



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, May 9, 2017 7:00 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

DECLARATION OF POSTING OF 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, AAE2017-0013, ZONING AMENDMENT, AAE2017-0021, SUBDIVISION AMENDMENT, AAE2017-0022: BUTTERFIELD - DIVIDEND: REQUEST FOR APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT, ZONING AMENDMENT AND SUBDIVISION AMENDMENT TO ADD SIX LOTS; APPROVE A SIX-MONTH EXTENSION TO THE COMMENCEMENT OF CONSTRUCTION DEADLINE (FISCAL YEAR 2016-2017); THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-26-005 AND 008, ARE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF BUTTERFIELD BOULEVARD AND CENTRAL AVENUE (MH VALENCIA 2015 INC., OWNER). CEQA: ADOPTED MITIGATED NEGATIVE DECLARATION**

Recommendation:

1. Open/close public hearing;
2. Adopt Resolution A - Recommend City Council approve Development Agreement Amendment;
3. Adopt Resolution B - Approve amendment to Precise Development Plan and Planned Development Overlay; and
4. Adopt Resolution C - Approve amendment to the Non-Vesting Tentative Map.

2. **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:

Adopt Resolution recommending City Council approval of a Development Agreement.

OTHER BUSINESS

3. **RDCS DISCUSSION**

Recommendation:

Discuss and provide feedback on several outstanding Residential Development Control System (RDCS) processing and procedural questions.

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: May 9, 2017

PREPARED BY: Jim Rowe, Contract Planner

APPROVED BY: Jennifer Carman, Community Development Director

DEVELOPMENT AGREEMENT AMENDMENT, AAE2017-0013, ZONING AMENDMENT, AAE2017-0021, SUBDIVISION AMENDMENT, AAE2017-0022: BUTTERFIELD - DIVIDEND: REQUEST FOR APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT, ZONING AMENDMENT AND SUBDIVISION AMENDMENT TO ADD SIX LOTS; APPROVE A SIX-MONTH EXTENSION TO THE COMMENCEMENT OF CONSTRUCTION DEADLINE (FISCAL YEAR 2016-2017); THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBERS 726-26-005 AND 008, ARE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF BUTTERFIELD BOULEVARD AND CENTRAL AVENUE (MH VALENCIA 2015 INC., OWNER). CEQA: ADOPTED MITIGATED NEGATIVE DECLARATION

RECOMMENDATION(S)

1. Open/close public hearing;
2. Adopt Resolution A - Recommend City Council approve Development Agreement Amendment;
3. Adopt Resolution B - Approve amendment to Precise Development Plan and Planned Development Overlay; and
4. Adopt Resolution C - Approve amendment to the Non-Vesting Tentative Map.

LOCATION MAP



PROJECT SUMMARY:

1. Location: Northwest corner of East Central Avenue and Butterfield Boulevard (APN 726-26-005 and 008)
2. Site Area: 15.72 acres
3. General Plan: Residential Attached Low and Residential Attached Medium
4. Zoning: R1 4,500 (PD) and R2 3,000 (PD)
5. Request: Development Agreement Amendment, Zoning Amendment and Tentative Subdivision Map Amendment to allow a six-month extension of time on 41 Fiscal Year 2015-2016 building allotments and incorporation of six Fiscal Year 2016-2017 allotments into Phase 2 of the project.

BACKGROUND:

Ordinance No. 2124 dated October 15, 2014 approved a Development Agreement for the Valencia development, which included 41 allotments to commence construction June 30, 2016. On June 1, 2016, the City Council adopted Ordinance No. 2202 which approved an amended Development Agreement, adding 37 Fiscal Year 2017-2018 allotments to the project (MC-15-15: Butterfield-MH Butterfield) and approved a one-year extension of time to the commence of construction deadline for 41 Fiscal Year 2015-2016 allotments. The applicant filed a request on March 21, 2017 requesting an amendment to a Development Agreement to incorporate six building allotments from an adjacent project (Application MMC-14-09: Butterfield-DPC) for Fiscal Year 2016-2017. On March 28, 2017, the Community Development Director approved a six-month extension of time on those six Fiscal Year 2016-2017 building allotments to December 31, 2017. The extension was granted to allow the Developer time to revise the Final Map and Improvement Plans for Phase 2 to incorporate the six lots and add open space and other associated improvements.

In addition to the merger of the six lots, the applicant is requesting the amendment to the Development Agreement to include a six-month extension of the 41 Phase 1 allotments to December 31, 2017. The Final Map for Valencia Phase 1 was recorded October 19, 2016. School Fees for the 41 lots of Phase 1 have been paid. Building permits for six lots on the east side of Butterfield Boulevard have been issued. Building permits for the remaining homes on the west side of Butterfield Boulevard are ready to issue, pending completion of the building pads. Improvements on the west side of Butterfield Boulevard have been stalled by significant amounts of rainfall preventing completion of the building pads.

Land Use Entitlement History

The combined project competed in three Residential Development Control System (RDSCS) competitions in 2013, 2014 and 2015 and was awarded 41 allotments for Fiscal Year 2015-2016; six allotments for Fiscal Year 2016-2017 and 37 allotments for Fiscal Year 2017-2018. Since that time, the following items have been completed:

1. Development Agreement;
2. Subdivision Map;
3. Site Review; and
4. Final Map Recorded/Improvement Plans Approved for Phase 1 (41 lots);
5. Building Permits issued for six units in Phase 1.

City Ordinances and Policies Governing Time Extensions

On November 8, 2016, the voters within the Morgan Hill community adopted Measure S, the replacement of the prior RDCS Ordinance. This ordinance repeals and replaces in its entirety the prior ordinances, previously codified in Division IV (Residential Development Code) of Title 18 (Zoning) of the Morgan Hill Municipal Code. The transition provisions specified in Section 18.78.030.C.1 and C.2 (Previously Approved Allotments) of the Morgan Hill Municipal Code allows for allotments awarded and exercised prior to March 1, 2017 to remain valid and not affected by the new ordinance.

Allotments awarded prior to March 1, 2017 that have not been exercised remain valid until the expiration date established at the time of allotment or as established in the project's Development Agreement. The City may grant an extension to the date by which an allotment must be exercised in accordance with the provisions outlined in Section 18.78.170 (Extensions) of the Morgan Hill Municipal Code.

ANALYSIS:

The applicant explains in the letter dated March 22, 2017, that due to extensive amount of rainfall this year, improvements on the west side of the project site have been stalled preventing completion of the building pads and a six-month extension of time is being requested. (Attachment 4).

To approve the extension, as requested by the applicant, the Planning Commission would need to make findings as provided in Section 18.78.170.F (Eligibility Criteria) of the Morgan Hill Municipal Code:

- "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."*

The applicant is seeking an extension 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-month period. The excessive rainfall is considered a severe act of nature, resulting in saturated soils and flooding which has left the project unable to complete the necessary grading for installation of on-site utilities or formation of building pads. 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 Resolution A recommending City Council approval of the amended Development Agreement and approving an extension of the 41 allotments (Fiscal Year 2016-2017) due to rain delays.

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 on May 17, 2017. 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.

Development Schedule

Commence Construction	Original Date 1st Extension	Approved Date Request	Staff Recommendation
FY 2015-2016 (41 allotments)	June 30, 2016 June 30, 2017	December 31, 2017	December 31, 2017
FY 2016-2017 (6 allotments)	June 30, 2017 December 31, 2017	No extension requested	
FY 2017-2018 (37 allotments)	June 30, 2018	No extension requested	

Zoning Amendment AAE2017-0021 (ZAA-14-04B)

Ordinance No. 2123 dated October 15, 2014 established the R1 4,500 zoning on the west side of Butterfield Boulevard and R2 3,000 zoning on the east side of Butterfield Boulevard. The Ordinance also approved a Precise Development Plan and Planned Development Overlay district on approximately 13.5 acres. Staff recommend the Planning Commission adopt Resolution B approving an amendment to the Precise Development Plan and Planned Development Overlay to incorporate six allotments and site area from an adjacent project (Application MMC-14-09: Butterfield-DPC) for Fiscal Year 2016-2017.

Subdivision Amendment AAE2017-0022 (SDA-14-04)

Resolution No. 14-30, dated September 23, 2014 approved a Non-Vesting Tentative Subdivision Map for 37 Fiscal Year 2017-2018 allotments for Phase 2 of the Valencia Development. Staff recommends the Planning Commission adopt Resolution C approving an amendment to the Non-Vesting Tentative Subdivision Map for Phase 2 to incorporate six allotments and the site area from an adjacent project (Application MMC-14-09: Butterfield-DPC) for Fiscal Year 2016-2017. The proposed amendment increases the number of lots in Phase 2 from 37 to 43.

California Environmental Quality Act (CEQA):

In accordance with Section 15162 of the CEQA Guidelines (Subsequent Negative Declarations), there is no substantial evidence, in light of the whole record, that the project as revised may have a significant effect on the environment; therefore, no further environmental analysis is required. A Mitigated Negative Declaration was adopted for the project and a Notice of Determination was filed.

LINKS/ATTACHMENTS:

1. DAA Resolution A
2. ZAA Resolution B
3. SDA Resolution C
4. Letter of Justification

A

RESOLUTION NO.

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A DEVELOPMENT AGREEMENT
AMENDMENT AAE2017-0013: BUTTERFIELD –
DIVIDEND ADDING SIX LOTS TO THE APPROVED 78-
UNIT VALENCIA DEVELOPMENT AND EXTENDING
THE COMMENCEMENT OF CONSTRUCTION FOR SIX-
MONTHS FOR 41 FISCAL YEAR 2015-2016 BUILDING
ALLOTMENTS (APN 726-26-005 &008)**

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 41 building allotments for application MC-13-18: Butterfield-MH Butterfield for FY 2015-2016 and awarded 37 building allotment for application MC-15-15: Butterfield-MH Butterfield for FY 2017-2018; and

WHEREAS, the Planning Commission awarded six building allotments for application MMC-14-09: Butterfield-DPC for FY 2016-2017; and

WHEREAS, the property owner for application MMC-14-09: Butterfield-DPC entered into an Assignment Agreement to transfer ownership and the six FY 2016-2017 building allotments to the adjacent Valencia (Dividend) project, increasing the number of units in phase two of the Valencia project from 37 to 43 units; 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 binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, on October 14, 2014, the City Council adopted Ordinance No. 2124, N.S which approved a Development Agreement for application MC-13-18: Butterfield-MH Butterfield; and

WHEREAS, on June 1, 2016, the City Council adopted Ordinance No. 2202, N.S. which approved an amended Development Agreement, adding 37 Fiscal Year 2017-2018 building allotments to the project awarded under application MC-15-15: Butterfield-MH Butterfield and approved a one-year extension of time to commence construction for the 41 Fiscal Year 2015-16 building allotment; and

WHEREAS, under 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

Attachment: DAA Resolution A [Revision 4] (1177 : Development Amendment Butterfield-Dividend)

month period. The excessive rainfall is considered a severe act of nature, has resulted in saturated soils and flooding which has left phase one of the Valencia (Dividend) 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 a severe act of nature; and

WHEREAS, the applicant is requesting a further amendment to the Development Agreement to incorporate the six-building allotment awarded to application MMC-14-09: Butterfield-DPC; 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 has been diligent in pursuing all necessary approvals, including a recording the final map for phase one and pulling a building permit and grading permit, but the extraordinary amount of rainfall has delayed the phase one 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 41, Fiscal Year 2015-2016 building allotments for MC-13-18: Butterfield-MH Butterfield (Dividend), incorporates six building allotments for MMC-14-09: Butterfield-DPC and recommends the City Council amend the project Development Agreement as shown in the attachment Exhibit A.

PASSED AND ADOPTED THIS 9TH DAY OF MAY 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: DAA Resolution A [Revision 4] (1177 : Development Amendment Butterfield-Dividend)

Exhibit A

Exhibit B shall be amended as follows:

EXHIBIT B

DEVELOPMENT SCHEDULE

MC-13-18: Butterfield-Dividend 41, FY 2015-2016

MMC-14-09: Butterfield-DPC, 6 FY 2016-2017

MC 15-15: Butterfield MH Butterfield 37, FY 2017-2018

I. SUBDIVISION AND ZONING APPLICATIONS		
Applications Filed:		03-21-2014
II. SITE REVIEW APPLICATION		
Application Filed:		12-30-2014
III. FINAL MAP SUBMITTAL		
Map, Improvements Agreement and Bonds: FY 2015-2016 (41 allocations)		03-30-2015
IV. BUILDING PERMIT SUBMITTAL		
Submit plans to Building Division for plan check:		
FY 2015-2016 (41 units)		12-30-2015
V. BUILDING PERMITS		
Obtain Building Permits:		
FY 2015-2016 (41 units)		03-30-2017
FY 2016-17 (6 units)		09-30-2017
FY 2017-18 (37 units)		03-30-2018
VI. COMMENCE CONSTRUCTION:		
FY 2015-2016 (41 units)	12-31-2017	06-30-2017
FY 2016-17 (6 units)		12-31-2017
FY 2017-2018 (37 units)		06-30-2018

Failure to obtain building permits by the dates listed above shall result in the loss of building allocations. 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 allocations. 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 21 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 allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

Attachment: DAA Resolution A [Revision 4] (1177 : Development Amendment Butterfield-Dividend)

Exhibit C Shall be amended as follows:

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restrictions and requirements apply to all 41 allotments awarded to RDCS application MC 13-18: Butterfield-Dividend, six allotments awarded to MCC-14-09: Butterfield-DPC and all 37 allotments awarded to MC 15-15: Butterfield-MH Butterfield unless noted below. 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			
B 1 Developer fees	Payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1998.	Prior to the issuance of each building permit.	Fee at time of Building Permit
B 4 Off-site pedestrian safety improvements	Project to spend \$4950/unit for pedestrian and school pedestrian improvements designated by the MHUSD and approved by the City.	Prior to issuance of Certificate of Occupancy	\$4,950 per unit.

18.78.220 Open Space			
B 1a Open space buffer	Project provides open space buffer ten feet in excess of code requirements and a minimum 55 feet in width along Butterfield Blvd at Calle Del Rey Court.	Prior to development plan approval	NA
B 2b Common open space area to be maintained by HOA	Project provides private open space which will be maintained by the HOA.	Prior to development plan approval	NA
B 1c Provides convenient access to amenities	The Project will have internal pathways through the common area to provide convenient access to the common area park amenities, per the stated requirements.	Prior to development plan approval	NA
B1f Provides private usable open space	Provides private usable open space areas for 100 percent of the homes	Prior to development plan approval	NA
B 1g Provides public or private common useable open space	Provides public or private common useable open space which may be used for a dual purpose to include underground storm water detention, as determined by the Department of Public Works.	Prior to development plan approval	NA
B 2a Provides a high ratio of total open space area.	Project commits to a building coverage of no more than 28%	Prior to development plan approval	NA
B 4c Transfer Development Credit (TDC)	Applicant commits to purchase double TDCs.	Prior to issuance of Certificate of Occupancy	Applicable TDC fee at time of C of O

18.78.240 Public Facilities			
B2a Grids water mains to existing system	The Project will grid the water mains at three points: Butterfield (project north corner), Butterfield (Main project entrance) & at Central entrance road.	Prior to improvement plan approval	NA
B 2b Drainage	Drainage concept must be consistent with City's storm drain system (e.g., the City Storm Drainage Master Plan, local area storm drain system)	Prior to improvement plan approval	NA
B 2c Drainage Design consistent with city storm drain system	Project storm drain lines that are to be maintained by the City will be constructed entirely within the paved area of the street, or in a location acceptable to the Director of Public Works. No storm drains within the project (on-site) will be maintained by the City.	Prior to improvement plan approval	NA
B 2d Design of on-site detention/retention pond	Project will still be required to provide RETENTION as part of the City's storm water management plans for water quality purposes and NOT for flood control.	Prior to improvement plan approval	NA
B 2f Off site public Improvements	The project will provide public improvements at cost of \$4400 per unit. Public improvements shall be determined and approved by Public Works.	Prior to issuance of Certificate of Occupancy	\$4400 per unit
18.78.250 Parks and Paths			
B 1 Park in-lieu	The project shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to Certificate of Occupancy	Fee at time of Certificate of Occupancy

B 2 Amenities	Project shall provide the following separate amenities: Two shade trellis areas, three separate barbeque/picnic areas, swimming pool, spa, community building and tot lot and passive recreational area adjacent to Calle Del Rey Court, sufficient to qualify for four points.	Prior to development plan approval	Fee at time of Certificate of Occupancy on last 20 units
B 3 Bicycle Lanes and Pathways	Provides Class I bicycle lanes and pathways along the project frontage and the project provides necessary street improvements and striping for Class II bike lanes. The project must provide at least one quarter mile of Class II bike lane improvements for each 10 dwelling units within the project.	Prior to development plan approval	NA
B 6 Double Park in-lieu	In addition to standard park fees, project shall pay the lesser of either double the in-lieu park fees or \$1,100 per unit. MMC-14-09: Butterfield – DPC FY 2016-2017: In addition to standard park fees, project shall pay the lesser of either six times the in-lieu park fees or \$3,300 per units for six units.	Prior to issuance of Certificate of Occupancy	NA
B 7 Park space	The project shall provide 3.61 4.52 acres of land dedicated to private parks.	Prior to recordation of the final map	NA
18.78.260 Housing Needs			
B3 BMR units	Project shall provide 6.24 BMR's, 3 low, 3 median income and .24 of the housing in-lieu fee. Project shall provide a total of 8% BMR units: 4% Low Income (3 units); and 4% Median Income (3 units). Any fraction of .5 or greater is deemed a requirement for one additional below market rate unit. Any fraction .4 or less shall be paid as a fraction of the housing in-lieu fee prior to the occupancy of the final unit. Low Income is defined as 73% Area Median Income (AMI) and Median Income is defined as 100% AMI (as determined and updated annually by the State HCD). Individual unit prices are dependent on unit sizes/bedroom counts and subject to the prices shown in the City of Morgan Hill's "New BMR Sales Pricing Index" table.	Prior to issuance of Certificate of Occupancy	1 per every 10 Certificate of Occupancies

	The Project shall provide at least 6 units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. BMRs are also subject to the requirements listed under “Additional Requirements” and as referenced per the Affordable Housing Agreement (AHA). Additional Requirements: (i) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer’s company, employees, and/or agents) agrees to cooperate with the Below Market Rate (BMR) Program Administrator and follow the guidelines and procedures as outlined in the Affordable Housing Agreement (AHA). (i) Project will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes. (iii) Project will provide the same level of customer service to the BMR buyer as the market rate buyer. (iv) The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference. (v) All BMRs will be processed using the guidelines, requirements, and pricing in effect at the time they are released for “sale.” (vi) Exterior trim entry door hardware, and finish to the same standard as the Market Rate.		
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	(vii) Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home. Minimum Interior standard finishes will be as follows: • All closets shall have doors • Interior doors to be raised panel type or same as market rate • Door hardware to be brass finish or the equivalent • Appliances shall be major brand name • Microwave with an exhaust vent shall be installed over the range. • Kitchen counters shall be white ceramic tile • Kitchen cabinets shall be stained wood with white melamine interiors • Units will be roughed in for AC including electrical and line set. • Basic alarm system to secure all accessible openings to the home • Carpet in bedrooms, hallways, family rooms • Linoleum or tile in entry, bathrooms kitchens • Laminate flooring may be substituted for carpet or linoleum • Electric garage door opener MMC-14-09: Butterfield–DPC FY 2016-2017: Project will pay double the standard housing fee computed at 8% of the of the six units added to the overall project. [8% of the six units times the standard housing fee amount equals the total fee amount]		
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18.78.270 Housing Types			
B1a Diversity of types	6, Single-family detached homes in the project area zoned R-1 4,500. 18 Single-family detached, 18 Triplex and 36 Single-family attached homes within the project area zoned R-2 3,000.	Prior to development plan approval	NA
B 3a Variation of sizes	There are ix different floor plans, the smallest being 1488 sf and the largest 2685 sf. Four of the floor plans are 200 sf larger than the next smaller plan	Prior to development plan approval	NA
B 1a R-1 4,500 units	R1-4,500 zone units shall be four bedroom units.	Prior to development plan approval	NA
18.78.280 Quality of Construction			
B1 Over and above commitments made in the Natural and Environmental category, the proposed development will install the following:	MC-13-18: Butterfield-Dividend 41, FY 2015-2016 • Full exterior OSB/Plywood wrap with window door flashing. • 220 Volt electric car charging station, inside of the garage. • All plumbing waste lines from 2nd story are installed with approved noise dampening system. • Recycle center built in to cabinet layout with pullouts for bins. • Noncombustible siding and roofing materials except for window, fascia and door trim on all homes. • R-13 sound attenuated insulation in all bathroom interior walls • Energy star rated fresh air exhausts system in home MMC-14-09: Butterfield-DPC, six units, FY 2016-2017 and MC 15-15: Butterfield MH Butterfield 37, FY 2017-2018 • Foundations: 20% reduction of cement in the concrete mix design by use of fly ash, slag, silica fume or rice hull ash. • Installation of 90% high efficiency fan forced heating.	Incorporate in to construction plans prior to the issuance of a building permit.	NA

	• Installation of one dedicated ¾ inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage. • Zoned heating and air condition for all one and two-story homes. • The proposed development will provide all the following: 1. Listed sound attenuation materials in walls that adjoin a bathroom and/or bedroom walls; 2. Installation of high efficiency energy star water heater with energy factor of 0.70; 3. Installation of ultra-high efficiency or dual flush toilet; and 4. Installation of rain sensor monitor on irrigation system.		
18.78.290 Lot Layout and Orientation			
B 1a Avoids deep or narrow lots	Project avoids excessively deep or narrow lots AND provides side yards at least 20% in excess of the minimum setback.	Prior to development plan approval	NA
B1h Repeat factor	Project commits to a repeat factor of 3.5 or less	Prior to development plan approval	NA
B 1d Minimize sound walls	There are increased set-backs along Butterfield to allow opens space areas along the larger open space areas with wrought iron fencing. All homes that side toward the railroad tracks will have sound board and sound reducing windows. A/C units where possible will be in rear of lots	Prior to development plan approval	NA
B 1f Transition of lot sizes	Project commits to provide appropriate transition to adjoining residential development	Prior to development plan approval	NA
B 2a Visibility of entrances	A minimum of 75 percent of the units have entrances that are visible from public streets.	Prior to development plan approval	NA

B 3a & b Setback variation	A minimum five-foot front and rear setback variation is provided between adjoining units	Prior to development plan approval	NA
B 3c Variation of lot widths	The proposed project provides at least 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. For purposes of making the above determination, there must be at least three different standard lot widths and at least a four-foot difference in the width of each standard lot.	Prior to development plan approval	NA
B 3d Garage Alternative	Project will provide a garage door that is setback a minimum of three feet beyond the front building footprint and includes architectural treatment of the face of garage (e.g. trellis, balcony, archway, 2ft recess of door, etc. (up to two points) on all single-family detached homes within the development.	Prior to development plan approval	NA
18.78.300 Circulation Efficiency			
B1a Future street extension	Project will stub connection to Parcel 2 that is not a part of the current project. The project provides an EVA or temporary turn-around on Parcel 2 for fire and police safety.		
B 4 Provides for dedication and improvement of extensions to existing streets	The project agrees to spend \$2,200/unit toward the construction of roadway improvements near or adjacent to the proposed development. Applicant agrees to construct out of tract public improvements at a cost of \$2,200 per unit. This commitment is in addition, and not duplicative, to the similar commitment in the Public Facilities Section.	Prior to issuance of Certificate of Occupancy	NA
B 1f Minimum 20 ft. clear view back-out distance	Provides a minimum 20-foot clear view back-out distance between enclosed garage space and the adjacent public street.	Prior to development plan approval	NA

B 3a Convert existing City street lights to LED	Converts existing city street lights to energy efficient LED lights at a ratio of one street light conversion per dwelling unit. This commitment shall apply to the conversion of existing street lights on or adjacent to the project frontage, or in an earlier phase of the current project.	Prior to acceptance of the public improvements.	NA
18.78.310 Safety and Security			
B 1b Provide first aid kit	Project commits to providing a first aid kit with poison control document. Kit to be installed in kitchen area of each unit	Prior to issuance of Certificate of Occupancy	NA
B 1d Provide outdoor lighting	Project commits to providing outdoor lighting that meets all police department specifications	Prior to development plan approval	NA
B 1f Illuminated address numbers and curb numbers	Project commits to installation of illuminated address numbers on each unit and to paint reflective curb numbers at each unit.	Prior to development plan approval	NA
B 1g Other intrusion protection device or approved construction technique	Project will be meeting with MHPD to obtain approval on an additional intrusion protection device.	Prior to development plan approval	NA
B 1h Bike storage	All units provided with enclosed garages for bike protection and storage.	Prior to issuance of Certificate of Occupancy	NA

B 1h All large common areas and parks will be provided with on-site (or modified electrolier) lighting to a minimum 1.5 foot candles.	Project commits to providing on-site lighting to a minimum of 1.5 foot candles.	Prior to development plan approval	NA
B 6 Neighborhood emergency preparedness program through HOA	Project commits to providing a Neighborhood Emergency Preparedness program to be administered by the Homeowners Association	Prior to the issuance of first Certificate of Occupancy	NA
Neighborhood "Watch Program" in CC&R's	Project commits to including in Covenants, Conditions and Restrictions provisions that will direct a Board representative to the police department to enact a Neighborhood Watch Program to be established as part of the first phase of the development	Prior to the issuance of first Certificate of Occupancy	NA
18.78.320 Landscaping, Screening and Color			
B 1c Varied front yard landscaping	Varied front yard landscaping will be installed by the developer.	Prior to development plan approval	NA
B 2d Adheres to Street Tree Master Plan and	The developer will plant street trees that will conform to the street tree master plan. There are at least three larger oak trees on the project that will be able to be saved within the larger central common area and several along the RR	Prior to development plan approval	NA

preserves existing trees	right of way. An arborist's report will be provided to verify the health of the trees that can be saved.		
B 2b Drought tolerant grasses	Drought tolerant hybrid tall fescue grasses will be used for lawn areas. The lawn areas will not exceed 25% of the landscape area. This is exclusive of park/open space landscape area.	Prior to development plan approval	NA
B 1b Automatic irrigation systems	Automatic irrigation system will utilize separate valve and circuits; Minimum of three separate valves required. Water conserving irrigation system will also be used.	Prior to development plan approval	NA
B 2b Use of water conserving plants	All other planting in non-turf areas shall be composed of low to moderate water use plants identified in Water Use Classification of Landscape Species Guide or East Bay Municipal District's Plants and Landscape for Summer-Dry Climates of the San Francisco Bay Region or other species, including native plants, that are well adapted to the climate of the region and require minimum water once established.	Prior to development plan approval	NA
B 2c Separate water source for irrigation of common area	Project will provide a well to provide irrigation water for the common area and front yards that are maintained by the HOA	Prior to development plan approval	NA
B 3 Visible landscaping to public	Landscaping is installed by the developer on all areas visible from public and private rights-of-way	Prior to development plan approval	NA
B 4 Site drainage reduction.	Project site drainage will be reduced by first-flush underground retention system, with testing results demonstrating sufficient percolation which is greater than 0.6 inches per minute. The desired reduction will be accomplished with soil amendment or other means verified by the Project Soil Consultant.	Prior to approval of the project improvement plans	NA

18.78.330 Natural and Environmental			
B 1 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 and three feet is acceptable as 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-swales where applicable.	Prior to development plan approval	NA
B 2 Alt. energy features	MC-13-18: Butterfield-Dividend 41, FY 2015-2016 Install solar photovoltaic panels to offset 60% of anticipated electrical energy demand of residential unit Pre-plumb for solar water heating. Twenty-one (21) additional Build It Green (BIG) Points beyond a 70-point minimum MC 15-15: Butterfield MH Butterfield 37, FY 2017-2018 Install solar photovoltaic panels to offset 50% of anticipated electrical energy demand of residential unit Building performance exceeds Title 24 by 30% Any community pool utilizing solar water heating.	Prior to issuance of building permit	NA
18.78.335 Livable Communities			
B 2 Bus stop installation	Project commits to the installation of bus shelters, benches, reinforced street sections or bus pullout areas as reviewed and approved by the Valley Transportation Agency (VTA). The VTA must accept the bus stop improvements.	Must be included in project improvement plans	

B 6b Roof lines	Project will use at least two different roof lines and two different pitches	Prior to development plan approval	NA
B 6c Profiles and massing	Project will retain architecture, profiles, and massing that conforms to the existing surrounding neighborhoods.	Prior to development plan approval	NA
B 6 a & d Relief and details	Project provides a consistent level of architectural relief and detailing on all four building elevations and conforms to other criteria, such as porches/balconies, standard trim, and base colors represent no more than 15% of the project. Where two-story rear and/or side-yard building elevations occur, architectural relief shall include some third dimensional design element such as bay windows, balconies, covered porches, decorative trellis, etc.	Prior to development plan approval	NA
B 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 interior atrium type patios.	Prior to development plan approval	NA

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RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AN AMENDMENT TO THE R-1 (4,500) (PD) AND R2 (3,000) (PD) PLANNED DEVELOPMENT OVERLAY DISTRICT AND PRECISE DEVELOPMENT PLAN FOR AN 84-UNIT RESIDENTIAL DEVELOPMENT ON A 13.72-ACRE SITE LOCATED ON THE NORTHWEST AND NORTHEAST CORNERS OF THE INTERSECTION OF BUTTERFIELD BOULEVARD AND EAST CENTRAL AVENUE. (APN 726-26-005 &008)

WHEREAS, such request was considered by the Planning Commission at its regular meeting May 9, 2017, at which time the Planning Commission recommended approval of zoning amendment application, AAE2017-0021 (ZAA-14-04): Butterfield-Dividend; and

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

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

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** The Planning Commission of the City of Morgan Hill hereby finds, on the basis of the whole record before it (including the addendum to the initial study), that there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Mitigated Negative Declaration adopted by the City Council on August 28, 2013 and this finding reflects the Planning Commission's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Community Development Department.
- SECTION 4** The Planning Commission finds that the amended Planned Development (PD) Overlay District is consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.
- SECTION 5.** The Planning Commission hereby recommends approval of an amendment to the Precise Development Plan adopted under Ordinance No. 2123 on October 15, 2014, as contained in that certain series of documents date stamped August 1, 2014 and April 27, 2017 on file at the Development Services Department, entitled "Valencia" prepared by MH Engineering. The amendment adds six lots and

expands the project area at the northeasterly corner of the site and expands the total project area to 13.72 acres. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses of the project.

SECTION 6. Approval of the amended PD overlay and Precise Development Plan shall allow exceptions to the base development standards of the base R2-3,000 zoning district and the base R-1 4,500 zoning district as applied in Ordinance 2085, including reduced side yard setbacks, and reduced lot areas and dimensions, as identified on the precise development plans dated September 14, 2014 (Phase 1) and April 27, 2017 (Phase 2).

SECTION 7. As part of the Design Permit approval process, emphasis shall be placed on architectural and landscape treatments that will minimize the appearance of the garage doors. Also as part of the Design Review approval process, adjustments shall be made to the precise development plan to minimize (within 25% of base standard and frequency of occurrence) the variations from the base development standards for the floor area ratios for the single-family detached homes and adjustment to lot sizes and lot width.

SECTION 8. For the single-family detached units within the PD any future building additions shall comply with the R-1 4,500 development standards of the Single-Family High zoning district. For the attached units within the PD future building additions shall comply with the R-2 3,000 development standard of the Multi-Family Low zoning district.

PASSED AND ADOPTED THIS 9th DAY OF MAY 2017, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

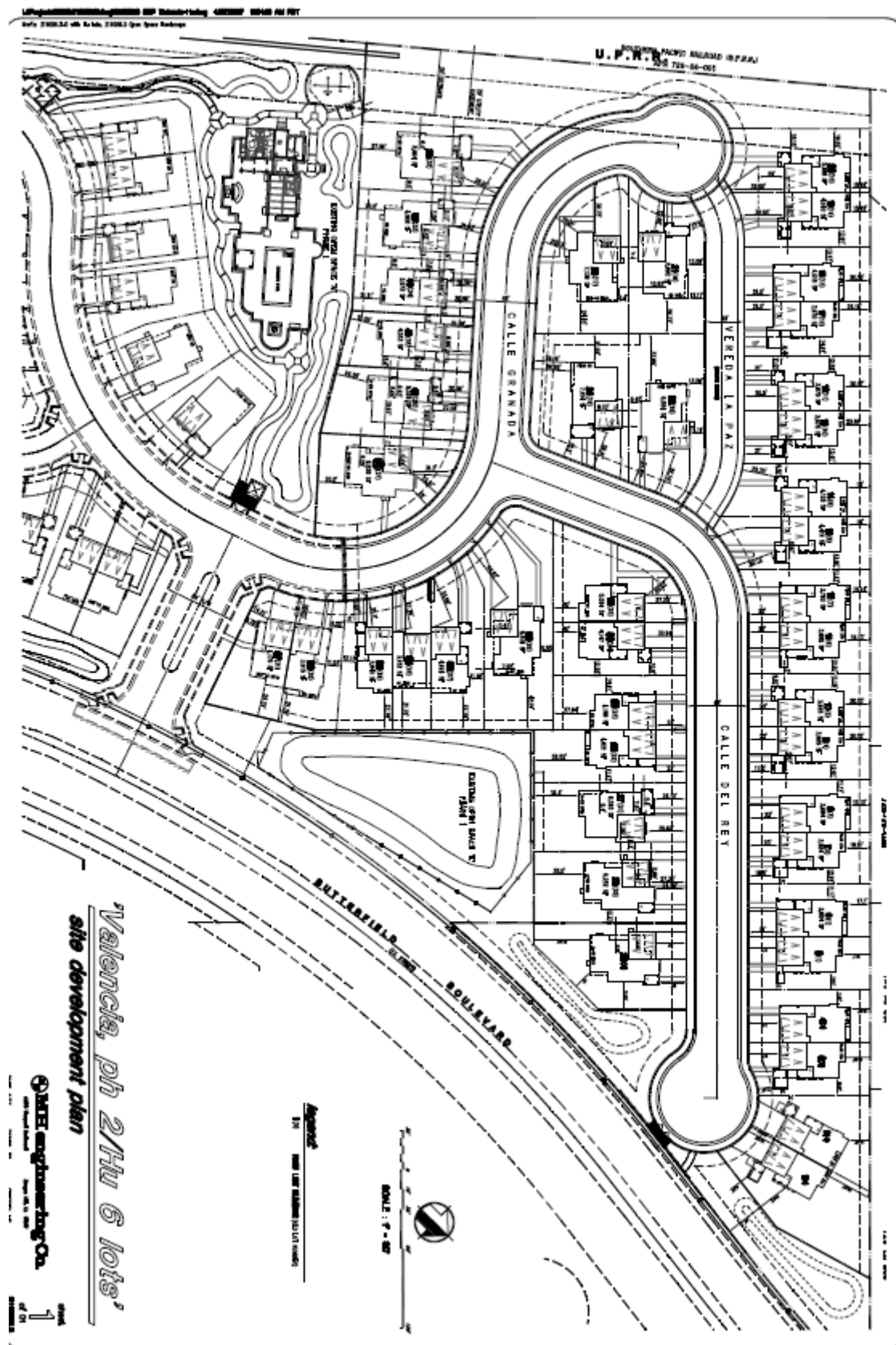
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

WAYNE TANDA, Chair





RESOLUTION NO.**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING AN AMENDED NON-VESTING 43-LOT RESIDENTIAL SUBDIVISION ON A 13.72-ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF BUTTERFIELD BLVD. AND EAST CENTRAL AVE. (APN 726-26-005 & 008)**

WHEREAS, such request was considered by the Planning Commission at its regular meeting of May 9, 2017, at which time the Planning Commission approved subdivision application, SDA-14-04: Butterfield-MH Butterfield (Dividend); and

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

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

- SECTION 1.** The approved project is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The approval of this subdivision is contingent upon the City Council approval of a Planned Development overlay zoning amendment and Precise Development Plan as contained in Zoning Amendment application, AAE2017-0021 (ZAA-14-04B): Butterfield-Dividend.
- SECTION 3.** The Planning Commission of the City of Morgan Hill hereby finds, on the basis of the whole record before it (including the addendum to the 2013 initial study completed for GPA 11-03: Butterfield-Butterfield Inv.), that there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the Mitigated Negative Declaration adopted by the City Council in on August 28, 2013 and this finding reflects the Planning Commission's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Community Development Department. The mitigation measures are identified in the set of standard conditions as contained in Exhibit A.
- SECTION 4.** The proposed subdivision will not result in a violation of the requirements established by the Regional Water Quality Control Board.
- SECTION 5.** The approved project shall be subject to the conditions as identified in the set of standard conditions attached hereto, as Exhibit A, and by this reference incorporated herein.
- SECTION 6.** As part of the Design Review approval process adjustments shall be made to the precise development plan and subdivision map to minimize (within 25% of base standard and frequency of occurrence) the variations from the base development standards for the floor area ratios for the single-family detached homes and

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adjustment to lot sizes and lot width.

**PASSED AND ADOPTED THIS 9th DAY OF MAY 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

A F F I D A V I T

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

By: _____

Date: _____

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Attachment: SDA Resolution C [Revision 3] (1177 : Development Amendment Butterfield-Dividend)



EXHIBIT A

CONDITIONS OF APPROVAL

1. All conditions as contained in Exhibit A to Resolution No. 14-30, adopted by the Planning Commission on September 23, 2014 and including the following added conditions:

LAND DEVELOPMENT/ENGINEERING DIVISION

The following conditions shall apply to the project/application.

1. PRIOR TO SUBMITTING ANY IMPROVEMENTS PLANS, developer and project Engineer shall meet with Public Works Engineering Division to go over Measure C commitments to be addressed. Contact Scott Creer or Charlie Ha (408-778-6480) to schedule a pre-design meeting.
2. Project improvement plans shall address or satisfy all Measure C commitments prior to issuance of any development permit.
3. All retention/detention ponds shall be privately maintained by the HOA.
4. Project will be responsible for reimbursement fee to the City for the special RDA Butterfield Boulevard right-of-way for the project frontage along Butterfield Boulevard.
5. Project will be responsible for the reimbursement fee of public improvements (36' right-of-way) along the frontage on Butterfield Boulevard.
6. Obtain an encroachment permit from the Public Works Department prior to commencement of any work in the City's right-of-way or in connection with the City's utility system.
7. Public Works impact fees are required for this project and must be paid prior to occupancy of each unit.

GENERAL

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

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Works prior to submittal of Final Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**

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

STREET IMPROVEMENTS

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

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

SANITARY SEWER SYSTEM

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

STORM DRAIN SYSTEM

15. A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the Director of Public Works. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
16. The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Site Review plans. All storm drain improvements shall be constructed to the satisfaction of the Director of Public Works. **(MHMC 17.32.020 A & B)**
17. Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry a 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
18. Prior to final map approval or issuance of a grading permit the applicant shall complete the following to the satisfaction of the Director of Public Works.
 - a. Storm drain calculations to determine detention/retention pond sizing and operations.
 - b. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 - c. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control. **(CMH Design Standards and Standard Details for Construction)**

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19. As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Public Works Engineering. A Waste Discharger Identification (WDID) number will be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WIDI number and approved SWPPP Manual shall be provided to Public Works and the Building Department prior to any approval of grading activities (**SWRCB NPDES General Permit CA000002**).
20. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:
 - a. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP)**.
 - b. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 - c. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
 - d. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
 - e. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building and Public Works Department if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Public Works). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors respectively.
 - f. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
 - g. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
 - h. Other non-compliance issues need to be addressed within a 24-hour period.
 - i. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow up inspection.

WATER SYSTEM

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

OTHER CONDITIONS

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

- d. General Contractor.
- e. Sub-Contractors.

NPDES STORMWATER POST CONSTRUCTION DEVELOPMENT STANDARDS

1. State Water Resources Control Board Post Construction Requirements (PCRs):

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

- a. Project shall provide Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements.
- b. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - i. Performance Requirement 1: Site Design and Runoff Reduction
 - ii. Performance Requirement 2: Water Quality Treatment
 - iii. Performance Requirement 3: Runoff Retention
 - iv. Performance Requirement 4: Peak Management
- c. **Submit/re-submit site review plans (SR) to include requirements of item “a” and “b” above.**

2. Design Standards Applicable to All Categories.

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

v. Preserve riparian areas and wetlands.

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

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

- i. [California Stormwater Quality Association \(CASQA\) Handbook: BMPs for New Development and Redevelopment](#)
- ii. [Bay Area Stormwater Management Agencies Association \(BASMAA\) Design Guidance Manual for Stormwater Quality Protection: Start at the Source 1999](#)

Other available sources of BMPs

- iii. [California Storm Water Best Management Practices Handbooks](#)
 - iv. [Caltrans Storm Water Quality Handbook: Planning and Design Staff Guide](#)
- d. **Provide Storm Drain System Stenciling and Signage** - Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: “NO DUMPING – DRAINS TO CREEK”) and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. · Legibility of stencils and signs must be maintained.
- e. **Design Standards for Structural or Treatment Control BMPs** - The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:
- i. Volumetric Treatment Control BMP
 1. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended

- in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- 2. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- 3. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.
- ii. Flow Based Treatment Control BMP
 - 1. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - 2. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.
- f. **Stormwater Runoff Management Plan (SWRMP) required** - The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.
 - i. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
 - ii. The chief engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
 - iii. Each certifying civil engineer shall establish to the city's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
 - iv. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.
- g. **Stormwater BMP operation, maintenance, and replacement responsibility**
 - i. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' or homeowners' association or other legal entity approved by the city.
 - ii. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
 - iii. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be

completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

- h. **Stormwater BMP operation and Maintenance Agreement (SWBOMA) required -** Improper maintenance is one of the most common reasons why water quality controls will not function as designed or which may cause the system to fail entirely. It is important to consider who will be responsible for maintenance of a permanent BMP, and what equipment is required to perform the maintenance properly.
 - i. Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The city shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard STORMWATER BMP OPERATION AND MAINTENANCE AGREEMENT to be provided by Public Works Engineering).
 - ii. The stormwater BMP operation and maintenance agreement shall require that the BMPs not be modified and BMP maintenance activities not alter the designed function of the facility from its original design unless approved by the city prior to the commencement of the proposed modification or maintenance activity.
 - iii. The stormwater BMP operation and maintenance agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.
- i. **Stormwater BMP inspection responsibility**
 - i. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Register Civil Engineer (RCE)**.
 - ii. Unless otherwise required by the chief engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - 1. Site address;
 - 2. Date and time of inspection;
 - 3. Name of the person conducting the inspection;
 - 4. List of stormwater facilities inspected;
 - 5. Condition of each stormwater facility inspected;
 - 6. Description of any needed maintenance or repairs; and
 - 7. As applicable, the need for site reinspection.
 - iii. Upon completion of each inspection, an inspection report shall be submitted to Public Works Engineering.
- j. **Records of maintenance and inspection activities** - On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-

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site stormwater management facilities under the BMP operation and maintenance agreement shall provide the chief engineer or designee with records of all inspections, maintenance and repairs.

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

Butterfield 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
Butterfield-Dividend (Valencia Phase 1) M13-18/DA-14-03
Butterfield-Dividend (Valencia Phase 2) MC-15-15
Monterey-Butterfield/DPC MMC 14-09/SD-1604 ("6 Hu Lots")

Terry:

Attached is our formal application for a Development Agreement Amendment (with four distinct requests), including an extension of time to meet the "commencement of construction" requirement of the Development Agreement and including a request that the 6 Hu lots project be merged into the Valencia Phase 2 Project, as requested by the City. The result would combine all the prior processing and applications of the Hu 6 Lots which would become part of Valencia Phase 2.. The Improvement Drawings, Vesting Tentative Map and the Final Map for Valencia Phase 2 are presently modified to include the Hu 6 Lots. The Development Agreement for Valencia would need to be amended to include the Hu 6 Lots and all the appropriate requirements for the Hu 6 Lots would be included therein and in the Development Agreement Amendment. (1) Request is therefor made for the Development Agreement to be amended to provide for this merger of the Hu 6 Lots into Phase 2 of Valencia.

The final map for Valencia Phase I was recorded on October 19, 2016. School Fees for the 41 lots of Phase 1 have been paid. Building permits for the six lots on the east side of Butterfield have been issued and the building permit for the Rec Building on the East side of Butterfield has been issued. Building permits for the remaining homes on the West side of Butterfield are ready to issue, pending completion of the pads. There was extensive tree removal and site demolition that commenced in early November. In December grading of the site commenced, but was stopped by the rains that began in December. Since that time, the site has been under water and in mud and grading operations have not been able to start again. It is hoped, pending future rains, that the grading will commence this week or next week. Phase 1 includes grading and utilities for remaining 35 lots on the west side of Butterfield and the major SWPPP retention basin. That work has been totally stopped since mid-December due to the rains.

AAE2017-0013: Butterfield - Dividend

There are six lots (part of Valencia Phase 1) on the east side of Butterfield that required very little grading and that Project already has been able to construct the pads and the utilities and slab foundations have been poured. On the west side of Butterfield, no progress has been made since mid-December due to the rain, which not as yet ceased. (2) Request a six-month extension of the commencement of construction date in the Development Agreement due to the rain delay is needed and requested for Phase 1 of Valencia.

The Final Map for Phase 2 of Valencia has not been filed, but will be filed shortly (after this requested amendment is approved to include the Hu 6 Lots). Because this is a large project, it is not possible or practical to commence construction on Phase 2 until at least all of the Improvements of Phase 1 (which include a large Recreation Building and pool) are completed and at least half of the homes have been sold. Because prior delays and extensions (caused by City time constraints and Union Pacific Railroad caused delays) and now rain delays, it will be impossible for Phase 2 to meet the current "Commencement of Construction" schedule (of 6/30/18) set forth in the Development Agreement.

Because a final map has not been recorded for Phase 2 and 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 provision 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 a future extension. Phase 2 of Valencia would be governed by the new Measure S provisions which set-forth serious constraints on issuing further extensions which would have the effect of stopping the project for many years (new Measure S applications, with different scoring requirements that it would not be very difficult to score well). That would not be in the best interest of the City nor for the buyers of Phase 1 homes (their homeowner fees would be almost doubled); and, this could have devastating financial consequences to us and the Project. We therefore: (3) Request language of the Development Agreement for Valencia Phase 2 for "Commencement of Construction" on Exhibit "B" be changed to "Filing of a Final Map."

Lastly, we just discovered that the 6 Hu Lot portion of the Project is burdened (in error) by an existing Development Agreement (that was recorded against the Hu 6 Lots on April 27, 2006, Document #189076700) for the Delco Project that was developed on the east side of Butterfield. Butterfield Blvd, bifurcated the Hu Property, creating the Hu 6 lot property on the west side of Butterfield. Recording that Development Agreement against the Hu 6 Lots was in error. Thus: (4) Request language be included in the Development Agreement Amendment authorizing the Staff to execute and record the removal of the recorded Development Agreement from the Delco Project from the Hu-6 Lots.

Very truly yours,

Dividend Homes, Inc.



By: Richard B. Oliver
President

Attachment: Letter of Justification (1177 : Development Amendment Butterfield-Dividend)



PLANNING COMMISSION STAFF REPORT

MEETING DATE: May 9, 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)

Adopt Resolution recommending City Council approval of a Development Agreement.

California Environmental Quality Act (CEQA)

An Environmental Impact Report (EIR) was approved by the City on March 18, 1981 for the Morgan Hill Ranch Business Park Planned Unit Development (PUD). In addition, a subsequent Initial Study was prepared and Mitigated Negative Declaration adopted by the City allowing an amendment to the PUD on April 5, 2000.

In accordance with Section 15162 (Subsequent EIRs and Negative Declarations) of the CEQA Guidelines, no subsequent EIR or Negative Declaration would be required unless conditions change warranting a subsequent environmental document.

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.

BACKGROUND:

Prior Council/Commission Actions

The City Council approved General Plan Amendment (File No. GPA-14-04) by Resolution No. 15-102 (Attachment 1) for a portion of the subject property on May 6, 2015, amending the designation of approximately 19.5 acres from Industrial to Multi-Family Medium. On September 2, 2015, the City Council adopted Ordinance No. 2163 (Attachment 2), approving a Zoning Amendment (File No. ZA-15-12) for the 19.5-acre site amending the zoning to R-3 Medium Density Residential.

A Preliminary Plan Review was reviewed by the Planning Commission at its July 26, 2016 meeting at which the Commission discussed key issues, which included:

1. Conversion of Industrial Land for Park/Open Space Purposes
2. Central Park Improvements
3. Site Layout and Architectural Design
4. Entitlement Process

The City Council subsequently reviewed the Preliminary Plan Review at their meeting of November 16, 2016.

RDCS applications (File No.'s MC-15-12 Jarvis-MWest and RDCS2016-0016 Jarvis-MWest) have been processed by the City. The residential portion of the project site received 10 allotments through the 2016 RDCS competition.

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, parkland, 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, and to assist in the Developer's ability to effectively market the Property, and finance some of the

infrastructure improvements, the Developer has proposed timing of certain obligations under this Agreement that are linked to the timing of the residential project.

ANALYSIS:

The proposed project was analyzed with respect to the: 1) Morgan Hill Ranch Business Park; 2) Development Agreement requirements; and 3) General Plan.

1. Morgan Hill Ranch Business Park

The site is zoned Planned Unit Development (last amended April 5, 2000: Ordinance No. 1474) as part of the Morgan Hill Ranch PUD which allows offices, research and development, and low-intensity industrial activities that take place within fully enclosed buildings, generate limited truck activity and minimize noise, and do not involve heavy manufacturing, outdoor activities or storage or use of large quantities of hazardous materials. The PUD zoning does not allow residential as a permitted or conditional use. A private park is allowed with a Conditional Use Permit. A public park would require the conversion of industrial land to a Public Facilities use which requires a General Plan Amendment and Zoning Code update

Architectural Review Design Guidelines have been adopted for the Morgan Hill Ranch Business Park PUD, which includes plan review procedures. The Architectural Review Guidelines encourage the highest quality of architectural design that reflects the latest techniques in construction materials and “state-of-the-art” architecture. Conceptually, the project is generally consistent with the Development Standards of the PUD except for the 40% maximum building coverage requirement which is exceeded where the 201,500-square foot building is proposed on the westerly side of the Sutter Boulevard Extension. This was identified during the Preliminary Plan Review of the project analysis. Staff would complete an in-depth review of the project upon submittal of project entitlements. The applicant has not provided specific users for the development at this time. A site plan has been provided as Exhibit 2 to the Development Agreement and is for illustrative purposes only. A complete analysis of the project’s conformance with the PUD zoning standards would occur upon submittal of a Site and Architectural Review application.

2. Development Agreement Requirements

The Community Development and Community Services team have been working in collaboration with the Developer on a Development Agreement for the industrial property since 2015. The intent of the Development Agreement has been to memorialize the public benefit commitments made by the Developer in the May 1, 2015 letter (Attachment 3) which was provided to garner support and approval of a General Plan Amendment from the City on May 6, 2015. A goal of the Development Agreement has been to provide specific milestones that honor the Developer’s commitment from the May 6th letter while comporting with standard city Development Agreement requirements as specified in Section 18.80.040 of the Morgan Hill Municipal Code, which requires negotiated Development Agreements to comply with the following requirements:

- "A. A Development Agreement shall specify its duration; the permitted uses of the subject property; the general location and density or intensity of uses; the general location, maximum height and size of proposed buildings; the relation of the project to adjacent properties; and provisions for reservation or dedication of land for public purposes. It shall contain provisions concerning its transferability.*
- B. A Development Agreement shall contain an indemnity clause requiring the applicant to indemnify and hold the City harmless against claims arising out of or in any way related to the actions of applicant in connection with the application or the development process, including all legal fees and costs.*
- C. A Development Agreement should clearly outline the benefits provided to the City from entering into the Development Agreement. Such benefits may include, but are not limited to:*
 - 1. Construction of public facilities beyond those required as a condition of approval;*
 - 2. Covenants to operate and maintain the private project at higher levels than would otherwise be required;*
 - 3. Proposals to achieve general plan goals not directly associated with the private project;*
 - 4. Other proposals which, in the judgment of the Planning Commission and City Council, provide public benefits sufficient to justify a Development Agreement.*
- D. A Development Agreement should include requirements for construction and maintenance of onsite and off-site improvements or payment of fees in lieu of such dedications or improvements.*
- E. A Development Agreement should include, without limitation, conditions and restrictions imposed by the City with respect to the project including those conditions and restrictions proposed in any environmental impact report applicable to the project prepared and certified under the California Environmental Quality Act, and the city's regulations with respect thereto, in order to eliminate or mitigate adverse environmental impacts of the project.*
- F. A Development Agreement should provide that the project be constructed in specified phases, that construction shall commence within a specified time, and that the project or any phase thereof be completed within a specified time.*
- G. A Development Agreement shall be a contract that is negotiated and voluntarily entered into by city and applicant and may contain any additional or modified conditions, terms or provisions agreed upon by the parties.*
- H. A Development Agreement may also include conditions, terms, restrictions, and requirements for subsequent discretionary actions but does not eliminate the applicant's responsibility to obtain all required land use approvals.*
- I. If the Development Agreement requires applicant financing of necessary public facilities, it may include terms relating to subsequent reimbursement over time for such financing.*

- J. A Development Agreement may include any other provisions necessary to guarantee performance of obligations stated in the agreement.
- K. All developments agreements, or any part of such development agreements, may be subject to subsequent condemnation proceedings by the city.”

The following provides a summary of the commitments made by the Developer within the **May 1, 2015** letter and those that have been incorporated within the Development Agreement:

INDUSTRIAL		
Proposed Commitment Description	Item No. within May 1, 2015 Letter	Item No. within Draft DA
Submittal of PD Zoning, Development Agreement, VTM and EIR for a 600,000 SF industrial park (six months following GPA)	Item I	Not completed
Business Ready Investment: Invest in entitlements and infrastructure	Item II	7.01, 7.02, and 7.03
Engage a qualified and motivated broker and provide quarterly market updates	Item VI	4.02 (a) and (b)
Actively market 38.5 industrial property and collaborate on a strategic outreach plan	Item VII	4.02 (c)
Establish a process of entitlements, community benefit & milestones	Item IX. a	DA
Request to establish a suitable financing mechanism such as a Mello Roos Community Facilities District for the financing and construction of Sutter Road as well as the internal access road (estimated value of \$3-\$4 M)	Item IX. b	3.07
Construction of interior roads to facilitate marketing of site	Item IX. c	4.05
Appropriate transitions and buffers between uses	Item IX. f	4.06
Bicycle and pedestrian connections, including connections to Jarvis neighborhood and industrial, including a multi-modal ped/bike path along Butterfield Blvd.	Item IX. g	4.04(a)
Develop a Transportation Demand Management plan to promote alternate means of transportation and reduce single-occupancy trips	Item IX. H	4.04(b)
Seek to establish a bus stop on Butterfield Boulevard	Item IX. I	4.04(c)
Explore feasibility of incorporating a small café within the project.	Item IX. J	N/A
RESIDENTIAL		
Process entitlements (PD Zoning, VTM, DA and RDCS) for up to 409 apartments and up to 5 acres of park/recreation space	Item III	10 building allotments obtained. No entitlements.
DETENTION POND		
Explore converting 7.6-acre detention parcel into park land for existing and future industrial & residential neighborhoods	IV	Not included
Application of 7.6-acre detention parcel land exchange to improve plan efficiency	V	Not included
Comprehensively study detention and storm water quality needs of 58-acre site	Item VIII	Study completed
May assist with the conversion of the 7.6-acre detention pond for public park/recreation use	Item IX.d	Not included
Funding and construction of 7.6-acre detention pond by MWest	Item IX.e	Not included
PARK		

Process entitlements (PD Zoning, VTM, DA and RDCS) for up to 409 apartments and up to 5 acres of park/recreation space	Item III.	4.07
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Key items within the Development Agreement include: Entitlement Processing and Timing of Development, Formation of Financing District, Impact Fees, Sutter Road Extension, Sutter Greenway, Butterfield Park Land Dedication and City Detention Parcel and Overflow Easement.

Entitlement Processing and Timing of Development

The Developer initially committed to making an application for an updated Industrial Park Master Plan, including Planned Development zoning, vested Tentative Map and additional environmental review within six months of obtaining approval of the 2015 General Plan Amendment for the 19.5-acre industrial conversion. Since that approval, the Developer presented a Preliminary Plan Review to the Planning Commission and City Council to obtain guidance on the project development. A lot line adjustment application was submitted to the City on January 9, 2017, which realigns the lots to conform with the zoning. At this time, the Developer does not plan to update the Industrial Park Master Plan or to entitle the industrial property.

The Development Agreement acknowledges that the Developer has spent significant resources since 2015 to study and plan the Property. The Site Plan is conceptual and is not intended to supersede or alter the existing approvals, but to illustrate a potential development plan for the site. The City has determined that the conceptual plan would be consistent with the existing Morgan Hill Ranch PUD. The Developer will continue, with the cooperation of the City, to use good faith efforts to make the site "business ready".

The Developer cannot at this time predict when or the rate at which phases of its Property will be developed. These decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand. As specified within the Development Agreement, the Developer has the right to develop the property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its subjective business judgment. If a new law is enacted, whether by action of the City Council or by initiative or otherwise, which governs the rate, timing, phasing or sequencing of new development or construction in the City, the new law would not apply to the project. It has been recognized that the City and Developer have a mutual desire to have the property develop as quickly as development factors permit.

The initial term of the Development Agreement is for a period of five (5) years, and can be extended for a total term of 15 years, at the Developer's sole discretion, provided certain milestones have been met which include:

- a. A five-year extension (for a total Term of 10 years) if the Developer has commenced and thereafter diligently completed either: (i) the Sutter Road Extension or, (ii) at least 50,000 square feet of new buildings (and any portion of

Sutter Road Extension).

- b. A second five-year extension (for a total Term of 15 years) if the Developer has completed the Sutter Road Extension and one of the following (i) at least 150,000 square feet of new buildings, in the aggregate.

The City has committed to consider extensions by end users to facilitate development.

Financing District

In the May 1, 2015 letter, the Developer expressed the desire to form a Mello Roos Community Facilities District, or other financing mechanism to assist in the financing and construction of the Sutter Extension Road, as well as the internal access road. As requested, the Development Agreement does allow for the construction of public improvements (including but not limited to, Sutter Road Extension and other infrastructure to serve the project) to be financed by a District or Districts. Costs related to the value of the dedication of the Butterfield Park land or future park improvements cannot not be financed by a District. The proposed financing mechanism could further encumber property that is located within an established assessment district.

The subject property is located within Reassessment District No. 2015-2 and has an **original** reassessment amount of \$577,907.01 with a **remaining** reassessment of \$499,973.06. The assessment is scheduled to be levied through Fiscal Year 2024/25 with the bonds maturing September 2, 2025. There are 24 parcels within the district.

Impact Fees

The Developer has requested that impact fees be locked for a set period of time. To facilitate this request, the Development Agreement includes a fee locking period of thirty-six (36) months. For a period of twenty-four (24) months, the Developer will pay the existing impact fees at the rate in effect as of the Development Agreement effective date. After twenty-four (24) months to the end of the fee locking period, if the City has otherwise increased the rates, the City may only increase any such increased impact fee applicable to the project by up to the San Francisco-Oakland-San Jose Consumer Price Index CPI-U ("CPI") for the prior year. After the fee locking period, the Developer will pay all impact fees.

Sutter Road Extension

The City and Developer acknowledge that improvements to Sutter Road Extension are both required for the industrial and residential projects. The residential project competed in the 2016 Residential Development Control System (RDSCS) competition and was awarded 10 building allotments for those commitments made through the RDSCS process. The project committed to complete 800 lineal-feet of Sutter Road Extension from the project road identified "Main Street" to Butterfield Boulevard. The applicant committed to contribute \$2,200 per unit towards completing 660 lineal-feet of Sutter Extension from the project road identified "Main Street" to Digital Drive. Additional

funds, as necessary, would be provided to fulfill the applicant's commitment. Because the applicant owned the adjacent property (industrial property), the City identified the commitment as "double dipping", but allowed for the point award stating that the City would be reimbursed these funds upon the development of the adjacent parcels fronting Sutter Place.

Although Sutter Road Extension is a requirement of the residential development, as stated within the RDCS commitments, the Development Agreement does include requirements for Sutter Road Extension. These are not intended to conflict with the RDCS commitments but to enhance the requirements.

The Development Agreement requires that the Developer dedicate, design and construct a slightly re-aligned 68-foot public street right-of-way from the intersection of Butterfield Boulevard and Sutter Boulevard to the extension of Sutter Place off of Digital Drive, with an approximate full length of 1,490 lineal feet. The proposed realignment is intended to increase the marketability of the industrial lots and allow for a future park. Improvements for the Sutter Road Extension shall include, but not be limited to, curb and gutter, compaction, sidewalks, driveway entrances, street paving, joint trench, storm drainage facilities, sewer and water mainlines and laterals, fire hydrants and street lighting. Driveway entrances and sidewalks may be deferred for construction on an individual parcel basis concurrent with the construction of each building site subject to reasonable approval of the City Engineer.

The City will allow the Developer to phase the construction of the Sutter Road Extension provided that access and circulation needs are met.

The adjacent residential project requires approximately 820 lineal feet of Sutter Road Extension for adequate circulation and secondary access to Butterfield Boulevard. If the residential project develops in advance of the industrial property, the developer has committed to commence construction (and complete in 270 days) of Sutter Road Extension from Butterfield Boulevard to Digital Drive once the Developer receives 165 residential building allotments and all necessary approvals, including building permits for those units.

Sutter Greenway

In the May 1, 2015 letter, the Developer committed to providing transitions and buffers between the existing residential and industrial uses. In the 2016 RDCS competition, the project committed to providing a 7-foot wide pedestrian and bike internal route along the Sutter Greenway, a buffer between the residential and industrial properties. To receive points the buffer needed to have an average width of 30 feet. As proposed, the Sutter Greenway will have an average width of 30 feet on the residential property and will be approximately 0.69 acres. For the industrial property, the Sutter Greenway will have an average width of 50 feet and will be approximately 1.11 acres.

The Development Agreement provides that the Developer will design and construct appropriate transitions and buffers between the residential property and the industrial

property, including a minimum 40-foot wide landscaped buffer/greenway extending from Jarvis Drive to Sutter Place. The Sutter Greenway is intended to provide an open space buffer, bioswales, trees and landscaping. The Developer will construct, own and maintain the Sutter Greenway and will provide public access. The Sutter Greenway, in combination with the portion that will be on the residential property, will be approximately 1.8 acres.

Butterfield Park

The Developer initially committed to providing up to five acres of parks and recreation space on the 19.5-acre residential property upon receiving approval of the 2015 General Plan Amendment. This was illustrated in Exhibit A of Resolution No. 15-102. Since that time, the Developer has reduced the size of the park to a minimum of 3.2 net acres and has relocated most of the park land to the industrial property. During the Preliminary Plan Review, both the Planning Commission and City Council discussed the location of the park and loss of additional industrial land for park use. Although it was not desirable to lose industrial land, there was the desire to see park development in conjunction with the overall project.

The Developer has agreed to offer to dedicate to the City in fee approximately 2.67 net acres identified as Butterfield Park Land. The Development Agreement allows for the Developer the right to construct and operate a private park, provided all the necessary permits and entitlements are obtained if the City chooses not to accept the park for public use.

At this time, park improvements have not been designed or approved by the City. The City will continue to work with the Developer regarding a future park at the site; however, there are many details that need to be fully developed and found acceptable prior to moving forward with a city owned and operated facility, which include:

1. City approval of park design and specific amenities for a Small Community Park (as defined in the updated Parks Master Plan);
2. Developer assurance that the park improvements will be fully funded by the Developer and park will be transferred to City as a turnkey park;
3. City evaluation of need and desire of Butterfield Park in relation to other park priorities that could be funded through residential park impact fees.
4. Developer's application submittal and City processing of necessary entitlements for the park (General Plan/Zone Change for a public park or CUP for a private park) to be processed prior to park acceptance;
5. Park would need to be fully completed prior to park acceptance;
6. Developer to provide warranty for a specific period for park improvements; and,
7. Developer to provide cost estimate for maintenance and operation of the park and City to evaluate proposed maintenance costs to determine overall impact on City budget and whether there is a public benefit to accepting the park as a public facility;

The Community Development and Community Services team will continue to work with the Developer to determine whether a public park would be the best use of the Butterfield Park Land.

City Detention Parcel and Overflow Easement

The Developer committed to study and discuss the use of the adjacent detention pond for passive recreation use in May 2015. Schaaf & Wheeler has prepared the "Butterfield Village Site Hydraulics and Water Quality" Memorandum dated September 22, 2016, which evaluates the City-owned 7.9-acre detention basin (Attachment 4).

The 7.9-acre detention pond (including an access easement and pump station) was constructed as part of an assessment district to limit the impacts of development within the Morgan Hill Ranch Business Park. The City's Storm Drainage Master Plan provided a plan to drain the business park to a City drainage channel to discharge to East Little Llagas Creek to the South. The Master Plan included construction of a regional detention basin at Maple Avenue to mitigate potential increased flows to the Creek, and construction of the Butterfield Channel from Central Avenue south to East Little Llagas Creek. The drainage systems for the Business Park and new development between the Business Park and Maple Avenue would drain to the Butterfield Channel. The City has completed construction of the Butterfield Channel and Maple Avenue Regional Detention Basin improvements, in accordance with the City Storm Drain Master Plan.

The Schaaf & Wheeler study analyzed detention storage of the existing business park and future buildout using computer modeling. Based on modeling scenarios, it was determined that the continued use of the City-owned detention basin is required to meet the goals of the City and Water District to maintain some historic flow to Fisher Creek. The City detention basin must be at least 8.0 acre-feet to provide 25-year storage for the pump station to deliver runoff to Fisher Creek and meet the residential retention requirement for the Central Coast Regional Board. With 1.5 acres required for the detention basin, the remaining 4.7 acres of the parcel is available for public park use. If a park is constructed within the existing drainage basin and used as overflow from the designated detention area, a 100-year 24-hour event will not overflow the pond's banks even if the pump is not running.

The Developers parcel (APN 726-25-26), located to the north of the detention pond is reserved for detention storage. The purpose of the detention easement was to allow for expansion of the City detention basin system if additional detention capacity was needed to serve development within the business park in the interim before construction of the Butterfield Channel system was completed. However, now that the City has completed construction of the Butterfield Channel and Maple Avenue Regional Detention Basin improvements, additional detention storage is not required.

A commitment to buildout the City-owned detention basin for recreational use has not been included within the Development Agreement because this requires additional review and analysis by the City. The City will work with the Developer to remove the overflow easement.

3. General Plan

The site has an Industrial General Plan designation in the Morgan Hill 2035 General Plan. Additionally, the site is located within one of the City's Core Employment Areas, as identified in the Morgan Hill 2035 General Plan. As a Core Employment Area, it is considered to be one the strongest locations for future employment growth with an emphasis on Research and Development, light manufacturing, office, and supporting uses. The General Plan specifies a maximum floor area ratio of 0.60 percent for projects with an industrial land use designation. In addition, there is a maximum height limitation of 50 feet. The project proposes building coverage's ranging from 29 to 48 percent which complies with the maximum development standards.

The proposed industrial development of the site is consistent with General Plan policies that encourage additional job opportunities for residents. The proposed park improvements and 1 acre landscaped greenway adjacent to the residentially designated property will contribute towards meeting General Plan policies that call for appropriate buffers and/or transitions between industrial and adjacent residential uses.

The Butterfield Park land dedication area is designated for industrial development and may conflict with the General Plan goal of providing adequate land for industrial development. The use of industrial land for park or open space purposes would result in an additional loss of industrial land that already occurred with the loss of 19.5 acres converted to residential use as part of General Plan Amendment (GPA-14-04) and Zoning Amendment (ZA-15-12) in 2015. Policies contained in the Morgan Hill 2035 General Plan specifically discourage the conversion of industrially-designate property designated to non-industrial uses. The Planning Commission and City Council did discuss the park location conceptually at previous meetings and concluded that a park would act as an amenity for the industrial park and provide public benefit.

Community Engagement

The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period.

Conclusion

As summarized in the Analysis of this report, the terms of the Development Agreement are consistent with the General Plan, Zoning Ordinance, and Morgan Hill Ranch Specific Plan. Therefore, the Planning Commission may conclude that the Development Agreement:

1. Is consistent with the goals, objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
2. Is compatible with the uses authorized in the zoning district in which the real property is located;

3. Duly considers city mitigation programs in effect at the time of execution of the agreement;
4. Will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood;
5. Complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto; and,
6. Will not adversely affect the orderly development of property or the preservation of property values.

LINKS/ATTACHMENTS:

1. CC Resolution No. 15-102
2. Ordinance No. 2163
3. MWest_Letter_5-1-2015
4. Schaafer & Wheeler hydraulics Memo
5. PC DA Resolution
6. DA Divco (MWest)
7. DA EXH_2 Illustrative Site Plan
8. DA EXH_3 Sutter Road Extension
9. 02 Supplement 1
- 10.02 Supplement 2
- 11.02 Supplement 3
- 12.02 Supplement 4

RESOLUTION NO. 15-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A REQUEST TO AMEND THE GENERAL PLAN LAND USE DESIGNATION OF A 19.5-ACRE SITE LOCATED AT THE SOUTHWEST CORNER OF JARVIS DRIVE AND BUTTERFIELD BOULEVARD FROM INDUSTRIAL TO MULTI-FAMILY MEDIUM (14-21 DU/AC) (APNS 726-25-061 AND -079 AND PORTIONS OF 066 AND 067)

WHEREAS, the applicant's request to amend the General Plan Land Use Designation from Industrial to Multi-Family Medium (14-21 du/ac) for the subject site was considered by the Planning Commission at their regular meeting of November 18, 2014. The Commission received testimony at the duly-noticed public hearing, along with exhibits and drawings and other materials that were considered in the review process. The Commission recommended that the City Council deny the amendment; and

WHEREAS, an Environmental Impact Report (EIR) was prepared in accordance with the California Environmental Quality Act (CEQA) to evaluate potential environmental impacts associated with the project and Addendum was prepared to evaluate the potential environmental impacts of the project in relationship to the Morgan Hill 2035 General Plan Update, currently undergoing separate CEQA analysis. The EIR and Addendum are intended to serve as informational documents for the public agency decision makers and the public regarding the project. The EIR and the Mitigation Monitoring and Reporting Program and Statements of Overriding Consideration were adopted under separate Resolution on May 6, 2015; and

WHEREAS, the applicant's request to amend the General Plan Land Use Designation from Industrial to Multi-Family Medium (14-21 du/ac) for the subject site was considered by the City Council at their regular meetings of February 4, 2015 and May 6, 2015; and

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

WHEREAS, at which time the City Council approved the General Plan Amendment application as shown on the attached map GPA-14-04: Butterfield-MWest; and

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

SECTION 1. The project is consistent with the Morgan Hill General Plan regarding the Residential Development Goal 7, Policies 7d, 7e, and 7i:

The project is consistent with Goal 7, Policies 7d, 7e, and 7i. The project proposes both apartment and for-sale housing products (270 and 88 dwelling units respectively), which would facilitate the housing needs of various incomes and socio-economic situations. The project site is

near US 101 and Cochrane Road, which are major thoroughfares within the City providing local and regional access. Some neighborhood-serving commercial is nearby, however, with the addition of the project that may lead to additional commercial development in the vicinity.

SECTION 2. The City Council hereby approves the General Plan Amendment as shown in the attached Exhibit 'A'.

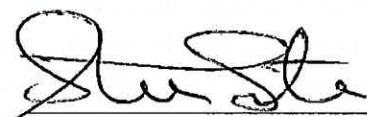
SECTION 3. This Resolution is effective immediately upon adoption, but shall be subject to a validly filed and processed referendum petition.

PASSED AND ADOPTED by the City Council of the of the City of Morgan Hill at a Regular Meeting held on the 6th day of May 2015 by the following vote:

AYES:	COUNCIL MEMBERS:	Lawrence Carr, Rich Constantine, Marilyn Librers
NOES:	COUNCIL MEMBERS:	Gordon Siebert, Steve Tate
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

ATTEST:


for IRMA TORREZ, City Clerk
8/17/15


STEVE TATE, Mayor

CERTIFICATION

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 15-102, adopted by the City Council at the meeting held on May 06, 2015.

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

DATE: 8/17/15


IRMA TORREZ, City Clerk

EXHIBIT A
General Plan Land Use
Butterfield – MWest Project
Multi-Family Medium Proposed

Alternative A

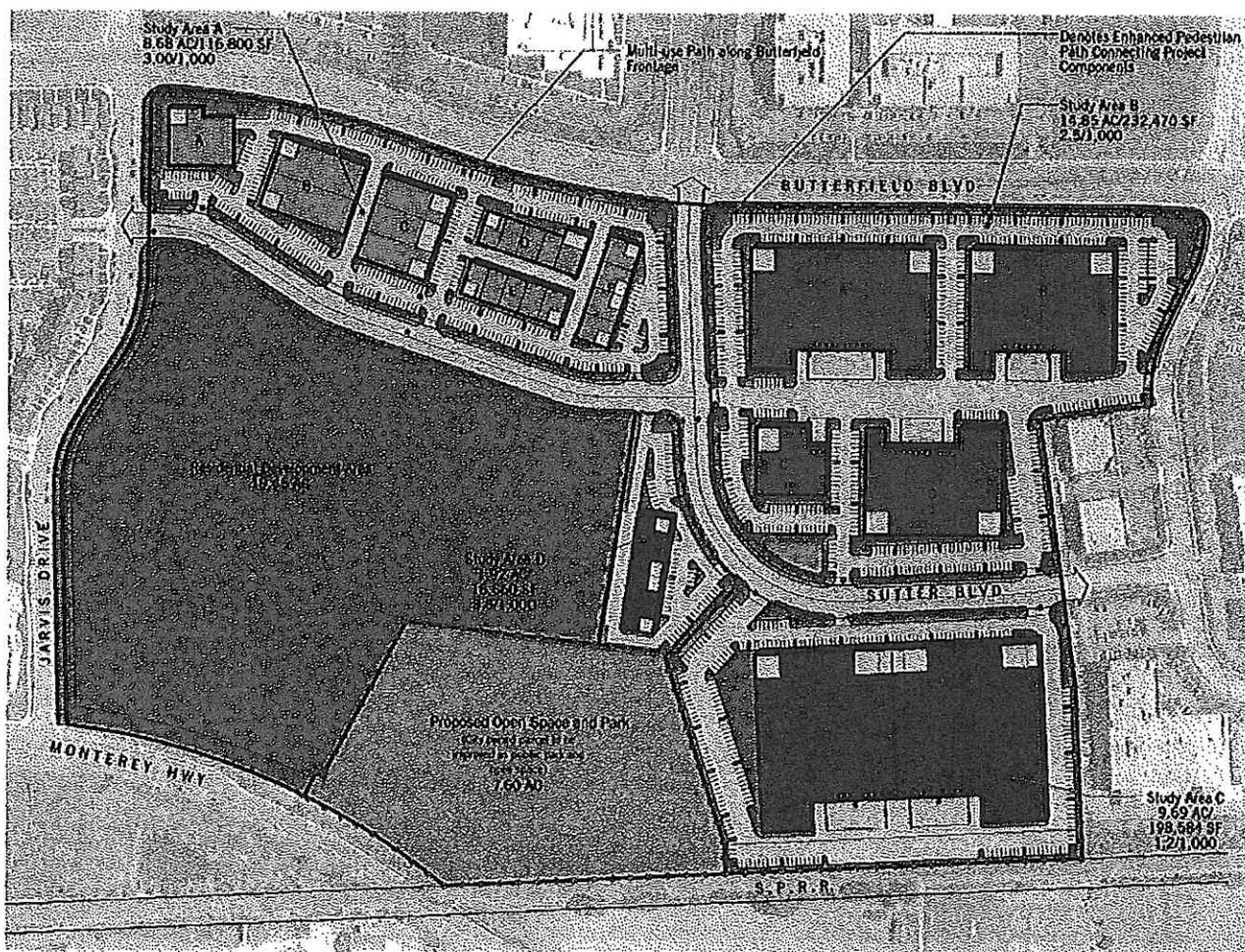
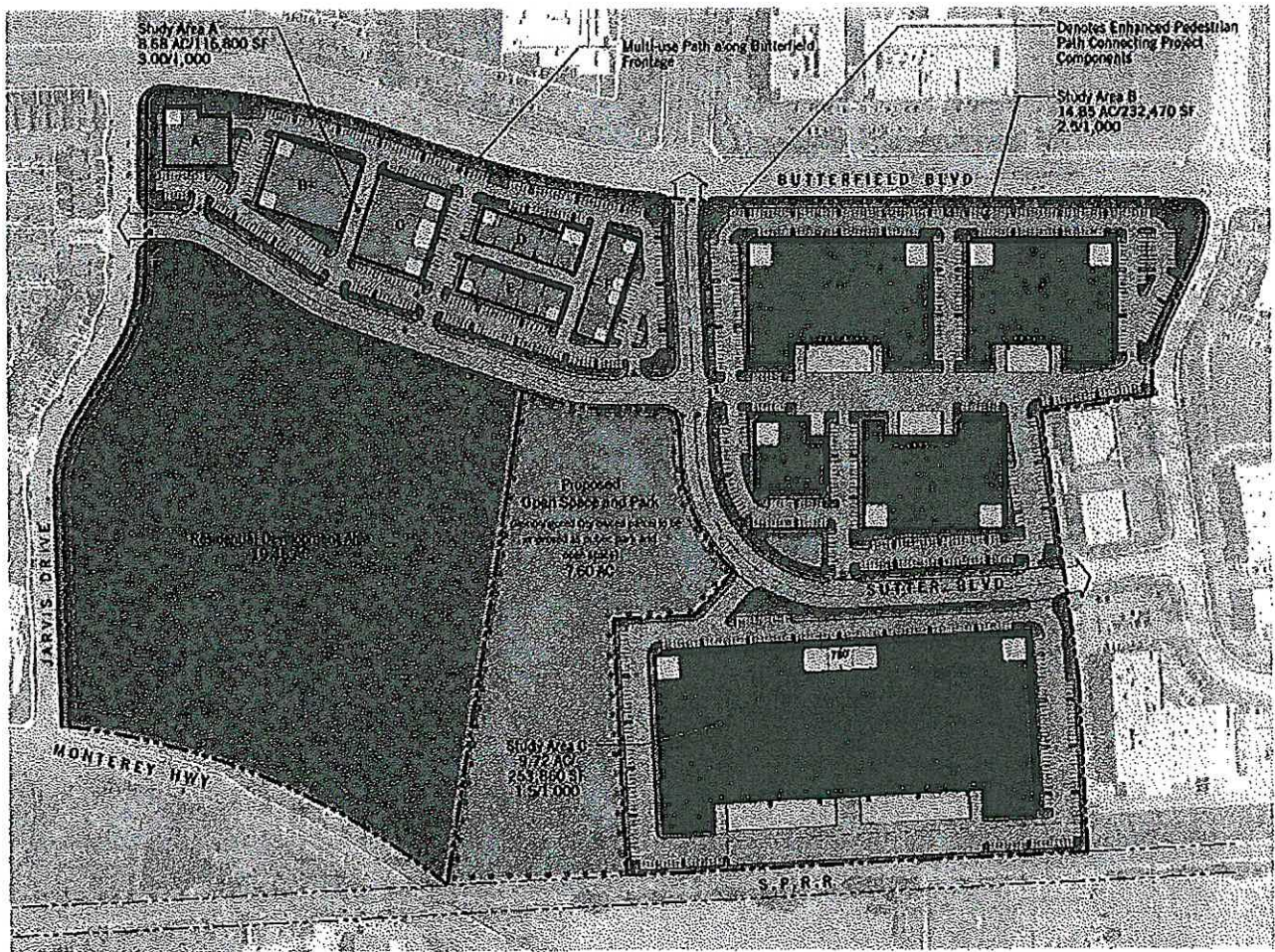


EXHIBIT A
General Plan Land Use
Butterfield – MWest Project
Multi-Family Medium Proposed

Alternative B



ORDINANCE NO. 2163, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION OF AN APPROXIMATELY 19.5 ACRE PORTION OF AN APPROXIMATELY 31 ACRE SITE LOCATED ON THE SOUTH SIDE OF JARVIS DRIVE BETWEEN MONTEREY ROAD AND BUTTERFIELD BOULEVARD (ASSESSOR PARCEL NUMBERS 726-25-061; -066, -067, -078, AND -079) FROM INDUSTRIAL PLANNED UNIT DEVELOPMENT TO R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT

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

- SECTION 1. ESTABLISHING R-3 ZONING DISTRICT** for an approximately 19.5-acre portion of an approximately 31-acre site located on the south side of Jarvis Drive, between Monterey Road and Butterfield Boulevard for Zoning Amendment application ZA-15-12: Butterfield-MWest (APN 726-25-061; -066, -067, -078, and -079).
- SECTION 2. DESCRIPTION OF LAND IN REZONING.** There hereby is attached hereto as "Exhibit A" and made a part of this ordinance a legal description and map which gives the boundaries of the described parcel of land.
- SECTION 3. FINDING OF CONSISTENCY WITH THE GENERAL PLAN.** The City Council hereby finds that the amendment established by this ordinance as herein described is compatible with the goals, objectives, policies and land use designation of the amended General Plan of the City of Morgan Hill. The Council further finds that the proposed amendment is required in order to serve the public health, convenience and general welfare as provided by Section 18.62.070 of the Morgan Hill Municipal Code.
- SECTION 4.** The City Council of the City of Morgan Hill hereby finds, on the basis of the whole record before it, that the project site was reviewed as part of an Environmental Impact Report (EIR) prepared in accordance with the California Environmental Quality Act (CEQA) to evaluate potential environmental impacts associated with the project. The EIR is intended to serve as an informational document for the public agency decision makers and the public regarding the project. The EIR, together with an Addendum thereto, and the Mitigation Monitoring and Reporting Program and Statements of Overriding Consideration were adopted under separate Resolution on May 6, 2015.

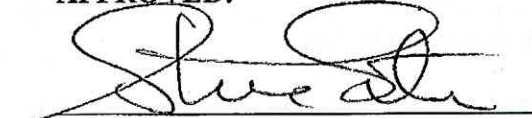
SECTION 5. SEVERABILITY. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 6. EFFECTIVE DATE; PUBLICATION. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this Ordinance pursuant to §36933 of the Government Code.

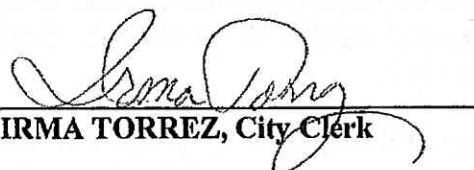
THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 2ND DAY OF SEPTEMBER 2015, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 7TH DAY OF OCTOBER 2015, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Marilyn Librers Gordon Siebert, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:


STEVE TATE, Mayor

ATTEST:


IRMA TORREZ, City Clerk

DATE:

October 23, 2015

Effective November 6, 2015

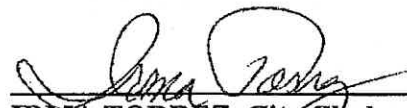
City of Morgan Hill
Ordinance No. 2163, New Series
Page 3 of 6

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2163, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 7th day of October 2015.

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

DATE: October 23, 2015


IRMA TORREZ, City Clerk

Attachment: Ordinance No. 2163 (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

July 10, 2015
Job No. 4657-01

EXHIBIT "A"
LEGAL DESCRIPTION FOR REZONING
LANDS OF MISSION WEST PROPERTIES, L.P. II
BEING A PART OF ORDINANCE NO. 2163, NEW SERIES
BUTTERFIELD VILLAGE, MORGAN HILL, CA

All that real property situate in the City of Morgan Hill, County of Santa Clara, State of California, being all of Lot 26, as said lot is shown on that certain Parcel Map filed for record on September 27, 2000 in Book 732 of Maps at pages 16 through 19, inclusive, also being a portion of Parcels 1 and 2, as said parcels are shown on that certain Parcel Map filed for record on October 10, 2001 in Book 743 of Maps at pages 3 through 6, inclusive, and also being a portion of Parcels 3 and 4, as said parcels are shown on that certain Parcel Map filed for record on May 29, 2002 in Book 749 of Maps at pages 6 and 7, and being more particularly described as follows:

BEGINNING at the most westerly corner of said Lot 26; thence along the southeasterly right-of-way line of Jarvis Drive, as said drive is shown on said Parcel Map filed in Book 749 of Maps at pages 6 and 7, the following 5 (five) courses:

1. North 51°41'21" East, a distance of 475.58 feet to the beginning of a tangent curve to the right;
2. thence along said curve having a radius 260.00 feet, through a central angle of 33°28'40", an arc length of 151.92 feet;
3. thence North 85°10'01" East, a distance of 157.16 feet to the beginning of a tangent curve to the left;
4. thence along said curve having a radius of 340.00 feet, through a central angle of 31°12'23", an arc length of 185.18 feet;
5. thence North 53°57'38" East, a distance of 68.86 feet to the beginning of a non-tangent curve to the right, from which point a radial line bears South 16°27'05" West; thence leaving said line and along said curve having a radius of 20.00 feet, through a central angle of 37°22'12", an arc length of 13.04 feet; thence South 36°10'43" East, a distance of 34.01 feet to the beginning of a tangent curve to the right; thence along said curve having a radius of 164.00 feet, through a central angle of 31°49'45", an arc length of 91.11 feet; thence South 04°20'58" East, a distance of 222.47 feet to the beginning of a tangent curve to the left; thence along said curve having a radius of 336.00 feet, through a central angle of 13°42'47", an arc length of 80.42 feet; thence South 18°03'45" East, a distance of 472.41 feet to the beginning of a tangent curve to the left; thence along said curve having a radius of 336.00 feet, through a central angle of 18°22'58", an arc length of 107.80 feet; thence South 36°26'43" East, a distance of 79.74 feet; thence South 63°26'46" West, a distance of 490.38 feet to the southwesterly line of said Parcel 2; thence along said line North 30°29'11" West, a distance of 399.49 feet to the most westerly corner of said Parcel 2, said point also being an angle point in the southerly line

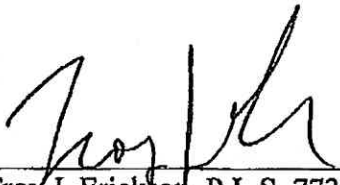
City of Morgan Hill
Ordinance No. 2163, New Series

Page 5 of 6

of said Lot 26; thence along the southerly line of said Lot 26 the following 5 (five) courses:

1. South 82°21'58" West, a distance of 339.26 feet;
2. thence South 63°43'51" West, a distance of 17.84 feet;
3. thence North 33°07'30" West, a distance of 22.00 feet;
4. thence South 74°55'59" West, a distance of 31.57 feet;
5. thence South 83°18'01" West, a distance of 16.00 feet to the northerly right-of-way line of Monterey Highway, as said highway is shown on said Parcel Map filed in Book 732 at pages 16 through 19, inclusive and the beginning of a non-tangent curve to the left, from which point a radial line bears South 78°42'31" West; thence along said right-of-way line and along said curve having a radius of 1575.00 feet, through a central angle of 18°45'59", an arc length of 515.87 feet to the POINT OF BEGINNING and containing an area of 19.5 acres, more or less.

This description was prepared by me or under my direct supervision.


Troy J. Erickson, P.L.S. 7735
Expires: 12/31/15



7/10/15
Dated

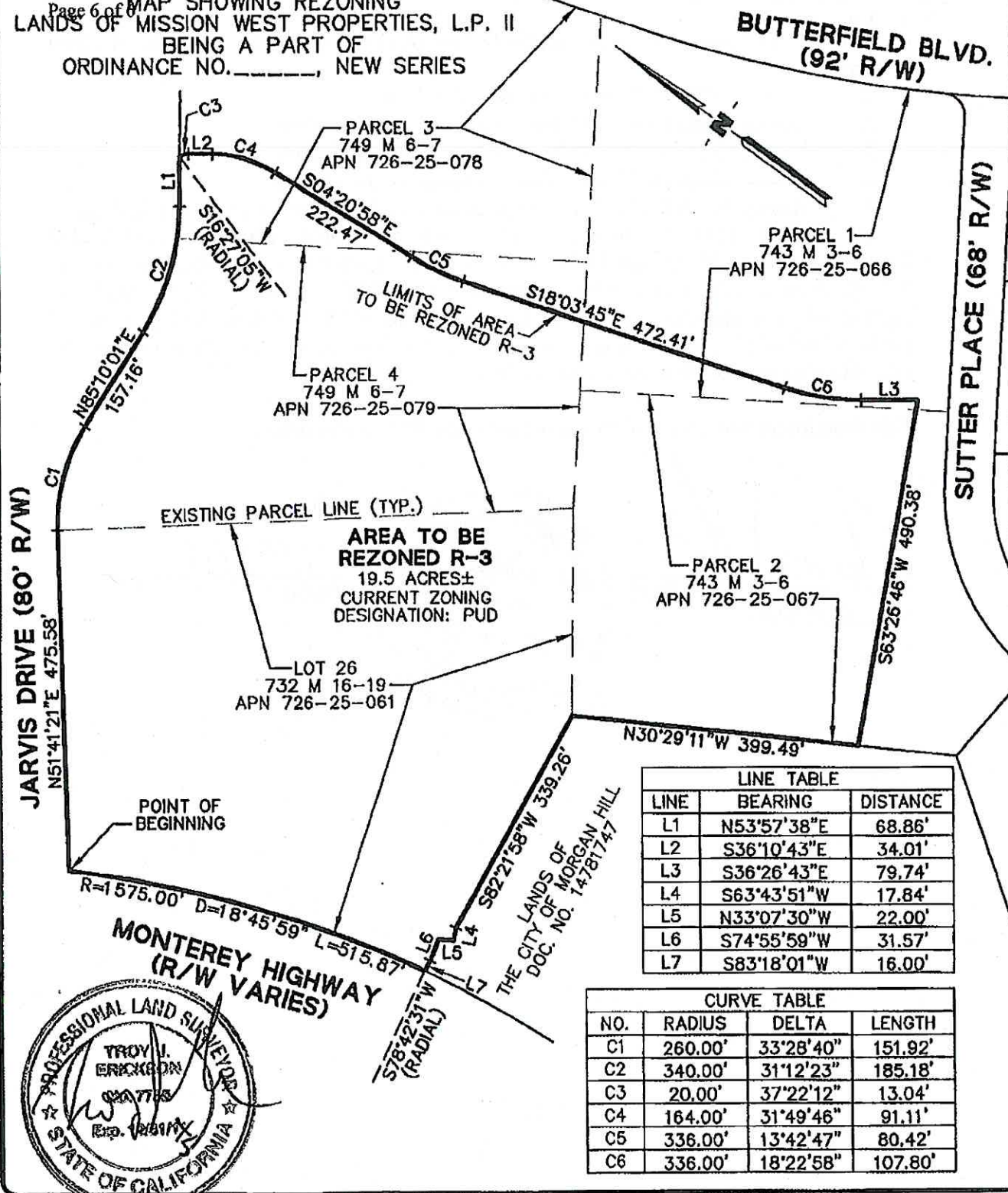
Attachment: Ordinance No. 2163 (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

City of Morgan Hill

Ordinance No. 2163, New Series

Page 6 of 6

MAP SHOWING REZONING LANDS OF MISSION WEST PROPERTIES, L.P. II BEING A PART OF ORDINANCE NO. _____, NEW SERIES



architecture
planning
interiors
graphics
civil engineering

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pleasanton, california 94588
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f 925.244.9621

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Subject EXHIBIT "B" - PLAT TO ACCOMPANY
LEGAL DESCRIPTION FOR REZONING

Job No. 4657-01

By TJE Date 7/10/15 Chkd.

Scale 1"=200' Sheet 1 of 1

Attachment: Ordinance No. 2163 (1105 : DA2017-0002: Butterfield - MWest Development Agreement)



May 1, 2015

Honorable Mayor Steve Tate
Members of the Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA 95037

RE: MWest-Butterfield General Plan Amendment Application Amendment and Additional Information for City Council Reconsideration (File No. GPA-14-04)

Honorable Mayor and Members of the City Council:

The purpose of this letter is to clarify the entitlement process and MWest's commitments going forward should the City Council choose to adopt the proposed General Plan Amendment (GPA-14-04) for the MWest-Butterfield property on May 6, 2015.

The proposal that we are bringing forward to the City Council reflects our understanding that the City's goal is not simply to preserve or "land bank" vacant industrial land, but to expand its economic base through the strategic deployment of initiatives that serve to catalyze industrial development and attract jobs.

Over the years, some of the most capable professionals in the development industry have tried unsuccessfully to get industrial development going on this large 58-acre site located west of Butterfield within the Morgan Hill Ranch Business Park. MWest's core competency is office/R&D/industrial development; we have an expansive portfolio of over 7 million square feet, the second largest in Silicon Valley. Our portfolio gives us a vast network of relationships and unrivaled access to premier tenants and users, knowledge of their locational preferences and requirements, and a rare platform upon which to build a successful strategy for marketing and developing our properties in Morgan Hill.

The Power of the Vision

Based on our expertise and breadth of knowledge of the marketplace, MWest believes that *a fresh and innovative approach is required to catalyze development*. Based on direct market feedback and the growing examples throughout the Bay Area of businesses desiring housing near their campuses (e.g.; Tesla, Facebook), we propose to:

- (1) Create a compelling vision to entice companies to locate here by offering a first class environment with space for small (10,000 – 27,000 SF), medium (40,000 SF – 80,000 SF) and large (125,000 – 250,000 SF) incubators and R&D manufacturers,
- (2) Integrate rental housing for their employees so they can walk or bike to work, and provide attractive lifestyle amenities, recreation and open space;
- (3) Update the 1980s master plan to meet current market needs and become "business ready" (including site plan, tentative map, product design, architecture, and related entitlements);
- (4) Invest in interior roads to create immediately accessible lots (an est. cost of \$3 - \$4 million).

Under the framework outlined below, the City and MWest would work collaboratively throughout the process to design, market and implement an innovative master plan for the 58-acre site. MWest's commitment includes preliminary capital expenditures and indebtedness totaling nearly \$5 million. Although the GPA is the first step,

there are many steps in the planning process to follow, and multiple checkpoints along the way. The following describes MWest's commitments and provides an overview of the anticipated entitlement process.

Should the City Council adopt the GPA for the reconfigured 19.5 acres, MWest commits to the following:

- I. Within six months of City Council's approval of the GPA, MWest commits to make an application for an updated Industrial Park Master Plan on a 38.5 acre portion of the property, including but not limited to PD Zoning, Development Agreement ("DA"), VTM and EIR, for a premier industrial park accommodating a wide range of users with a capacity of up to 600,000 SF of office/R&D/industrial space;
- II. MWest commits to taking the steps necessary to make the site "business ready" to catalyze near term development. "Business ready" means that MWest will invest in entitlements and infrastructure to remove the current market barriers associated with an outdated master plan (e.g.; entitlement risk, uncertain improvement costs, and inadequate infrastructure), thereby accelerating the timing of development so that once end users have been identified, all that is required to build is design review and ministerial building permits;
- III. On a parallel track, MWest commits to processing remaining entitlements for up to 409 apartments and up to 5 acres of parks and recreation space on 19.5 acres of the property, at a density of 14 – 21 du/acre, to include PD zoning, VTM, DA, and application for inclusion in the City's residential allocation process for multi-family projects;
- IV. MWest commits to work with the City to discuss potential options for converting the 7.6-acre City owned Detention Parcel for use as a public park and open space to be enjoyed by the existing and future industrial and residential neighborhoods;
- V. MWest commits to make an application for a land exchange for the 7.6 acre Detention Basin to reconfigure the parcel to improve the efficiency of the plan for industrial, residential and open space;
- VI. MWest commits to continuously engage a qualified and motivated broker familiar with the Morgan Hill industrial market and to provide routine market updates to City staff, no less than quarterly;
- VII. MWest commits to continue to actively market the 38.5-acre industrial property to prospective users in Morgan Hill, throughout Silicon Valley and beyond, and to jointly collaborate with the City of Morgan Hill's Economic Development Director in developing a strategic plan for outreach to prospective users;
- VIII. MWest commits to comprehensively study and evaluate the detention and stormwater quality needs of the entire 58-acre site, including the continued need for both the Detention Basin and the MWest Overflow Parcel and, if City determines that the facilities are no longer needed based on the completion of the Butterfield Stormwater Channel and other regional improvements, City will vacate (at City Council's discretion) the existing utility easement encumbering the Overflow Parcel;
- IX. MWest commits to make an application for a Development Agreement covering the proposed 38.5-acre industrial portion of the property. The DA would provide for a range of commitments, milestones and community benefits, including but not limited to:
 - (a) Establishment of a process between the City and MWest for the timely processing of entitlements, community benefits, and appropriate milestones;
 - (b) MWest will request to work with the City to establish a Mello Roos Community Facilities District, or other suitable financing mechanism, for the financing and construction of the extension of Sutter

Road, as well as the internal access road located behind the industrial buildings at the north end of Butterfield (“the interior roads”). The total estimated value of improvements is \$3 – \$4 million;

- (c) Upon securing financing at terms acceptable to MWest, MWest commits to construct the interior roads as soon as practicable to facilitate and expedite the marketing of the site to prospective users;
- (d) If desired by the City, MWest will assist with the conversion of up to 7.6 acres of land currently owned by the City and used for storm water detention to allow for public access, natural open space, trails and recreation uses;
- (e) MWest and the City to agree on public improvements to the 7.6-acre detention parcel to be funded and constructed by MWest. Such improvements may include: native plantings, public gardens, walking and biking trails, benches and picnic areas, shade structures, par course or exercise equipment, dog run, public parking and/or other amenities;
- (f) Provide for appropriate transitions and buffers between existing residential and industrial uses, and proposed uses within the Property;
- (g) Provide for bicycle and pedestrian connections throughout the site, including connections to the existing Jarvis neighborhood and neighboring industrial uses, and a multi-use pedestrian and bicycle path along the Butterfield Boulevard frontage;
- (h) MWest commits to developing a Transportation Demand Management plan to promote alternate means of transportation and to reduce single-occupancy vehicle trips to and from the area;
- (i) MWest and City would jointly seek to establish a bus stop on Butterfield Boulevard;
- (j) MWest and City to explore the feasibility of incorporating a small cafe within the project.

Taking Advantage of the Market Window

This is an opportunistic moment in time when both the industrial and residential markets are strong. Waiting until the General Plan Update concludes will likely delay the project for 18 months to 2 years or more. Unfortunately, market windows can close as fast as they open. It is important not to get complacent. The industrial market in Morgan Hill is cyclical. The last time vacancy rates were at this level was during the economic boom of the late 1990s. Within just two years following the “dot.com bust”, vacancy rates spiked to over 20%.

MWest is committed to collaborating with the City and business community to take Morgan Hill’s economic base to the next level. With the strategy outlined above, MWest looks forward to creating and developing a master plan that will ultimately add over 10% to the City’s industrial base (600,000 SF), generate 1,200+/- jobs and \$20 - \$25 million in annual retail spending, and provide critically needed rental housing for Morgan Hill.

Very Truly Yours,



Chad Froman, Director
MWest

Kerry M. Williams

Kerry M. Williams,
Project Director



ABOUT MWEST

MWest is a partnership between DivcoWest and TPG Real Estate, a vertically integrated real estate investment company headquartered in Santa Clara:

- We focus on acquiring, re-positioning, developing and operating a community of office, R&D, industrial and residential projects in Silicon Valley that meet the demands of a progressive workforce
- Our strategy is to provide superior work environments that support collaboration, productivity and employee well-being
- MWest currently owns a portfolio totaling over 7 million square feet of commercial properties located across Silicon Valley



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Schaaf & Wheeler
 CONSULTING CIVIL ENGINEERS

MEMORANDUM

TO:	Mr. Karl Bjarke, City of Morgan Hill	DATE:	September 22, 2016
FROM:	Kirk Wheeler, PE Caitlin Gilmore, PE	JOB#:	MWES.01.15.002
SUBJECT:	Butterfield Village Site Hydraulics and Water Quality		

At the request of MWest PropCo XXIII, LLC ("MWest"), Schaaf and Wheeler has been retained to evaluate the existing City-owned detention basin located on 7.9 acres within a larger 58 acre property owned by MWest between Monterey Road and Butterfield Boulevard at Jarvis Road in Morgan Hill, CA. This memorandum describes the existing hydraulics of the detention basin and pump station and the projected future need for the facility in light of the completion of regional drainage improvements along Butterfield and the future development of the MWest property for industrial and residential use. Hydraulic modeling of the business park storm drainage system and Butterfield Channel is included. Additionally, the potential capacity for the basin to serve multiple benefit use as a retention pond to meet the Central Coast MS4 permit LID requirements and as a public park and open space amenity is discussed.

Existing Basin Design

The existing approximate 6.2 acre detention pond (part of a larger 7.9 acre parcel, including an access easement and pump station) was constructed as part of an assessment district to limit the impacts of development within the Morgan Hill Ranch Business Park. The City's Storm Drainage Master Plan has long planned to drain the business park to a City drainage channel to discharge to East Little Llagas Creek to the South. The Master Plan included construction of a regional detention basin at Maple Avenue to mitigate potential increased flows to the Creek, and construction of the Butterfield Channel from Central Avenue south to East Little Llagas Creek. The drainage systems for the Business Park and new development between the Business Park and Maple Avenue would drain to the Butterfield Channel.

In 2000, when development of the business park began, the City had constructed a portion of the Butterfield Channel system north of Tenant Avenue, but had not yet constructed the regional detention basin or the Butterfield Channel connection to East Little Llagas Creek. The City proceeded with approval of the business park with an interim drainage system using a detention basin and pump station adjacent to Monterey Road and the UPRR. The business park drainage system to connect to the Butterfield Channel was constructed, but with an internal wall to prevent flow to the Butterfield Channel and force drainage to the City detention basin.

The basin has a capacity of approximately 44 acre-feet, bottom surface area of 5.1 acres, an active storage depth of 8.3 feet and a total depth of 13 feet. The top elevation is at 355 feet NGVD29 and the bottom elevation is 342 feet NGVD29. The pond is fed by an 84" diversion (line "D"¹) from Butterfield Blvd at Sutter Blvd and an 18" (line "B"²) which flows northwest along the Union Pacific Railroad from the

¹ Assessment District No. 1998-1 Improvement Plans for Line "D" Storm Drain – Sheet 16 of 39, As-Built 2/25/00.

² Assessment District No. 1998-1 Improvement Plans, Line "B" Storm Drain Sheet 14-15, As-Built 2/25/00.

Digital Drive development. A duplex pump station is operated in the pond which discharges water to Fisher Creek via a float control structure and three 24" metal pipes. In addition to the pumps, there is a high level 48" gravity discharge at elevation 348.42 feet NGVD29 to Fisher Creek and a 36" line directly from Cochrane Road operated by the float control structure (line "C"³). The pumps are operated with set levels 342.9 and 343.9 feet NGVD29 allowing for a minimum of 1.9 feet of ponding within the basin. The 84" drainage system (line "D") from Butterfield Boulevard begins to overflow to a 60" pipe running southerly down Butterfield Boulevard at elevation 350.3 feet NGVD29. Two additional gravity overflows are located south of the Digital Drive development. In the south corner, an overflow bubbler structure with rim elevation 352.0 allows flow to exit the system (line "B") and flow overland in a ditch towards Central Avenue. It was the intent to eventually have a pipe which runs along the railroad which would connect this bubbler to Central Avenue⁴. This is shown as the red line in Figure 1. The last overflow is an 18" pipe (line "A"⁵) which runs along the south west edge of the Digital Drive development from the overflow bubbler, connecting to the 72" Butterfield Blvd drain at an invert elevation 347.8 feet.



Figure 1: Detention Pond System Layout

In 2006, in response to flooding problems on Fisher Creek in 2005, the City modified the operation of the detention basin system. One pump was converted to manual operation to limit the flow rate to Fisher

³ Assessment District No. 1998-1 Improvement Plans, Line "C" Storm Drain Sheets 11-12, As-Built 2/25/00

⁴ Stormwater Drainage and Detention Program for Morgan Hill Ranch, Schaaf & Wheeler, February 2008

⁵ Assessment District No. 1998-1 Improvement Plans, Line "A" Storm Drain Sheet 13, As-Built 2/25/00

Creek to approximately 22 cfs in normal operation. The connection to Butterfield Channel within the 72" line in Butterfield Boulevard was modified to allow limited low flows to discharge to the south to reduce the potential effect on the detention basin. The 18" pipe (line "A") on the south side of the Digital Drive development was blocked for low flows at the connection to the 72" Butterfield Blvd drain⁶.

The Butterfield Channel Improvements assumed that the Cochrane Business Park would be built out to 80% impervious in the final condition. An 80% imperviousness was also assumed for the detention pond hydrology⁷.

Overflow Easement

Parcel 26 (APN 726-25-26), located to the north of the detention pond is reserved for detention storage and its removal requires approval by the Director of Public Works per the year 2000 recorded parcel map. The low grade elevation on Parcel 26 is near elevation 351 feet NGVD29 (354 feet NAVD88)⁸. The basis of design for the original detention basin system is not available, but the purpose of the detention easement on Parcel 26 was to allow for expansion of the City detention basin system if additional detention capacity was needed to serve development within the business park in the interim before construction of the Butterfield Channel system was completed. However, now that the City has completed construction of the Butterfield Channel and Maple Avenue Regional Detention Basin improvements, per the City Storm Drain Master Plan, no additional detention storage is required. The easement can be removed and the property returned to MWest for unrestricted use.

Business Park Storm Drainage Modeling

In order to determine the hydraulic grade line, capacity, pipe flows and detention storage of the existing Butterfield Business Park storm drainage system, a MIKE Urban (MU) computer model was developed. The model includes hydrologic and hydraulic modeling for the business park south of Cochrane Road, downstream to Central Avenue and the start of the Butterfield Channel. The hydrologic methodology was based on the Santa Clara County Drainage Manual hydrograph procedures. This involves the use of land use data, National Resources Conservation Service (NRCS) Curve Numbers, determination of catchment flow paths, and a design storm pattern.

The land use conditions for each model were based on satellite imagery for the existing condition and the City zoning maps which consider future development. Percent impervious cover for each type of land use was estimated using satellite imagery to check and adjust County Drainage Manual Assumptions. The 349 Acre Butterfield Business Park drainage area was delineated using 2006 Santa Clara County LiDAR contours. This was broken into smaller catchment areas for both existing and developed conditions.

Empirical Curve Numbers from the Drainage Manual were assigned to the pervious areas of each catchment based on Land Use and Soil types in GIS. Pervious area curve numbers were assigned to each catchment's pervious area, while a curve number of 100 (indicating that all precipitation would turn into runoff) was applied to impervious catchment areas. Design storms for system analysis were based on City of Morgan Hill Storm Drain design standards. Existing and Developed condition catchments and drainage parameters are shown in Appendix A.

⁶ Cochrane Business Park – Flap Gate Alternatives, Schaaf & Wheeler, November 3, 2008

⁷ Stormwater Drainage and Detention Program for Morgan Hill Ranch, Schaaf & Wheeler, February 1998

⁸ Aerial Exhibit, RJA, September 2014

For all scenarios, except Scenario 1, it was assumed that the 72" Butterfield Boulevard pipe is unblocked and the low flow weir in the outlet of the 18" pipe (line "A") from Digital Drive to Butterfield is removed. It is also assumed for each storm drain modeling scenario that the Butterfield Channel earthen check dams remain in place. Sensitivity analysis shows that using the boundary with earthen check dams does not influence flooding in the pipe system and removing the check dams will not significantly reduce upstream flooding. A HEC-RAS analysis of the hydraulic grade of the channel with and without the check dams is also presented.

Scenario 1: Existing System 10-year

Purpose of Scenario

This scenario was run to show the existing conditions during a 10-year storm event, prior to Project construction.

Elements of Scenario

The full existing storm drainage system 10-year storm event was modeled, assuming that the blockage placed on the 72" pipe to throttle flows to Butterfield Channel is present. The model includes the 84" line from Butterfield Blvd to the basin, the 18" connecting Digital Drive to the basin, and one 22 cfs pump operating in the City detention pond (the other does not turn on). This assumes undeveloped, open field on the project site.

- Storm Event: 10-year, 24-hour
- Development Condition: Existing Condition at Butterfield Site, existing land use through the rest of the business park
- Pipe Conditions:
 - o Existing pipe system
 - o 72" in Butterfield is partially blocked and 18" to Butterfield from Digital Drive overflow is blocked to low flows.

Scenario Results Explanation

This scenario resulted in no significant flooding within the system. The 42" pipe adjacent to the railroad is surcharged, but this does not cause flooding in the Digital Drive system. Results are shown in Figure 2.



Figure 2: Existing System 10-year Hydraulics

Scenario 2: Existing System 10-year, Unblocked***Purpose of Scenario***

This scenario was run to analyze the effect of removing the blockages (location shown in Figure 2) and allowing flow to enter Butterfield Channel prior to development and modification of the storm system in the development area.

Elements of Scenario

The existing storm drainage system 10-year storm event was modeled, assuming that the connections to Butterfield Boulevard and ultimately Butterfield Channel are unblocked as discussed above. All other storm drainage elements were modeled as they are currently operating, with one 22 cfs pump in the City detention pond.

- Storm Event: 10-year, 24-hour
- Development Condition: Existing Condition at Butterfield Site, existing land use through the rest of the business park
- Pipe Conditions:
 - o Existing pipe conditions
 - o Removed blockage to 72" in Butterfield (throttled to 9" x 19" opening) and 18" (26" high weir) to Butterfield from Digital Drive.

Scenario Results Explanation

This scenario resulted in no significant flooding within the system. The 42" pipe adjacent to the railroad is somewhat less surcharged than with the blockages in place. Results are shown in Figure 3.



Figure 3: Existing System 10-year Hydraulics with Blockages Removed.

Elements of Scenario

The MIKE Urban model was run for the project condition for the 10-year, 24-hour storm event to determine the hydraulic grade line throughout the system under the following conditions:

- Storm Event: 10-year, 24-hour
- Development Condition: Developed Condition at Butterfield Site, City proposed land-use throughout the rest of the Business Park
- Pipe Conditions:
 - o Blockages on 72" in Butterfield Blvd and 18" from Digital Drive to Butterfield removed
 - o Replaced portion of 84" pipe connecting Butterfield Boulevard to the detention basin with 36" pipe on the Sutter Extension.
 - o A weir is placed on upstream end of the 36" pipe to allow overflow from Butterfield Boulevard to enter the detention basin and control the HGL on Sutter Boulevard.
 - o 18" pipe connecting the Digital Drive system to the detention basin remains.
 - o Flap gate placed on 18" connection from Digital Drive to Butterfield Boulevard.
 - o The Industrial A & B and Sutter Extension are drained to the 36" to the detention basin.
 - o Detention Basin size reduced (see Scenario 4).
 - o The Residential and Industrial C areas are drained directly to the detention basin.
 - o One 22 cfs pump continues to operate at current set levels.

To accommodate development and the drainage directions described above, a portion of the 84" pipe would be replaced with a 36" pipe. A weir with a crest elevation of 355.5 ft NAVD is placed on the upstream end to allow high flows from Butterfield into the detention basin. Industrial Areas A and B and the Sutter Extension are drained to the new 36". It is necessary to drain the Residential and Industrial Area C to the City pond as the hydraulic grade in Butterfield is too high to allow flow by gravity from these lower lying areas. A flap gate is placed on the 18" pipe from the Digital Drive 42" to Butterfield to ensure high flows in the Butterfield 72" pipe reach Butterfield Channel.

Scenario Results Explanation

10-year hydraulic model results for scenario 3 are shown in Figure 5. The developed condition increases the HGL in the pipes in Sutter Boulevard and Butterfield Boulevard. Placing a weir at the upstream end of the 36" pipe and allowing for overflow from Butterfield into the detention basin helps alleviate flooding compared with complete removal of the 84" pipe.

Changes to the system result in slightly increased HGL in pipes draining Digital Drive. The increased HGL does not induce flooding on Digital Drive, and surcharge adjacent to the railroad remains contained. This slightly increases flows at the bubble up. Figure 6 shows the hydraulic grade lines from Digital Drive to the 42" pipe parallel to the railroad for the existing condition and for project conditions with and without the 18" connection to the basin.

In order to keep the 10-year HGL along the railroad equivalent to existing conditions and avoid a potential increase flood depths on Digital Drive for storm events larger than 10-year, it would be necessary to install a 30" pipe connecting the bubbler to Central Ave (shown in Figure 1 as a red line).

The 10-year HGL for Butterfield Blvd is shown in Figure 7 and shows that the existing 60" pipe has the capacity to drain the business park to Butterfield Channel for a 10-year event. Overland 2D modeling (see Scenario 5) shows that flooding on Sutter Blvd is minor and would remain completely contained in the streets, draining towards Butterfield Blvd and entering the pipe system where capacity is available.

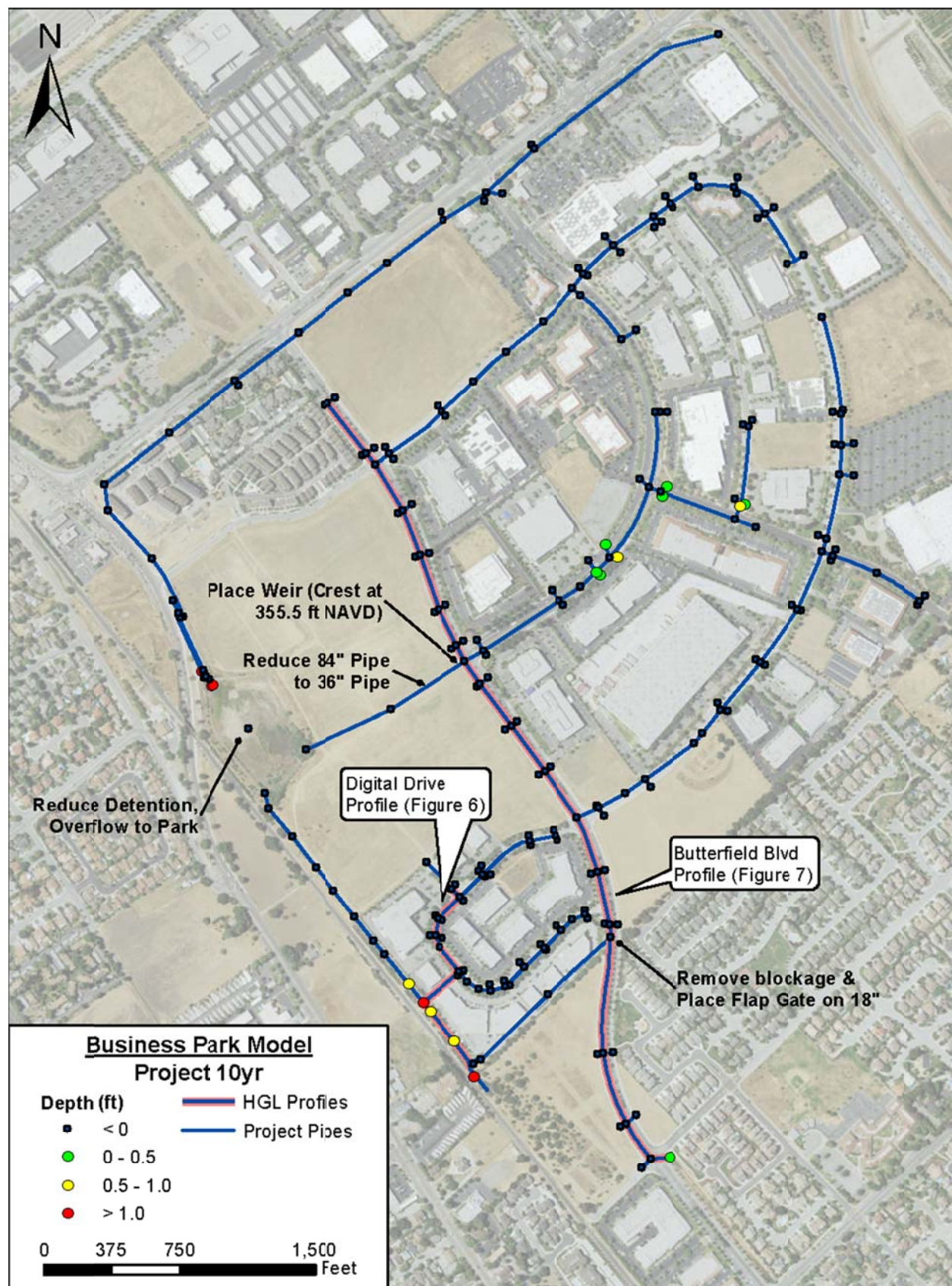


Figure 5: Proposed 10-year Hydraulics Without Connecting the Bubbler to Central Ave

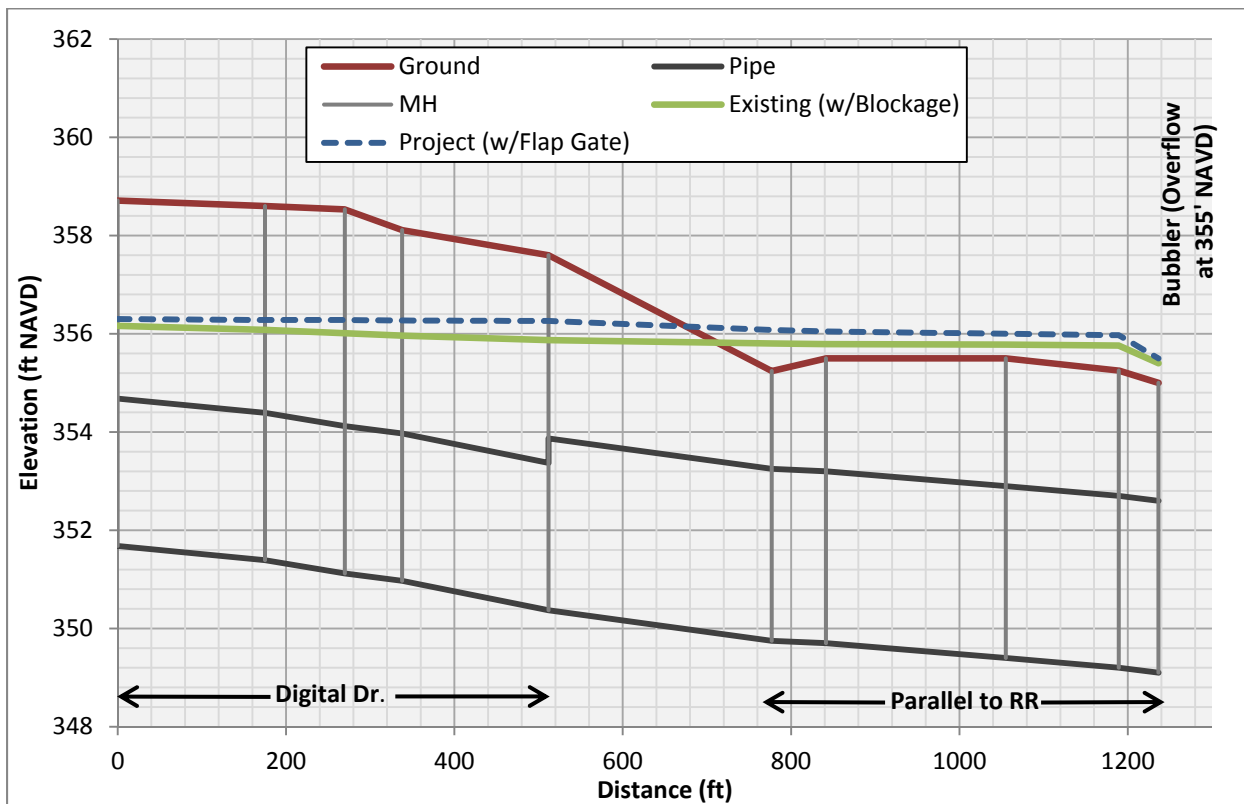


Figure 6: Existing and Proposed Project 42" Railroad Hydraulic Profile

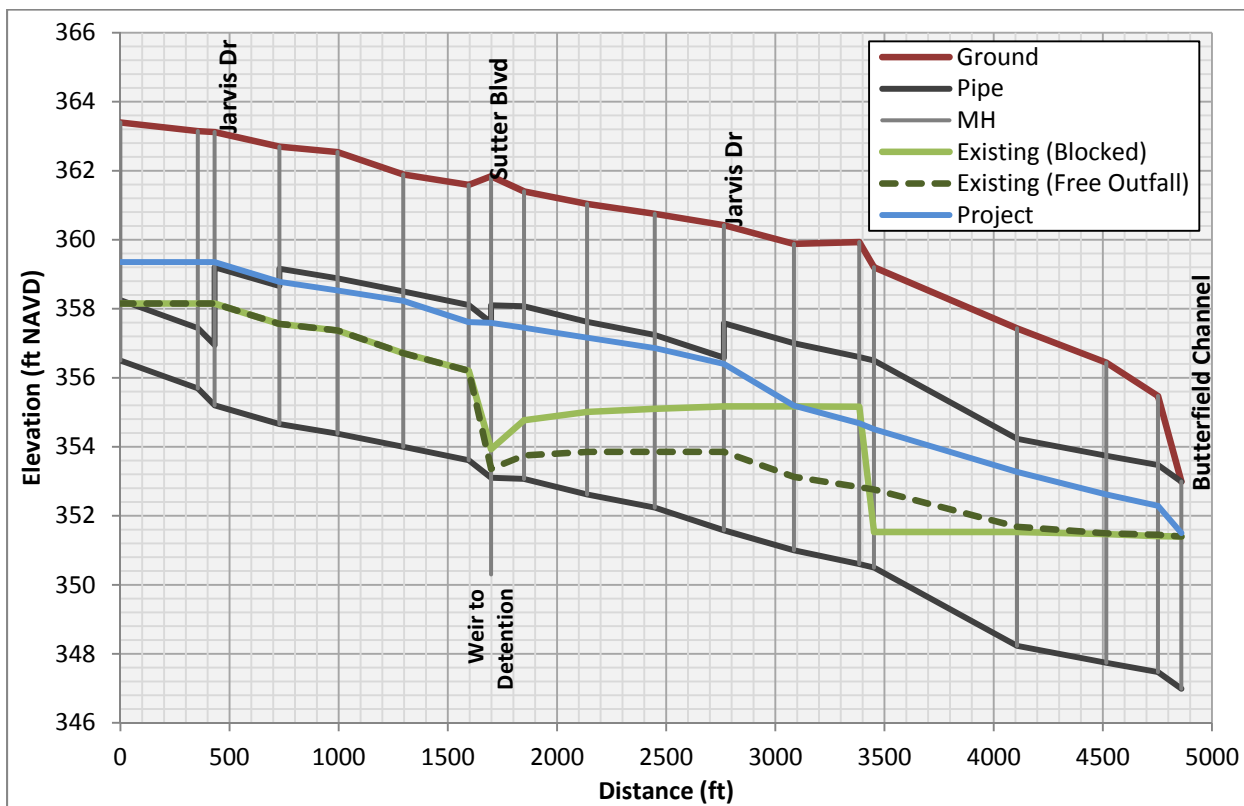


Figure 7: Existing and Proposed 10-year Hydraulic Profile of Butterfield Blvd

Scenario 4: Proposed 25-year Detention Basin Sizing

Purpose of Scenario

In order to determine the required size of the detention basin to detain the post-project flows to Fisher Creek from the reduced drainage area, the MIKE Urban model results for the 25-year 24-hour storm event were used. This volume was used to size the basin based on the City storm drainage standards. The volume required is 8.0 acre-feet. This assumes the same drainage system described in Scenario #2, attempting to mimic historic flows to Fisher Creek.

Elements of Scenario

In order to find required detention basin parameters, the model was run under the following conditions:

- Storm Event: 25-year, 24-hour
- Development Condition: Developed Condition at Butterfield Site, City proposed land-use throughout the rest of the Business Park
- Pipe Conditions:
 - o Removed blockage of 72" in Butterfield Boulevard
 - o Replaced portion of 84" pipe connecting Butterfield Boulevard to the detention basin with 36" pipe on the Sutter Extension.
 - o Added weir to upstream end of 36" pipe to control flow from Butterfield 72" to detention.
 - o 18" pipe connecting the Digital Drive system to the detention basin remains.
 - o Flap gate placed on 18" connection from Digital Drive to Butterfield Boulevard.
 - o The Industrial A and B and Sutter Extension are drained to the 36" Sutter Extension pipe.
 - o The size of the basin is reduced.
 - o The Residential and Industrial C areas are drained directly to the detention basin.
 - o One pump continues to operate at current set levels.

Scenario Results Explanation

Using the existing pond bottom elevation and overflow elevations and a side slope of 4:1, the required detention basin volume roughly equates to a top area of 1.5 acre (elevation 347.8 feet NGVD) and a bottom area of 1.0 acres (elevation 342 feet NGVD). The 25-year water surface elevation will reach elevation 347.8 feet NGVD during normal pump station operations. Although the required storage volume is only 8.0 acre-feet at elevation 347.8 feet NGVD (5.8 ft depth) with a single 22 cfs pump operating, the total pond capacity would depend on the location of the berm which separates the detention pond from the proposed park area. It is assumed that the remainder of the pond will not be filled, and a berm will be placed within the pond to divide into a "wet" detention side and a "dry" park side. During events larger than the 25-year 24-hour, overflow would be able to fill the park portion of the pond before overland release occurs.

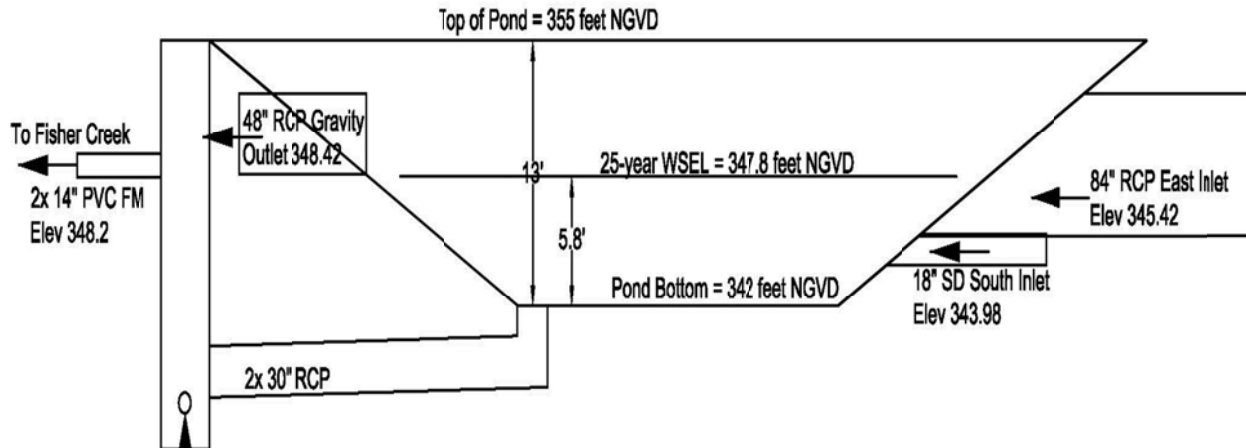


Figure 8: Reduced Pond Schematic

Scenario 5: Detention Pond Capacities & Overland Release

Purpose of Scenario

In order to simulate storage, including overflow capacity, and potential overland release, the post project condition was run for the 95th percentile, 10-, 25- and 100-year storm events.

Elements of Scenario

In order to evaluate storage requirements and overland release, the following conditions were modeled:

- Storm Events: 95th Percentile, 10-year, 25-year, and 100-year (all 24-hour)
- Development Condition: Developed Condition at Butterfield Site, City proposed land-use throughout the rest of the Business Park.
- Overland Conditions:
 - o Additional terrain includes preliminary site grading and proposed building finished floor elevations
 - o Overland manning's value is assumed to be 0.03
 - o Existing catch basins are connected to the 2D surface grid
- Pipe Conditions:
 - o Removed blockage from 72" pipe in Butterfield.
 - o Replaced portion of 84" pipe connecting Butterfield Boulevard to the detention basin with 36" pipe on the Sutter Extension.
 - o Added weir to upstream end of 36" pipe to control flow from Butterfield 72" to detention.
 - o 18" pipe connecting the Digital Drive system to the detention basin remains.
 - o The Industrial A and B and Sutter Extension are drained to the 36" Sutter Extension pipe.
 - o Reduced detention basin with overflow to park for events larger than 10-year
 - o The Residential and Industrial C areas are the only direct inflows to the detention basin.
 - o Jarvis and Cochrane road drain directly to Fisher Creek by gravity.
 - o Neither pump is operating.
 - o The 48-inch gravity overflow from the basin to Fisher Creek is disconnected

Scenario Results Explanation

The water surface elevation in the pond for each scenario is shown in Figure 9. Cumulatively, the reduced basin and park area are essentially equivalent to the existing detention area (excluding the overflow

parcel). The model indicates that with the pipe conditions described and the pump and gravity outflow not operating, the basin and park would nearly reach full storage capacity for the 100-year event.

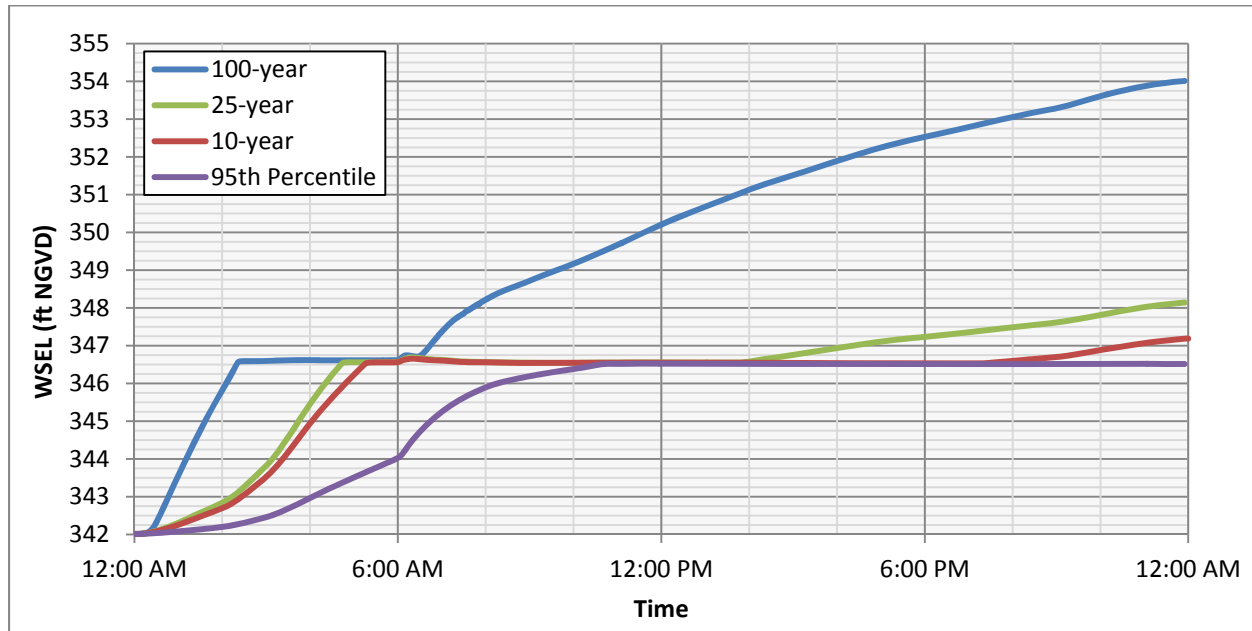


Figure 9: Basin HGL for 95th Percentile, 10-, 25-, and 100-year Events

Total storage volumes with and without the pump and gravity outflow are summarized in Table 1.

Table 1: Scenario #4 Basin Storage Volumes

Return Period	Total Storage (AF)	Total Storage (No Pumps/Overflow) (AF)
95 th Percentile	1.0	11.0
10-year	5.2	29.0
25-year	9.0	34.8
100-year	27.8	56.2

For storm events which exceed the capacity of the storm drain system, a two dimensional grid with a 15 foot cell size is coupled to the storm drain system to route overland flows. This two dimensional model terrain includes preliminary topography for the industrial development area and Sutter Extension.

The overland Manning's "n" value for the model is assumed to be 0.03, as most of the overland flow is concentrated in streets and commercial/industrial parking lots. This Manning's value accounts for buildings, landscaping, parked vehicles, and other obstructions common to urban areas that impede overland flows. These obstructions, in essence, contribute to "roughness" within 2D grid elements. A composite value of 0.03 was found using the Hejl Method¹⁰ to reflect obstructions in an industrial area.

Maximum overland flow depths can be seen for the 100-year event in Figure 10. For the 25- and 100-year return periods, overland flow actually enters the basin and contributes to storage.

¹⁰ Hejl, H. R., Jr. "A Method for Adjusting Values of Manning's Roughness Coefficient for Flooded Urban Areas." *Journal of Research of the U.S. Geological Survey* 5.5 (1977): 541-45. <https://pubs.er.usgs.gov/publication/70162873>. 14 July 2016.

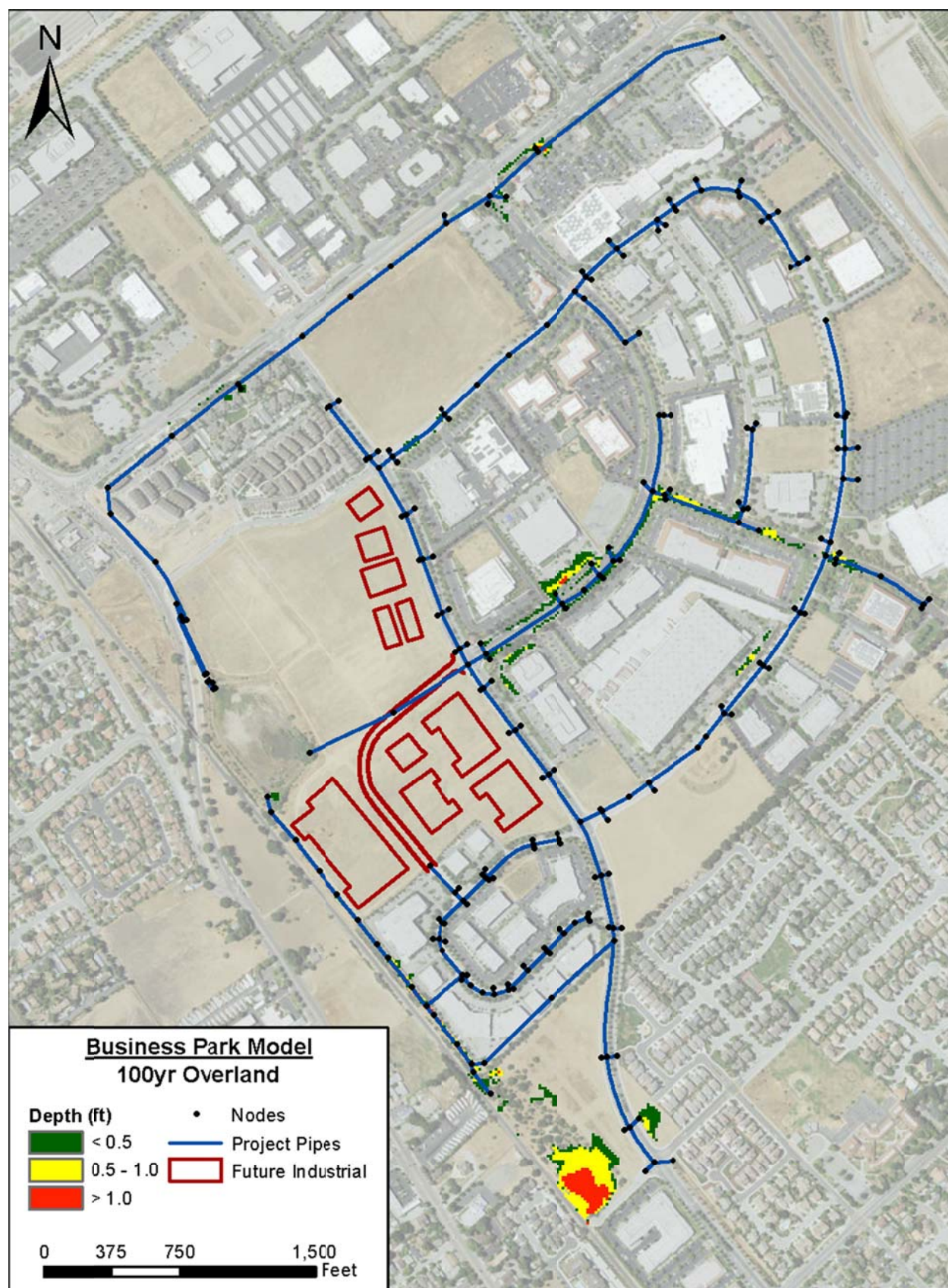


Figure 10: Developed Condition Overland Release for the 100-year Design Storm

The pipes on Butterfield Boulevard lack capacity to fully convey the 25- and 100-year storms. Resulting overland flows enter the streets and are generally confined to Sutter Blvd. Overland flows generally do not pose any significant threat to existing structures. 100-year overland flows remain contained in parking lots and streets, as shown in Figure 10. Ponded water would remain until flows decrease and capacity becomes available in the pipe system. The ponding on the parcel to the south east of Digital Drive (currently under development) occurs during the 100-year event. Some of this flooding could be alleviated by the placement of a 30-inch pipe along the railroad which connects to Central Avenue. It is recommended that the City maintain a drainage easement for this purpose.

Butterfield Channel Modeling

Utilizing the Water District's hydrologic methodology, the design HEC-RAS model for the Butterfield Channel was run utilizing the 10- and 100-year storm events. Full build out of the Butterfield Business Park was assumed with an estimated 80% imperviousness. Note that the methodology for the Butterfield Channel modeling differs from that used for the Butterfield Business Park storm drainage modeling. The channel methodology is consistent with the design requirements of the Water District.

Cross sections for the HEC-RAS model were previously created based on available as-built drawings and Santa Clara County 2006 LiDAR survey data. The model included Butterfield Channel and the portion of East Little Llagas Creek between West Edmundson Ave and East Middle Ave.

Inflow hydrographs for the channel model are based on US Army Corps of Engineers (USACE) HEC-1 hydrologic models used for the Upper Llagas Flood Protection Project. USACE hydrology models apply the SCS Curve Number method previously described to estimate runoff hydrographs for 23 subareas, making up a 62.7 square mile watershed.

Two conditions were modeled; with and without the earthen check dams currently in place. The check dams were installed to slow discharge and promote infiltration prior to the construction of the Maple Avenue Regional Detention Basin. Now that the basin has been constructed the City is considering the removal of the check dams. 10- and 100-year results for both conditions are shown in Figure 11 and Figure 12. It is clear that water surface elevations decrease considerably with the removal of the check dams.

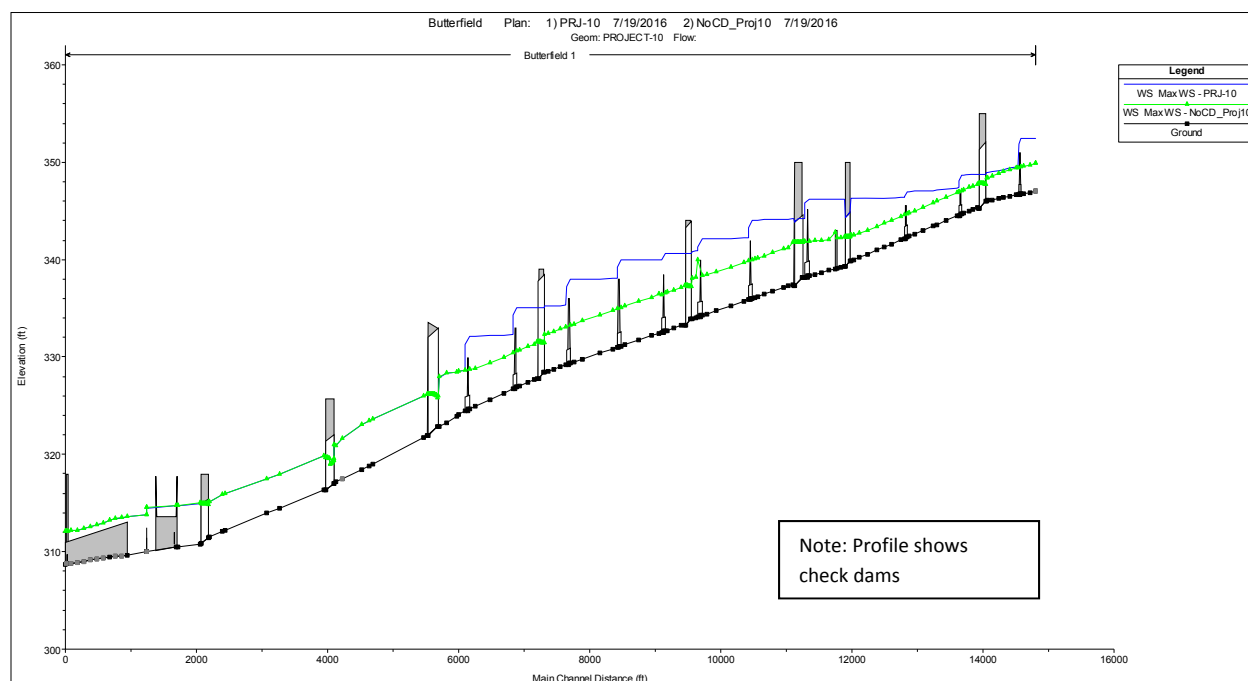


Figure 11: 10-year Channel Hydraulic Grade Line With (Blue) and Without (Green) Check Dams

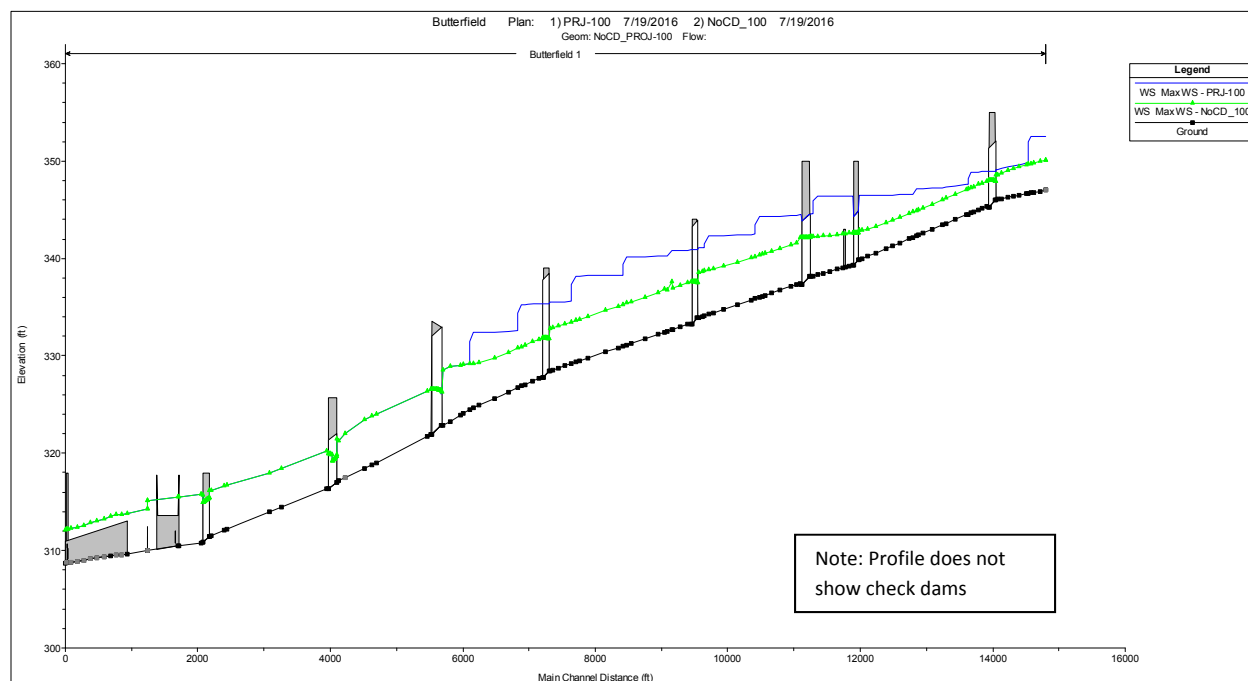
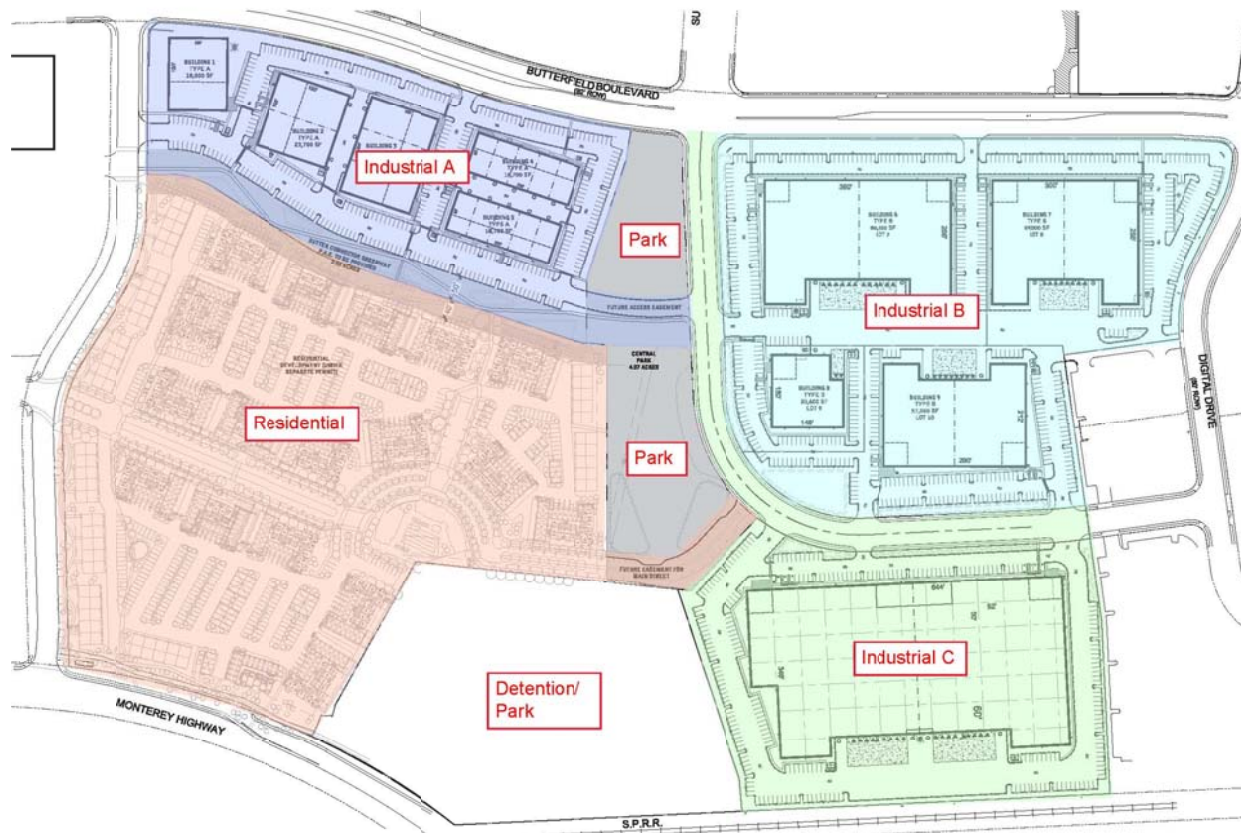


Figure 12: 100-year Channel Hydraulic Grade Line With (Blue) and Without (Green) Check Dams

Water Quality Design

Fisher Creek discharges to the north to the San Francisco Bay while East Little Llagas Creek discharges south to Monterey Bay. Therefore, the site ultimately drains to the jurisdictions of two different Regional Water Quality Control Boards; San Francisco Bay to the north and Central Coast to the south. However, the City of Morgan Hill is a permittee under the Central Coast Region and not the San Francisco Bay RWQCB. Therefore, the entire project must adhere to the Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast Region Resolution No. R3-2013-0032 and the City's Storm Water Management Guidance Manual for Low Impact Development & Post-Construction Requirements (March 6, 2014).

Figure 10: Onsite Development Areas



Central Coast Permit

According to Section 1 of the "Stormwater Management Guidance Manual for Low Impact Development & Post-Construction Requirements" design manual, all new Development Projects within the Central Coast must adhere to all Post-Construction Performance Requirements set forth by the City of Morgan Hill, Gilroy, and Unincorporated Santa Clara County; section 1 states that for all New Development projects "Water Quality Treatment, Runoff Retention, and Peak Management Performance Requirements, as applicable to the Project, shall apply to the Project's entire Equivalent Imperious Surface Area (EISA) for the Site." Regardless of watershed, the entire project will be under the jurisdiction of the Central Coast Board.

- Equivalent Impervious Surface Area (ft²) = Impervious Tributary Surface Area (ft²) + Pervious Tributary Surface Area (ft²) * .01

For this Site, the Pervious Tributary Surface Area has a correction coefficient of 0.1 for grass.

Table 2: Central Coast Treatment Sizing Calculations

Treatment Area	Pervious Area (ft ²)	Impervious Area (ft ²)	% Impervious	EISA (ac)	Required Bio-retention Area (4 %) (ac)	Remaining Required Infiltration Area (6 %) (ac)
Industrial Area A	106,900	106,900	72.8%	6.8	0.27	0.41*
Industrial Area B	122,800	122,800	81.0%	12.3	0.49	0.74*
Industrial Area C	56,000	457,300	89.1%	10.6	0.43	0.64*
Parks	34,848	-	-%	-	-	-
Residential	230,900	619,000	72.8%	14.7	0.59	0.88
Total	551,448	1,885,000	77.4%	44.5	1.78	2.67

*Infiltration not allowed per SCVWD guidelines

Performance Requirement #2: Treatment

Performance Requirement #2 requires the project to treat all runoff from impervious surfaces through bio-filtration if harvesting, infiltration and evapotranspiration are deemed infeasible. The required bio-retention area is approximately four percent of the EISA. This is based on dividing a rain event with 0.2 inches/hour intensity by bio-treatment soil with 5 inches/hour infiltration rate. Table 1 above displays the total required bio-retention area for the entire project is 1.78 acres. Bio-retention in the industrial project should be lined with an impermeable plastic layer to limit infiltration per SCVWD guidelines¹¹.

Performance Requirement #3: Retention

The project is located in Water Management Zone 1 per the Central Coast MS4 NPDES permit and Morgan Hill LID manual. The project Site is required to maximize infiltration, prevent offsite discharge and completely infiltrate the 95th percentile 24-hour rainfall event per Performance Requirement #3. However, onsite soils are anticipated to have poor infiltration capacity per testing performed by Cornerstone Earth Group¹² and complete onsite treatment through infiltration is technically infeasible. Therefore, the project must get approval of Alternative Compliance due to Technical Infeasibility which would require the Site to allot an area equal to 10% of the equivalent impervious surface to retention devices. This 10% could be made up of 4% bio-retention and 6% other infiltration devices.

Additionally, the project is located within the Santa Clara Valley Water District (SCVWD) jurisdiction regarding groundwater and infiltration. The SCVWD does not allow infiltration of runoff into groundwater from industrial sites where the groundwater table is less than 30 feet below grade, and does not allow any infiltration regardless of water table for high risk industrial uses¹³. The groundwater at the Butterfield Village Site is within 20-25 feet from the surface¹⁴. It is unknown if the onsite industrial uses will be high

¹¹ SCVURPPP C.3 Handbook Appendix A Table A-1 SCVWD Guidelines for Stormwater Infiltration Devices

¹² Cornerstone Earth Group, Butterfield Village - Table 2: Double-Ring Infiltration Test Results, Draft 7/17/15

¹³ SCVURPPP C.3 Handbook Appendix A Table A-1 SCVWD Guidelines for Stormwater Infiltration Devices

¹⁴ Seismic Hazard Zone Report, CGS, Morgan Hill 7.5 minute Quadrangle, 2004

risk. Based on conversations with SCVWD groundwater staff, it is assumed that runoff from the industrial site will not be allowed to infiltrate. Therefore, for the Industrial areas, only bioretention would be provided.

The residential portion of the project will drain to the existing detention basin. 10% of the EISA of the residential project is 1.47 acres. 0.59 acres of retention is provided by the bioretention ponds (4% EISA). An additional 0.88 acres of retention devices are required to meet the 10% EISA minimum. If the existing pond maintains a bottom surface area of 0.88 acres, the detention pond could fulfill the project retention requirement for the residential land use.

Performance Requirement #4: Peak Management

Per Performance Requirement 4, the project must provide peak management. The Central Coast RWQCB Post-Construction Requirements state that the “proposed off-site projects may be existing facilities... that are as effective in maintaining watershed processes as implementation of the applicable Post-Construction Stormwater Requirements on-site.” As the Maple Street Regional Detention Facility was designed for the build-out of the Butterfield Business Park, it should be used to meet peak management requirements for portions of the project draining to Butterfield Boulevard. The portion of the project which drains to the onsite City detention pond will meet the requirements of Performance Requirement #4 provided the pump discharge rate is not altered.

Multiple Benefit Use as Public Park and Open Space

Our understanding is that the City and MWest are exploring the feasibility of using a portion of the detention basin for public park and open space use. Based on the above analysis, continued use of the detention basin is required to meet the goals of the City and Water District to maintain some historic flow to Fisher Creek. The City detention basin must be at least 8.0 acre-feet (1.0 acre bottom, 1.5 acre top at elevation 347.8 feet NGVD) to provide 25-year storage for the pump station to deliver runoff to Fisher Creek and meet the residential retention requirement for the Central Coast Regional Board. With 1.5 acre required for the detention basin, the remaining 4.7 acres of the parcel is available for public park use. If the park is constructed within the existing drainage basin and used as overflow from the designated detention area, the 100-year 24-hour event will not overflow the pond's banks even if the pump is not running.

Conclusions

The following are recommended based on the above analysis:

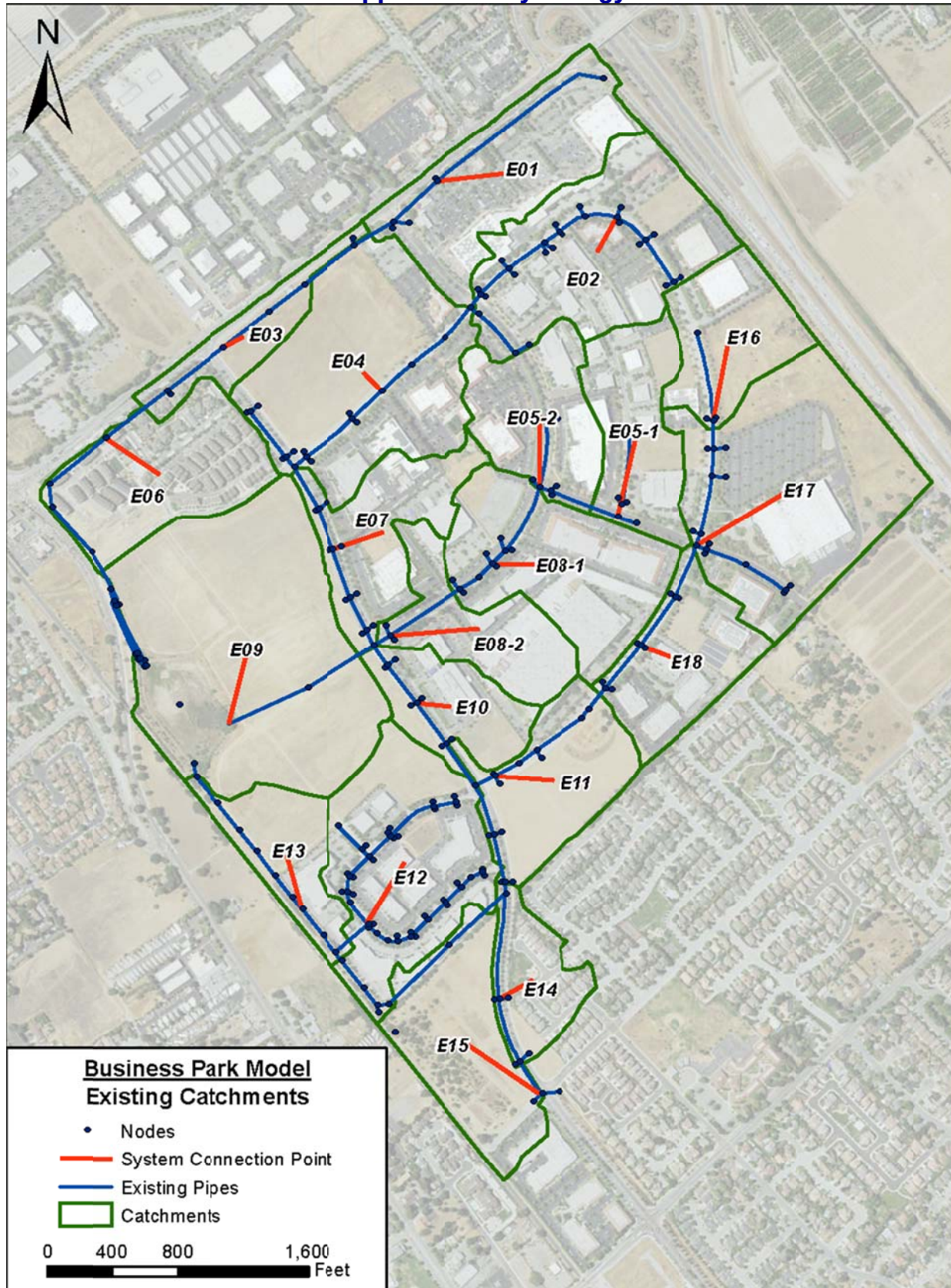
Detention Recommendations

1. With the completion of construction of the Butterfield Channel and Maple Street Regional Detention facility, the City does not require the overflow easement and the land can be returned to the property for unrestricted use.
2. The 7.9 acre City detention parcel can be designed for multi-benefit use.
3. Land above elevation 347.8 NGVD is not inundated in the 25-year event for the Post-Project condition and therefore may be used for recreation, open space, trails and other non-essential facilities. A berm may also be placed within the park to isolate portions of low-lying areas from inundation.
4. The City detention basin must be at least 8.0 acre-feet (1.0 acre bottom, 1.5 acre top at elevation 347.8 feet NGVD) to provide 25-year storage for the pump station to deliver runoff to Fisher Creek and meet the Central Coast retention requirements for the residential development.
5. With 1.5 acre required for the detention basin (per bullet 4), 4.7 acres of the existing City detention basin is available for the levee and public park use.
6. By leaving the park at its current low elevation and footprint, it will provide up to the 100-year flood storage; even if the pumps are off and the gravity outfall is blocked.

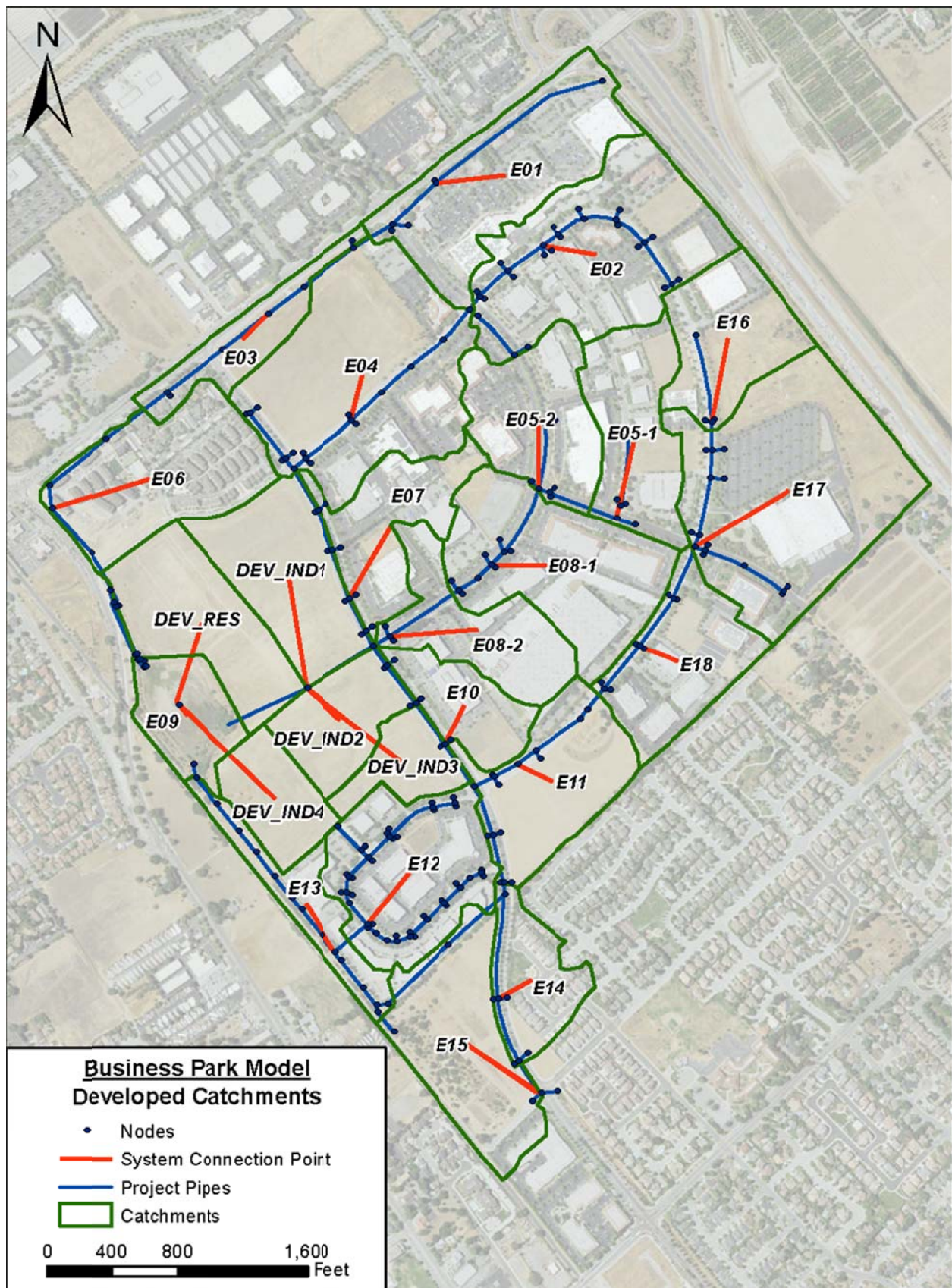
System Modeling Results and Recommendations

- The obstruction in the 72" line in Butterfield can be removed.
- The low flow weir on the 18" discharge (line "A") from Digital Drive to the 72" should be removed and replaced with a flap gate.
- The entirety of the MWest development (residential, parks, industrial development areas A, B and C and Sutter Extension) may be drained to the existing onsite detention pond.
- The 84" connection to Butterfield Boulevard may be reduced to a 36" pipe with a weir set at elevation 355.5 feet NGVD to relieve potential flooding during the 10-year and greater event.
- The 18" drainage pipe from the east near Digital Drive development along the railway can remain to drain to the exiting City detention pond.
- In order to provide the same level of service for Digital Drive and to reduce the overland flow impacts during the 10-year and greater event, a 30" pipe could be constructed to connect Digital Drive overflow bubbler to Central Avenue. It is recommended that the City maintain a drainage easement in along the railroad right-of-way to Central Avenue for overland flow and potential future culvert.
- The set levels of the existing pump station should be evaluated due to the modified drainage area to prevent pump cycling.
- The check dams in Butterfield Channel could be removed to allow for operation as designed.

Appendix A: Hydrology



Existing Condition Catchment Delineation and Hydrograph Connection Points



Developed Condition Catchment Delineation and Hydrograph Connection Points

Existing Conditions Catchment Properties

ID	Area (ac)	% Imp	Pervious CN	Lag (min)
E01	23.8	83%	58	10.7
E02	29.9	77%	58	10.8
E03	8.3	46%	58	14.5
E04	35.0	45%	62	14.5
E05-1	15.1	75%	67	10.0
E05-2	15.4	75%	69	10.0
E06	20.7	74%	72	10.1
E07	15.6	68%	75	12.5
E08-1	24.0	81%	69	10.0
E08-2	13.6	80%	70	10.0
E09	52.3	2%	76	20.0
E10	11.4	54%	75	11.6
E11	16.6	25%	68	16.5
E12	27.4	61%	62	13.1
E13	11.1	23%	59	18.9
E14	9.5	77%	58	9.2
E15	19.4	21%	60	19.9
E16	14.1	37%	63	14.4
E17	38.2	58%	67	14.7
E18	15.2	67%	70	11.3

Developed Conditions Catchment Properties

ID	Area (ac)	% Imp	Pervious CN	Lag (min)
E01	23.8	83%	58	10.7
E02	29.9	77%	58	10.8
E03	8.3	46%	58	14.5
E04	35.0	45%	62	14.5
E05-1	15.1	75%	67	10.0
E05-2	15.4	75%	69	10.0
E06	20.7	74%	72	10.1
E07	13.0	74%	75	11.7
E08-1	24.0	81%	69	10.0
E08-2	13.6	80%	70	10.0
E09	8.8	1%	76	10.0
E10	8.4	61%	74	10.8
E11	16.6	25%	68	16.5
E12	20.3	79%	59	11.5
E13	8.6	40%	59	16.6
E14	9.5	77%	58	9.2
E15	19.4	80%	60	19.9
E16	14.1	37%	63	14.4
E17	38.2	58%	67	14.7
E18	15.2	67%	70	11.3
DEV_IND1	17.1	83%	74	15.2
DEV_IND2	13.7	82%	66	13.2
DEV_IND3	11.2	82%	65	12.7
DEV_IND4	8.4	82%	66	10.0
DEV_RES	16.7	73%	74	7.8

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT APPLICATION, DA2017-0002: BUTTERFIELD MWEST FOR APPROXIMATELY 39 ACRES IN THE MORGAN HILL RANCH BUSINESS PARK (APN'S 726-25-046, -047, - 059, -066, -067, -070, -073, -078 AND -079)

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

WHEREAS, said Development Agreement request was considered by the Planning Commission at its regular meetings of May 9, 2017 at which time the Planning Commission recommended approval of Development Agreement application, DA2017-0002: Butterfield MWest; and

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

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

- SECTION 1.** The proposed Development Agreement is consistent with the Morgan Hill Ranch Business Park Planned Unit Development (PUD), the Zoning Ordinance, and the General Plan.
- SECTION 2.** An Environmental Impact Report (EIR) was approved by the City on March 18, 1981 for the Morgan Hill Ranch Business Park PUD. In addition, a subsequent Initial Study was prepared and Mitigated Negative Declaration adopted by the City allowing an amendment to the PUD on April 5, 2000. This project is located within the Morgan Hill Ranch Business Park PUD and is consistent with the development projections analyzed in the EIR for the project site. No further environmental assessment is required. The project shall comply with the mitigation measures of the Morgan Hill Ranch Business Park PUD EIR on file in the Community Development Department.
- SECTION 3.** The Planning Commission hereby recommends to the City Council adoption of Development Agreement DA2017-02: Butterfield MWest as attached in Exhibit A.

**PASSED AND ADOPTED THIS 9th DAY OF MAY 2017, AT A REGULAR MEETING OF
THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

AYES: COMMISSIONERS:

Resolution No. 17-__

Page 2

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

WAYNE TANDA, Chair

R:\PLANNING\WP51\Land Agreements\DA\2013\DA 13-08 Depot-Weston\DA1308.r1p.docx

Attachment: PC DA Resolution (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

Resolution No. 17-__
Page 3

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

EXHIBIT A

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

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
CHARLES WESTON AND LESLEY MILES
REGARDING
THE GRANARY DISTRICT STADDLE STONE
RESIDENTIAL DEVELOPMENT PROJECT

Attachment: PC DA Resolution (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 CHARLES WESTON AND LESLEY MILES
 REGARDING THE
 GRANARY DISTRICT STADDLE STONE PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Charles Weston, an individual, and Lesley Miles, an individual, 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. Thirty (30) Measure A exempt allotments pursuant to Section 18.78.025 of the Morgan Hill Municipal Code, and conditions attached to the assignment of such allotments;

Resolution No. 17-__**Page 2**

2. Downtown Specific Plan Environmental Impact Report (EIR) certified on November 4, 2009 by Resolution No. 6282;

3. Zoning Amendment to establish PD, Planned Development Overlay Zoning and precise development plan adopted on _____ by Ordinance No. _____;

4. Design Permit approved on _____ by Resolution No. _____.

The Existing Approvals are more particularly described in the EIR and the ordinances and 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 September 24, 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 _____, 2013, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No. _____, 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 _____, 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"** means the development containing 30 residential condominium units proposed in a three-story building with lofts at the southeast corner of Main Avenue and Depot Street in downtown Morgan Hill, as more particularly described in the Zoning Amendment application, ZA-13-10, and Site Review application, SR-13-13: Depot – Weston. 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 0.82 acres after proposed lot line adjustment 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 Other Project-Specific Requirements.

The project shall comply with the conditions of approval for the related zoning amendment, design permit and future subdivision applications.

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 **Measure A** RDCS allotment shall expire pursuant to the schedule contained in Attachment B.

(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, 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 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 RDSCS.

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 [Not Used.]**4.12 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.

4.13 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 \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed 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:

Charles Weston and Lesley Miles
c/o Weston Miles Architects
17500 Depot Street #120
Morgan Hill, CA 95037

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

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

Exhibit B 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 effect 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.

Resolution No. 17-__
Page 23

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

CITY OF MORGAN HILL:

s/_____

 Steve Rymer
 City Manager

Date: _____

Attest:

s/_____

 Deputy City Clerk

Approved as to Form:

s/_____

 Renee A. Gurza
 City Attorney
 Date: _____

DEVELOPER:

Charles Weston and Lesley Miles
 c/o Weston Miles Architects

s/_____

 Name/Title [print]

*Corporate entities must provide a
 second signature:*

s/_____

 Name/Title [print]

Date: _____

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

Attachment: PC DA Resolution (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

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

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 2, of that Parcel Map, being a portion of the “Morgan Hill Rancho No. 2, recorded in Map Book ‘G’, page 19, filed for record in the office of the Recorder of the County of Santa Clara, State of California on December 29, 1980 in Book 477 of Maps, page 48.

Excepting therefrom that portion thereof lying below a depth of 500 feet, measured vertically, from the contour of the surface of said property; however, grantor or its successors and assigns shall not have the right for any purpose whatsoever to enter upon, into or through the surface of said property or any part thereof lying between said surface and 500 feet below said surface.

APN: 726-14-060

APN: portion of 726-14-059; 0.117 acres as depicted in Zoning Plat

EXHIBIT B**COMMENCEMENT OF CONSTRUCTION SCHEDULE**

**30 Measure A Exempt Allotments
Granary District Staddle Stone Project****I BUILDING PERMITS**

Submit plans to Building Division for plan check:	July 1, 2014
Obtain Building Permits:	October 1, 2014

II. COMMENCE CONSTRUCTION

All 30 units:	December 1, 2014
---------------	------------------

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting Building Permits one or more months beyond the filing date listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Building Permit Submittal deadline listed above may result in loss of building allocations. In such event, the property owner must apply for a new development agreement.

Note: Remove Header when Final DA completed

DRAFT
DEVELOPMENT AGREEMENT

**RECORD WITHOUT FEE
PURSUANT TO GOVERNMENT CODE § 6103**

**RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:**

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**DEVELOPMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL,
a California municipal corporation,
AND
MWEST PROPCO XXIII LLC REGARDING
THE BUTTERFIELD TECHNOLOGY CENTER**

Effective Date:

Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

Note: Remove Header when Final DA completed

DRAFT
DEVELOPMENT AGREEMENT

TABLE OF CONTENTS [**TO BE INSERTED WHEN FINAL DA COMPLETE**]

EXHIBITS

1. Legal Description of Property
2. Illustrative Project Site Plan
3. Sutter Road Extension
4. Existing Impact Fee List
5. Insurance Requirements

Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

DEVELOPMENT AGREEMENT

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, ("**City**"), and MWest PropCo XXIII LLC, a Delaware limited liability company, ("**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 also 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

Developer and City enter into this Agreement on the basis of the following facts, understandings, and intentions. The following recitals are a substantive part of this Agreement:

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

B. Developer is currently the legal fee title owner of the property ("**Property**") governed by this Agreement. The Property consists of _____ separate parcels [*insert post-LLA; note APNs may not be available*] totaling approximately 37 acres, as further described in **Exhibit "1"**, attached hereto and incorporated by this reference.

C. The Developer proposes to plan, develop, construct, operate and maintain 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 consistent with the Existing Approvals (as defined below) and this Agreement ("**Project**"). The Project is depicted, for illustrative purposes only, on the site plan attached as **Exhibit "2"** ("**Illustrative Site Plan**").

D. Developer also currently owns approximately 19.5 acres which are contiguous to the Property ("**Residential Property**"). The Developer is separately, but concurrently, processing an application for a multi-family residential development on the Residential Property ("**Residential Project**"). The Residential Project is being developed to provide high quality apartments in close proximity to the Project and to meet the need for quality rental housing in the City .

E. As described in Recital F(2), the Property is located within the Morgan Hill Business Park Planned Unit Development. A prior Development Agreement with Morgan Hill Development Partners for the Morgan Hill Business Park, that included the Property, was approved on March 1, 2001, but expired by its own terms in 2011. Since the approval of the Morgan Hill Business Park, the market for development of industrial or other appropriate commercial uses on the Property has not been strong enough to spur development, so the Property has remained vacant. In support of economic development in the City generally, and in particular within the Morgan Hill Business Park, one of the City's core job centers, and to provide for the retention and expansion of jobs within Morgan Hill, the City wishes to encourage and expedite the development and occupancy of industrial and other permitted uses on the Property. Therefore, the Developer requested that City enter into a Development Agreement as a means to encourage and expedite such development and occupancy. Developer and the City now desire to enter into this Agreement to facilitate industrial development and to take the steps necessary to make the site "business ready" to catalyze near term development.

F. As of the Effective Date, various land use regulations, 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. The 2016 Morgan Hill General Plan ("**General Plan**")

2. The Morgan Hill Business Park Planned Unit Development, originally established by Ordinance No. 545, An Ordinance of the City of Morgan Hill Amending Ordinance No. 44, The General Zoning Ordinance by Rezoning from ML or Light Industrial to PUD, Planned Unit Development Certain Parcels of Land Owned by the Wiltron Company and Located on the South Side of Cochrane Road Between Monterey Road and the South Valley Freeway, adopted on March 18, 1981, and as amended by the following ordinances (collectively, the "**PUD**"):

(a) Ordinance No. 1340, An Ordinance of the City Council of Morgan Hill Amending Ordinance No. 545, New Series to Amend the Development Plan and Architectural Review Guidelines for the Planned Unit Development Located on the South Side of Cochrane Road Between Monterey Road and Highway 101, adopted June 25, 1997;

(b) Ordinance No. 1474, An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 545, New Series, Amending the Plan and Text to the Development Plan for the Planned Unit Development Located on the South Side of Cochrane Road Between Monterey Road and Highway 101, ZA 99-12: Cochrane-Morgan Hill Development Partners, adopted April 9, 2000; and

(c) Ordinance No. 1476, An Ordinance of the City Council of the City of Morgan Hill Approving an Amendment to Ordinance No. 545, New Series, Amending the Development Plan for the Planned Unit Development Located on the South Side of Cochrane Road Between Monterey Road and Highway 101, ZA 00-03: Cochrane Rd – Morgan Hill Development Partners (APN 726-32-015), adopted May 24, 2000.

3. The Environmental Impact Report prepared for the Morgan Hill Business Park, which includes, (a) the Draft Environmental Impact Report for Planned Unit Development and Construction of Improvements, and (b) Morgan Hill Business Park Environmental Impact Report Addendum (June 1980)(“**EIR**”).

4. The Parties acknowledge that the Developer will be required to comply with the Subdivision Map Act and the City’s subdivision ordinance in obtaining any future subdivision of the Property (including but not limited to any tentative and final maps) of the Property that may be necessary and appropriate to sell and/or lease portions of the Property to end users.

G. For the reasons recited herein, Developer and City have determined that the Project is the type of industrial development for which this Agreement is appropriate pursuant to Section 18.80.030(E)(2)(b)(i)-(iii) of the Enabling Ordinance. The Developer and City have identified a mutual interest in making the Property “business ready” and this Agreement would help 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.

H. City is willing to enter into this Agreement for the reasons enumerated in Chapter 18.80 of the Morgan Hill Municipal Code, including but not limited to: (a) strengthening the public planning process, (b) encouraging private participation in comprehensive planning by providing a greater degree of certainty, (c) reducing the economic costs of development, (d) allowing for orderly planning of public improvements and services, and the allocation of costs in order to achieve the maximum utilization of public and private resources in the development process, (e) ensuring that appropriate measures to enhance and protect the environment are achieved, and (f) ensuring that all conditions of approval, including the construction of off-site improvements made necessary by land development, will proceed in an orderly and economical fashion to the benefit of City.

I. Developer acknowledges and recognizes that material inducements for City to enter into this Agreement are: (a) an opportunity to encourage and expedite a high quality business park within the City that will help attract new industrial tenants and/or owners, and help retain existing businesses by providing opportunities for companies to grow and expand in Morgan Hill, (b) the voluntary contributions and commitments by Developer including, but not limited to those listed in Article 4; and (c) an opportunity to protect the Property from pressure to convert to residential development. City’s willingness to enter into this Agreement is a material inducement to Developer to implement the Project, and Developer proposes to enter into this Agreement in order to obtain assurances from City that the Property may be developed, constructed, completed and used pursuant to this Agreement, and in accordance with existing policies, rules and regulations of City, subject to the exceptions and limitations expressed herein and the term of this Agreement; and to provide for a coordinated and systematic approach to funding the cost of certain public improvements and facilities planned by City, and to establish the timing and extent of contributions required from Developer for these purposes.

J. On , 2017, following a duly noticed and conducted public hearing, the Planning Commission of the City (“**Planning Commission**”), the initial 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.

1. ADMINISTRATION

1.01 Effective Date and Recordation. On , 2017, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No. , 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 , 2017. 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, *i.e.*, the date that is thirty days after the date of the adoption of the Approving Ordinance. The Effective Date shall be inserted on the cover page of this Agreement prior to 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 Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

1.02 Definitions.

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

"**Applicable Law**" shall have that meaning set forth in Section 3.01 of this Agreement.

"**Butterfield Park Land**" shall have that meaning set forth in Section 4.07 of this Agreement.

"**CEQA**" shall mean the California Environmental Quality Act, California Public Resources Code Section 21000, *et seq.*, and the State CEQA Guidelines, (California Code of Regulations, Title 14, Section 15000, *et seq.*), as each is amended from time to time.

"**Developer**" shall mean MWest PropCo XXIII LLC, a Delaware limited liability company, and its successors and assigns under this Agreement.

"**Development Factors**" shall have that meaning set forth in Section 6.06 of this Agreement.

"**District**" shall mean any assessment or financing district(s) established by the City pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code Sections 53311 *et seq.*, the Streets and Highways Code, Division 10 and 12, the Landscape and Lighting Act of 1972, or other similar law to finance all or part of the public improvements through the issuance

of bonds and the imposition of assessments, fees, or taxes on the benefiting land, including, but not limited to, the Property.

“**EIR**” shall have that meaning set forth in Recital F of this Agreement.

“**Existing Approvals**” shall have that meaning set forth in Recital F of this Agreement.

“**Existing City Laws**” shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices, and official policies governing land use, zoning, and development, 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.

“**Existing Impact Fees**” shall mean those fees set forth on Exhibit “4” 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.

“**General Plan**” shall have that meaning set forth in Recital F of this Agreement.

“**Illustrative Site Plan**” shall have that meaning set forth in Recital C of this Agreement.

“**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.

“**Marketing Activities**” shall have that meaning set forth in Section 4.02 of this Agreement.

“**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.

“**Permitted Uses**” shall have the meaning set forth in Section 3.03.

“**Project**” shall have the meaning set forth in Recital C. Any reference in this Agreement to the “Project” shall mean and include the “Property.”

“**Project Approvals**” mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

“**PUD**” shall have the meaning set forth in Recital F.

“**Property**” shall have the meaning set forth in Recital B.

“**Severe Economic Recession**” means a decline in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of US Gross

Domestic Project (“**GDP**”) published by the US Department of Commerce Bureau of Economic Analysis (and not BEA’s subsequent monthly revisions), lasting more than four (4) consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

“**Sutter Road Extension**” shall have the meaning set forth in Section 4.05.

“**Sutter Greenway**” shall have the meaning set forth in Section 4.06.

"**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 re-subdivision.

"**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, including without limitation, subdivision maps and any Subdivision Document.

[Note: Need to add cross references and do a throughout word processing review to add other defined terms from the agreement once DA in execution version]

(b) To the extent that any defined terms contained in this Agreement are not defined in this Section 1.02, 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 Date. The term (“Term”) of this Agreement shall commence on the Effective Date set forth in section 1.01 above, and shall continue for a period of five (5) years, unless sooner terminated or extended as hereinafter provided.

1.04 Expiration. Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to any express post-termination obligations of Developer and City identified in this Agreement.

(a) 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.

(b) If any "**Third Party Challenge**" (as that term is defined in Section 22 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 the Parties mutually agree to do so.

1.05 Term Extension. At the Developer's request, in Developer's sole discretion, by written notice to the City prior to the expiration of the then-applicable Term, the Term shall be extended as follows:

- (a) A five-year extension, ("First Extension") (for a total Term of 10 years) if the Developer has commenced and thereafter diligently completed either: (i) the Sutter Road Extension or, (ii) at least 50,000 square feet of new building(s) for an industrial, office and/or research and development uses consistent with the Project Approvals (and any portion of the Sutter Road Extension required to serve such industrial development).
- (b) A second five-year extension (for a total Term of 15 years) if the Developer has completed the Sutter Road Extension and one of the following (i) at least 150,000 square feet of new buildings, in the aggregate, for industrial, office and/or research and development uses consistent with the Project Approvals.
- (c) The City commits to consider good faith requests to extend portions of the Agreement, if requested by an end user to facilitate development.

2. COVENANTS RUN WITH THE LAND

The terms of this this Development Agreement is legislative in nature and applies to the Property as a regulatory ordinance. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and 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 Property, any lot, parcel or any portion thereof and any interest therein, whether by sale, operation of law or other manner, and shall inure to the benefit of the Parties and their respective successors.

3. APPLICABLE LAW

3.01 Applicable Law—Generally.

As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section, subject only to the limitations set forth in Section 6 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):

- (a) All the provisions, terms, and conditions of this Agreement.
- (b) 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.
- (c) 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.
- (d) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.
- (e) Any "New City Laws" Developer is subject to under this Agreement. Additionally, any New City Laws to which Developer elects, in writing and in its sole discretion, to be subject to.
- (f) All other applicable City plans, policies, programs, regulations, ordinances, and resolutions of City in effect as of the Effective Date, which regulate development of the Property and implementation of the Project, and which are not inconsistent with the terms of this Agreement ("Other City Regulations").

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.

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.

3.02 Vested Elements. The Permitted Uses of the Property, the maximum density and intensity of use, the maximum heights, locations, numbers and gross square footage of the proposed buildings, the provisions for vehicular access and parking, reservation or dedication of land for public purposes, provision for construction of public improvements as described in the Applicable Law, shall be vested and are hereby vested and referred to as vested elements ("Vested Elements"). In addition to the foregoing Vested Elements, other terms and conditions of development

applicable to the Project are set forth in the following documents as they exist as of the Effective Date:

- (a) The General Plan of City of Morgan Hill, current as of the Effective Date, the terms and conditions of which are incorporated herein by this reference.
- (b) Morgan Hill Municipal Code, current as of the Effective Date, including the zoning of the Property.
- (c) All other applicable City plans, policies, programs, regulations, ordinances, and resolutions of City in effect as of the Effective Date, which regulate development of the Property and implementation of the Project, and which are not inconsistent with the terms of this Agreement (“Other Regulations”).
- (d) Any permits and/or subsequent approvals, including but not limited to additional subdivision maps or lot line adjustments, if any, final maps, site and architectural review, demolition permits, building permits, grading permits, and infrastructure improvement plans processed in accordance with the terms of this Agreement. Upon approval, such Subsequent Approvals shall be incorporated into this Agreement and vested hereby for the Term of the Agreement.

3.03 Permitted Uses. The Permitted Uses of the Project shall mean any use permitted (expressly or with a use permit) in the PUD. The parties acknowledge that they have not yet confirmed what, if any, additional City entitlements or approvals may be necessary for the construction and future use of a public park on the Butterfield Park Land, and the parties therefore agree to work in good faith to identify and expeditiously process any such approvals (including but not limited to a General Plan, rezoning or other approval determined by the City to be necessary).

3.05 Vested Right to Applicable Law.

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. 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.

- (b) 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.

3.06 Project Impacts and Costs. Notwithstanding any other express or implied term or condition of this Agreement (or the Project 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 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). The financing of any such Project Mitigation 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 agreed to between City and Developer. The City agrees to work with Developer, at Developer's request and cost, to secure Financing Mechanisms for public infrastructure to serve the Project.

3.07 Approval of the Financing Mechanisms. The City and the Developer agree that the construction of public improvements (including but not limited to, Sutter Road Extension, other infrastructure to serve the project but not including any costs related to the value of the dedication of the Butterfield Park Land or future park improvements on the Butterfield Park Land) may be financed by a District or Districts which could encompass the Property, and, to the extent other property owners outside the Property are interested or benefit and are made part of such District in accordance with all applicable law, such other lands. If the Developer requests formation of a District, the Developer will be deemed to have consented to formation of such District(s), to the assessments or taxes ratably allocated to the Property by the District(s), and to having the Property included within the District(s). The Developer agrees to cooperate in the City's formation of the District or Districts and in the performance by the District(s) of its responsibilities. The City and Developer agree that, unless the City and the Developer agree otherwise, the assessments or special taxes for any District formed will be collected from any parcels only after the issuance of building permits for such parcels. City, as the legislative body of any District, shall proceed with all good faith to consider at a noticed public meeting of the legislative body, the adoption of a resolution of intention and a rate and method of apportionment or an engineer's report, establishing a special tax or assessment to be levied semi-annually on property within the District(s), subject to the provisions of subsections (a) and (b) below. City, as legislative body of the District(s), shall thereafter, in accordance with the appropriate legislation for the Financing Mechanism, consider a resolution of formation for the adoption of such District(s) and shall further hold all elections of the qualified voters thereof in connection with the establishment of a District(s) and the approval of such special tax or assessment. City, as legislative body of the District, further agrees to simultaneously consider (or at such time as California law shall otherwise require) the adoption of a resolution of issuance of bonds secured by such special tax or assessment in an amount as is necessary to finance the Improvements and the Impact Fees that may be required in connection with the development of the Project; provided, however, that the amount of such bonds shall be dictated by prudent underwriting standards, as may be required by an underwriter selected by the City. In all respects, City agrees to use its good faith efforts to implement such requests, and Owner shall rely on such good faith efforts in connection with the consideration provided

hereunder by Owner. City shall also use its good faith efforts to enter into joint facilities financing agreements with other eligible recipients of District proceeds.

(a) General Parameters for Financing Mechanisms.

1. Upon written request of City, Developer will advance amounts necessary to pay all costs and expenses of City to evaluate and structure any Financing Mechanism, to the end that City will not be obligated to pay any costs related to the formation or implementation of any Financing Mechanism. City staff shall meet with the Developer to establish a preliminary budget for such costs, and will confer with Developer from time to time as to any necessary modifications to that budget.

2. Any Financing Mechanism may provide for the reimbursement to Developer of any advances by Developer for any costs incurred in Section (a) 1 above, and any other costs incurred by Developer that are related to the Financing Mechanism, such as the costs of legal counsel, special tax consultants, engineers, etc. Developer agrees to promptly submit to City a detailed accounting of all such other costs incurred by Developer at such time as Developer makes application for reimbursement. Prior to the filing by Developer of a petition to request that the City institute proceedings to create a District, City and Developer shall enter into a deposit and reimbursement agreement, mutually acceptable to both City and Developer that provides for the deposit by Developer of funds sufficient to commence proceedings to form any Financing Mechanism and the reimbursement of such amounts from the available bond or assessment proceeds.

(b) Financing Parameters for Financing Mechanisms.

1. Any public financing shall be secured solely by assessments or special taxes levied within the respective District, proceeds of the bonds issued that are placed in a bond fund, reserve fund or other such fund for the financing and investment earnings thereon. City's general fund shall not be pledged to the repayment of any public financing contemplated by this Section. Notwithstanding anything to the contrary in this Agreement, nothing herein would preclude the City from pursuing other financing alternatives as is necessary to finance infrastructure, public facilities, including but not limited to the Improvements and/or Impact Fees, if it would be in the best interest of the City.

2. The payment of reasonable initial and annual administrative costs of the City to be incurred in connection with any Financing Mechanism shall be adequately assured, through the inclusion in any assessment or special tax methodology and the City's general fund shall not be called upon to provide for initial or any annual administrative costs related to the Financing Mechanism.

4. DEVELOPER OBLIGATIONS AND COMMITMENTS

The following commitments are voluntarily assumed by Developer in return for benefits derived from this Agreement and may be included and/or referenced by the City in any conditions of approval applicable to Subsequent Project Approvals, as appropriate and applicable.

4.01 No Residential Conversion. Developer shall not convert or apply to convert any additional portion of the Property to residential use for the Term of this Agreement, including any extensions.

4.02 Marketing Activities.

(a) Developer shall retain a qualified broker or other qualified marketing professional (either an in-house professional or third party) to actively market the Property for Permitted Uses (“**Marketing Activities**”).

(b) Developer shall provide regular (no less than quarterly) updates to the City on the Developer’s Marketing Activities. The frequency of the updates may be adjusted in the future based on the status of the Project.

(c) Developer shall use good faith efforts to participate in collaborative marketing efforts with the City including no fewer than two (2) broker events annually and no fewer than two (2) marketing advertorials produced and distributed annually and other similar activities that directly benefit the marketing of the Property for Permitted Uses.

4.03 Good Faith Planning of Property. The Parties acknowledge that the Developer has spent significant resources since 2015 to study and plan the entire Property, as shown in the Illustrative Site Plan at **Exhibit “2.”** The Parties acknowledge that the Illustrative Site Plan is conceptual only and is not intended to supersede or alter the Existing Approvals, but rather illustrate a potential development plan for the Project, that the City has determined is consistent with the Existing Approvals, to facilitate the future processing of entitlements in connection with the Marketing Activities and the needs of the potential end users. The Developer will continue, with the cooperation of the City, to use good faith efforts to make the site "business ready" to catalyze development as end users are identified.

4.04 Development of the Property. In the development of the Project, the Developer shall, as appropriate to the order in which the Property develops, and in light of the particular business needs of end users as they are identified, use good faith efforts to ensure the following:

(a) Adequate bicycle trails and amenities (e.g. bike racks, bike fix-it station) and pedestrian connections throughout the site, including connections to the existing Jarvis neighborhood and neighboring industrial uses, and a detached sidewalk along the Butterfield Boulevard frontage.

(b) To the extent acceptable to end users, implement good faith Transportation Demand Management Plan measures to promote alternate means of transportation and reduce single occupancy vehicle trips to and from the Project.

(c) Work cooperatively with the City and VTA to establish a bus stop on Butterfield Boulevard adjacent to the Property, if acceptable to VTA and warranted by demand.

4.05 Sutter Road Extension.

(a) In order to help attract users and accelerate new investment in the Project, at the time set forth below, the Developer shall dedicate, design and construct a slightly re-aligned 68-foot public street right-of-way from the intersection of Butterfield Boulevard and Sutter Boulevard to the extension of Sutter Place off of Digital Drive, as conceptually shown on the attached **Exhibit “3 (“Sutter Road Extension”)**, with an approximate full length of 1,490 lineal feet. The proposed realignment is intended to increase the marketability of the industrial lots and allow for a future park on the Butterfield Park Land as shown on the Illustrative Site Plan. Developer shall submit revisions to the approved November 30, 2001 “Plans for the Improvement of Sutter Place” to reflect the realignment and current standards per the attached Industrial standard 48-foot (curb-to-curb). Improvements for the Sutter Road Extension shall include, but not be limited to, curb and gutter, compaction, sidewalks, driveway entrances, street paving, joint trench, storm drainage facilities, sewer and water mainlines and laterals, fire hydrants and street lighting. Driveway entrances and sidewalks may be deferred for construction on an individual parcel basis concurrent with the construction of each building site subject to reasonable approval of the City Engineer.

(b) City will allow Developer to phase the construction of the Sutter Road Extension so long as access and circulation needs are met to the reasonable satisfaction of the City Engineer.

(c) Developer and City acknowledge that, as shown on **Exhibit “3”** approximately 820 lineal feet of the Sutter Road Extension is anticipated to be required to provide adequate circulation and a secondary access and connection for the Residential Project to Butterfield Boulevard. However, in order to expedite development and make the Property “business ready,” if the Residential Project develops in advance of the Project, Developer commits to and shall commence construction (and complete in 270 days) of the entire length of the Sutter Road Extension from Butterfield Boulevard to Digital Drive once Developer receives 165 residential allotments under the RDCS and all necessary approvals, including building permits for those units.

4.06 Sutter Greenway.

(a) In accordance with appropriate phasing of the development of Study Area 1 of the Project, as such phasing is determined during the Design Review process in accordance with Chapter 18.74 of the Morgan Hill Municipal Code pursuant to Section 7.02, the Developer will design and construct appropriate transitions and buffers between the Residential Project and this Project, including a minimum 40-foot wide (to the Property boundary) landscaped buffer/greenway extending from Jarvis Drive to Sutter Place, as generally shown on the Illustrative Site Plan (“**Sutter Greenway**”). The Sutter Greenway is intended to provide an open space buffer bioswales, trees and landscaping as shown generally on the Illustrative Site Plan. Developer shall construct, own and maintain the Sutter Greenway and will provide public access in perpetuity. Ownership and maintenance may be transferred to a property owner’s association. It is anticipated that the Sutter Greenway, in combination with the portion of the open space buffer to be located on the Residential Project, will be approximately 1.8 acres.

4.07 Butterfield Park Land Dedication

(a) At the time set forth in Section 4.07(b) below, the Developer shall offer to dedicate to the City in fee the approximately 2.67 net acres, not including roadways (“**Butterfield Park Land**”) in the location generally depicted on the Illustrative Site Plan. It is anticipated that the Butterfield Park Land, in combination with the portion of the park to be located on the Residential Project, will be approximately 3.2 net acres.

(b) Developer shall offer to dedicate the Butterfield Park Land prior to the issuance of the final Certificate of Occupancy for both Site Areas 2 and 3 of the Project, as those areas are depicted on Exhibit “2.”

(c) Nothing in this Agreement is intended to limit the Developer’s ability to request credits or points under and through the Residential Development Control System process for the dedication of the Butterfield Park Land to the City. The Developer acknowledges and agrees that nothing in this Agreement is in anyway intended to commit the City to grant any credits or points in the Residential Development Control System process for any dedication of land for the Butterfield Park Land or construction of improvements on the Butterfield Park Land.

(d) As noted in Section 3.03, the parties acknowledge that they have not yet confirmed what, if any, additional City entitlements or approvals may be necessary for the construction and future use of the Butterfield Park Land as a public park, and the parties therefore agree to work in good faith to identify and expeditiously process any such approvals (including but not limited to a General Plan, rezoning or other approval as may be determined by the City to be necessary). The parties acknowledge that in light of the potential need for discretionary entitlements from the City and that the public park improvements have not yet been designed or approved by the City, it is possible the City will not be able to accept or will reject the Developer’s offer of the Butterfield Park Land. Therefore, until such time as the City formally accepts the offer of the Butterfield Park Land, the Developer has the right to construct and operate a private park on the Butterfield Park Land (subject to Developer obtaining any necessary permits from the City as required under the Existing Approvals). And, if the City, at any time after the Effective Date of this Agreement (1) notifies the Developer in writing of its intent not to accept the Butterfield Park Land if offered, or (2) formally rejects the offer when made by the Developer, the obligations of the Developer under this Section 4.07 are deemed satisfied in full and have no further force or effect.

5. **INTENTIONALLY DELETED.**

6. **EFFECT OF AGREEMENT**

6.01 Subsequent State or Federal Laws or Regulations. As provided in California Government Code §65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are required by changes in county, regional, state or federal laws or regulations (“Changes in the Law”). In the event Changes in the Law prevent or preclude compliance with one or more material provisions of this Agreement, Developer may request that such material provisions be modified or suspended, or performance

delayed, as may be necessary to comply with Changes in the Law, and City may take such action as it deems necessary to be consistent with the intent of this Agreement.

6.02 Changes to Existing Regulations. Except as otherwise specifically provided, only the following changes to the Vested Elements, including such changes to the Vested Elements adopted by the electorate through the powers of initiative, or otherwise, shall apply to the development of the Property:

(a) Citywide regulations, ordinances, policies, programs, resolutions, or fees adopted after the Effective Date that are not in conflict with the Vested Elements and the terms and conditions for development of the Property established by this Agreement, or otherwise applicable regulations existing as of the Effective Date. Changes to the General Plan, Morgan Hill Municipal Code, or Other Regulations shall be deemed to conflict with the approvals and this Agreement (“Conflicting City Law”) if such changes prevent development of the Property in substantial accordance with the Project Approvals, require significant changes in the development of the Property from what is contemplated by the Project Approvals, significantly delay, ration, or impose a moratorium on development of the Property, or require the issuance of discretionary or nondiscretionary permits or approvals by City other than those required as of the Effective Date. This Section is subject to the restrictions on fee increases listed in Section 6.09.

(b) Any law, regulation or policy that would otherwise be Conflicting City Law, but through this Agreement or by later separate document, application to the Property has been consented to in writing by the Developer, in the Developer’s sole and absolute discretion.

6.03 Further Reviews. Developer acknowledges that existing land use regulations, the Vested Elements and this Agreement contemplate the possibility of further reviews of elements or portions of the Project by City including potential CEQA analysis, if required as set forth in Section 6.15. Nothing in this Agreement shall be deemed to limit the legal authority of City with respect to these reviews as provided by and otherwise consistent with this Agreement.

6.04 Local Rules. Future development on the Property shall be subject to all the official rules, regulations and policies (collectively “Local Rules”) of City which govern uses, architectural design, landscaping, public improvements and construction standards, and which are in effect as of the Effective Date, with the exception that revisions or amendments to the Local Rules necessitated by reasonable public health or fire and life-safety considerations shall apply as though the rules were in effect as of the Effective Date. Notwithstanding any other provision of this Agreement, and without limitation as to any other exceptions contained in this Agreement, City shall retain the authority to take the following actions, so long as such action is applied on a citywide basis to similarly situated projects:

(a) Adopt and apply property transfer taxes and/or excise taxes;

(b) Adopt updates to the Construction Codes, as defined in Section 6.14;

© Maintain the right of voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with any Vested Elements acquired by the Developer in this Agreement; except that this Agreement itself is subject to referendum; and,

(d) Take other actions not expressly prohibited by the terms or provisions of this Agreement.

6.05 Future Exercise of Discretion by City. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or, except as provided herein, to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances or laws which require the exercise of discretion by City or any of its officers or officials. Except as provided, this Agreement shall not prevent City from applying new rules, regulations and policies, or from conditioning future Project development approval applications on new rules, regulations and policies that do not conflict with the terms of the Development Plan or this Agreement.

6.06 Timing of Development. The parties acknowledge that Developer cannot at this time predict when or the rate at which phases of its Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors (the “**Development Factors**”). Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the parties’ intent to cure that deficiency by acknowledging and providing that the Developer shall have the right to develop its Property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its subjective business judgment. In the event that a New City Law is enacted, whether by action of the City Council or by initiative or otherwise, which governs the rate, timing, phasing or sequencing of new development or construction in the City, such New City Law shall not apply to the Project or any portion thereof. The Parties have a mutual desire to have the Project develop as quickly as the Development Factors permit.

6.07 Improvements. In any instance where Developer is required to install improvements, 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, promptly and in a reasonable manner pursuant to Section 7. Where the actual cost of any improvement exceeds Developer’s estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City.

6.08 Overcapacity, Oversizing. 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. The Developer may request a reimbursement agreement to receive reimbursement from any future development served by such required Oversizing.

6.09 New Fees. In order to help catalyze development by providing a level of certainty and stability with respect to the costs of development, for a period of thirty-six (36) months from the

Effective Date (“**Fee Locking Period**”), the Developer shall pay, when due and as applicable, only those Existing Impact Fees identified on **Exhibit “4.”** Duly adopted impact fees as of the Effective Date which are inadvertently omitted from the Impact Fee list, **Exhibit “4”** are also included and must be paid by the Developer when due and as applicable. For a period of twenty-four (24) months, the Developer shall pay such Existing Impact Fees at the rate in effect as of the Effective Date. After twenty-four (24) months to the end of the Fee Locking Period, if the City has otherwise increased the rate of any Existing Impact Fee on a citywide and nondiscriminatory basis, the City may only increase any such increased Existing Impact Fees applicable to the Project by up to the San Francisco-Oakland-San Jose Consumer Price Index CPI-U (“**CPI**”) for the prior year. After the end of the Fee Locking Period, the Developer shall pay all duly enacted impact fees, when due, that apply on a citywide or area-wide basis.

6.10 New Processing Fees. New processing fees may be imposed by City if such new fees apply to all similarly situated projects or works within City and if the application of these Processing Fees to the Property is prospective only. Processing Fees shall be due and payable on a phase-by-phase basis, so that only those fees applicable to the actual construction of each phase shall be paid upon the issuance of the appropriate permits for that phase. Developer shall pay the costs associated with the planning, processing, and environmental review process for the Project, provided that such costs shall be limited to (i) fees ordinarily charged by City for processing land use applications and permits, provided that such fees and costs are applied to Developer in the same manner as other similarly situated applicants seeking similar land use approvals and are not limited in applicability to the Project or to related uses; and (ii) fees associated with third-party permit plan checking, if applicable, above those normally charged by City. Developer shall reimburse City for reasonable staff overtime expenses incurred by City in processing review, approval, inspection and completion of the Project provided that such overtime expenses are reasonably necessary for the completion of the Project in accordance with Developer’s schedule.

6.11 Contribution to Costs of Facilities and Services. Developer agrees to contribute to the costs of public facilities and services as required herein to mitigate impacts of the development of the Property, and City agrees to assure that Developer may proceed and complete development of the Property in accordance with the terms of this Agreement. City and Developer recognize and agree that but for Developer’s contributions to mitigate the impacts arising as a result of the development entitlement granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement. City’s approval of development of the Property is in reliance upon and in consideration of Developer’s agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property.

6.12 Water, Sewer Facilities, Storm Drains and Runoff. This Agreement does not affect the Developer’s obligations to provide water system improvements as required by City to serve the Project, or to pay for or construct improvements in the storm drain system required to implement the Project, or the Developer’s obligations to meet any applicable federal, state and local discharge limits and requirements pertaining to sewer facilities, storm drains, or runoff.

6.13 Limited Effect on Right to Tax, Assess, or Levy Fees or Charges. Except as expressly provided herein at Section 6.09 with respect to impact fees, this Agreement does not limit the

power and right of City to impose the same taxes, levy the same assessments, or require the payment of the same permit fees and charges by the Developer as City requires for all other nonresidential development or property on a citywide basis.

6.14 No Limit on Right of City to Adopt and Modify Uniform 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. This Agreement does not limit the right of City, to the extent permitted by state law, to adopt local modifications of those Construction Codes, from time to time.

6.15 California Environmental Quality Act Compliance (“CEQA”). City has prepared and certified an EIR and has imposed mitigation measures as Conditions of Approval prior to the execution of this Agreement. This Agreement does not limit City’s duty to comply with the provisions of CEQA and the associated Guidelines, as they may be amended from time to time, that comply with the provisions of § 21082 of CEQA. However, City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a subsequent approval or other discretionary action, it shall be in accordance with §§ 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA.

6.16 No General Limitation on Future Exercise of Police Power. City retains its right to exercise its general police power except when such exercise would conflict with the vested rights granted under this Agreement. The police powers so retained and enforceable under this Agreement shall include, but are not limited to, the enactment of regulations that apply generally to City concerning the disposition of construction and demolition materials.

6.18 Drainage Improvements. Developer shall provide onsite and offsite drainage improvements as required by City consistent with this Agreement, the Existing Approvals and Subsequent Approvals.

6.19 Water System Improvements. Developer shall provide water system improvements as required by City as required by City consistent with this Agreement, the Existing Approvals and Subsequent Approvals.

6.20 **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**7. COOPERATION IN IMPLEMENTATION**

7.01 Cooperation in Implementation. So long as the Developer is in good faith compliance with this Agreement, and in the spirit of the mutual benefit of ensuring the Property is “business ready,” the City shall prioritize processing of applications related to the Project and shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Project, including the following actions:

(a) Scheduling all required public hearings by the Planning Commission and City Council;

(b) Processing and checking all maps, plans, land use and architectural review permits, permits, building plans, and specifications and other plans relating to development of the Property filed by Developer as necessary for complete development of the Property. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and to cause City’s planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties’ express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the Development Plan and the terms hereof. At Developer’s request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City’s efforts in order to expedite City processing and approval work. City shall cooperate with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits, needed for development of the Project or any other on or offsite improvements.

7.02 Design Review. Developer shall apply for Design Review to obtain architectural, site and landscape approval prior to construction. So long as the proposed Project, or portion thereof subject to a formal application, meets the Project Approvals and is conformance with CEQA pursuant to Section 6.15, City shall expedite review and approval of projects through the Design Review process in accordance with Chapter 18.74 of the Morgan Hill Municipal Code. It is the parties’ intent to utilize the administrative portion of Chapter 18.74 in the review and approval of architectural, site and landscape approvals; but nothing herein is intended to prohibit the City from referring an approval to the Planning Commission (or the Developer’s right to appeal a decision of the Community Developer Director in the normal course).

7.03 Standard of Review for Issuance of Ministerial Permits. All permits (“**Permits**”) required by Developer to develop the Property, but including (a) road construction permits, (b) grading permits, (c) building permits, (d) fire permits, and © certificates of occupancy, shall be issued by City after City’s review and approval of Developer’s applications, provided that City’s review of the applications is limited to determining whether the following conditions are met:

- a. The application is complete; and

b. The application demonstrates that Developer has complied with this Agreement, the Project Approvals and Applicable Law.

8. ANNUAL REVIEW

8.01 Annual Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date. Except as affected by the terms hereof, the terms of Morgan Hill Municipal Code Section 18.80.070 shall govern City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement.

8.02 Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Developer shall submit a compliance letter ("Compliance Letter") to the City Manager with copies to the Community Development Director and the City Attorney, describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the Compliance Letter is submitted to City pursuant to the requirements of Government Code Section 65865.1, this Agreement, and Morgan Hill Municipal Code Section 18.80.070.

8.03 City's Finding of Compliance. Within sixty (60) days after receipt of the Compliance Letter, the City Manager shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the City Manager finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the City Manager shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review ("**Compliance Certificate**"). Developer may record the Compliance Certificate with the Santa Clara County Recorder's Office.

8.04 City's Finding of Non-Compliance. If the City Manager finds the Developer has not complied in good faith with the terms and conditions of this Agreement during the year under review, the City Manager shall specify in writing to the Developer the respects in which the Developer has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance. Within ten (10) days of receipt of the notice of noncompliance the Developer may, at its option and in its sole discretion, file a written appeal to the City Council. If the Developer files an appeal, the City Council shall, expeditiously, hold a duly noticed public hearing on the matter. If, after such hearing, the Council finds and determines based on substantial evidence that Developer has complied in good faith, then the City Manager shall issue a Compliance Certificate pursuant to Section 8.03. If, however, the City Council determines based on substantial evidence that Developer has not complied in good faith, the City Manager shall give written notice thereof to Developer terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance, and such notice shall serve as a notice of default under Section 11.10. If after receipt of a notice of non-compliance, Developer fails to cure the noncompliance within a reasonable period of time as established by the City

Manager, in his or her discretion, may (a) grant additional time for compliance by Developer, or (b) refer the Agreement to the City Council to modify this Agreement to the extent necessary to remedy or mitigate the noncompliance or terminate this Agreement.

9. REIMBURSEMENTS

Reimbursements. The Parties agree that Developer shall not be entitled to any reimbursement for the construction of any private or public improvement required by this Agreement, unless expressly provided by this Agreement.

10. INSURANCE

Insurance. During the term of this Agreement, Developer shall maintain in full force and effect the insurance policies required in Exhibit “5”. These policies shall be maintained with coverage amounts, required endorsements, certificates of insurance and coverage verifications included, as defined in **Exhibit “5”**, attached hereto and incorporated by this reference.

11. DEFAULT AND REMEDIES

11.01 Default. Failure by either Party to perform any material term or provision of this Agreement shall constitute a default, provided that the Party alleging the default gave the other Party advance written notice of the default and thirty (30) days to cure the condition, or, if the nature of the default is such that it cannot be cured within thirty (30) days, the Party receiving notice shall not be in default if the Party commences performance of its obligations within the thirty (30) day period and diligently completes that performance. Written notice shall specify in detail the nature of the obligation to be performed by the Party receiving notice.

11.02 Remedies. It is acknowledged by the Parties that City and Developer would not have entered into this Agreement if City were to be liable in damages under, or with respect to, this Agreement or the application thereof. City and Developer shall not be liable in damages to one another, or to any assignee, transferee or any other person, and Developer covenants not to sue for or claim damages. Each Party shall have the right to (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (b) bring any action at law or in equity as may be permitted by law or this Agreement. The Parties acknowledge that monetary damages and remedies at law generally are inadequate upon the occurrence of a default. Therefore, specific performance or other extraordinary equitable relief (such as injunction) is an appropriate remedy for the enforcement of this Agreement, other remedies at law being inadequate under all the circumstances pertaining as of the Effective Date of this Agreement and any such equitable remedy shall be available to the Parties. Nothing in this Section 11.02 is intended to limit the City’s remedies that are otherwise available under Applicable Law to require compliance with the Project Approvals (e.g. compliance with building permit requirements).

12. AMENDMENT OR TERMINATION

12.01 Amendments. No alterations or changes to the Terms of this Agreement shall be valid unless made in writing and signed by both Parties, and completed in compliance with the procedures listed in the Development Agreement Statute or Enabling Ordinance.

12.02 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. 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) 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 allowed under the Existing Project Approvals, (5) provisions for reservation or dedication of land for public purposes, or (6) general location of the uses or proposed buildings allowed under the Existing Project Approvals; or

(ii) Any material amendment or modification or eliminations of the Developer commitments set forth in Article 4 of this Agreement, any reduction in fees, or any reduction or elimination of any Project Mitigations hereunder.

12.03 Termination upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, or when the Property has been fully developed and all of the Developer’s obligations are satisfied as determined by City. Upon termination of this Agreement, City may record a *Notice of Termination* in a form satisfactory to the City Attorney.

12.04 Effect of Termination Upon Developer Obligations. Termination of this Agreement as to the Developer shall not affect any of the Developer’s obligations to comply with City General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlement approved with respect to the Project, nor shall it affect any other covenants or development requirements in this Agreement that are expressly specified to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

12.05 Effect of Termination Upon City. Upon any termination of this Agreement as to the Developer, the entitlement, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested with respect to the Property. City shall no longer be limited by this Agreement and may make any changes or modifications to the entitlement, conditions, or fees applicable to the Property.

12.06 Elements of Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the Term;
- (b) Entry after all appeals have been exhausted of a final court judgment or issuance of a final court order directed to City to set aside, withdraw, or abrogate City's approval of this Agreement or any material part thereof; or
- © The effective date of a Party's election to terminate the Agreement as provided in this Agreement.

13. MORTGAGEE PROTECTION: CERTAIN RIGHTS OF CURE

13.01 Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum thereof is recorded, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("Mortgagees") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in-lieu-of foreclosure, voluntary transfer or otherwise.

13.02 Mortgagee Obligations. City, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer that are reasonably susceptible of being cured are cured by the Mortgagee as soon as reasonably possible, provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such Property by such Mortgagee. The foreclosing Mortgagee shall have the right to find a substitute developer to assume the obligations of Developer, which substitute shall be considered for approval by City pursuant to Section 16 of this Agreement.

13.03 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to Developer, all notices given to Developer describing all claims by City that Developer has defaulted hereunder. If City determines that Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice.

14. ASSIGNABILITY

14.01 Assignment. Except as provided in Section 15 with respect to Mortgagees, neither Party shall convey, assign or transfer, in whole or in part, ("Transfer") any of its interests, rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. In no event shall the obligations conferred upon Developer under this Agreement be transferred except through a Transfer of all or a portion of the Property. Should Developer Transfer any of its interests, rights or obligations under this

Agreement, in whole or in part, it shall nonetheless remain liable for performance of the obligations under this Agreement, unless the transferee executes an Assumption Agreement in a form reasonably acceptable to City whereby the transferee agrees to be bound by the relevant Terms of the Agreement. If a Transfer is for less than all of the Developers rights and obligations, the allocation of such rights and obligations shall be clearly specified by the Assumption Agreement. During the Term, Developer shall provide City with written notice of a request to Transfer any interest in this Agreement forty-five (45) days prior to any such contemplated Transfer. Any such request for a Transfer shall be accompanied by quantitative and qualitative information that substantiates, to City's reasonable satisfaction, that the proposed transferee has the financial capability to assume the rights and fulfill those obligations of this Agreement that are proposed to be Transferred. Within thirteen (30) days of such a request and delivery of information, the Morgan Hill City Manager shall make a determination, in his or her reasonable discretion, as to whether the Transfer shall be permitted or whether such Transfer necessitates approval by the City Council. The Assumption Agreement, once approved and executed, shall be recorded by City in the Santa Clara County Recorder's Office promptly upon execution by each of the Parties.

14.02 Foreclosure. Nothing contained in this Section shall prevent a Transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any lender acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Developer under this Agreement; provided, however, in no event shall such lender be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Property by such lender, and provided further, in no event shall any such lender or its successors or assigns be entitled to a building permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Property acquired by such lender) have been paid to City.

15. CONTROLLING LAW

Controlling Law. This Agreement shall be governed by the laws of the State of California, and the exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Santa Clara. In the implementation of this Agreement and the Project, the Developer shall comply with all applicable requirements of state and federal law, including, without limitation, the payment of prevailing wages, where applicable and to the extent legally required.

16. GENERAL

16.01 Construction of Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning.

16.02 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon the other Party's noncompliance or failure to perform under the provisions of this Agreement shall impair or be construed to waive any right or power. A waiver by either Party of any of the covenants or conditions to be performed by Developer or City shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions.

16.03 Agreement is Entire Agreement. This Agreement and all exhibits attached hereto or incorporated herein are the sole and entire Agreement between the Parties concerning the Property. The Parties acknowledge and agree that they have not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

16.04 Estoppel Certificate. Either Party from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications, and, (c) the requesting Party does not have knowledge of default in the performance of its obligations under this Agreement, or if in known default, describing therein the nature and monetary amount, if any, of the default. A Party receiving such a request shall execute and return the certificate within thirty (30) days after receipt thereof. City Manager shall have the right to execute the certificates requested by Developer. At the request of Developer, the certificates provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and Developer shall have the right to record the certificate for the affected portion of the Property at its cost.

16.05 Severability. Each provision of this Agreement which is adjudged by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions, and the other provisions shall remain in full force and effect.

16.06 Further Documents. Each Party shall execute and deliver to the other all other instruments and documents as may be reasonably necessary to carry out this Agreement.

16.07 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

16.08 Defense, Indemnification and Hold-Harmless Provisions. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees (the "Indemnified Parties") harmless from any liability 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 the actions be by the Developer or by any of 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 subcontractor's. Developer shall indemnify and defend Indemnified Parties from any suit or actions at law or in equity for damages caused, or alleged to have been caused, by reason of the operations and Developer shall pay all reasonable attorneys' fees and costs that City may incur. City does not, and shall not waive any rights against Developer that 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 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 operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the Project. Notwithstanding anything to the contrary, Developer's indemnification of the Indemnified Parties shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence or willful misconduct of the Indemnified Parties.

16.09 Construction. This Agreement has been reviewed and revised by legal counsel for both City and Developer and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

16.10 Section Headings. All Section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

16.11 Attorneys' Fees. 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.

17. NOTICES

Notices. Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified U.S. mail, postage prepaid. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by U.S. mail. Notices shall be sent to the addresses below for the respective Parties; provided, however, that either Party may change its address for purposes of this Section by giving written notice to the other Party. These addresses may be used for service of process:

<u>If to City:</u>	City Clerk 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Tel: (408) 779-7259 Fax: (408) 779-3117
<u>With a Copy To:</u>	Donald Larkin City Attorney 17575 Peak Avenue Morgan Hill, CA 95037 Tel: (408) 779-7271 Fax: (408) 779-1592
<u>If to Developer:</u>	Mwest PropCo XXIII LLC c/o Mwest Properties Attn: Ryan McDaniel 3351 Olcott Street

Santa Clara, CA 95054
Tel: (408) 450-3823
Fax: (408) 982-9594

With a Copy To: Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111
Attention: Tamsen Plume
Tel: (415) 743-6941
Fax: (415) 743-6910

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.

18. DEVELOPER INDEPENDENT CONTRACTOR

Developer is an Independent Contractor. Developer is not an agent or employee of City, but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed or utilized by Developer in connection with this Agreement are employees or contractors of Developer and shall not be considered employees of City in any respect.

19. PROJECT AS A PRIVATE UNDERTAKING

Project is a Private Undertaking. It is specifically understood and agreed that the Project is a private development. No partnership, joint venture or other association of any kind between City and Developer is formed by this Agreement.

20. NONDISCRIMINATION

Nondiscrimination. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion or disability in connection with or related to the performance of this Agreement.

21. FORCE MAJEURE.

21.01 Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board or the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, Severe Economic Recession, or Third Party Challenge as provided in Section 1.04(b) (each a "**Force Majeure Event**").

22. THIRD PARTY LEGAL ACTIONS

22.01 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.

22.02 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 actual and reasonable attorneys’ fees and costs (including related court costs).

22.03 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. 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.

23. NO THIRD-PARTY BENEFICIARY

No Third-Party Beneficiary. This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third-party or Parties, and no third-party or Parties shall have any claim or right of action hereunder for any cause whatsoever.

24. ALTERNATE DISPUTE RESOLUTION

Alternative Dispute Resolution. 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. The parties shall, in good faith, attempt to resolve any dispute through mediation prior to filing a lawsuit concerning this Agreement.

25. CONSENT

Consent. Where consent or approval of a Party is required or necessary under this Agreement, the consent or Agreement shall not be unreasonably withheld or delayed. Where consent or approval of the City is required or necessary under this Agreement, the consent or approval shall be by the City Manager, or his or her delegate, unless specified otherwise or required by Applicable Law.

26. COVENANT OF GOOD FAITH AND FAIR DEALING

Covenant of Good Faith and Fair Dealing. Neither Party to this Agreement shall do anything which shall have the effect of harming or injuring the right of the other Party to receive benefits of this Agreement; each Party shall refrain from doing anything which would render its performance

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DRAFT
DEVELOPMENT AGREEMENT

under this Agreement impossible; and, each Party shall do everything which this Agreement contemplates to accomplish the objectives and purpose of this Agreement.

27. AUTHORITY TO EXECUTE

Authority to Execute. The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of Developer, and further represent that they have the authority to bind Developer to the performance of its obligations in this Agreement.

28. COUNTERPARTS

Counterparts. This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in Counterparts.

SIGNATURES FOLLOW ON PAGE _____

CITY OF MORGAN HILL, CALIFORNIA

a California municipal corporation

APPROVED AS TO FORM:

DONALD A. LARKIN
City Attorney

Steve Rymer
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

ATTEST:

IRMA TORREZ
City Clerk
“CITY”

Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

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DEVELOPMENT AGREEMENT

DEVELOPER:

Mwest PropCo XXIII LLC, a Delaware limited liability company

s/_____

_____	By:	_____
		Signature of Person executing the Agreement on behalf of Developer
Name:		_____
Title:		_____
Local Address:		_____

Telephone		() _____
Facsimile:		() _____

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

Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

**DEVELOPMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL,
a California municipal corporation,
AND**

MWEST PROPCO XXIII LLC

EXHIBIT 1

LEGAL PROPERTY DESCRIPTION

AND MAP OF PROPERTY

[To be inserted]

Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

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DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL,
a California municipal corporation,**

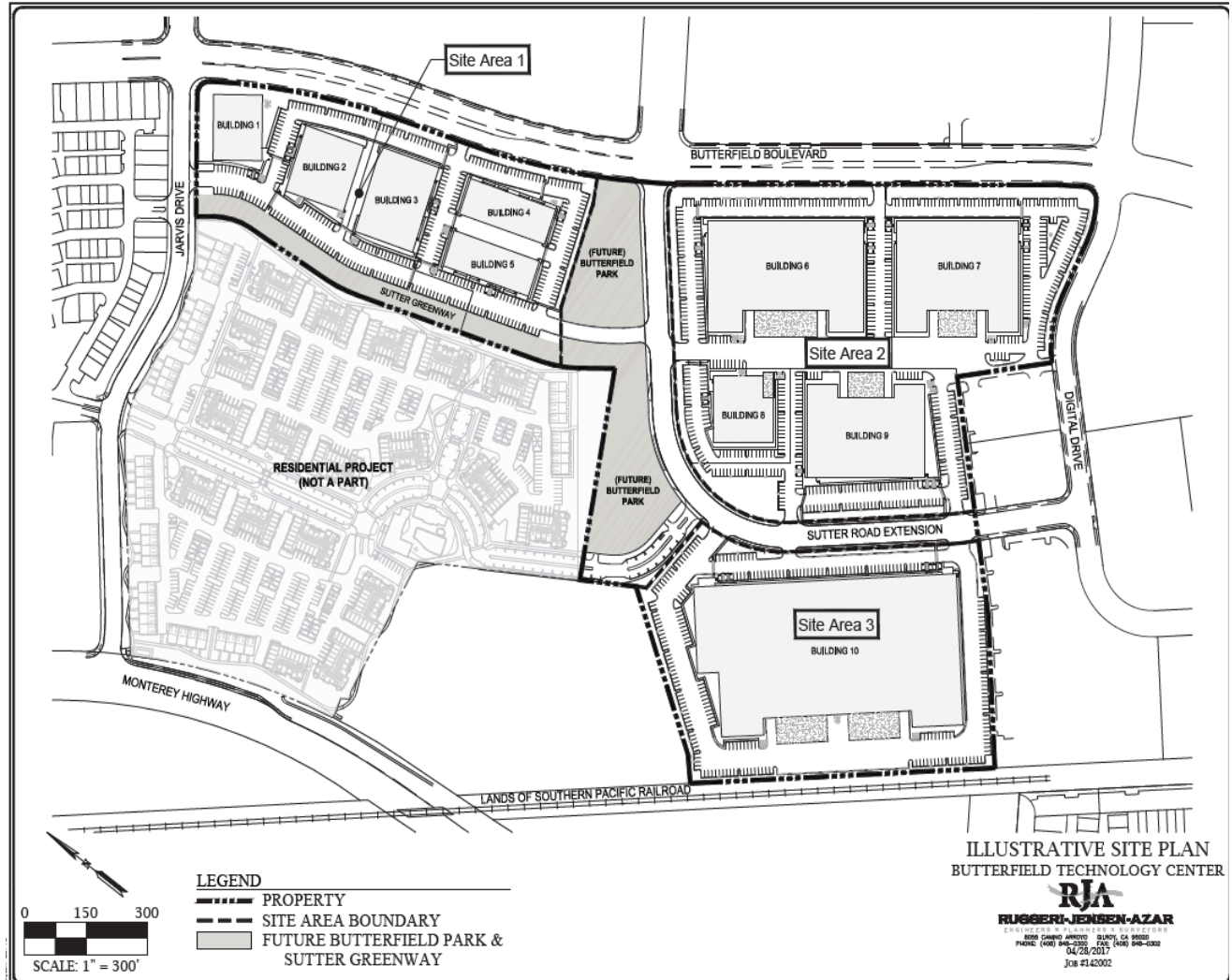
AND

MWEST PROPCO XXIII LLC

EXHIBIT 2

ILLUSTRATIVE SITE PLAN

This plan is for illustrative purposes only and is subject to the City's Design Review process.



Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

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DEVELOPMENT AGREEMENT

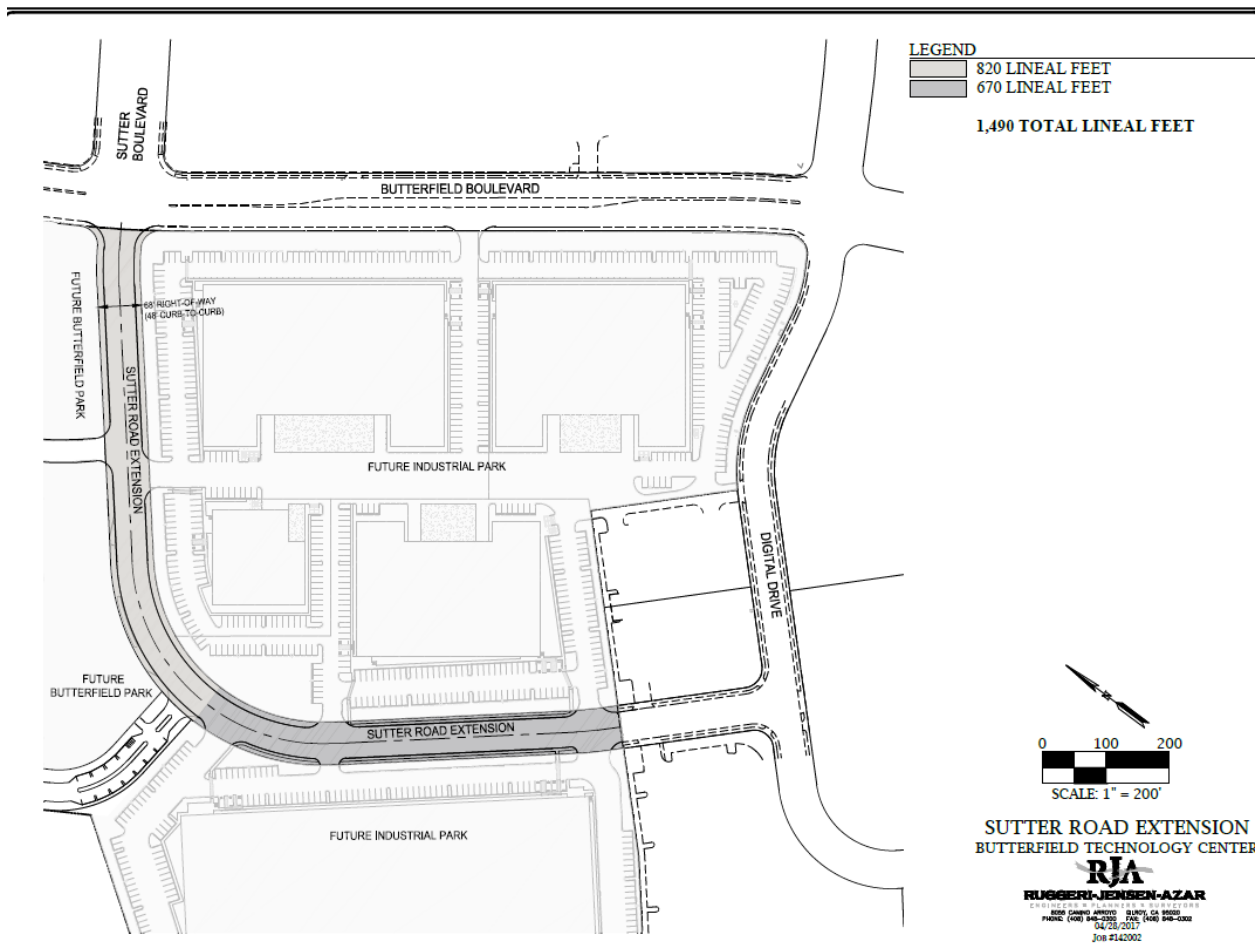
**DEVELOPMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL,
a California municipal corporation,**

AND

MWEST PROPCO XXIII LLC

EXHIBIT 3

SUTTER ROAD EXTENSION



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DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
BETWEEN CITY OF MORGAN HILL,
a California municipal corporation,**

**AND
MWEST PROPCO XXIII LLC**

EXHIBIT 4

EXISTING IMPACT FEE LIST

[City preparing list for insertion in execution form]

Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

**BETWEEN CITY OF MORGAN HILL,
a California municipal corporation,****and
MWEST PROPCO XXIII LLC**

EXHIBIT 5**INSURANCE REQUIREMENTS**

Developer is required to procure and provide proof of the insurance coverage required by this Agreement in the form of certificates and endorsements. The required insurance must cover the activities of Developer and its Subcontractors relating to or arising from the performance of work associated with the Agreements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Agreement terminates.

The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. If Developer fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Developer’s expense, or terminate the Agreement for default. Developer further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Developer, at any time as deemed necessary to protect the interests of the City.

A. Upon execution of Agreement:**(a) Policies and Limits. The following insurance policies and limits are required:**

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s (including its agents, representatives, officers, employees, invitees, volunteers, and contractors) activity, use and maintenance of the property against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage.

(b) Required Endorsements. Developer shall provide proof of the following endorsement to the General Liability policy:

a. “Additionally Insured” - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

B. Ten (10) days prior to start of any construction within the Project:

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s or its Subcontractor’s acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.

(2) Workers’ Compensation Insurance and Employer’s Liability: Developer shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Developer is self-insured, Developer must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Developer shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Developer does not own automobiles, then Developer shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Developer under

Developer's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Developer's work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Developer shall procure and maintain Pollution Liability covering the Developer's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Developer under Developer's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Developer shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

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

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;

c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. Developer must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

Note: Remove Header when Final DA completed

DRAFT
DEVELOPMENT AGREEMENT

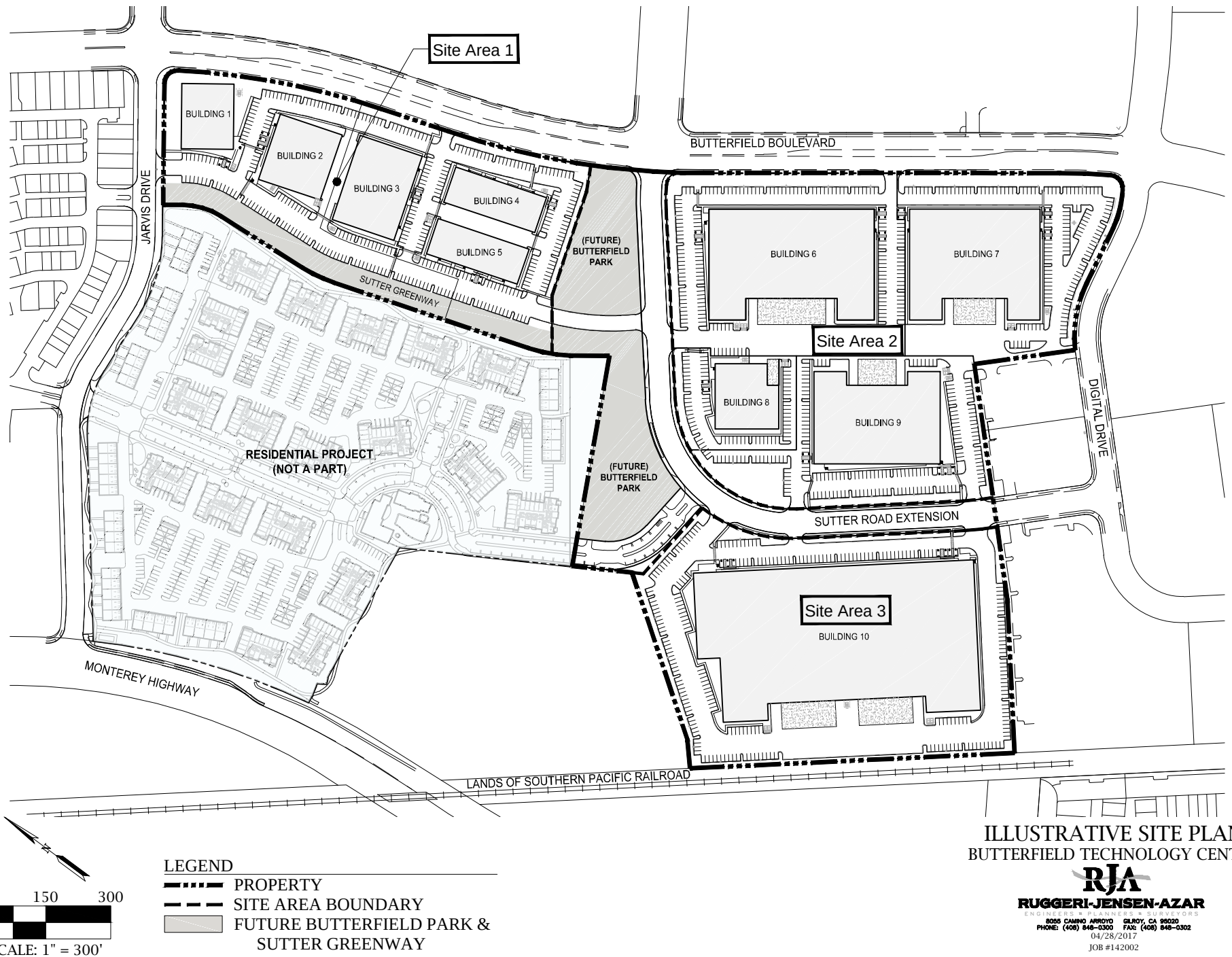
(d) Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of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

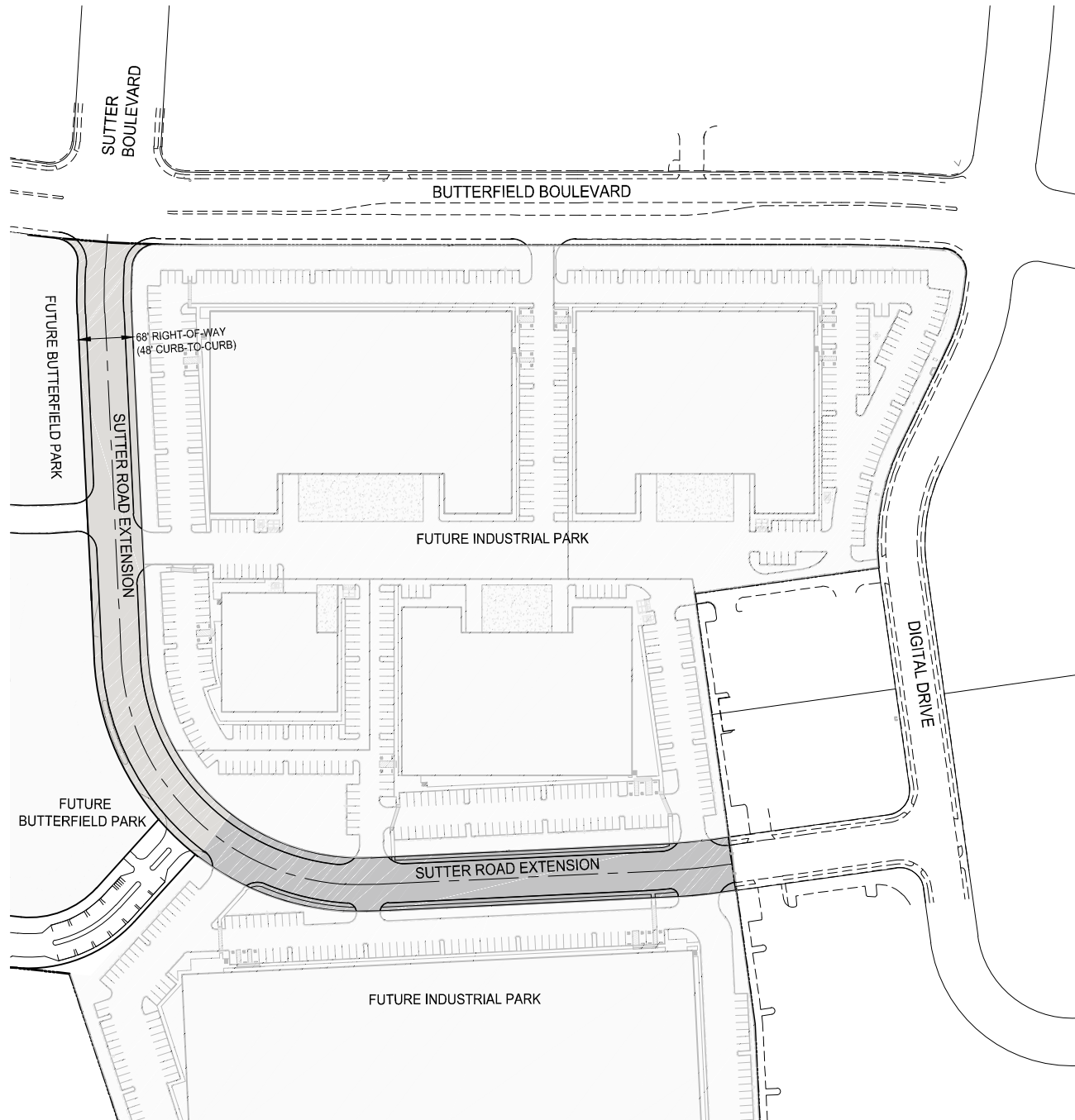
C. Certificates. Developer shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Developer's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

Attachment: DA Divco (MWest) (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

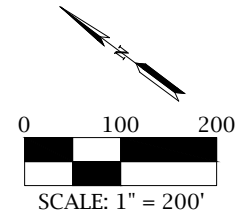




LEGEND

-  820 LINEAL FEET
-  670 LINEAL FEET

1,490 TOTAL LINEAL FEET



SUTTER ROAD EXTENSION
BUTTERFIELD TECHNOLOGY CENTER

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS • PLANNERS • SURVEYORS
 8055 CAMINO ARROYO GILROY, CA 95020
 PHONE: (408) 848-0300 FAX: (408) 848-0302
 04/28/2017
 JOB #142002

May 9, 2017

Chair Wayne Tanda and
Morgan Hill Planning Commissioners
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

RE: DivcoWest SVI Industrial Development Agreement for the Butterfield Technology Center

Dear Chair Tanda and Members of the Planning Commission:

Divco West Silicon Valley Investments ("Divco") is one of the largest owner/developers of office/industrial/R&D properties in Silicon Valley, with a current portfolio of nearly 4 million square feet. In 2012, we acquired an approximately 58-acre vacant industrial site (the "site") in the Morgan Hill Ranch Business Park (the "Ranch") as part of a larger portfolio of industrial properties in Silicon Valley. Our goal is to develop the land into a premier industrial park with up to 600,000 square feet of industrial, office/R&D and manufacturing space, state of the art amenities that meet the needs of a competitive work force, including outdoor work spaces, passive and active recreation, and attractively priced rental housing within walking/biking distance.

The Importance of Being "Business Ready"

Although the eastern and southern portions of the Ranch have developed into one of the City's core industrial areas, the west side of Butterfield Road between Digital Drive and Jarvis Drive has remained vacant for decades. One significant impediment to development has been the lack of planning and clear entitlements to support a modern industrial park. Although the site has PUD zoning for industrial use, the original 1990's era site plan is outdated and the prior Development Agreement ("DA") has expired. Users looking for build-to-suit opportunities want to be able to move quickly so they need land that is already planned and entitled and ready to go. They need to know what their costs will be, including design and construction, their share of public and private infrastructure improvements, City fees, and State and local taxes. They need flexibility and expedited permitting and in this competitive market for jobs, companies are looking carefully at what additional incentives cities are willing to offer to entice them and help reduce their costs.

Over the past 2 years, we have been funding, processing and securing all necessary entitlements to make the site business ready. We designed a master plan for a premier 38.5-acre industrial park, 19.5 acres of rental housing, and a total of 5.0 acres of publicly accessible parks and open space (the 3.2-acre Butterfield Park and the 1.8-acre Sutter Greenway), taking care to provide appropriate transitions with our industrial and residential neighbors. To support this effort, we took the following strategic steps:

- 1) Modernized the outdated industrial PUD to meet the needs of today's companies.
 - a. Divided the plan into 3 site areas to accommodate companies at all growth stages.
 - i. Site Area 1, totaling 109,700 SF, provides space for start-ups and smaller companies (5 buildings ranging from 18,000 – 30,600 SF);

- ii. Site Area 2, totaling 233,000 SF, will accommodate medium size companies, including those looking for expansion space in Morgan Hill (4 buildings ranging from 20,600 – 86,400 SF), and
 - iii. Site Area 3 provides a rare opportunity for a larger building (up to 200,000 SF) for companies needing distribution or manufacturing space.
- 2) Comprehensively studied the circulation, parking and infrastructure needs of the project.
 - a. Determined the capacity of the City's detention basin to handle run-off from the Morgan Hill Ranch area and designed the optimal hydrological system to accommodate the needs of the project at buildout.
 - b. Determined the optimal location for the extension of Sutter Road to Digital Drive, as well as curb cuts and secondary access to each phase of development.
- 3) Filed an application for Preliminary Plan Review for Staff review and comment, including a full schematic set of architectural, landscaping and civil engineering drawings.
- 4) Held a community meeting at the Morgan Hill Community Center for our residential and industrial neighbors to solicit feedback from the community.
- 5) Brought the Preliminary Review Plan to the Parks and Recreation Commission, Planning Commission, and City Council for feedback; the plan was positively received at all levels.
- 6) Processed a Parcel Map for Lot Line Adjustment Purposes ("LLA") to create more marketable lots in Site Area 1, which represents the "sweet spot" of the industrial market at this time.
- 7) Negotiated a Development Agreement with City Staff designed to solidify the intent of the parties to make this vision a reality.

The Development Agreement Provides Certainty and a Valuable Marketing Tool

A Development Agreement is the most common entitlement vehicle for a larger, multi-phase project of this type and scale to provide clarity and certainty for due diligence, budgeting and construction, and it can be an extremely effective marketing tool to attract jobs and investment. In 2000, the City entered into a Development Agreement with the original developer of the Morgan Hill Ranch, which led to the successful development of the east and south end of the Ranch. The Butterfield Technology Center has been designed to be consistent with the existing PUD, so we have determined that it is not necessary to amend the zoning. At your May 9, 2017 hearing, we are asking the Planning Commission to recommend approval of a new DA which provides the following benefits:

Benefits for the City

- 1) The Development Agreement is consistent with the City's Economic Blueprint and is a valuable marketing tool to attract new jobs and investment to Morgan Hill.
- 2) Helps incentivize development of industrial space in one of the City's core economic areas.
- 3) Secures a commitment from the landowner not to seek residential conversion.
- 4) Provides for the dedication or set aside of park land to be made available to the public.
- 5) Commits the landowner to ensure adequate buffers (Sutter Greenway) between industrial uses and future residential uses.
- 6) Provides a means whereby the developer can feasibly finance key infrastructure (such as the Sutter Road Extension) to catalyze development on this long vacant site.
- 7) Commits the landowner to actively market the property.

Benefits for the Developer

- 1) The Development Agreement provides certainty over time.
 - a. Provides for the implementation of multiple phases of development and infrastructure.

- b. Provides assurances that the developer and prospective users have a vested right to build during the term of the DA (up to 15 years based on performance criteria).
- 2) Helps the developer plan for and apportion infrastructure and other development costs on a phase by phase basis.
- 3) Shows that the City of Morgan Hill is committed to helping implement this project by:
 - a. Providing expedited permitting for Site and Architectural Review and building permits.
 - b. Providing fee locking for a period of up to 3 years.
- 4) Serves as a valuable marketing tool to help us attract prospective users.

A Note about Design Review

In the industrial market, which is changing rapidly, the need for customization is extremely important for companies to right size and for space to meet their unique needs. We believe it would not be a valuable use of time or resources (by the owner or the City) to start design review before we have a user in hand and know their specific requirements. Nonetheless, the substantial work that has been done on the Preliminary Plan Review and through the DA will help expedite this process to respond to end users.

Conclusion

We understand that first and foremost, the City of Morgan Hill wants to see construction begin as soon as possible. Our goals are aligned with the City's; we are in the business of building buildings, not sitting on vacant land. Now that we have a master plan strategically designed to meet current and projected market conditions, we understand the infrastructure requirements and costs of development, and with, we hope, our efforts culminating in the City's approval of the Development Agreement, we consider the site business ready. We look forward to our continued collaboration with the City to bring this exciting vision to fruition.

Very Truly Yours,



Ryan McDaniel
Vice President

Kerry M. Williams

Kerry M. Williams
Project Director

cc: Steve Rymer, City Manager
Edith Ramirez, Economic Development Director
Jennifer Carmen, Community Development Director
Gina Paolini, Interim Principal Planner
Don Larkin, City Attorney
Gary Baum, Law Offices of Gary Baum
Tamsen Plume, Holland & Knight



TENCATE ADVANCED COMPOSITES USA, INC.

May 8th, 2017

Steve Tate - Mayor of Morgan Hill
Morgan Hill Planning Commission Members
Morgan Hill City Council Members
1575 Peak Avenue
Morgan Hill, CA 95037-4128

Reference: Divco - MWest Butterfield Project Development Agreement

Dear Mayor Tate, Planning Commission and City Council Members:

We represent business employers in Morgan Hill Ranch (MHR). Our collective employee count is approximately 980 and we occupy 9 buildings consisting of 700,000 square feet of commercial industrial space in the MHR business park that sit across from the proposed Butterfield MWest project. While we remain opposed to the rezoning of this commercial industrial land to high density residential apartments, we respect the Council's decision and are willing to work with MWest to establish a project scenario that satisfies the needs of local residents, businesses and MWest alike.

We have the following principal concerns that we would like the Morgan Hill Planning Commission, City Council and Mayor Tate to address on our behalf:

1. At the Morgan Hill City Council Meeting in May 2015, direction was given by City Council for Divco - MWest to proceed through a Master Planning process for their proposed project on Butterfield Blvd that would include input from not only impacted businesses and residents, but also the local community at large. At the subsequent Morgan Hill Planning Commission meeting, the Commission rejected Divco MWest's request for zoning approval, as they saw that MWest had not gone through the Master Planning process.

Fast forward to the present and Divco MWest has still yet to engage with our local businesses in any planning process regarding their project or the development agreement, as they promised to the City Council. Further it appears that Divco-MWest continues to use their marketing muscle and political power to bypass proper approval channels and for some reason they have been given 10 residential housing credits, carte blanche, despite scoring very low on their 2016 RDCS application.

2. The parking situation on West End of Jarvis Drive, in the evening and early morning hours, is horrendous and we're concerned that parking overflow from this proposed project will spill into the other side of Jarvis Drive as well into our parking lots at TenCate, Andpak or Anritsu. See pictures below from a typical 5 am timeslot.
 - a. How does the current Divco-Mwest plan mitigate this?
 - b. Is the parking density per unit done any differently than the two developments on the North Side of Jarvis? If not, we suggest that this needs to be re-looked at by MWest and the City Planning Commission.



Picture 1: Jarvis Drive Nearest to Butterfield Blvd at 5 am, 5-5-2017

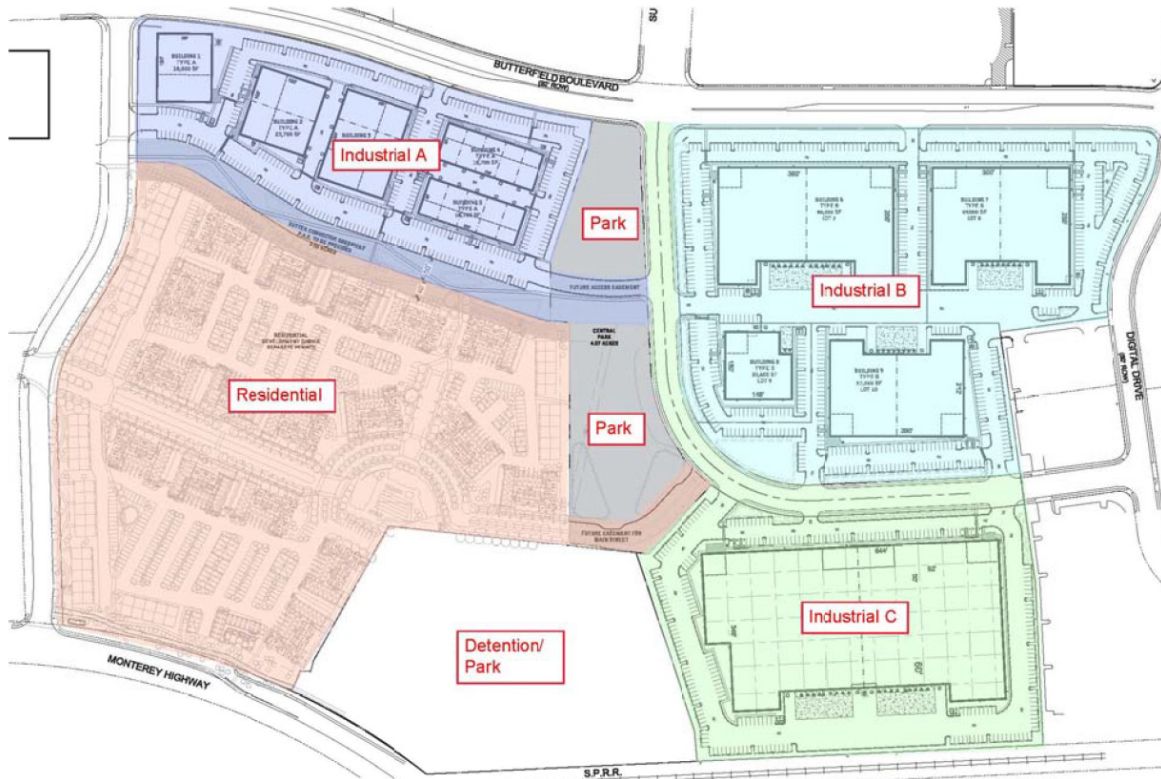


Picture 2: Jarvis Drive Nearest to Monterey Road at 5 am, 5-5-2017

3. Originally the park was proposed by Divco-MWest as being up to 5 acres and accessible to both the new residents and the surrounding businesses/current residents. Further, the acreage for the park was supposed to be part of the 19.5 acre original re-zoned land for the proposed housing development.
 - a. The newly proposed park is now only 2.67 acres, has indeed taken more land from the remaining industrial property and is proposed to be private (no longer benefiting other residents or businesses).
4. The Sutter Blvd extension is not planned to be completed through to Digital Drive as originally discussed by Divco-MWest. The proposal in the Development Agreement only shows Sutter being completed far enough to serve the residential community and will stifle future commercial development on the remaining industrial land. The City of Morgan Hill has been sold on this plan from Divco-MWest based upon the residential development boosting the commercial development of the remaining property. If this is indeed the case, then why wouldn't the city not push for Divco-Mwest to finish Sutter completely to Digital Drive?

5. Divco-MWest has not been required to make any commitments whatsoever on any industrial land developments. Divco-MWest had proposed previously the potential to develop the Light Industrial Research and Technology Park (Industrial A in the proposed plan below). Our view is the City needs to push for this to happen establish a proper buffer between TenCate and the proposed Residential Project and to set the stage for further industrial development in the park.

Figure 10: Onsite Development Areas



We've been very forthright in our commitment to the processes put in place by the Council and have put our faith in your representation of our local businesses that you support. We continue to stand ready to work with Divco-MWest, but they obviously have no intention of engaging local businesses to assure a project that has mutual benefit to all affected by the project.

We previously stated in our letter from September 2015, "What kind of message would you be sending to the community and its businesses if you allow MWest to use its marketing muscle and prominent Silicon Valley presence to push Council into a decision that not only breaks the precedent set with Condit Evergreen, but goes against the Council's own Master Planning direction given to MWest and the Planning Commission at the May City Council Meeting?"

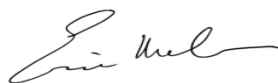
Sadly, this appears to be exactly what is transpiring and Divco-MWest continues to get their way, at the expense of businesses that help drive the economic viability of our city. We strongly encourage the Council to remain true to their direction given to the MWest and assure that this project is completed with benefit to all the stakeholders within our community and not simply Divco-MWest.

Sincerely,



Scott Unger
Global Chief Technology Officer
TenCate Advanced Composites

Sincerely,



Eric McLean
Anritsu Corporation

This letter is also supported by the following Morgan Hill Ranch businesses

Sakata Seed	Rhonda Jones	Operations Director
Andpak EMA	Dick Varien	President
Krayden	Dennis Wagner	President
KR Anderson	Mark Silliman	General Manager

18410 Butterfield Blvd.
Morgan Hill, CA 95037
USA

Tel 408 776 0700
Fax 408 776 0107
www.tencate.com

ISO 9001
AS 9100
Registered

Jenna Luna

From: Kerry Williams <k-keenan@pacbell.net>
Sent: Tuesday, May 09, 2017 4:16 PM
To: Jennifer Carman; Gina Paolini; Edith Ramirez
Cc: Planning_Commission; Jenna Luna
Subject: Clarification to May 9, 2017 PC Staff Report

Hi Edith, Jennifer and Gina –

A few points of clarification to the Staff Report. The letter we sent to the City Council in May 2015 was based on a conceptual plan for the entire 65 acre site (the 58 acres owned by Divco and the 7.9 acre detention basin owned by the City), as well as the best available information we had at the time.

Our original plan for the residential project, which was shown graphically to the Planning Commission and City Council in a PowerPoint presentation with color illustratives, included a private recreation center with a pool and fitness center, two large private pocket parks and green spaces, several smaller private recreation spaces (tot lots, etc.) distributed within the community, and publicly accessible open spaces and trails along the perimeter of the project. In total, we estimated these public and private open space and recreation areas would total *up to* 5.0 acres.

The larger contiguous park (7.9 acres) shown in Exhibit A referenced in the Staff report was based on a concept we had discussed in which we would *swap acreage* with the City to allow for an alternative configuration of the City's 7.9 acre detention basin and the possibility of converting it to a public park. This would have impacted the configuration of the 19.5 acre residential area, as shown in Exhibit A, but not reduced it. As promised, we worked with Public Works and our hydrological consultant to fully evaluate this concept, but it was ultimately determined not to be feasible relocate the basin.

It's important to make clear for the record that prior to May 2015, we never discussed with the Commission or the Council any commitment to dedicate a 5 acre contiguous park to the City within the residential area. Of course, as time has moved on and we have been working with Staff, the PC, Council and Parks and Recreation Commission on a comprehensive plan for the 65 acres, we have done our best to accommodate a larger contiguous park in a central location that can benefit the new industrial park by providing desirable campus amenities, as well as existing businesses and residents in the Morgan Hill Ranch area and beyond. We feel that together with the City we have arrived at a plan that optimizes the land within the entire site plan for that purpose and are excited about its inclusion in the project.

Thank you for the ability to make this clarification.

Kerry M. Williams
DivcoWest SVI

ADVANCED COMPOSITES

TenCate Advanced Composites

May 9, 2017

Divco-Mwest Planning Commission Meeting Presentation

Local Morgan Hill Ranch Businesses
Issues with Divco-Mwest Proposal

Scott Unger
TenCate Advanced Composites
Group President and Chief Technology Officer



Local Morgan Hill Ranch Businesses Issues with Divco-Mwest Proposal

- Representing TenCate, Anritsu, Sakata Seed, Andpak and Krayden
 - 980 employees, 9 building sites and 700,000 square feet of Operations in Morgan Hill Ranch – across from the proposed project
- Five Major Issues we'd like support on from Planning Commission, City Council and the Mayor:
 - Broken Promises to the City, our businesses and community
 - Parking Along Jarvis Drive, Monterey Road and Cochrane
 - Local Park Within the Proposed Development
 - Sutter Blvd Extension Plan
 - Lack of commitment on industrial

Divco-Mwest's Broken Promises

- **Morgan Hill City Council Meeting in May 2015**
 - City Council directed Divco - MWest to proceed through a Master Planning process for their proposed project on Butterfield Blvd that would include input from not only impacted businesses and residents, but also the local community at large.
 - At the subsequent Morgan Hill Planning Commission meeting, the Commission rejected Divco MWest's request for zoning approval, as they saw that MWest had not gone through the Master Planning process.
- **Fast Forward to Today**
 - Divco MWest has still yet to engage with our local businesses in any planning process regarding their project or the development agreement, as they promised to the City Council.
 - Further it appears that Divco-MWest continues to use their marketing muscle and political power to bypass approved procedures
 - Divco-Mwest has been granted 10 residential housing credits, carte blanche, despite scoring very low on their 2016 RDCS application.
- **Why is the City Allowing this to happen and breaking traditional processes to do so?**

Parking Issues

- Overflow parking on West of Butterfield Jarvis, Monterey Road and Cochrane out of control
 - Addition of Divco-Mwest project will put more pressure on this situation
 - Overflow will likely push parking eastward across Butterfield to Jarvis Drive, TenCate, Andpak and Anritsu Parking Lots
- How do the Divco-Project's Parking Requirements address this issue?
- Is the project built with the same parking requirements as the existing residences?
 - If so, something needs to be modified in the Divco-Mwest Plan

Picture 1: Jarvis Drive Nearest to Butterfield Blvd at 5 am, 5-5-2017



Picture 2: Jarvis Drive Nearest to Monterey Road at 5 am, 5-5-2017



Attachment: 02 Supplement 4 (1105 : DA2017-0002: Butterfield - MWest Development Agreement)

Park Space

- Originally the park was proposed by Divco-MWest as being up to 5 acres and accessible to both the new residents and the surrounding businesses/current residents.
- Further, the acreage for the park was supposed to be part of the 19.5 acre original re-zoned land for the proposed housing development.
- The newly proposed park is now only 2.67 acres
 - Has indeed taken more land from the remaining industrial property, further decreasing precious industrial land for the city to drive its business growth
 - Park is now proposed to be private (no longer benefiting other residents, businesses or the community)

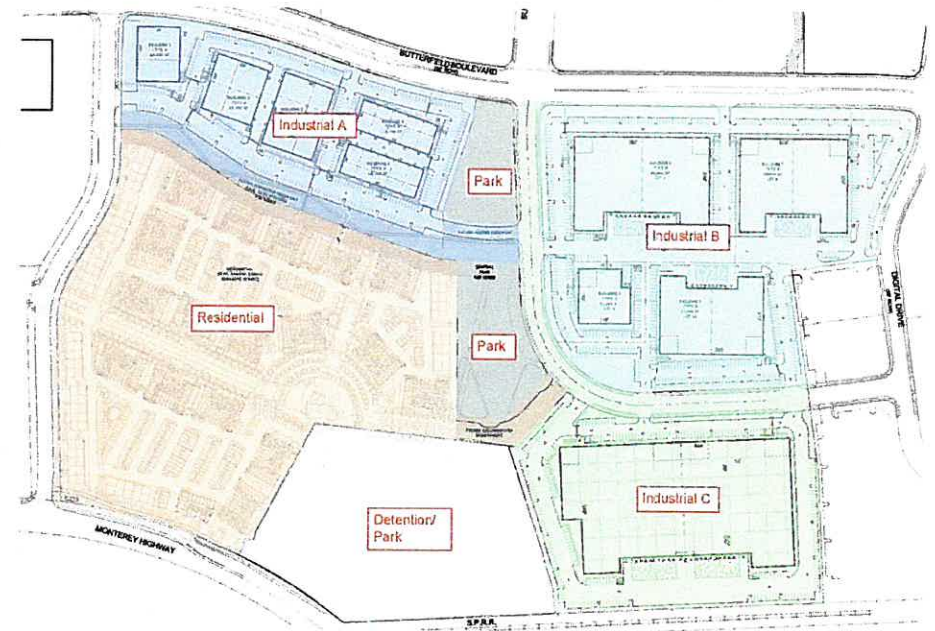
Sutter Road Extension

- The Sutter Blvd extension is not planned to be completed through to Digital Drive as originally proposed by Divco-MWest.
- The City of Morgan Hill has been sold on this plan from Divco-MWest based upon the residential development boosting the commercial development of the remaining property.
- If this is indeed the case, then why wouldn't the city push for Divco-Mwest to finish Sutter completely to Digital Drive?
- We urge the planning commission and the city to demand that the extension be completed at the outset of the project to facilitate business growth
 - A partially completed road will deter businesses from building as they see this as an unknown delay in their proposed building project

No Industrial Building Commitment

- Divco-MWest has not been required to make any commitments whatsoever on any industrial land developments.
- Divco-MWest had proposed to develop the Light Industrial Research and Technology Park (“Industrial A” in the proposed plan at right).
- Our view is the City needs to push for this to happen establish a proper buffer between TenCate and the proposed Residential Project and to set the stage for further industrial development in the park.
- If Divco-Mwest’s theory of having this residential development stimulate the growth of the industrial space, they should asked to stand by this statement and support the concept with the Industrial Space A buildout.

Figure 10: Onsite Development Areas





PLANNING COMMISSION STAFF REPORT

MEETING DATE: May 9, 2017

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

RDCS DISCUSSION

RECOMMENDATION(S)

Discuss and provide feedback on several outstanding Residential Development Control System (RDCS) processing and procedural questions.

BACKGROUND:

In advance of the May 17, 2017 City Council RDCS workshop, this is an opportunity for the Planning Commission to discuss and provide input on several outstanding processing and procedural questions related to implementation of the RDCS, including:

- Authority to grant extensions
- Streamlining the extensions process with administratively approved RDCS development agreements
- Status of the RDCS development agreements versus statutory Development Agreements
- Multi-year project administration
- Adding allotments to agreements administratively
- The practice of swapping allotments
- Definition of delay

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. RDCS Ordinance Chapter 18.78

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.