bat roosting are identified, impact minimization measures are not warranted. If suitable roosting sites or evidence of bat roosting are identified, the following measures ~~should~~ shall be conducted:
 - i. A qualified biologist ~~should~~ shall survey suitable roost sites immediately prior to the removal or significant pruning of any of the larger trees, or demolition or significant renovation of any structures.
 - ii. If the project biologist identifies suitable day or night roost sites or evidence of bat occupation, the following steps ~~should~~ shall be followed to discourage use of the sites by bats and to ensure that any bats present are able to safely relocate.

For trees:

- o Tree limbs smaller than 7.6 cm (3 in) in diameter ~~should~~ shall be removed and any loose bark should be peeled away.
- o Any competing limbs that provide shelter around the potential roost site ~~should~~ shall be removed to create as open of an area as possible.
- o The tree ~~should~~ shall then be alone to allow any bats using the tree/snag to find another roost during their nocturnal activity period.
- o The project biologist ~~should~~ shall re-survey the trees a second time 48 hours after trimming.
- o If no bats are present, work may proceed.
- o If bats remain on-site, additional measures ~~would~~ shall be prescribed by the biologist.

For structures:

- o Depending on the location of potential roost sites and the nature of bat occupation, partial dismantling of a suspect structure ~~may~~ will be performed to discourage use by bats. Partial dismantling ~~may~~ will consist of the removal of siding, roof sections, and roof gables to permit air flow and exposure to sunlight. This work ~~should~~ shall be performed under the supervision and direction of a qualified biologist.
- o The project biologist ~~should~~ shall re-survey the structures a second time 48 hours after performance of the partial dismantling work..."

On pages 9-10, the following text changes are also required:

“MM HYD-1: Properly Abandon Site Well. The project sponsor shall determine the location of the site’s water well, if present, prior to the start of project construction. The applicant shall retain a licensed well driller to destroy or abandon the water well at the project site in accordance with the standards specified in Santa Clara Valley Water District Ordinance 90-1, Santa Clara Environmental Health, and the California Water Well Standards developed by the California Department of Water Resources. Documentation of appropriate disposal shall be submitted to the City of Morgan Hill Building Inspection Department prior to issuance of a demolition permit. (http://www.water.ca.gov/groundwater/well_info_and_other/california_well_standards/well_standards_content.html). “

On page 10, the following text changes are as follows:

“III. FINDING

The City of Morgan Hill ~~Community and Economic Development~~ Services Director hereby...”

Conclusion

The aforementioned revisions are for clarification purposes only, and do not affect the conclusions of the IS/MND.

RESOLUTION NO. 19-20

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A ZONING MAP AMENDMENT FOR AN RDM-7,000/ PLANNED DEVELOPMENT COMBINING DISTRICT AND MASTER PLAN FOR A 24-UNIT RESIDENTIAL DEVELOPMENT ON A 4.84-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY (DIANA MANA HANALEI PROJECT/MONTECITO ESTATES) (APN 726-09-001 & 726-09-002).

WHEREAS, Mana Hanalei, LLC proposes to develop the property (Montecito Estates) located on the northwest corner of the intersection of Diana Avenue and Lotus Way, identified by Assessor Parcel Number(s) 726-09-001 and 726-09-002, with a single-family residential project with 24 single-family dwelling units on a 4.84-acre site;

WHEREAS, through the RDCS process, the Planning Commission adopted Resolution No. 18-13 on May 22, 2018, awarding twenty-three (23) Fiscal Year 2019-2020 residential building allotments;

WHEREAS, the City Council adopted Resolution No. 18-050 on June 20, 2018, reaffirming the distribution of RDCS allotments;

WHEREAS, said development requires establishment of a Planned Development combining district which requires the approval of a Zoning Map Amendment and the establishment of a Planned Development Master Plan;

WHEREAS, Section 18.114.040 requires that the Planning Commission make a recommendation to the City Council regarding the Zoning Map Amendment to establish the Planned Development combining district based on supportive reasoning;

WHEREAS, Section 18.30.050.H.5 requires that the Planning Commission make a recommendation to the City Council regarding the Planned Development Master Plan based on findings and supportive reasoning;

WHEREAS, such request was considered by the Planning Commission at its regular meeting of October 22, 2019; and

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

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

SECTION 1. The proposed amendment is consistent with the general plan and any applicable specific plan as provided by Government Code Section 65860.

The project complies with the allowed density range for units on the site in accordance with the General Plan.

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

The project is a housing project that would provide an opportunity for those seeking housing in the current housing market.

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

The project is a residential housing development with lot sizes similar to the surrounding residential developments. The proposed circulation will provide connectivity and complete circulation patterns to adjoining neighborhoods.

SECTION 4. 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 consistent with the policies established by the General Plan and Zoning Code.

SECTION 5. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

The development will be of high design standards with varied and distinct architecture and details.

SECTION 6. The proposed project will provide a substantial public benefit. 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.

Several public benefits include off-site improvements along Diana Avenue and Weichert Drive for roadway connectivity consistency and safe circulation, and additional dedicated ROW along Dakota Drive.

SECTION 7. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The project site is 4.84-acres and will have a density of 4.95 dwelling units per acre. The size and shape of the site will accommodate the proposed residential and open space uses.

SECTION 8. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.

The site fronts Diana Avenue and Lotus Way. Roadway extensions will be made on Dakota Drive, Juliann Way, and Weichert Drive. A new cul-de-sac will be constructed off Lotus Way. There are wet and dry utilities and infrastructure in the surrounding area that will support the project.

SECTION 9. 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 project is compatible with the surrounding single-family residential uses and will not have a substantial adverse effect with conditions of approval and mitigation measures included.

SECTION 10. Planning Commission recommends approval of Zoning Amendment application, ZA2019-0006: Diana-Mana Hanalei.

PASSED AND ADOPTED THIS 22nd DAY OF OCTOBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS: MUNOZ-MORRIS, HABIB, TANDA, GONZALES-ESCOTO

NOES: COMMISSIONERS: MUELLER, DOWNEY

ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

JUAN MIGUEL MUNOZ-MORRIS, Chair



COMMUNITY DEVELOPMENT SERVICES DEPARTMENT, PLANNING DIVISION

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

**DRAFT
MITIGATED NEGATIVE DECLARATION**

I. DESCRIPTION OF PROJECT:

Application #s: DA2018-0003, EA2018-0023, SD2018-0006, ZA2019-0006

APN: 726-09-001 and 726-09-002

Project Title: Diana Avenue-Mana Residential Project

Project Location: The 4.84-acre project site is located immediately north of the intersection of Diana Avenue and Lotus Way, within an urbanized portion of Morgan Hill. Regional access to the project site is available from State Highway 101, located approximately 0.5 mile east of the project site, and E. Dunne Avenue via Butterfield Boulevard, approximately 0.25 mile south of the site. Diana Avenue adjoins the project site and provides local access to the property.

Project Proponent: Mana Hanalei, LLC
Scott Murray, Orville Power
175 E. Main Avenue
Morgan Hill, CA 95037

Project Description: The project applicant is requesting approval for the following on the 4.84-acre site (APNs 726-09-001 and 726-09-002):

- Demolition of ~~one~~^{two} residences and associated outbuildings;
- Subdivision of the project site into 24 residential lots;
- Construct 24 single-family residences, public access roads, and a private park.

The proposed project involves the development of 24 residential units on the project site. The lots would vary in size, from 3,862 square feet to 9,228 square feet. The majority of the single-family lots would be sized between 7,000 and 8,000 square feet. The project would include 12 single-story and 12 two-story units, distributed throughout the site to

create height variation and a visually interesting appearance within the neighborhood. All of the proposed residential units would include attached garages for two vehicles.

II. DETERMINATION

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

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

III. CONDITIONS (Mitigation [MM] and ~~Standard Measures [SM]~~):

A. Air Quality

Although the project's construction-related air pollutant emissions would not exceed the BAAQMD's applicable significance thresholds, the following measures are recommended by the BAAQMD to reduce the project's construction emissions:

- MM AQ-1: Basic Construction Measures.** To limit the project's construction-related dust and criteria pollutant emissions, the following BAAQMD-recommended Basic Construction Mitigation Measures shall be included in the project's grading plan, building plans, and contract specifications:
- All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
 - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

B. Biological Resources

The project's construction-related activities, including demolition of structures, site preparation, and grading could have potentially significant effects on special-status animal species that could be expected on the project site or using suitable habitat on-site. Implementation of the following measures would reduce these potentially significant potential impacts to special-status animals to less-than-significant levels:

MM BIO-1: Special-Status Bats. Prior to the removal of mature trees or the demolition or renovation of structures, the measures outlined below shall be performed.

- a. A pre-construction survey shall be conducted by a qualified biologist to identify suitable bat roosting sites.
- b. Any trees or structures determined to support or potentially support maternal roosting sites ~~may~~ shall only be removed or demolished after coordination with the CDFW and/or the USFWS. Passive exclusion of roosting bats will be required and this may only be performed during the non-breeding season (i.e., between October 1 and March 30).
- c. Any trees or structures determined to provide suitable bat day or night roosting sites shall be identified and marked on site plans. Such roosting sites include snags, rotten stumps, and decadent trees with broken limbs, exfoliating bark, cavities, openings leading to interior portions of any structures. If no suitable roost sites or evidence of bat roosting are identified, impact minimization measures are not warranted. If suitable roosting sites or evidence of bat roosting are identified, the following measures shall be conducted:
 - i. A qualified biologist shall survey suitable roost sites immediately prior to the removal or significant pruning of any of the larger trees, or demolition or significant renovation of any structures.
 - ii. If the project biologist identifies suitable day or night roost sites or evidence of bat occupation, the following steps

shall be followed to discourage use of the sites by bats and to ensure that any bats present are able to safely relocate.

For trees:

- Tree limbs smaller than 7.6 cm (3 in) in diameter shall be removed and any loose bark should be peeled away.
- Any competing limbs that provide shelter around the potential roost site shall be removed to create as open of an area as possible.
- The trees shall then be undisturbed for 48 hours to allow any bats using the tree/snag to find another roost during their nocturnal activity period.
- The project biologist shall re-survey the trees a second time 48 hours after trimming.
- If no bats are present, work may proceed.
- If bats remain on-site, additional measures shall be prescribed by the biologist.

For structures:

- Depending on the location of potential roost sites and the nature of bat occupation, partial dismantling of a suspect structure may be performed to discourage use by bats. Partial dismantling may consist of the removal of siding, roof sections, and roof gables to permit air flow and exposure to sunlight. This work shall be performed under the supervision and direction of a qualified biologist.
- The project biologist shall re-survey the structures a second time 48 hours after performance of the partial dismantling work.
- If no bats are present, work may proceed.
- If bats remain on-site, additional measures shall be prescribed by the biologist.

MM BIO-2: Special-Status Animal Species with Suitable Site Habitat. Prior to site preparation for project construction, including the removal of mature trees, demolition of structures, and grading, the measures outlined below shall be performed.

- a. If demolition, site clearing, grading or shrub removal or pruning are to be conducted outside of the breeding season (i.e., September 1 through January 31), no preconstruction surveys for nesting migratory birds is necessary.

- b. If demolition, site clearing, grading or shrub removal or pruning are to be conducted during the breeding season (i.e., February 1 through August 31), a preconstruction nesting bird survey shall be conducted. The survey shall be performed by a qualified biologist no more than two weeks prior to the initiation of work. If no nesting or breeding activity is observed, work may proceed without restrictions. To the extent allowed by access, all active nests identified within 92 meters (300 feet) for raptors and 31 meters (100 feet) for passerines shall be mapped.
- c. For any active nests found near the construction limits (i.e., 92 meters [300 feet for raptors and 31 meters [100 feet] for passerines) the project biologist shall make a determination as to whether or not construction activities are likely to disrupt reproductive behavior. If it is determined that construction is unlikely to disrupt breeding behavior, construction may proceed. If it is determined that construction may disrupt breeding, the no-construction buffer zone shall be expanded; avoidance is the only mitigation available. The ultimate size of the no-construction buffer zone may be adjusted by the project biologist based on the species involved, topography, lines of site between the work area and the nest, physical barriers, and the ambient level of human activity. If it is determined that construction activities are likely to disrupt raptor breeding, construction activities within the no-construction buffer zone may not proceed until the project biologist determines that the nest is long longer occupied.
- d. If maintenance of a no-construction buffer zone is not feasible, the project biologist shall monitor the nest(s) to document breeding and rearing behavior of the adult birds. If it is determined that construction activities are likely to cause nest abandonment, work shall cease immediately and the CDFW and/or the USFWS Division of Migratory Bird Management shall be contacted for guidance.

SM-BIO-1: ~~Tree Replacement.~~ Pursuant to the Morgan Hill Municipal Code, ~~replacement planting is required at a one to one (1:1) ratio, subject to the approval of the Community Development Director.~~

SM-BIO-2: ~~Tree Protection Plan.~~ Prior to site preparation for project construction, the ~~arborist's report recommends the implementation of a detailed Tree Protection Plan for the project.~~

~~C. Cultural Resources~~

~~The following standard measures will reduce potential impacts from site preparation and~~

~~construction grading on unknown cultural resources that could occur on the project site.~~

SM-CUL-1: ~~The proposed project would be subject to the provisions of City of Morgan Hill Municipal Code Section 18.60.090. This section requires that if a project is located within or adjacent to a known archaeological site, the CEQA review shall consider potentially significant impacts on archaeological resources. If appropriate, mitigation measures shall be included, in addition to the standard conditions identified in subsection B of Section 18.60.090. Subsection B stipulates that if the project is not located within or adjacent to a known archaeological site, then the project applicant has the option to complete an archaeological survey of the property to determine the appropriate mitigation to be used as conditions of project approval or comply with the Standard Conditions of Approval which shall conclusively reduce potentially significant impacts to less than significant level.~~

D. ~~Geology and Soils~~

~~The project site, like other surrounding developed areas in Morgan Hill, will be subject to very strong ground shaking from future strong earthquakes in the site vicinity.~~

SM-GEO-1: ~~Conformance with the 2019 California Building Standards Code (CBSC) along with site specific seismic design parameters specified in the geotechnical report required by the City will be adequate to reduce potentially significant groundshaking hazards to less than significant.~~

SM-GEO-2: ~~As a Standard Condition of Approval, the project applicant would be required to implement an erosion control plan. The proposed erosion control measures would include use of fiber rolls or silt fences along the perimeter of all proposed private drives, installation of a sediment barrier at the site's principal storm drain inlet, provision of gravel bag check dams on the proposed public street, and hydroseeding of designated areas.~~

SM-GEO-3: ~~As a Standard Condition of Approval, the project applicant is required to prepare a geotechnical engineering report, which includes soil classifications and foundation design recommendations in conformance with the CBSC. The geotechnical investigation was completed in response to this requirement and recommends use of post tensioned slab on grade foundations to minimize the adverse effects of expansive soils.~~

CE. Hazards and Hazardous Materials

The following measures would be required to reduce the project's potential release of or public exposure to hazardous materials to a less-than-significant level:

MM HAZ-1: Implement Buyer Education Program for Household

Hazardous Waste: The project sponsor, working with the City of Morgan Hill and County of Santa Clara Household Hazardous Waste program, shall implement a Buyer Education Program for Household Hazardous Waste, providing materials and/or direction to sources of information, (e.g. <https://www.morgan-hill.ca.gov/432/Household-Hazardous-Waste>) to educate project buyers about the identification of household hazardous wastes, environmental hazards associated with mishandling of the wastes, appropriate disposal methods, and how to make an appointment for disposal.

MM HAZ-2: Hazardous Building Materials Removal. Prior to demolition of the existing buildings at the project site, the project applicant shall require that the contractor(s) have a hazardous building materials survey completed by a Registered Environmental Assessor or a registered engineer. This survey shall be completed prior to any demolition activities associated with the project. If any friable asbestos-containing materials or lead-containing materials are identified, adequate abatement practices, such as containment and/or removal, shall be implemented in accordance with applicable laws prior to demolition. Specifically, asbestos abatement shall be conducted in accordance with Section 19827.5 of the California Health and Safety Code, as implemented by the Bay Area Air Quality Management District, as well as 8 CCR Section 1529 and Sections 341.6 through 341.14, as implemented by Cal/OSHA. Lead-based paint abatement shall be conducted in accordance with Cal/OSHA's Lead in Construction Standard.

Any PCB-containing equipment, fluorescent light tubes containing mercury vapors, and fluorescent light ballasts containing DEHP shall also be removed and legally disposed of in accordance with applicable laws including 22 CCR Section 66261.24 for PCBs, 22 CCR Section 66273.8 for fluorescent lamp tubes, and 22 CCR Division 4.5, Chapter 11 for DEHP.

DF. Hydrology and Water Quality

In accordance with the City of Morgan Hill Standard Conditions of Approval and the General National Pollutant Discharge Elimination System Storm Water Permit for Construction Activities, the following measures have been included in the project to reduce potential construction-related water quality impacts to a less than significant level:

MM HYD-1: Properly Abandon Site Well. The project sponsor shall determine the location of the site's water well, if present, prior to the start of project construction. The applicant shall retain a licensed well driller to destroy or abandon the water well at the project site in accordance with the standards specified in Santa Clara Valley

Water District Ordinance 90-1 and the California Water Well Standards developed by the California Department of Water Resources. Documentation of appropriate disposal shall be submitted to the City of Morgan Hill Building Inspection Department prior to issuance of a demolition permit.

(http://www.water.ca.gov/groundwater/well_info_and_other/california_well_standards/well_standards_content.html).

SM-HYD-1: ~~In order to be consistent with the City's requirements for storm runoff control, the proposed project design would need to include the development of a storm water detention basin or other drainage control structures on the subject property. The storm drainage facilities proposed for the project would need to be consistent with provisions the City's Storm Drainage System Master Plan and the stormwater related conditions of project approval. The incorporation of the Stormwater Conditions for construction activities, post construction operation of the project, and LID would reduce the potentially significant impacts of the project on stormwater quality to less than significant levels.~~

G. Land Use

The proposed zoning for the project site includes a Planned Development (PD) 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.

SM-LUP-1: ~~The review and approval of the PD Combining District is subject to the provisions of Chapter 18.30.050 of the City of Morgan Hill Municipal Code.~~

H. Tribal Cultural Resources

SM-TCR-1: ~~The City will require monitoring of ground-disturbing activities for archaeological resources and the reporting of appropriate treatment and disposition of such resources that may be uncovered. In the event that undocumented human remains or unknown significant historic or archaeological resources are discovered, subsection B.2. in Section 18.75.110 provides a specific protocol for the treatment of the uncovered human remains and/or resources. The protocol entails the process of identifying the human remains and the contact of appropriate parties such as the Native American Heritage Commission (NAHC) and the NAHC-designated Tribe to determine Most Likely Descendant for further consultation on the disposition of the remains. As noted in the City's ordinance, the completion of the standard conditions of approval would reduce potentially significant impacts on archaeological resources to a less than significant level.~~

III. FINDING

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

 Jennifer Carmen
 Development Services Director

Date: _____

**MITIGATION MONITORING AND REPORTING PROGRAM
DIANA AVENUE - MANA
RESIDENTIAL DEVELOPMENT
MORGAN HILL, CALIFORNIA**

Prepared for the:



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

Prepared by:

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September 2019

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MITIGATION MONITORING AND REPORTING PROGRAM

INTRODUCTION

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

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

This MMRP has been prepared by the City of Morgan Hill, with technical assistance from Geier & Geier Consulting, Inc., an environmental consulting firm. Questions should be directed to Joey Dinh at the City of Morgan Hill.

Contact Information:

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

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Monitoring Notes
Prior to Construction			
BIO-1: A qualified biologist shall also conduct a pre-construction survey for suitable bat roosting sites prior to removal of mature trees and demolition or renovation of structures. Specific measures as described herein shall be implemented for the protection of the bats that may occur on the site.	Project Applicant with Construction Contractor	City of Morgan Hill Community Development <u>Services</u> Department	
BIO-2: Prior to site preparation for project construction, including the removal of mature trees, demolition of structures, and grading, the measures outlined below shall be performed. If demolition, site clearing, grading or shrub removal or pruning are to be conducted outside of the breeding season (i.e., September 1 through January 31), no preconstruction surveys for nesting migratory birds is necessary. If demolition, site clearing, grading or shrub removal or pruning are to be conducted during the breeding season (i.e., February 1 through August 31), a preconstruction nesting bird survey shall be conducted. The survey shall be performed by a qualified biologist no more than two weeks prior to the initiation of work. Specific measures as described herein shall be implemented for the protection of the bats that may occur on the site.	Project Applicant with Construction Contractor	City of Morgan Hill Community Development <u>Services</u> Department	

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Monitoring Notes
HYD-1: The project sponsor shall determine the location of the site's water well, if present, prior to the start of project construction. The project sponsor shall retain a licensed well driller to destroy <u>relocate</u> or abandon the former irrigation well at the project site in accordance with the standards specified in Santa Clara Valley Water District Ordinance 90-1, <u>Santa Clara County Environmental Health Department</u> , and the California Water Well Standards.	Project Applicant with Construction Contractor	City of Morgan Hill Community Development Services Department and City of Morgan Hill Public Works Department	
HAZ-2: Remove and dispose of existing hazardous materials prior to building demolition.	Project Applicant with Construction Contractor	City of Morgan Hill Community Development Services Department and County of Santa Clara Department of Environmental Health	
During Construction			
AQ-1: To limit the project's construction-related dust and criteria pollutant emissions, the BAAQMD-recommended Basic Construction Mitigation Measures shall be included in the project's grading plan, building plans, and contract specifications.	Project Applicant with Construction Contractor and City of Morgan Hill	City of Morgan Hill – Community Development Services Department	

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Monitoring Notes
HYD-1: The applicant shall retain a licensed well driller to destroy or abandon the water well at the project site in accordance with the standards specified in Santa Clara Valley Water District Ordinance 90-1 and the California Water Well Standards developed by the California Department of Water Resources. Documentation of appropriate disposal shall be submitted to the City of Morgan Hill Building Inspection Department prior to issuance of a demolition permit. (http://www.water.ca.gov/groundwater/well_info_and_other/california_well_standards/well_standards_content.html).	Project Applicant with Construction Contractor	City of Morgan Hill – Public Works Department	
Prior to Occupancy			
HAZ-1: Implement Buyer Education Program for Household Hazardous Waste.	Project Applicant with City of Morgan Hill	City of Morgan Hill – Community Development Services Department	
¹ The City of Morgan Hill may hire a qualified contractor to conduct mitigation monitoring.			

Air Quality

Although the project's construction-related air pollutant emissions would not exceed the BAAQMD's applicable significance thresholds, the following measures are recommended by the BAAQMD to reduce the project's construction emissions:

- MM AQ-1: Basic Construction Measures.** To limit the project's construction-related dust and criteria pollutant emissions, the following BAAQMD-recommended Basic Construction Mitigation Measures shall be included in the project's grading plan, building plans, and contract specifications:
- a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
 - f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - h. Post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

BIOLOGICAL RESOURCES

The project's construction-related activities, including demolition of structures, site preparation, and grading could have potentially significant effects on special-status animal species that could be expected on the project site or using suitable habitat on-site. Implementation of the following measures would reduce these potentially significant effects to less-than-significant levels:

MM BIO-1: Special-Status Bats. Prior to the removal of mature trees or the demolition or renovation of structures, the measures outlined below ~~shall~~ be performed.

- a. A pre-construction survey ~~shall~~ be conducted by a qualified biologist to identify suitable bat roosting sites.
- b. Any trees or structures determined to support or potentially support maternal roosting sites ~~may~~ shall only be removed or demolished after coordination with the CDFW and/or the USFWS. Passive exclusion of roosting bats will be required and this may only be performed during the non-breeding season (i.e., between October 1 and March 30).
- c. Any trees or structures determined to provide suitable bat day or night roosting sites ~~shall~~ be identified and marked on site plans. Such roosting sites include snags, rotten stumps, and decadent trees with broken limbs, exfoliating bark, cavities, openings leading to interior portions of any structures. If no suitable roost sites or evidence of bat roosting are identified, impact minimization measures are not warranted. If suitable roosting sites or evidence of bat roosting are identified, the following measures ~~shall~~ be conducted:
 - i. A qualified biologist ~~shall~~ survey suitable roost sites immediately prior to the removal or significant pruning of any of the larger trees, or demolition or significant renovation of any structures.
 - ii. If the project biologist identifies suitable day or night roost sites or evidence of bat occupation, the following steps ~~shall~~ be followed to discourage use of the sites by bats and to ensure that any bats present are able to safely relocate.

For trees:

- Tree limbs smaller than 7.6 cm (3 in) in diameter ~~shall~~ be removed and any loose bark should be peeled away.
- Any competing limbs that provide shelter around the potential roost site ~~shall~~ be removed to create as open of an area as possible.
- The tree ~~shall~~ then be alone to allow any bats using the tree/snag to find another roost during their nocturnal activity period.
- The project biologist ~~shall~~ re-survey the trees a second time 48 hours after trimming.
- If no bats are present, work may proceed.
- If bats remain on-site, additional measures ~~shall~~ be prescribed by the biologist.

For structures:

- Depending on the location of potential roost sites and the nature of bat occupation, partial dismantling of a suspect structure ~~will~~ may be performed to discourage use by bats. Partial dismantling will consist of the removal of siding, roof

sections, and roof gables to permit air flow and exposure to sunlight. This work ~~shall~~ be performed under the supervision and direction of a qualified biologist.

- The project biologist ~~shall~~ re-survey the structures a second time 48 hours after performance of the partial dismantling work.
- If no bats are present, work may proceed.
- If bats remain on-site, additional measures shall be prescribed by the biologist.

MM BIO-2: Special-Status Animal Species with Suitable Site Habitat. Prior to site preparation for project construction, including the removal of mature trees, demolition of structures, and grading, the measures outlined below shall be performed.

- a. If demolition, site clearing, grading or shrub removal or pruning are to be conducted outside of the breeding season (i.e., September 1 through January 31), no preconstruction surveys for nesting migratory birds is necessary.
- b. If demolition, site clearing, grading or shrub removal or pruning are to be conducted during the breeding season (i.e., February 1 through August 31), a preconstruction nesting bird survey shall be conducted. The survey shall be performed by a qualified biologist no more than two weeks prior to the initiation of work. If no nesting or breeding activity is observed, work may proceed without restrictions. To the extent allowed by access, all active nests identified within 92 meters (300 feet) for raptors and 31 meters (100 feet) for passerines shall be mapped.
- c. For any active nests found near the construction limits (i.e., 92 meters [300 feet] for raptors and 31 meters [100 feet] for passerines) the project biologist shall make a determination as to whether or not construction activities are likely to disrupt reproductive behavior. If it is determined that construction is unlikely to disrupt breeding behavior, construction may proceed. If it is determined that construction may disrupt breeding, the no-construction buffer zone shall be expanded; avoidance is the only mitigation available. The ultimate size of the no-construction buffer zone may be adjusted by the project biologist based on the species involved, topography, lines of site between the work area and the nest, physical barriers, and the ambient level of human activity. If it is determined that construction activities are likely to disrupt raptor breeding, construction activities within the no-construction buffer zone may not proceed until the project biologist determines that the nest is long longer occupied.

- d. If maintenance of a no-construction buffer zone is not feasible, the project biologist shall monitor the nest(s) to document breeding and rearing behavior of the adult birds. If it is determined that construction activities are likely to cause nest abandonment, work shall cease immediately and the CDFW and/or the USFWS Division of Migratory Bird Management shall be contacted for guidance.

HAZARDS AND HAZARDOUS MATERIALS

The following mitigation measures will reduce potential hazardous materials impacts from structure demolition, site preparation, and construction grading that could occur on the project site.

MM HAZ-1: Implement Buyer Education Program for Household Hazardous Waste: The project sponsor, working with the City of Morgan Hill and County of Santa Clara Household Hazardous Waste program, shall implement a Buyer Education Program for Household Hazardous Waste, providing materials and/or direction to sources of information, (e.g. <https://www.morgan-hill.ca.gov/432/Household-Hazardous-Waste>) to educate project buyers about the identification of household hazardous wastes, environmental hazards associated with mishandling of the wastes, appropriate disposal methods, and how to make an appointment for disposal.

MM HAZ-2: Hazardous Building Materials Removal. Prior to demolition of the existing buildings at the project site, the project applicant shall require that the contractor(s) have a hazardous building materials survey completed by a Registered Environmental Assessor or a registered engineer. This survey shall be completed prior to any demolition activities associated with the project. If any friable asbestos-containing materials or lead-containing materials are identified, adequate abatement practices, such as containment and/or removal, shall be implemented in accordance with applicable laws prior to demolition. Specifically, asbestos abatement shall be conducted in accordance with Section 19827.5 of the California Health and Safety Code, as implemented by the BAAQMD, and 8 CCR Section 1529 and Sections 341.6 through 341.14, as implemented by Cal/OSHA. Lead-based paint abatement shall be conducted in accordance with Cal/OSHA's Lead in Construction Standard.

Any PCB-containing equipment, fluorescent light tubes containing mercury vapors, and fluorescent light ballasts containing DEHP shall also be removed and legally disposed of in accordance with applicable laws including 22 CCR Section 66261.24 for PCBs, 22 CCR Section 66273.8 for fluorescent lamp tubes, and 22 CCR Division 4.5, Chapter 11 for DEHP.

HYDROLOGY AND WATER QUALITY

In accordance with the City of Morgan Hill Standard Conditions of Approval and the General National Pollutant Discharge Elimination System Storm Water Permit for Construction Activities, the following measures have been included in the project to reduce potential construction-related water quality impacts to a less than significant level:

MM HYD-1: Properly Abandon Site Well. The project sponsor shall determine the location of the site's water well, if present, prior to the start of project construction. The applicant shall retain a licensed well driller to destroy or abandon the water well at the project site in accordance with the standards specified in Santa Clara Valley Water District Ordinance 90-1, [Santa Clara County Environmental Health](#), and the California Water Well Standards developed by the California Department of Water Resources. Documentation of appropriate disposal shall be submitted to the City of Morgan Hill Building Inspection Department prior to issuance of a demolition permit.
(http://www.water.ca.gov/groundwater/well_info_and_other/california_well_standards/well_standards_content.html).

III. FINDING

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

Jennifer Carman
Development Services Director

Date: _____



CITY COUNCIL STAFF REPORT

MEETING DATE: November 20, 2019

PREPARED BY: Terry Linder, Senior Planner

APPROVED BY: City Manager

APPROVE REQUEST FOR A WATER SERVICE CONNECTION OUTSIDE OF THE CITY'S URBAN SERVICE AREA BOUNDARY WHICH WILL ALLOW FOR THE CONSTRUCTION OF A 7,000 SQUARE FOOT BUDDHA HALL AT THE METTA TAM TU BUDDHIST TEMPLE APPROVED BY SANTA CLARA COUNTY. THE PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 817-07-024, IS LOCATED ON SOUTHEAST CORNER OF THE INTERSECTION OF BUTTERFIELD BOULEVARD AND FISHER AVENUE (LIEU QUAN BUDDHIST CULTURAL CENTER, OWNER). OA2019-0001/EA2019-0011

RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt resolution approving the water service request and directing staff to file an application with the Local Agency Formation Commission for Out of Agency service request.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Advancing Regional Initiatives

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On June 17, 2019, the City of Morgan Hill received an Out of Agency service request from the Metta Tam Tu Buddhist Temple located at 610 Fisher Avenue in an unincorporated area of Morgan Hill. The request is to connect the property to the City water line located 68 feet from the northwest corner of the Temple property.

City of Morgan Hill

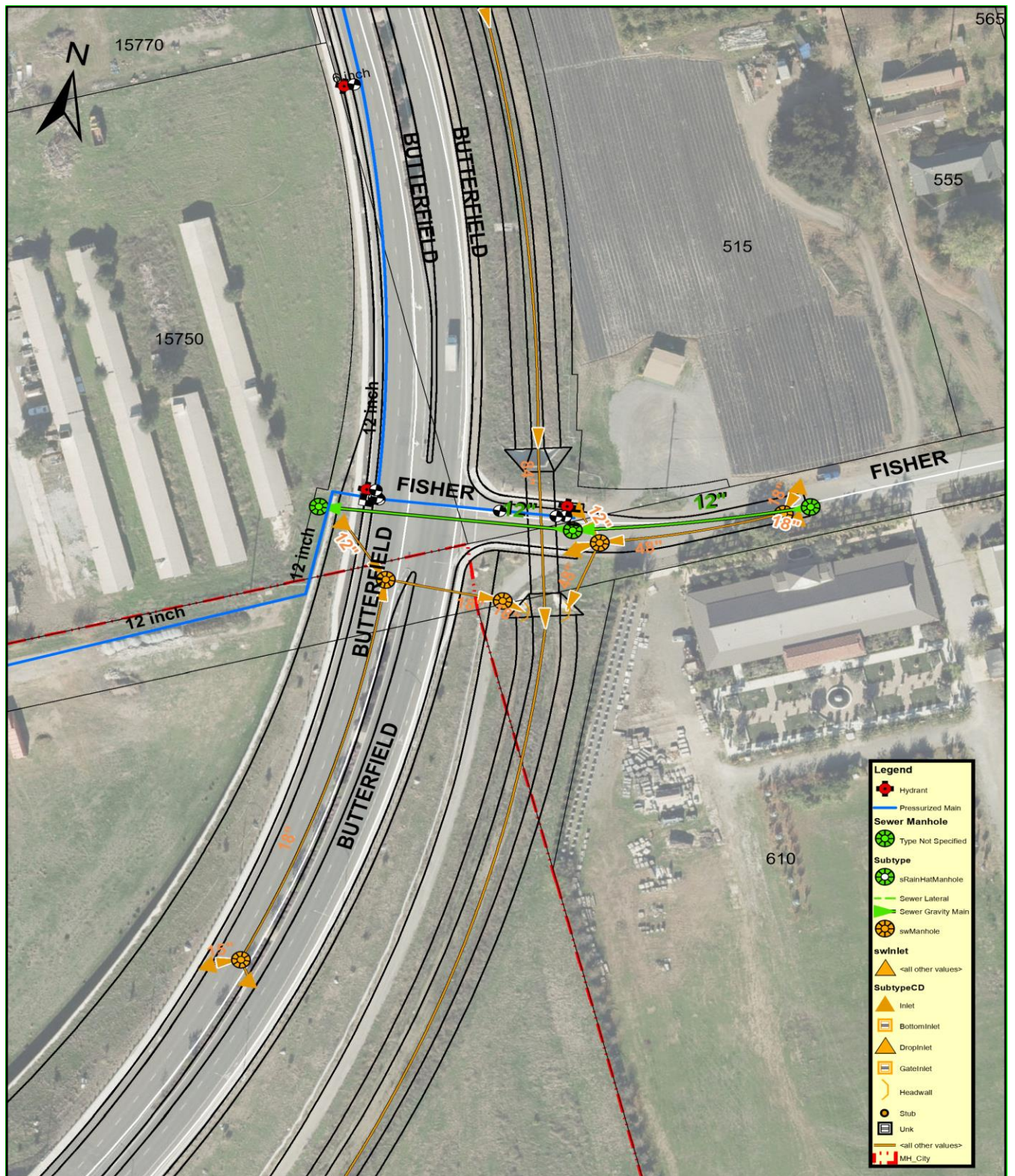
In 2013, the City of Morgan Hill extended Butterfield Boulevard from Tennant Avenue to Monterey Road, and created an intersection with Fisher Avenue on the east side of Butterfield Boulevard.

Figure 1: 2013 Butterfield Extension



As part of the project, the City extended a 12-inch water line from Watsonville Road through a portion of Fisher Avenue then north along Butterfield Boulevard tying the new waterline into an existing 12-inch line on Tennant Avenue. The City also installed a water, sewer and storm drain line, 70 feet, 265 feet and 158 feet (respectively) on Fisher Avenue east of Butterfield Boulevard. These improvements are within the City owned right of way, but approximately 1600 lineal feet of water and storm drain lines extend outside the City's Urban Service Area.

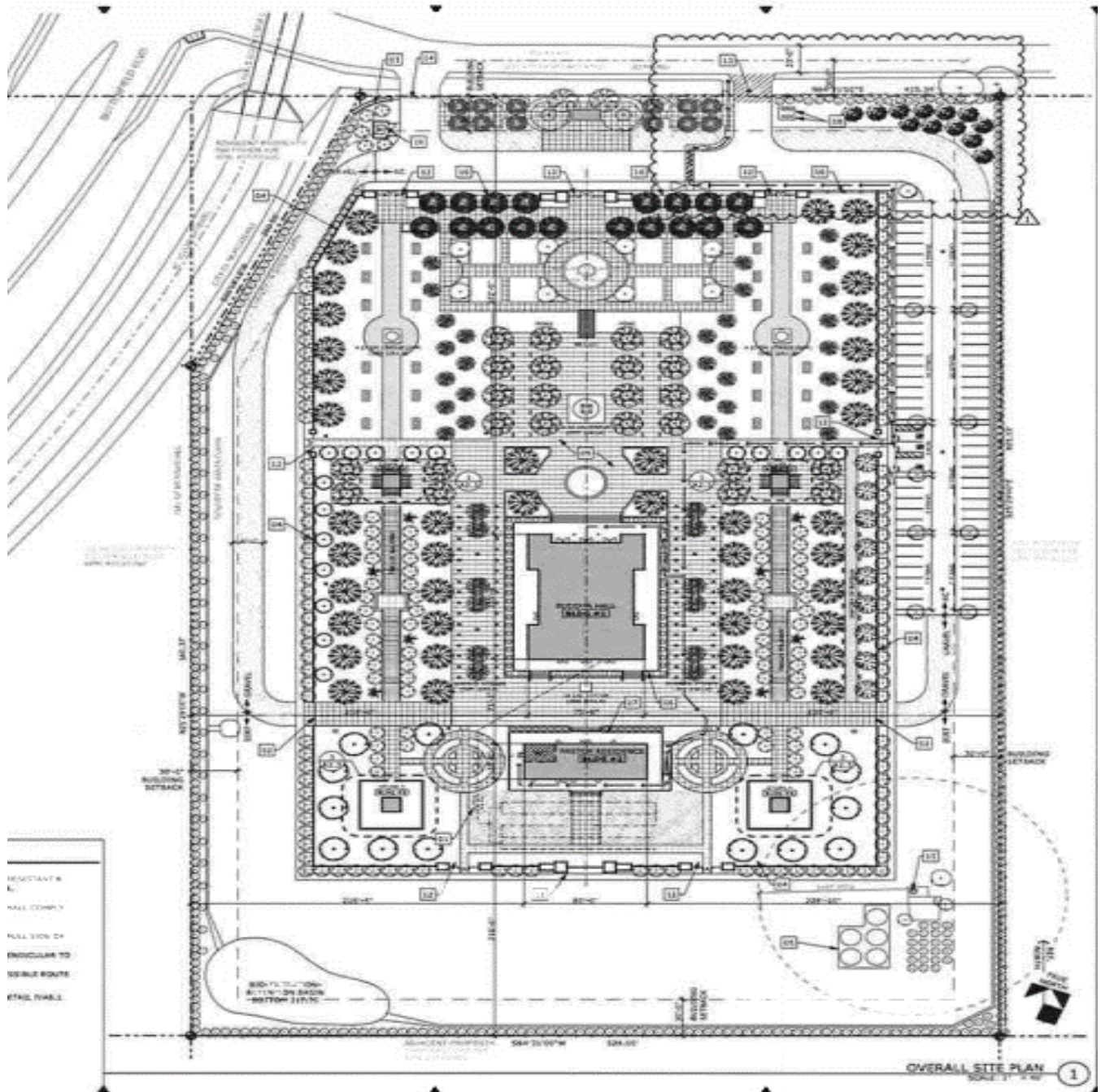
Figure 2: Map of Utilities Intersection



County of Santa Clara

In January 2016, a Mitigated Negative Declaration, Use Permit, Architectural and Site Approval, and Grading approval were granted by the Santa Clara County Planning Commission to allow for the construction of the Metta Tam Tu Buddhist Temple at 610 Fisher Avenue. The project includes the construction of a 7,000 sq. ft. temple/multi-purpose event room, four accessory structures containing stupas, 53-stall parking lot, on-site detention basin, new septic system, and landscaping. An existing 6,400 sq. ft. residence would remain.

Figure 3: Approved plan for Metta Tam Tu Temple



Beginning in September 2017, the Metta Tam Tu Buddhist Temple submitted for, and were issued, the following permits from County of Santa Clara:

	Submit Date:	Approved Date:
Grading Permit	9-11-2017	3-09-2018
Two 35 ft tall Buddha Statues	4-20-2018	5-02-2018
Site Utilities / Underground	5-15-2018	5-29-2019
Fire Water Tank	11-07-2018	5-23-2019

Main Hall clearance/connection	12-11-2018	pending water
Stupa #1	1-29-2019	6-20-2019
Stupa #2	1-29-2019	6-20-2019
Stupa #3	1-29-2019	6-20-2019
Stupa #4.	1-29-2019	6-20-2019

In March 2019, the Temple was notified by the County Office of Environmental Health to seek permission from the State Water Resources Control Board (SWRCB) to expand their existing water system to a public water system to support the special events at the Temple's main hall. The SWRCB determined that the size of the proposed hall requires a public water system. A public water system is "a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60-days out of the year."

State Water Resource Control Board

In January 2017, Senate Bill (SB) 1263 the California Safe Drinking Water Act, went into effect. According to the State, the number of failing, contaminated, unmonitored wells have created a public health hazard. The SWRCB is charged with the enforcement of requirements within SB 1263. SB 1263 amended Section 116540 and added Section 116527 to the Health and Safety Code. SB No. 1263 (Section 1d) declared that it is the policy of the state to discourage the establishment of new, unsustainable public water systems when there is a feasible alternative. The amendment requires anyone seeking approval of a new public water system (defined as a system serving 25 or more for more than 60-days out of the year) to seek approval from the SWRCB. Pursuant to Health and Safety Code 116527 (c) 9, the Temple prior to applying to SRWCB for a public water system permit, must consult with the local agency formation commission if any adjacent public water system is a local agency as defined by Section 56054 of the Government code (Gov. Code Section 56054 defines a local agency as a city, county or district).

Due to the existence of a 12-inch City water line which terminates 70 ft. from the northwest corner of the Temple property, it is the position of the SWRCB that the Temple must apply to the City of Morgan Hill for a water service connection. The SWRCB sent a letter to the City encouraging the City to make water services available to the property (Attachment 2).

City of Morgan Hill General Plan

The 2016 General Plan includes two sections of text that have very similar language pertaining to the extension of City Services outside of the City's Urban Service Area (USA), boundary. The first section is under the "City Boundaries" description starting on General Plan page CNF-1. The USA description reads as follows:

URBAN SERVICE AREA

The Urban Service Area refers to the area within the Urban Growth Boundary where utilities, such as gas, water, sewer, and electricity, and public services, such as police, fire, schools, and parks and recreation, are and will be provided by the City or other service provider agencies. The extension of urban services beyond the Urban Service Area is not allowed, except in the event that 1) the City has entered into a mutual aid or reciprocal emergency agreement for police, fire, or other emergency services to be provided by the City on County land; or 2) the extension is to address the failure of an existing septic system or well that would have a direct adverse impact on public health and safety without the expansion of the service.

It should be noted at the time of the construction of the Butterfield Boulevard extension the City's 2001 General Plan did not contain this type of USA statement outside of the provisions of the Residential Development Control System.

Similar language is found under the Residential Development Control section of the City and Neighborhood Form chapter on page CNF-9 of the 2016 General Plan.

URBAN SERVICES EXTENSIONS

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire, or other emergency services to be provided by City facilities on County land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

The two, 2016 General Plan statements are very similar with one being specific to residences and the other is non-specific to the type of land-use being served outside of the USA. The wording of both are specific to "existing" development or "existing" septic or well failure.

The Temple is an existing non-residential use with a fully operational water well. However, the Temple is precluded by State Law from expanding the existing well into a public water system to support the construction of the Temple hall due to the proximity of the City's water line. Consistency with the General plan policies can be achieved by concurring with the State's findings that public water systems are detrimental to public health and safety, thus failure to support the connection request would have a direct adverse impact on public health and safety.

POLICY CONSIDERATIONS:

The City and the Local Agency Formation Commission have policies pertaining to the provision of services outside of jurisdictional boundaries.

Morgan Hill Council Policy:

The stated purpose of the City Council policy CP-96-03, Provision of water and sewer service outside City Limits is to 1) promote the centralization of the city limits and the water and sewer service area of the City so that services can be provided to the citizens of Morgan Hill in the most cost-efficient means possible; and 2) to acknowledge that the provision of water and/or sewer service can be an incentive to annexation and should be used to encourage annexation consistent with City policies and regulations.

The entire west side of the temple parcel is adjacent to the Morgan Hill City limits however the Temple property (9.3 acres) and the adjacent incorporated parcel (10.6 acres), are not within the City's Urban Service Area boundary, USA. To annex the Temple property, the City's USA boundary located 620 feet to the west, would need to be expanded to include the adjacent 10.6-acre parcel, the Temple parcel and five adjacent parcels to the north in order to avoid creation of a county island and provide a logical adjustment to the USA boundary.



Pursuant to the terms of the 2017 LAFCO Settlement Agreement, the City is precluded from applying for an USA boundary adjustment until an update is completed to the General Plan environment impact report. The update to the General Plan environmental impact report is currently in progress. The inclusion of the Temple property in the USA boundary would also require the inclusion of an additional 33.84 acres. Given the LAFCO response to the City's 2017 USA adjustment application, City staff believes a USA boundary adjustment request to include 43.47 acres would not generate a positive recommendation from LAFCO staff and commission and thus annexation is not a viable option at this time or in the near future. The City is not requesting to amend the USA at this time, so the support for the water service would not violate the 2017 LAFCO settlement Agreement.

Pursuant to City Council Policy CP-96-03, it is the policy of the City Council of the City of Morgan Hill that city water and /or sewer services **will not be provided** outside of our city limits prior to annexation **except when**:

1. Documented public health and safety problems exist, as determined by City Council, and the property is not contiguous to the city limits, and an agreement is signed by the property owner binding the owners and successors in interest of the property to not protest future annexation to the City. If service is provided prior to annexation, agreements will be recorded against the land clarifying that the water and/or sewer service provided is temporary and only for a specific land use and terminates when the use is eliminated.
2. The City Council finds there are unique circumstances such that the public benefits of the proposed project to be served outweigh the negative aspects of the continued decentralization of the City service area. If service is provided prior to annexation, agreements will be recorded against the land clarifying that the water and/or sewer service provided is temporary and only for specific land use and terminates with the use is eliminated.
3. Legally binding previously approved water and/or sewer service agreements exist, as determined by the City Attorney.

The historic interpretation and application of exception number one, as listed under Council Policy CP-96-03, has been an existing failed well or septic that cannot be replaced and will result in a residence becoming non-habitable. The Temple does have an existing water well that is sufficient for their current use. It is the increase in the use of the Temple site through the County approved construction of the 7000 square foot hall that necessitates the installation of a public water system. The installation of a public water system is precluded by the State due to the existence of the City water line.

The State Legislature has documented through the passage of the Safe Drinking Water Act, the public health and safety issues surrounding the establishment of public water systems. The City Council could concur with the State findings that a public health and safety problem exists.

As discussed earlier in the report, the temple's west property boundary is contiguous with the city limits but is 650 feet east of the USA boundary. In accordance with the government code, properties must be within a city's USA boundary prior to annexation. The adjacent contiguous property is in the city limits but is outside the City's USA boundary. This circumstance is an anomaly created with the establishment of the City's USA boundary in the late 1970's. The policy provision of "the property is not contiguous to the city limits" assumes the City's USA boundary and city limit boundary are coterminous. The intended purpose of this provision is to have properties annex rather than extend services outside the City boundary, in this situation, annexation is not an option due to the location of the City's urban service boundary.

The applicant is willing to enter into a binding, recorded agreement agreeing not protest future annexation to the City and that the service provided is only for use of the property as a Temple. This agreement would have to be executed prior to the City submitting an application to the Local Agency Formation Commission for the Out of Agency Service request.

Exception number two, as listed under Council Policy CP-96-03, requires unique circumstances such that the public benefits of the proposed project to be served outweigh the negative aspects of the continued decentralization of the City service area. The unique circumstances surrounding the Temple's Out of Agency Service request are as follows:

- The Temple is a non-profit religious institution.
- The City of Morgan Hill installed water, sewer and storm drain utilities at the Fisher Ave intersection within 68 feet of the Temple property in 2013.
- The Temple received approval of a Conditional Use Permit and Design Permit from the County Planning Commission in January 2016; then three years later are precluded from exercising those permits due to the implementation of SB 1263.
- The adjacent property is in the city limits but outside of the City's USA boundary which makes annexation unfeasible.

The public benefits of the Temple Out of Agency Service request:

- Connection would provide a safe reliable water source for the residents and guests.
- Connection would be consistent with the State's goals of eliminating and reducing the number of private water systems.
- Connection to the City water line would require only a minor (26 ft) extension of the City water line.
- Allows for the construction of a main worship hall which is open to the public.

- The connection of the Temple would not be detrimental to the City's water system.
- Allows for expanded use of the Temple property to host community events and festivals.
- Allow for installation of on-site fire hydrants and reliable water source for fire suppression systems.
- The Temple also provides spiritual support as a place of worship for Buddhist residents in Morgan Hill and South Santa Clara County.

Exception number three, is the requirement to enter into a legally binding service agreement. As previously stated, the Temple is willing to enter such an agreement.

Santa Clara County Local Agency Formation Commission:

The Santa Clara County Local Agency Formation policy pertaining to Out of Agency service requests reads as follows:

1. A city or special district may provide new or extended services by contract or agreement outside its jurisdiction only upon LAFCO approval.
2. LAFCO shall not accept for review any proposal, which is outside of the agency's sphere of influence except as provided under section 56133 (c) of the Government Code.
3. LAFCO will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency.
4. If immediate annexation is not feasible alternative, then an extension of services may be approved in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex as well as appropriate assurances. Such assurances will be evaluated on a case by case basis and will include all appropriate actions such as pre-zoning the area, preparing a plan for annexation of the area, requiring deferred annexation agreements and waiver of protest rights from property owners in the area and requiring that the property owners submit in advance the legal map description and fees for the future annexation of the area.
5. LAFCO will consider the public benefit of the proposal, including the resolution of an existing health and safety hazard.
6. LAFCO will consider factors such as the following to determine the local and regional impacts of an out of agency contract for services:
 - a. The growth inducing impacts of any proposal.

- b. The proposal's consistency with the policies and general plans of all affected local agencies.
- c. The ability of the local agency to provide services to the proposal area without detracting from current service levels.
- d. Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

The Temple application would be consistent with LAFCO **policies 1 and 2** because of the property's location within the City's sphere of influence and the City acknowledges the requirement to apply to LAFCO prior to providing services beyond its jurisdictional boundaries. Compliance with LAFCO **policy 3** is precluded due to the property's distance from the Urban Service boundary and the City's current Settlement Agreement with LAFCO. The expansion of the USA to include the Temple property would not represent a logical adjustment to the City boundary unless the adjacent 34-acres were added to the request. Since compliance with policy 3 is not feasible, to comply with **policy 4** the Temple is willing to sign and record an annexation agreement with the City agreeing to future annexation, signing a waiver of protest and submittal of a map and legal description if required. LAFCO could meet the requirements of **policy 5** by acknowledging the findings of the State Legislature that new public water systems are not sustainable or in the best interest of public health thus there is a public benefit to allowing connection to the City water system. LAFCO could also acknowledge the perchlorate contamination of the aquifers located south of Tennant Avenue. The Temple property is located 1835 feet south of the contamination source and the well servicing the Temple site has been equipped with a filtration system.

The Temple's request is to connect to an "existing" water line. This connection should not be considered growth inducing per **policy 6a** since the Temple is not introducing any new or upgraded utility beyond what currently exists at their property boundary. The current water line termination point would be required to extend approximately 26 feet east so a standard perpendicular lateral connection could be made to the Temple site. A 26-foot extension would not place the existing water line closer to any other properties.

Consistency with policies and General Plans (LAFCO **policy 6b**) of all affected agencies may prove difficult since the policies of the City, County and LAFCO have yet to be updated to recognize the requirements of the California State Drinking Water Act and the State's findings regarding public water systems. The City and County will need to be mindful of the State's findings and requirements under the Safe Drinking Water Act when planning for future service extensions and permitting land uses that require a public water system.

Consistency with LAFCO Policy 6c can be made due to the relatively new utilities within the Butterfield Boulevard extension area and the existing and planned capacity of the City's water system. The Temple's potential water demand would not detract from the City's ability to serve existing development.

LAFCO Policy 6d is no longer applicable since the use of the property switched from agriculture to a temple in 2012, as permitted by County zoning. Providing the site with City water will not undo the improvements completed to date that allow the property to function as a Buddhist temple.

CONCLUSION

To exercise the County building permit for the main hall, the Temple property must connect to City water since the Temple is precluded by the SWRCB from installing a public water system due to the proximity of the City's water line. Based on the State's findings of public health and safety and the proximity of City's water source, it is recommended the City Council approve the out of agency service request directing staff to file an Out of Agency service request with the Local Agency Formation Commission.

COMMUNITY ENGAGEMENT: Inform

Public notice was mailed to property owners within 300 feet of the Temple property and a notice was published in the Morgan Hill Times on November 8.

ALTERNATIVE

ACTIONS:

Based on the City's understanding that LAFCO will not support the provision of service outside the City limits, or if the City Council cannot make the findings in council policy CP-96-03, City Council could deny the application request. This action would preclude the Out of Agency Service request from moving forward to the Santa Clara County Local Agency Formation Commission for consideration. This action would potentially preclude the construction of the Temple Hall approved through County Use Permit application 17-13P: Metta Tam Tu Buddhist Temple.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Filing fees have been paid to cover the cost of processing the request. Should the Council approve the services extension and connection, the associated costs will be paid for by the Temple.

CEQA (California Environmental Quality Act): The extension of a water line service to the site would be categorically exempt pursuant to Section 15301 Existing Facilities because it is a minor alteration to the existing water line and would not expand the use beyond what was considered in the Mitigated Negative Declaration that was adopted by the County Planning Commission for the construction of the Metta Tam Tu Buddhist Temple.

LINKS/ATTACHMENTS:

1. CC Resolution
2. Letter of Support from SWRCB

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A REQUEST FOR CITY WATER SERVICE TO SUPPORT THE EXPANSION OF THE METTA TAM TU BUDDHIST TEMPLE AT 610 FISHER AVENUE IN THE UNINCORPORATED AREA OF SANTA CLARA COUNTY (APN 817-07-024)**

WHEREAS, in August 2013, the City of Morgan Hill in completion of the Butterfield Boulevard extension between Tennant Avenue and Monterey Road, extended a 12-inch waterline to the intersection of Fisher Avenue and Butterfield Boulevard, 68 feet north of the Metta Tam Tu Buddhist Temple property at 610 Fisher Avenue.

WHEREAS, in January 2016, the Metta Tam Tu Buddhist Temple received Conditional Use Permit, Grading and Design Permit approval from the Santa Clara County Planning Commission to construct a 7,000 sq. ft. temple, parking lot and accessory structures at 610 Fisher Avenue.

WHEREAS, in September 2016, Senate Bill (SB) No. 1263 (Section 1d) was passed declaring that it is the policy of the state of California to discourage the establishment of new, unsustainable public water systems when there is a feasible alternative such as a municipal water system.

WHEREAS, in January 2017, the provision of Senate Bill 1263 took effect requiring any new or expanded public water systems to seek permit approval from the State Water Resources Board.

WHEREAS, in December 2018, as part of the building permit application review, the County Office of Environmental Health directed the Temple to seek permission from the State Water Resources Board to expand their existing water system, prior to the issuance of a building permit; and

WHEREAS, the State Water Resources Board application filing requirements for a public water system requires documentation of the negotiations with the City of Morgan Hill as the local jurisdiction and the Santa Clara County Local Agency Formation Commission.

WHEREAS, in July 2019, the provisions of SB200 went into effect allowing the State Water Resources Board to deny an application for a public water system regardless of the outcome of negotiations, if a City water system is adjacent to the project site.

WHEREAS, the City Council finds that the establishment of the Metta Tam Tu Buddhist Temple is a faith based asset for residents of Morgan Hill and the Santa Clara County.

WHEREAS, the City Council finds that water service connection request is consistent with Council policy CP 96-03 and LAFCO policy by recognizing there is an existing health and

safety problem with the establishment of public water systems as documented by the State Legislature in its passage of SB1263.

WHEREAS, such request was considered by the City Council at its regular meeting of November 20, 2019, at which time the City Council approved Out of Agency Service Request: OA 2019-0001: Fisher Ave.-Buddhist Temple; and

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

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds the subject property is 620 feet to the east of the City's Urban Service Area Boundary and thus is unavailable for annexation.

SECTION 2. The City Council concurs with the State's finding that the number of failing, contaminated unmonitored wells has created a public health hazard. To maintain and improve public health and safety the Council approves of the Temple's connection to the City water system.

SECTION 3. The City Council finds unique circumstances exist, with the 2013 installation of a City water line outside of the Urban Service Area (68 feet from the property boundary), the timing of the Temple's project approvals with the County, and the subsequent passages of SB 1263.

SECTION 4. The public benefit of the proposed project as a faith based institution that is open to the public outweighs the negative aspects of the decentralization of the City service area.

SECTION 5. The City Council directs an Out of Agency Service application be filed with the Santa Clara County Local Agency Formation Commission upon the Temple's execution of an annexation and water service agreement with the City of Morgan Hill.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 20th day of November 2019.

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. 19-xxx, adopted by the City Council at a regular meeting held on November 20, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: CC Resolution [Revision 1] (2453 : OA2019-0001 Buddhist Temple)



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

Division of Drinking Water

November 13, 2019

Ms. Jennifer Carman
Development Services Director
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Dear Ms. Carman:

METTA TAM TU BUDDHIST TEMPLE – WATER SERVICE EXTENSION

This letter is in support of the water service extension for the Metta Tam Tu Buddhist Temple (Temple) that will be considered by the Morgan Hill City Council during the November 20, 2019 council meeting. The Temple, located at 610 Fisher Avenue, is outside of the City of Morgan Hill's (City) urban service area, but is only approximately 60 feet from an existing City distribution system water main. The Temple inquired about pursuing a Domestic Water Supply Permit from the State Water Resources Control Board Division of Drinking Water (Division) to operate a public water system to supply domestic water service to as many as 200 people during events at the facility. The Division notified the Temple that it was required to evaluate the feasibility of annexation, consolidation or other measures to secure a supply of domestic water from an existing community water system for the proposed new public water system's service area pursuant to Section 116527 of the California Health and Safety. As part of that effort, a connection to the City's public water supply system was identified.

The Division fully supports and encourages extending water service from the City to the Temple. Operation and maintenance of a public water system is challenging, particularly for small water systems that lack the financial resources to fund basic capital cost and ongoing costs of maintenance, energy and treatment. Furthermore, small public water systems are often less resilient to natural disasters, such as drought and fire, and have more difficulty adjusting to regulatory changes due to insufficient technical and managerial capacity. Connecting to the City's water supply will ensure a safe, affordable and potable supply of water to the Temple.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

850 Marina Bay Parkway, Bldg. P, 2nd Floor, Richmond, CA 94804-6403 | www.waterboards.ca.gov

Attachment: Letter of Support from SWRCB (2453 : OA2019-0001 Buddhist Temple)

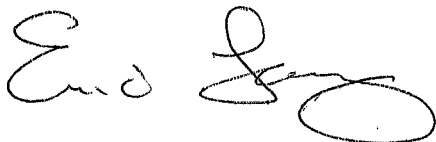
Ms. Jennifer Carman

- 2 -

November 13, 2019

If you have any questions regarding this letter, please contact Ms. Van Tsang at (510) 620-3602.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Lacy". The signature is fluid and cursive, with the first name "Eric" and last name "Lacy" clearly distinguishable.

Eric Lacy, P.E.
District Engineer
Santa Clara District
Division of Drinking Water
State Water Resources Control Board

Cc: Santa Clara County Environmental Health

Ms. Terry Linder – City of Morgan Hill (via email)

Mr. Dan Repp – City of Morgan Hill (via email)

Mr. Do Tran (via email)

Attachment: Letter of Support from SWRCB (2453 : OA2019-0001 Buddhist Temple)



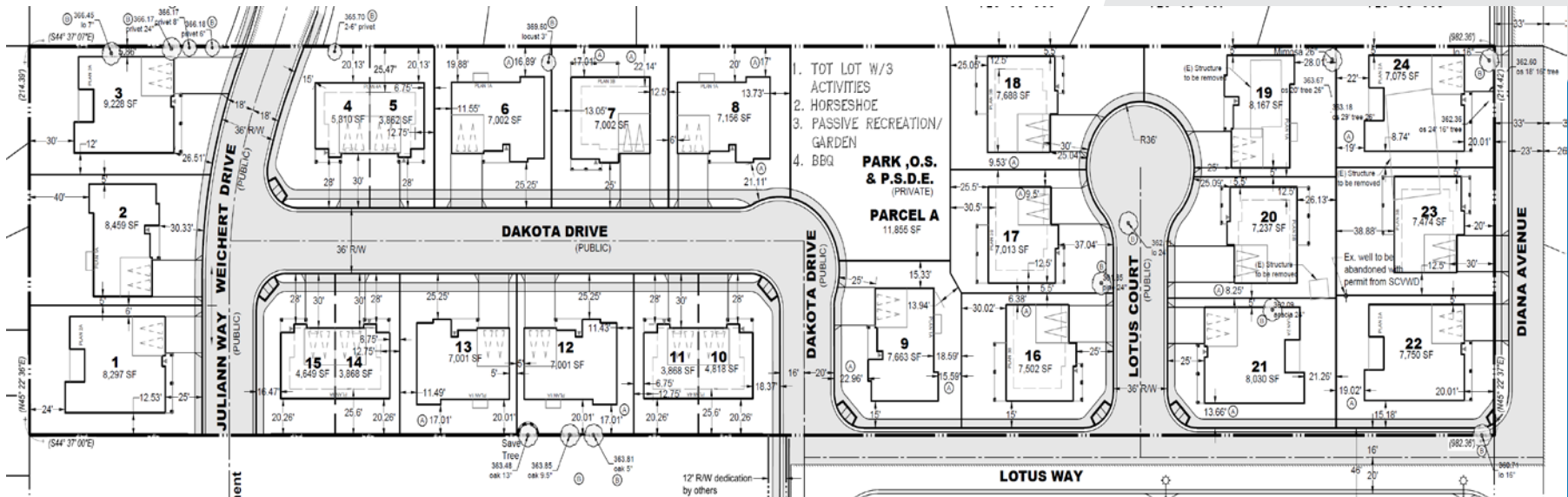
**City Council Meeting
November 20, 2019
Agenda Item No. 8**

ZA2019-006/DA2018-0003: Diana-Mana Hanalei (Montecito Estates)



Request

- Zoning Map Amendment for PD Combining District and PD Master Plan
- DA for 24-lot subdivision and RDCS public benefit commitments



Project Location



Conceptual Street Scene



Planning Commission Recommendation



- Approve PD Combining District
- Approve PD Master Plan
- Approve Development Agreement with Public Benefit Commitments

Zoning Map Amendment



PD Zoning and Master Plan

- Setback variations required
- Well designed site layout
- Deviations allow for varied massing and architectural variation

PD Combining District Findings



- The site for the proposed development is adequate in size and shape to accommodate proposed land uses
- Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development
- 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

PD Combining District Findings Cont'd



- 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 superior to the development that could occur under the standards applicable in the existing zoning districts

PD Combining District Findings Cont'd



- 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

Substantial Public Benefit



Affordable Housing

- Building two BMRS
- Contribute to Affordable Housing Fund at 110% rate of baseline contributions

Circulation Improvements

- 12-feet of dedicated ROW along Dakota Drive
- Off-site ROW improvements
Diana Avenue and Weichert Drive

Green Building Design

- Exceeds CA Title 24 (15%)
- 48% less outdoor water use
- Exceeds "Build It Green" requirements

Ratifying Prior Planning Commission Actions

- Updated minor details such as number of existing dwellings
- Removed Standard Measures from MND and MMRP but are kept in Conditions of Approval
- Clarified language in mitigation measures to be more clear
- Minor grammatical/spelling errors

Recommendation



1. Open and Close Public Hearing
2. Adopt Resolution ratifying PC Resolutions 19-18 and 19-19;
3. Waive first and second reading of ZA Ordinance;
4. Introduce ZA Ordinance;
5. Waive first and second reading of DA Ordinance; and
6. Introduce DA Ordinance.

Questions



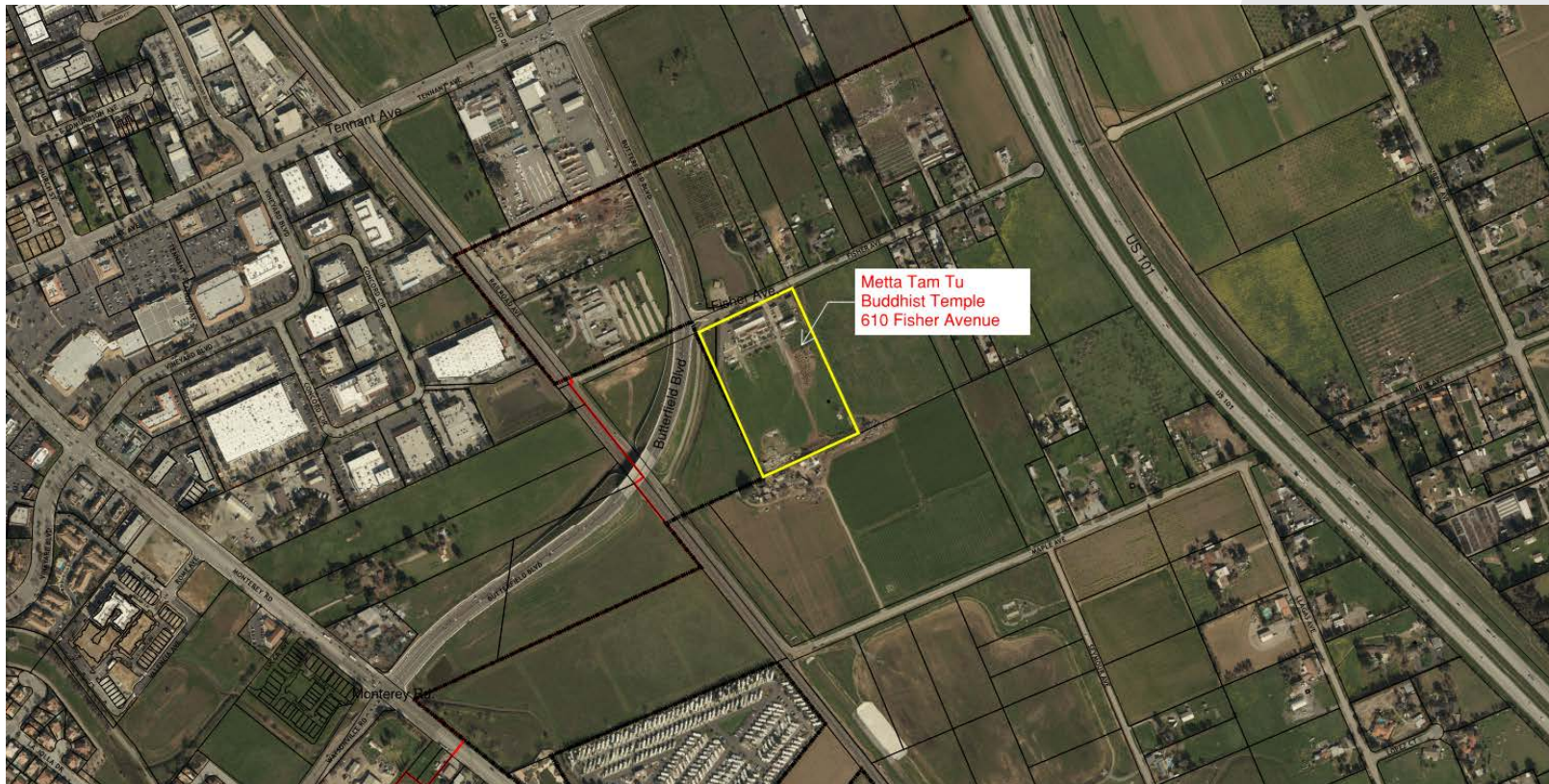


November 20, 2019- Agenda Item# 9 (OA2019-0001): Fisher-Buddhist Temple



Request

Water service connection to the Metta Tam Tu Buddhist Temple located at 610 Fisher Avenue in an unincorporated area of Morgan Hill.



OA2019-0001: Fisher-Buddhist Temple



2013: City installed a 12-inch water line 70 feet from the northwest corner of the Temple property when extending Butterfield Blvd. from Monterey Rd. north to Tennant Ave.

Timeline



- 2016:** Approval granted by the Santa Clara County Planning Commission to allow for the construction of the Metta Tam Tu Buddhist Temple.
- 2017:** Senate Bill 1263 the California Safe Drinking Water Act, goes into effect.
- Temple submits for building permits with the County.
- 2018:** Grading permit issued and permit to erect two 35 ft. statues.
- 2019:**
- March:** Temple is informed by the County of the need to have a public water system prior to construction of the main hall.
- May:** Temple is informed by State Water Regional Control Board that they will not be allowed to have public water system due to the existence of the City water line on Fisher Ave.
- June:** Temple files an Out of Agency service application with the City of Morgan Hill.

Council Policy for Out of Agency Service



1. A documented public health and safety problems exists.

The State Legislature, through the passage of the Clean Water Act has documented the failure of public water systems and their threat to public health and safety.

Council Policy for Out of Agency Service (Cont'd)



2. There are unique circumstances such that the public benefits of the proposed project to be served outweigh the negative aspects of the continued decentralization of the City service area.

Unique Circumstances

- The Temple is precluded by the SWRCB from installing a public water system due to the proximity of the City's water line.
- The Temple received approval of a Conditional Use Permit and Design Permit from the County Planning Commission in January 2016; then three years later are precluded from exercising those permits due to the implementation of SB1263.
- The adjacent property is in the City limits but outside of the City's USA boundary which makes annexation unfeasible.

Council Policy for Out of Agency Service (Cont'd)



Public Benefits:

- Connection would provide a safe reliable water source for the Temple residents and guests.
- Connection would be consistent with the State's goals of eliminating and reducing the number of private water systems.
- The Temple is a non-profit religious institution that is open to the public and provides spiritual support as a place of worship for Buddhist residents in Morgan Hill and South Santa Clara County.
- Allows for expanded use of the Temple property to host community events and festivals.
- Allow for installation of on-site fire hydrants and reliable water source for fire suppression systems.

Council Policy for Out of Agency Service (Cont'd)



3. An agreement be recorded against the land clarifying that the service provided is temporary and only for specific land use and terminates when the use is eliminated.

Prior to application to the LAFCO, the Temple is willing to enter into the required service agreement specific to the Temple use of the property.

Santa Clara Co. Local Agency Formation Policy



1. A city may provide services by contract or agreement outside its jurisdiction only upon LAFCO approval.
2. LAFCO shall not accept for review any proposal, which is outside of the agency's sphere of influence.

Consistent with policies 1 and 2 because of the property's location within the City's sphere of influence and the City acknowledges the requirement to apply to LAFCO prior to providing services beyond its jurisdictional boundaries.

3. LAFCO will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency.

Compliance with LAFCO policy 3 is precluded due to the property's distance from the Urban Service boundary and the City's current Settlement Agreement with LAFCO.

Santa Clara Co. Local Agency Formation Policy (Cont'd)



4. If immediate annexation is not feasible alternative, then an extension of services may be approved in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex as well as appropriate assurances. Such assurances will be evaluated on a case by case basis and will include all appropriate actions such as pre-zoning the area, preparing a plan for annexation of the area, requiring deferred annexation agreements and waiver of protest rights from property owners in the area and requiring that the property owners submit in advance the legal map description and fees for the future annexation of the area.

To comply with policy 4 the Temple is willing to sign and record an annexation agreement with the City agreeing to future annexation, signing a waiver of protest and submittal of a map and legal description if required.

5. LAFCO will consider the public benefit of the proposal, including the resolution of an existing health and safety hazard.

The requirements of policy 5 can be met by acknowledging the findings of the State Legislature that new public water systems are not sustainable or in the best interest of public health thus there is a public benefit to allowing connection to the City water system.

Santa Clara Co. Local Agency Formation Policy (Cont'd)



6. LAFCO will consider factors such as the following to determine the local and regional impacts of an out of agency contract for services:

a. The growth inducing impacts of any proposal.

A 26-foot extension would not place the existing water line closer to any other properties.

b. The proposal's consistency with the policies and general plans of all affected local agencies.

The City, County and LAFCO policies have yet to be updated to recognize the requirements of the California State Drinking Water Act and the State's findings regarding public water systems. The City and County will need to be mindful of the State's findings and requirements under the Safe Drinking Water Act when planning for future service extensions and permitting land uses that require a public water system.

Santa Clara Co. Local Agency Formation Policy (Cont'd)



6. LAFCO will consider factors such as the following to determine the local and regional impacts of an out of agency contract for services (Cont'd):

c. The ability of the local agency to provide services to the proposal area without detracting from current service levels.

Consistency with LAFCO Policy 6c can be made due to the relatively new utilities within the Butterfield Boulevard extension area and the existing and planned capacity of the City's water system. The Temple's potential water demand would not detract from the City's ability to serve existing development.

d. Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

The property switched from agriculture to a temple in 2012, as permitted by County zoning. Providing the site with City water will not undo the improvements completed to date that allow the property to function as a Buddhist temple.

Recommendation



Based on the State's findings of public health and safety, the proximity of City's water source and the Temple's benefit to the Community, it is recommended the City Council approve the out of agency service request directing staff to file an Out of Agency service request with the Local Agency Formation Commission.

Questions?



OA2019-0001: Fisher-Buddhist Temple





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, November 20, 2019 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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.

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC PRESENTATION- ASSET #41- POSITIVE CULTURAL IDENTITY

CITY COUNCIL REPORTS

Council Member McKay

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

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. ADOPT RESOLUTION AUTHORIZING GRANT APPLICATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE GRANT RELATED AGREEMENTS AND DOCUMENTS

Recommendation:

Adopt resolution:

1. Authorizing staff to prepare and submit a 2019 Planning Grants Program Application to the State of California, Department of Housing and Community Development for an amount not to exceed \$160,000 for the development of a proposed Form-Based Code for the Monterey Road Corridor; and
2. Authorizing the City Manager to negotiate and execute the City of Morgan Hill Planning Grants Program application, the Planning Grants Program grant documents, and any amendments thereto as required by the Department of Housing and Community Development for receipt of the grant.

2. APPROVE SECOND AMENDMENT TO SERVICES AGREEMENT WITH CSG CONSULTANTS, INC. FOR LAND DEVELOPMENT REVIEW PROGRAM SUPPORT

Recommendation:

1. Approve the Second Amendment to the professional services agreement with CSG Consultants, Inc. for land development review services for an additional \$136,300, for a total not-to-exceed amount of \$346,250 with the term of the agreement unchanged;
2. Authorize the City Manager to execute the Second Amendment; and
3. Adopt resolution amending the City's Fiscal Year 2019-20 budget to appropriate an additional \$136,300 within the Community Development Fund (Fund No. 206) for related professional services.

3. APPROVE SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE HILL MEADOWS – TRACT NO. 10378

Recommendation:

1. Approve Second Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Second Amendment to the Subdivision Improvements Agreement with Mission Pacific Homes, LLC; and
3. Authorize the recordation of the Second Amendment to the Subdivision Improvements Agreement.

4. APPROVE SECOND AMENDMENT TO SUBDIVISION IMPROVEMENTS AGREEMENT FOR DUNNE MURPHY – TRACT NO. 10387

Recommendation:

1. Approve Second Amendment to Subdivision Improvements Agreement;
2. Authorize the City Manager to execute the Second Amendment to the Subdivision Improvements Agreement with Nordstrom Cal Homes, LLC; and
3. Authorize the recordation of the Second Amendment to the Subdivision Improvements Agreement.

5. APPROVE CITY COUNCIL MEETING SCHEDULE FOR CALENDAR YEAR 2020

Recommendation:

1. Review and adjust the 2020 City Council meeting schedule as deemed appropriate; and
2. Approve 2020 City Council meeting schedule.

6. APPROVE THE NOVEMBER 6, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

7. ADOPT RESOLUTION OF INTENT TO HOLD SPECIAL BALLOT PROCEEDING FOR JACKSON MEADOWS #6 AND MILL CREEK SUBAREAS OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1

Recommendation:

1. Open/Close public hearing for Jackson Meadows #6 subarea;
2. Open/Close public hearing for Mill Creek subarea; and
3. Adopt resolutions declaring intent and authorizing the special ballot proceeding required to increase the maximum assessment rate for the Jackson Meadows #6 and the Mill Creek subareas of the City's Landscape Assessment District Number 1, effective Fiscal Year (FY) 2020-21.

Estimated Time: 10 Minutes

PUBLIC HEARING

8. **INTRODUCE ORDINANCES TO ADOPT A ZONING AMENDMENT AND TO APPROVE A DEVELOPMENT AGREEMENT FOR A 24-LOT SINGLE-FAMILY RESIDENTIAL DEVELOPMENT, INCLUDING PUBLIC ACCESS ROADS, AND A PRIVATE PARK. RATIFY THE PLANNING COMMISSION APPROVAL OF THE TENTATIVE SUBDIVISION MAP, MITIGATED NEGATIVE DECLARATION, AND THE MITIGATION MONITORING AND REPORTING PROGRAM. THE PROPERTIES, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-09-001 AND 726-09-002, ARE LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF DIANA AVENUE AND LOTUS WAY. (DIANA-MANA HANAIEI - MONTECITO ESTATES PROJECT)**

Recommendation:

1. Open and close public hearing;
2. Adopt resolution ratifying Planning Commission Resolutions 19-18 and 19-19;
3. Waive first and second reading of Zoning Amendment Ordinance;
4. Introduce Zoning Amendment Ordinance;
5. Waive first and second reading of Development Agreement Ordinance; and
6. Introduce Development Agreement Ordinance.

Estimated Time: 20 Minutes

9. **APPROVE REQUEST FOR A WATER SERVICE CONNECTION OUTSIDE OF THE CITY'S URBAN SERVICE AREA BOUNDARY WHICH WILL ALLOW FOR THE CONSTRUCTION OF A 7,000 SQUARE FOOT BUDDHA HALL AT THE METTA TAM TU BUDDHIST TEMPLE APPROVED BY SANTA CLARA COUNTY. THE PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 817-07-024, IS LOCATED ON SOUTHEAST CORNER OF THE INTERSECTION OF BUTTERFIELD BOULEVARD AND FISHER AVENUE (LIEU QUAN BUDDHIST CULTURAL CENTER, OWNER). OA2019-0001/EA2019-0011**

Recommendation:

1. Open/close public hearing; and
2. Adopt resolution approving the water service request and directing staff to file an application with the Local Agency Formation Commission for Out of Agency service request.

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 cityclerk@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

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

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





NOVEMBER

Developmental Asset #41

POSITIVE CULTURAL IDENTITY

Young person feels proud of her/his cultural background.

Cultural Identity Within Our Community

- Hispanic Heritage Month: Latin Cultural Dance Show/Concert
- Mushroom Mardi Gras
- Taste Of Morgan Hill
- 4th of July Parade
- Holiday Parades



How this Relates to YAC

- A variety of diverse members
- Respect each other's cultures, values, and opinions
- Foster environment of personal positive cultural identity
- Expand and learn about different cultures through food, stories, and music.





NOVEMBER COMPLEMENTARY

Asset #2

Positive Family Communication

Young person and her or his parents(s) communicate positively and young person is willing to seek advice and counsel from parent(s).

How Can Adults Share Their Heritage With Their Children?

- Games/Activities they Played When they Were Younger
- Religious Traditions –Holiday Shopping
- Traditional Foods
- Practice Ethnic Holidays: Día de Los Muertos
- Show Old Family Pictures
- Tell Interesting Stories: Songs, Jokes, etc.



How did your parents convey their culture to you, and how do you integrate that into your daily life?



SAVE THE DATE

Friday, November 20, 2020 – CCC

20th Anniversary Celebration and

1st YAC Reunion in the History of Morgan Hill



CITY OF MORGAN HILL



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