



CITY OF MORGAN HILL

Regular Meeting Agenda

Planning Commission

Wayne Tanda - Chairman

Michael Orosco - Vice Chairman

John McKay - Planning Commissioner

Joseph Mueller - Planning Commissioner

Liam Downey - Planning Commissioner

Patricia Toombs - Planning Commissioner

Yvonne Martinez Beltran - Planning Commissioner

Tuesday, April 25, 2017 6:00 PM

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

DECLARATION OF POSTING AGENDA

Pursuant to Government Code Section 54954.2

OPEN PUBLIC COMMENT PERIOD

Members of the public are entitled to address the Planning Commission concerning any item within the Morgan Hill Planning Commission's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the Planning Commission is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ORDERS OF THE DAY

PUBLIC HEARINGS

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

This item was continued from the March 28, 2017 Planning Commission meeting. This item will be tabled at this time at the request of the applicant and shall be duly noticed when scheduled for a future Planning Commission meeting.

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

Recommendation:

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

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

Request for a Development Agreement Amendment to add 12, Fiscal Year 2017-2018 and 52, Fiscal Year 2018-2019 building allotments to an existing Development Agreement. The properties, identified by Assessor Parcel Numbers 728-59-001, 728-59-002, 728-59-013, 728-56-013, and 728-56-045, are located on the north corner of Cochrane Road and Mission View Drive (Cal Atlantic Homes, Owner). CEQA: Mitigated Negative Declaration completed.

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

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

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

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

completed.

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

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

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

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

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

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

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

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

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

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

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

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

Declaration completed.

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

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

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

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

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

Recommendation:

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

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

Recommendation:

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

OTHER BUSINESS

ANNOUNCEMENTS

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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



Sustainable Morgan Hill Vision

Morgan Hill is a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all.

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 Cultural Heritage

2017 STRATEGIC PRIORITIES

High Speed Rail

Inclusiveness

Infrastructure

Regional Initiatives

Telecommunications

2017 STRATEGIC PRIORITIES:



High Speed Rail

The City of Morgan Hill will directly advocate for our community's needs through our communications, discussions, and decisions. We will continue to engage the community, the High Speed Rail Authority, our state and federal legislators, and other regional agencies to mitigate negative impacts and convey our position that the High Speed Rail Authority should only use the existing Highway 101 right-of-way to avoid all impacts to residents, schools, and businesses. Should the Authority decide the 101 right-of-way is not feasible, we will strongly advocate for the route with the least impact on Morgan Hill.



Inclusiveness

We will celebrate the diversity, history, and culture of our community. Through City Council workshops, community meetings, and researching successes in other communities, the City will listen to and collaborate with the community to define how inclusiveness will be further woven into our community's fabric and to increase public participation. The City's communications, services, public spaces, and projects will embrace all community members as partners, advancing our vision of being a socially responsible community.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs initially by updating its 2014 infrastructure study to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for the Santa Teresa extension and road maintenance. We will continue to work closely with our community to inform them of the needs and engage them to find an affordable and sustainable solution.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. This regional involvement will include, but not be limited to, partnering with the League of California Cities, Valley Transportation Authority, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



Telecommunications

The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Development Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure. The plan will be used to signal Morgan Hill's support for business expansion.



PLANNING COMMISSION STAFF REPORT

MEETING DATE: April 25, 2017

PREPARED BY: Terry Linder, Senior Planner

APPROVED BY: Jennifer Carman, Community Development Director

PUBLIC HEARINGS: DEVELOPMENT AGREEMENT AMENDMENTS FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDACS) APPLICATIONS

RECOMMENDATION(S)

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

PROJECT SUMMARY:

Eleven applicants are requesting amendments to their respective project Development Agreements. Several of the Development Agreement amendment applications are similar in nature and have been grouped for discussion purposes as follows:

1. Incorporation of allotments awarded from the 2016 competition (Applications A and B)
2. Incorporation of allotments awarded from the 2016 competition and extension of the commencements of construction dates for FY 2016-2017 allotments due to rain delays (Applications C, D and E)
3. Extension of the commencements of construction dates for FY 2015-2016 and FY 2016-2017 allotments due to rain delays (Applications F, G and H)

4. Extension of the commencements of construction dates for FY 2006-2007, FY 2009-10, FY 2015-2016 and FY 2016-2017 allotments due to other delays (Applications I, J and K).

BACKGROUND:

The Planning Division has received requests from 14 of the 23 projects that have building allotments that will expire June 30, 2017. Nine projects with allotments expiring June 30, 2017 did not apply for extensions. Four of the 14 projects that did apply for an extension have been (or will be) considered separately since one of four (Hill-Lueng) had a March 30, 2017 commencement date, two projects (Butterfield-DPC and E. Dunne-Kruse) do not have approved development agreements and therefore qualify for administrative extensions pursuant to Municipal Code section 18.78.170 C, and a fourth project (Butterfield-Dividend/Valencia) has a zoning and subdivision amendment request pending. All Valencia project applications will be considered together. Nine of the 11 Development Agreement Amendment requests are asking for extensions of allotments. To assist in the comparison of the nine extension requests, staff has prepared a table of all projects seeking extensions (C thru K) titled "Summary of April 2017 Extension Requests" (attached). This table provides some basic project data such as the number of allotments within the fiscal year seeking extension, the number of extension previously granted to the subject fiscal year(s) and the reason for the extension request. The table also outlines the steps completed in the development process.

The nine extension requests contained in this report have been evaluated pursuant to Municipal Code Sections 18.78.170. F. 1 and 2:

F. Eligibility Criteria.

1. *The Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approval required to exercise the allotments, or due to an earthquake, flood, fire, or other severe act of nature outside of the applicant's control. It is the applicant's responsibility to provide evidence that the request is consistent with this requirement.*
2. *The Planning Commission may not approve an extension for any reason other than in Paragraph F.1 above, including but not limited to difficulties obtaining financing, changes to the project not required by the City or other public agencies, applicant delays responding to requests from the City or other public agency, personal circumstances of the applicant, or changes in property ownership.*

Six of the nine applications seeking extensions are citing delays caused by the excessively wet winter. In the period between October 2016 and April 2017 the City of Morgan Hill received approximately 29.3 inches of rain representing 142% of the annual rainfall within a six and month period. The excessive rainfall is considered a severe act

of nature, and has resulted in saturated soils and flooding which has left six projects unable to complete the necessary grading for the installation of on-site utilities or the formation of building pads. Five of the six applications have pulled grading permits and have equipment on-site but are unable to proceed due to the saturated soil. In report sections 2 and 3 below, each of the six rain delayed project requests are discussed followed by the staff recommendation.

ANALYSIS:

The specific reasons cited for each of the 11 Development Agreement Amendment requests is outlined on the following pages. Letters of request from the applicants are also attached at the end of this report and labeled alphabetically to correspond with their individual requests as titled within this report.

1. Incorporation of allotments awarded from the 2016 RDCS competition

The following two projects competed in the 2016 RDCS competition and were each awarded additional allotments for Fiscal Years 2017-2018 and 2018-2019. Each project has an approved Development Agreement that contains the project's RDCS commitments and development schedule. The proposed amendments will modify the currently approved Development Agreement to incorporate the new allotments into the projects development schedule and add any additional commitments specific to the new allocation years. Extension of time for the project allotments is not requested or proposed.

A. AAE2017-0004: Cochrane – Cal Atlantic

Request for a Development Agreement Amendment to add 12, Fiscal Year 2017-2018 and 52, Fiscal Year 2018-2019 building allotments to an existing Development Agreement for the 135-unit Wisteria project located on the north corner of Cochrane Road and Mission View Drive.

Application MC 13-10 Cochrane-Standard Pacific received 13 Fiscal Year 2015-2016 allotments, application MC 13-11 Cochrane-Lantana received 28 Fiscal Year 2015-2016 allotments, application MC 14-03 Cochrane-Standard Pacific received 16 Fiscal Year 2016-2017 allotments, MC 14-04 Cochrane-Standard Pacific received 14 Fiscal Year 2016-2017 allotments, MC 15-13 Lantana-Standard Pacific received 12 Fiscal Year 2017-18 allotments, and on February 15, 2017 the project was awarded 52, Fiscal Year 2018-2019 allotments, to complete the project. The Development Agreement has been modified to add the 2018-2019 Fiscal Year allotments and the associated commitments.

B. AAE2017-0009: Condit -Mana

Request for a Development Agreement Amendment to add 44, Fiscal Year 2018-2019 and 30, Fiscal Year 2017-2018 building allotments to an existing Development Agreement for the 74-unit Mana project located on the north side of San Pedro Avenue between Condit Road and Murphy Avenue.

Application MC 15-17 Condit-Mana (For Sale) received 30 Fiscal Year 2017-2018 allotments as part of the 2015 RDCS competition and on February 15, 2017, the project received 44 Fiscal Year 2018-2019 allotments, to complete the project. The Development Agreement has been modified to add the 2018-2019 Fiscal Year allotments and the associated commitments.

Resolutions A and B attached to this report, recommend the Planning Commission recommend City Council approval of the Development Agreement Amendment requests as shown in Exhibit A of Resolutions A and B.

2. Incorporation of allotments awarded from the 2016 competition and extension of the commencement of construction dates for Fiscal Year 2016-2017 allotments due to rain delays for varying periods of time

Similar to the projects discussed in Section 1, the following three projects competed in the 2015 and 2016 RDCS competitions and were awarded additional allotments for Fiscal Years 2016-2017, 2017-2018 and 2018-2019. Each project has an approved Development Agreement that contains the project's RDCS commitments and development schedule. The proposed amendments will modify the currently approved Development Agreement to incorporate the new allotments into the projects development schedule and add any additional commitments specific to the new allotment years.

Each of these projects is also citing delays due to the extra ordinary amounts of rain.

C. AAE2017-0008: Laurel - DeRose

Request for a Development Agreement Amendment to add 13, Fiscal Year 2016-2017, one, Fiscal Year 2017-2018 and 11, Fiscal Year 2018-2019 building allotments to a previously approved Development Agreement. The request also includes a six-month extension of the commencement of construction dates for 18, 2016-17 Fiscal Year allotments for the 65 unit Madison Gate project located north of Laurel Road and east of Walnut Grove Drive.

Application MC 16-14 Laurel-DeRose received 11, Fiscal Year 2018-2019 allotments as part of the 2016 RDCS competition and on February 15, 2017 the project received 14 (13 FY 2016-17 and one, FY 2017-18) allotments that were reassigned from previously over-allocated projects. The reassigned allotments are proposed to be incorporated into the current development schedule increasing the total number of 2016-17 Fiscal Year allotments from five to 18, 2017-18 Fiscal Year allotments would increase from 15 to 16 and 11, 2018-19 Fiscal Year allotments would be added. The RDCS commitments for the various reassigned allotments would be the same as the project commitments for the respective RDCS applications from which the original project allotments were granted. For example, the 13 reassigned allotments for Fiscal Year 2016-17 would have the same commitments as the original five, Fiscal Year allotments

assigned to MC 14-16 and the one reassigned 2017-18 Fiscal Year allotment would have the same commitments as the 15, 2017-18 Fiscal Year allotments awarded to MC 15-06.

The Madison Gate project had a final map ready to record but with the additional allotments, Tri-Pointe Homes submitted an amended map that incorporates the additional allotments. Once the Development Agreement is approved, the final map with the additional lots will be approved. Tri-Pointe Homes has their building permit master plan approved and commenced preliminary grading of the site but the significant rain fall has slowed their progress.

D. AAE2017-0014: Altimira – Dividend

Request for a Development Agreement Amendment to add five, Fiscal Year 2017-2018 building allotments to an approved Development Agreement. The request also includes a request for a 12-month extension to the commencement of construction date for two, 2016-17 Fiscal Year allotments for the seven-unit Altimira project located on the south side of Altimira Circle, easterly of the intersection with Mission Avenida.

Application MC 14-15: Altimira-Ventura Alicante received five, Fiscal Year 2017-2018 allotments as an “On-Going” project in the 2015 RDCS competition. The five, 2017-2018 Fiscal Year allotments are proposed to be incorporated into the current development schedule. As an “On-Going” project, the RDCS commitments would be the same as currently stated in the Development Agreement.

The seven (7) lot project has been delayed by a combination of two factors; the significant rain fall and additional toxic soil testing required by the California State Department of Toxic Substances Control (DTSC). As detailed in the applicant’s letter of request, the site which had previously tested clean, is now testing positive for soil toxins that must be remediated prior to construction of homes. The testing required by DTSC cannot move forward due to the rainfall conditions. Once testing is completed, up to two feet of soil may have to be removed from the entire site which will further delay the commencement of construction.

The applicant has also requested to have the “Commencement of Construction” deadline be replaced with a “Final Map Recordation” deadline of June 30, 2018. Pursuant to Measure S (Morgan Hill Municipal Code, MHMC Section 18.78.160 A) an allotment is considered “exercised” with the recordation of a final map. The new definition of “exercised” is a topic that will be discussed by the City Council during an RDCS study session in May. Until the City Council provides clarification on the provisions of MHMC Section 18.78.160 A, it is recommended that this deadline replacement request not be granted.

E. AAE2017-0017: Cochrane – Toll Brothers

Request for a Development Agreement Amendment for a six-month extension to the commence of construction date for 15, Fiscal Year 2016-

17 allotments granted to the 244-unit San Sebastian project located on Cochrane Road adjacent to Alicante Estates and Alicante Ranch bordered by Peet Road and Coyote Road.

Toll Brothers commenced construction on 15-units within the San Sebastian project in December of 2016 however, their efforts to commence on the next 15, Fiscal Year 2016-2017 allotments has been delayed due to the extra ordinary amounts of rain and the discovery of a considerable number of archeological remains which has required coordination with an archeologist and the Native American Heritage Commission.

Application RDCS 2016-0015: Cochrane-Borello received 16, Fiscal Year 2018-2019 allotments as part of the 2016 RDCS competition. The allotments are proposed to be incorporated into the current development schedule

Resolutions C, D and E attached to this report, recommend the Planning Commission recommend City Council approval of the Development Agreement Amendment requests to add the additional building allotments as shown in Exhibit A of Resolutions C, D and E. It is also recommended the Planning Commission grant a six-month extension to the Madison Gate project's 18, Fiscal Year 2016-2017 allotments finding that the delay has been caused by a severe act of nature outside of the applicant's control; grant a 12-month extension to the Altimira project's two, Fiscal Year 2016-2017 allotments finding that the delay has been caused by a severe act of nature outside of the applicant's control and delays caused by an outside agency; and grant a six-month extension to the San Sebastian project's 15, Fiscal Year 2016-2017 allotments finding that the delay has been caused by a severe act of nature outside of the applicant's control and delays caused by an outside agency.

3. Extension of the commencements of construction dates for Fiscal Year 2015-16 and Fiscal Year 2016-17 allotments due to rain delays

The following extension requests F, G and H are each for six-months due to rain delays. Each of the projects have recorded maps and grading permits.

F. AAE2017-0006: Monterey -Gipetti/KB: Request for a Development Agreement Amendment to incorporate a six-month extension to the 26 Fiscal Year 2015-16 and 32, Fiscal Year 2016-17 allotments for the 58-unit Parque project located on Monterey Road, south east of the intersection of Monterey Road and Old Monterey.

KB Homes has pulled all 58 permits and has commenced construction on approximately seven units. Their ability to meet the commencement of construction deadline of June 30, 2017 on all 56 units has been hindered by significant amounts of rain.

G. AAE2017-0012: San Pedro – Presidio: Request for a Development Agreement Amendment to incorporate a six-month extension to the eight,

Fiscal Year 2016-17 allotments for the 14-unit “The Commons” project located on the northwest corner of San Pedro Avenue and Church Street.

Van Daele Homes began preliminary grading operations on the site back in December 2016 but their efforts to commence construction have been stalled due to significant amounts of rainfall.

H. AAE2017-0015: Watsonville – Dividend: Request for a Development Agreement Amendment to incorporate a six-month extension to the eight, Fiscal Year allotments for the 36-unit Connemara project located on the south side of Watsonville Road at the southerly terminus of La Alameda.

Phase one (22-units) of the Connemara project was completed in May 2016. Dividend Homes began clearing the phase two area in January 2017 but their efforts to fully exercise their grading permit has been stalled by significant amounts of rainfall.

Based on finding that the delays have been caused by a severe act of nature outside of the applicant’s control, it is recommended the Planning Commission approve Resolutions F, G and H as attached to this report, incorporating six-month extensions for:

- 26 Fiscal Year 2015-2016 and 32, Fiscal Year 2016-2017 allotments granted to the Parque project (KB Homes) DAA 14-09.
- Eight, Fiscal Year 2016-2017 allotments granted to “The Commons” project (VanDaele Homes) DAA 15-02.
- Eight, Fiscal Year allotments granted to Connemara project (Dividend Homes) DAA 12-03.

4. Extension of the commencements of construction dates for Fiscal Year 2016-2017 allotments due to other delays.

Extension requests I, J and K are each seeking six-month extensions to all project allotments due to City delays.

I. AAE2017-0016: Monterey – Gunter Request for a Development Agreement Amendment for a six-month extension to four, Fiscal Year 2006-2007 and 11 Fiscal Year 2009-2010 allotments for the 15-unit Gunter Building project located approximately 100 feet north of the intersection of Monterey Road and Main Street, on the east side of Monterey Road

This request has been withdrawn. The applicant is in settlement discussions with the City. If a settlement is reached, an amendment to the Development Agreement will be considered by the City Council.

- J. AAE2017-0018: E. Dunne – Busk:** Request for a Development Agreement Amendment for a six-month extension to the seven, Fiscal Year 2015-2016 and five, Fiscal Year 2016-2017 commencement of construction dates as set forth in an approved Development Agreement for the 14-unit Busk located on the southeast corner of the intersection of East Dunne Avenue and Murphy Avenue.

The applicants letter of request states that there have been unforeseen circumstances and occurrences for the owner/developer and the City that have caused a delay in the project moving forward by the June 30, 2017, deadline set forth in the current Development Agreement. Specifically, the letter states that plans had been submitted to Public Works for a “second plan check” in October 2016 and the project engineer completed the second plan check and resubmitted on December 16, 2016. A third plan check was received from the City on February 15, 2017, which contained “new comments” not seen on the previous plan checks, with “significant changes requiring four weeks to complete.” Revised plans were submitted to the City on March 15, 2017. The applicant’s letter concludes that the City’s processing of the map and improvement plans has delayed the project four months.

To date the project has received two, six-month extensions (12 months) to the seven, Fiscal Year 2015-2016 allotments. The first extension was granted in April 2016, as part of the project’s zoning, subdivision and development agreement approval. At that time, the project received a six-month extension of the seven, Fiscal Year 2015-2016 allotments due to site plan changes requested by the City.

In November 2016, a six-month extension request was submitted in which the developer claimed that significant site plan changes requested by the City during the zoning and subdivision review process had delayed the project’s ability to meet its December 30, 2016, commencement deadline. The November 2016 staff report provided the Commission and Council with background information regarding the initial six-month extension granted in April 2016. It was noted that as of November 22, 2016 the developer had not submitted a Site Review application and had submitted the required final map and improvement plans to Public Works on October 24, 2016. The City Council reluctantly granted the second six-month extension and stipulated that all deadlines within project’s development schedule would become hard deadlines, thus failure to meet any of the dates would result in a loss of all building allotments.

According to the City’s records, the project Tentative Subdivision Map was approved on February 9, 2016, the first final map and improvement plan submittal was on October 24, 2016. The project Site Review application was submitted on January 31, 2017. The first round of plan check comments was returned on February 17, 2017, and the project engineer submitted revised plans on March 15, 2017. A second round of plan check comments were sent to the applicant on April 4, 2017. The project engineer has yet to respond to the

second round of plan check comments. The applicant was provided additional Final Map comments on April 14, 2017.

The Site Review application was filed on January 31, 2017, eight-months after the first extension and two-months after the City Council granted the second extension. As of April 13, 2017, the Site Review application has not been approved due to a conflict between the project's tree preservation commitments and the project improvement plans. Final review of the map cannot be completed without Site Review plans to coordinate the actual development with the map.

It is not unusual for the map and improvement plan review process to take a total three to four months and require two to three rounds of plan check comments prior to finalizing the map. Developers typically use this processing time to submit master plans to the Building Division for plan check; a process that also typically takes two to three months to complete with two to three- rounds of plan check comments. Processing the map and building plan in parallel allows for the issuance of building permits immediately upon recordation of the final map.

Master building plans were submitted to the Building Division on April 6, 2017.

Pursuant to Municipal Code Section 18.78.170 F 1. the applicant has not produced evidence that the City is responsible for a delay in the issuance of permits or granting approval required to exercise the allotments. A three-month review period is typical for map and improvement plans. Even if the map were to record today, the City is not confident that there is insufficient time for the processing of necessary building permits for the project to commence construction on June 30, 2017. The failure to commence construction by June 30, 2017, is due primarily to the applicant's failure to submit for Site Review and building permits to facility review in a timely manner.

K. AAE2017-0019: Monterey – Central ECA

Request for a Development Agreement Amendment for a six-month extension to the seven, Fiscal Year 2015-2016 and five Fiscal Year 2016-2017 commencement of construction dates as set forth in an approved Development Agreement for the 15-unit ECA project located on the south west corner of Central Avenue and McLaughlin Avenue.

The applicants letter of request states that there have been unforeseen circumstances and occurrences for the owner/developer and the City that have caused a delay in the project moving forward by the June 30, 2017, deadline set forth in the current Development Agreement. Specifically, the letter states that the final map and improvement plans had been submitted to Public Works on December 15, 2016 and as of March 24, 2017 comments have not been provided to the project engineer. The applicant's letter concludes that the City's processing of the final map and improvement plans has already delayed the project 2.5 months and could possibly delay the project another 4-months.

To date, the project has received one, 12-month extension to seven, Fiscal Year 2015-2016 allotments. The extension was granted in April 2016, as part of the project's zoning, subdivision and development agreement approval. At that time, the project received a 12-month extension due to a prolonged environmental review process and City requested site plan changes.

Site Review application SR 15-17: Monterey-Central was submitted to the City on July 24, 2015 and the application has not been approved. The application was dormant for 15-months until the City contacted the applicant on October 4, 2016 and requested submittal of updated plans. Additional requests were sent by the City in November and December 2016 requesting the applicant to submit revised plans. Revised site review plans were submitted to the City on February 2, 2017. On March 1, 2017, a letter was sent to the applicant containing the City's comments on the February 2, 2017 plan submittal. Revised architecture plans were submitted to the City on March 30, 2017 and landscape plans were submitted on April 12, 2017.

Final map and improvement plans were submitted to Public Works on December 15, 2016, six-months after the tentative map approval on June 14, 2016. Public Works comments on the map and improvement plans were provided to the project engineer on April 11, 2016.

Master building plans have not yet been submitted to the Building Division.

Pursuant to Municipal Code Section 18.78.170 F 1. the applicant has not produced evidence that the City is responsible for a delay in the issuance of permits or granting approval required to exercise the allotments. The four-month map review has not delayed the project's ability to commence construction since the map cannot record until the Site Review application is approved. Even if the map were to record today, there is insufficient time for the City to process the necessary building permits for the project to commence construction on June 30, 2017. The failure to commence construction by June 30, 2017, is not due to a four-month map and improvement plan process. The applicant's failure to submit the required plans in a timely manner for the approval of the Site Review application and failure to submit master building plans to the City is responsible for the delay.

Based on Findings of evidence that the City is not responsible for the delays in the issuance of permits or granting approvals required to exercise allotments, it is recommended that the Planning Commission deny the extension requests contained in attached Resolutions J and K.

If the Planning Commission should determine that Findings of evidence have been made that the City is responsible for the delays, Resolutions J-1 and K-1 have been provided for consideration.

California Environmental Quality Act (CEQA):

Each project described in this report has been reviewed for CEQA compliance. A list of CEQA documents for each project is included in the attached Public Hearing Notice.

LINKS/ATTACHMENTS:

1. Extention Summary Chart
2. A Cochrane-Cal Atlc PC Reso AAE2017-0004
3. B Condit-Mana PC Reso AAE2017-0009
4. C Laurel-DeRose PC 1 Reso AAE2017-0008
5. D Altimira Divded PC Reso AAE2017-0014
6. E- Cochrane-Toll Brothers AAE2017-0017
7. F Mo-KB (Gippetti) PC Reso AAE2017-0006
8. G San Pedro-Presidio PC Reso AAE2017-0012
9. H Watsnvllle-Dividend PC Reso AAE2017-0015
10. J EDunne-Busk PC Reso AAE2017-0018
11. J-1 EDunne-Busk PC Reso AAE2017-0018
12. K Mo-ECA PC Reso AAE2017-0019
13. K-1 Mo-ECA PC Reso AAE2017-0019
14. 04-25-2017 PC PHN TO NEWSPAPER
15. Extension Requests Items A - K

SUMMARY OF APRIL 2017 EXTENSION REQUESTS

	<u>DAA14-09</u> <u>Monterey-</u> <u>Gippetti</u> 26-FY 2015-16 26-FY 2016-17 6-FY 2016-17	<u>DAA 12-03</u> <u>Watsonville</u> <u>Connamara</u> 8-FY2016-17	<u>DAA-09-05:</u> <u>Cochrane-Toll</u> <u>Brothers</u> 15-FY 2016-17	<u>DAA 15-02</u> <u>San Pedro-</u> <u>Presidio</u> 8-FY 2016-17	<u>DAA 15-05</u> <u>Laurel-</u> <u>DeRose</u> 18-FY2016-17	<u>DAA 15-10</u> <u>Altimira-</u> <u>Dividend</u> 2-FY2016-17	<u>DAA 14-10 E.</u> <u>Dunne-Busk</u> 7-FY 2015-16 5-FY 2016-17	<u>DAA 14-11</u> <u>Monterey-</u> <u>Central ECA</u> 7-FY 2015-16 5-FY 2016-17	<u>DAA06-06:</u> <u>Monterey-</u> <u>Gunter</u> 4-FY 2006-07 11-FY 2009-10
Number of Allocations and Fiscal Year(s) of subject extension request									
Number of previous extensions granted per Fiscal Year seeking extension	+12 mo. FY2015-16 0 mo. FY 2016-17	0	0	0	0	0	+12 mo. FY2015-16 0 mo. FY2016-17	+12 mo. FY2015-16 0 mo. FY 2016-17	+120 mo. FY 2006-07 +84 mo. FY 2009-10
Reason given for extension	Rain	Rain	Rain + Cultural resource discovery	Rain	Rain	Rain + Soil contamination	City delay	City delay	City delay
<u>Steps Completed</u>									
1. Planning Applications Submitted Zoning, Subdivision, Development Agreement and Site Review	✓	✓	✓	✓	✓	✓	✓	✓	✓
2. All Planning Applications Approved	✓	✓	✓	✓	✓	✓	Site Review not approved	Site Review not approved	Site Review not approved
3. Final map/Improvement plans submitted	✓	✓	✓	✓	✓	✓	✓	✓	
4. Final map/Improvement plans approved by Council	✓	✓	✓	✓	✓	✓	pending		
5. Master plan check submitted	✓	✓	✓	✓	✓	✓	✓	4-6-17 submittal	
6. Master plan check approved	✓	✓	✓	✓	✓	✓			
7. Final map/Improvement plans recorded	✓	✓	✓	✓	Requires DAA approval prior to recordation ✓				
8. Grading permit issued	✓	✓	✓	✓					
9. Building permits issued	✓								

RESOLUTION NO. 17-__

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A DEVELOPMENT AGREEMENT
AMENDMENT, DAA-14-06 (AAE 2017-0004): COCHRANE -
CAL ATLANTIC RECOMMENDING THE INCORPORATION
OF 12 FY 2017-2018 AND 52 FY 2018-2019 ALLOTMENTS
AWARDED TO MC 16-13. (APN 728-59-001, 728-59-002, 728-
59-013, 728-56-013, AND 728-56-045)**

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

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 13 building allotments (FY2015-2016) for application MC-13-10: Cochrane - Standard Pacific, awarded 28 allotment (FY2015-2016) for application MC 13-11: Cochrane-Lantana, awarded 16 allotments (FY2016-2017) for application MC 14-03, and awarded 14 allotments (FY2016-2017) for application MC 14-04; and

WHEREAS, on September 2, 2015, the City Council adopted Ordinance No. 2168, N.S. which approved a Development Agreement and established ‘commence construction’ dates for the 41, FY 2015-2016 and the 30 FY 2016-2017 allotments. Reference is hereby made to that certain Agreement on file in the office of the City Clerk of the City of Morgan Hill. The agreement 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; and

WHEREAS, the Planning Commission on January12, 2016, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded MC 15-13: Lantana-Standard Pacific 12 building allotments (FY2017-2018); and

WHEREAS, the Planning Commission on January10, 2017, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded RDCS2016-0013: Cochrane-Cal Atlantic, 52 building allotments (FY2018-2019); and

WHEREAS, the City Council on February 15, 2017, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, reaffirmed the awarded RDCS2016-0013: Cochrane-Cal Atlantic, 52 building allotments (FY2018-2019); and

WHEREAS, the Planning Commission has reviewed the Development Agreement amendment requested at its regular meeting of April 25, 2017, at which

Res. No. 17-__
Page 2

time the Planning Commission recommends approval of application DAA-14-06: Cochrane – Cal Atlantic amending the development agreement to incorporate the 12 FY 2017-2018 and 52 FY 2018-2019 allotments.

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 approved project is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The Planning Commission of the City of Morgan Hill found that, on the basis of the whole record before it, that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis, and that the Mitigated Negative Declaration as amended by this resolution was adopted prior to action taken to adopt the original project proposal. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

SECTION 3. The Planning Commission hereby recommends amendment to the project development agreement as shown in the attached Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

WAYNE TANDA, Chair

EXHIBIT A

Exhibit B of Development Agreement DA-14-06: Cochrane – Standard Pacific shall be amended as follows:

EXHIBIT B
DEVELOPMENT SCHEDULE
MC 13-10: 13 allotments, MC 13-11: 28 allotments,
MC 14-03: 16 allotments and MC 14-04: 14 allotments, MC 15-13: Lantana-Standard
Pacific: 12 allotments and RDCS2016-0013: 52 allotments
FY: 2015-16, 2016-17, 2017-18 & 2018-2019

I. SUBDIVISION AND ZONING APPLICATIONS

Applications Filed:

FY 2015-16 (41 allotments)	09-02-14
FY 2016-17 (42 allotments)	09-02-15
<i>FY 2017-18 (12 allotments)</i>	<i>N/A</i>
<i>FY 2018-19 (52 allotments)</i>	<i>N/A</i>

II. SITE REVIEW APPLICATION

Application Filed:

FY 2015-16 (41 allotments)	02-04-15 (revised to 10-30-15)
FY 2016-17 (42 allotments)	02-04-16 (revised to 10-30-16)
<i>FY 2017-18 (12 allotments)</i>	<i>07-01-18</i>
<i>FY 2018-19 (52 allotments)</i>	<i>04-01-19</i>

III. FINAL MAP SUBMITTAL

Map, Improvements Agreement and Bonds:

FY 2015-16 (41 allotments)	02-04-15 (revised to 3-30-16)
FY 2016-17 (42 allotments)	02-04-16 (revised to 3-30-17)
<i>FY 2017-18 (12 allotments)</i>	<i>09-01-17</i>
<i>FY 2018-19 (52 allotments)</i>	<i>03-01-18</i>

IV. BUILDING PERMIT SUBMITTAL

Submit plans to Building Division for plan check:

FY 2015-16 (41 allotments)	07-01-15 (revised to 7-01-16)
FY 2016-17 (42 allotments)	07-01-16 (revised to 7-01-17)
<i>FY 2017-18 (12 allotments)</i>	<i>12-01-17</i>
<i>FY 2018-19 (52 allotments)</i>	<i>07-01-18</i>

V. BUILDING PERMITS

Obtain Building Permits:

FY 2015-16 (41 allotments)	04-01-16 (revised to 10-30-16)
FY 2016-17 (30 allotments)	04-01-17 (revised to 10-30-17)
<i>FY 2017-18 (12 allotments)</i>	<i>04-01-18</i>
<i>FY 2018-19 (52 allotments)</i>	<i>04-01-19</i>

VI. COMMENCE CONSTRUCTION:

FY 2015-16 (41 allotments)	06-30-16 (revised to 04-30-17)
FY 2016-17 (30 allotments)	06-30-17 (revised to 07-30-18)
<i>FY 2017-18 (12 allotments)</i>	<i>06-30-18</i>
<i>FY 2018-19 (52 allotments)</i>	<i>06-30-19</i>

Failure to obtain building permits by the dates listed above shall result in the loss of building

Attachment: A Cochrane-Cal Atlc PC Reso AAE2017-0004 (1147 : Mass 2017 DAAs)

allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least eight [8] dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

RESOLUTION NO. 17-__

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A DEVELOPMENT AGREEMENT
AMENDMENT TO DA2016-005 (AAE 2017-0009): CONDIT –
MANA (FOR SALE) RECOMMENDING THE
INCORPORATION OF 44 ALLOTMENTS FOR FY 2018-2019
AWARDED TO RDCS 2016-0017 MURPHY-PRESIDIO
EVERGREEN. (APN 817-12-009)**

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

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, the Planning Commission on January 12, 2017, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 30 building allotments (FY2017-2018) for application MC2015-0017: Condit-Mana (For Sale); and

WHEREAS, on August 24, 2016, the City Council adopted Ordinance No. 2215, N.S. which approved a Development Agreement and established ‘commence construction’ dates for the 30, FY 2017-2018 allotments; and

WHEREAS, the Planning Commission on January 10, 2017, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 44 building allotments (FY2018-2019) for application RDCS2016-0017: Murphy – Presidio Evergreen (For Sale); and

WHEREAS, the City Council on February 15, 2017, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, reaffirmed the awarded RDCS2016-0017: Murphy – Presidio Evergreen (For Sale), 44 building allotments (FY2018-2019); and

WHEREAS, the Planning Commission has reviewed the Development Agreement amendment requested at its regular meeting of April 25, 2017, at which time the Planning Commission recommends approval of application AAE2017-0009: Condit – Mana (For Sale) amending the Development Agreement to incorporate the 44 FY 2018-2019 allotments.

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 approved project is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The Planning Commission of the City of Morgan Hill hereby finds that, on the basis of the whole record before it (including any comments received), that there is no substantial evidence that the project will have a significant effect on the environment based on the findings in the Addendum. This addendum demonstrates that the circumstances, impacts, and mitigation measures identified in the adopted EIR remain substantively unchanged by the project-level detail described in the Addendum, and supports the finding that the proposed project does not raise any new issues, and does not cause any significant impacts identified in the previous Initial Study to be substantially increased in severity.
- SECTION 3.** The Planning Commission hereby recommends amendment to the project Development Agreement as shown in the attached Exhibit B and Exhibit C.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

WAYNE TANDA, Chair

R:\PLANNING\WP51\Land Agreements\DA\MassDAA.17\Resolutions\Condit-Mana PC Reso AAE2017-0009.docx

Attachment: B Condit-Mana PC Reso AAE2017-0009 (1147 : Mass 2017 DAAs)

EXHIBIT B

DESCRIPTION OF PROJECT SHALL BE AMENDED AS FOLLOWS
MC-15-17 and MC2016-0017: Condit - Mana Investments FY 2017-2018 and FY 2018-2019
Allotments
(San Pedro-Presidio, For Sale, 30 allotments in 2017-2018 and 44 allotments in 2018-2019)

I.	GENERAL PLAN AMENDMENT Application Approved:	02-04-2015
II.	ZONING APPLICATION(S) Application Filed:	01-29-2016
III.	SUBDIVISION MAP APPLICATION Application Filed:	06-29-2016
IV.	SITE REVIEW APPLICATION Submit to Planning Department for approval: FY 2016-2017	09-01-2017
V.	FINAL MAP SUBMITTAL Map, Improvements Agreement and Bonds: FY 2016-2017	12-01-2017
VI.	BUILDING PERMIT SUBMITTAL Submit plans to Building Division for plan check: FY 2017-2018 <i>FY 2018-2019</i>	12-01-2017 <i>12-01-2018</i>
VII.	BUILDING PERMITS FY 2017-2018 (30 allotments) <i>FY 2018-2019 (44 allotments)</i>	02-30-2018 <i>03-30-2019</i>
VIII.	COMMENCEMENT CONSTRUCTION: FY 2017-2018 (30 allotments) <i>FY 2018-2019 (44 allotments)</i>	 06-30-2018 <i>07-30-2019</i>

Failure to obtain building permits by the dates listed above shall result in the loss of building allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the property owner/designee being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least 7 dwelling allotments and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested

Exhibit B of Development Agreement DA2016-0005: Condit – Mana (For Sale) shall be amended to include or replace the following sections:

EXHIBIT C
SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to 30 allotments awarded in the RDCS application MC-15-17 and 44 allotments awarded in the RDCS application MC2016-0017 shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements under CEQA, impact fee, in-lieu fees or other requirements under federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

Municipal Code Reference	Description of Requirement	Time of Implementation (specify date or phase #)	Estimated Cost or Fee Amount*
18.78.270	Housing Types		
3.a Variation of size	10% of the 44 last allotments provide 200 square foot differences between livable square footage and size (1,554-2,820).	<u>Prior to Building Permit Issuance</u>	<u>NA</u>
3. b Variation of size	Each condo or single family detached home includes at least three bedrooms for the first 30 allotments.	<u>Prior to Building Permit Issuance</u>	<u>NA</u>
18.78.300	Circulation Efficiency		
3.a The project commits to convert existing street lighting adjacent to the site to LED lights at a ratio of one street light conversion perm dwelling unit.	The project will pay the street light conversion fee of \$750.00 per dwelling unit up to 44 allotments.	Prior to issuance of Certificate of Occupancy	\$750.00 per unit
3.b Dedication or improvement to existing streets and parking lots outside of project	The project will pay the streetlight conversion of \$1,500 (2 x \$750) per dwelling unit up to 30 allotments.	Prior to issuance of Certificate of Occupancy	\$1,500 per unit

C

RESOLUTION NO. 17-__

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT, TO DA15-05 (AAE 2017-0008): LAUREL-DEROSE INCORPORATING 13 FISCAL YEAR 2016-2017 ALLOTMENTS, ONE FISCAL YEAR 2017-2018 ALLOCATION, AND 11 FISCAL YEAR 2018-2019, ALLOTMENTS AWARDED TO RDCS2016-0014 AND EXTENDING THE COMMENCEMENT OF CONSTRUCTION DATE FOR SIX -MONTHS FOR 18 FISCAL YEAR 2016-2017 ALLOTMENTS. (APN 726-01-008)

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

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, on November 30, 2010, the Planning Commission adopted a policy for consideration of changes to approved residential development control system projects; and

WHEREAS, the Planning Commission on March 4, 2015, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 5 building allotments for FY 2016-2017 (MC-14-16: Laurel – Tri Pointe De Rose); and

WHEREAS, the Planning Commission on January 12, 2016, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 15 building allotments for FY 2017-2018 (MC-15-06: Laurel - DeRose); and

WHEREAS, on July 20, 2016, the City Council adopted Ordinance No. 2209, N.S. which approved a development agreement and established ‘commence construction’ dates for the five (5), FY 2016-2017 and 15, FY 2017-2018 allotments. Reference is hereby made to that certain Agreement on file in the office of the City Clerk of the City of Morgan Hill. The agreement 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; and

WHEREAS, the Planning Commission on January 10, 2017, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 11 building allotments (FY 2018-2019) for application RDCS2016-0014: Laurel -DeRose; and

Attachment: C Laurel-DeRose PC 1 Reso AAE2017-0008 (1147 : Mass 2017 DAAs)

WHEREAS, the City Council on February 15, 2017, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, reaffirmed the awarded RDCS2016-0014: Laurel-DeRose, 11 building allotments (FY 2018-2019); and

WHEREAS, the City Council on February 15, 2017, pursuant to Chapter 18.78.150.B of the Morgan Hill Municipal Code and Resolution 17-018, awarded and redistributed 13, 2016-2017 Fiscal Year building allotments and one additional Fiscal Year 2017-2018 building allotment to applications MC-14-16: Laurel – Tri Pointe De Rose and MC-15-06: Laurel – DeRose; and

WHEREAS, a six-month extension is currently requested for the 18, 2016-2017 Fiscal Year building allotments due to delays caused by a severe act of nature; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and

WHEREAS, the period between October 2016 and April 2017 the City of Morgan Hill received approximately 29.3 inches of rain representing 142 % of the annual rainfall within a six and month period. The excessive rainfall is considered a severe act of nature, has resulted in saturated soils and flooding which has left the Madison Gate project unable to meet the current FY 2016-2017 commencement of construction deadline; and

WHEREAS, the Planning Commission has reviewed the Development Agreement amendment requested at its regular meeting of April 25, 2017, at which time the Planning Commission recommends approval of application AAE2017-0008: Laurel-DeRose amending the Development Agreement to incorporate the 13, FY 2016-2017 allotments, one FY 2017-2018 allotment and 11, FY 2018-2019 allotments.

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 approved project is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The Planning Commission of the City of Morgan Hill found that, on the basis of the whole record before it, that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis, and that the Mitigated Negative Declaration as amended by this resolution was adopted prior to action taken to adopt the original project proposal. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

SECTION 3. The project has been diligent in pursuing all necessary approvals, a pending approved final map, has pulled a grading permit and has approved master building plans but the extraordinary amount of rainfall has delayed the project site work resulting in delays in utility installation and creation building pads therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

SECTION 4. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a six-month extension for the 18, Fiscal Year 2016-2017 building allotments for MC-14-16: Laurel – Tri Pointe De Rose and recommends the City Council adopt the amended the project Development Agreement as shown in the attachment Exhibit A.

SECTION 5. The Planning Commission hereby recommends amendment to the project development agreement as shown in the attached Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

WAYNE TANDA, Chair

R:\PLANNING\WP51\Land Agreements\DA\MassDAA.17\Resolutions\Laurel-DeRose PC 1 Reso AAE2017-0008.docx

Attachment: C Laurel-DeRose PC 1 Reso AAE2017-0008 (1147 : Mass 2017 DAAs)

EXHIBIT A

EXHIBIT C of the project Development Agreement shall be amended as follows:

DEVELOPMENT SCHEDULE

**MC-14-16: 13 allotments FY 2016-2017, MC-15-06: 16 allotments FY 2017-2018
and RDCS2016-0014: Laurel -DeRose 11 allotments FY2018-2019**

1. SUBDIVISION APPLICATION		
Application Approved:		12-08-15
11. SITE REVIEW APPLICATION		
Application Filed:		06-16-15
111. FINAL MAP SUBMITTAL		
Map, Improvements Agreement and Bonds:		09-30-16
IV. BUILDING PERMIT SUBMITTAL		
Submit plans to Building Division for plan check:		
FY 2016-2017 (5 18 allotments)		01-05-17
FY 2017-2018 (15 16 allotments)		01-05-18
FY 2018-2019 (11 allotments)		01-05-19
V. BUILDING PERMITS		
Obtain Building Permits:		
FY 2016-2017 (5 18 allotments)	10-30-17	05-31-17
FY 2017-2018 (15 16 allotments)		05-31-18
FY 2018-2019 (11 allotments)		05-31-19
VI. COMMENCE CONSTRUCTION:		
FY 2016-2017 (5 18 allotments)	12-30-17	06-30-17
FY 2017-2018 (15 16 allotments)		06-30-18
FY 2018-2019 (11 allotments)		06-30-19

Failure to obtain building permits by the dates listed above shall result in the loss of building allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least one dwelling unit and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Exhibit B

Development Agreement Exhibit D shall be amended to include or replace the following sections:

EXHIBIT D **SPECIFIC RESTRICTIONS AND REQUIREMENTS**

The following restriction and requirements apply to all allotments awarded in the RDCS applications MC-14-16, MC-15-06 and RDCS2016-0014 allotments and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements under CEQA, impact fee, in-lieu fees or other requirements under federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
18.78.210	Schools		
B3. Off-site pedestrian safety improvements (11 Allotments)	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within ¾ miles of the project site or to a middle school or high school up to \$4,950 per unit. Projects commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department	Prior to issuance of Certificate of Occupancy	Up to \$4950 per unit
18.78.220	Open Space		
B1b (11 Allotments)	Private usable open space will be maintained by an HOA	Prior to issuance of Certificate of Occupancy	NA
B4c (11 Allotments)	Applicant commits to purchase double TDC's or in lieu of a TDC commitment, applicant agrees to pay double the Open Space fee. The current fee effective as of July 1, 2016 is 7,798.19 per unit.	Prior to issuance of Certificate of Occupancy	\$7,798.19 per unit
18.78.240	Public Facilities		
2f (11 Allotments)	Provides public facility, off-site storm drainage improvements or pedestrian improvements from a City-approved list or improvements on or adjacent to the project in access of standard requirement	Prior to Site Improvements Approval	\$4,400 per unit
2g (11 Allotments)	RDCS Capital Improvement Program Fund	Prior to Site Improvements Approval	\$1,100 per unit
6 Park in-Lieu (11 Allotments)	Lesser of double the required in-lieu park fees or \$1,100 per point	Prior to issuance of Certificate of Occupancy	\$3,300 per unit
18.78.300	Circulation Efficiency		
4 (11 Allotments)	Dedication and improvements of extensions to existing streets and shared parking lots outside of the project boundaries	Prior to Site Improvements Approval	\$2,200 per unit

RESOLUTION NO. 17-__

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A DEVELOPMENT AGREEMENT
AMENDMENT, DA-15-10 (AAE 2017-0014): ALTIMIRA-
DIVIDEND EXTENDING THE COMMENCEMENT OF
CONSTRUCTION DATE FOR 12-MONTHS FOR TWO
(2) FISCAL YEAR 2016-2017 AND INCORPORATING
FIVE (5) FY 2017-2018 ALLOTMENTS AWARDED TO
MC 14-15: ALTIMIRA-VENTURA/ALICANTE. (APN
728-55-017)**

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

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, the City Council on March 4, 2015, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded two (2) building allotments (FY2016-2017) for application MC-14-15: Altimira-Ventura/Alicante; and

WHEREAS, on February 2, 2016, the City Council adopted Ordinance No. 2148, N.S. which approved a Development Agreement and established 'commence construction' date for the two (2), FY 2016-2017 allotments; and

WHEREAS, the Planning Commission on January 12, 2016, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded five (5) building allotments (FY2017-18) from the On-going Project set-aside; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and;

WHEREAS, in the period between October 2016 and April 2017 the City of Morgan Hill received approximately 29.3 inches of rain representing 142% of the annual rainfall within a six and month period. The excessive rainfall is considered a severe act of nature, has resulted in saturated soils and flooding which has left the Alicante Phase 6 project unable to meet the current commencement of construction deadline.

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow for an extension of up to twelve (12) months due to delays caused by severe act of nature (well above average seasonal rains) causing delay in the completion of additional required soil testing and implementation of a Remedial Action Work Plan to remove contaminated soils from the project site. The rain delay and requirement for additional testing have delayed obtaining final approval from the State of California Department of Substances Control to complete contaminated soils remediation; and

WHEREAS, the Planning Commission has reviewed the Development Agreement amendment requested at its regular meeting of April 25, 2017, at which time the Planning Commission recommends approval of application AAE 2017-0014: Altimira-Dividend amending the Development Agreement to incorporate five (5) FY 2017-2018 allotments.

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 approved project is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The Planning Commission of the City of Morgan Hill hereby finds that, on the basis of the whole record before it (including any comments received), that there is no substantial evidence that the project will have a significant effect on the environment based on the findings in the Addendum to the adopted in the 2001 Initial Study for the Cochrane – Lupine Annexation and Rezone project. This addendum demonstrates that the circumstances, impacts, and mitigation measures identified in the Cochrane – Lupine Annexation and Rezone Project remain substantively unchanged by the project-level detail described in the Addendum, and supports the finding that the Altimira - Dividend Project (proposed project) does not raise any new issues, and does not cause any significant impacts identified in the previous Initial Study to be substantially increased in severity. The custodian of the documents or other material which constitute the record shall be the Community Development Department.
- SECTION 3.** The project has been diligent in pursuing necessary approvals, a Development Agreement has been approved along with an approved Tentative Subdivision Map, Site and Architectural Review and pending Final Map but the extraordinary amount of rainfall has delayed the project site work resulting in delays in completing the soil mitigation, grading and pad certification by the June 30, 2017 deadline for the two lots in Phase 1 of the project therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

Resolution. No. 17-____
Page 3

SECTION 4. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a 12-month extension for the Two (2), Fiscal Year 2016-2017 building allotments for MC-14-15: Altimira – Ventura/Alicante and recommends the City Council amend the project Development Agreement as shown in the attachment Exhibit C.

SECTION 5. The Planning Commission hereby recommends amendment to the project Development Agreement as shown in the attached Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

WAYNE TANDA, Chair

Attachment: D Altimira Divded PC Reso AAE2017-0014 (1147 : Mass 2017 DAAs)

EXHIBIT A

Exhibit B of Development Agreement DA 15-10: Altimira-Dividend shall be amended as follows:

EXHIBIT B**DESCRIPTION OF PROJECT****ALICANTE PHASE 6 DEVELOPMENT**

MC-14-15: Altimira – Ventura/Alicante

FY 2016-2017, Two (2) Building Allotments

FY 2017-2018, Five (5) Building Allotments

Exhibit C of Development Agreement DA 15-10: Altimira-Dividend shall be amended as follows:

**EXHIBIT C
DEVELOPMENT SCHEDULE**

**MC-14-15: Altimira – Ventura/Alicante
FY 2016-2017, two allotments
FY 2017-2018, five allotments**

I.	SUBDIVISION APPLICATION		
	Application Approved:		12-08-15
II.	SITE REVIEW APPLICATION		
	Application Approved		02-29-16
III.	FINAL MAP SUBMITTAL		
	Map, Improvement Agreement and Bonds:		09-30-16
IV.	BUILDING PERMIT SUBMITTAL		
	Submit plans to Building Division for plan check:		01-05-17
V.	BUILDING PERMITS		
	Obtain Building Permits FY 2016-17, two allotments:	01-28-18	03-31-17
	Obtain Building Permits FY 2017-18, five allotments:		01-28-18
VI.	COMMENCE CONSTRUCTION		
	FY 2016-17, two allotments:	06-30-18	06-30-17
	FY 2017-18, five allotments:		06-30-18

Failure to obtain building permits by the dates listed above shall result in the loss of building allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least one dwelling unit and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

E

RESOLUTION NO. 17-__

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A DEVELOPMENT AGREEMENT
AMENDMENT DAA 09-05: COCHRANE – TOLL
BROTHERS (AAE2017-0017) EXTENDING THE
COMMENCEMENT OF CONSTRUCTION DATE FOR
SIX-MONTHS FOR 15, FISCAL YEAR 2016-2017
ALLOTMENTS AND INCORPORATING 16, FY 2018-
2019 ALLOTMENTS AWARDED TO RDCS2016-0015:
COCHRANE-BORELLO. (APN 728-34-008)**

WHEREAS, Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, has to date awarded 151 building allotments to applications MC-08-16: Peet-Borello, 23 building allotments (FY 2010-2011), MC 09-04: Cochrane-Borello, 37 building allotments (FY 2011-2012), MC 11-03: Cochrane-Borello, 15 building allotments (FY 2013-2014), MC 12-07: Cochrane-Borello, 20 building allotments (FY 2014-2015), MC 13-21: Cochrane-Borello, 25 building allotments (FY 2015-2016), MC 14-12: Cochrane-Borello, 15 building allotments (FY 2016-2017) and RDCS2016-0015: Cochrane Borello, 16 building allotments (FY 2018-2019); and

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

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, on March 27, 2013 the City Council adopted Ordinance No. 2065, N.S., which approved a Development Agreement which established ‘commence construction’ dates for a 244-unit project. Reference is hereby made to that certain Agreement on file in the office of the City Clerk of the City of Morgan Hill. The agreement 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; and

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

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

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

WHEREAS, on August 5, 2015 the City Council adopted Ordinance No. 2161, N.S., which approved an amendment to the Development Agreement incorporating commitments and adding to exhibit D the development schedule for 15 building allotments for FY 2016-2017; and

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

WHEREAS, on January 10, 2017, the Planning Commission pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded application RDCS2016-0015: Cochrane-Borello, 16 building allotments for FY 2018-2019; and

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

WHEREAS, a six-month extension is currently requested for the 15 building allotments awarded for FY 2016-2017; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and

WHEREAS, the period between October 2016 and April 2017 the City of Morgan Hill received approximately 29.3 inches of rain representing 142 % of the annual rainfall within a six and month period. The excessive rainfall is considered a severe act of nature, has resulted in saturated soils and flooding which has left the San Sebastian project unable to meet the current commencement of construction deadline; and

WHEREAS, during grading operations the project has encountered a significant number of archeological remains which has required coordination with archeologist and the Native American Heritage Commission which has further delayed the project; and

WHEREAS, the Planning Commission has reviewed the Development Agreement amendment requested at its regular meeting of April 25, 2017, at which time the Planning

Commission recommends approval of application AAE2017-0017-: Cochrane-Borello amending the Development Agreement to incorporate the 16, FY 2018-2019 allotments; and

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

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

SECTION 1. The approved project is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The City Council of the City of Morgan Hill found that, on the basis of the whole record before it (including the EIR and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Environment Impact Report adopted by the City Council in January 2013, and the Planning Commission's independent judgment and analysis, and that the EIR was adopted prior to action taken to adopt the original project proposal. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

SECTION 3. The project has been diligent in pursuing all necessary approvals, a recorded final map, has pulled a grading permit and has pulled 15 building permits but the discovery of a significant number of archeological remains which has delayed the project through required coordination with archeologist and the Native American Heritage Commission. The extraordinary amount of rainfall has further delayed the project site work resulting in delays in utility installation and creation building pads therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

SECTION 4. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a six-month extension for the 15, Fiscal Year 2016-2017 building allotments for MC-14-12: Cochrane-Borello and recommends the City Council adopt the amended Development Agreement as shown in the attachment Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

Attachment: E- Cochrane-Toll Brothers AAE2017-0017 (1147 : Mass 2017 DAAs)

EXHIBIT A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

~~SAN SEBASTIAN MH GENERAL PARTNERSHIP~~

TOLL BROTHERS XX CALIFORNIA GENERAL PARTNERSHIP CORPORATION

REGARDING

THE SAN SEBASTIAN RESIDENTIAL DEVELOPMENT PROJECT

Attachment: E- Cochrane-Toll Brothers AAE2017-0017 (1147 : Mass 2017 DAAs)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
~~**SAN SEBASTIAN MH GENERAL PARTNERSHIP**~~
TOLL BROTHERS XX CALIFORNIA GENERAL PARTNERSHIP CORPORATION

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 ~~San Sebastian MH~~ **Toll Brothers XX CA**, a General Partnership, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

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 (Section 1880 *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. MC 11-03/MC 13-21/MC14-12: Cochrane-Borello; **and RDCS 2016-0015: Cochrane-Borello**
2. EA 09-23: Cochrane-Borello;
3. Zoning Amendment ZA 09-08: Cochrane-Borello;
4. Subdivision SD 09-07: Cochrane-Borello;

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

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

F. On February 14, 2012, February 25, 2014, February 10, 2015 *and January 10, 2017*, the Morgan Hill Planning Commission approved an allotment for the Project as set forth in the Developer's application for a development allotment pursuant to Chapter 18.78 of the Morgan Hill Municipal Code ("**Residential Development Control System**", or "**RDCS**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits included in the Developer's application as required under Section 18.78.060A of Chapter 18.78 of the Code.

G. On February 12, 2013, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute and the Enabling Ordinance, adopted Resolutions that affirmed CEQA compliance for this Agreement, adopted findings that this Agreement is consistent with the City's General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On February 27, 2013, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No. 2065, an ordinance that affirms CEQA compliance that adopts findings that this Agreement is consistent with the City's General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement's execution by City ("Approving Ordinance"). The City adopted the Approving Ordinance on March 27, 2013, the Approving Ordinance became effective thirty (30) days later, and the Parties signed the Agreement. The "Effective Date" in this Agreement shall be the date that the Approving 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) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.

(2) "**Existing Approvals**" shall have that meaning set forth in Recital paragraph D of this Agreement.

(3) **"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.

(4) **"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.

(5) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval 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.

(6) **"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.

(7) **"Project"** shall mean the development containing 244 single family residential units as more particularly described in the Environmental Impact Report titled Cochrane-Borello, dated August 2012 Any reference in this Agreement to the "Project" shall mean and include the "Property,"; provided however, that the Project to which this Agreement applies may be only occupy a part of the Property and may be only a phase of a larger development on the Property.

(8) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(9) **"Property"** shall mean that certain real property consisting of approximately 122 acres located within the City, as more particularly described and shown on **Exhibit A** to this Agreement.

(10) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.

(11) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

(12) **"Subdivision Document"** means, pursuant to Government Code section 66452.6(a) and this Agreement, the term of any tentative map, vesting tentative map, parcel map, vesting parcel map, final map or vesting final maps, or any such new map or any amendment to any such map, or any resubdivision.

(13) "**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 Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps and any Subdivision Document.

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

1.03 Term/Subdivision Documents.

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

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

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

controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section 2.01, subject only to the conditions set forth in Section 2.02(c) of this Agreement. 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) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes any requirements for notice, acts of protest and/or right to litigation pursuant to the Mitigation Fee Act and/or any other applicable law.

(3) The Subsequent Approvals, provided such Subsequent Approvals are:

- (i) In compliance with all controlling California law;
- (ii) Mutually agreed to by the Parties; and
- (iii) Duly enacted by City.

(4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

(5) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.09. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.09(e).

(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) 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.

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

(e) Nothing contained herein will give Developer a vested right to develop the described Project absent valid and unexpired development allocations under the RDCS.

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. 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.

(b) Under 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.

(c) If the RDCS is applicable to the Project or any portion thereof, the vested rights to develop the Project according with Applicable Law and this Agreement shall be vested only to those residential units having a RDCS allotment. If the Project defined in this Agreement includes units that have not been awarded RDCS allotments ("Pending Units"), the RDCS allotments for the Pending Units shall be a necessary Subsequent Approval and this Agreement shall be amended to reflect the application and conditions attaching to the RDCS allotments for the Pending Units.

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

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall

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

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

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

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The following specific requirements set forth in Exhibit C are voluntarily assumed by Developer in return for benefits derived from the City's RDCS building allotment

approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement or otherwise imposed to mitigate impacts of the Project. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition under otherwise applicable city, state or federal law and waives any such right to credit, refund, reimbursement or prohibition. Instead, these requirements are voluntarily assumed by Developer in return for benefits derived from the RDCS. For example, under 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 is willing to pay fees in addition to those already required to mitigate its impacts. The payment of these additional fees results in additional points being awarded to the development proposal under the RDCS, thereby allowing the development proposal to secure a higher score under the RDCS, which in turn may provide a high enough score for the development proposal to secure allotments. The obligation that results (to pay such additional fees and to otherwise abide by the requirements derived from that RDCS process in return for additional points under the RDCS) are enforced through this Agreement.

(b) The Developer's RDCS applications MC 11-03: Cochrane-Borello allocations approved February 14, 2012, MC 13-21 Cochrane-Borello allocations approved February 25, 2014, MC 14-12: Cochrane-Borello allocations approved February 10, 2015, ***RDCS2016-0015 allocations approved January 10, 2017*** and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement; provided however, the Project under this Agreement may constitute only part of the development or Property to which said RDCS application and approvals apply and cover only part of the allotments awarded to the Property or development. Attachment A identifies the portion of the Property, the phase of the development and the number of allotments that the Project and this Agreement covers. If this Agreement covers multiple phases of a development on the Property, then Attachment also identifies the phase during which each of the specific requirements shall apply.

2.05 Construction Codes.

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

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in

accordance with the RDCS, the RDCS allotment shall expire pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code.

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

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Developer agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

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

2.07 Improvements.

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

2.08 Overcapacity, Oversizing.

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

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

2.09 New City Laws.

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

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

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

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

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

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New

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

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

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

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought

and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3 **PROCESSING**

3.01 Processing.

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

(b) 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 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 Administrative Amendments.

(a) Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the city manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, the City Manager or his designee may approve the proposed amendment or modification without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals subject to further CEQA review. Any minor amendment must be made in writing signed by the City Manager (and approved by the City Attorney) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the amendment shall be recorded with the Santa Clara county recorder.

(b) For the purpose of this Agreement, a minor amendment shall include any extension, postponement or amendment of the time for commencement of construction of the Project that is concurrent and to the same extent as the time extension granted pursuant to an “exception to the loss of allotment” granted by the City council pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code.

(c) A “minor amendment” shall not include any of the following:

- (i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the permitted uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings, (5) provisions for reservation or dedication of land for public purposes, (6) general location of the uses or proposed buildings or (7) the relation of the project to adjacent properties; or
- (ii) Any material amendment or modification, or eliminations of provisions set forth in Article 2 of this Agreement or Exhibit C to this Agreement or any reduction in fees or Project Mitigations hereunder.

3.04 Amendments.

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the City Manager or his designee 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.

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 under 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 under this Agreement and the non-defaulting Party may exercise any of the remedies available under 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 under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

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

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

4.03 Resolution of Disputes.

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

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

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

4.04 Periodic Review.

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

(b) If, as a result of such periodic 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 under the RDCS.

4.05 Force Majeure Delay, Extension of Times of Performance.

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

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

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

4.06 Third Party Legal Actions.

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

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

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

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

4.07 Estoppel Certificate.

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

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

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

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

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

4.08 Assignment/Covenants Run with the Land.

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

obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

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

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

4.09 Encumbrances on the Property.

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

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated under

this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer under 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 under 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 under Bankruptcy Code section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

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

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

4.11 Compliance with Government Code Section 65867.5.

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

4.12 Termination.

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

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

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

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

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under 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. 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 under this agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$2,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$2,000,000

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 under this agreement and before permitting any Contractor or Subcontractors to perform work under this agreement, the Subdivider shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Subdivider as it may be applied to the Contractor's or Subcontractor's work.

(f) 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.

(g) 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 to the respective Party as follows:

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

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

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

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

(h) 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.

(i) 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.

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

(k) 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.

(l) 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.

(m) 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.

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

Exhibit A Description of Project

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

Exhibit C Project Requirements and Commitment (including RDCS)

Exhibit D Development Schedule

5.02 Limitations on Time to Challenge Validity of this Agreement. Developer shall have ninety (90) days from the date that the City Council approved this Agreement to commence and affect service of summons of any action or proceeding to attack, review, set aside, void or annul this Agreement or any part of this Agreement. Thereafter, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision of the proceedings, acts or determinations, including any provision of this Agreement or the enforcement hereof.

5.03 Notice of 90-day Right to Protest. Developer is hereby notified that Developer shall have ninety (90) days from the date of the imposition of any fees, dedications, reservations, or other exactions, to file a protest of the imposition of any such fees, dedications, reservations or other exactions; provided however that any challenge to the validity of any provisions of this Agreement, including Project Mitigations, or any RDCS or Project Specific Requirements, shall be subject to Section 5.02 and that this notice of the right to protest shall not supplant, extend or start anew any protest period already commenced pursuant to previous notices.

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

CITY OF MORGAN HILL:

DEVELOPER:

s/ _____

s/ _____

City Manager

Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

Attest:

s/ _____

s/ _____

Name/Title [print]

Deputy City Clerk

Date: _____

Approved as to Form:

s/ _____

Interim City Attorney

Date: _____

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

Attachment: E- Cochrane-Toll Brothers AAE2017-0017 (1147 : Mass 2017 DAAs)

EXHIBIT A**DESCRIPTION OF PROJECT:**

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

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

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

PARCEL ONE:

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

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

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

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

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

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

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

Attachment: E- Cochran-Toll Brothers AAE2017-0017 (1147 : Mass 2017 DAAs)

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

PARCEL TWO:

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

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

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

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

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

Assessor's Parcel No. 728-34-027

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to Phase 1 (15 FY 13-14 allotments/15 FY 2016-17 allotments), Phase 2, (25 FY 15-16 allotments), and **Phase 3, 16 FY 18-19 allotments** of the Development proposed in the following respective RDCS applications MC 11-03: Cochran-Borello, MC 13-12: Cochran-Borello, MC 14-14: Cochran-Borello and **RDCS 2016-0015: Cochran Borello** and shall apply to that portion of the Property included in the said phases of the development on the Property. Certain of the restrictions and requirements may be a partial allocation of the total requirements the Developer has committed as conditions of the total RDCS allotments awarded to the entire Project. 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 under CEQA, impact fee, in-lieu fees or other requirements under federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

Municipal Code Reference	Description of Requirement	<u>Time of Implementation</u> (specify date or phase #)	<u>Estimated Cost or Fee Amount*</u>
18.78.210	Schools		
1. Developer fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.		
3. Off-site pedestrian safety improvements	MC 11-03: Applicant will provide off-site pedestrian safety improvements or traffic safety improvements near or on a MHUSD school site valued at (\$825 X 5 = \$4,125) \$4,125 dollars per unit or pay an in-lieu fee equal to \$4,125 dollars per unit or develop any other improvements valued at \$4,125 dollars per unit to be determined by the MHUSD.	FY 2013-2014 allotments	\$4,125/unit

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3. Off-site pedestrian safety improvements	Project commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department. Said fee shall not exceed \$4,125 dollars per unit. MC 13-21 and MC 14-12: Will provide off-site pedestrian safety improvements or traffic safety improvements near or on a MHUSD school site valued at (\$825 X 5 = \$4,125) \$4,125 dollars per unit or pay an in-lieu fee equal to \$4,125 dollars per unit or develop any other improvements valued at \$4,125 dollars per unit to be determined by the MHUSD. RDCS 2016-0015: Will provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within 3/4 miles of the project site or to a middle school or high school up to \$4,950 per unit or develop any other improvements valued at \$4,950 as determined by MHUSD and the City of Morgan Hill Public Works Department.	FY 2015-2016 & FY 2016-2017 Allotments FY 2018-2019 Allotments	\$4,125/unit \$4,950/unit
18.78.220	Open Space		
1.a Open space buffer	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Applicant commits to providing a minimum 10ft buffer in excess to the standard along Peet Rd (arterial). Minimum setback for fence/wall on side yard is 15ft (20ft average). For front yard, minimum 30ft.		
1.b Common useable open space	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Private open space areas and amenities are to be maintained by a Homeowners Association.		
1.c Convenient access to parks	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Applicant to provide a minimum 7ft wide pedestrian/bicycle pathway in areas no less than 20ft wide		

	with an average of 30ft wide. Cannot be redundant of public sidewalks and will provide convenient direct and safe access to the centrally located park.		
1.d Accessibility to parks/open space	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: For consistency with prior scoring of application, applicant will provide minimum 7ft wide pathway in area no less than 20ft wide. Pathway will provide access through SCVWD property to "The Ranch at Alicante" subdivision which has pathway that provides better access to Coyote Creek Park on north side of Cochrane Rd.		
2. Percentage of buildings Ratio to open space	MC 11-03: Provides less than 20% building coverage. MC 13-21 and MC 14-12 and RDCS2016-0015: Provides less than 25% building coverage	FY 2013-2014 allotments FY 2015-2016, FY 2016-2017 and FY2018-2019 allotments	
4. Transfer Development Credit (TDC)	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Applicant commits to purchase TDC's at a ratio of one TDC for every twenty units in project.	Paid prior to certificate of occupancy	
18.78.240	Public Facilities		
2.a Grids water mains to existing system	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Project proposes to grid water in future phases Peet to Cochrane.	FY 2013-2014/FY 2015-2016/ FY 2018-2019 allotments	

2.b Design consistent with city storm drain system	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Drainage concept will be consistent with City's Storm drain system (e.g., the City Storm Drainage Master Plan, local area storm drain system).		
2.c Location of storm drain lines	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: All Storm drain lines will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works. Public Storm Drain Lines that are to be maintained by the City shall be constructed within a paved area or a location acceptable to the Director of Public Works.		
2.d Design of on-site detention/retention pond	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Applicant will provide an oversized detention pond along Cochran Road. Oversized detention ponds shall be provided because the adjacent Alicante Ranch project cannot accept any additional flows. Additional storage capacity shall be provided at the direction of the Director of Public Works.		
2.f Provides public improvements	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Will provide public facilities, off site storm drainage or pedestrian improvements from a City approved list at a rate of \$4400/unit per stated requirements.	FY 2013-2014, FY 2015-2016, FY 2016-2017, and FY 2018-2019 allotments	\$4,400.00/unit
2.g Contribution to RDCS Capital Improvements fund	MC 11-03: Applicant will contribute \$1,100 per unit to the RDCS Capital Improvement Program Fund:	FY 2013-2014 allotments	\$1,100 per unit
18.78.250	Parks and Paths		
2. Amenities	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Swimming Pool Restroom Area		

	Tot Lot Club house with kitchen area Tennis Court Recreation Hall Exercise Room Cabana/Shade Trellis 1/2 Court Basketball Court		
3. Bike paths/equestrian trails	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Applicant commits to the criteria above and agrees to install 6.1 Miles of Class II Bike Lanes where required by the 2008 Bicycle Master Plan (244/10*0.25)=6.1 Miles. (1 Mile = 5280 ft.) Applicant commits to a total of 32,208 Linear Feet of Class II bike lane improvements. Prior to installation, the Project shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed		
5. Neighborhood park	MC 11-03/MC 13-21: Project will provide 3.5-acre open space/park plus provide public pathways to link all the open space areas to the pathway system within the adjacent developments.		
6. Lesser of Double standard park impact fees in effect (State Amount)	MC 11-03, MC 14-12 and RDCS2016-0015: Applicant agrees to pay the lesser of double the required in-lieu park fees or \$1,100 per unit.	FY 2013-2014, FY 2016-2017, and FY2018-2019 allotments	\$1,100/unit
18.78.260	Housing Needs		
B1 15% Secondary Dwellings	MC 11-03/MC 13-21 and MC 14-12 and RDCS2016-0015: The developer to providing a minimum of 15% secondary units for the entire project.		

2a Standard Housing Fees	MC 11-03/RDCS2016-0015: <i>Applicant commits to pay Double the standard housing fee, and to provide a minimum of 20 percent of the overall dwellings with secondary dwelling units. 244 lots with 49 secondary units (20.08% of total project)</i> Commits to payment of double the current standard housing fee (\$150,000 X 2 = \$300,000) computed at 8% of the total units. MC 13-21 and MC 14-12: <i>Applicant commits to payment of the standard housing fee and to and to provide a minimum of 20 percent of the overall dwellings with secondary dwelling units. 244 lots with 49 secondary units (20.08% of total project)</i>		
18.78.270	Housing Types		
1. Diversity of types and categories	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Applicant is committing to provide 15% sf detached, 15% secondary dwelling units, and 15% single story sf units.		
3. Variation of sizes	MC 11-03/MC 13-21 and MC 14-12 and RDCS2016-0015: The project will provide for a variation of housing sizes within the project. The proposed project provides at least a fifty percent variation in house size from the smallest to largest floor plan and each house size represents at least ten percent of the total units. (three points) For purposes of making the above determination, there must be at least three (3) different floor plans and there must be a two hundred square foot difference between the size of each floor plan (less than two hundred square feet difference will be aggregated as one floor plan).		
4. Visitability accessible units	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: The project will provide at least 25 percent of the dwellings		

	as visitability accessible units will be awarded one point. Visitability units are accessible dwellings that have one zero-step entrance on an accessible route; all main floor interiors, including bathrooms, with 32 inches of clear passage space; and at least a half-bath on the main floor usable for a person in a wheelchair.		
18.78.280	Quality of Construction		
1. Conservation of resources	MC 11-03: The following improvements shall be included in each home: • Recycling center built in to cabinet layout with pull out bins. • Noncombustible siding. • 5/8 sheet rock in all interior bathroom. • Appliances shall be Energy Star rated. • Full exterior OSB/Plywood wrap with window/door flashing. • 5/8" Type "X" sheetrock in all interior walls. • Mud room from garage into home on 30% of homes. MC 13-21: The following improvements shall be included in each home: • Full exterior OSB/Plywood wrap with window/door flashing. • 5/8" Type "X" sheetrock in all interior walls. • Mud room from garage into home on 30% of homes • Recycle center built in to cabinet layout with pull outs for bins. • Noncombustible Siding and roofing Materials except for window, fascia and door trim on all homes.		

	• Energy Star rated fresh air exhausts system in home. MC 14-12/RDCS2016-0015: The following improvements shall be included in each home: • Full exterior OSB/Plywood wrap with window/door flashing. • Installation of light weight wallboard for all walls excluding code requirement for fire walls. • Installation of one dedicated 3/4inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage. • Installation of 90% high efficiency fan forced heating. • Zoned heating and air condition for all one and two-story homes. • Listed sound attenuated materials in wall that adjoin a bathroom and or bedroom walls. • Installation of high efficiency energy star water heater with energy factor of 0.70. • <i>Installation of ultra-high efficiency or dual flush toilet</i> • Install rain sensor monitor in irrigation system.		
18.78.290	Lot Layout and Orientation		

a. Avoids deep or narrow lots and provides side yard setbacks that exceed city requirements by 20%.	Side yard setbacks (majority) shall exceed city requirements by 20%.		
c. Avoids sharp angled lots	No sharp angled lots or poor building sites proposed.		
d. Driveways < 150 ft. long—	No driveways of 150 feet in length are proposed.		
e. Transition of lot sizes	A sufficient transition in lot sizes shall be proposed in the site plan design to allow compatibility between existing and proposed neighborhoods.		
g. Exterior design	Each floor plan/elevation repeats less than 3.5 times.		
2. Street design			
a. Location to parks and open space	Park/open space area shall be aggregated into a large meaningful area.		
b. Visibility of entrances	Over 75% of the units' entrances are visible from the public right of way.		
3. Variety of setbacks			
a. Between units - front	A minimum five-foot front setback variation is provided between adjoining units.		
b. Between units - rear	A minimum five-foot rear setback variation is provided between single-family dwellings.		
c. Variation of lot widths	A four-foot variation in standard lot widths (excluding cul-de-sac lots) and each lot width represents at least 10 percent of the total lots.		
d. Garage placement	At least 50% percent of units have side-loading, detached, rear garages, or two car garages with tandem parking space to accommodate a third vehicle inside the garage.		
4. Measures to reduce noise	Project commits to:		

	• Greater setbacks at project boundaries. • Sound insulation in units exposed to higher noise levels than average or on specific units as required by the Director of Planning. • Minimizing windows on the side of the units. • Locating AC units away from property lines.		
18.78.300	Circulation Efficiency		
1.a Discourage fast traffic	Project will have gated private streets.		
1.b Future street extensions	The project will provide the Peet Road/Hill Road realignment per the City's General Plan • Project will provide the following internal improvements: Privately maintained private streets. • Storm water bio-swales. • Project specific street sections will be utilized. • Roadway system that meets City Standard R-Values and allow for a looping pattern of circulation.		
1.d Looping pattern of circulation	Interior streets and/or drive aisles are designed to meet all city safety and parking standards and allow for a looping pattern of circulation.		
1.e Eliminate existing stubs	Full street improvements will be constructed as part of the Peet/Hill Road realignment work. The internal roadway system will meet City Standard R-Values and allow for a looping pattern of circulation		
1.g Minimum 20 ft. clear view backout distance	The project will provide for a minimum 20-foot clear view back outdistance between enclosed garage space and roadway and/or drive aisle.		
1.h Multiple access streets	All phases will have access from two separate streets.		

1.i Landscaped islands and entry monument	Islands and entry statements will be provided at all project entries.		
1.j Facilitates emergency response	The proposed access points to the project will provide adequate circulation for emergency response and police patrol.		
2.a Internal circulation for local residents	Internal project circulation is designed for use primarily by local residents.		
2.b Avoids undesirable future traffic situations	No double frontage lots. No utility easements in rear or side yards of private property. No landlocked property.		
2.c Detached sidewalks	MC 14-12: Project shall include detached sidewalks with a minimum five foot street landscape strip	FY 2016-2017 and FY 2018-2019 allotments	
Minimize damage to surrounding streets.	The project shall document the condition of the existing surrounding right-of-ways prior to any on-site grading. Any damage caused to the adjacent or surrounding right of ways as a result of the project's construction activity shall be the responsibility of the project to repair and restore to the satisfaction of the City Engineer.		
3a. Convert existing lights to LED	Converts existing city lighting to energy efficient LED lights at a ratio of one street light conversion per dwelling unit. The cost of the light conversion shall be at least equal to or greater than \$ 750.00 per unit.	FY 2016-2017 & FY 2018-2019 allotments	

4. Dedication or improvement to existing streets and parking lots outside of project	MC 11-03 & MC 14-12 and RDCS2016-0015: The project will install full street improvements on the realignment of Peet Road at a cost of \$2200/unit. Should the cost exceed \$2200/unit for said Peet Road realignment, applicant will install offsite improvements from the City approved list. The project has committed to install full street improvements along the full length realigned section of Peet Road between Half Road and the northwesterly boundary of the project. MC 13-21: The project will install street improvements along the length of the re-aligned section of Peet Road between Half Road and the northwesterly boundary of the project. The applicant has obtained letters from the affected property owners agreeing to the required dedication at a cost of \$1,100 dollars per unit or pay an in-lieu-fee equal to \$1,100 dollars per unit. Said fee shall not exceed \$1,100 dollars per unit.	FY 2013-2014, 2016-2017 & FY 2018-2019 allotments FY 2015-2016 allotments	\$2200/unit \$1,100/unit
18.78.310	Safety and Security		
1.a Provide fire escape ladder, fire extinguishers and fire proof safe.	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: : Units shall have a fireproof safe installed; the safe shall be bolted to the floor or other suitable location.	FY 2013-2014 FY 2015-2016, FY 2016-2017, and FY 2018-2019 allotments	
1.b Provide first aid kit	Applicant agrees to provide a first aid kit with a poison control document installed in the kitchen area of each D.U.		
1.d Provide outdoor lighting	Project will provide: • Outdoor lighting to meet all police department specifications. • Lockable hardware on all side yard gates.		

	On-site lighting (or modified electrolier) to a minimum of 1.5 foot candles in all park and common areas		
1.e Illuminated address numbers and curb numbers	Developer will install illuminated address numbers for each unit and painted reflective curb numbers. <i>House identification number markers will be installed at the entrance of each cul-de-sac</i> .to be maintained by the homeowners association.		
2. Non-combustible siding materials	Noncombustible siding will be used on 50% of units comprising of at least 75% of the siding on each unit.		
2a. Natural Surveillance 2b. Territorial Reinforcement 2c. Natural Access Control	Project will include features that maximize the visibility of people, parking and entrances Features that include landscape plantings, paving designs, and gateway treatments that define property lines and distinguish private space from public space Project shall include features that promotes natural access control by designing streets, walkways and entrances to clearly indicate public routes and discourage access to private areas		
3. Monitored alarm system	MC 11-03/MC 13-21, MC 14-12 and RDCS2016-0015: Each unit shall have installed an intrusion alarm; fire alarm and heat detector system monitored by a central station and meets City ordinance. A one-yr monitoring contract shall be provided with home purchase and commits to deliver to the homeowner a City specific responsible listing card that the MH Police Dept. can keep on file.		

5. Neighborhood emergency preparedness program through HOA	Project commits to neighborhood Emergency Preparedness Program administered through a homeowners association or central property management.		
6. Carbon monoxide detection device	Each unit shall be provided a hardwired carbon monoxide detection device or devices with battery backup. The installations of the devices are to be located per manufacturer's requirement with at least one detector per floor of the residence.		
7. Neighborhood "Watch Program" in CC&R's	The developer shall include provisions in the Covenants, Conditions and Restrictions (CC&R's) of the homeowners association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development.		
18.78.320	Landscaping, Screening and Color		
1.a 24" box-size trees within project	Agrees to provide twenty-four-inch box-size trees at a ratio of one box-size tree per ten trees.		
1.b Shading and screening of group parking areas	Sufficient planting will be provided around the necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.		
1.c Varied front yard landscaping	Varied front yard landscaping plans will be installed by the developer.		
1.d Energy saving trees on south walls—	Deciduous trees will be planted along the south-facing side of homes		
1.e Adheres to Street Tree Master Plan	Project will conform to a Street Tree Master Plan		
2.a Drought tolerant grasses	Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn.		

2.b Automatic irrigation systems	Automatic irrigation systems utilize separate valve and circuits for trees.		
2.d Use of water conserving plants	The landscape to be installed by the developer will include pervious hardscape coverage on at least fifteen percent of the landscape area.		
2.e Separate water source for irrigation of common area	A separate water source (e.g., well, import or recycled water) to irrigate common area landscape areas that are maintained by a homeowners association.		
3. Visible landscaping to public	Landscaping shall be installed on all areas visible from public and private rights-of-way.		
4. Minimize drainage runoff	Project will install pervious pavement in all open parking lots, driveways and sidewalk areas to minimize drainage runoff.		
18.78.330	Natural and Environmental		
1.a Minimize grading	Foundation types will be designed to minimize grading of the site and road alignment follows and maintains existing ground elevation to the greatest extent possible. Minimal grading is considered a fill or excavation of less than two feet in depth (four feet is acceptable for detention ponds or required fill for flood protection), and restricts the amount of runoff caused by impervious surfaces and the covering of land area suitable for percolation or bio-swailes where applicable.		
1.c Preserves trees	Each building site and project circulation plan shall preserve significant trees as defined in Section 12.32.020G of the Morgan Hill Municipal Code.		
2.a Over and above commitments made in Quality of Construction,	MC 11-03: The project will add 50 BIG points beyond the commitments in the Quality of Construction category		

the proposed development will install the following:			
2.a Over and above commitments made in Quality of Construction, the proposed development will install the following:	MC 13-21, MC 14-12 and RDCS2016-0015: The project will add 40 BIG points beyond the 70-point commitment in the Quality of Construction category		
2.b Minimizes use of sound walls	Landscape buffer areas shall be provided at Cochrane Road, Peet /Hill Road.		
3. Pre-wired for alt. energy	A 2.4 KwH solar system shall be installed on all homes. MC 14-12 and RDCS2016-0015: Install solar photovoltaic panels to offset 60% of anticipated electrical energy demand of residential unit.		
4.b All homes use alternative power for home electricity	A 2.4 KwH solar system shall be installed on all homes. Install solar photovoltaic panels to offset 60% of anticipated electrical energy demand of residential unit.		
18.78.335	Livable Communities		
a. Porches and balconies	Uses porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project on at least 25% of units to promote a neighborhood feel		
b. Roof lines	Home plans retain two different roof lines and two different pitches throughout.		
c. Profiles and massing	The proposed project conforms to the existing development that adjoins to the north.		
d. Relief and details	All materials and window detailing wrap all four sides of each home. Rear and side elevation offsets between first		

	and second floors provide architectural interest. The color schemes are plotted to provide the additional variety and each scheme is utilized on less than 15% of the homes.		
2b In residential areas by constructing school bus bench and shelter within common area maintained by an HOA or at a location approved by the MHUSD.	Project commits to install a reinforced street bus pullout area across the street from Live Oak High School. The applicant will provide the pullout, shelter and bench.		
7. Provides privacy for residents	Uses design and layout techniques that give individuals maximum privacy within and outside the homes. Such techniques include the off set of windows between units, alternating outdoor patio areas and entrance and consideration of fence height in relation to grade changes.		

EXHIBIT D

DEVELOPMENT SCHEDULE MC 11-03/MC 13-21/MC 14-12/RDCS2016-0015: Cochran-Borello Fiscal Year 2013-14 (15 allotments)/ Fiscal Year 2015-16 (25 allotments)/Fiscal Year 2016-17 (15 allotments)/Fiscal Year 2018-19 (16 allotments)

I. SUBDIVISION AND ZONING APPLICATIONS

Applications Filed:

09-01-09

II. SITE REVIEW APPLICATION

Application Filed:

04-08-13

III. FINAL MAP SUBMITTAL

Map, Improvements Agreement and Bonds:

FY 2013-2014 – (15 units)

FY 2015-2016 – (25 units)

FY 2016-2017 – (15 units)

IFY 2018-2019 – (16 units)

IV. BUILDING PERMIT SUBMITTAL

Submit plans to Building Division for plan check:

FY 2013-2014 – (15 units)

FY 2015-2016 – (25 units)

FY 2016-2017 – (15 units)

FY 2018-2019 – (16 units)

03-01-16

03-01-18

03-01-17

03-01-19

V. BUILDING PERMITS

Obtain Building Permits:

FY 2013-14 – (15 units)

FY 2015-16 – (25 units)

FY 2016-17 – (15 units)

FY 2018-19 – (16 units)

05-30-16

05-30-18

11-30-17
~~05-30-2017~~

05-30-, 2019

VI. COMMENCE CONSTRUCTION

FY 2013-14 – (15 units)

FY 2015-16 – (25 units)

FY 2016-17 – (15 units)

FY 2018-19 – (16 units)

01-15-17*

06-30-18*

~~06-30-17~~

06-30-19

**The allocation extensions are effective only if the Master Building Plan set is approved by August 1, 2016 and the final map for phase I (21 lots) of the San Sebastian project is recorded prior to October 31, 2016.*

Failure to commence construction by the dates listed above, shall result in the loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least 72 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

F

RESOLUTION NO. 17-__

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT DA 14-09 (AAE 2017-0006): MONTEREY - KB EXTENDING THE COMMENCEMENT OF CONSTRUCTION DATE FOR SIX-MONTHS FOR 26 FISCAL YEAR 2015-2016 AND 26 FISCAL YEAR 2016-2017 ALLOTMENTS. (APN 726-53-001 THRU 726-53-058)

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 26 building allotments (FY2015-2016) and 26 building allotments (FY2016-2017) for application MC-13-12, and awarded 6 building allotments (FY2016-2017) for application MC-14-13: Monterey-KB Gippetti; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

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

WHEREAS, on September 2, 2015, the City Council adopted Ordinance No. 2170, N.S which approved a Development Agreement for application DA-14-09: Monterey- KB Gippetti. Reference is hereby made to that certain Agreement on file in the office of the City Clerk of the City of Morgan Hill. The agreement 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; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and;

WHEREAS, the period between October 2016 and April 2017 the City of Morgan Hill received approximately 29.3 inches of rain representing 142 % of the annual rainfall within a six and month period. The excessive rainfall is considered a severe act of nature, has resulted in saturated soils and flooding which has left the San Sebastian project unable to meet the current commencement of construction deadline; and

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow a for an extension of up to six-months due to delays caused by severe act of nature; and

Attachment: F Mo-KB (Gippetti) PC Reso AAE2017-0006 (1147 : Mass 2017 DAAs)

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

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

SECTION 1. The project has been diligent in pursuing all necessary approvals, a recorded final map, has pulled a grading permit and has pulled 58 building permits but the extraordinary amount of rainfall has delayed the project site work resulting in delays in utility installation and creation building pads therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

SECTION 2. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a six-month extension for the Monterey-KB project, Fiscal Year 2016-2017 building allotments for MC-13-12: Monterey-UCP and MC-14-13: Monterey-KB Gippetti, and recommends the City Council amend the project Development Agreement as shown in the attachment Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

Attachment: F Mo-KB (Gippetti) PC Reso AAE2017-0006 (1147 : Mass 2017 DAAs)

Exhibit B shall be amended as follows:

EXHIBIT B
DEVELOPMENT SCHEDULE
MC-13-12: 52 allotments/MC-14-13: 6 allotments
Fiscal Years: 2015-2016 and 2016-2017

I.	SUBDIVISION AND ZONING APPLICATIONS		
	Applications Filed:		09-02-15
II.	SITE REVIEW APPLICATION		
	Application Filed:		02-04-16
III.	FINAL MAP SUBMITTAL		
	Map, Improvements Agreement and Bonds:		
	FY 2015-16 MC-13-12 (26 allotments)		02-04-16
	FY 2016-17 MC-13-12 (26 allotments)		02-04-16
	FY 2016-17 MC-14-13 (6 allotments)		02-04-16
IV.	BUILDING PERMIT SUBMITTAL		
	Submit plans to Building Division for plan check:		
	FY 2015-16 MC-13-12 (26 allotments)		07-01-16
	FY 2016-17 MC-13-12 (26 allotments)		07-01-16
	FY 2016-17 MC-14-13 (6 allotments)		07-01-16
V.	BUILDING PERMITS		
	Obtain Building Permits:		
	FY 2015-16 MC-13-12 (26 allotments)		04-01-17
	FY 2016-17 MC-13-12 (26 allotments)		04-01-17
	FY 2016-17 MC-14-13 (6 allotments)		04-01-17
VI.	COMMENCE CONSTRUCTION:		
	FY 2015-16 MC-13-12 (26 allotments)	12-30-17	06-30-17
	FY 2016-17 MC-13-12 (26 allotments)	12-30-17	06-30-17
	FY 2016-17 MC-14-13 (6 allotments)	12-30-17	06-30-17

Failure to obtain building permits by the dates listed above shall result in the loss of building allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least [7] dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Attachment: F Mo-KB (Gippetti) PC Reso AAE2017-0006 (1147 : Mass 2017 DAAs)

G

RESOLUTION NO 17-__

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT DA 15-02 (AAE 2017-0012): CHURCH-PRESIDIO EXTENDING THE COMMENCEMENT OF CONSTRUCTION DATE FOR SIX-MONTHS FOR EIGHT FISCAL YEAR 2016-2017 ALLOTMENTS. (APN 817-01-001)

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded eight (8) building allotments for application MC-14-08: Presidio-Mana Monterey for FY 2016-2017; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

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

WHEREAS, on September 2, 2015, the City Council adopted Ordinance No. 2166, N.S which approved a Development Agreement for application DA-15-02: San Pedro-Presidio; and

WHEREAS, on July 20, 2016, the City Council adopted Ordinance No. 2210, N.S. which approved an amended Development Agreement incorporating four (4), FY 2017-2018 building allotments awarded to MC-15-11: San Pedro: Presidio Mana Monterey; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and;

WHEREAS, in the period between October 2016 and April 2017 the City of Morgan Hill received approximately 29.3 inches of rain representing 142 % of the annual rainfall within a six and month period. The excessive rainfall is considered a severe act of nature, has resulted in saturated soils and flooding which has left the "The Commons" project unable to meet the current commencement of construction deadline.

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow a for an extension of up to 6-months due to delays caused by severe act of nature; and

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

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

Attachment: G San Pedro-Presidio PC Reso AAE2017-0012 (1147 : Mass 2017 DAAs)

SECTION 1. The project has been diligent in pursuing all necessary approvals, a recorded final map, has pulled a grading permit and has approved master building plans; but the extraordinary amount of rainfall has delayed the project site work resulting in delays in utility installation and creation building pads therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

SECTION 2. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a 6-month extension for eight (8), Fiscal Year 2016-2017 building allotments for application AAE2017-0012: Church-Presidio and recommends the City Council amend the project Development Agreement as shown in the attachment Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

Attachment: G San Pedro-Presidio PC Reso AAE2017-0012 (1147 : Mass 2017 DAAs)

Exhibit B shall be amended as follows:

EXHIBIT B
DEVELOPMENT SCHEDULE
MC-14-08: San Pedro: Presidio Mana Monterey 8, FY 2016-2017 Allotments
MC-15-11: San Pedro: Presidio Mana Monterey 4, FY 2017-2018 Allotments

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Approved:	08-14-07
II.	SITE REVIEW APPLICATION	
	Application Filed:	07-29-15
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	
	FY 2016-17 (8 allotments)	05-30-16
	FY 2017-18 (4 allotments)	05-30-17
IV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	
	FY 2016-17 (8 allotments)	12-30-16
	FY 2017-18 (4 allotments)	12-30-17
V.	BUILDING PERMITS	
	Obtain Building Permits:	
	FY 2016-17 (8 allotments)	03-30-17
	FY 2017-18 (4 allotments)	03-30-18
VI.	COMMENCE CONSTRUCTION:	
	FY 2016-17 (8 allotments)	06-30-17 12-30-17
	FY 2017-18 (4 allotments)	06-30-18

Failure to obtain building permits by the dates listed above shall result in the loss of building allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least 6 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Attachment: G San Pedro-Presidio PC Reso AAE2017-0012 (1147 : Mass 2017 DAAs)

H

RESOLUTION NO. 17-__

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT DA 12-03 (AAE 2017-0015): WATSONVILLE-DIVIDEND EXTENDING THE COMMENCEMENT OF CONSTRUCTION DATE FOR SIX-MONTHS FOR EIGHT FISCAL YEAR 2016-2017 ALLOTMENTS. (APN 779-57-027)

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded eight (8) building allotments for application MC 10-01: Watsonville-Dividend for FY 2016-2017; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

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

WHEREAS, on April 3, 2013, the City Council adopted Ordinance No. 2067, N.S. which approved a Development Agreement establishing ‘commence construction’ dates for a 24-unit portion of the 36-unit project which received allotments from MC 10-01: Watsonville-Dividend; and

WHEREAS, on June 3, 2015, the City Council adopted Ordinance No. 2149, N.S. which approved an amended Development Agreement incorporating eight (8), FY 2015-2016 allotments and granting a 12-month extension of time to the commence construction on eight, FY 2014-2015 allotments; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant’s control; and;

WHEREAS, in the period between October 2016 and April 2017 the City of Morgan Hill received approximately 29.3 inches of rain representing 142 % of the annual rainfall within a six and month period. The excessive rainfall is considered a severe act of nature, has resulted in saturated soils and flooding which has left phase two of the Connemara project unable to meet the current commencement of construction deadline.

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow a for an extension of up to six-months due to delays caused by severe act of nature; and

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

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

Attachment: H Watsonville-Dividend PC Reso AAE2017-0015 (1147 : Mass 2017 DAAs)

SECTION 1. The project has been diligent in pursuing all necessary approvals, a recorded final map and has pulled a grading permit but the extraordinary amount of rainfall has delayed the phase two project site work resulting in delays in utility installation and creation building pads therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

SECTION 2. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a six-month extension for the eight (8), Fiscal Year 2016-2017 building allotments for application AAE 2017-0015: Watsonville-Dividend and recommends the City Council amend the project Development Agreement as shown in the attachment Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

Attachment: H Watsonville-Dividend PC Reso AAE2017-0015 (1147 : Mass 2017 DAAs)

EXHIBIT A

Exhibit B shall be amended as follows:

EXHIBIT B
DEVELOPMENT SCHEDULE
MC-10-01: Watsonville-Dividend

FY 2012-13 (16 allotments); FY 2014-15 (8 allotments); FY 2016-17 (8 allotments +4 existing)

I. SUBDIVISION APPLICATION		
Applications Filed:		March 29, 2012
II. SITE REVIEW APPLICATION:		March 29, 2012
III. FINAL MAP SUBMITTAL		
Map, Improvements Agreement and Bonds:		
FY 2012-2013 (16 allotments)		December 1, 2013
FY 2014-2015 (8 allotments)		December 1, 2014
FY 2016-2017 (8 allotments)		December 1, 2016
IV. BUILDING PERMIT SUBMITTAL		
Submit plans to Building Division for plan check:		
FY 2012-2013 (16 allotments)		January 1, 2014
FY 2014-2015 (8 allotments)		January 1, 2016
FY 2016-2017 (8 allotments)		January 1, 2017
V. BUILDING PERMITS		
Obtain Building Permits		
FY 2012-2013 (16 allotments)		May 1, 2014
FY 2014-2015 (8 allotments)		May 1, 2016
FY 2016-2017 (8 allotments)	November 30, 2017	May 1, 2017
Commence Construction:		
FY 2012-2013 (16 allotments)		June 30, 2014
FY 2014-2015 (8 allotments)		June 30, 2016
FY 2016-2017 (8 allotments)	December 30, 2017	June 30, 2017

Failure to commence construction by the dates listed above, shall result in the loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least 7 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Attachment: H Watsonville-Dividend PC Reso AAE2017-0015 (1147 : Mass 2017 DAAs)

RESOLUTION 17- ____

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
DENIAL OF DEVELOPMENT AGREEMENT
AMENDMENT AND DENYING EXTENSION FOR SEVEN
(7) FISCAL YEAR 2015-2016 AND FIVE (5) FISCAL YEAR
2016-2017 BUILDING ALLOTMENTS FOR
APPLICATION AAE2017-0018: EAST DUNNE - BUSK
(APN 817-19-044)**

WHEREAS, the Planning Commission on February 25, 2014, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded seven (7) building allotments for application MC-13-16: East Dunne – MDMH Investors for FY 2015-2016 and five (5) building allotments for FY 2016-2017; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

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

WHEREAS, on April 6, 2016, the City Council adopted Ordinance No. 2195, N.S which approved a Development Agreement for application MC-13-16: East Dunne – MDMH Investors, said ordinance included a six-month extension to the seven (7), FY 2015-2016 allotments; and

WHEREAS, on January 18, 2017, the City Council adopted Ordinance No. 2228 N.S. which approved an amended Development Agreement granting a six-month extension of time to commence construction on the seven (7), FY 2015-2016 allotments, said ordinance further stipulated as a condition of the six-month extension all dates within Exhibit B of the Development Agreement shall become hard deadlines and if any of the deadlines were missed, all allotments shall expire immediately. Ordinance No. 2228 further stipulated that no further extensions will be provided; and

WHEREAS, under Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only if the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow a for an extension of six-months for the seven (7), FY 2015-2016 allotments and the five (5), FY 2016-2017 allotments; and

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

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

SECTION 1. As documented in the Planning Commission Report dated April 25, 2017, the Commission finds that the preponderance of processing delays is attributable to the applicant's failure to:

- 1) The Site Review application was not submitted in a timely manner. Site Review application SR 2017-0003 was filed on January 31, 2017, eight-months after the first extension granted under Ordinance 2195 and two-months after the second extension granted under Ordinance 2228.
- 2) As of April 13, 2017, the Site Review application has not been approved due to a conflict between the project's tree preservation commitments and the project improvement plans.
- 3) The applicant failed to submit master building permit plans to the City for processing until April 6, 2017.

The project applicant has not demonstrated that there are circumstances cause by City processing that have precluded the project from pulling the building permits to exercise the allotments, therefore it does not meet the criteria for extension.

SECTION 2. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission denies a six-month extension for application AAE2017-0018: East Dunne - Busk.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

RESOLUTION NO. 17-__

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF DEVELOPMENT AGREEMENT
AMENDMENT DA 14-10 (AAE2017-0018): DUNN-BUSK
GRANTING A SIX-MONTH EXTENSION FOR SEVEN (7)
FISCAL YEAR 2015-2016 AND FIVE (5) FISCAL YEAR
2016-2017 BUILDING ALLOTMENTS (APN 817-19-044)**

WHEREAS, the Planning Commission on February 25, 2014, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded seven (7) building allotments for application MC-13-16: East Dunne – MDMH Investors for FY 2015-2016 and five (5) building allotments for FY 2016-2017; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

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

WHEREAS, on April 6, 2016, the City Council adopted Ordinance No. 2195, N.S which approved a Development Agreement for application MC-13-16: East Dunne – MDMH Investors, said ordinance included a six-month extension to the seven (7) FY 2015-2016 allotments; and

WHEREAS, on January 18, 2017, the City Council adopted Ordinance No. 2228 N.S. which approved an amended Development Agreement granting a six-month extension of time to commence construction on the seven (7) FY 2015-2016 allotments, said ordinance further stipulated as a condition of the six-month extension all dates within Exhibit B of the Development Agreement shall become hard deadlines and if any of the deadlines were missed, all allotments shall expire immediately. Ordinance No. 2228 further stipulated that no further extensions will be provided; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only if the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow a for an extension of six-months for the seven (7), FY 2015-2016 allotments and the five (5) FY 2016-2017 allotments; and

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

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

SECTION 1. The project applicant has demonstrated that there are circumstances from extended City processing of the Final Map and Improvement Plans that have precluded the project from issuance of permits or granting of approvals required to exercise the allotments therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

SECTION 2. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a six-month extension for the seven, FY 2015-2016 building allotments and the five, FY2016-2017 building allotments for application AAE2017-0018: East Dunne – Busk and recommends the City Council amend the project Development Agreement as shown in the attachment Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

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Attachment: J-1 EDunne-Busk PC Reso AAE2017-0018 (1147 : Mass 2017 DAAs)

EXHIBIT A

EXHIBIT B

DEVELOPMENT SCHEDULE

MC 13-16: E. Dunne- MDMH Investors 7 FY 2015-16 & 5 FY 2016-17 Allotments

I. SUBDIVISION AND ZONING APPLICATIONS		
Applications Filed:		10-31-2014
II. SITE REVIEW APPLICATION		
Application Filed:		01-30-2017
III. FINAL MAP SUBMITTAL		
Map, Improvements Agreement and Bonds:		
FY 2015-16 (7 units)		10-24-2016
FY 2016-17 (5 units)		10-24-2016
IV. BUILDING PERMIT SUBMITTAL		
Submit plans to Building Division for plan check:		
FY 2015-16 (7 units)	04-06-2017	03-30-2017
FY 2016-17 (5 units)	04-06-2017	03-30-2017
V. FINAL MAP RECORDATION		
FY 2015-16 (7 units)	10-30-2017	04-30-2017
FY 2016-17 (5 units)	10-30-2017	04-30-2017
VI. COMMENCE CONSTRUCTION:		
FY 2015-16 (7 units)	12-30-2017	06-30-2017
FY 2016-17 (5 units)	12-30-2017	06-30-2017

Failure to obtain building permits by the dates listed above shall result in the loss of building allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least 7 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Attachment: J-1 EDunne-Busk PC Reso AAE2017-0018 (1147 : Mass 2017 DAAs)

K

RESOLUTION 17-__

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
DENIAL OF DEVELOPMENT AGREEMENT
AMENDMENT AND DENYING EXTENSION FOR SEVEN
(7) FISCAL YEAR 2015-2016 AND FIVE (5) FISCAL YEAR
2016-2017 BUILDING ALLOTMENTS FOR
APPLICATION DA 14-11 (AAE2017-0019): MONTEREY-
CENTRAL ECA (APN 726-23-020)**

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 12 building allotments for application MC-13-14: Monterey-Central ECA, seven (7), FY 2015-2016 and five (5), FY 2016-2017 allotments; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

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

WHEREAS, on July 20, 2016, the City Council adopted Ordinance No. 2212, N.S which approved a Development Agreement for application DA-14-11: Monterey-Central ECA and granted a 12-month extension to the five (5), FY 2015-2016 allotments; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only if the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow for an extension of the FY 2015-2016 and FY 2016-2017 allotments for six-months due to delays caused by the City, not a result of developer in action; and

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

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

Attachment: K Mo-ECA PCReso AAE2017-0019 (1147 : Mass 2017 DAAs)

SECTION 1. As documented in the Planning Commission Report dated April 25, 2017, the Commission finds that the preponderance of processing delays is attributable to the applicant's failure to:

- 1) The applicant has not received Site Review application approval in a timely manner. SR 15-17: Monterey-Central was submitted to the City on July 24, 2015. The application sat dormant for 15-months until revised site review plans were submitted to the City on February 2, 2017. The City contacted the applicant on October 4, 2016, November 2016 and December 2016 requesting revised plans.
- 2) Final map and improvement plans were submitted to Public Works on December 15, 2016, six-months after the tentative map approval on June 14, 2016.
- 3) The applicant has failed to submit master building permit plans to the City for processing.

The project applicant has not demonstrated that there are circumstances cause by City processing that have precluded the project from pulling the building permits to exercise the allotments, therefore it does not meet the criteria for extension.

SECTION 2. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission denies a six-month extension for application AAE2017-0019: Monterey-Central ECA.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

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Attachment: K Mo-ECA PCReso AAE2017-0019 (1147 : Mass 2017 DAAs)

K-1

RESOLUTION NO. 17-__

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF DEVELOPMENT AGREEMENT
AMENDMENT DA 14-11 (AAE2017-0019): MONTEREY-
CENTRAL ECA AND GRANTING A SIX-MONTH
EXTENSION FOR SEVEN (7) FISCAL YEAR 2015-2016
AND FIVE (5) FISCAL YEAR 2016-2017 BUILDING
ALLOTMENTS (APN 726-23-020)**

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 12 building allotments for application MC-13-14: Monterey-Central ECA, seven (7), FY 2015-2016 and five (5), FY 2016-2017 allotments; and

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

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

WHEREAS, on July 20, 2016, the City Council adopted Ordinance No. 2212, N.S which approved a Development Agreement for application DA-14-11: Monterey-Central ECA and granted a 12-month extension to the five (5), FY 2015-2016 allotments; and

WHEREAS, pursuant to Section 18.78.170.F of the Municipal Code, the Planning Commission may approve an extension only if the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to earthquake, flood, fire, or other severe act of nature outside of the applicant's control; and

WHEREAS, the applicant is currently requesting to amend the Development Agreement to allow for an extension of the FY 2015-2016 and FY 2016-2017 allotments for six-months due to delays caused by the City, not a result of developer in action; and

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

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

SECTION 1. The project applicant has demonstrated that there are circumstances from extended City processing of the Final Map and Improvement Plans that have precluded the project from issuance of permits or granting of approvals required to exercise the allotments therefore it does meet the criteria for extension to the date by which these allotments must be exercised.

Attachment: K-1 Mo-ECA PC Reso AAE2017-0019 (1147 : Mass 2017 DAAs)

SECTION 2. Based on the findings required in Section 18.78.170 of the Municipal Code the Planning Commission approves a six-month extension for the seven, FY 2015-2016 building allotments and the five, FY 2016-2017 building allotments for application AAE2017-0019: Monterey-Central ECA and recommends the City Council amend the project Development Agreement as shown in the attachment Exhibit A.

PASSED AND ADOPTED THIS 25th DAY OF APRIL 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

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Attachment: K-1 Mo-ECA PC Reso AAE2017-0019 (1147 : Mass 2017 DAAs)

EXHIBIT A

Exhibit C of the development agreement shall be amended as follows:

EXHIBIT C
DEVELOPMENT SCHEDULE
MC-13-14: Monterey – Central ECA
FY 2015-2016 7 allotments/FY 2016-2017, 5 allotments

I.	ZONING APPLICATION Application Approved:		05-18-16
II.	SITE REVIEW APPLICATION Application Approved:	05-30-17	09-30-16
III.	BUILDING PERMIT SUBMITTAL Submit plans to Building Division for plan check: FY 2015-16, 7 allotments FY 2016-17, 5 allotments	06-30-17 06-30-17	01-05-17 01-05-17
IV.	BUILDING PERMITS Obtain Building Permits: FY 2015-16, 7 allotments FY 2016-17, 5 allotments	09-30-17 09-30-17	03-31-17 03-31-17
V.	COMMENCE CONSTRUCTION: FY 2015-16, 7 allotments FY 2016-17, 5 allotments	12-30-17 12-30-17	06-30-17 06-30-17

Failure to obtain building permits by the dates listed above shall result in the loss of building allotments. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allotments. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

If a portion of the project has been completed (physical commencement on at least one dwelling unit and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allotments for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Attachment: K-1 Mo-ECA PC Reso AAE2017-0019 (1147 : Mass 2017 DAAs)

**DEVELOPMENT SERVICES CENTER
COMMUNITY DEVELOPMENT DEPARTMENT**

PUBLIC NOTICE - LEGAL ADVERTISING SECTION

NOTICE IS HEREBY GIVEN THAT THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL WILL CONDUCT A PUBLIC HEARING ON THE FOLLOWING PROPOSAL(S) AT THE DATE, TIME AND LOCATION LISTED BELOW. ALL INTERESTED PERSONS ARE INVITED TO ATTEND THE HEARING AND PROVIDE COMMENTS.

DATE: April 25, 2017

TIME: 6:00 P.M.

LOCATION: City Council Chambers
Civic Center
17555 Peak Avenue
Morgan Hill, California 95037

DEVELOPMENT AGREEMENT, DA2017-0002: BUTTERFIELD-MWEST: Request for an Industrial Development Agreement for approximately 39 acres in the Morgan Hill Ranch Business Park. The properties, identified by Assessor's Parcel Numbers 726-25-046, -047, -059, -066, -067, -070, -073, -078 and -079 are located on the west side of Butterfield Boulevard between Jarvis Drive and Digital Drive (Divco West SVI, Owner). CEQA: Certified EIR for the Morgan Hill Ranch Business Park.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0004: COCHRANE - CALATLANTIC: Request for a Development Agreement Amendment to add 12, Fiscal Year 2017-2018 and 52, Fiscal Year 2018-2019 building allotments to an existing Development Agreement. The properties, identified by Assessor Parcel Numbers 728-59-001, 728-59-002, 728-59-013, 728-56-013, and 728-56-045, are located on the north corner of Cochrane Road and Mission View Drive (Cal Atlantic Homes, Owner). CEQA: Mitigated Negative Declaration completed.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0006: MONTEREY - KB: Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The properties, identified by Assessor Parcel Numbers 726-53-001 thru 726-53-058, are located on Monterey Road, south east of the intersection of Monterey Road and Old Monterey (KB Homes, Owner). CEQA: Mitigated Negative completed.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0008: LAUREL - DEROSE: Request for a Development Agreement Amendment to add 13, Fiscal Year 2016-2017, one, Fiscal Year 2017-2018 and 11, Fiscal Year 2018-2019 building allotments to a previously approved Development Agreement. The request also includes a 6-month extension of the commencement of construction dates. The property, identified by Assessor Parcel Number 726-01-008, is located north of Laurel Road and east of Walnut Grove Drive (Denise DeRose, Owner). CEQA: Addendum to Mitigated Negative Declaration completed.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0009: CONDIT -MANA: Request for a Development Agreement Amendment to add 44, Fiscal Year 2018-19 and 30 Fiscal Year 2017-2018 building allotments to an existing Development Agreement. The property, identified by Assessor Parcel Number 817-12-009 is located on the north side of San Pedro Avenue between Condit Road and Murphy Avenue (Evergreen

Attachment: 04-25-2017 PC PHN TO NEWSPAPER (1147 : Mass 2017 DAAs)

Investments Group 2: Kenneth Chung, Owner). CEQA: Addendum to approved EIR.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0012: SAN PEDRO – PRESIDIO VAN DAELE MONTEREY: Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 817-01-001, is located on the northwest corner of San Pedro Avenue and Church Street (VanDaele Homes, Owner). CEQA: Mitigated Negative Declaration completed.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0014: ALTIMARA – VENTURA/ALICANTE: Request for a Development Agreement Amendment to add 5, Fiscal Year 2017-2018 building allotments to an approved Development Agreement. The request also includes a request for a 6-month extension to the commencement of construction date. The property, identified by Assessor Parcel Number 728-55-017, is located on the south side of Altimira Circle, easterly of the intersection with Mission Avenida (Lupine Investors, LLC, Owner). CEQA: Addendum to Mitigated Negative Declaration.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0015: WATSONVILLE - DIVIDEND: Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 779-57-027 is located on the south side of Watsonville Road at the southerly terminus of La Alameda (Dividend Homes, Owner). CEQA: Mitigated Negative Declaration completed.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0016: MONTEREY - GUNTER: Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 726-23-008, is located on north of the intersection of Monterey Road and Main Street, on the east side of the road (Gunter Building, LLC., Owner). CEQA: Mitigated Negative Declaration completed.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0017: COCHRANE – TOLL BROTHERS: Request for a Development Agreement Amendment for a 6-month extension to the commence of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 728-34-026, is located on Cochrane Road adjacent to Alicante Estates and Alicante Ranch bordered by Peet Road and Coyote Road (Toll Brothers, Owner). CEQA: Previously adopted Environmental Impact Report.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0018: E. DUNNE - BUSK: Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 817-19-044, is located on the southeast corner of the intersection of East Dunne Avenue and Murphy Avenue (Betty Busk, Owner). CEQA: Mitigated Negative Declaration completed.

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0019 MONTEREY – CENTRAL/ECA: Request for a Development Agreement Amendment for a 6-month extension to the commencement of construction date as set forth in an approved Development Agreement. The property, identified by Assessor Parcel Number 726-23-020, is located on the south west corner of Central Avenue and McLaughlin Avenue (EAC Partners, LLC., Owner). CEQA: Mitigated Negative Declaration completed.

NOTICE IS ALSO GIVEN, pursuant to Government Code Section 65009, that any challenge of the above application(s) 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 Planning Commission at, or prior to the public hearing on this matter.

Attachment: 04-25-2017 PC PHN TO NEWSPAPER (1147 : Mass 2017 DAAs)

Additional information regarding these proposals is available for review at the Development Services Department Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Further information may be obtained from the Development Services Department at telephone number (408) 778-6480 or planning@morganhill.ca.gov.

Date: April 10, 2017
Published: April 14, 2017

Attachment: 04-25-2017 PC PHN TO NEWSPAPER (1147 : Mass 2017 DAAs)



RUGGERI-JENSEN-AZAR

A.
AAE 2017-0004 (DAA-14-06):
COCHRANE-CAL ATLANTIC

2.R

January 25, 2017

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

DEVELOPMENT
SERVICES

FEB 09 2017

CITY OF MORGAN HILL

Re: Development Agreement Amendment Request – Lantana-Wisteria Development

Dear Planning Staff,

On behalf of our client, CalAtlantic Homes, RJA is filing this Development Agreement Amendment application to amend DA 14-06.

Lantana-Wisteria is a 135-unit residential development project. The previously approved Development Agreement, DA 14-06, includes a total of 71 allocations from the 2013 and 2014 RDCS competitions (MC 13-10, MC 13-11, MC 14-03 & MC 14-04). Subsequent to DA 14-16's approval, the applicant participated in the 2015 (MC 15-13) and 2016 RDCS (RDCS 2016-0013) competitions, and received 12 allocations and 52 allocations to complete the project, respectively.

The attached Development Agreement Amendment application proposes to include the 64 allocations awarded in the 2015 and 2016 RDCS competitions.

Thank you for your consideration.

ROSS DOYLE

Sincerely,
Ross Doyle

Senior Planning Project Manager
Ruggeri Jensen Azar

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)



RUGGERI-JENSEN-AZAR

ENGINEERS • PLANNERS • SURVEYORS

February 24, 2017

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

DEVELOPMENT
CITY OF MORGAN HILL

Re: Development Agreement Amendment Request – *Presidio For Sale*

Dear Planning Staff,

On behalf of our client, Mana Investments, RJA is filing the attached Development Agreement Amendment application package to amend DA2016-005.

Presidio For Sale is a 9-acre, 74-unit residential development project, located on the north side of San Pedro Avenue, between Condit and Murphy Roads. The previously-approved Development Agreement, DA2016-005, includes a total of 30 allocations from the 2015 RDCS competition (MC-15-17: FY 2016/2017). Subsequent to DA2016-005's approval, the applicant participated in the 2016 competition (RDCS2016-0014: FY 2018/2019), and received 44 allocations, which totals the project buildout.

The attached Development Agreement Amendment application proposes to include the 44 allocations as referenced above.

Thank you for your consideration.

Sincerely,
Ross Doyle

Senior Planning Project Manager
Ruggeri Jensen Azar

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

C.
AAE 2017-0008 (DAA-15-05)
LAUREL-DEROSE

THINK RENEW INSPIRE

March 22, 2017

Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Attn: Terry Linder

Re: Development Agreement Amendment Request – Madison Gate (DA-15-05)

Terry,

Madison Gate is a 7-acre, 65-unit residential development project, located on the north side of Laurel Road, between Honda of Morgan Hill and Trader Joe's. The previously approved Development Agreement, DA-15-05 (recorded on 11-14-2016), includes a total of 20 allocations from the 2014 and 2015 RDCS competitions (MC-14-16: FY 2016/2017 & MC 15-06: FY 2017/2018). Subsequent to DA 15-05's approval, the applicant participated in the 2016 competition (RDCS2016-0014: FY 2018/2019), and received 11 allocations. Subsequent to this award, the project received an additional 14 allocations to be added to the FY 2016/2017 total pursuant to City Council action on February 15th.

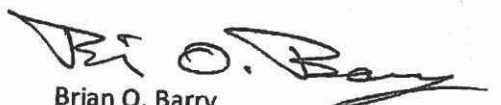
The attached Development Agreement Amendment application proposes to include the 25 allocations as discussed above.

Also, due to the inclement weather over the last two months, which has affected construction schedules across Northern California, Madison Gate has suffered an unforeseen delay. Furthermore, the current forecast suggests more wet weather, which could further delay the project start. Thinking of this, we request an extension to our deadline to obtain building permits and commence construction per below:

- | | | |
|-----|--|---------------------|
| V. | BUILDING PERMITS (Obtain Building Permits) | |
| | FY 2016-17 (5 allocations + 14 per above = 19 allocations) | 5-31-17 7-30-17 |
| | FY 2017-18 (15 allocations) | 5-31-18 (no change) |
| VI. | COMMENCE CONSTRUCTION | |
| | FY 2016-17 (5 allocations + 14 per above = 19 allocations) | 6-30-17 8-30-17 |
| | FY 2017-18 (15 allocations) | 6-31-18 (no change) |

Thank you for your consideration.

Sincerely,


Brian O. Barry
Vice President of Project Management

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

D.

**AAE 2017-0004 (DAA-15-10):
ALTIMIRA-DIVIDEND**

Ventura Investors LLC
c/o Dividend Homes, Inc.
385 Woodview Ave. Suite 100
Morgan Hill, CA 95037
408-779-5900
roliver@dividendhomes.com

March 22, 2017

Terry Linder
Planning Department
City of Morgan Hill
17571 Peak Ave.
Morgan Hill, CA 95037

DEVELOPMENT
SERVICES

MAR 22 2017

CITY OF MORGAN HILL

Re: Development Agreement Amendment including Extension of Time
Altimira-Ventura/Alicante MC-14/15/DA-15/10

Terry:

Attached is our formal application for a Development Agreement Amendment, including an extension of time to meet the "commencement of construction" requirement of the Development Agreement.

Phase 1 of the Altimira 7-Lot project is for the first 2 lots. This project is adjacent to the Proposed Borello School site which we offered for dedication to the MHUSD over 13 years ago. Prior to our acquiring the site from the Borello family, and prior to the offer of dedication, the site had some toxic issues; however, the Borello family mitigated the toxics in the soil and obtained a site clearance from the State DTSC. Approximately 3 acres of the site was approved by the City for seven homes (2 in Phase 1 and 5 in Phase 2). The project has an approved Site Development Plan, Approved Arch and Site approval, a Development Agreement, a Vesting Tentative Map and the Final Map has been ready for submittal for almost a year.

The MHUSD as part of their due diligence, just in this past year conducted additional soil testing on the adjoining property; and, for reasons that no one can explain toxics reappeared in the soil. That prompted a requirement on the 7-Lot portion of the property that we retest the soil. We did; and, levels of toxic showed up in the soil. Again, no one can explain why. We have gone through at least three rounds of testing, with at least one or two more required, when the rains came and prevented the soil testing to be completed. After the tests are completed and after we are able to obtain a Remedial Action Work Plan (RAW) from the DTSC, we can proceed with the remediation. It is the considered opinion of the soil consultants that up to two feet of soil on the 7-lot property will likely have to be removed from the site (and probably from the school site as well) and taken to an approved disposal site. The rain and requirement for additional testing have detained the obtaining final approval from the State of California which will cause a serious delay of at least one year for the two lots in Phase 1 to proceed.

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

It is physically impossible for us to complete the soil mitigation, grading and pad certification a by the June 30, 2017 deadline set in our Development Agreement. We request the Commencement of Construction Date (for the 2 lots) be changed from June 30, 2017 to June 30, 2018 due to the rain caused delay and the very unexpected reemergence of toxics on the site and the resultant lengthy State review and approval process .

In the alternate and because a final map has not been recorded, this project falls into the transition period between the ending of Measure C, on March 1, 2017, and the commencement of Measure S, we believe that it would qualify for the Measure S provisions. Those provisions that replaces "Commencement of Construction" date with "the Recording of the Final Map" date in the Development Agreement, thereby avoiding the necessity of returning to the Planning Commission and City Council for an extension. We, therefore, request that the Development Agreement approved the change in Exhibit B, from "Commencement of Construction by June 30, 2017" to "Recording a Final Map by June 30, 2018".

Very truly yours,

Dividend Homes, Inc.



By: Richard B. Oliver
President

**AAE 2017-0017 (DAA-09-05):
COCHRANE-TOLL BROTHERS**

City of Morgan Hill
ATTN: Terry Linder
17575 Peak Avenue
Morgan Hill, CA 95037

DEVELOPMENT
SERVICES

LAR 2017

RE: Extension to the Loss of Building Allocation (ELBA)

Dear Terry,

CITY OF MORGAN HILL

Toll Brothers is requesting the City of Morgan Hill's planning commission and city council approve a 6 month extension to the potential Loss of 15 Building Allocations set to expire June 30th, 2017 for Borello Ranch Estates (a.k.a San Sebastian). Our request results from unforeseen acts of nature and archeological findings that interrupted construction timelines, resulting in a limited ability for Toll Brothers to meet "Commencement of Construction" on an additional 15 lots by the deadline of June 30th, 2017.

Borello Ranch Estates, formerly known as San Sebastian, has been well anticipated by the City of Morgan Hill since its initial allocation in 2010 as the first single family gated community. Toll Brothers closed on the property's first 54 lots last July. Since closing, site improvement plans and Final Maps were approved and site grading started last September.

During site grading and excavation work, archeological remains were discovered. These discoveries resulted in several months of delay while a team of Archeologists who worked with the Most Likely Descendant to appropriately relocate the remains.

Furthermore, site work was further delayed by historical rainfalls this season. To put it in perspective, rainfalls in the area were so significant that the Anderson Reservoir emergency spillway was activated for the first time in 11 years and caused record flooding throughout the region. The winter rains have delayed site work by over 3 months.

Due to the inability to work because of the rains, and archeological finds, the project had to shut down numerous times through the fall and winter. Even with these significant challenges, Toll was able to secure the first 15 building permits that were to expire on January 15, 2017.

Toll Brothers continues to make significant progress on this project and has established a team of reputable consultants that are committed to guide this project to completion. The below timeline summarizes key events since project approval.

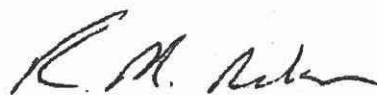
1. Planning Applications
 - o Zoning – **APPROVED**
 - o Tentative Map – **APPROVED**
 - o Vesting Tentative Map – **APPROVED**
 - o Development Agreement – **APPROVED**
 - o Design Permit/Site Review – **APPROVED**
2. Final Map – **APPROVED (Phase 1 and 1B, 54 units)**
3. Improvement Plans – **APPROVED (Phase 1 and 1B, 54 units)**
4. Master Plan Check Submittal – **APPROVED**

We trust the Planning Commission and City Council recognizes Toll has used its best efforts to secure its building allocations and had it not been for the historical winter rains and the archeological finds, this request would not have been made.

Sincerely,



Hugo Luna | Project Manager | Toll Brothers, Inc.
669.226.0774



Richard M. Nelson | Division President | Toll Brothers, Inc.
925.249.6000

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

F.
AAE 2017-0006 (DAA-14-09):
MONTEREY-KB



Mayor Steve Tate
Caitlin Robinett Jachimowicz, Council Member
Larry Carr, Mayor Pro Tem
Rich Constantine, Council Member
Rene Spring, Council Member
David Clink, City Treasurer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

DEVELOPMENT
SERVISE

FEB 17 2017

CITY OF MORGAN HILL

February 16, 2017

RE: Development Agreement Amendment for Monterey Parque/Gipetti

Dear Honorable Mayor Tate and City Council Members:

The intent of this letter is to respectfully request Council approval of an amendment to the Development Agreement (DA) by and between the City of Morgan Hill and KB Home, South Bay, Inc regarding the 52-Unit Single Family Attached and the 6-Unit Single Family Detached Monterey Parque – KB Gippetti Project.

KB Home has a successful track record in the City of Morgan Hill with numerous projects completed on schedule. On Monterey Parque, KB Home has made considerable strides in meeting its obligations under the DA schedule (including obtaining necessary approvals from the City to pull all 58 building permits, grade the site, perform joint trench work, etc.); however, unforeseen circumstances led to a period from May through November of 2016 where all work on the project stopped. Nevertheless, the issue that caused this delay has been resolved and we are back to work.

In addition to unexpected regulatory hurdles, we are dealing with an extremely wet winter that has made it impossible for us to meet the Development Schedule in the DA as recorded. Therefore, we respectfully request the Council approve an extension of the "Commence Construction" deadline in Exhibit B of the DA from June 30, 2017 to December 31, 2017 through a DA amendment.

Thank you for your time and thoughtful consideration.

Sincerely,

Ray Parlek,
Senior Vice President

KB HOME | 5000 EXECUTIVE PARKWAY | SUITE 125 | SAN RAMON, CA 94583

TEL 925 983 4000 | FAX 925 983 4590 | KBHOME.COM

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

G.
AAE 2017-0012 (DAA-15-02):
SAN PEDRO-PRESIDIO



March 15, 2017

Elaine Collins
Planning Technician
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA. 95037-6480

DEVELOPMENT
SERVICES

MAR 17 2017

CITY OF MORGAN HILL

Dear Ms. Collins;

**Subject Notice of Development Processing Deadline
Application MC-14-08/DA-15-02: San Pedro (The Commons)**

In response to your letter dated March 7, 2017 we would like to formally request an amendment to Development Agreement 15-02.

The Development Agreement for the project stipulates certain timelines most specifically the requirements to "obtain building permits" by March 30, 2017 and "commence construction" by June 30, 2017 on 8 of the 12 units.

Due to the extraordinary weather conditions we and the project experienced during the winter the project has been subjected to an inordinate amount of precipitation that has significantly slowed our process in the lot development and the improvements. We are moving forward with the project with all possible speed and are invoking additional and extraordinary measures to speed the process and expect to make great progress. We additionally have continued moving forward with all other aspects of the project including but not limited to;

- Installation of retaining and sound walls
- Approval of Final Map 12/2/16
- Improvement plans approved 10/19/16
- Architecture and Landscape submittals to 3rd plan check

Current soil conditions on the site due to the amount of rain we have experienced has not allowed the project grading operations to commence. If weather continues to improve we anticipate to start grading in the coming weeks and complete by the end of April.

This letter is to formally request an amendment to "Exhibit B" of DA-15-02 per the provisions of Municipal code Section 18.78.170. We specifically request an extension of the deadline as noted above as follows:

OBTAIN BUILDING PERMITS (8 units):
COMMENCE CONSTRUCTION (8 units):

June 30, 2017
September 29, 2017

We look forward to your response and the success of the project.

Thank you.

Christopher M. Warren
Senior Project Manager
cwarren@vandaele.com
P: 707-344-5665

AAE 2017-0015 (DAA-12-03):
WATSONVILLE-DIVIDEND

MH CONNEMARA 2013, LLC
Dividend Homes, Inc.
385 Woodview Ave. Suite 100
Morgan Hill, CA 95037
408-779-5900
roliver@dividendhomes.com

March 22, 2017

Terry Linder
Planning Department
City of Morgan Hill
17571 Peak Ave.
Morgan Hill, CA 95037

DEVELOPMENT
SERVICES
MAR 22 2017
CITY OF MORGAN HILL

Re: Development Agreement Amendment including Extension of Time
Watsonville-Dividend (Connemara) MC-10-01/DAA-12/03

Terry:

Attached is our formal application for a Development Agreement Amendment, including an extension of time to meet the "commencement of construction" requirement of the Development Agreement.

Phase 1 of Connermara has been completed. The final map for Phase 2 was recorded on November 23, 2016. The building permits are ready to be issued at any time, pending only the site improvement work being ready. The demolition of the existing structures and tree removal commenced in December and was about 90% completed when the rain commenced in December. The site is expected to be dry enough this next week (unless the rain returns) to complete the demolition and allow the mass grading of the streets to commence and installation of the utilities to the pads.

We were also requested by the City, in response to a neighbor concern, to voluntarily stop demolition for a week when the weather was predicted to allow us to complete the demolition. We did stop the work; however, the rain returned almost immediately thus preventing us from starting up again.

It is physically impossible for us to complete the grading, pad certification and to install the joint trench and extend the utilities to the pads by the June 30, 2017 deadline set in our Development Agreement. We request a Development Agreement extending the "Commencement of Construction" by six months due to the rain caused delay. There are also some minor adjustments to the Development Agreement that might be required which could be taken care of at this same time.

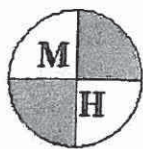
Very truly yours,

Dividend Homes, Inc.


By: Richard B. Oliver
President

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

I.
AAE 2017-0016 (DAA-06-06)
MONTEREY-GUNTER



MH engineer inc.

16075 Vineyard Blvd., Morgan Hill, CA 95037
(408) 779-7381/226-3050; Fax (408) 226-5712

MAR 23 2017

CITY OF MORGAN HILL

March 23, 2017

MH24191.3

City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Subject: Gunter – Monterey Road, Development Agreement Amendment

On behalf of Gunter Building, LLC and Mana Investments, LLC:

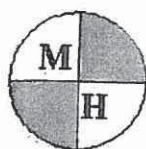
The land owner and developer are requesting the Commence Construction date to be extended to 12/31/2017. There have been unforeseen circumstances and occurrences for the owner/developer and the City that have caused a delay in the project moving to a point where it will be able to commence construction by the deadline set forth in the current Development Agreement.

Owner/Developer/Applicant reserves the right to supplement and amend this letter in the future if necessary.

Sincerely,
William J. McClintock

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

AAE 2017-0018 (DAA-14-10):
E. DUNNE- BUSK



MH engineering

16075 Vineyard Blvd., Morgan Hill, CA 95037
(408) 779-7381/226-3050; Fax (408) 226-5712

March 24, 2017

MH 24126

Letter of Request
Lands of Busk

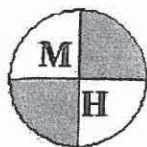
There have been unforeseen circumstances and occurrences for the owner/developer and the City that have caused a delay in the project moving to a point where it will be able to commence construction by the deadline set forth in the current Development Agreement. Owner/Developer/Applicant reserves the right to supplement and amend this letter in the future if necessary.

The "Busk" project was granted an Elba in October 2016, wherein the project is required to have Final Map approval on or before April 30, 2017 and commence construction on or before June 30, 2017. In October 2016 the project had been submitted to Public Works for second plan check. MH engineering completed the second plan check and resubmitted on December 16, 2016. The third plan check was received from public works on February 15, 2017, three months lapsed time. The third plan check had new comments, not seen on previous plan checks, with significant changes requiring four weeks to complete. Plans were resubmitted March 15, 2017.

All in all since October 2016, Public Works can be attributed to four months of delay.

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)

AAE 2017-0019 (DAA-14-11):
MONTEREY-CENTRAL EC/



MH engineer inc.

16075 Vineyard Blvd., Morgan Hill, CA 95037
(408) 779-7381/226-3050; Fax (408) 226-5712

March 24, 2017

MH 213064

Letter of Request
Monterey / Central
"Donut"

There have been unforeseen circumstances and occurrences for the owner/developer and the City that have caused a delay in the project moving to a point where it will be able to commence construction by the deadline set forth in the current Development Agreement. Owner/Developer/Applicant reserves the right to supplement and amend this letter in the future if necessary.

The "Donut" project has a commencement construction deadline of June 30, 2017. Improvement Plans and Final Map were submitted to Public Works on December 15, 2016 for first Plan Check. As of 3/24/17 we have not received the first plan check.

This is a lapse of four months, which is supposed to take 6 weeks. We will still need a second and possibly a third plan check which could take Public Works another four months. As of today Public Works has caused a delay of 10 weeks (2.5 mo.)

This project could catch up and commence construction by June 30, 2017 with diligent cooperation from Public Works, but this application for an extension also has a deadline to file today.

Attachment: Extension Requests Items A - K (1147 : Mass 2017 DAAs)



PLANNING COMMISSION STAFF REPORT

MEETING DATE: April 25, 2017

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: Jennifer Carman, Community Development Director

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

RECOMMENDATION(S)

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

BACKGROUND:

A comprehensive update of the City of Morgan Hill's Residential Development Control System (RDCS) was approved by voters on November 8, 2016 and became effective on March 1, 2017. The RDCS ordinance is codified in Chapter 18.78 of Title 18 (Zoning) of the Morgan Hill Municipal Code (attached).

Section 18.78.100 of the RDCS ordinance requires that the City Council adopt and maintain an RDCS Competition Manual (Manual) that establishes criteria and point values that the City will use to award allotments to competing residential projects. The Manual will contain policies to guide implementation of the RDCS.

Over the past six months, between October 11, 2016 and April 25, 2017, the Planning Commission has held 20 public workshops to review, consider input from the community, discuss, and provide feedback to the City team on revisions to the Draft Manual.

After completing its review of an earlier draft of the Manual in January 2017, the Planning Commission reviewed and approved an approach to testing how a range of project types in different locations would score according to the criteria, standards, and points available within the nine RDCS Objectives (e.g., Schools, Affordable Housing, etc.).

With help from a number of volunteers from the development community, our city team conducted an initial round of tests on 15 different projects. Based on the results from initial testing, the Planning Commission determined that adjustments to the competition criteria and points were necessary to ensure that different types of projects in a variety of locations could feasibly obtain a minimum score (160 out of 200 points) without voluntary improvements, dedications or contributions. Through subsequent rounds of changes and testing it was evident that certain classes of projects (Micro and Small, including custom lots) and projects with primarily single-family detached homes were

having difficulty achieving a minimum score.

The attached table summarizes how nine different test projects, including Micro, Small, and custom lot projects, could score based on the latest Planning Commission recommended changes to Section III (Competition, Criteria, Standards, and Points).

The Final Draft RDCS Competition Manual (attached), incorporates additional criteria and point revisions proposed by the Commission at the April 11 and 18, 2017 workshops. The summary table results indicate that all of the test projects, with the exception of the Custom Lot and Senior Projects, could achieve at least the minimum score with contributions that are less than or very close to what these projects contributed under Measure C. Four of the test projects could achieve scores that are close to the scores they earned under Measure C with a contribution amount that is close to their Measure C commitment.

CEQA (California Environmental Quality Act):

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the Residential Development Control System (RDCS) Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074) requirements.

LINKS/ATTACHMENTS:

1. Scoring Test Results
2. RDCS Chapter 18.78
3. RDCS Competition Manual

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Chapter 18.78 – Residential Development Control System

Sections:

18.78.010	RDSC Purpose and History
18.78.020	Amendments to RDSC Ordinance
18.78.030	Transitional Provisions
18.78.040	Population Limit
18.78.050	Allotments– General
18.78.060	Downtown and Agricultural Preservation Set Asides
18.78.070	Urban Service Area Boundaries
18.78.080	Competition for Allotments
18.78.090	Competition Categories
18.78.100	Competition Manual
18.78.110	Number of Available Allotments
18.78.120	RDSC Procedures – Application Submittal and Review, Project Scoring, and Award of Allotments [CCA]
18.78.130	Pre-Application Review [CCA]
18.78.140	Project Phasing [CCA]
18.78.150	Land Use Entitlements Required [CCA]
18.78.160	Expiration of Allotments [CCA]
18.78.170	Extensions [CCA]

Note: Sections which may be amended or repealed by the City Council without voter approval are identified with the note “[CCA]” following the section heading.

18.78.010 RDCS Purpose and History

A. Purpose. This chapter establishes requirements for the Morgan Hill Residential Development Control System (RDCS). The purpose of the RDCS is to:

1. Establish a limit on the amount and rate of residential growth in Morgan Hill through 2035.
2. Encourage high quality residential development that enhances residents' quality of life.
3. Ensure that new residential development does not adversely impact the level of public services and infrastructure provided for current and future residents.
4. Promote a diverse stock of high quality housing to meet the full range of housing needs within Morgan Hill.
5. Encourage new residential development to contribute community benefits that enhance the public health, safety, and welfare.
6. Encourage an orderly, efficient, and sustainable residential development pattern.
7. Advance the goals and policies of the General Plan and Downtown Specific Plan.
8. Provide certainty to residents that residential development patterns will reflect local goals and values.

B. History. The RDCS is a continuation and refinement of the voter-approved growth management system first established in Morgan Hill in 1977. The RDCS was originally approved by voters in response to concerns over the amount and pace of residential growth and the impacts of this growth on city services and infrastructure. RDCS ballot measures adopted by the voters include the following:

1. Measure E (1977), which set a target population of 30,000 for year 2000 and established the RDCS.
2. Measure P (1990), which refined the RDCS and established a population ceiling of 38,800 for 2010.
3. Measure C (2004), which again refined the RDCS and set the population ceiling to 48,000 for 2020.
4. Measure F (2006) and Measure A (2009), which established exemptions for units constructed Downtown.
5. Measure [TBD] (2016), which was adopted in conjunction with the City's General Plan Update to further refine the RDCS and set the population ceiling to 58,200 for 2035.

18.78.020 Amendments to RDCS Ordinance

This ordinance (Chapter 18.78 of the Morgan Hill Municipal Code) was adopted by the voters of Morgan Hill in 2016 and may be amended or repealed only with voter approval except as specified in subsections A and B below.

A. Amendments Allowed without Voter Approval. The following sections may be amended by an ordinance duly adopted by the City Council in accordance with state law:

1. 18.78.120 (RDCS Procedures – Application Submittal and Review, Project Scoring, and Award of Allotments).
2. 18.78.130 (Pre-Application Review).
3. 18.78.140 (Project Phasing).
4. 18.78.150 (Land Use Entitlements Required).
5. 18.78.160 (Expiration of Allotments).
6. 18.78.170 (Extensions).

B. Reorganizing and Renumbering of Municipal Code. The Morgan Hill Municipal Code may be reorganized or readopted in a different format, and individual provisions may be renumbered or reordered, in the course of ongoing updates of the Municipal Code, provided that the provisions of this ordinance adopted by the voters of Morgan Hill in 2016 remains in the Municipal Code unless earlier repealed or amended by the voters or by the City Council in accordance with subsection A, above.

18.78.030 Transitional Provisions

- A. Replacement of Prior RDCS Ordinance.** This ordinance repeals and replaces in its entirety the prior RDCS ordinances, previously codified in Division IV (Residential Development Code) of Title 18 (Zoning) of the Morgan Hill Municipal Code.
- B. Prior Actions Remain Valid.** Any City action taken or approval granted pursuant to the prior RDCS ordinance is not affected by the enactment of this ordinance. All future actions and approvals shall comply with this ordinance.
- C. Previously Approved Allotments.**
1. Allotments awarded and exercised prior to March 1, 2017 shall remain valid and are not affected by this ordinance.
 2. Allotments awarded prior to March 1, 2017 but which have not yet been exercised shall remain valid until the expiration date established at the time of allotment or as established in the project's Development Agreement. Applicant requests for an extension to the date by which these allotments must be exercised and City action on these requests are governed by Section 18.78.170 (Extensions) of this ordinance.
- D. No Changes to Prior Projects Required.** No provision of this ordinance shall require any change in the plans, construction, or design of the portion of a project which received allotments prior to March 1, 2017.

18.78.040 Population Limit

- A. Maximum Population.** Morgan Hill's population as of January 1, 2035 shall not exceed 58,200.
- B. Ceiling, Not a Target.** The 58,200 population limit is a maximum ceiling, not a target. The City is not required to actively strive to reach 58,200 residents by 2035. Instead, the City shall ensure that Morgan Hill's population does not exceed this limit by 2035 while continuing to meet the full range of housing needs in Morgan Hill.

- C. Limit to all Population Growth.** Morgan Hill's population limit is intended to limit all population growth, including growth from new housing exempt from receiving RDCS allotments as specified in Section 18.78.050.C (Exemptions from Allotments) and set-aside allotments awarded as allowed by Section 18.78.070 (Downtown and Agricultural Preservation Set Asides). The number of allotments available each year and the process to adjust this number is intended to ensure that residential growth from all sources does not result in a population that exceeds the population limit of 58,200 residents in 2035.

18.78.050 Allotments – General.

- A. Allotments Based on Population Limit.** The City Council shall establish a maximum number of residential allotments available each year, not to exceed 215 allotments per year, such that the population in Morgan Hill does not exceed 58,200 as of January 1, 2035.
- B. Allotment Requirement.** A residential allotment authorizes an applicant to apply for land use entitlements and to construct these units should the City approve these entitlements. No residential unit may be developed without first obtaining an allotment, except for exempt units specified in Section C below.
- C. Exemptions from Allotments.** The following types of residential projects may be developed without first receiving any allotments:
1. One single-family home on a lot existing as of March 1, 2017;
 2. Secondary dwelling units;
 3. The conversion of an existing single-family home into a duplex provided that a new detached primary structure is not constructed on the lot or lots;
 4. Assisted living/nursing homes; and
 5. The annexation of existing dwelling units outside of City limits into the City.
- D. Timing of Allotment Use.** To maintain a steady rate of residential development, allotments must be used ("exercised") by a specific date as established in Section 18.78.160 (Expiration of Allotments). Allotments that are not used by the specified date expire and are no longer valid. Projects with expired allotments must reapply for allotments in the same manner as all other new proposed projects requesting allotments.
- E. Rate of Growth.** The Planning Commission shall allocate available allotments each year with the goal of maintaining a steady rate of growth.
- F. Cancellation of Allotment Awards.** The City Council may cancel the process to award allotments upon finding that public services and facilities are inadequate to accommodate additional residential development and that awarding allotments would significantly impact the public health, safety and welfare.

18.78.060 Downtown and Agricultural Preservation Set Asides

- A. General.** Through 2035 a certain number of allotments are set aside for residential projects in Downtown Morgan Hill and for projects that contribute to the City's agricultural preservation goals.
- B. Eligibility.** To be eligible to receive set-aside allotments, a project must receive at least 80 percent of the total maximum score in the RDCS competition criteria.
- C. Competition Not Required.** Eligible projects are not required to compete for set-aside allotments. Instead, allotments are issued to eligible projects by the Planning Commission on a first-come, first-served basis up to the total number of available set-aside allotments each year.
- D. Number of Available Set-Aside Allotments.**
 - 1. **Downtown Set-Asides.** Through 2035, 500 allotments are set aside for housing within the Downtown Specific Plan boundaries set forth in the City's General Plan as of July 27, 2016. No more than 100 set-aside allotments are available for downtown projects within a single year.
 - 2. **Agricultural Preservation Set-Asides.** Through 2035, 300 allotments are set-aside for housing that may be applied anywhere within the City. Recipient projects must directly establish permanent agricultural conservation easements within the City Limits or within the City's Priority Agricultural Conservation Area. Easements must be established within the City's Sphere of Influence in a manner consistent with the Citywide Agricultural Lands Preservation Program. The number of allotments granted to an eligible project shall be commensurate with the community benefit obtained from the resulting preservation of agricultural lands. No more than 35 set-aside allotments are available for agricultural preservation projects within a single year.

18.78.070 Urban Service Area Boundaries

- A. Allotments within Urban Service Area Only.** The City may approve allotments only for projects located within the City's Urban Service Area boundaries.
- B. Application to Expand Urban Service Area.** The City may apply to the Santa Clara County Local Agency Formation Commission to expand the Urban Service Area boundary of the City to accommodate additional residential development if the City Council first makes all of the following findings supported by substantial evidence on the record of a duly noticed public hearing on the matter:
 - 1. The expansion is necessary to accommodate the amount, rate, location, and type of residential development envisioned in the General Plan.
 - 2. The expansion is consistent with any City adopted plans, policies, or ordinances specifying a preferred sequence of future annexations.
 - 3. Public services and infrastructure are or will be sufficient to accommodate development resulting from the expansion of the Urban Service Area boundary. Additional development will not adversely impact public services and infrastructure, including public schools, the transportation system, parks, police, fire service, storm drainage, wastewater, and water service.

4. The expansion supports an orderly development pattern that prioritizes infill development adjacent to existing development and served by existing public services and infrastructure.
5. The expansion is necessary to accommodate the housing and/or employment needs of Morgan Hill.
6. The expansion promotes fiscal responsibility, cost-effective service delivery, and the City's ability to plan for and adequately maintain urban services over time.

18.78.080 Competition for Allotments

- A. Annual Competition.** Each year the City may conduct a competition for allotments for development of residential units, except when the City Council cancels the competition allowed by Paragraph D below. Projects exempt from the RDCS competition as specified in Section 18.78.050.C (Exemptions from Allotments) and projects eligible for set-aside allotments as specified in Section 18.78.060 (Downtown and Agricultural Preservation Set Asides) do not participate in the competition.
- B. Minimum Score.** To be eligible to compete for allotments, a project must receive a minimum score of at least 80 percent of the total maximum score in the RDCS competition criteria.
- C. Award of Allotments.** The Planning Commission shall award allotments based on a scoring of projects using criteria established by the City Council pursuant to Section 18.78.100 (Competition Manual). The Planning Commission may award a project fewer than the total number of allotments requested by the applicant. In such a case, the Planning Commission may award the surplus allotments to the next highest scoring projects if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.
- D. Cancellation of Allotment Awards.** The City Council may cancel the process to award allotments upon finding that public services and facilities are inadequate to accommodate additional residential development and that awarding allotments would significantly impact the public health, safety and welfare, or if there is insufficient demand necessary to produce high quality developments.

18.78.090 Competition Categories

- A. General.** Each year the City Council may establish competition categories for certain types of projects. Projects within a competition category will compete for allotments only with other projects in the same competition category. For each competition category, the City Council shall identify the number of allotments available for projects competing within the competition category.
- B. Example Competition Categories.** Example of competition categories may include, but are not limited to, projects within the Monterey Road corridor, small projects (less than 15 units), senior housing, vertical mixed use, and multi-family rental.
- C. Affordable Housing.** When establishing competition categories, the City Council shall ensure that an adequate number of allotments are available for affordable housing projects consistent with the City's Regional Housing Needs Allocation (RHNA) and adopted Housing Element.

18.78.100 Competition Manual

The City Council shall adopt and maintain an RDCS Competition Manual that establishes criteria and point values for the RDCS competition. The Competition Manual shall define terms and provide detail as needed to ensure that the City awards points consistently for all competing projects.

A. Competition Criteria. The Competition Manual shall identify the criteria that the City will use to award allotments to competing projects. Competition criteria in the Competition Manual shall advance the nine City objectives below, which may be modified only with voter approval.

1. **Schools.** Provide safe and convenient access to schools and ensure high quality schools in Morgan Hill.
2. **Location.** Encourage infill development adjacent to existing development and close to existing community services and facilities.
3. **Affordable Housing.** Increase the supply of housing affordable to households of all incomes levels.
4. **Housing Diversity.** Provide a variety of housing types and sizes to meet the range of housing needs within Morgan Hill.
5. **Parks and Open Space.** Provide high quality parks and recreational facilities and protect and preserve open space and productive agricultural land.
6. **Environmental Protection.** Increase energy efficiency, renewable energy, energy conservation, water conservation, habitat protection, and achieve other sustainability goals.
7. **Transportation.** Support a balanced and efficient transportation system for pedestrians, cyclists, public transit, and automobiles that maintains quality of life in residential neighborhoods.
8. **Infrastructure and Services.** Emphasize efficient use of public infrastructure and services.
9. **Project Quality.** Ensure quality design related to general livability, public safety, neighborhood form, site planning, building design, and landscape design.

B. Points. The Competition Manual shall establish points available for competition criteria that advance the City goals identified in Section A above.

1. **Limitations on Number of Points and Changes.** The total number of points for each of the nine objectives above (e.g., schools, location, affordable housing, etc.) shall be no more than 20 percent and no less than 5 percent of the total number of available RDCS competition points. The City Council may adjust the number of points within each objective by no more than 15 percent of the points available within the objective the previous year.
2. **Intent of Points.** Points shall be awarded only for projects that provide for excellence in project design and provide a community benefit that exceeds minimum requirements of the City and other governmental agencies. All projects must comply with City standards established in the General Plan, Municipal Code, and other City rules and regulations together with other applicable laws.

C. Revisions to Criteria and Points. In order to promote long term consistency and reduce uncertainty for applicants for residential development, the City Council shall amend competition criteria and point values in the Competition Manual only when necessary and no more frequently than once a year. The Planning Commission shall recommend to the City Council any revisions to the competition criteria and/or point values. If amended, competition criteria and/or point values shall be established no later than six months prior to the RDCS application submittal deadline.

18.78.110 Number of Available Allotments

A. Annual Allocations. Beginning with the competition in year 2017, the City may allocate no more than 215 allotments in any given year for residential development that must compete for allotments. Set-aside allotments as described in Section 18.78.060 (Downtown and Agricultural Preservation Set-Asides) may be awarded in addition to the annual allotment maximum.

B. Annual Reductions to Available Allotments. Each year staff shall provide the Planning Commission with an assessment of conditions, per the findings below, that may necessitate a reduction in the number of available allotments. No later than six months prior to the RDCS application submittal deadline each year, the Planning Commission may recommend and the City Council may reduce the number of available allotments for an RDCS competition year upon finding that:

1. Reducing the number of allotments is necessary to prevent a sudden spike in construction of new housing caused by a backlog of awarded allotments which have not yet been exercised.
2. Public infrastructure and services are or will be inadequate to accommodate the new development. Public infrastructure and services include public schools, the transportation system, parks, police, fire service, storm drainage, wastewater, and water service.
3. Other conditions are present that necessitate a reduction in the number of available allotments to achieve the RDCS purpose as stated in Section 18.78.010 (RDCS Purpose and History).
4. Downtown and/or Agricultural Preservation Set-Aside allotments have been issued. The number of annual allotments must be reduced to address the issuance of any set-aside allotments.
5. There is insufficient demand necessary to produce high quality developments or public benefits.

18.78.120 RDCS Procedures – Application Submittal and Review, Project Scoring, and Award of Allotments [CCA]

- A. Pre-Competition Orientation.** The City shall hold an open pre-competition orientation meeting at least four months prior to the RDCS application submittal deadline. At this meeting the City shall review with prospective applicants the RDCS schedule, application requirements, and competition criteria for awarding points.
- B. Pre-Application Review.** To be eligible to submit an RDCS application, applicants must have completed Pre-Application Review as described in Section 18.78.130 (Pre-Application Review).
- C. Applications.** Applicants shall submit an RDCS application consisting of the information and materials required by the City. Applications shall be submitted on a date determined by the Community Development Director. Applications may not be modified after submittal except as otherwise provided for in this chapter.
- D. General Plan and Zoning Consistency Determination.** After deeming an RDCS application complete, the Community Development Director or the Director's designee shall evaluate each application for consistency with the City's General Plan and Zoning Code and reject any applications which are found to be inconsistent with either the City's General Plan or Zoning Code. The Community Development Director's determination is appealable to the City Council. The City Council may direct the applicant to make modifications to the application and if these modifications bring the application into compliance with the General Plan and Zoning Code the application may continue to compete for allotments.
- E. Staff Scoring of Applications.** After deeming an RDCS application complete and consistent with the General Plan and Zoning Code, the Community Development Director or Director's designee shall recommend point assignments to projects using scoring criteria established by the City Council. City staff shall forward recommended scoring to the Planning Commission.
- F. Planning Commission Hearings – Project Scores.** The Planning Commission shall hold a public hearing to consider the scoring recommendation and to make a final determination of project scoring.
- G. Staff Recommendation – Award of Allotments.** After the completion of the appeal period following the Planning Commission determination of project scoring, the Community Development Director or the Director's designee shall recommend the award of allotments based on the project scoring. City staff shall forward recommended award of allotments to the Planning Commission.
- H. Planning Commission Hearings – Award of Allotments.** The Planning Commission shall hold a public hearing to consider the award of allotment recommendation and to award allotments based on the project scoring. The Planning Commission may award fewer than the total number of allotments requested for a project and may award allotments to lower-scoring projects if doing so would create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.
- I. Appeals.** All decisions of the Planning Commission may be appealed to the City Council pursuant to Municipal Code Chapter 18.64.

- J. Development Agreement.** The City may issue building permits only after the applicant has entered into a Development Agreement with the City confirming the specific development commitments made by the applicant at the time the Planning Commission awarded allotments.

18.78.130 Pre-Application Review [CCA]

- A. Pre-Application Review Requirement.** Applicants may apply for allotments only after completing the Pre-Application Review process. Pre-Application Review is required only once for a development project – projects which previously received allotments and reapply for additional allotments in subsequent competitions are not required to complete Pre-Application Review again prior to reapplication. Significant changes to a project, as determined by the Community Development Director, will require Pre-Application Review.
- B. Project Quality and Consistency.** Pre-Application Review allows City staff to evaluate the overall project quality as well as consistency with the General Plan, any applicable specific plan, the Morgan Hill Municipal Code, Architectural Review Handbook, and other applicable City rules and regulations. Pre-Application Review is intended to help ensure that projects receiving allotments can be built consistent with their approved RDCS application.
- C. Timing and Schedule.** The Community Development Director shall establish a schedule for submittal of materials and City staff review that provides sufficient time for the completion of Pre-Application Review prior to the RDCS application submittal date.
- D. Project Information Required.** Applicants shall submit information and materials for Pre-Application Review necessary to present the project concept and demonstrate compliance with City land use and neighborhood design policies in the General Plan. Detailed architectural plans are not required. Materials submitted for Pre-Application Review become part of the public record and are not confidential.
- E. Multi-Department Review.** The City Planning Division of the Community Development Department, Engineering Division of the Public Works Department, and other City staff involved in the land use entitlement approval process shall participate in the Pre-Application Review.
- F. Review Letter.** After reviewing the submittal and meeting with the applicant, the Community Development Director shall provide applicants with a Pre-Application Review Letter either making a preliminary finding that for the purposes of the RDCS competition the project is consistent with City policies and ordinances, or recommending changes to a project necessary to achieve consistency with those policies and regulations. The Pre-Application Review Letter is not a project approval or final determination by the City as to a project's conformity to City policies and ordinances.
- G. Applicant Response.** Applicants shall submit their Pre-Application Review Letter with their allotment application and any response, if needed, detailing the changes made to the project to address staff comments, or reasons why changes were not possible or desirable.
- H. Planning Commission Consideration.** The Planning Commission shall consider the Pre-Application Review Letter and the applicant's response to the letter when awarding competition points under the Project Quality criteria category.

18.78.140 Project Phasing [CCA]

- A. Multi-Year Allotments.** The Planning Commission may distribute allotments awarded to a single project over multiple years as allowed by this section.
- B. Intent.** Multi-year allotments are intended to support a fair and efficient RDCS process by allowing high quality projects constructed over multiple years to compete one time for allotments.
- C. Eligibility.** The Planning Commission shall have the discretion to determine which projects are eligible for multi-year allotments.
- D. Number of Years.** The Planning Commission may award allotments over a period of up to:
 - 1. Three years for projects with less than 100 units; and
 - 2. Five years for projects with 100 or more units.
- E. Findings.** The Planning Commission may award multi-year allotments to projects only upon finding that:
 - 1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing;
 - 2. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development;
 - 3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and
 - 4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.
- F. Use of Allotments.**
 - 1. Multi-year allotments must be exercised by the date specified by the Planning Commission consistent with Section 18.78.160 (Expiration of Allotments).
 - 2. If allotments for one year are not exercised by the specified expiration date, all multi-year allotments awarded to the project shall expire.
- G. Regular Rate of Growth.** Allotments awarded for future years shall be subtracted from the number of allotments available to other projects in those years so as to maintain a regular rate of growth consistent with the RDCS.

18.78.150 Land Use Entitlements Required [CCA]

- A. Authorization to Apply for Entitlements.** An award of an allotment is not an entitlement to develop. Allotments authorize an applicant to apply for land use entitlements and to construct these units should the City approve the required land use entitlements.
- B. Effective Allotment.** Applicants may submit an application for land use entitlements only after receiving an award of allotment. Planned Development Zoning applications may be filed prior to receiving an award of allotment.

- C. Finding of Compliance with Approved RDCS Application.** To approve land use entitlements, the City must find that the project substantially complies with the RDCS application as approved by the Planning Commission.

18.78.160 Expiration of Allotments [CCA]

- A. Exercise of Allotment.** Allotments must be exercised within 30 months of approval or by an alternative date specified in the Development Agreement. An allotment is considered exercised with the recordation of a final map, issuance of a grading permit, or the commencement of construction if no final map or grading permit is required. The City may grant an extension to an allotment only as permitted under Section 18.78.170 (Extensions).
- B. Expiration.** Allotments that are not exercised consistent with the terms above expire the day following the exercise date specified in the Development Agreement.
- C. Reapplication.** Projects with expired allotments must reapply for allotments in the same manner as all other new proposed projects requesting allotments.

18.78.170 Extensions [CCA]

- A. General.** The City may approve an extension to the date by which an allotment must be exercised only as allowed by this section.
- B. Extension Request.** Extension requests shall be submitted in writing to the Community Development Department a minimum of 60 days prior to the allotment expiration date and shall describe how the project meets the extension eligibility criteria in Subsection F below.
- C. Administrative Extension.** For projects that received allotments under the previous RDCS, but have not secured a Development Agreement, the Community Development Director may issue a six month extension.
- D. Number and Duration.** In addition to receiving an Administrative Extension and/or prior extensions under the previous RDCS, a project may receive no more than one extension for a maximum one additional year period. Phased projects may only receive one one-year extension.
- E. Public Notice and Hearing.** The Planning Commission shall review and act on an extension request at a noticed public hearing.
- F. Eligibility Criteria.**
1. The Planning Commission may approve an extension only when the City or other public agency is responsible for a delay in the issuance of permits or granting approvals required to exercise the allotments, or due to an earthquake, flood, fire, or other severe act of nature outside of the applicant's control. It is the applicant's responsibility to provide evidence that the request is consistent with this requirement.
 2. The Planning Commission may not approve an extension for any reason other than in Paragraph E.1 above, including but not limited to difficulties obtaining financing, changes to the project not required by the City or other public agencies, applicant delays responding to requests from the City or other public agency, personal circumstances of the applicant, or changes in property ownership.

- G. Appeals.** Planning Commission denial of a requested extension may be appealed to the City Council. The City Council may grant the appeal only upon finding that the request complies with the eligibility criteria in Paragraph F above.
- H. Effect of Denial.** If a request for extension is denied, the allotments shall expire the day following the exercise date specified in the Development Agreement. Projects with expired allotments must reapply for allotments in the same manner as all other new proposed projects requesting allotments.

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I. COMPETITION MANUAL OVERVIEW

This RDCS Competition Manual contains the criteria and standards that the City of Morgan Hill uses to award residential allotments to projects. These criteria and standards are consistent with the RDCS ballot measures approved by the voters in 2016, the RDCS Ordinance in Division IV of the Morgan Hill Development Code, and with the growth management goals and policies in the General Plan.

The RDCS Competition Manual is an official City policy document adopted by the City Council on [date of adoption]. The Manual contains the specific rules to award points to competing projects, as well as examples of how these rules are applied and interpreted for sample projects. The Manual will be revised overtime to help the City identify projects that best meet the community's development objectives and award points to competing projects in a predictable and consistent manner.

Following this introduction, the RDCS Competition Manual presents the nine Objectives, which are categories of RDCS competition criteria established by the RDCS ordinance and lists the individual competition criteria within these nine Objectives. The manual then presents each individual standard and criteria with definitions of terms, rules for scoring projects, and example project scoring as needed.

The Updated RDCS

The Residential Development Control System (RDCS) is Morgan Hill's voter-approved growth management system that limits the total amount and pace of new residential construction and encourages high-quality development that enhances residents' quality of life. The RDCS was first established in 1977 and has been extended and modifies multiple times by voters since then.

In November of 2016 the voters approved the current version of the RDCS, known as Measure S. This updated RDCS establishes a maximum population limit of 58,200 in 2035 and a maximum of 215 allotments available each year. The updated RDCS continues the requirement that a residential development project compete for allotments each year, predicated upon the City awarding allotments to projects based on established scoring criteria. Unlike previous versions of the RDCS, the specific competition criteria is contained in this Competition Manual, not in the RDCS Ordinance itself.

The RDCS Ordinance contains rules and requirements that may only be modified by the voters as well as content that may be modified by the City Council without voter approval. Content within the Competition Manual which may be modified only by the voters include the nine City Objectives and limitations regarding the number of points available under these nine Objectives described in the next section. Other contents of this Competition Manual, including the specific competition criteria and standards and the specific point values for each, may be modified by the City Council without voter approval.

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II. COMPETITION CRITERIA SUMMARY

A. Criteria and Points Overview

Section 18.78.100.A (Competition Criteria) of the RDCE Ordinance states that the Competition Manual must establish the criteria that the City will use to award projects to competing projects, and these criteria must advance nine specific City objectives. Table 1 below lists these nine objectives, identifies the maximum number of points that may be awarded from criteria that advance the objectives, and shows the percent of the maximum points that may be awarded for each.

TABLE 1: CRITERIA ADVANCING OBJECTIVES

Objective	Maximum Score	
	Points	Percent
1. Schools	12	6%
2. Location	22	11%
3. Affordable Housing	32	16%
4. Housing Diversity	23	11%
5. Parks and Open Space	29	14%
6. Environmental Protection	22	11%
7. Transportation	15	8%
8. Municipal Infrastructure	10	5%
9. Project Quality	35	18%
Total	200	100%

Section 18.78.100.B (Points) of the RDCE Ordinance states that the cumulative total number of points for competition criteria that advance each of the nine Objectives shall be a minimum of 5 percent (i.e., 10 points) and a maximum of 20 percent (i.e., 40 points) of the maximum total number of RDCE competition points (i.e., 200 points). The City Council may adjust the number of points within each Objective by no more than 15 percent of the points available within the Objective the previous year.

B. Specific Criteria and Available Points

Table 2 shows each of the competition criteria for the nine Objectives, the available points for each competition criteria, and the maximum number of points that may be awarded under each objective. Within each Objective there are typically more *available* points than *maximum* points that may be awarded. For example, within the Location Objective there are 36 available points and 22 maximum points. A project may select any of the 36 available points to maximize its score, but may not be awarded more than 22 points within the Objective. With total available points that exceed maximum points that may be awarded in each Objective, projects have multiple pathways to maximize their scores and may earn points from criteria that are most appropriate for the project type.

Points are intended to be awarded only for projects that provide for excellence in project design and provide a community benefit that exceeds minimum requirements of the City and other governmental agencies. All projects must comply with City standards established in the General Plan, Municipal Code, and other City rules and regulations together with other applicable laws.

To promote long term consistency and reduce uncertainty for applicants for residential development, the City Council may amend competition criteria and point values in the Competition Manual only when necessary and no more frequently than once per year. Annually the Planning Commission reviews and recommends to the City Council any revisions to the competition criteria and/or point values. If amended, competition criteria and/or point values must be established no later than six months prior to the RDCS application submittal deadline.

TABLE 2: RDCS COMPETITION CRITERIA

Criteria	Points Available	Objective Maximum Points
1. Schools	13	12
1-A: Proximity to Schools	5	
1-B: Proximity to Schools with Capacity	2	
1-C: Student Transportation Improvements	6	
2. Location	36	22
2-A: Central Core	12	
2-B: Infill Corridors	10	
2-C: Adjacent to Development	3	
2-D: Proximity to Daily Needs	5	
2-E: Proximity to Police and Fire Service	3	
2-F: Areas with Public Utility Capacity	3	
3. Affordable Housing	32	32
3-A: Affordable Housing Fund Contribution	32	
3-B: Development of Affordable Units	32	
4. Housing Diversity	38	23
4-A: Accessory Dwelling Units	3	
4-B: Diversity of Housing Types	8	
4-C: Variation in Housing Size	8	
4-D: Small Units	8	
4-E: Housing Stock Diversity	8	
4-F: Single-Story Homes	3	

5. Parks and Open Space	50	29
5-A: Park Fund Contribution	6	
5-B: Excess Park Land	5	
5-C: Agriculture Conservation or Open Space Easement	9	
5-D: Agriculture Buffer	4	
5-E: Agriculture Preservation or Open Space Fund Contribution	9	
5-F: On-Site Recreational Amenities	8	
5-G: Amenities for All Age Groups	2	
5-H: Public Gathering Places	3	
5-I: Proximity to Public Park	3	
5-J: Open Space Design	10	
6. Environmental Protection	54	22
6-A: Energy Efficiency	6	
6-B: On-Site Solar Energy Generation	10	
6-C: Indoor Water Use	4	
6-D: Outdoor Water Use	12	
6-E: Sustainable Site and Building Design	22	
7. Transportation	31	15
7-A: Bicycle and Pedestrian Improvements	6	
7-B: Transit Improvements	3	
7-C: Off-Site Roadway Improvements or Fund Contribution	6	
7-D: Transportation Demand Management	5	
7-E: Connections to Adjacent Property	3	
7-F: Internal Connections	4	
7-G: EV Charging Stations	4	
8. Municipal Infrastructure	22	10
8-A: Water Infrastructure	4	
8-B: Wastewater Infrastructure	4	
8-C: Storm Water Infrastructure	4	
8-D: Infrastructure and Services Fund Contribution	4	
8-E: Broadband Connectivity	6	
9. Project Quality	58	35

9-A: Exterior Building Design	13	
9-B: Building Placement and Massing	15	
9-C: Site Improvements	7	
9-D: Vehicle Parking and Access	13	
9-E: Public Art	3	
9-F: Smart Homes	4	
9-G: Project Excellence	3	
Total Points Available	333	200

C. Types of Criteria and Project Scoring Examples

There are four general types of RDCS competition criteria: 1) location criteria 2) qualitative criteria; 3) off-site criteria; and 4) funding criteria.

Location Criteria

Location criteria award points based on the location of a property within the City of Morgan Hill. These points are awarded based on location and therefore cannot be “earned” through project features or contributions. A total of 46 location points are available, primarily within the Location Objective but also in the Schools and Parks and Open Space Objectives. Location criteria are intended to encourage and prioritize infill development and housing close to existing services and infrastructure.

Location Criteria Example: Criteria 2-A (Central Core)

Under Criteria 2-A (Central Core) a project receives 1 to 12 points depending on its distance from Morgan Hill’s central core. A project that is two miles from the central core would receive 1 point. Projects closer to the central core would receive more points, up to 12 points for projects within the central core. The central core boundaries are shown in Figure 2 in Part 3 of the Competition Manual. The distance from the central core is measured using the minimum distance between any portion of a parcel and the central core boundary measured in a straight line.

Qualitative Criteria

Qualitative criteria award points for improvements and design features located on the development site. Up to 238 qualitative points are available, with point opportunities in all Objectives except for Schools and Location. Qualitative points are awarded for project features such as diversity in housing types and sizes, parks and recreational amenities, on-site bicycle and pedestrian facilities, and excellence in site and building design. Qualitative criteria directly benefit project residents as well as the community at large.

Qualitative Criteria Example: Criteria 4-A (Accessory Dwelling Units)

Under Criteria 4-A (Accessory Dwelling Units) a project receives 1 to 3 points for incorporating accessory dwelling units on lots with detached single-family homes. An accessory dwelling unit is a secondary dwelling unit located on the same lot as a detached single-family dwelling and may be either attached or detached

from the main home. Under this criteria projects receive 1 point for providing 10 to 20 percent of lots with accessory dwelling units, 2 points for 20 to 30 percent of lots with accessory dwelling units, and 3 points for more than 30 percent of lots with accessory dwelling units.

Off-Site Criteria

Off-site criteria award points for the construction of improvements outside of the project site that would provide a public benefit. A total of 44 off-site points are available for constructing bicycle, pedestrian, and roadway improvements, establishing an agricultural conservation easement, and constructing public utility improvements. Points awarded for off-site improvements are typically based on the value of the improvement per number of units (e.g., 1 point for \$1,000 in improvement value per unit). In some cases the City may accept a financial contribution in-lieu of constructing the improvement to better meet community needs.

Off-Site Criteria Example: Criteria 7-C (Off-Site Street and Parking Improvements)

Under Criteria 7-C (Off-Site Street and Parking Improvements) a project receives up to 6 points for constructing off-site street roadway improvements or providing funds for the construction of off-site street roadway improvements. A project receives 1 point for every \$1,000 in value of improvement per unit. For example, if a 10-unit project constructs off-site street improvements valued at \$20,000, the project would receive 2 points. To receive these points, the off-site improvement must be voluntary and not otherwise required by the City or any other public agency.

Funding Criteria

Funding criteria awards points for financial contributions to City funds used to provide community services and infrastructure. A total of 41 points are available for contributions to City funds for affordable housing, parks and open space, agricultural preservation, transportation improvements, infrastructure, and services. Points awarded for fund contributions are based on the value of the improvement per number of units (e.g., 1 point for \$1,000 in contribution per unit). Points are awarded only for contributions beyond minimum City fees and are separate from any required development impact fees.

Funding Criteria Example: Criteria 5-E (Agriculture Preservation or Open Space Fund Contribution)

Under Criteria 5-E (Agriculture Preservation or Open Space Fund Contribution) a project receives up to 9 points for contributing to the City's agriculture preservation or open space fund beyond the minimum requirement. Points awarded are based on amounts established through the City's Special Funds Ordinance (4 points for \$3,899.09 contributed per unit and 9 points for \$7,798.19 contributed per unit). Based on this a 10-unit project that contributes \$38,990.90 would receive 4 points and a 10-unit project that contributes \$77,981.90 would receive 9 points.

In most cases, a project feature or contribution may not earn a project points in more than one criteria. For example, a project that earns points for installing safe-routes-to-school pedestrian improvements under Criteria 1-C (Student Transportation Improvements) may not also receive points for the same improvement under Criteria 7-A (Bicycle and Pedestrian Improvements). However, there are cases where a project design feature may allow a project to receive points from multiple criteria. For example, a project that incorporates accessory dwelling units may earn points in criteria 4-A (Accessory Dwelling Units) and 4-B (Diversity of Housing Types). Points may be awarded in multiple criteria for a single project feature only where expressly identified in Section III of this manual.

D. Minimum Score

Section 18.78.080.B (Minimum Score) of the RDCS Ordinance states that a project may receive allotments only if it receives a score of at least 80 percent of the total maximum score in the RDCS competition criteria. As shown in Table 1, the total maximum score is 200, so a project must receive at least 160 points (80 percent of 200) to receive allotments.

To receive allotments, a project must receive a minimum score of 18 points under the Affordable Housing Objective. For all other Objectives, there is no minimum score to be eligible for allotments. However, to receive at least 160 points, a project would need to receive points from criteria under at least six of the nine Objectives, if not more.

RDCS criteria and point values have been designed to provide a realistic pathway for all types of projects to achieve a minimum score through location and qualitative criteria points. Based on previous RDCS competitions, it is expected that many projects will elect to receive points from off-site and funding contribution in order to achieve a winning score and receive allotments.

III. COMPETITION CRITERIA, STANDARDS, AND POINTS

1. SCHOOLS

Intent: Support safe and convenient access to schools and promote high quality schools in Morgan Hill.

Points Available: See Table 3.

TABLE 3: SCHOOL POINTS AVAILABLE

Criteria	Points Available	
1-A: Proximity to Schools	5	
1-B: Proximity to Schools with Capacity	2	
1-C: Student Transportation Improvements	10 6	
Total	173	12 Maximum

Criteria 1-A: Proximity to Schools

Standard: The project is within walking distance of one or more Morgan Hill Unified School District (MHUSD) schools.

Points: See Table 4.

TABLE 4: POINTS FOR PROXIMITY TO SCHOOL

Project Location	Points
Walking distance from one school (elementary, middle, or high school)	2
Walking distance from two schools, each serving different grade levels (elementary, middle, or high school)	5

Total Available Points: 5

Senior Projects. [Housing projects for senior citizens as defined in Section 51.2 of the State Civil Code will receive an automatic 6 points regardless of proximity to schools.](#)

Scoring Instructions: A project is within walking distance of a school if it is 0.75 miles or less from an elementary school and 1.5 miles or less from a middle or high school.

To be eligible for points, students must be able to walk along a safe route from the project to the school as determined by the MHUSD. A safe route means a continuous sidewalk, pedestrian path, or trail with street crossings, intersection controls, and other physical improvements that reduce potential conflicts between pedestrians, bicyclists, and vehicles. A safe route must be in place at time of application submittal or established by the applicant within the first year of project construction.

The distance to a school is measured as the lineal distance a student would walk, from the project point of entrance nearest to the school to the nearest entrance point of the school grounds.

Schools eligible for points include any MHUSD school or charter school included on the MHUSD official list of existing and planned schools. MHUSD schools and programs which serve all students in the district and don't have specific boundaries (e.g., Community Adult School, Continuation High School) are not eligible for points.

Scoring Example: A project located within walking distance of an elementary school would receive two points. If the project is within walking distance of both an elementary and a middle school, the project would receive five points.

Criteria 1-B: Proximity to Schools with Capacity

Standard: The project is located within walking distance of one or more Morgan Hill Unified School District (MHUSD) schools with capacity to serve new students.

Total Available Points: 2 points

Scoring Instructions: To be eligible for points, the project must be located within walking distance of an elementary, middle, or high school that has capacity to house the number of students that the development would yield as determined by the MHUSD in writing prior to the RDCS competition application deadline.

For multi-year projects, the project shall retain the points received during the first phase.

The requirements for walking distance, safe routes to schools, rules of measurement, and eligible schools for Criteria 1-B above also apply to Criteria 1-C.

Criteria 1-C: Student Transportation Improvements

Standard: The project contributes funds or constructs off-site pedestrian, bicycle and/or vehicle access improvements for Morgan Hill Unified School District (MHUSD) schools within the Morgan Hill Sphere of Influence.

Points: 1 point for every \$1,000 of improvement value per unit; and/or 1 point for every \$1,000 in funds contributed per unit.

Total Available Points: 106 points

Scoring Instructions: A project may receive points if it constructs sidewalks, pedestrian paths, trails with street crossings, intersection controls, vehicle access enhancements, and other physical improvements that reduce potential conflicts between pedestrians, bicyclists, and vehicles. Improvements must facilitate a safe route to school for pedestrians and bicyclists from the project to a MHUSD school. A project may also receive points for contributing funds to the City's Safe Access to Schools Fund to be used by the City to construct physical improvements to enhance safe student access to MHUSD schools.

2. LOCATION

Intent: Encourage infill projects adjacent to existing development and close to existing community services and facilities.

Points Available: See Table 5.

TABLE 5: LOCATION POINTS AVAILABLE

Criteria	Points Available	
2-A: Central Core	12	
2-B: Infill Corridors	10	
2-C: Adjacent to Development	35	
2-D: Proximity to Daily Needs	5	
2-E: Proximity to Police and Fire Service	35	
2-F: Areas with Public Utility Capacity	35	
Total	36	22 Maximum

Criteria 2-A: Central Core

Standard: The project is in or near Morgan Hill's central core.

Points: See Table 6.

TABLE 6: POINTS FOR CENTRAL CORE

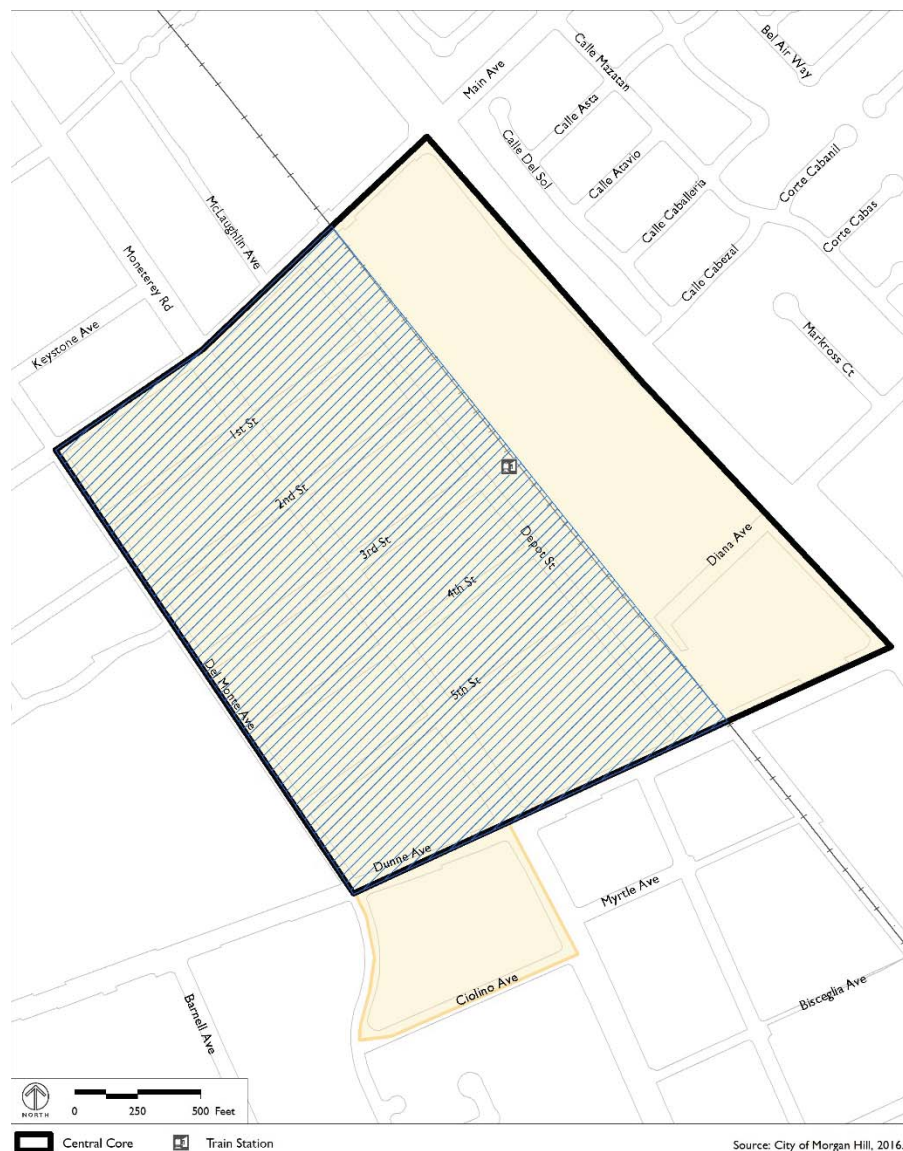
Project Distance from Central Core	Points
Within two miles	12
Within one mile	34
Within three-quarters mile	6
Within one-half mile	8
Within one-quarter mile	10
Within the Central Core	12

Total Available Points: 12

Scoring Instructions: Central core boundaries are shown in Figure 1. The distance from the central core is measured using the minimum distance between any portion of a parcel and the central core boundary measured in a straight line.

If any portion of a project is within a distance from the central core shown in Table 6, the project may receive the total number of points corresponding to that distance. For example, if any portion of the project area is within a half mile of the central core, the project may receive 4 points.

FIGURE 1: CENTRAL CORE BOUNDARIES



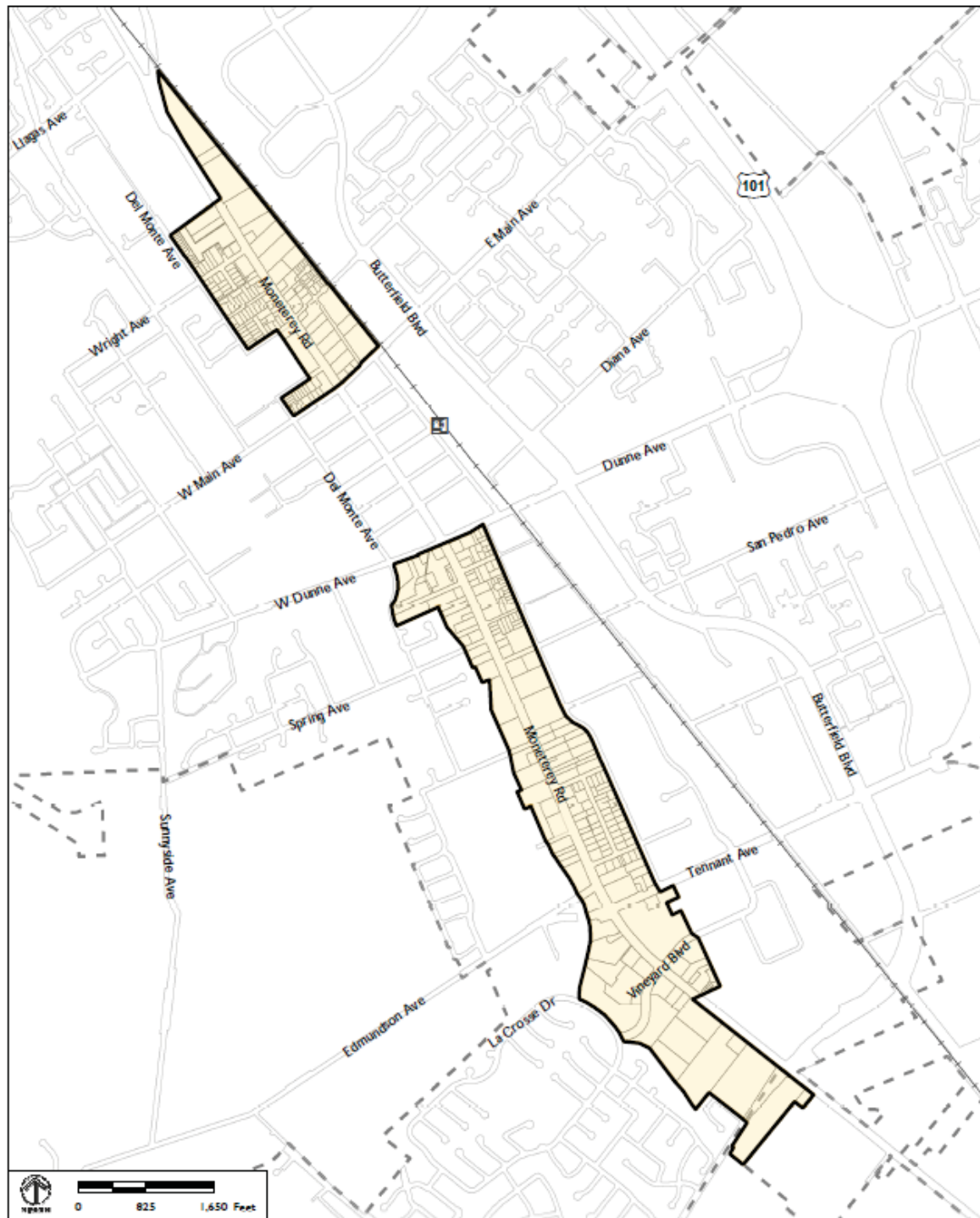
Criteria 2-B: Infill Corridors

Standard: The project is located in an infill corridor as shown in Figure 2.

Points: 10 points for projects located in the Monterey Road infill corridor.

Total Available Points: 10

FIGURE 2: INFILL CORRIDORS



Source: City of Morgan Hill, 2017; Placeworks; 2017.

Criteria 2-C: Adjacent to Development

Standard: The project is adjacent to land that is developed, utilized to its ultimate potential, or that requires no further discretionary approvals for development.

Points: See Table 7.

TABLE 7: POINTS FOR ADJACENT TO DEVELOPMENT

Percent of Project Boundary Adjacent to Existing Development	Points
25% to less than 50%	4 2
50% to less than 75%	2 3
75% to 100%	3 5

Total Available Points: ~~3~~5

Scoring Instructions: A project boundary is adjacent to existing development if the project boundary abuts the property line of the adjacent development or is across a street from the existing development. Existing development means the following:

- Property in Morgan Hill's city limits with at least 95 percent of its contiguous land area developed or utilized to its ultimate potential use according to the General Plan or applicable zoning.
- Land in unincorporated Santa Clara County owned or under control (i.e., permanent easement) of a public agency that is developed or utilized to its ultimate potential use according to the County's General Plan or applicable zoning.
- Privately owned, non-agricultural (designated Rural County or greater) land in unincorporated Santa Clara County that is utilized to its ultimate potential according to the City's General Plan.
- Undeveloped property which by September 15th of the competition year has received final map approval, tentative map and development agreement approval for projects with previously completed phase(s), or for which building permits have been issued.

Criteria 2-D: Proximity to Daily Needs

Standard: The project is within walking distance of non-residential land uses that meet residents' daily needs.

Points: See Table 8.

TABLE 8: POINTS AVAILABLE FOR PROXIMITY TO DAILY NEEDS

Project Distance from Two or More Different Land Use Categories	Points
Within three-quarters mile	1
Within one-half mile	3

Within one-quarter mile	5
-------------------------	---

Total Available Points: 5**Scoring Instructions:** Land use categories are as follows:

1. Community-serving retail, such as a supermarket, pharmacy, or convenience store.
2. Restaurants and cafes.
3. Personal services, such as bank, salons, and medical offices.
4. Public and quasi-public uses such as places of worship; community centers; and parks, trails and recreational facilities.
5. An existing or planned bus or rail transit stop or station.

A single establishment may not be counted in two categories (e.g., retail establishment may be counted only once even if it also contains a café). Establishments in a mixed-use building may each count if they are distinctly operated enterprises with separate exterior entrances. No more than two of the minimum number of land use categories can be situated in a single building or under a common roof.

The distance to a land use category is measured as the lineal distance a pedestrian would walk, from the average center point of housing in a project to the nearest entrance point of the land use category.

Criteria 2-E: Proximity to Police and Fire Service**Standard:** The project is located within the established response time of one or more fire stations.**Points:** See Table 9.

TABLE 9: POINTS AVAILABLE FOR PROXIMITY TO FIRE STATIONS

Standard	Points
The project is located within the established response time of the police station	1 <u>2</u> point
The project is located within the established response time standard of one fire station	1 point
The project is located within the established response time standard of two or more fire stations	2 <u>3</u> points

Total Available Points: ~~3~~ 5

Scoring Instructions: Determinations of whether a project is located within an established response time and eligible for points under this criteria shall be made by the Community Development Director in consultations with the City of Morgan Hill Police and Fire Departments.

Three fire stations serve Morgan Hill: the El Toro Fire Station (18300 Old Monterey Road) the Dunne Hill Fire Station, (2100 E. Dunne Avenue), and the CAL FIRE station (15670 Monterey Road). The Fire Department's current response time is eight minutes.

The Morgan Hill Police Department headquarters is located at 16200 Vineyard Boulevard. -The Police Department's aims to respond to Priority One calls within 5 minutes and Priority Two calls within 8 minutes.

Criteria 2-F: Areas with Public Utility Capacity

Standard: The project is located in areas with sufficient public utility capacity to serve the project.

Points: See Table 10.

TABLE 10: POINTS FOR PROXIMITY TO MUNICIPAL SERVICES AND FACILITIES

Standard	Points
Local water distribution lines are of sufficient size to serve the proposed project. The project does not require replacing existing local water distribution lines with larger diameter pipes. New water mains to serve the site do not need to be installed.	1 <u>2</u> points
The existing wastewater collection system is sufficient to serve the proposed project. The project does not require extending or replacing existing sewer pipes or lift stations outside of the project site.	1 <u>2</u> points
Existing off-site storm drainage facilities are sufficient to serve the project.	1 point

Total Available Points: ~~3~~5

3. AFFORDABLE HOUSING

Intent: Increase the supply of affordable housing in Morgan Hill.

Points Available: See Table 11.

TABLE 11: AFFORDABLE HOUSING POINTS AVAILABLE

Criteria	Points Available	
3-A: Affordable Housing Fund Contribution	22 or 32 depending on project type	
3-B: Development of Affordable Units	32	
Total	32	32 Maximum

Minimum Score: 18 (for-sale projects) and 10 (rental projects)

***Unlike other objectives, projects must receive a minimum score of 18 points in the affordable housing objectives to be eligible for allotments. The minimum score is 18 points for projects where individual units will be sold to buyers (for-sale projects) and 10 points for projects where individual units will be occupied by renters (rental projects).**

Automatic Points – Rental Projects. Rental projects shall receive an automatic 10 points within this objective without contributing to the City's affordable housing fund or constructing BMR units. However, if the State adopts legislation specifically authorizing cities to establish inclusionary housing requirements for rental housing, rental projects will not receive automatic points and must contribute to the City's affordable housing fund and/or construct BMR units to receive points.

Criteria 3-A: Affordable Housing Fund Contribution

Standard: The project makes a voluntary contribution to the City's affordable housing fund.

Points: See the following tables:

- Table 12 for projects with 12 units or more, excluding single-family detached projects where all home lots are 12,000 square feet or more.
- See Table 13 for single-family detached projects with 12 units or more where all home lots are 12,000 square feet or more.
- See Table 14 for projects with 11 units or less, including single-family detached projects where all home lots are 12,000 square feet or more.

TABLE 12: POINTS FOR CONTRIBUTION TO AFFORDABLE HOUSING FUND – PROJECTS WITH 12 OR MORE UNITS EXCLUDING SINGLE-FAMILY DETACHED PROJECTS WHERE ALL HOME LOTS ARE 12,000 SQUARE FEET OR MORE

Contribution to Affordable Housing Fund	Points
20% of baseline contribution	2

30% of baseline contribution	4
40% of baseline contribution	6
50% of baseline contribution	8
60% of baseline contribution	10
70% of baseline contribution	12
80% of baseline contribution	14
90% of baseline contribution	16
Baseline contribution	18
110% of baseline contribution	20
120% of baseline contribution	22

TABLE 13: POINTS FOR CONTRIBUTION TO AFFORDABLE HOUSING FUND – SINGLE-FAMILY DETACHED PROJECTS WITH 12 UNITS OR MORE WHERE ALL HOME LOTS ARE 12,000 SQUARE FEET OR MORE

Contribution to Affordable Housing Fund	Points
20% of baseline contribution	2
30% of baseline contribution	4
40% of baseline contribution	6
50% of baseline contribution	8
60% of baseline contribution	10
70% of baseline contribution	12
Baseline contribution	18
150% of baseline contribution	28

TABLE 14: POINTS FOR CONTRIBUTION TO AFFORDABLE HOUSING FUND – PROJECTS WITH 11 UNITS OR LESS

Contribution to Affordable Housing Fund	Points
Baseline contribution	26
110% of baseline contribution	29
120% of baseline contribution	32

Total Available Points: 22 for projects with 12 units or more, 32 for projects with 11 units or less, 29 for single-family detached projects with 12 or more units and all home lots 12,000 square feet or more.

Scoring Instructions: The baseline contribution to the City’s affordable housing fund is set by the City Council and may change from year to year. In 2016, the City Council set the baseline contribution at \$12.92 per square foot of livable space of the entire project. A project with 12 or more units receiving points for contributing to the City’s affordable housing fund may also receive points for incorporating BMR units within the projects from Criteria 3-B provided the total number of combined points awarded from both Criteria 3-A and 3-B does not exceed 24. A project with 11 units or less may receive points only from Criteria 3-A or 3-B, not both. The City uses 12 units as the threshold because a project with 12 units can build one on-site BMR unit (8 percent of total project units) whereas a project with 11 or fewer units cannot.

Project Scoring Example: A proposed project contains 56 units, each with 2,000 square feet of floor area, with 112,000 square feet total within the project. The baseline contribution would be \$1,447,000 (112,000 x \$12.92) or \$25,840 per unit. If the project contributes the baseline amount of \$1,447,000, the project would receive 18 points. If the project contributes 120 percent baseline contribution (\$1,736,000), the project would receive 22 points.

Criteria 3-B: Development of Affordable Units

Standard: The project incorporates below market rate (BMR) units within the project.

Points: See Tables 15, 16, 17, and 18.

TABLE 15: POINTS FOR DEVELOPMENT OF AFFORDABLE UNITS, MARKET RATE FOR-SALE PROJECTS

Percent of Total Project Units			Points
70% AMI	80% AMI	90% - 120% AMI (see scoring instructions)	
-	4%	4%	20
4%	-	4%	24
-	6%	2%	28
8%	-	-	32

TABLE 16: POINTS FOR DEVELOPMENT OF AFFORDABLE UNITS, AFFORDABLE FOR-SALE PROJECTS

Percent of Total Project Units					Points
70% AMI	80% AMI	90% AMI	100% AMI	120% AMI	
-	-	20%	40%	40%	20
		20%	50%	30%	24
	10%	10%	40%	40%	28
20%	30%	30%	20%	-	32

TABLE 17: POINTS FOR DEVELOPMENT OF AFFORDABLE RENTAL UNITS, MARKET RATE PROJECTS

Percent of Total Project Units			Points
30% AMI	50% AMI	80% AMI	

-	-	8%	20
-	4%	4%	24
-	6%	2%	28
4%	4%	-	32

TABLE 18: POINTS FOR DEVELOPMENT OF AFFORDABLE UNITS, AFFORDABLE RENTAL PROJECTS

Percent of Total Project Units			Points
30% AMI	50% AMI	80% AMI	
-	30%	70%	20
5%	35%	60%	24
10%	40%	50%	28
10%	50%	40%	32

“AMI” means Area Median Income for Santa Clara County as established by the U.S. Department of Housing and Urban Development (HUD)

Total Available Points: 32

Scoring Instructions: Points shall be awarded and monitored consistent with the City of Morgan Hill’s Below Market Rate Housing Program policies and procedures. When a calculation produces a fraction of a unit less than one-half, the applicant shall pay the corresponding fraction of the standard housing fee. A fraction of one-half or greater requires one additional BMR unit. If a project receives the maximum 32 points for constructing BMR units and pays the corresponding fraction of the standard housing fee, the project does not receive additional points for the fractional housing fee. A project with 12 units or more receiving points for incorporating BMR units within the project may also receive points for contributing to the City’s affordable housing fund from Criteria 3-A provided the total number of combined points awarded from both Criteria 3-A and 3-B does not exceed 32.

Affordability levels to receive points for units affordable at the “90% to 120% AMI” level in a market rate for sale project (Table 13) depend on the unit type, as follows:

- Multi-Family (Condominiums): 90% AMI
- Attached Single-Family: 100% AMI
- Small Detached Single-Family (up to 2,000 square feet): 110% AMI
- Large Detached Single-Family (up to 2,000 square feet): 120% AMI

For market rate for-sale projects (Table 15) to be eligible for points, BMR units must comply with the City Council approved BMR unit policies, including but not limited to the following:

- BMR units must be distributed throughout project and integrated with the market rate units rather than separated from the market rate units and/or concentrated together within one location within the project.

- The floor area of each BMR unit shall be no less than the floor area of the smallest market rate unit of the same housing type.
- Housing type (e.g., detached single-family home, multi-family) for the BMR units must be generally proportionate to the market rate housing type(s) within the project. For example, if two-thirds of the units in a project are detached single-family homes and one-third are multi-family, roughly two-thirds of the BMR units must be located in the single-family portion of the project.
- BMR units for a detached single-family project may be in the form of duets if duets are a permitting housing type in the applicable zoning district (e.g., R-1 7,000 and R-1 9,000). Triplex BMR units are allowed in zoning districts that permit duplex units.

4. HOUSING DIVERSITY

Intent: Encourage a diverse housing stock in Morgan Hill.

Points Available: See Table 19.

TABLE 19: HOUSING DIVERSITY POINTS AVAILABLE

Criteria	Points Available	
4-A: Accessory Dwelling Units	3	
4-B: Diversity of Housing Types	8	
4-C: Variation in Housing Size	8	
4-D: Small Units	8	
4-E: Housing Stock Diversity	8	
4-F: Single-Story Homes	3	
Total	38	23 Maximum

Criteria 4-A: Accessory Dwelling Units

Standard: The project incorporates accessory dwelling units on lots with detached single-family homes.

Points: See Table 20.

TABLE 20: POINTS FOR ACCESSORY DWELLING UNITS

Percentage of Detached Single-Family Lots with Accessory Dwelling Units	Points
10 to 20 percent	1 points
20 to 30 percent	2 points
More than 30 percent	3 points

Total Available Points: 3

Scoring Instructions: Accessory dwelling units are secondary dwelling units located on a lot occupied by a detached single-family dwelling. -Accessory dwelling units must be a permanent structure and include provisions for living, sleeping, eating, cooking, and sanitation and have a private entry accessed from the exterior of the building. -Accessory dwelling units may be either detached from or attached to the primary dwelling on the lot. To be eligible for points, accessory dwelling units must comply with development standards for new secondary units in Chapter 18.55 (Secondary Dwelling Units) in the Zoning Code.

Scoring Example: A project contains 10 single-family detached homes and 10 single-family attached (townhome) units. -Two of the detached single-family homes feature an accessory dwelling unit on the

same lot. The project would receive 2 points as twenty percent of the detached single-family lots contain accessory dwelling units.

Criteria 4-B: Diversity of Housing Types

Standard: The project contains a diversity of housing types.

Points: See Table 21 and 22.

TABLE 21: POINTS AVAILABLE FOR DIVERSITY OF HOUSING TYPES FOR PROJECTS WITH 16 OR MORE UNITS.

Number of Different Housing Types in the Project	Points
2	4 points
3	8 points

TABLE 22: POINTS AVAILABLE FOR DIVERSITY OF HOUSING TYPES FOR PROJECTS WITH UP TO 15 UNITS.

Number of Different Housing Types in the Project	Points
2	8 points
3	12 points

Total Available Points: 8 for projects with 16 or more units. 12 for projects with up to 15 units.

Scoring Instructions: To be eligible for points, a housing type must constitute at least 10 percent of total number of units in the project. Different housing types are defined as follows:

1. **Multiple-Story Detached Single-Family Home.** A residential structure on its own lot designed for occupancy by one household with two or more stories of living space.
2. **Single-Story Detached Single-Family Home.** A residential structure on its own lot designed for occupancy by one household with one story of living space.
3. **Accessory Dwelling Unit.** An accessory dwelling unit located on the same lot as a detached single-family home. Accessory dwelling units may be attached to or detached from the primary home on the lot.
4. **Single-Family Attached.** Single-family homes attached to one or more other single-family homes in a linear arrangement, either as multiple townhome units per parcel or one townhome unit per parcel.
5. **Courtyard Housing.** Detached single-family homes with entrances oriented toward a shared common area.
6. **Custom Lots.** Lots left undeveloped for future development by the lot buyer.
7. **Duplex or Duet.** A building that contains two dwelling units, each with its own entrance.
8. **Triplex or Quadplex.** A single residential structure that contains three or four dwelling units, with each unit having its own entrance.

9. **Multi-Family.** A Structure that contains three or more dwelling units that share one or more common entries.
10. **Vertical Mixed Use.** A building with commercial uses on the grounds floor and three or more multi-family or condominium units on the upper floors.

A unit may qualify as only one housing type even if it meets the definition for two or more housing types. For example, a single-story detached single-family home oriented towards a shared common area may qualify only as courtyard housing (housing type number 5 above), not courtyard housing and single-story detached single-family home (housing type number 2 above).

Scoring Examples: A 100-unit project with 90 detached single-family homes and 10 townhome units would receive six points as both the detached single-family homes and townhome units constitute 10 percent or more of the total project units. A 100-unit project with 50 detached single-family homes, 25 duplex units, 25 townhome units, and 25 single-story detached single-family homes would receive 12 points as the three housing types each constitute 10 percent or more of the total project units.

Criteria 4-C: Variation in Housing Size

Standard: The project includes a diversity of housing sizes.

Points: See Tables 23 and 24.

TABLE 23: POINTS AVAILABLE FOR DIVERSITY OF HOUSING SIZE FOR PROJECTS WITH 16 OR MORE UNITS.

Number of Different Housing Size Categories in the Project	Points
2	3 point
3	6 points
4	8 points

TABLE 24: POINTS AVAILABLE FOR DIVERSITY OF HOUSING SIZE FOR PROJECTS WITH UP TO 15 UNITS.

Number of Different Housing Size Categories in the Project	Points
2	6 point
3	9 points
4	12 points

Total Available Points: 8 for projects with 16 or more units. 12 for projects with up to 15 units.

Scoring Instructions: Diversity of housing types is calculated by determining the percent of units that are in two or more housing size categories. Housing size categories for multi-family projects is based on the number of bedrooms. For all other housing types housing size categories are based on square footage of the unit. To be eligible for points, the number of units in a housing size category must constitute at least 10 percent of total number of units in the project.

Housing size categories for multi-family housing types are as follows:

1. Studio apartment
2. One-bedroom
3. Two-bedroom
4. Three-bedroom
5. Four-bedroom or more

For all other housing types (single-family detached, duplex, etc.) and for projects with both multi-family units and other housing types, a project shall be considered to have two or more different size categories only if there is a minimum 35 percent variation between the smallest and largest floor plan the project. In such a case, every floor plan that varies in size from another floor plan by 200 square feet or more shall be considered a different housing size category.

Scoring Example: A proposed project contains ten detached single family homes with two different floor plans. The smaller floor plan is 2,000 square feet and the larger floor plan is 3,000 square feet. The project would receive six points because there is 50 percent variation in size between the smallest and largest floor plans and more than 200 feet in variation between the two floor plans.

Criteria 4-D: Small Units

Standard: The project includes small dwelling units.

Points: See Table 25.

TABLE 25: POINTS AVAILABLE FOR SMALL UNITS

Percent Small Units	Points
10	4 points
20	5 points
30	6 points
40	7 points
50 or more	8 points

Total Available Points: 8

Scoring Instructions: Small units are defined as follows:

- **Detached Single-Family Home:** Less than 1,700 square feet
- **Single-Family Attached:** Less than 1,500 square feet
- **Duplex or Duet:** Less than 1,500 square feet
- **Triplex or Quadplex:** Less than 1,250 square feet
- **Multi-Family:** Less than 1,000 square feet (rental); 1,200 square feet (ownership)

Unit square footage means total livable building area excluding garages. Unit type definitions are the same as in Criteria 4-B.

Scoring Example: A 100-unit project with 10 detached single-family homes less than 1,700 square feet would receive 4 points. A 100-unit project with 10 detached single-family homes less than 1,700 square feet and 10 duplex units less than 1,250 square feet would receive 6 points.

Criteria 4-E: Housing Stock Diversity

Standard: The project adds housing types that are underrepresented in Morgan Hill’s citywide housing stock.

Points: See Table 26.

TABLE 26: POINTS AVAILABLE FOR HOUSING STOCK DIVERSITY

Housing Type	Points
Courtyard Housing	4 points
Multi-Family Owner Occupied	6 points
Market-rate Senior	8 points
Multi-Family Rental	8 points
Vertical Mixed Use (owner-occupied or rental)	8 points

Total Available Points: 8

Scoring Instructions: Unit type definitions are the same as in Criteria 4-B. To be eligible for points, the housing type must constitute 75 percent or more of the total project housing units.

Scoring Example: A 100-unit project with 25 detached single-family homes and 75 townhomes would receive 4 points. A 100-unit project with 40 detached single-family homes and 60 townhomes would not receive any points under this criteria, but may be eligible for points under Criteria 4-B.

Criteria 4-F: Single-Story Homes

Standard: The project includes single-story single-family homes.

Points: See Table 27.

TABLE 27: POINTS FOR SINGLE-STORY SINGLE-FAMILY HOMES

Percentage of Single-Story Single-Family Homes	Points
25 percent	1 point
50 percent	2 points
75 percent	3 points
100 percent	4 points

Total Available Points: 4

Scoring Instructions: Percentage is calculated by dividing the number of single-story single-family homes in the project by the total number of units (regardless of type) within the project. A story is defined in accordance with Zoning Code Section 18.04.415 (Story).

Scoring Example: A 100-unit project that includes 50 single-story detached single-family homes would receive 2 points. If all units within the project are single-story detached single-family homes, the project would receive 4 points.

5. PARKS AND OPEN SPACE

Intent: Provide high quality parks and recreational facilities, encourage publicly accessible outdoor amenities, and preserve open space and agricultural land.

Points Available: See Table 28.

TABLE 28: PARKS AND OPEN SPACE POINTS AVAILABLE

Criteria	Points Available	
5-A: Park Fund Contribution	6	
5-B: Excess Park Land	5	
5-C: Agriculture Conservation or Open Space Easement	9	
5-D: Agriculture Buffer	4	
5-E: Agriculture Preservation or OS Fund Contribution	9	
5-F: On-Site Recreational Amenities	8	
5-G: Amenities for All Age Groups	2	
5-H: Public Gathering Places	3	
5-I: Proximity to Public Park	3	
5-J: Open Space Design	10	
Total	50	29 Maximum

Criteria 5-A: Park Fund Contribution

Standard: The project contributes to the City's park fund beyond the minimum requirement.

Points: 1 points for every \$1,000 contributed per unit.

Total Available Points: 6

Scoring Instructions: To be eligible for points, the project must contribute funds in addition to the minimum required park impact fee and fees in lieu of park land dedication. Contributed funds may be used by the City to fund acquisition and maintenance of parks.

The required park impact fee is identified in the current City of Morgan Hill Fee Schedule as adopted by the City Council. Minimum requirements for payment of fees in lieu of park land dedication are established in Chapter 17.28 (Land Dedications and Reservations) in Title 17 (Subdivisions) of the Morgan Hill Municipal Code. The Community Development Director shall estimate the minimum park land dedication in-lieu fee for competing projects using the standards and formula in Chapter 17.28 (Land Dedications and Reservations). Minimum in-lieu fee estimates are prepared only for the purpose of

awarding points for the RDCS competition. Actual in-lieu fee requirements will be determined at the time of subdivision approval and may be different from these estimates.

Criteria 5-B: Excess Park Land

Standard: The project provides land for parks beyond the minimum City park land requirement.

Points: See Table 29.

TABLE 29: POINTS FOR EXCESS PARK LAND

Park Land Provided in Excess of Minimum City Requirement	Points	
	16 or more units	7 to 15 units*
10%	13	2
20%	24	4
30%	35	5
40%	46	-
50%	57	

*Includes custom lot projects

Total Available Points: ~~57~~

Small and Micro Projects: Projects with up to ~~6-15~~ units, including custom lot projects, shall automatically receive ~~5-7~~ points under Criteria 5-B without dedicating any park land.

Scoring Instructions: Minimum park land dedication and private park requirements are in Chapter 17.28 (Land Dedications and Reservations) in Title 17 (Subdivisions) of the Morgan Hill Municipal Code. The Community Development Director shall estimate the minimum required park land for competing projects using the standards and formula in Section 17.28.060 (Acreage Required – Formula).

Minimum park land estimates are prepared only for the purpose of awarding points for the RDCS competition. Actual dedication requirements will be determined at the time of subdivision approval and may be different from these estimates.

To be eligible for points under this criteria, projects must comply with the following requirements:

- Park land must be either a) within the project boundaries; or a) adjacent to the project boundaries and owned or controlled by the project applicant.
- Land for parks shall be consistent with the City of Morgan Hill Parks, Facilities & Recreation Program Master Plan, the General Plan, and any other adopted City policy or ordinance concerning park and recreational facilities.
- Either: a) Dedicated park land shall be deeded to the City for public park purposes, or b) Private park land for use by residents shall be maintained by the home owners association or other similar maintenance entity.

- The calculation of park land may not include yards, court areas, setbacks and other open areas required by the Zoning Code, Building Code, or other City ordinances. Points may not be awarded to passive open space or landscape buffer areas deeded to a homeowners' association.

Project Scoring Example: Section 17.28.060 (Acreage Required – Formula) of the Subdivision Ordinance states that 0.01 acres of land per dwelling unit shall be provided as a park in a single-family subdivision. Assuming a 100-unit single-family subdivision, the minimum required dedication of park land would be 1.0 acres. -Providing 1.5 acres of park land would exceed the minimum requirement by 50 percent and would receive 5 points.

Criteria 5-C: Agriculture Conservation or Open Space Easement

Standard: The project establishes an agriculture conservation easement consistent with the City's agriculture conservation easement policy or an open space easement.

Points: 9 points

TABLE 30: POINTS FOR EASEMENTS

Type of Easement	Points
Agriculture Conservation	9
Open Space	9

Total Available Points: 9

Scoring Instructions: Points may be awarded for projects that establish one of the following: an agriculture conservation easement or an open space easement. Points are awarded only for one type of easement. A project may not receive points for establishing a second or third type of easement on the property.

Agriculture Easement

Establishment of an agriculture conservation easement shall occur in a manner consistent with Municipal Code Chapter 18.85 (Agricultural Lands Preservation Program). If a project is required to establish an agriculture conservation easement to mitigate the loss of agricultural land pursuant to Chapter 18.85, points may be awarded only for establishing an agriculture conservation easement beyond the minimum 1:1 mitigation ratio required by Chapter 18.85.

To be eligible for points, an agriculture conservation easement must be established within the Morgan Hill Sphere of Influence (SOI). The property subject to the easement must be of adequate size, configuration, and location to be viable for continued agricultural use and must meet the criteria for "eligible mitigation lands" as established in Municipal Code Section 18.85.090 (Eligible Mitigation Lands).

Open Space Easement

To be eligible for points, an open space easement must be established within the Morgan Hill Sphere of Influence (SOI). The property subject to the easement must be of adequate size, configuration, and location to protect and/or preserve open space and natural resources as identified in the General Plan. Natural resources include but are not limited to agricultural lands, undeveloped open space, scenic hillsides, habitat for sensitive species, and riparian areas and aquatic habitat as defined in the General

Plan Natural Resources and Environment Element. There is no minimum size for the easement provided the City determines the easement to be of adequate size, configuration, and location to preserve open space or protect natural resources.

Project Scoring Example: A proposed project that converts five acres of agriculture land to non-agricultural use proposes the establishment of a five-acre agricultural conservation easement on adjacent agricultural land to satisfy the agricultural mitigation requirement in Municipal Code Chapter 18.85. If the project establishes an additional agricultural conservation easement on a property separate from the easement used for mitigation, the project would receive five points. There is no minimum size for the additional easement eligible for points provided the property subject to the easement meets the criteria for “eligible mitigation lands” as established in Municipal Code Section 18.85.090 (Eligible Mitigation Lands).

Criteria 5-D: Agriculture Buffer

Standard: The project establishes and agriculture buffer easement.

Points: 4

Scoring Instructions. To be eligible for points, a project shall establish an open space easement to provide a buffer between active agricultural operations and new development. The City determines the size and configuration of the buffer is adequate to minimize future conflicts between the new residential use and the existing agricultural operation.

Criteria 5-E: Agriculture Preservation or Open Space Fund Contribution

Standard: The project contributes to the City’s agriculture preservation or open space fund beyond the minimum requirement.

Points: See Table 31.

TABLE 31: POINTS FOR AGRICULTURE PRESERVATION OR OPEN SPACE FUND CONTRIBUTION

Contribution Amount	Points
Single: \$3,899.09 per unit*	4
Double: \$7,798.19 per unit*	9

* Adjusts annually.

Total Available Points: 9

Scoring Instructions: Contribution to the City’s agriculture preservation fund shall occur in a manner consistent with Municipal Code Chapter 18.85 (Agricultural Lands Preservation Program). If a project is required to pay an agricultural preservation in-lieu fee to mitigate the loss of agricultural land pursuant to Chapter 18.85, points may be awarded only for the amount of the contribution to the City’s agriculture preservation fund in that exceeds the required in-lieu fee.

Project Scoring Example: A 10-unit project that converts one acre of agricultural land pays an in-lieu mitigation fee of \$14,960 to satisfy the minimum requirement in Chapter 18.85. If the project contributes an additional \$38,990.90 beyond the required mitigation fee, the project would receive 4 points.

Criteria 5-F: On-Site Recreational Amenities

Standard: The project provides on-site recreational amenities to serve residents.

Points: See Table 32. Points identified in Table 24 are for each individual amenity included in the project.

Total points. Total points awarded to a project under this criteria will be the sum of points for each individual amenity up to a maximum of eight points.

TABLE 32: POINTS FOR ON-SITE RECREATIONAL AMENITIES

	Points for Each Amenity Provided			
Project Size	Tier 1	Tier 2	Tier 3	Tier 4
1 to 15 units	6	8		
16 to 50 units	2	3	4	-
51-100 units	1	2	3	4
101-150 units	0	1	2	3
151+ units	0	0	1	2
201+ units	0	0	1	1

Recreational amenities eligible for points are divided into the four tiers as follows:

Tier 1 amenities:

- Shuffleboard
- Horseshoes
- Bowling green w/artificial turf
- Passive recreation area and/or gardens
- Passive water feature (e.g., fountain)
- Picnic/barbeque area

Tier 2 amenities:

- Cabana or shade trellis area
- Two picnic/barbeque areas
- Clubhouse
- Volleyball court and/or Bocce ball court

- Outdoor racquetball/handball tilt-up wall
- Dog Park (add one point more with dog wash station)
- Sauna and/or Jacuzzi
- Tree grove as approved by the community development director or designated staff.
- Community garden plots (minimum one forty-eight-square-foot plot per each ten dwelling units) with water service
- ½ court basketball (one hoop)
- Bridle paths
- Bocce ball
- Artificial turf putting green

Tier 3 amenities:

- Softball field
- Sports court and/or 2 1/2-court basketball courts (two hoops)
- Restroom area
- ½ scale soccer field
- Tot lots (age appropriate play equipment/minimum three activities; can be integrated in structure)
- Jacuzzi and separate child wading pool (for projects between twenty and fifty units zoned R-2, R-3 or higher density development)
- Tennis court
- Recreation hall
- Exercise room
- Clubhouse w/ kitchen

Tier 4 amenities:

- Swimming pool (for projects of fifty-one or more units zoned R-2, R-3 or higher density development)

Small and Micro Projects: Projects with up to 15 units with no usable common open space or shared recreational amenities, including custom lot projects, shall automatically receive ~~6~~8 points under Criteria 5-F without providing on-site recreational amenities.

Scoring Instructions: Points awarded are based on the number and type of recreational amenities for different project sizes as shown in Table 30. Projects with 50 or fewer units may receive points for a maximum of one Tier 1 amenity. Projects with 50 to 150 units may receive points only for Tier 2, 3 and 4 amenities. To be eligible for points, projects with more than 150 units must provide at least two Tier 3 or Tier 4 amenities. For a project of more than 150 units, two Tier 2 amenities may count as one Tier 3

amenity if the project provides at least one Tier 3 amenity. Projects with between 201 and 300 units must provide two Tier 3 amenities before two Tier 2 amenities may be counted as one Tier 3 amenity. Projects over 300 units must provide three Tier 3 amenities before two Tier 2 amenities may be counted as one Tier 3 amenity.

The Planning Commission may award points for unlisted amenities that provide recreational amenities to a level similar to those described above.

Total Available Points: 8

Project Scoring Example: A 25-unit project includes common open space with shuffleboard court, horseshoe area, and a volleyball court. The project would receive a total of four points with one point awarded for the shuffleboard court, one point for the horseshoe area, and two points for the volleyball court.

Criteria 5-G: Amenities for Age Groups

Standard: The project provides on-site social and recreational amenities for various age groups.

Points: 2

Total Available Points: 1 or 2 (two age groups = 1; all age groups =2)

Scoring Instructions: To be eligible for points, a project must provide on-site social and recreational amenities specifically designed to meet the unique needs of all age groups, including children, teens, adults, and seniors. Examples of amenities appropriate for different age groups include the following:

- **Children:** tot lots, children’s wading pool
- **Teens:** Outdoor spaces for socializing, recreational equipment that provides physical challenge (e.g., skate park), indoor recreational amenities (pool tables, table tennis)
- **Adults:** Indoor gym, outdoor picnic/barbecue area
- **Seniors:** Walking paths, low-impact outdoor exercise equipment designed for seniors (“senior playgrounds”)

Criteria 5-H: Public Gathering Places

Standard: The project provides publicly accessible outdoor gathering places and open space in higher density and more urban settings.

Points: 1 point per \$1,000 value of amenity per unit.

Total Available Points: 3

Scoring Instructions: To be eligible for points, a project must provide one or more outdoor public gathering places such as plazas, courtyards, and parks that exceed minimum City requirements. Points awarded for the criteria are intended for projects located Downtown and in other higher intensity areas

with pedestrian activity. To receive points, the public gathering place must comply with the following standards:

- **Location:** The public gathering places space must be located close to pedestrian activity, along streets, or where pathways intersect. Open spaces must support an integrated pedestrian network by providing on-site and off-site connections to the open space.
- **Activity:** For public gathering places incorporated into to mixed use development with ground commercial uses, active ground-floor uses (e.g., retail or restaurants) must be located uses along the edge of a courtyards and plazas.
- **Visibility and Access:** Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
- **Seating:** Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
- **Year-Round Use:** Open space must be usable year-round with features such as awnings, wind breaks, and sun shades, umbrellas, or other similar features that provide shelter from the elements.

Criteria 5-I: Proximity to Public Parks

Standard: The project is within walking distance of a public park or recreational facility.

Points: See Table 33.

TABLE 33: POINTS AVAILABLE FOR PROXIMITY TO PUBLIC PARKS

Project Distance from Public Park	Points
Within three-quarters mile	1
Within one-half mile	2
Within one-quarter mile	3

Total Available Points: 3

Scoring Instructions: To be eligible for points, the project must be located within walking distance of a City of Morgan Hill or Santa Clara County park with recreational amenities available for public use without charge. The distance to the park is measured as the lineal distance a pedestrian would walk, from the average center point of housing in a project to the nearest entrance point of the park.

Criteria 5-J: Open Space Design

Standard: The project provides common open space and outdoor amenities that enhance project residents' quality of life and the overall project design quality.

Points: See Table 34.

TABLE 34: POINTS FOR OPEN SPACE

Open Space	Points
a. The project designs open spaces to function as “outdoor rooms” for common use of project residents. As outdoor rooms, open spaces feature amenities such as seating areas, shade structures and play equipment to create inviting places that encourage resident activity and interaction.	2
b. The project provides common open space areas of sufficient size for the use and enjoyment of residents. The project does not fulfill its minimum common open space requirement primarily through small patches of unconnected open space areas which individually are of insufficient size to serve as a useful recreational amenity for residents.	1
c. The project uses buildings, fences, walls, and landscaping to define the edges of common open space.	2
d. The project locates open space area so that they can be viewed from individual units, preferably from the kitchen, living room, or dining room.	2
e. The project maximizes the number of units that are immediately adjacent to common open space. Units not immediately adjacent to common open space can access open space areas through pedestrian connections separate from drive aisles and vehicle parking lots.	2
f. The project incorporates exceptional landscape design in common open space areas to create a unique and welcoming environment for residents.	2
g. The project retains existing native trees on the property which, if removed, would require a tree removal permit in accordance with Municipal Code Chapter 12.32 (Restrictions on Removal of Significant Trees).	1
h. For detached single family <u>and duplex/duet</u> projects, rear-yard usable open space is 25 percent or more than the minimum rear setback area required by the applicable zoning. and or finished backyard improvements are installed by the developer.	2

i. <u>Finished (e.g., landscape, hardscape, irrigation) backyard improvements are installed by the developer.</u>	<u>1</u>
<u>h-j.</u> For attached projects, usable private open space for ground floor units is 25 percent or more than required by the applicable zoning and finished private open space improvements are installed by the developer.	2

Total Available Points: 10

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, with no common open space, shall automatically receive 6 points under Criteria 5-J.

6. ENVIRONMENTAL PROTECTION

Intent: Encourage protection of natural resource and promote the City’s environmental sustainability goals.

Points Available: See Table 35.

TABLE 35: ENVIRONMENTAL PROTECTION POINTS AVAILABLE

Criteria	Points Available	
6-A: Energy Efficiency	6	
6-B: On-Site Solar Energy Generation	10	
6-C: Indoor Water Use	4	
6-D: Outdoor Water Use	12	
6-E: Sustainable Site and Building Design	22	
Total	54	22 Maximum

Criteria 6-A: Energy Efficiency

Standard: The project exceeds the minimum building energy efficiency required by the California Energy Code.

Points: See Table 36.

TABLE 36: POINTS FOR ENERGY EFFICIENCY

Energy Efficiency Beyond Minimum Requirement	Points
a. 5%	2
b. 10%	4
c. 15%	6

Total Available Points: 6

Scoring Instructions: Energy use and efficiency is calculated as the aggregate of all buildings within a project. To receive points, a project must show a reduction in its energy budget compared to the standard design building, as calculated by Title 24, Part 6 Compliance Software certified by the California Energy Commission.

Criteria 6-B: On-Site Solar Energy Generation

Standard: The project incorporates on-site solar energy generation systems to provide energy for on-site use.

Points: See Table 37.

TABLE 37: POINTS FOR ON-SITE SOLAR ENERGY GENERATION

Project's annual electrical energy cost provided from an on-site solar energy generation system	Points
a. 60%	4
b. 70%	6
c. 80%	8
d. 90%	10

Total Available Points: 10

Scoring Instructions: Percentage of energy generated from on-site renewable sources must be demonstrated using a building energy performance simulation tool consistent with industry standards.

Criteria 6-C: Indoor Water Use

Standard: The project exceeds the minimum indoor water efficiency and conservation requirements of the California Green Building Standards Code (CalGreen).

Points: See Table 38.

TABLE 38: POINTS FOR INDOOR WATER EFFICIENCY AND CONSERVATION

Water Efficiency Beyond Minimum Requirement	Points
a. 5%	2
b. 10%	4

Total Available Points: 4

Scoring Instructions: Applicants shall demonstrate attainment of water efficiency standards utilizing methods consistent with CalGreen and industry standards.

Criteria 6-D: Outdoor Water Use

Standard: The project reduces outdoor water use through water efficiency landscaping and irrigation.

Points: See Table 39.

TABLE 39: POINTS FOR OUTDOOR WATER USE

Standard	Points
a. Less than 50% of landscaped area contains natural turf	2
b. The project contains no natural turf outside of common areas used for active play	4
c. The project exceeds outdoor water efficiency standards by 10 percent	2

d. The project exceeds outdoor water efficiency standards by 20 percent	4
e. The project exceeds outdoor water efficiency standards by 30 percent	6
f. The project installs subsurface irrigation for all natural turf areas	2

Total Available Points: 12

Scoring Instructions: The project's outdoor water efficiency shall be calculated in accordance with Morgan Hill Municipal Code Chapter 18.73 (Water Conservation in Landscaping). Standards (a) and (b) and standards (c) and (d) are mutually exclusive; points for all other standards may be combined.

Criteria 6-E: Sustainable Site and Building Design

Standard: The project incorporates sustainable building site design features beyond the minimum requirements of the California Green Building Standards Code (CalGreen).

Points: 1 point for every 2 Build It Green Point (BIG) over the minimum required by Chapter 15.65 of the City of Morgan Hill Municipal Code

Total Available Points: 22

Scoring Instructions: Applicants shall use the current Build It Green Checklist maintained by the City of Morgan Hill. A project may receive Build It Green Points only for measures beyond the minimum requirements of the California Green Building Standards Code adopted by the City of Morgan Hill. Consistent with Chapter 15.65 of the City of Morgan Hill Municipal Code, Community points in the Build It Green checklist are excluded from the sustainability standard and the project is required to meet minimum point requirements within the checklist categories (energy, water, resource, and indoor air quality).

If construction on a project has not commenced within 3 years of initial award of allotments, project must use Build It Green checklist in effect at the time of application for building permits.

7. TRANSPORTATION

Intent: Support a balanced and efficient transportation system for pedestrians, cyclists, public transit, and automobiles that maintains quality of life in residential neighborhoods.

Points Available: See Table 40.

TABLE 40: TRANSPORTATION POINTS AVAILABLE

Criteria	Points Available	
7-A: Bicycle and Pedestrian Improvements	6	
7-B: Transit Improvements	3	
7-C: Off-Site Roadway Improvements or Fund Contribution	6	
7-D: Transportation Demand Management	5	
7-E: Connections to Adjacent Property	3	
7-F: Internal Connections	4	
7-G: EV Charging Station	4	
Total	31	15 Maximum

Criteria 7-A: Bicycle and Pedestrian Improvements

Standard: The project constructs pedestrian and bicyclist improvements beyond the minimum requirement.

Points: 1 point for every \$1,000 in improvements constructed per unit.

Total Available Points: 6

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, shall automatically receive 3-4 points under Criteria 7-A without constructing pedestrian and bicyclist improvements.

Scoring Instructions: Improvements may be on-site or off-site consistent with the City's Bikeways Master Plan. Points may be awarded only for the construction of improvements that exceed improvements normally required as a condition of approval for a subdivision map or other project permit. For example, the City would not typically award points for the installation of a bikeway along the property frontage identified as a future bikeway in the City's Bikeways Master Plan as the installation of this bikeway would be a typical condition for the approval of a proposed subdivision.

To be eligible for points, bicycle improvements must be consistent with the City of Morgan Hill Bikeways Master Plan. Types of bicycle improvements may include construction of bicycle paths, lanes, and routes; repair of existing facilities, installation of bicycle racks and lockers, and installation of way-finding signs.

Types of pedestrian improvements may include installation of new sidewalks, enhanced street crossings, ADA-compliant curb ramps, mid-block crossings, traffic calming measures, and curb extensions.

Points may be awarded for creative or innovative amenities that support bicycling and walking, including but not limited to secure indoor bicycle storage for each unit, shared bicycle repair facilities, and car sharing facilities.

Criteria 7-B: Transit Improvements

Standard: The project constructs bus stop or other bus transit improvements beyond the minimum requirement

Points: 1 point for every \$1,000 in value of improvement per unit.

Total Available Points: 3

Scoring Instructions: Points may be awarded only for the construction of improvements that exceed improvements normally required as a condition of approval for a subdivision map or other project permit. For example, the City would not typically award points for the installation of a bus turnout along the property frontage if the City's General Plan or other policy documents identify the location as requiring the turnout. The requirement to install the turnout or other similar improvement would be a typical condition for the approval of a proposed subdivision to comply with and achieve consistency with the General Plan.

Types of improvements eligible for points include bus shelters, benches, reinforced street sections or bus pullout areas, information signs and displays, enhanced pedestrian access, security enhancements, and landscaping. These improvements must be located on an approved or planned Valley Transportation Agency (VTA) transit route and accepted by the VTA for maintenance. A letter from the VTA must be submitted confirming VTA's acceptance and maintenance of the proposed bus stop. For planned bus routes, the VTA letter shall provide confirmation of the future bus route extension. This standard may apply to a bus stop constructed in the initial or previous phase that would serve subsequent phases of the same development.

There is no geographic requirement for improvements - points may be awarded for improvements located outside of the project boundary or away from the immediate vicinity of the project.

Criteria 7-C: Off-Site Street and Parking Improvements or Fund Contribution

Standard: The project constructs and/or funds off-site street roadway improvements.

Points: 1 point for every \$1,000 in value of improvement per unit.

Total Available Points: 6

Scoring Instructions: To be eligible for points, a project must provide for the dedication and/or improvement of extensions to existing streets and/or shared parking lots outside of the project boundaries. Shared parking must be subject to an agreement between property owners to ensure the continued availability of shared parking. Projects which offer to complete adjacent or nearby off-site

street or parking improvements which were committed to be installed by another project under a previously approved application will not receive points for the same commitment. To be eligible for points improvements must be voluntary and not otherwise required by the City or any other public agency.

After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the Public Works Director determines that the in-lieu funds will allow for street and parking improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 7-D: Transportation Demand Management

Standard: The project incorporates transportation demand management (TDM) measures

Points: See Table 41.

TABLE 41: POINTS FOR TRANSPORTATION DEMAND MANAGEMENT MEASURES

Building Design Feature and Construction Method	Points
The project contributes to the City's transportation fund to be used to provide city-wide TDM programs	1 per \$1,000 contributed per unit, up to 2
For rental projects, the project establishes a TDM program that incorporates three or more TDM measures	1 to 3

Total Available Points: 5

Scoring Instructions: To be eligible for points, TDM measure must be in excess of those required as environmental mitigation and may not be used to receive point under other competition criteria. Rental projects may receive one point for committing to maintain a TDM program for the life of the project that incorporates three or more of the following TDM measures:

- Free transit passes for residents.
- Free car share membership for residents.
- On-site cargo bicycle available for residents' use.
- Operation of a dedicated shuttle service during the peak period to a rail station.
- Operation of a commute assistance center, offering on site, one stop shopping for transit and commute alternatives information.
- Installation of shared office facilities for the use of residents to facilitate telecommuting and home-based employment. high bandwidth connections in employees' homes to the Internet to facilitate home telecommuting.
- Other similar measures as approved by the Planning Commission.

Criteria 7-E: Connections to Adjacent Property

Standard: The project maximizes connections to adjacent property for vehicles, bicyclists, and pedestrians.

Points: See Table 42.

TABLE 42: POINTS FOR CONNECTIONS TO ADJACENT PROPERTY

Connection to Adjacent Property	Points
a. For projects abutting developed land, the project aligns and connects streets intersecting the project boundary with all adjoining streets.	1
b. For projects abutting undeveloped land, the project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	1
c. The project provides off-street bicycle and pedestrian connections to adjacent destinations, including parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the general public.	1

Total Available Points: 3

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, shall automatically receive ~~3~~4 points under Criteria 7-E.

Criteria 7-F: Internal Connections

Standard: The project maximizes internal connections within the project for vehicles, bicyclists, and pedestrians.

Points: See Table 43.

TABLE 43: POINTS FOR INTERNAL CONNECTIONS

Internal Connection	Points
a. The project incorporates “complete streets” that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities.	1
b. The project incorporates enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage.	1
c. The project provides direct pedestrian connections from units to common open space, recreational facilities, and other project amenities.	1

d. The project incorporates neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulbouts, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	1
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Total Available Points: 4

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, shall automatically receive 3-4 points under Criteria 7-F.

Criteria 7-G: Electric Vehicle Charging Stations

Standard: The project provides electric vehicle charging stations beyond minimum requirements.

Points: 1 point per charging station.

Maximum Points: 4

Scoring Instructions. Charging stations shall be publicly available for use by all project residents and visitors. The developer shall install all connections and equipment necessary for the charging stations to be ready to use by residents and visitors upon project completion. Technical specifications for charging stations and related improvements shall be as required by the Building Official upon time of installation.

8. MUNICIPAL INFRASTRUCTURE

Intent: Encourage the efficient use of public infrastructure and services.

Points Available: See Table 44.

TABLE 44: MUNICIPAL INFRASTRUCTURE POINTS AVAILABLE

Criteria	Points Available	
8-A: Water Infrastructure	4	
8-B: Wastewater Infrastructure	4	
8-C: Storm Water Infrastructure	4	
8-D: Infrastructure and Services Fund Contribution	4	
8-E: Broadband Connectivity	6	
Total	22	10 Maximum

Criteria 8-A: Water Infrastructure

Standard: The project constructs off-site water infrastructure improvements beyond minimum requirements.

Points: 1 point for every \$1,000 in improvements constructed per unit

TOTAL AVAILABLE POINTS: 4

Scoring Instructions: Off-site water infrastructure improvements must be consistent with the City's Infrastructure Master Plan, approved by the Public Works Director, and constructed consistent with the City's standard specification for water infrastructure improvements. After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the Public Works Director determines that the in-lieu funds will allow for water infrastructure improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 8-B: Wastewater Infrastructure

Standard: The project constructs off-site wastewater infrastructure improvements beyond minimum requirements.

Points: See Table 45.

TABLE 45: POINTS AVAILABLE FOR WASTEWATER INFRASTRUCTURE

Standard	Points
The project provides off-site extensions or replacement of wastewater collection pipes and lift stations beyond minimum requirements.	1 point for every \$1,000 in improvements constructed per unit

Total Available Points: 4

Scoring Instructions: Off-site waste water infrastructure improvements must be consistent with the City's Infrastructure Master Plan, approved by the Public Works Director, and constructed consistent with the City's standard specification for water infrastructure improvements. After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the Public Works Director determines that the in-lieu funds will allow for waste water infrastructure improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 8-C: Storm Water Infrastructure

Standard: The project utilizes low impact development (LID) techniques and/or constructs storm water improvements beyond minimum requirements.

Points: See Table 46.

TABLE 46: POINTS AVAILABLE FOR STORM WATER INFRASTRUCTURE

Standard	Points
The project reduces the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques.	2 points
The project provides off-site stormwater infrastructure improvements beyond minimum requirements.	1 point for every \$1,000 in improvements constructed, up to 2 points

Total Available Points: 4

Scoring Instructions: Low-Impact Development (LID) is a stormwater management approach that manages rainfall on the site through landscape features that infiltrate, filter, store, evaporate and detain stormwater at the source. - LID techniques integrate green space, native landscaping, natural hydrologic functions, and other techniques to generate less runoff from developed land. City LID requirements can be found in the City's Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements (2015). The applicant is required to demonstrate that the LID techniques specifically proposed will result in water quality and flood control benefits to the project site and community.

Off-site storm water infrastructure improvements must be consistent with the City's Infrastructure Master Plan, approved by the Public Works Director, and constructed consistent with the City's standard specification for water infrastructure improvements. After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the Public Works Director determines that the in-lieu funds will allow for storm water infrastructure improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 8-D: Infrastructure and Services Fund Contribution

Standard: The project contributes water, sewer, storm drain funds greater than the minimum required.

Points: 1 point for every \$1,000 contributed.

Total Available Points: 4

Criteria 8-E: Broadband Connectivity

Standard: The project provides advanced broadband connectivity.

Points: See Table 47.

TABLE 47: POINTS AVAILABLE FOR COMMUNICATION TECHNOLOGY

Standard	Points
The project installs broadband conduit in the public right-of way.	2
The project installs broadband conduit from the public right-of-way to each home or occupied building in the project.	1
The project pre-installs indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit.	1
The project provides primary broadband service to each unit from a competitive telecommunications company (i.e., a company other than Frontier or Charter)	6

Total Available Points: 6

Scoring Instructions: Broadband means telecommunications service capable of supporting digital data transmission at minimum download speeds of 25 Mbps. To be eligible for points, projects must install conduit each with at least two pull cables and of sufficient size and quality to accommodate multiple future broadband providers. At least one conduit shall remain empty and reserved for use by a potential future broadband service provider. Points for providing broadband service from a competitive telecommunications company may not be combined with points for installing conduit pathways within the right-of way, from the right-of-way to buildings, and within buildings.

9. PROJECT QUALITY

Intent: Encourage exceptional project design at the neighborhood, site, and building scale.

Points Available: See Table 48.

TABLE 48: PROJECT QUALITY POINTS AVAILABLE

Criteria	Points Available	
9-A: Exterior Building Design	13	
9-B: Building Placement and Massing	15	
9-C: Site Improvements	7	
9-D: Vehicle Parking and Access	13	
9-E: Public Art	3	
9-F: Smart Homes	4	
9-G: Project Excellence	3	
Total	58	35 Maximum*

*The maximum score for Criteria 9-A through 9-F is 32. The Planning Commission may award an additional 3 points for Criteria 9-G for a total maximum score of 35.

Criteria 9-A: Exterior Building Design

Standard: Exterior architectural elements support walkable and attractive neighborhoods.

Points: See Table 49.

TABLE 49: POINTS FOR EXTERIOR BUILDING DESIGN

Building Design Features	Points
1. Front Porches. A minimum of 50 percent of homes facing a street or common interior courtyard include a front porch. -Porches must be part of the home's primary entrance, connected to the front yard or common interior courtyard, a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard. Multi-family projects may earn points if 50 percent of ground floor units with exterior entrances include a porch.	1 (attached) 3 (detached)
2. Balconies Facing Street or Courtyard. A minimum of 25 percent of home facing a street or common interior courtyard include a balcony overlooking a public space. Balconies must provide usable private outdoor space for residents, be in full view	1

of a street or common interior courtyard, and face away from neighbors' yards to maintain privacy. Multi-family projects may earn points if 25 percent of upper floor units facing a street or common interior courtyard include a balcony.	
3. Balconies Facing Alleys. A minimum of 25 percent of homes abutting a shared alley include a balcony overlooking the alley, parking area, or drive aisle. Multi-family projects may earn points if 25 percent of upper floor units facing an alley, parking area, or drive aisle include a balcony.	1
4. Façade Articulation and Finishes – Front building facades feature quality façade articulation and finishes to break up blank, flat walls and provide visual interest. Example façade articulation include but are not limited to windows, shutters, awnings, balconies, bay windows, and stone enhancements.	1 (attached) 3 (detached)
5. 360-degree Architecture. The project features full and consistent articulation and design detail on all building facades.	1 (attached) 3 (detached)
6. Corner Treatments. For projects where the side or rear of a home faces a street or common courtyard street, the project incorporates enhanced treatments of these side and rear facades to support a welcoming and visually interesting public realm.	1
7. Colors and Materials. The project incorporates a mix of exterior finish materials and colors that is compatible with the architecture of the homes and enhances visual interest.	1 (attached) 3 (detached)
8. Multi-family Ground Level Entrances. For multi-family residences, the project provides as many private, exterior ground-level entries to individual units as possible.	1
9. Individual Residences – Attached Projects. Large buildings are architecturally subdivided so that they appear as individual residences or small groups of units. Buildings incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	4
10. Residential-Scale Design Elements – Attached Projects. Buildings incorporate design details, including but not limited to porches, projections, eaves, bay windows, and other similar architectural elements, that provide residential scale and help to break up the building mass.	1

Total Available Points: 13 ([attached](#)); 15 ([detached](#))

Criteria 9-B: Building Placement and Massing

Standard: The placement of buildings on lots, orientation of units to the street, and configuration of building height and volume supports a high-quality design environment.

Points: See Table 50.

TABLE 50: POINTS FOR BUILDING PLACEMENT AND MASSING

Building Placement and Massing Features	Points
1. Entrance Orientation – Collector and Residential Streets. The primary entrance of homes face streets along the project perimeter for projects: - Fronting an existing residential or collector street; or - Located Downtown or in the Monterey Road corridor.	<u>12</u>
2. Entrance Orientation – Single-Family Detached Projects/Arterial Streets. The primary entrances of detached single-family homes outside of Downtown or the Monterey Road corridor do not face an arterial street. Project perimeters along arterial streets feature landscaping, fences, walls, and other improvements that create visual interest and support a pedestrian-friendly environment.	<u>12</u>
3. Variation in Building Height. The project incorporates variation in building heights to minimize monotony and enhance visual interest.	2
4. Variation in Building Placement. The project incorporates variation in building front setbacks and placement on lots to minimize monotony and enhance visual interest.	2
5. Roof Line Variation. Variation in roof lines through changes in roof height and form break of building massing and create visual interest.	<u>12</u>
6. Upper Floor Set Back – Detached Homes. A minimum of 50 percent of detached single-family homes feature second stories stepped back a minimum of 10 feet from the street-facing ground floor building wall.	<u>12</u>
7. Upper Floor Set Back – Attached Homes. Upper floors of attached housing types facing a street are stepped back a minimum of 10 feet from the street-lower floor building wall.	1
8. Height and Project Edge – Attached Projects. The project minimizes building heights along the project edge and locates larger buildings towards the interior of the site.	1

9. Separate Structures – Attached Projects. Large projects divide units into multiple separate structures. Maximum number of units per structure is as follows: - Attached single-family (townhomes): 5 units maximum per structure - Multi-family: 10 units maximum per structure	4	Total
10. Adjacent Building Types– Attached Projects. The project matches building types along project edge with adjacent land that is developed to its ultimate potential use according to the General Plan or applicable zoning. For example, the project locates detached single-family homes along the project perimeter when facing existing detached single-family homes in an area zoned for detached single-family homes.	1	

Available Points: [12 \(detached\); 15 \(attached\)](#) ~~15~~¹⁹

Criteria 9-C: Site Improvements

Standard: Landscaping and other site improvements contribute to a high-quality design environment.

Points: See Table 51.

TABLE 51: POINTS FOR SITE IMPROVEMENTS

Site Improvements	Points
1. Landscaping – Parkway Design. The project provides a landscape parkway along the street 50 percent wider than the minimum required for the street type. Street trees and pedestrian-scale lighting within or adjacent to the parkway exceed minimum requirements and help create a distinctive and memorable design environment. For private streets with no minimum parkway standard, projects may receive points for exceed the width of an equivalent public street standard.	2
2. Landscaping – Visual Relief. Landscaping is placed and designed to minimize the appearance of building bulk and mass and to emphasize building features that create visual interest and support a pedestrian-friendly environment.	1
3. Exterior Lighting. Exterior lighting fixtures are architecturally integrated with the primary building's design, style, material, and colors.	1
4. Entrance Pathways. The project provides a direct pathway connection from a public sidewalk to the primary entrance of each unit or building adjacent to the sidewalk. For buildings and units oriented towards interior common open space, points may be awarded if direct pathway connection is provided from the open space to each unit or building facing the open space.	1

5. Public/Private Transitions. The project includes transition zones between private and public spaces along the street frontage through the use of landscaping, fences, trellises, walls, or a change in floor elevation.	1
6. Mechanical Equipment. All mechanical equipment is screened from the public right-of-way and common areas enclosed with an architecturally compatible structure. Equipment closures are screened through landscaping.	1

Total Available Points: 7

Criteria 9-D: Vehicle Parking and Access

Standard: The project minimizes visual impacts from on-site vehicle access and parking facilities.

Points: See Table 52.

TABLE 52: POINTS FOR VEHICLE PARKING AND ACCESS

Vehicle Parking and Access Features	Points
1. Garage Door Orientation. Garage doors do not face the front street. Garages are configured on the site such that garage doors face either the side or rear of the property.	3
2. Garage Door Design – Minimizing Visual Dominance. For garage doors that face the front street, garage doors and entrances are designed to be visually subservient to other building elements through methods such as increasing garage door setbacks, incorporating greenery within the driveway, and other methods.	1
3. Garage Door Design - Detailing. Garage doors feature enhanced windows or architectural detailing consistent with the main dwelling.	1
4. Garage Configuration. No more than 50 percent of single-family homes feature an identical garage configuration. Garage configuration may include front loaded attached, front loaded detached, side loaded, and rear loaded garages.	1
5. Parking – Attached Projects. The project locates parking lots serving attached residential units at the rear or side of the site to allow a majority of dwelling units to front on the street or an internal courtyard. Parking is not located between a building and any public sidewalk or street.	1
6. Screening. Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	1

7. Landscaping – Attached Projects. The project incorporates landscaping to soften the appearance of off-street parking areas and private drive aisles in attached single family and multi-family projects	1
8. Setback Areas. For detached single-family projects, paved areas and hard surface for vehicle access and parking occupies not more than 50 percent of the front and street-side setback area.	1
9. Pavement Design. Areas for vehicle parking and circulation feature enhanced paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	2
10. Clustered Units. Parking for clustered single-family units use a shared driveway.	1

Total Available Points: 13

Criteria 9-E: Public Art

Standard: The project incorporates public art to create a livable and visually stimulating environment.

Points: 1 point for every \$1,000 in artwork cost per unit.

Total Available Points: 3

Scoring Instructions: Public art means privately funded, constructed, and maintained artwork located on private property, but which also provides a public benefit, or on public property pursuant to City approval. The public art must be located in areas on the site clearly visible from the public street or sidewalk or in publicly accessible outdoor areas. Public art must be displayed in a manner that will enhance its enjoyment by the general public.

Artwork costs include all costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation, or exhibition of the public art. Public art may include sculpture, murals, photography and original works of graphic art, earthworks, fiber works, waterworks, neon, glass, mosaics, or any combination of forms of media, furnishing or fixtures permanently affixed to the building or its grounds, and may include architectural features of the building or elements of landscape design. The creator of public art shall be a practitioner in the visual arts who is not a member of the project engineering, architecture or landscape architecture firm.

Criteria 9-F: Smart Homes

Standard: The project accommodates or provides home automation devices that are connected to and controlled through a digital network.

Points: See Table 53.

TABLE 53: POINTS AVAILABLE FOR SMART HOMES

Standard	Points
The project installs home automation devices within units.	1 per \$1,000 in device value per unit
The project installs home automation devices within units that reduce energy consumptions, such as devices that automatically adjust lighting, heating, and air conditioning.	1 per \$1,000 in device value per unit

Total Available Points: 4

Scoring Instructions: A home automation device means a household device, appliance, or fixture that is connected to a digital network and controlled remotely by the resident. Example home automation devices include, but are not limited to major homes appliances (refrigerators, freezers, ovens washers/dryers), heaters and air conditions, thermostats, lighting systems, locks and home security, doorbells, and home theatre and entertainment systems.

Criteria 9-G: Project Excellence

Standard: The project incorporates exceptional features as determined by the Planning Commission.

Points: See Table 54

TABLE 54: POINTS AVAILABLE FOR PROJECT EXCELLENCE

Planning Commission Vote	Points
Majority	1
Super-Majority	2
Unanimous	3

Total Available Points: 3

Scoring Instructions: Points may be awarded to projects that demonstrate exceptional consistency with policies under Goal CNF-11 in the General Plan City and Neighborhood Form Element as determined by the Planning Commission. Points for Planning Commission votes (majority, super-majority, unanimous) are based on Planning Commissioners present. Super-majority means one vote more than a majority vote. When making its decision the Planning Commission will consider information provided by staff.

IV. RDCS IMPLEMENTATION POLICIES

A. Schedule for 2017 Competition

March 14	Planning Commission Evaluation and Recommendation of Available Allotments (18.78.110B)
April 19	City Council Determination on Possible Reduction to Available Allotments (18.78.110B)
June 19	Pre-Competition Orientation (18.78.120A)
August 18	Pre-Application Review (18.78.130)
September 15	Pre-Application Review Letter (18.78.130F)
September 29	Applicant Response to Pre-Application Review Letter (18.78.130G)
October 19	RDCS Application Submittal Deadline (18.78.120C)
November 2	General Plan and Zoning Consistency Determination (18.78.120D)
November 20	Deadline to file General Plan and Zoning Consistency Appeal to City Council
December 4	Staff Scoring of Applications/Recommendation to Planning Commission (18.78.120E)
December 13	Appeals of General Plan and Zoning Consistency Heard by City Council
December 19	Planning Commission Hearing - Project Scores (18.78.120F)
January 3	Deadline to File Scoring Appeal to City Council
February 7	Scoring Appeal Heard by City Council
February 12	Staff Recommendation - Award of Allotments (18.78.120G)
February 27	Planning Commission Hearing - Award of Allotments (18.78.120H)
March 14	Deadline to File Allotment Appeal to City Council
April 3	Allotment Appeal Heard by City Council

* All decisions of the Planning Commission may be appealed to the City Council (18.78.120J)

B. Exemptions

The following types of residential projects may be developed without first receiving any allotments:

1. One single-family home on a lot existing as of March 1, 2017;
2. Secondary dwelling units;
3. The conversion of an existing single-family home into a duplex provided that a new detached primary structure is not constructed on the lot or lots;
4. Assisted living/nursing homes (reference Zoning Ordinance for definition); and
5. The annexation of existing dwelling units outside of City limits into the City.

C. Application Submittal Requirements

See RDCS Process and Filing Requirements section on RDCS Process web page:

<http://www.morgan-hill.ca.gov/109/RDCS-Process>

D. General Plan and Zoning Consistency

After deeming an RDCS application complete, the Community Development Director or the Director's designee shall evaluate each application for consistency with the City's General Plan and Zoning Code and reject any applications which are found to be inconsistent with either the City's General Plan or Zoning Code. The Community Development Director's determination is appealable to the City Council. The City Council may direct the applicant to make modifications to the application and if these modifications bring the application into compliance with the General Plan and Zoning Code the application may continue to compete for allotments.

A proposal is consistent with the General Plan when:

1. The subject site's General Plan Land Use designation allows the proposed use at the proposed density; and
2. The proposal meets the overall intent of the Goals and Policies of applicable elements of the General Plan.

A proposal is consistent with the Zoning Code when:

1. The base Zoning District or PD Zoning for the site allows the proposed use; and the proposal meets the zoning regulations (e.g., setbacks) of the subject site's base Zoning District or PD Zoning, or the proposal only includes minor deviations from zoning regulations that, at the entitlement stage, could either be modified to be fully consistent with zoning regulations or the applicant would secure approval of a PD Zoning to establish modified development standards.

Minor deviation means an adjustment to the development standard in the project's base zoning district not to exceed the percentages in Table 55. For example, if a project is in a zoning district with a minimum front setback of 25 feet and proposes front setbacks of no less than 20 feet through PD Zoning, the project would be consistent with the Zoning Code. If a project in a zoning district with a maximum height of 30 feet proposed a height of 35 feet (more than a 10 percent deviation from the zoning district standard), the project would not be considered consistent with the Zoning Code.

TABLE 55: MAXIMUM DEVIATIONS FOR ZONING CONSISTENCY

Standard	Maximum Deviation
Setbacks, Front and Rear	20 percent decrease
Setbacks, Side	30 percent decrease
Lot Coverage and FAR	10 percent increase
On-site Parking	25 percent decrease
Building Height	10 percent increase
<u>Lot Size</u>	<u>15 percent decrease</u>

Any proposed minor deviation(s) must be clearly identified with justification for the deviation(s) provided in writing as part of the required Pre-Application Review process, per Section 18.78.130 of the RDCS Ordinance.

Proposed deviations shall not unreasonably affect abutting sites.

E. Competition Categories and Ongoing Projects

Each year the City Council may establish competition categories for certain types of projects. Projects within a competition category will compete for allotments only with other projects in the same competition category. For each competition category, the City Council shall identify the number of allotments available for projects competing within the competition category. Examples of competition categories may include, but are not limited to, projects within the Monterey Road Corridor, small projects (less than 15 units), senior housing, vertical mixed use, custom lots, and multi-family rental.

2017 Competition for Fiscal Year 2019/20

<u>Competition Category</u>	<u>Number of Allotments</u>
Affordable Housing	40 <u>39</u> (20% of total allotments)
Micro Projects	XX
Small Projects	XX
Multi-family Rental	XX
Open/Market	XX
Senior Housing	XX
Monterey Corridor	XX
Custom Lots	XX
On-going Projects	59
Prior Multi-year Commitment	0
Total	200 <u>195</u>

Affordable Housing: The City Council shall ensure that an adequate number of allotments are available for affordable housing projects consistent with the City's Regional Housing Needs Allocation (RHNA) and adopted Housing Element.

Micro Projects: A Micro Project consists of a maximum of six (6) dwelling units on a site with an ultimate development potential of no more than six (6) units.

Small Projects: A Small Project consists of between seven (7) and 15 dwelling units on a site with an ultimate development potential of no more than 15 units.

Multi-family Rental: A Multi-family Rental project is a development of any size providing market rate rental housing.

Open/Market: The Open/Market category applies to housing of any type typically consisting of more than 15 units at build-out.

Senior Housing: Senior Housing projects are any market-rate housing type for persons 55 and older. For RDCE purposes Senior Housing must meet the following minimum requirements: 1) Must be 25 units or more; 2) Lot sizes shall not exceed an average 9,000 square feet (unless a single lot multi-family development); 3) Must have an HOA to maintain all common amenities and front yard landscaping; 4) Seventy-five percent or more of the units must be single story in projects proposed in single-family zoning districts (or single level flats in multi-family zoning districts) with the exception of R-1 4,500 Zoning District where fifty percent or more shall be single story; 5) All 2-story units shall be designed and prewired for elevators or stair lifts; 6) All units within the project must meet visitability and adaptability standards. The Planning Commission has the discretion to waive or allow variation from the above definition for multifamily senior projects that are found to be in substantial conformance with the above definition.

Custom Lot: A Custom Lot is defined as a project which includes the opportunity for individuals to purchase lots. Custom lots shall be defined as follows: 1) Minimum lot size shall be based on the underlying zoning (no RE or large lot minimums); 2) The original developer can retain ownership of up to 50% of the lots with the balance made available for purchase by individual builders who wish to construct homes; 3) Of the "for sale lots", no more than 2 lots may be purchased by any one person; 4) Exterior elevations should vary throughout the project and floor plans may not be repeated, but can be reversed if elevation is varied.

On-going Projects: In addition to the competition categories, allotments may also be given to on-going projects. These are projects that were awarded building allotments in previous competitions, but were not fully allocated. Each on-going project can receive allotments without submitting a new application. See Section N below for additional details.

Prior Multi-Year Commitment: The number of allotments in a given competition year that were previously awarded to multi-year/phased projects.

F. Scoring

Scoring Errors: After the Planning Commission approval of final points no point adjustments are allowed.

Changes to Approved Projects/Substitution of Points/Criteria: Changes will be considered on a case-by-case basis with any changes resulting in the project receiving the same or higher score within each Objective and the change would maintain or improve the quality of the project and would result in the same or greater value to the City or its project's future residents. If project is refined, allow points to be made up in a different Objective only if it is not possible to make-up in Objective where loss of points occurred.

Point Opportunities for Project Feature Under Multiple Criteria. In most cases, a project feature or contribution may not earn a project points in more than one criteria. For example, a project that earns points for installing safe-routes-to-school pedestrian improvements under Criteria 1-C (Student Transportation Improvements) may not also receive points for the same improvement under Criteria 7-A (Bicycle and Pedestrian Improvements). However, there are cases where a project design feature may allow a project to receive points from multiple criteria. For example, a project that incorporates accessory dwelling units may earn points in criteria 4-A (Accessory Dwelling Units) and 4-B (Diversity of Housing Types). Points may be awarded in multiple criteria for a single project feature only where expressly identified in Section III of this manual.

G. Multi-year Allotments

Section 18.78.140 Project Phasing allows the Planning Commission to distribute allotments awarded to a single project over multiple years to support a fair and efficient RDCS process by allowing high quality projects constructed over multiple years to compete one time for allotments.

The Planning Commission has discretion to determine which projects are eligible for multi-year allotments and may award multi-year allotments over a period of up to: 1) Three years for projects with less than 100 units; and 2) Five years for projects with 100 or more units. How well a project scores will be one factor Planning Commission will consider when awarding multi-year allotments.

The Planning Commission may award multi-year allotments to projects only upon finding that:

1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing;
2. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development;
3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and
4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

The Planning Commission will strive to ensure that a sufficient number of allotments are available each year for non-multi-year allotted projects, in addition to affordable allotments, to allow for a yearly competition.

Multi-year projects are not eligible to compete for additional allotments within the years awarded.

H. Development Agreement

A deadline to commence construction under the fiscal year building allotment shall be incorporated into a Development Agreement approved by the City Council.

I. Tentative Subdivision Map

The City will allow for the processing of tentative subdivision maps which exceed the number of allotments currently assigned to a development if the following criteria are met:

- The overall project must be consistent with the Zoning Code.
- The Tentative Map shall be non-vesting.
- The recordation of a Final Map will not be permitted until allotments are secured under the RDCS and a Development Agreement has been recorded.

The Tentative Map approval would expire after two years (or sooner as specified by the Planning Commission) and the Tentative Map approval period will not be automatically extended through the filing of a Final Map, but may be extended through separate application and approval by the Planning Commission.

J. Exercise of Allotments

Allotments must be exercised within 30 months of approval or by an alternative date specified in the Development Agreement. An allotment is considered exercised with the recordation of a Final Map, issuance of a grading permit, or the commencement of construction if no Final Map is required.

A project shall be deemed to have physically commenced construction upon issuance of a building permit and completion of the following improvements: Installation of on-site and off-site improvements including grading and certification of the building pad by the Building Division and completion of one or more of the following: a) Excavation of the footings and foundations for the dwelling units; b) Installation of water or sewer laterals to the relevant units.

K. Early Start of Construction

An early start of construction date is possible as long as the units are not completed and occupied until after the start of the fiscal year in which the allotments must be used. The construction schedule

incorporated into the project development schedule shall ensure that dwelling units are not completed before the start of the fiscal year in which the allotments must be used.

L. Extensions

For Projects that received allotments under the previous RDCS, but have not secured a Development Agreement, the Community Development Director may issue a (single) six (6) month extension based on current Measure S criteria.

Extension requests shall be submitted in writing to the Community Development Department a minimum of 60 days prior to the allotment expiration date and shall describe how the project meets the extension eligibility criteria listed below and in Section 17.78.170F of the Zoning Code.

In addition to receiving an Administrative Extension and/or prior extensions under the previous RDCS, a project may receive no more than one (1) extension for a maximum one additional year period. Phased projects may only receive one, one-year extension. The commencement date of successive phases may, at the discretion of the Planning Commission, be extended at the time of granting the one extension.

Eligibility Criteria

1. The Planning Commission may approve an extension only when the City or other public agency is responsible for a delay (evaluated on a case-by-case basis) in the issuance of permits or granting approvals required to exercise the allotments, or due to an earthquake, flood, fire, or other severe act of nature outside of the applicant's control. It is the applicant's responsibility to provide evidence that the request is consistent with this requirement.
2. The Planning Commission may not approve an extension for any reason other than in the above paragraph, including but not limited to difficulties obtaining financing, changes to the project not required by the City or other public agencies, applicant delays responding to requests from the City or other public agency, personal circumstances of the applicant, or changes in property ownership.

M. Transfer of Allotments

In order to expedite the completion of projects awarded allotments under the RDCS, the transfer of fiscal year allotments between and within projects that meet the following criteria, may occur:

1. The receiving project has sufficient lead time to exercise the transferred allotment prior to the deadline.
2. The transfer must work as a trade between two developments or within a project.
3. The transfer may apply to partially allotted and fully allotted projects.
4. Both on-going and recently allotted first time projects may transfer allotments.

A transfer only changes the year the units may be built. A transfer does not alter in any way project commitments.

N. On-Going Allotments

Each on-going project can receive up to 15 allotments (up to 25 for projects that are transitioning from Measure C to Measure S) without submitting a new application. Projects are required to submit a letter by the RDCS Application filing date requesting on-going allotments. Projects that have previously competed and are partially allotted shall be considered on-going and may receive allotments from the on-going category. To be eligible to receive an allotment, the following criteria must be met:

1. A project has completed all planning entitlements (Tentative Map, Development Agreement, and Site Review).
2. A project is in compliance with their development schedule.
3. A project will pay additional fees for Development Agreement compliance related to the additional award and any fees for processing and administration of on-going allotments should they be established and required.
4. Finally, for the unique 2017 RDCS competition, the three Measure C transitional projects, Laurel-TRI Pointe, San Pedro-Presidio Evergreen, and Toll Brothers (formerly Borello) will be entitled to receive a combined maximum of 59 allotments.

Projects that were awarded, but do not use on-going allotments will lose their eligibility to be considered on-going and must re-compete.



PLANNING COMMISSION STAFF REPORT

MEETING DATE: April 25, 2017

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

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

RECOMMENDATION(S)

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

LOCATION MAP:



Location:	West side of Butterfield Boulevard between Jarvis Drive and Digital Drive.
Site Area:	39 acres
General Plan:	Industrial
Zoning:	Industrial/Planned Unit Development

Request: Development Agreement for development of 39 acres of industrial property located within the Morgan Hill Ranch Business Park.

PROJECT DESCRIPTION

DivcoWest SVI, the property owner, is proposing a Development Agreement for the Butterfield Technology Center Project consisting of up to 600,000 gross square feet of new industrial development, public park, landscaping, parking, streets and infrastructure. The Developer also owns the 19.5-acres contiguous to the industrial property. A separate, but concurrent, application for a multi-family residential development on the residential property is being processed through the Residential Development Control System (RDCS). The residential project will be subject to a separate Development Agreement through the RDCS. Because of the importance of diverse housing, especially multi-family apartments near the City's core job center, to the Developer's ability to effectively market the Property, the Developer has proposed timing of certain obligations under this Agreement that are linked to the timing of the residential project.

SUMMARY

Although the project was scheduled for the April 25, 2017 Planning Commission meeting, negotiations are still underway and the Development Agreement is not complete and ready for Planning Commission consideration. Public hearing notices were published and mailed to the community; therefore, it is recommended the Planning Commission open the public hearing and continue the project to a date certain. The project would be scheduled for the May 9, 2017 Planning Commission meeting.

LINKS/ATTACHMENTS: