

RESOLUTION NO. 16-

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A DEVELOPMENT AGREEMENT
AMENDMENT RDCS-2016-0002:DUNNE-LUENG
EXTENDING THE COMMENCEMENT OF
CONSTRUCTION FOR 3-MONTHS FOR 6 FISCAL
YEAR 2015-16 BUILDING ALLOTMENTS (APN 728-11-
026)**

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded six building allotments for application MMC-13-20: Dunne-Lueng for FY 2015-16; and

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

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

WHEREAS, on November 18, 2015, the City Council adopted Ordinance No. 2176, N.S which approved a development agreement for application MMC-13-20: Dunne-Lueng; and

WHEREAS, under Section 18.78.125.G of the Municipal Code, the City Council may grant an Exception to Loss of Building Allotment (ELBA) if it finds that the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 of the Municipal Code, or extended delays in environmental review, permit delays not the result of developer inaction, or allocation appeals processing; and

WHEREAS, the applicant is currently requesting to amend the development agreement to allow a for an ELBA of up to 6-months due to delays caused by the City, not a result of developer in action; and

WHEREAS, on October 22, 2009, the City Council adopted Council Policy CP-09-02, establishing criteria by which to evaluate ELBA requests filed by developers; and

WHEREAS, in accordance with Policy CP-09-02, projects that have timely completed at least six of eight steps in the permitting process would be considered favorably for an extension because it demonstrates good faith effort by the developer in commencing and completing the project. The Council may also consider other circumstances unique to a project to support an ELBA request provided the applicant provides sufficient evidence of the extraordinary or unique circumstances; and

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

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

SECTION 1. The project applicant has demonstrated that there are circumstances unique to the project that have precluded the project in achieving Step 4, therefore it does meet the criteria for favorable consideration of approving an Exception to Loss of Building Allotment.

SECTION 2. Based on the findings required in Section 18.78.125 of the Municipal Code and Council Policy CP-09-02, the Planning Commission recommends that the City Council approve a 3-month Exception to Loss of Building Allotment for the 6, Fiscal Year 2015-16 building allotments for MMC-13-20:Dunne-Lueng and amend the project development agreement as shown in the attachment Exhibit C.

PASSED AND ADOPTED THIS 26TH DAY OF JULY 2016, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Jenna Luna, DEPUTY CITY CLERK

Wayne Tanda, CHAIR

Exhibit C shall be amended as follows:

EXHIBIT C
DEVELOPMENT SCHEDULE

MMC-13-20 Dunne-Lueng
FY 2015-2016, 6 allotments

I.	SUBDIVISION APPLICATION Applications Filed:	10-13-15
II.	SITE REVIEW APPLICATION Submit Application:	06-11-15
III.	FINAL MAP SUBMITTAL Map, Improvements Agreement and Bonds: FY 2015-16, 6 units	12-30-15
IV.	BUILDING PERMIT SUBMITTAL Submit plans to Building Division for plan check: FY 2015-16, 6 units	2-28-16
V.	BUILDING PERMITS Obtain Building Permits: FY 2015-16, 6 units	07-31-16 10-31-16
VI.	COMMENCE CONSTRUCTION: FY 2015-16, 6 units	09-30-16 12-30-16

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.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

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