



**CITY COUNCIL STAFF REPORT**

**MEETING DATE:** April 5, 2006

Agenda Item # 21

Prepared By:

DS  
Project Planner

Approved By:

JK  
Community  
Development Director

Submitted By:

[Signature]  
City Manager

**AMENDMENT TO DESIRABLE INFILL POLICY**

**RECOMMENDED ACTION(S):**

Approve amendment to policy by minute action.

**EXECUTIVE SUMMARY:**

The Desirable Infill Policy, which was authorized by Measures P and C, establishes standards for expansion of the Urban Service Area for small areas. The Policy was first adopted by the City Council in 1993 and has been amended several times since that time. However, application of the policy to the Oak Meadow Plaza Urban Service Area application (USA 05-02), currently under consideration, has identified a number of aspects of the policy that may result in unanticipated consequences.

Staff has proposed amendments to the Policy that would align it more closely with the specific language contained in the Measure C initiative and clarify that the provision of permanent open space would beneficially affect the general welfare of the citizens of the City, as required by the initiative. Attached are two staff reports to the Planning Commission that fully explain the proposed changes and respond to questions/issues raised by the Commission. Also attached is a memo from the City Attorney which addresses the consistency of the proposed changes to the Policy with the language of Measure C.

The Planning Commission considered the proposed changes to the Policy at its meeting of March 14 and 28. The Commission recommends approval of the changes to the Policy as shown in the attachment. Language that is proposed to be added to the Policy is underlined and language that is proposed to be deleted is lined out.

**FISCAL IMPACT:**

No budget adjustment required.

# CITY OF MORGAN HILL

## CITY COUNCIL POLICIES AND PROCEDURES

CP 94-02

**SUBJECT: CRITERIA FOR ADJUSTMENT OF THE URBAN SERVICE BOUNDARY**

**EFFECTIVE DATE: APRIL 7, 1994**

**REVISION DATE: June 15, 1994, September 21, 2005, April 5, 2006**

### DESIRABLE INFILL STANDARDS

It shall be the policy of the City of Morgan Hill to utilize the following criteria to evaluate and approve boundary adjustments to forward to the County Local Agency Formation Commission (LAFCO) based on the Desirable Infill exception allowed by Section 18.78.070(B) of the Municipal Code.

#### Residentially Planned Properties

The City may petition LAFCO for expansion of the Urban Service Area (USA) irrespective of the amount of vacant land available for residential development currently within the Urban Service Area provided that the property subject to the proposed expansion meets the definition of "Desirable Infill". That definition includes criteria which addresses physical characteristics of the property, provision of services to the property, and benefits to the City from inclusion of the property. All three criteria must be met for a property to be added to the Urban Service Area.

#### Physical Criteria

1. Complete or pPartial properties may shall not be included. Partial properties may only be included subject to the following standards:
  - a. The portions of the properties not proposed for inclusion within the USA must be annexed at the same time as the portions proposed for inclusion; and
  - b. The portions of the properties not proposed for inclusion within the USA must be planned for open space or greenbelt use and owned by a public agency or, if not owned by a public agency, protected by a conservation easement for the benefit of the public;
2. The total acreage of land to be added to the USA a parcel shall not exceed 20 acres; and
3. The land to be included Each parcel shall be abutted at least 50% on each of two sides by property within the ascribed boundaries ~~on December 7, 1990;~~ or is abutted at least 50%

on one side by property within the ascribed boundaries ~~on December 7, 1990~~ and has two other sides within 1320 ft. of the ascribed boundaries ~~on December 7, 1990~~ (as

determined by perpendicular lines drawn from the two other sides of the land to be included property to the ascribed boundaries). For the purpose of this determination, the ascribed boundaries shall be defined as follows:

- a. In instances where the urban service boundary is within the city limits, the ascribed boundary is the urban service boundary.
  - b. In instances where the urban service boundary is coterminous with or extends beyond the city limits, the ascribed boundary is the city limits.
  - c. A parcel which does not touch property within the ascribed boundaries but is on the opposite side of the street from property within the ascribed boundaries will be considered to abut property within those boundaries.
4. Land Parcels not contiguous to the urban service area may be eligible for inclusion in the urban service area if the land parcels meets the standards contained in criteria 1 and 2 above and the property's inclusion is necessary to avoid the potential for creation of an unincorporated peninsula or island within the City. Such non-contiguous land parcels may only be included within the USA if the entire area of consideration in which the land parcels are contained does not exceed 20 acres.
5. The City Council, prior to approving expansion of the USA, shall make finding(s) documenting that the expansion is not being granted to an applicant, development or land previously included within the USA under the terms of this policy.

### City Service Criteria

The City shall only add land parcels to the Urban Service Area which would potentially be eligible to receive a passing score under Part 1 of the Residential Development Control System criteria (Section 18.78.200 of the Municipal Code).

For the purposes of this determination, properties will be evaluated against Part I of the RDCS using the following standards:

2 Points assigned if the necessary facility is currently in place and is of adequate capacity to serve the potential development of the parcel (as recommended by the City Engineer).

1 or 1.5 points assigned if the necessary facility could be reasonably installed or improved as a condition of a development of the parcel (as recommended by the City Engineer).

0 points assigned if the necessary facility could not be reasonably installed or improved as a condition of development of the parcel (as recommended by the City Engineer).

### **Beneficial Criteria**

The City shall only add land parcels to the Urban Service Area which would beneficially affect the general welfare of the citizens of the City.

Land Parcels which would be considered to beneficially affect the citizens of the City includes those which promote orderly and contiguous development ~~by~~ and allowing for the provision of needed infrastructure or allowing for the establishment of public facilities such as parks, open space and greenbelt lands under conservation easements, schools or other buildings to be owned or operated by the City, School District, Water District or any other public agency.

For the purpose of this determination, the following standards shall apply:

~~Orderly and Contiguous Development: To be considered “orderly and contiguous development” parcels must be adjacent to the Urban Service Boundary on at least 50 percent or more of the property boundary.~~

Provision of Needed Infrastructure: To allow for the completion of needed infrastructure, land parcels must be capable of providing for one or more of the following:

- a. The gridding of the existing water system.
- b. The elimination of an existing dead end street(s) or the improvement of an existing substandard street which has been identified as creating a potentially hazardous situation or provision of a new street which substantially improves circulation in an area.
- c. The installation or improvement of a sewer line(s) where the existing line or service levels are determined to be substandard.
- d. The installation or improvement of storm drainage facilities where the existing facilities or service levels are determined to be substandard.
- e. The establishment of water tanks or lift stations in areas where determined necessary by the City.

**Establishment of Needed Public Facilities:** To allow for the establishment of public facilities, ~~land a parcel~~ must be identified as a location for the establishment of a public

facility (park, school, public buildings) to be owned or operated by the City, School District, Water District or any other public agency.

The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements on which the City's findings are based, and/or convey the land needed for the public facilities or record a conservation easement for the benefit of the public, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in section 18.78.030.A, "Development allotments – Determination and distribution" of the Residential Development Control provisions of the Morgan Hill Municipal Code

### **Commercially and Industrially Planned Properties**

To encourage economic development, the City may approve expansions of the Urban Service Boundary which include properties which are contiguous to the Urban Service Boundary and are designated in the Land Use Element of the Morgan Hill General Plan for commercial or industrial use. Properties so added to the Urban Service Area shall not be eligible for conversion to residential use except as provided by Section 18.62.070 of the Morgan Hill Municipal Code.

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

**APPROVED:**

\_\_\_\_\_  
**DENNIS KENNEDY, MAYOR**



## **Memorandum**

**Date:** MARCH 14, 2006  
**To:** PLANNING COMMISSION  
**From:** COMMUNITY DEVELOPMENT DEPARTMENT  
**Subject:** AMENDMENT TO DESIRABLE INFILL POLICY

### **REQUEST**

Review of recommended changes to the City Council policy regarding amendment to the Urban Service Area – Desirable Infill.

### **RECOMMENDATION**

Recommend City Council adoption of amendments to Desirable Infill Policy, as shown in Exhibit A, by minute action.

### **BACKGROUND**

The voters of Morgan Hill approved Measure P in 1990. In addition to regulating residential growth, the initiative included restrictions regarding expansion of the City's Urban Service Area (USA) for future residential development. Those restrictions prohibit the City from requesting LAFCO approval for expansion of the USA until such time as there is less than a five-year supply of vacant, residentially planned land within the current USA. An exception to the prohibition was included in the initiative for small areas that meet certain standards. The exception is defined by the initiative as Desirable Infill. The initiative limits the eligibility of land to be included in the USA under this exception by the following criteria:

1. The area cannot be larger than 20 acres in size;
2. The area must be adjacent to the city limits on two sides or adjacent to the city limits on one side and within one quarter of a mile of the city limits on two other sides;
3. Inclusion of the area within the USA must not unduly burden city services, and
4. Inclusion of the area must beneficially affect the general welfare of the citizens of the City.

## **AMENDMENT TO DESIRABLE INFILL POLICY**

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The initiative specifies that in order to allow exceptions under Desirable Infill, the City must establish standards for their approval that would "prevent repetitively granting exceptions to the same applicant, development or parcel."

In 2004, the voters approved Measure C. That Measure updated Measure P and extended residential growth control ten years to the year 2020. Measure C strengthened the requirements for Desirable Infill by establishing more definitive standards for the benefits that must accrue to the City as a result of adding land to the USA.

Measure C is codified in the Municipal Code as the Residential Development Control System (RDCS).

The City Council first adopted a policy for Desirable Infill in 1993. The policy has been amended several times since its adoption. A copy of the current policy, with proposed amendments that are described below, is attached for Commission review.

### **PROPOSED POLICY AMENDMENTS**

The Desirable Infill policy has served the City well for a number of years. However, application of the policy to the Oak Meadow Plaza Urban Service Area application (USA 05-02) and Annexation application (ANX 06-01), currently under consideration, has identified a number of aspects of the policy that may result in unanticipated consequences. Following is a description of the sections of the policy that staff believes warrant further review and amendment.

#### **Physical Criteria #1:**

This criterion currently reads as follows:

1. Partial properties shall not be included.

Staff believes the purpose of this standard is to prohibit partial properties from being annexed into the city limits. Annexation of partial properties is strongly discouraged by LAFCO policy and prohibited by State law.

The Oak Meadow Plaza Urban Service Area and Annexation applications propose to annex 34 acres into the city limits. Twenty of those acres, including partial properties, would be included in the USA and planned for residential development. The other 14 acres are steeply sloped and would be maintained as open space. The entire 34-acre area would be part of a single project with the open space maintained by the homeowners association formed for the residential portion of the property.

Staff recommends the prohibition against adding partial properties to the USA be modified to allow partial properties to be included within the USA provided that the portions of the properties not proposed for inclusion be annexed along with the portions in the USA. It is

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further recommended that this only be allowed when it would promote preservation of open space and/or greenbelts. Allowance for open space or greenbelt areas within the city limits, yet outside the USA, would enhance the City's ability to achieve its planning objectives at the City's edges.

### Physical Criteria #2:

This criterion currently reads as follows:

2. The total acreage of a parcel shall not exceed 20 acres.

If Physical Criteria 1, above, is to be changed, amendment to Criteria 2 would also be appropriate to limit acreage of "land to be added to the USA" to 20 acres or less. Consistent with this amendment, language throughout the policy should be changed to, where appropriate, to refer to "land" being added to the USA instead of "parcels."

### Physical Criteria #3:

This criterion currently reads as follows:

3. Each parcel shall be abutted at least 50% on each of two sides by property within the ascribed boundaries on December 7, 1990; or is abutted at least 50% on one side by property within the ascribed boundaries on December 7, 1990 and has two other sides within 1320 ft. of the ascribed boundaries on December 7, 1990 (as determined by perpendicular lines drawn from the two other sides of the property to the ascribed boundaries). For the purpose of this determination, the ascribed boundaries shall be defined as follows:
  - a. In instances where the urban service boundary is within the city limits, the ascribed boundary is the urban service boundary.
  - b. In instances where the urban service boundary is coterminous with or extends beyond the city limits, the scribed boundary is the city limits.
  - c. A parcel which does not touch property within the ascribed boundaries but is on the opposite side of the street from property within the ascribed boundaries will be considered to abut property within those boundaries.

This criterion was developed in response to a provision contained in Measure P (and extended into Measure C) regarding limitations for Desirable Infill. Specifically, the provision provides that if the City allows exceptions for Desirable Infill, it must "include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel." The establishment of a fixed date (December 7, 1990, the effective date of Measure P) in the policy was intended to prevent such repetitive approvals.

The applicant who filed the Oak Meadow Plaza application is not the same as prior applicants for USA expansion and the subject property is not part of a development or parcel that previously received USA expansion approval. Yet the current criterion would preclude the property from being added to the USA.

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Staff recommends this standard be amended to more closely reflect the language in the RDCS. Specifically, reference to a specific date associated with the city boundaries should be replaced with more direct findings regarding the applicant, development and property proposed for addition to the USA. The specific language proposed is shown in the attached policy.

### Beneficial Criteria - Orderly and Contiguous Development

The Desirable Infill policy limits additions to the Urban Service Area to land that would meet certain physical criteria, service criteria, and would beneficially affect the general welfare of the citizens of the City. Benefit is defined by the criteria to include land that would result in "orderly and contiguous development" and (*emphasis added*) that would 1) provide needed infrastructure or 2) allow for the establishment of public facilities. The portion dealing with orderly and contiguous development currently reads as follows:

Orderly and Contiguous Development: To be considered "orderly and contiguous development" parcels must be adjacent to the Urban Service Boundary on at least 50 percent or more of the property boundary.

This provision of the Desirable Infill policy exceeds the standard established for beneficial effects as contained in the RDCS. The RDCS defines beneficial effects as those "which promote orderly and contiguous development by (*emphasis added*) facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency." The requirement that an area proposed to be added to the USA be adjacent to the current USA on at least 50 percent of its boundary significantly exceeds the RDCS standard that would allow additions that are adjacent to the city limits on one side and within one-quarter mile on two other sides. In that this policy standard would potentially preempt an application of a provision of the RDCS, staff recommends it be eliminated.

Establishment of Public Facilities: The RDCS and Desirable Infill policy identifies parks, schools and public buildings as examples of the types of public facilities that would beneficially affect the general welfare of the citizens of the City. Staff would recommend adding to the list of examples open space and greenbelt lands which are under conservation easement as such lands would also beneficially affect the welfare of the citizens of the community.

### Attachments

1. Exhibit A, Recommended Amendments to the City Council Policy establishing standards for Desirable Infill.
2. Section 18.78.070 of the RDCS, addressing Desirable Infill

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### **18.78.070 Urban Service Area Restrictions.**

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable infill. "Desirable infill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The city council, prior to approving any expansion of the urban service area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services and that the expansion would beneficially affect the general welfare of the citizens of the city, as defined in the following paragraph.

Areas whose addition to the urban service area would be considered to beneficially affect the general welfare of the citizens of the city include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools or other buildings to be owned or operated by the city, school district, water district or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns) or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the city's findings that the expansion would beneficially affect the general welfare of the city must be installed, or the land needed for public facilities that are the basis of the city's findings that the expansion would beneficially affect the general welfare of the city must be conveyed to the public agency, within five years of the date the area is added to the urban services area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the city's findings are based or convey the land needed for the public facilities on which the findings are based must be secured prior to official action

adding the area to the urban services area through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the existing county subdivisions enumerated in Section 18.78.030(A) may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these existing county subdivisions may be added to the city urban service area and annexed into the city without otherwise meeting the test for desirable in-fill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any court judgment.

D. In order to assure that city services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered infill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County general plan as of March 1, 1990. (Ord. 1665 N.S. § 3 (part), 2004; Ord. 1010 N.S. § 2 (F), 1990)



## Memorandum

**Date:** MARCH 28, 2006  
**To:** PLANNING COMMISSION  
**From:** COMMUNITY DEVELOPMENT DEPARTMENT  
**Subject:** AMENDMENT TO DESIRABLE INFILL POLICY

### REQUEST

Review of recommended changes to the City Council policy regarding amendment to the Urban Service Area – Desirable Infill.

### RECOMMENDATION

Recommend City Council adoption of amendments to Desirable Infill Policy, as shown in Exhibit A, by minute action.

### BACKGROUND

This request was considered by the Commission at its March 14 meeting and continued to this date. Attached are the staff report and supporting documents from that meeting.

At the meeting, Commissioners raised a number of questions and comments regarding the proposed amendments to the Desirable Infill policy. Following are those questions and comments and Staff's responses to the first two of them. The City Attorney is drafting a memo in response to the last two questions and comments. Copies of that memo will be distributed to the Commission on Monday.

1. Should the Orderly and Contiguous requirement be eliminated from the Beneficial Criteria?

Response: The Orderly and Contiguous standard of Desirable Infill Policy requires any property proposed to be added to the Urban Service Area (USA) must be adjacent to the Urban Service Boundary on at least 50 percent or more of the property boundary. There is no basis for this requirement in Measure C. Further, the requirement significantly exceeds the RDCS standard that would potentially allow

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additions to the USA that are adjacent to the city limits on one side and within one-quarter mile on two other sides. Staff is unaware of the number of areas that have the potential to be added to the USA under the Desirable Infill Policy that would be preempted by the existing Orderly and Contiguous standard. Insofar as this standard significantly exceeds the requirements of Measure C and has the potential to preempt approval of applications that meet all Measure C standards, staff continues to recommend its elimination.

2. In lieu of elimination of the December 7, 1990 date from the Physical Criteria, replace it with the effective date of Measure C.

Response: Neither Measure P nor Measure C require property to be within one-quarter of a mile of the city limits as they existed on any date. Both Measures require that the policy regulating Desirable Infill "include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel." The establishment of a fixed date (December 7, 1990, the effective date of Measure P) in the policy was intended to prevent such repetitive approvals. Replacement of the December 7, 1990 date with the effective date of Measure C (March 2, 2004) would, in the near term, provide more flexibility in review of USA requests. In the long term, it may create the same problem as currently exists.

3. Replacement of the word "parcel" with "land" throughout the policy, and
4. Addition of conservation easements to the list of infrastructure improvements that would beneficially affect the general welfare.

### Attachments

1. March 14, 2006 Staff Report
2. Exhibit A, Recommended Amendments to the City Council Policy establishing standards for Desirable Infill.
3. Section 18.78.070 of the RDCS, addressing Desirable Infill



**MEMORANDUM**

**TO:** Kathy Molloy Previsich, Director of Community Development  
Jim Rowe, Planning Manager  
David Bischoff, Planning Consultant

**COPY:** Ed Tewes, City Manager

**FROM:** Janet Kern, City Attorney

**DATE:** March 27, 2006

**SUBJECT:** Issues Relating to Desirable Infill Standards Policy

Tomorrow, March 28, 2006, the City Planning Commission will consider certain proposed amendments to the City Council policy regarding expansion of the Urban Service Boundary for Desirable Infill. In light of that upcoming discussion, Staff has requested clarification of certain terms in the Morgan Hill Municipal Code Chapter 18.78, Residential Development Control System (Measure C).

**ISSUE**

1. Does a permanent open space easement satisfy the requirement set forth in Section 18.78.070 for any proposed expansion of the City's urban service area to "beneficially affect the general welfare of the citizens of the city"?
2. May only a portion of a legal parcel be included in a proposed expansion of the City's urban service area?

**BACKGROUND**

Subsection A of Section 18.78.070 prohibits the addition of land to the City's urban service area until such time as land within the existing urban service area is insufficient to accommodate five years of future residential growth in accordance with the development allotment process. Subsection B of Section 18.78.070 sets forth an exception to that prohibition for "desirable infill". Subsection B authorizes the City Council to formulate standards to determine "desirable infill" and also provides certain direction and guidance to the City Council in formulating those standards.



Kathy Molloy Previsich; Jim Rowe; David Bischoff  
Re: Issues Relating to Desirable Infill Standards Policy  
March 27, 2006  
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The first paragraph of Subsection B provides direction that the City Council "shall make findings documenting that the expansion would not unduly burden city services and that the expansion would beneficially affect the general welfare of the citizens of the city, as defined in the following paragraph." (Underlining added.)

The second paragraph of Subsection B provides guidance to the City Council in making those findings. Rather than using mandatory language, the second paragraph describes "areas whose addition to the urban service area would be considered to beneficially affect the general welfare of the citizens of the city [to] include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities, such as parks, schools or other buildings to be owned or operated by the city, school district, water district or any other public agency." (Underlining added.)

Effective April 7, 1994, and in accordance with Subsection B of Section 18.78.070, the City Council did adopt Criteria for Adjustment of the Urban Service Boundary and has revised that policy on June 15, 1994 and September 21, 2005 ("Infill Policy"). A recommendation on further revision to the Infill Policy will be before the City Planning Commission tomorrow.

## ANALYSIS

### The First Issue

On February 4, 2006, the City Council approved the Predevelopment Memorandum of Understanding Regarding Certain Undeveloped Property Located on Sunset, Edmundson and DeWitt in Unincorporated Santa Clara County (the "MOU"). Section 4(b)(iv) of the MOU provides: "The permanent open space easements and other limitations on the Edmundson Property and DeWitt Property would provide the required community benefit for inclusion of the 19.99 acre portion of the Sunset Property in the Urban Service Area as "infill development" pursuant to Measure C."

The proposed revision to the Infill Policy will clarify that a permanent open space easement, granted to and recorded for the benefit of the City, qualifies as an acceptable method of satisfying the requirements of Chapter 18.78.070, Subsection B. There is no language in Chapter 18.78.070 which prohibits the City Council from making such a determination. There is support for such a determination in the Findings and Purposes of Chapter 18.78.010, Subsection H (enacted with passage of Measure P) which states: "The unique character of the city depends on its rural surroundings. In order to maintain this rural atmosphere, provide a buffer against development and preserve a greenbelt legacy for future generations, the city must take steps to preserve open space and

agricultural land and public parklands in and around the city." Upon adoption of Measure C, the foregoing language was retained and supplemented with by findings stating "Should the City in the future establish an Urban Limit Line or Greenbelt, no residential development or expansion of the Urban Growth Boundary or Urban Service Area could be approved pursuant to the RDCS Update that is inconsistent with such Urban Limit Line or Greenbelt." Therefore, it appears the intent is to allow the City Council discretion to establish acceptable criteria for "desirable infill" and to encourage greenbelts. Permanent open space easements are consistent with greenbelt uses.

### The Second Issue

The proposed revision to the Infill Policy also will clarify the conditions under which a partial legal parcel may qualify for treatment as "desirable infill." Subsection B of Chapter 18.78.070 describes "desirable infill" as "a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel."

As stated above, Subsection B of Chapter 18.78.070 provides guidance to the City Council in establishing criteria for "desirable infill." The use of the word "parcel," "land," "area," "development," "boundary," etc. appear to be descriptive rather than attempting to convey any precise legal meaning. Therefore, the City Council should not be restricted from taking an otherwise legal action that satisfies other Local Agency Formation Commission requirements due to the use of the word "parcel."

### CONCLUSION

The City Council is authorized by Measure C to adopt criteria for "desirable infill". For the City Council to find that the general welfare of the citizens of the city have been beneficially affected by obtaining a permanent open space easement, granted to and recorded for the benefit of the City, would seem a reasonable and defensible determination. Further, there does not appear to be any restriction on the City Council adding partial parcels of land as "desirable infill" assuming all other conditions have been met.

Ms. Maskell said that there was a laborious process on the committee voting on every aspect of design, and that the design before the Agency Board was unanimously supported by the committee.

Agency Member Lee inquired as to how much of the sign an individual would see from a distance driving or walking by.

Mr. Andrews stated that he was satisfied that as you approach the entry sign, it would be prominent and noticeable.

Vote:            *The motion carried unanimously (5-0).*

### ***City Council Action***

#### **OTHER BUSINESS:**

#### **20. REVIEW OF COUNCIL POLICIES RELATED TO COMMUNITY DEVELOPMENT DEPARTMENT**

Community Development Director Molloy-Previsich presented the staff report relating to 14 City Council policies regarding planning issues; several specifically relating to the City's Residential Development Control System (RDSCS). She indicated that staff is recommending that several of the policies be deleted; consolidating items not yet codified into one new RDSC Council policy. She informed the Council that several other policies relate to design guidelines and standards. She recommended that these policies be deleted with the understanding that the design guidelines and standards will be incorporated into the new design guidelines and standards handbook. One policy relates to the schedule when individuals can apply for major land use decisions.

#### **Criteria for Adjustment of the Urban Service Boundary**

Ms. Molloy Previsich indicated that the current policy is meant to provide urban guidance to an existing RDSCS ordinance section; clarifying what is meant by "abutting." She addressed and explained the recommended changes to this policy as addressed in the supplemental staff report.

Council Member Grzan noted that a domino affect would occur when you bring property into the city limits: making adjacent parcel(s) eligible. He did not know if this was the intended desire.

Ms. Molloy Previsich informed the Council that there is somewhat of a domino affect even with the existing policy. She indicated that the voter approved RDSCS allows for desirable infill proposals to expand the urban service boundary.

City Manager Tewes clarified that property owners would be eligible to apply to have the Council make a subsequent discretionary decision about whether or not to allow the property(ies) to come into the urban service boundary. Today's rules do not give some property owners the ability to apply for an urban service boundary adjustment. The existing rules outline the properties eligible to apply for a discretionary approval by the City Council.

Ms. Molloy Previsich said that the proposed change offers the greatest amount of potential for straightening out the variety of ins and outs of boundaries that occur on the south Monterey Road area. She clarified that any property(ies) proposed for inclusion into the urban service area has (have) to be within the urban limit line. She stated that the proposed amendment offers a little more flexibility for applicants to be eligible to propose an adjustment to the urban service boundary.

Council Member Grzan noted that when you redefine this policy, many properties on the edges could be eligible to apply for an urban service boundary adjustment; subject to discretionary approval by the Council.

Ms. Molloy Previsich identified the application process relating to urban service boundary adjustment; including CEQA review and a public hearing; with the Council making the ultimate decision on whether to forward the application to LAFCo. She indicated that LAFCo can overturn the City's approval; noting that LAFCo will only accept one application per year from the City.

Mayor Pro Tempore Carr noted that this is only one of three tests to qualify for urban service boundary adjustment.

Ms. Molloy Previsich brought to the Council's attention the fact that language is contained in the policy pertaining to commercial and industrial planned properties. She stated that the RDCS ordinance imposes a limitation on properties being brought into the urban service area as commercial and industrial, only to later change to residential zoning. She indicated that the existing policy contains language that stipulates that in order to encourage economic development the City may approve expansion of the urban service boundary. This includes properties contiguous to the urban service area boundary and are designated in the land use element for commercial or industrial use. The policy further states that properties so added to the urban service area, shall not be eligible for conversion to residential use except as provided by the zoning amendment chapter. She informed the Council that staff received an application for a general plan amendment for property currently zoned public facilities (PF). Staff sought an opinion from the City Attorney who ruled the property was eligible to file a zoning amendment application, and that staff needed to process the application. Therefore, staff is currently processing an application for a general plan amendment to change the land use designation from PF to residential.

Ms. Molloy Previsich informed the Council that the existing policy was silent on PF properties. Staff is suggesting the inclusion of a paragraph relating to public facility properties; including State law provisions in the policy. This amendment would limit changes for two years. She informed the Council that there was some discussion at the Planning Commission level with some Commissioners feeling that the intent of the RDCS was that commercial/industrial restriction was supposed to apply to all none residential lands. However, this is not stated in the RDCS ordinance, zoning amendment chapter or the existing Council policy. She informed the Council that the Planning Commission recommends the City not add the policy and that the City be silent on this. She recommended the Council make a deliberate decision on whether or not to amend the policy to add State law provisions.

Council Member Grzan noted that this is a complex matter, making it difficult for the potential applicant and the City, should the policy remain silent. It may also subject the City to litigation. He inquired why the City has not drawn the line and state that the line would remain in place until the next general plan amendment. He did not know why the City would want to have a policy in place that would allow the Council to move the line because the applicant believes he is justified to do so.

Ms. Molloy Previsich felt that the authors of the RDCS may have wanted to incorporate flexibility due to geographic location as well as the city services criteria; providing the necessary public facilities. She stated that there is flexibility in the proposal; however, a property owner would have a high hurdle to jump because they would have to demonstrate beneficial improvements that benefit the public in terms of public infrastructure/services. She noted that this is still a discretionary application where the Council decides whether the application gets forwarded to LAFCo; with LAFCo making the ultimate decision.

Council Member Grzan reiterated that this creates a domino affect for adjacent properties that were not eligible; making them eligible.

Mayor Tate recommended that the policy state that it would apply to public use facilities. He stated his support of the first part of staff's recommendation, but does not support the second part where it is being recommended that PF properties added to the urban service area shall not be eligible to convert to residential for a period of two years from the date added to the urban service area, and officially annexed to the City of Morgan Hill. He supported the conditions that would have to apply to commercial properties rather than an arbitrary two year limitation.

Ms. Molloy Previsich informed the Council that current State law stipulates two years for changes. She noted that it would be the City's discretion on how it wants to implement its policies and ordinance.

City Manager Tewes felt that it would be better to be clear about what the City's policy is with respect to this type of land use, whether the PF land use can be converted and under what circumstances. He stated that some commissioners prefer to be silent to allow interpretation of the policy. It is staff's belief that it would be better to clarify the policy.

Mayor Tate stated his support of the suggestion to provide clarity, but did not support the two year period. He would support a policy that reviews the years of supply of land the City has.

Ms. Molloy Previsich said that the Council could amend the current zoning amendment chapter to apply to PF zoned property that currently applies to commercial and industrial planned properties.

Mayor Pro Tempore Carr expressed concern with the two year proposal. It was his belief that the test for commercial and industrial would be difficult to apply to a quasi public/public use. As proposed, PF properties deemed as having a public use could be brought into the urban service boundary, and never be used for its intended purpose. He felt that PF zoned property could be changed to a residential use and the developer would make a lot of money. He did not believe this was the intent of the policy. He did not know if it was just a matter of timing, or whether another test should be included before the City considers a change to the PF zoning designation.

City Attorney Kern clarified that the applicant is processing an application. However, this does not mean the zoning automatically gets converted. In order to process a general plan amendment application, it would require all the individuals/bodies in the process to determine that the general plan designation needs to be changed. She stated that there has to be substantially good reasons/justification why the land use designation should be converted from its current general plan designation.

City Manager Tewes stated that the City cannot prejudge an application for a general plan amendment. He did not believe there would be a significant increase in the number of opportunities for applications that would result in any of the changes being discussed.

Mayor Tate agreed with Mayor Pro Tempore Carr's comments. However, he felt that requests to change the general plan from public facilities to residential would not be a common occurrence. If State law precludes a two year minimum before a property owner can request a general plan change, he could accept this time limit because he did not believe the City would be faced with such requests. He supported being specific about the statement.

**Action:** *It was the consensus of the City Council to concur with staff's recommendation to include the paragraph, as recommended by staff.*

#### RDSC Implementation Policies

Ms. Molloy Previsich recommended the deletion of the current RDSC policies as staff is proposing a new policy entitled "RDSC Implementation Policies." She clarified that staff has taken portions of the other existing RDSC policies that are not codified; and consolidating them into one new policy.

#### Native Tree Policy

Ms. Molloy Previsich said that it is being proposed to shift the policy regarding native trees into the design guidelines and standards.

#### Offsite Improvements for Industrial Areas

Ms. Molloy Previsich indicated that staff noted this policy is codified in the Municipal Code; therefore, this policy is no longer needed.

#### Schedule for Consideration of Major Land Use Planning Decisions

Ms. Molloy Previsich indicated that this policy relates to general plan amendments and urban service area boundary amendments, as well as deadlines for filing applications for RDSC allocations. She stated that the RDSC policies have been moved into the proposed policy or are codified. She informed the Council that general plan amendments and the urban service area applications have established submittal deadlines and dates for Council consideration. She stated that CEQA needs to be conducted, and takes a lot of time; misleading applicants about the timing for Council consideration. She said that State law allows general plan amendments to be considered up to four times a year per element. Staff recommends expansion of the policy to address the schedule and to include State law regarding filing general plan amendment applications. Staff recommends retaining the twice a year timeframe for private

applications, and that the policy indicate that the City will accept applications for general plan amendment during the months of January and June with the planning commission or the Council initiating general plan amendments any time of the year. It is further recommended that the Community Development Director manage the processing and scheduling of applications; possibly considering the consolidation of certain applications and conducting one CEQA document/traffic study. Staff would make sure the City does not exceed the State law provisions of amending the general plan elements more than for times per year. The policy is also being amended to include other sections of State law and instructions to staff about referring general plan amendments to other agencies. She informed the Council that the Planning Commission recommends adding an explicit provision with respect to the timing of public hearings; clarifying that the public hearing is not to occur until after the public review period and the CEQA documents are completed.

#### Urban Service Area (USA) Boundary Amendment Schedule

Ms. Molloy Previsich indicated that the previous policy stated that applications for USA needed to be filed by March 15, and that the Council would consider the request during the month of May. She stated that due to CEQA and other scheduling matters, this timing does not really take place. The recommended policy states that the application may be initiated by the Council, Planning Commission or owners of the property. The Planning Commission or Council could initiate a boundary amendment any time of the year. The City is to accept applications from private property owners in January of each year. She stated that staff would manage the preparation of the CEQA document and the timing of hearings; submitting only one application per year to LAFCo.

#### Street Naming Policy

Ms. Molloy Previsich noted that initially, the staff report before the Council suggested one additional change. She informed the Council that the Planning Commission supported the policy. Staff had a question regarding a lane indicating a private street and not a public right of way. She said that the Planning Commission recommends the Council include a clarifying statement that a lane is not necessarily a private street. However, she heard from the Public Works Director who supports private streets being called lanes as the City would not be responsible for street maintenance. She informed the Council that staff is recommending that it retain the policy as written (no changes proposed).

#### Lane Use Near Streams

Ms. Molloy Previsich indicated that land use near streams was an interim policy while the City was working on the Water District's water collaborative process for creating guidelines and standards for properties that have streams or are adjacent to streams. She stated that this effort has been completed. She informed the Council that the design review chapter will be coming to the Council in a workshop this fall. The proposed ordinance will make reference to the guidelines and standards of the water collaborative - one has to be substantially in conformance with the guidelines and standards. She stated that the Council will be adopting the guidelines and standards as part of the design guidelines. She said that the policy language and the handbook will become a part of the City's regulation. Therefore, staff recommends this policy be deleted

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Early Start of Construction Policy for RDCS

Ms. Molloy Previsich indicated that one minor amendment is being proposed. She stated that all timelines and deadlines used to be a part of the statutory development agreement approved by the Council. The City shifted most of the deadlines into resolutions that the Planning Commission has authority over; only keeping the hard deadline under the RDCS in the development agreement. She stated that there is some language contained in the policy to reflect this practice.

Tentative Subdivision Map Approval Prior to the Award of Building Allocations through the RDCS (CP-06-04)

Ms. Molloy Previsich informed the Council that no changes are proposed to this policy.

Score and Award of 100 allotments made Available through Measure F, adopted in 2006

Ms. Molloy Previsich indicated that these are policies recently adopted in 2007 on how to score and award the 100 allotments made available through Measure F in November 2006. However, recently, a question was put forth regarding a particular type of application filed for Measure F allocation. In reviewing the policy, the policy proposes an obstacle to filing a Measure F application. The policy in place is stricter than Measure F, adopted by the voters. She informed the Council that the policy states that the project should represent the ultimate development of a parcel created before December 6, 2006; an eligibility criteria. It was her belief the intent of Measure F, in limiting projects to 25 or fewer allotments, was that projects with allocations would not return to get Measure F allocations. It was felt that individuals with Measure C allotments would not use these allotments and would come in for Measure F allotments instead. She said that additional language is being recommended to address currently allocated projects to clarify that you cannot substitute allocations that were previously awarded. The policy is proposed to remove the restriction on whether the project has to be the ultimate development of the site. It is being suggested by staff that the Council delete provisions 4 and 6.

Ms. Molloy Previsich recommended that the timing of when the Measure F competitions are to occur be clarified. She noted that the policy was adopted in April 2007. Since that time, staff has been talking to possible applicants, and is reviewing development standards for the downtown; trying to generate interest in filing applications to take advantage of Measure F allotments. Staff suggests the City shift back the deadline of filing for the first batch of 50 allotments available. The City is to establish a filing date of December 1 for the first competition. For the remaining 50 units, applications would need to be submitted by September 2008, or later, should so be directed by the Council.

Council Member Sellers indicated that the City should have designated how Measure F would be implemented (process) when it placed Measure F on the ballot. He appreciated the efforts made to catching some of the problems that were put into place, via a policy, that may be counter to what the voters wanted, and counter to what may be a good policy associated with the Downtown Plan. He felt it would be important to identify how the City would go through the process as it moves forward.

## SUPPLEMENTALS TO ITEM 1

City Manager Tewes informed the Council that staff would return to the Council on August 22 with the final versions of whatever policy direction is given by the Council this evening. The Council can review clear, clean copies of the proposed policies. However, he said that it would be helpful to staff if the Council indicates its consensus on policy choices.

**Action:** *It was the consensus of the majority of the Council to concur with staff's recommendation for the criteria of the adjustment of the urban service boundary; including the statement relating to quasi public land use, and pull back a little bit from the either/or boundary.*

Council Member Grzan stated that he does not want the Council to open a can of worms where the City would have a number of applicants applying for expansion, and that based upon the makeup of the Council, the urban limit line starts to expand greatly. He stated that he would like the line to be contained as it is, and be careful as the City moves out in this direction. He stated that he was not comfortable with the policy.

Mayor Pro Tempore Carr noted that this is just one of three tests that would need to be applied, per voter approval mandate.

**Action:** *It was the consensus of the Council to support the deletions, and the creation of the new policy that consolidate all policies, per staff's recommendation.*

Council Member Grzan expressed concern with the word "delete" because in actuality, staff is not deleting, but shifting the policies. Expressing deletion of the policies gives the impression that the City no longer has a native tree policy; noting that it is going into a different area.

Mayor Tate stated that as the policies are being taken away as an identified policy number, this is the reason staff used the nomenclature of "deletion." However, he concurred with what Council Member Grzan is stating.

**Action:** *It was clarified that there is Council consensus on everything presented this evening; all current versions of all recommendations before it.*

Council Member Grzan noted that some of the proposed changes, as listed in the supplemental staff report, have not gone back to the Planning Commission. He inquired whether staff would be proposing to take the new amendments back to the Planning Commission.

Ms. Molloy Previsich stated that she did not believe it would be necessary to take back the new changes to the Planning Commission because the current recommendations are more restrictive than what was forwarded to the Council by the Planning Commission. She did not believe the Planning Commission would have any concerns about policies being more restrictive.

Mayor Tate opened the floor to public comment. No comments were offered.

**Action:** *Staff to return with amendments, as identified above, for Council review/approval.*

# SUPPLEMENTALS TO ITEM 1

## RESOLUTION NO.

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF THE INCLUSION OF 19.99 ACRES LOCATED WEST OF SUNSET AVENUE, INTO THE CITY'S URBAN SERVICE AREA (APNs PORTIONS OF 767-15-026, 767-19-028, -020 AND -024)**

**WHEREAS**, Urban Service Area restrictions are codified in the Morgan Hill Municipal Code Section 18.78.070; and

**WHEREAS**, the Morgan Hill City Council has adopted a policy defining criteria for adjustment of the Urban Service Boundary as provided for in Morgan Hill Municipal Code Section 18.78.070(B) referenced herein as CP 94-02 (amended from time to time); and

**WHEREAS**, a Mitigated Negative Declaration (MND) was adopted for the project on February 4, 2015 in accordance with the California Environmental Quality Act (CEQA). Changes to the project since that time have been evaluated. On the basis of substantial evidence in the light of the whole record no new significant impacts have been identified. As such, an Addendum to the previously adopted MND is warranted; and

**WHEREAS**, such request was considered by the Planning Commission at its regular meeting of July 14, 2015, at which time the Planning Commission recommended approval of Urban Service Area application, USA-05-02: Edmundson-Oak Meadow Plaza; 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 Planning Commission finds that the proposed inclusion of territory into the Urban Service Areas is consistent with the General Plan, Desirable Infill Policy defined by Morgan Hill Municipal Code Section 18.78.070.B, and CP 94-02.

**SECTION 2.** The Planning Commission finds that the project complies with CP 94-02 Physical Criteria 1.a and 1.b because:

- The 19.99-acre Area 1 shown on Exhibit A, is proposed to be included in the USA boundary; and
- Areas 2 and 3 that are outside of the USA would have its General Plan land use designation changed to Open Space, and a conservation easement would be recorded on it for the benefit of the City. Areas 1, 2 & 3 are proposed for annexation into the City.

**SECTION 3.** The Planning Commission finds that the project has been evaluated and would receive a passing score under Part 1 of the City's Residential Development Control System.

**SECTION 4.** The Planning Commission finds that the project is consistent with the CP 94-02 "Beneficial Criteria" in that the project proposes to record open space easement on all lands over 10 percent slope owned by applicant, with the exception of Area 1 and building envelopes identified in the Memorandum of Understanding (MOU 2015). This commitment would result in approximately 30.77 acres of land recorded in open space easements of the project site. In addition, the project proposes to establish trailheads and easements for trails throughout the project. These commitments would meet the beneficial criteria for inclusion in the USA boundary by "allowing the establishment of public facilities such as parks, open space and greenbelt lands under conservation easements".

**SECTION 5.** A Mitigated Negative Declaration (MND) was adopted for the project on February 4, 2015 in accordance with the California Environmental Quality Act (CEQA). Changes to the project since that time have been evaluated. On the basis of substantial evidence in the light of the whole record no new significant impacts have been identified. As such, an Addendum to the previously adopted MND is warranted

**PASSED AND ADOPTED THIS 14TH DAY OF JULY 2015, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:**

**NOES: COMMISSIONERS:**

**ABSTAIN: COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

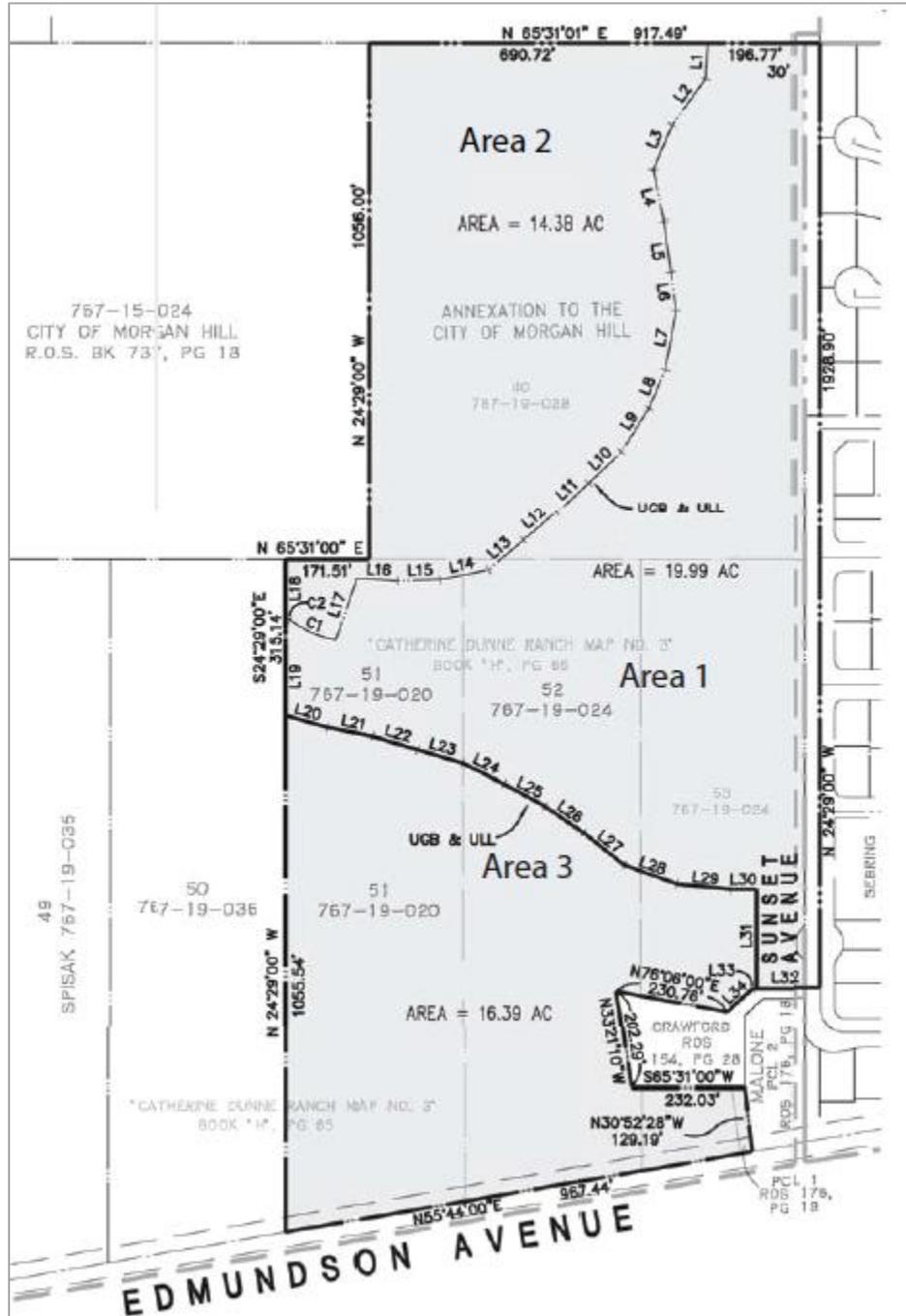
**APPROVED:**

\_\_\_\_\_  
**TERESA CRUE, Deputy City Clerk**

\_\_\_\_\_  
**JOE MUELLER, Chair**

Date: \_\_\_\_\_

EXHIBIT A



## **SUPPLEMENTALS TO ITEM 1**

### **RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF ALTERATION OF BOUNDARIES OF THE CITY OF MORGAN HILL BY ANNEXATION THERETO OF CERTAIN TERRITORY DESIGNATED "OAK MEADOW PLAZA", AND WITHDRAWAL OF SAID TERRITORY (50.76 ACRES/APNS 767-15-026, 767-19-028, & -024, AND 767-19-020) FROM THE SOUTH SANTA CLARA COUNTY FIRE PROTECTION DISTRICT.**

**WHEREAS**, such request was considered by the Planning Commission at its regular meeting of July 14, 2015, at which time the Planning Commission recommends City Council approval of Annexation Application ANX-06-01: Edmundson-Oak Meadow Plaza; and

**WHEREAS** the property, 50.76 acres west of Sunset Avenue (APNS 767-15-026, 767-19-028, & -024, and 767-19-020) is found contiguous to the City of Morgan Hill and is within this urban service area; and

**WHEREAS**, the South Santa Clara Fire Protection District would be affected by the proposed annexation by the removal of the subject area from the district; and

**WHEREAS**, said territory is uninhabited and all owners of land included in proposal have consented to this annexation; and

**WHEREAS**, annexation would provide for use of City services; and

**WHEREAS**, the Planning Commission has determined that the proposed annexation does not split lines of assessment or ownership nor would it create islands of areas to which it would be difficult to provide municipal services; and

**WHEREAS**, this territory is recommended to be pre-zoned under adopted Resolution \_\_\_ on June 23, 2015, as Open Space and R1 (12,000).

**WHEREAS**, a Mitigated Negative Declaration (MND) was adopted for the project on February 4, 2015 in accordance with the California Environmental Quality Act (CEQA). Changes to the project since that time have been evaluated. On the basis of substantial evidence in the light of the whole record no new significant impacts have been identified. As such, an Addendum to the previously adopted MND is warranted; 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 Planning Commission recommends that the City Council find that the said territory is uninhabited and comprises approximately 50.76 acres.

**SECTION 2.** The Planning Commission recommends that the City Council find that the annexation is consistent with the orderly annexation of territory within the City's urban service area and is consistent with the City policy of annexing when providing City services.

Pursuant to Section 56757 of the California Government Code, it is recommended the City Council of the City of Morgan Hill annex to the City of Morgan Hill the territory as described in attached Exhibit "A" and illustrated in attached Exhibit "B".

**SECTION 3.** A Mitigated Negative Declaration (MND) was adopted for the project on February 4, 2015 in accordance with the California Environmental Quality Act (CEQA). Changes to the project since that time have been evaluated. On the basis of substantial evidence in the light of the whole record no new significant impacts have been identified. As such, an Addendum to the previously adopted MND is warranted; and the custodian of the documents or other material, which constitute the record, shall be the Community Development Department.

**SECTION 4.** The Planning Commission adopted Resolution \_\_\_\_\_ recommending that the City Council enact an ordinance pre-zoning the subject territory with an Open Space and R1 (12,000) zoning designation.

**SECTION 5.** The Planning Commission adopted Resolution \_\_\_\_\_ recommending that the City Council approve Urban Service Area adjustment to be considered by the Local Agency Formation Commission of Santa Clara County.

**SECTION 6.** The proposed annexation is consistent with the City's General Plan in that:

a. The project is consistent with the Morgan Hill General Plan regarding the Development Pattern Goal 2 and Policy 2c:

Goal 2. An orderly and efficient pattern of development

Policy 2c. Consider land within or adjacent to the city as available for urban development only when it is included within the Urban Service Area and Urban Growth Boundary and can be developed in a manner that will be cost-effective to the City.

The subject properties are within the Urban Limit Line and UGB, however, are not within the USA. As a part of this project an adjustment to the USA is proposed. With the approval of the USA, the project is consistent with this policy.

b. The project is consistent with the Morgan Hill General Plan regarding the Urban Growth Boundary Goal 3, Policies 3b, 3d and 3e:

Goal 3. A long-term Urban Growth Boundary and Urban Limit Line around the City

Policy 3b. Allow Urban Service Area expansions only within the long-term Urban Growth Boundary and for lands with urban designations; the timing and extent of Urban Service Area expansion shall remain consistent with established Urban Service Area expansion policies and ordinances.

Policy 3d. Establish and maintain an Urban Limit Line around the City to serve as a longer term version of the Urban Growth Boundary and define the inner limits of potential greenbelt areas.

Policy 3e. The Urban Limit Line should be continuous around the City and located outside of or coterminous with the City limits and Urban Growth Boundary. Greenbelt areas should be located outside of the ULL. The ULL may be located within City limits so that parks or other City-designated open space land at the fringe of the community may be included within the Greenbelt.

The Oak Meadow Plaza project is consistent with Policy 3b, 3d and 3e; the portion of the project that is proposed for residential development is located within the UGB and ULL, and the proposed USA expansion is consistent with the established USA expansion policies and ordinances as discussed in detail in this report. As proposed in the project's Memorandum of Understanding (MOU 2015), the project area that is outside of the UGB and ULL will have development restrictions that will limit the location and intensity of future development to be consistent with the surrounding development located in the County.

c. The project is consistent with the Morgan Hill General Plan regarding the Urban Growth Boundary Goal 4, Policy 4a:

Goal 4. Efficient and appropriate development of land within the UGB

Policy 4a. Support the County's policy to avoid land uses and development in the unincorporated areas which would potentially conflict with future annexation and the optimal utilization of lands within the UGB. Also encourage the County to retain large minimum parcel sizes, and promote agricultural and open space uses on unincorporated lands.

The Oak Meadow Plaza project allows for the expansion of the USA to be consistent with the UGB and ULL on the project site. The project furthers Goal 4

and Policy 4a by granting an open space easement to the City of Morgan Hill that limits future development on the 32 acres adjacent to the UGB, including trailheads and trails.

d. The Project is consistent with the Morgan Hill General Plan regarding the Urban Growth Boundary Goal 5, Policies 5a, and 5b:

Goal 5. Preservation of agricultural and open space uses on unincorporated lands outside the UGB

Policy 5a. Promote the maintenance of current County General Plan policies encouraging low density uses, including large lots and agriculture, for County projects adjacent to the UGB.

Policy 5b. Retain current Rural County and Open Space land use designations in the City's General Plan, applicable to rural unincorporated lands outside the UGB.

The Oak Meadow Plaza project is consistent with Goal 5, Policy 5a and 5b since it proposes to maintain Rural County and/or Open Space designations for all of the project area that is outside of the UGB. In addition, the project's MOU 2015 Agreement commits the application to provide open space easements over steeper portions of the project site (over 10% slope), and limit future development areas.

e. The Project is consistent with the Morgan Hill General Plan regarding Policy 2c, Action 2.6, Policy 2p and Actions 2.17 and 2.18:

Neighborhoods Policy 8d. Complete street connections between neighborhoods to promote efficient circulation and emergency service response time.

The Oak Meadow Plaza project is consistent with Policy 8d since it proposes access from the existing Denali Drive and Bryce Drive within the City of Morgan Hill.

(Policies and Actions regarding Creation of the Greenbelt)

Policy 2c. Protect views of hillsides, ridgelines and prominent natural features surrounding the City. These features help define the City's historic rural character, sense of place, image and identity.

Action 2.6. The highest priority areas for Greenbelt preservation include the east side of El Toro, the Edmundson/DeWitt/Sunset area, and the foothills on the eastern side of the valley north of Dunne Ave.

(Policies and Actions regarding uses within the Greenbelt)

Policy 2p. Within Greenbelt areas, parks, and other designated open spaces, scenic/open space easements, golf courses, low intensity public facilities involving minimal permanent improvements and agricultural activities are appropriate uses. Existing residential may remain and new residential uses should be located and designed to have minimal visual and other environmental impacts.

Action 2.17. Within City Hillside Greenbelt areas, new development should be subject to a site and design review process that encourages minimizing environmental impacts including the amount of grading and encouraging location of structures in areas where they are least visible from the valley floor.

Action 2.18. The basic Santa Clara County development review process should be evaluated, updated and strengthened to achieve greater restrictions on the visibility, from the valley floor and major transportation corridors, of structures in the hillside Greenbelt areas. This updated review process should result in a minimal review process for structures that are not visible from the valley floor and major transportation corridors and an extensive review process for structures that are visible.

The project's MOU 2015 outlines the commitments and obligations proposed by the project, which make the project consistent with Policy 2c and 2p and Actions 2.6, 2.17 and 2.18. These policies and actions all seek to promote the protection of hillsides and limit the development within the greenbelt and hillside areas in and around the City.

**SECTION 7.** The proposed territory to be annexed is contiguous to existing City limits.

**SECTION 8.** Annexation of the subject 50.76 acres as shown in attached Exhibit "B" is recommended for approval, subject to the following conditions:

- a. Fulfillment of City of Morgan Hill and Local Agency Formation Commission (LAFCO) requirements.
- b. Payment of all appropriate state and local fees for processing of the subject annexation.
- c. Prior to application to LAFCO the applicant must complete to the satisfaction of the Building Official the Pre-annexation process with the Morgan Hill Building Division.

**BE IT FURTHER RESOLVED** that upon completion of these reorganization proceedings the territory annexed will be detached from the South Santa Clara County Fire Protection District in accordance with Section 13952 of the California Health and Safety Code.

**PASSED AND ADOPTED THIS 14TH DAY OF JULY 2015, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:**

**NOES: COMMISSIONERS:**

**ABSTAIN: COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**TERESA CRUE, Deputy City Clerk**

\_\_\_\_\_  
**JOE MUELLER, Chair**

**Date** \_\_\_\_\_

**EXHIBIT A**

**Annexation to the City of Morgan Hill**

**Edmundson Road No. XX**

**July 7, 2015**

All that certain real property situated in the County of Santa Clara, State of California and being a portion of Lots 39 and 40, **AND** all of Lots 50 through 53, as said lots are shown on that certain Map entitled, "Catherine Dunne Ranch Map No. 3", filed for record on May 11, 1894 in Book "H" of Maps, at page 65, at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

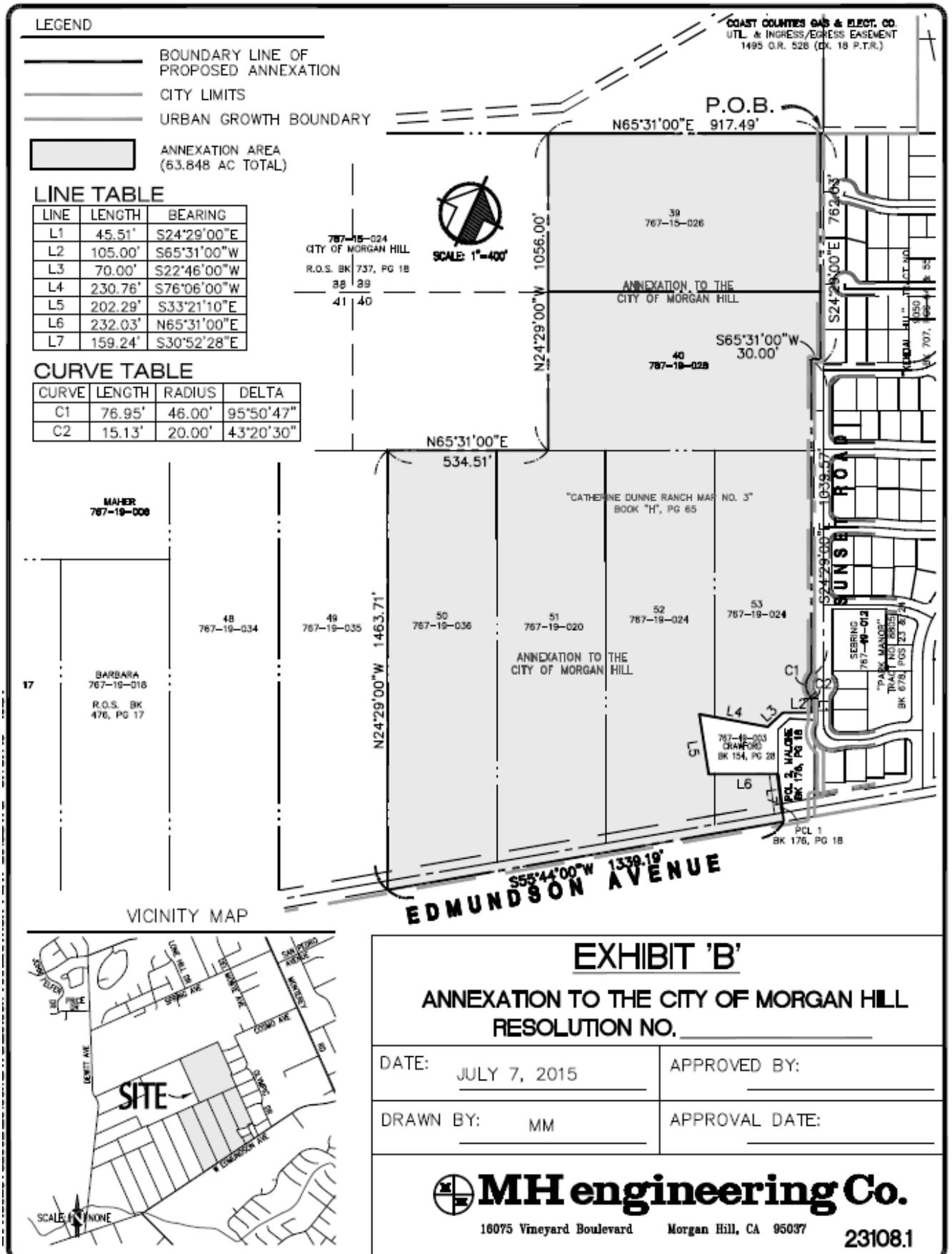
**BEGINNING** at the westerly corner of Lands annexed by "Sunset Avenue Annexation No. 1", adopted on \_\_\_\_\_ as Resolution No. \_\_\_\_\_, which is also coincident to the northwesterly corner of Lot 39, as said lot is shown on that certain Map entitled, "Catherine Dunne Ranch Map No. 3"; thence along the easterly line of said Lot 39, South 24°29'00" East, a distance of 1928.90 feet to a point on the northwesterly line of Lands of Crawford, as said Lands are shown on that certain Record of Survey filed for record on November 14, 1962 in Book 154 of Maps, at page 28; thence coincident with said Record of Survey the next five courses, South 65°31'00" West, a distance of 135.00 feet; thence South 22°46'00" West, a distance of 70.00 feet; thence South 76°06'00" West, a distance of 230.76 feet; thence South 33°21'10" East, a distance of 202.29 feet; thence North 65°31'00" East, a distance of 232.03 feet to a point on the westerly line of Parcel 2, as said parcel is shown on that certain Record of Survey, filed for record in Book 176 of Maps, at page 18; thence South 30°52'28" East, 129.19 feet to a point on the centerline of Edmundson Avenue (60.00 wide); thence along said centerline South 55°44'00" West, a distance of 1,335.79 feet to a point on the westerly line of Lot 50, as said lot is shown upon said Map entitled "Catherine Dunne Ranch Map No. 3", Book "H" of Maps, at page 65; thence along said westerly line, North 24°29'00" West, a distance of 1,433.27 feet to the northerly line of said lot 50; thence along said northerly line, North 65°31'00" East, a distance of 534.51 feet to the most easterly corner of Lands of city of Morgan Hill as described in Document Number 15439518 and shown on that certain Record of Survey, filed for record in Book 737 of Maps, at page 18; thence coincident with the northeasterly line of said Lands of the City of Morgan Hill, North 24°29'00" West, a distance of 1056.00 feet to the northwesterly line of said Lot 39; thence coincident with last said line, North 65°31'00" East, a distance of 917.49 feet to the **POINT OF BEGINNING** and containing an area of 63.752 acres, more or less.

**See Exhibit "B" attached hereto and made a part hereof.**

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors' Act.

\_\_\_\_\_  
William J. McClintock, R.C.E. 24893  
Expires: 12/31/2015

\_\_\_\_\_  
Date



Teresa Crue

**From:** Kevin Pfeil [kpfeil94@gmail.com]  
**Sent:** Sunday, July 12, 2015 12:41 PM  
**To:** Andrew Crabtree  
**Cc:** Sheldon Ah Sing  
**Subject:** Re: Oak Meadow Planning Commission notice

Wow, you guys really went full bore in favor. I request you add in the minutes from the 2006 CC meeting where the developer was told, and vehemently said they would, get agreement from the neighbors. not just meet with the neighborhood and say what they want to do. I would also like you to define in what dates the developer met with us since you said they did several times, specifics should be listed. Other than Vern coming into our neighborhood and lying to everyone which was established in front of the planning commission. Tell me what the last time there was a meeting with the developer and what was presented to the neighborhood. 5 years ago? where in here there is any sense of hearing and addressing the concerns of the neighborhood, other than saying we were met with and our concerns are noted.

Building homes up the slope of rural open space is in direct conflict with most the goals as you noted before, unbelievable how this has completely disappeared for the last staff report. How does this even happen?

On Jul 9, 2015, at 5:00 PM, Andrew Crabtree <[Andrew.Crabtree@morganhill.ca.gov](mailto:Andrew.Crabtree@morganhill.ca.gov)> wrote:

Yes, sometimes an applicant will request directly to the PC Chair a change in the order of the agenda.

---

**From:** Kevin Pfeil [<mailto:kpfeil94@gmail.com>]  
**Sent:** Thursday, July 09, 2015 4:50 PM  
**To:** Andrew Crabtree  
**Cc:** Sheldon Ah Sing  
**Subject:** Re: Oak Meadow Planning Commission notice

I have been to over 10 meetings and it's been early and has been as late as 10 we've been there, more than once. I'm not sure who was complaining but we never requested to go early before but we definitely been there late at night. maybe it was the developers request to go later based on their schedule. Thanks for your consideration

On Jul 9, 2015, at 4:13 PM, Andrew Crabtree <[Andrew.Crabtree@morganhill.ca.gov](mailto:Andrew.Crabtree@morganhill.ca.gov)> wrote:

Kevin,

That is our standard practice. If we have 'continued' items, they come first; next consideration is projects with anticipated large attendance. In this case Oak Meadow is both. I had heard someone was complaining that we always put Oak Meadow late in the agenda, but that is not the case. It was first on the 6-23 agenda (before being continued), first on the 1-13-15 agenda after two continued items, second on the 11-18-14 agenda after an item that was scheduled for continuance and no discussion was expected, etc.

Andrew

**From:** Kevin Pfeil [<mailto:kpfeil94@gmail.com>]  
**Sent:** Thursday, July 09, 2015 3:46 PM  
**To:** Andrew Crabtree  
**Cc:** Sheldon Ah Sing  
**Subject:** Re: Oak Meadow Planning Commission notice

## SUPPLEMENTALS TO ITEM 1

Please put us early in the agenda since we have such a large group

On Jul 8, 2015, at 4:58 PM, Andrew Crabtree <[Andrew.Crabtree@morganhill.ca.gov](mailto:Andrew.Crabtree@morganhill.ca.gov)> wrote:

Kevin,  
Just caught up with your voicemail as well. Once the item had been continued, my attention was on other priorities, and we have not yet finished the staff report for next week's Commission. It will be available this Friday.  
Andrew

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**From:** Kevin Pfeil [<mailto:kpfeil94@gmail.com>]  
**Sent:** Tuesday, July 07, 2015 4:34 PM  
**To:** Sheldon Ah Sing  
**Cc:** Andrew Crabtree  
**Subject:** Re: Oak Meadow Planning Commission notice

Sheldon,  
This is a follow-on request. Where is the material that is to be presented to the planning commission? Since you were planning to present this three weeks ago it should have been made available to the residents long ago.

We met with the community director and this trail is not a public connector, and not meant to be a trail head with parking, just be a connection our neighborhood to el toro trails. Since this is theoretically for our benefit, specifically our neighborhood, how is being determined by others what the public benefit is? We are the public.

Kevin

On Jun 16, 2015, at 8:19 PM, Sheldon Ah Sing <[sheldon@mplanninggroup.com](mailto:sheldon@mplanninggroup.com)> wrote:

All,

Some of you provided further status update and input on the noticing. We appreciate the feedback as it makes the process better.

As a result, we will send a new notice for the July 14, 2015 Planning Commission meeting. Nothing will be presented at the June 23 meeting. You should be receiving a new notice regarding the project in early July.

Again, thank you for your feedback.

**Sheldon S. Ah Sing, AICP**

M-Group | Senior Planner  
579 Clyde Avenue, Suite 340  
Mountain View, California 94043  
Ph: 650.938.1111 x 109  
Fx: 650.938.1119

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Teresa Crue

**From:** Kevin Pfeil [kpfeil94@gmail.com]  
**Sent:** Monday, July 13, 2015 8:28 AM  
**To:** Planning Commission  
**Subject:** Oak Meadow Plaza

Planning Commission,

I assume you are as confused as the neighborhood how a proposal almost exactly the same from Jan 13<sup>th</sup> 2014 which was 40ish homes and was recommended for denial is now recommended for approval. There is no explanation what changed (compare the two) just now all the sudden everything is in compliance with the general plan. We were told by the staff it was because of the trail but that was in this plan in Jan and as far back offered in 2006 ( Apr 16 minutes pg 14) and as recent as the Jan 13<sup>th</sup> 2014 page 6 when the recommendation was denial.

The project violates precepts of our General Plan

- City has sufficient land for residential development within its current city limits.
- Agricultural lands, including lands for grazing are to be protected
- Our view-shed of our foothills are also to be protected
- The long term costs will impact this City's sustainability
- The project violates Smart-Growth guidelines a key city council goal
- Building and expanding at our core and at or near transit centers prevents urban sprawl while it optimizes ever limited city resources and existing infrastructure.

Community involvement

They staff report does not include the city council meeting from April 19 2006 where this whole site was MOU'd and ULL with very specific caveats from the city council direction and agreement from the developer around working with and reaching agreement with the community. Community involvement was a divide and conquer promising cul-de-sac to some streets and the second time around sent someone through the neighborhood trying to get them to sign something (38 homes) with tactics that backfired and created outrage in the neighborhood. This person is specifically angling to have a road from this proposed development to access the back of their county property. Where is the neighborhood on this proposed development?

Other documented opposition

- The General Plan Advisory Committee voted unanimously (14-0) against developing this property

## SUPPLEMENTALS TO ITEM 1

- Hundreds of petition signatures
- School district - MHUSD
- Greenbelt Alliance
- Audubon Society
- Voted against several times at the planning commission – same plan
- LAFCO has written this does conform to their principles

Trail -

We met with the Community Developer Chris Ghione and he said this trail link was not meant to have parking when they designed the map and it was purely for the neighborhood to access - by which logic we should have a say at what cost, and surely not when it mean having to walk most of it though a development that destroys view sheds. A trail that exist so you can walk through a development is

Morgan Hills input in general input – To date we have been circulating issue around the community starting on the 4<sup>th</sup> of July, we have over 700 petition signatures in just 3 weeks. Just like the GPAC, a group that includes people in development, the rest of the community is against this annexation. I will bring the pile of signatures to the meeting.

Up a hill – this is not a development with the same topographical features as adjacent neighborhood. It is literally up a hill which is viewable from Monterey Hwy and city park. It is clearly developing up and out in hillside ag land.

Real beautiful hillside ag land a mile from downtown – we must come up with a better way to preserve it besides hiding it behind a development.

Please hear the voices of the neighborhood and the citizens of Morgan Hill and deny recommendation of annexation, USA, GB, zoning etc. You can help save this special piece of land and promote development in other areas.

Regards,

Kevin Pfeil

404 Denali Dr

Morgan Hill

## SUPPLEMENTALS TO ITEM 1

Teresa Crue

**From:** Dianna [dianyang@att.net]  
**Sent:** Monday, July 13, 2015 9:18 AM  
**To:** Planning Commission  
**Subject:** Against annexation of Oak Meadows

To Morgan Hill Planning Commission,

I am Dianna Dininno, a home owner in Kendal Hill community. I am against annexation of Oak Meadows off of Denali Drive in Morgan Hill.

I was from China and I know first hand what terrible consequences irresponsible development and ignore citizen's voice can lead to.

There are a lot of developers and builders in China, they make secret, illegal deals with government officials, they override civilian's voice and rights.

They take away farmland, wilderness, and build at alarming rate. Now in most of the cities, there are empty houses that can last until year 2033 without building more.

Their environment is badly damaged, streets are clogged, and air is polluted. Now China is the most polluted country in the world, including water, soil, and air.

We don't want that to happen in our community in Morgan Hill.

The Oak Meadows project is heavily influenced by developer and special interest so far. Even the outside consultants who makes recommendation for the annexation are paid indirectly by Developers' application fee. Citizen's opposing voice has not been considered despite of home owners in the community repeatedly opposing it in the meetings and email letters.

There are evidence that there has been unethical, even illegal practice, which deliberately prevent or make it hard for the community to participant in the decision making of the project.

For example the MOU to remove Urban boundary at Oak Meadows is approved by the city in 2006 without noticing the impacted community.

For recent Meetings of Planning Commission to recommend annexation of Oak Meadows, there is ether short notice, or claiming that notice has been sent, but in reality no notice has been sent to home owners of impacted community.

Here are some more facts: (This document is a work in progress)

[https://docs.google.com/document/d/1IRJAeIPCiyt39VXK5rQVTkEk7scOoNp1qh9\\_rd6\\_o5w/edit?usp=sharing](https://docs.google.com/document/d/1IRJAeIPCiyt39VXK5rQVTkEk7scOoNp1qh9_rd6_o5w/edit?usp=sharing)

In year 2013, according to LAFCO there were 33 years manufacturable land, and according to City of Morgan Hill there were 18 years manufacturable land for housing development. And since then, there might have been more land annexed from the County. So we don't need to annex more land from county for many years to come!

Now I am a US citizen, a tax payer. I would like to exercise my democratic rights.

I would like to request vote on any annexation of county land by home owners of the community. These matters should not only be decided by planning commission and developers.

Regards,  
Dianna

**From:** Sherril Nathan [sherril@glenloma.com]  
**Sent:** Monday, July 13, 2015 10:02 AM  
**To:** Planning Commission  
**Subject:** Oak Meadow Annexation

Dear Planning Commission,

I am writing to urge you to vote against the annexation of Oak Meadows tomorrow night. This is a beautiful piece of property that should be preserved for as long as possible, there is plenty of less attractive land that should be developed first. Annexing this land is inconsistent with the General Plan which favors agriculture and views. Annexing this land violates Smart Growth Principles.

Please do not take pity on this developer because the process "has been dragging on for so long." Bethany Liou has no one but herself to blame for how long this process has "dragged on." Like many developers, she chose to not pursue the annexation during the housing market crash. When she did resurface, she completely ignored Commissioner Mueller's request to come back with a plan for "20 or less" houses. She feels that because of all the concessions she has made, she deserves at least 44. As far as I know, she never showed us any analysis which showed what her breakeven point would be. What is very disturbing is that the City Council members who are in favor of this project think there should be more than the 44 homes she is currently proposing.

Thank you for your careful consideration.

Sherril Nathan, CPA  
Resident Bryce Dr



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)

**From:** Ms Mary Sperry [maryhsperry@charter.net]  
**Sent:** Sunday, July 12, 2015 7:21 PM  
**To:** Planning Commission  
**Subject:** Oak Meadow OPPOSED

Dear planning commission,

Why are you selling out our beautiful hillside to the developers? We have plenty of land inside our city to develop. We should never have changed the definition of infill to accommodate this developer. Kennedy worked on the council at the time it was changed and then for the developer. Doesn't that reek to you? Is MH that kind of town? This developer wants the Oak Meadow property to build homes for her family. This is a 'project' for her. She is here doing her family's bidding. It is OUR town and OUR life. It is not a project or a prize to be had for some foreigner with lots of money. You are on this commission to represent US the citizens of MH , not the developers.

Thank you and please reconsider your recommendation to approve this development.

Mary Sperry  
(MH resident)

Sent from my Verizon Wireless 4G LTE smartphone

Sent from my Verizon Wireless 4G LTE smartphone

**From:** sherrisliter@aol.com  
**Sent:** Sunday, July 12, 2015 1:21 PM  
**To:** Planning\_Commission  
**Subject:** EDMUNDSON OAK MEADOW PROJECT

Dear Planning Commission and City Council Members,  
My name is Sherri Sliter and I am the original owner of 16204 Sunset Ave. My home is directly across the street where the proposed Oak Meadow housing development would be. I am totally against this development, period!!! There are NO benefits to this project for Morgan Hill at all. There is plenty of flat land available in Morgan Hill and there are numerous construction of homes being built throughout the entire town!!! No one has brought up the fact of water (we are in a drought) situation, safety and traffic. This land needs to stay in the county. I am against the annexation to the city.

Thank you,  
Sherri J. Sliter (Morgan Hill resident for 39 years)

**From:** Joy B [joyb@cando-productions.com]  
**Sent:** Sunday, July 12, 2015 7:29 PM  
**To:** Planning\_Commission  
**Subject:** Home owner Morgan hill

Hello,

I'm a home owner in Morgan Hill and in strong opposition to any homes being approved on the oak meadow proposal/ development.

Our family moved to Morgan Hill a couple years ago and are appalled at all the new development given the terrible commute traffic that already exists- we are looking to sell and move away from Morgan Hill due to the out of control development we are going up everyone around town (and hit all looks like high density housing / tiny lots with huge houses).

The city needs a better master Plan that keeps the small town feel Morgan hill is known for.

Sincerely,

Joy Thompson  
16275 Denali dr  
Morgan Hill, CA

Sent from a smart phone. Please forgive any typos.

**From:** Olivia/Mike Holt [mikeandolivia@yahoo.com]  
**Sent:** Monday, July 13, 2015 2:51 PM  
**To:** Planning Commission  
**Subject:** Oak Meadow Annexation

Dear Planning Commission,

We are writing to you with regard to the Oak Meadow Development project asking that you deny all requests with relation to the project. As Morgan Hill residents for seven years we have come to enjoy the many views and agricultural open space the town offers.

We are looking to you as leaders of the community to use your voice and make the best decision not only for the city but also the residents of Morgan Hill. In 1977, the city's first RCDS (Measure E) was passed with a population target of 30,000 residents by 2000. However, due to loopholes and exemptions the city was going to be well over that number by the year 2000. In 1990, the residents voted for Measure P, which reduced exemptions and eliminated loopholes in Measure E, which also extended the RCDS to 2010 and changed the population target to 38,000 by 2010. Measure P was working to prevent urban sprawl and focus on growth in the center of the city by prohibiting the city from annexing land to its urban service area with the exception of "desirable infill". Measure P was set to expire in 2010 so the residents of Morgan Hill spoke up yet again and passed Measure C in 2004.

Measure C continued the work of Measure P maintaining that the 'desirable infill' requirement was met and City Council could determine that the amount of developable land within the City's borders could not accommodate 5 years of residential growth. However, shortly after the residents of Morgan Hill voiced their opinion in a vote to prevent urban sprawl and maintain the amount of annexed land in Morgan Hill, City Council chose to overlook the larger community opinion and changed the definition of 'desirable infill' which conveniently allows the Oak Meadow project to meet the requirement.

In addition to the residents passing the above Measures and a review of Morgan Hill City's General Plan it is clear that the community continues to have a desire for open space and agricultural land. The community is not against building but wants to keep the building to the available spaces within the city limits. There is plenty of buildable land and this hill along with other county land does not need the dense housing, which decreases the Morgan Hill quality of life that all enjoy.

We ask that you carefully consider the voices of Morgan Hill when voting to deny the recommendation of the Oak Meadow Project.

Thank you for your time and consideration,

Mike and Olivia Holt  
Bryce Drive

11. **THIRD QUARTER REPORT FROM THE CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT PARTNERSHIP**

*Action: Accepted the Report.*

**SUPPLEMENTALS TO ITEM 1**

***City Council and Redevelopment Agency Action***

**CONSENT CALENDAR:**

Council/Agency Member Carr requested that item 12 be removed from the Consent Calendar.

*Action: On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board, on a 4-0-1 vote with Council/Agency Member Carr abstaining, Approved Consent Calendar Item 12 as follows:*

12. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 5, 2006**

*Action: Approved the Minutes as Submitted.*

***City Council Action***

**CONTINUED PUBLIC HEARINGS:** (Continued from April 5, 2006)

13. **GENERAL PLAN AMENDMENT, GPA-05-05: CITY OF MORGAN HILL- URBAN LIMIT LINE/GREENBELT STUDY IMPLEMENTATION**

Mayor Kennedy indicated that items 13, 14 and 15 all relate to the Urban Limit Line (ULL) and that item 13, is a general plan amendment to implement the ULL and the Greenbelt Study Implementation. He indicated that item 14 is an urban service area/zoning amendment application for the Oak Meadow Plaza project. Item 15 is a general plan, urban service area, zoning amendment and annexation application for Santa Teresa Boulevard-Black Rock project. He stated that he met with staff earlier today. It is being suggested that staff present a report on items 13, 14 and 15; followed by the opening of the public hearing for all three items. The Council will enter into discussion on all three items after the closure of the public hearing. The Council will then take the appropriate actions, one at a time.

Contract Planner Bischoff noted that there are a lot of interrelationships between items 13, 14 and 15. Therefore, he would be presenting a single staff report. He proceeded to present the staff reports for the three items.

Agenda Item 13

Contract Planner Bischoff said that item 13 represents the recommendation of the advisory committee for the urban limit line/greenbelt study. He clarified that item 13 only amends the general plan text, and adds policies and actions regarding the implementation of the study. The implementation of the ULL Committee recommendations has been added to the land use diagram of the General Plan Map. It also adds an additional map to the general plan that identifies locations of greenbelts. He stated that the map reduces the size of the urban growth boundary (UGB) in four areas involving approximately 160-170 acres. He noted that these areas are already zoned open space or have open space easements over them. However, it also expands the urban growth boundary in two locations and designates the locations as residential use. The first area is the West Hills Community Church 23-acre area located on the west side of DeWitt Avenue; designating the area as residential estate. The second area is the Oak Meadow Plaza property; consisting of approximately 118-acres on Edmundson, DeWitt and Sunset Avenues. The Oak Meadow Plaza application includes approximately 20-acres, adjacent to Sunset Avenue, in the UGB. The 20-acres would be designated as single family low and would allow up to 60 units to be built upon the land. He stated that a non binding memorandum of understanding (MOU) was entered into by the City and the property owners in order to understand the extent of the environmental review needed. The non binding MOU stipulates that should the area be included within the UGB and designated for residential use, open space easements would be created over 84-acres. There would be 5 homes built on 74-acres of property located outside the city limits.

### Item 14 – Expansion of the urban service area, rezoning and annexation – Oak Meadow Plaza

Contract Planner Bischoff addressed the Oak Meadow Plaza project. The proposal is to add 20-acres to the urban service area, the same 20-acres the ULL Advisory Committee recommended be added to the UGB. The action would prezone 20-acres of the property to R-1-12,000 and 14-acres as open space; annexing 34-acres. He informed the Council that in order to include the 20-acres within the urban service area, the City would need to make findings regarding the benefits that are to be accrued to the community, overall, as a result of inclusion. He stated that the beneficial affect proposed by the applicant, and recommended by the Planning Commission, is the preservation of the open space associated with the application.

### Item 15 – Black Rock applications

Contract Planner Bischoff addressed item 15, the Black Rock property, an 18-acre parcel located at the southwest corner of Santa Teresa Boulevard and Watsonville Road. Being proposed is a general plan amendment to include property within the UGB and that it be designated residential estate, and expansion of the urban service area to include the 18-acre parcel. Also, proposed is rezoning of the parcel to RE-40,000; including annexation. He stated that in order to include the area within the urban service area, certain findings need to be made with respect to the benefits that would accrue to the general public as a result of its inclusion. He informed the Council that the Planning Commission's findings and recommendations are that the overlay of Watsonville Road in front of the property would result in annexation and the ultimate development that would be allowed to take place. There would also be the provision of an additional well site to the City.

## SUPPLEMENTALS TO ITEM 1

City of Morgan Hill  
Joint Special & Regular City Council and  
Regular Redevelopment Agency Meeting  
Minutes – April 19, 2006  
Page - 8 -

Contract Planner Bischoff indicated that staff conducted an environmental evaluation on the three items as there was an interrelationship between the three. The environmental document was prepared at a program level as there are no specific development projects being proposed at this time; looking at impacts at a program level. With respect to the recommendation of the ULL advisory committee, the environmental study did not find there were significant impacts that would result from the city-wide proposals to amend the general plan, and inclusion of the ULL on the general plan map. However, the study did find there were potential significant impacts that would result from expanding the UGB to include the West Hills Community Church area, the 20-acre Oak Meadow Plaza, as well as the Black Rock area. However, mitigation measures were identified that would reduce the impacts to a less than significant level. It is staff's belief that it would be appropriate that a mitigated negative declaration be proposed and adopted for all three separate agenda items. He informed the Council that included in the Council's agenda packet is a mitigation monitoring and reporting program as required by law. This document will ensure that the mitigation measures are carried out when needed.

Contract Planner Bischoff noted the City received a lot of public testimony regarding the applications and the environmental review. A couple of the comments addressed the mitigated negative declaration and resulted in changes to this document. He indicated that the attorney for the Black Rock applicant suggested the mitigation that required a 50-foot setback from the creek is too specific, given the City does not have a development proposal. The attorney suggested it would be more general to state that the setback would be whatever is required by the Department of Fish and Game and the City of Morgan Hill, in consultation with each another. He felt this was an appropriate modification to make and that it has been added to the mitigated negative declaration. Another amendment to the mitigated negative declaration was attributed to a comment made by the Committee for Green Foothills stating that the way wetlands were being treated was inappropriate. It was their belief that whether wetlands falls within the Army Corp of Engineer's purview or not, mitigations still need to be considered. He said that staff discussed this concern with the City's consultant and as such, this mitigation measure has been modified as well.

Contract Planning Bischoff informed the Council that it received a lot of comments with respect to the mitigated negative declaration. There were comments that suggested that a mitigation measure(s) needs to occur for loss of agricultural land throughout the City, not just for the Black Rock property because the City was establishing an urban limit line. With respect to the Oak Meadow Plaza evaluation, he indicated that there were a number of comments made by individuals who believe the environmental review was inadequate in the way it addressed issues such as geology, biology, traffic, and aesthetics. There was an individual who felt the mitigated negative declaration to be inappropriate; suggesting that a full EIR was needed. He informed the Council that staff met with the City's consultant and that it was felt that the mitigated negative declaration is appropriate. With respect to the other comments made, he stated that the City's environmental consultant provided two memos. There are also two memos from the City's traffic consultant that addresses the concerns raised by the public at prior meetings. He informed the Council that in attendance were the City's environmental and traffic consultants, should the Council have any questions relating to the mitigation measures, or to respond to comments that may be raised by the public. He stated that prior to taking any actions this evening, the Council needs to approve the mitigated negative declaration and the mitigation monitoring program.

## SUPPLEMENTALS TO ITEM 1

Contract Planner Bischoff informed the Council that there were a number of outstanding questions and issues raised by the public:

- Should action item 3.4 be amended? The action had to do with how frequently the City should amend the UGB. He indicated that a concern was expressed that amendments to the UGB would occur too frequently. He stated that included in the Council's packet is revised language proposed by staff that would address concerns expressed by the Council.
- A concern was expressed regarding the location of the ULL. He said that a representative who served on the ULL committee felt the ULL should not be located on Hill Road, east of Highway 101, but located at the base of the hills, as recommended by the advisory committee.
- The Council heard comments from a number of individuals stating that the property located on the south side of Spring Avenue should be included within the UGB. He indicated that the Planning Commission heard these concerns and they are recommending that these areas be included within the UGB. The two property owners on Spring Avenue requested that they be included in the ULL and UGB. The Planning Commission, on a 4-3 vote did not recommend these two parcels be included within the ULL or UGB. He said the Planning Commission felt the property was part of the Oak Meadow Plaza property and had an open space easement attached. The Planning Commission would like to keep the areas as open as possible. Therefore, they did not believe it appropriate to include the properties in the ULL.
- There was a question whether the Oak Meadow Plaza project should be included within any of the City's boundaries and planned for residential development. If included, what density would be appropriate. It was staff's belief the potential impacts associated with proposed development have been adequately evaluated and mitigated. He informed the Council that the Planning Commission recommends that 19-acres be included within the UGB and planned for residential development instead of the 20-acres being requested. The difference between the 19 and 20 acres is whether you use the 12½% slope proposed by the applicant or the 10% slope line as recommended by the ULL advisory committee. Also, recommended by the Planning Commission is that rather than having an open space easement being assigned or attached to the 14-15 acres that the property be deeded to the City in fee title.
- Regarding the Black Rock property, a couple of neighbors felt it would be inappropriate to include the property within any of the City's boundaries or planned for residential development.

Mr. Bischoff informed the Council that the Planning Commission recommends Council approval of item 13, the urban limit line/greenbelt study with the addition of the Spring Avenue mentioned, but not the DeWitt area. The Planning Commission is recommending approval of the Oak Meadow Plaza application with 19-acres being included within the UGB instead of the 20 acres, and the dedication of open space for 14-15 acres. The Planning Commission further recommends approval of the Black Rock property application.

## SUPPLEMENTALS TO ITEM 1

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Mr. Bischoff informed the Council that there are four pieces of correspondence in front of the Council regarding these items: 1) a memo from EIP that was left out of the Council's packet; 2) an e-mail from Mary Sue Rice and 3) letters from Brandy Moreau and Bart Hechtman regarding the Oak Meadow Plaza project.

Mr. Bischoff indicated that the General Plan was adopted in 2001 and called for a greenbelt to be established around the City. He said that the ULL Committee worked on the greenbelt for two years and spent a lot of time considering a lot of different aspects. He felt the job of identifying areas to be protected as greenbelt for the long term and establishment of the beginnings of an implementation plan needs to be done in order to make sure greenbelts are protected in perpetuity.

Mayor Kennedy reopened the public hearings for items 13, 14 and 15.

Jeff Pedersen inquired whether the ULL Committee ever considered the affect of establishing a 30-year timeline on the City's Residential Development Control (RDCCS) Ordinance. He expressed concern that there is a greater chance for legal challenge to the City's growth control ordinance by planning even further outside the line that would indicate a greater expectation for growth. He expressed concern with any challenges to the growth control ordinance because the City is now identifying a greater inventory of land that could be developed. He requested the Council provide an indication of whether this was ever considered at all in the new concept the City is trying to create. He referred to Exhibit A of the ULL/greenbelt plan; specifically, page 4 of 11 that speaks to the Oak Meadow Plaza project. He noted that this page indicates this project is subject to 118-acres. If you perform the addition of the acreage being spoken to as far as what would be developable and what would be placed into an open space easement, he did not believe the acreage adds up. He felt there were 12-acres that were not accounted for in the statements. He would like to see item 9c expanded, or that the Council applies the 19-acres as recommended by the Planning Commission. The 19-acres are not to exceed the 10% contour line as so specified. He noted there were statements made by a number of council members about an R-1-20,000 density at the last meeting. He requested the Council enforce its comments and apply this density.

Jon Maxey requested that his property and neighbor's property be included within the ULL. He indicated that both properties are currently developed with at least 100-foot setbacks from DeWitt Avenue. Further, both properties have City water lines in front of the properties, but cannot get approved for connection unless the properties are included in the ULL. He did not believe there were opportunities for further development on these properties.

Michele Beaseley, representing Greenbelt Alliance, indicated that the Council is making an important decision about the future of Morgan Hill this evening. She agreed the Council needs to plan for and allow for future growth. However, consideration should be given to what this future growth would look like. Should future growth occur on the fringes, it may lead to more suburban sprawl; or blend into neighboring communities. She felt that focus should be on true infill with more compact development in the downtown area. She agreed that growth is inevitable, but felt that it is how the City defines this growth that will determine whether Morgan Hill will retain its unique identity and rural charm, or whether Morgan Hill will start to resemble the City's neighbors to the north. She encouraged the Council to keep the ULL as close to the UGB as possible. Further, that the City not allow too much land

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within the ULL. She felt the creation of a greenbelt was a commendable effort, but expressed concern that the process would allow more development to occur. She felt the City has plenty of vacant land within the UGB. She recommended that development occur in lands within the current UGB.

Ron Key, Spring Avenue resident, informed the Council that he and neighbors were in attendance at Planning Commission meetings and the Council's April 5 meeting. He requested Council follow the recommendation of the Planning Commission with respect to the Spring Avenue properties; inclusion of the properties within the ULL and the UGB.

Brandy Moreau informed the Council that she sent a letter that she understands was included in the Council's packet. She requested that her correspondence be considered before the Council makes a decision. She did not recommend the Council approval of the Oak Meadow Plaza property for annexation because there are too many unanswered questions.

Bart Hechtman, speaking on behalf of the Oak Meadow Plaza property owners, informed the Council that he submitted a letter for Council consideration that addresses items 13 and 14. He requested the Council approve item 13 as it relates to Oak Meadow Plaza that includes the general plan, ULL, and UBG, but differ item 14 that relates to the rezoning, annexation and the urban service area. He is requesting the Council differ item 14 as it is the heart of the issue. He said that the density of the project and the traffic impact arise out of zoning. He said that Oak Meadow Plaza representatives have heard the neighbors and have determined they can work with the neighbors to ameliorate some of their concerns. He foresees a process where Oak Meadow Plaza proponents can work with the neighbors and staff to prepare and revise the plans; allowing for dialogue to occur with the property owners and adjacent neighbors that would take approximately 2-3 months to try and come up with a workable solution. He would return to the Council in the form of a development agreement and an RPD zoning overlay that would impose some restrictions on the development that would give some comfort to the neighbors (e.g., restrict density, address traffic impacts, address the open space easement versus the fee acquisition, address/restrict granny units, etc.).

Mr. Hechtman addressed the difference between the 10% and 12½% slope through the development agreement and/or the RPD zoning. He said that it can be made clear that there is to be no development above the 10% line other than rear yard fences and associated landscaping. He stated that they would like to take the time to engage the neighborhood in an open dialogue to see what can be accomplished; working cooperatively. This is the reason he requests the Council take no action on any of the items related to agenda item 14 this evening. He indicated that the owners of the properties have been keeping open the DeWitt and Edmundson Avenue properties for more than two years while they engage in dialogue; working with the task force. He said that Oak Meadow Plaza is working on a concept with the City to preserve the open vistas in perpetuity. However, they are at a crossroad where property owners need an indication from the City if it desires to move forward with the project in some form. Property owners would like to know that they are not holding the properties open needlessly. Should the City not act at this time and continues the decision to the next general plan cycle, it would result in waiting until October or November 2006 for a decision. He informed the Council that there is an open space initiative that is being circulated that may appear on the November 2006 ballot. If approved, it will take affect in January 2007, absent legal challenge. If this happens, the visual safe guard/provisions of the initiative

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will impact how individuals can use properties on DeWitt and Edmundson. If they are not able to work something out with the City to permanently preserve lands in open space, now is the time for these owners to take these properties to market so that potential buyers can get into the County and make their applications, obtaining appropriate approvals before the initiative becomes affective.

Mr. Hechtman stated that he would like the Council to approve the general plan amendment with a designation of single family low, and a zoning designation of 1-3 dwelling units per acre. This could result in a range of 20-60 homes on 20-acres. He felt this to be an appropriate range to work within without binding the Council to a particular figure. He requested the Council allow the property owners the latitude to have the 20-acres, using the 12½% line. There would be an understanding that when they return to the Council with a development agreement and the RPD zoning designation, a provision will be included that would make it absolutely clear that there will never be any development above the 10% line other than a rear yard fence and landscaping at the 12½% line.

Mayor Pro Tempore Grzan noted that Mr. Hechtman mentioned the open space initiative. He did not believe it matters what the initiative does as the Council could decide at a later date to move into the unincorporated areas, negating whatever restrictions are put into place.

Mr. Hechtman clarified that the open space initiative would only apply to unincorporated lands, if approved. He stated that by the time the City decides to incorporate these lands, homes may have already been constructed. He clarified that he was suggesting that if Oak Meadow Plaza properties are not allowed to move forward with the City on a mutually agreeable proposal, and home designs are submitted to the County, the City will end up with homes in places where it wants to see open fields. Once annexed, it is true that the properties would be under the City's control and the initiative would not apply.

Bob Costamagna, representing South Valley Community Church, informed the Council that the Church owns a small parcel of land adjacent to the Oak Meadow Plaza consisting of less than 1 acre. He requested the Council include APN 767-49-4600 into the ULL and UGB.

Bill Moreau expressed concern that there are a number of individuals on the Council, Planning Commission and staff who are not backing the citizens, but are backing the developers in their ability to develop this property. He noted that the northwest section of the property is on a steep hill and that it is too steep to build upon, regardless if it is dedicated as open space or not. He expressed concern that Council members have already made up their minds and that citizens are wasting their voice this evening.

Rocke Garcia, owner of the Black Rock property, stated his support of the Planning Commission and ULL task force recommendations as the property is a gateway into the City from Watsonville Road and the County areas. It is also the gateway to County rural properties and wineries along Watsonville Road. He felt this to be a major intersection and is adjacent to Quail Creek, a 54-unit development, and Quail Meadows, a 1-acre large custom home subdivision similar to what he is proposing. He noted that Quail Meadows has stubbed their street into his property. He has upgraded the sewer. He requested the Council adopt item 4 that would include the property within the UGB, designate the property for

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residential estate, add the property into the urban service area and prezone it RE-40,000; feathering the property from east to west from 1 acre to 2½ acres, followed by annexation into the City. He stated that inclusion in the UGB would allow dedication of an easement to the Santa Clara Valley Water District. He indicated that he has been a home builder and developer for over 25-years. He felt that what is being proposed is smart growth as he would be filling a need in the community to supply executive high end housing.

Alex Kennett said that no matter where the line is drawn, someone will want to be included/excluded. He recommended the Council keep in mind the quality of life we have in Morgan Hill and that the Council keeps this philosophy in mind as it makes decisions about the 10% versus the 12½% slope as well as the location of the line on Hill Road. He felt that a compact ULL would be better as it represents the continuation of the quality of life. He said that there are advantages to being on either side of the line. He said that the line should be allowed to be reviewed on a regular basis. He recommended that the Council take this matter to the voters so that it is kept, and reviewed with the general plan cycle or whatever timeline is chosen. Doing so would allow Morgan Hill to retain its quality of life, yet flexibility.

Brad Mortenson, pastor for West Hills Community Church, requested the Council adopt the recommendations of the Planning Commission with respect to the West Hills Community Church property.

Tim Russell addressed the Oak Meadow Plaza project. He inquired as to the value proposition this project would represent to the residents of Morgan Hill. He identified three possible scenarios for the Oak Meadow Plaza properties. 1) Allow the property to remain as is, beautiful rolling hills and pastures. 2) Property to remain in the county and be zoned 10-acres per lot; having estate homes developed on each of the lots. This would have the characteristics of being low density, attractive homes, and potentially increase the value of the surrounding neighborhood. Further, it would not add to the burden of additional traffic or safety concerns associated with the tot lots and Community Park. 3) Annex the properties and allow 60± homes to be developed; reserving 14 acres in open space. This would cause an increase in traffic to neighboring streets, reduce the safety for the residents and children, and depreciates the associated property values for the properties in the area. He felt that the City would see the 14-acres of open space regardless of any scenarios; therefore, the City is not gaining anything by allowing the development of the remaining 19 or 20 acres. Should the Council allow opening up the 14-acres to additional public access, this would increase the traffic beyond the 650-700 trips per day that was estimated for the 60+ homes to be developed. It also has the potential of having negative impacts such as drug use, assaults, etc. that may require additional mitigations such as lighting and additional street patrol. He stated his preference to the first or second option versus the third option.

Bill McClintock, MH Engineering, requested urban service area expansion and annexation because of the desirable infill criteria provided for in Measure P and C. He said that if a property has a significant benefit to the City and it has been made more difficult in Measure C, the Council can review and approve annexations beyond that needed for residential development in a 5-year period. He sees a significant benefit in that the Council has adopted a greenbelt study. The greenbelt study targets the Oak Meadow Plaza area, the old Bevelaqua Ranch, as one of the key properties that has significance to the

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City. It is his vision to be able to open the area to the public in the future. He noted the City owns 35-acres in the area and that there are 34-acres of open space easements already dedicated on a project on Spring Avenue. He informed the Council that the developer is willing to work with the City on a staging area for a parking lot on DeWitt Avenue so that the neighbors residing in the development on Olympic would not be impacted with this traffic. He would like to see some trails open up with the project being proposed. In working with the City and the adjacent neighbors, he felt this proposal would be a benefit to everyone. He noted that development of the area was eminent and that the ULL Committee was working on the greenbelt study. The owners of the property have worked with the City in developing the MOU. If allowed to remain in the County, development could occur on 30% slope. He did not believe the City and its residents would like to see large estate houses built in the County. He felt this was an opportunity the City should not pass up. Regarding the development proposal, it was his belief that in working with the neighborhood and mitigating their concerns, the number of units could be negotiated. The development plan could address lessening the traffic by cul de sacing the five streets that touch this project; spreading the traffic out. He felt that working cooperatively, everyone would benefit.

No further comments being offered, the public hearing was closed for items 13, 14 and 15.

Mayor Kennedy said that it was his recollection that when the ULL Committee discussed Oak Meadow Plaza the goal was to preserve large number of acres in open space. The parcels of lands owned by Anchorpoint Academy were for sale and would have eminently been developed into large lot parcels with 11-12 homes being built on these parcels. The goal of this effort was to preserve the majority of the hill in open space through a concept of clustering. Higher density development would be clustered together to protect larger amounts of open space. He inquired as to how many acres of open space would be protected under this proposal.

Mr. Bischoff said that approximately 84-acres would be preserved as permanent open space that would allow agricultural uses with the exception of two homes that could be built in the general location of the existing house and barn on Edmundson Avenue. The 84-acres do not include the 34 acres owned by the City. He said that two other homes, near the water tank, could be built that would not be visible from Edmundson Avenue. In order to find a place for a house on DeWitt that would not be visible, it would require a land swap of about approximately 5-acres between the City and Oak Meadow Plaza land. By transferring land, it would allow a house to be sited on DeWitt that would not be visible. He said that you can expect homes to be large and be located in prominent locations, should the land be allowed to remain in the County. Without this proposal, there is nothing that would preclude the owners of the parcels from constructing homes or out buildings/associated structures on the property.

Mayor Kennedy noted there would be at least 118-acres in addition to the 34-acres for a total of approximately 150 acres of hilltop open space that would be protected by this action. The City is interested in protecting this open space, thus the interest for looking at the Oak Meadow Plaza proposal in the first place.

Council Member Carr noted that some speakers suggested that some of the acreage to be placed in open space is not truly developable. He inquired how much of the 84-acres could be developed as large lot estates as mentioned by staff.

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Mr. Bischoff said that there are approximately 11 lots that could be developed with estate homes. He said that the 14-15 acres being proposed for open space or deeded to the City are steep areas that could not be built upon. Should properties be sold, homes could be built at the hilltop, including accessory structures that would have visual impacts.

Mayor Pro Tempore Grzan inquired how many homes could be developed without being brought into the City.

Mr. Bischoff said that with 11 lots, there could be 10 more homes built. It could be expected that the existing small home could be replaced with a larger home.

Council Member Sellers requested the Council ULL Committee members address their thoughts and ideas on developing the Oak Meadow Plaza proposal, tradeoffs, and where it should be headed.

Mayor Kennedy said that the ULL Committee was established approximately 3-years ago with the goal of establishing a greenbelt around the City of Morgan Hill. In order to establish a greenbelt, it needed to be determined where the greenbelt begins and ends; noting the greenbelt ends at the City's sphere of influence. It was the majority opinion of the ULL committee members to preserve as much of this hill as possible as a greenbelt. However, the property was up for sale by Anchorpoint Academy and was capable of being subdivided into individual parcels. The ULL Committee urged him and staff to meet with the property owners to see if there was a way to preserve the majority of this prime real estate property in open space as a greenbelt. He stated that the ULL Committee tried to find a solution that would be a win win situation, and benefit everyone. He understands that it is difficult for those living adjacent to pristine open space to see any development take place. He said that it was the Council's role to look at the greater good of the entire community and that it may require some compromises, on everyone's part. He felt the suggestion being proposed by Mr. Hechtman was a good one (e.g., changing the general plan to allow 1-3 du/acre, allow negotiations to take place with the property owners and residents to come up with a solution that addresses the residents' concerns regarding traffic, visual impacts, etc., over a course of 3-4 months. He did not believe that development would ever be the maximum of 3 du/acre. He recommended the Council support the general plan change to single family low (1-3 du/acre) as it would allow flexibility. He stated that there would be a whole series of steps that would need to occur after this. The first step is to have staff and the developer meet with the neighborhood to try and find a solution that would work for the residents.

Mr. Bischoff said that should the applicant and the adjacent property owners reach some sort of agreement, the agreement would return to the Council. If supported by the Council, the Council would be asked to act on the three applications: expansion of the urban service area, rezoning, and annexation. Should the Council take favorable action on all three applications, the application would go to LAFCo. He indicated that the LAFCo process could be a 6-12 month long process.

Mayor Kennedy noted that a development proposal would need to go through Measure C before being allowed to develop. He said the Planning Commission would have strict control on what kind of

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development would be allowed. He indicated that there would be a series of steps that would need to take place before allowing development to move forward.

Mayor Pro Tempore Grzan stated that the same proposal to add additional homes in this area came before the general plan task force. He indicated that the general plan task force was not in support of this development. He noted that the general plan task force, comprised of 21 members, did not have the conflict of interest the ULL task force had. He stated that he has concerns regarding any development in this area. He did not like being threatened that development would occur on the hillsides and be prominent, should the City not approve the applicant's proposal. He said that this same issue will be felt all around the City. He urged the Council to move forward with an agreement with the County in order to protect this area as well as other areas throughout the City. He noted that the applicant has requested the Council approve the general plan amendment at this time; deferring other applications to a later date.

Council Member Sellers said that should the Council agree with the applicant's request, the Council would be identifying general parameters and a range of development. He noted the Council would not be annexing property this evening. If not annexed at all, it may result in large estate homes being built, but fewer of them.

Mr. Bischoff said that he heard certain members of the public express concern about the density. Others stated they did not want to see any type of development occur at all. Should the Council approve the general plan amendment this evening, the Council would not be satisfying those individuals who have stated they do not want any type of development. The Council would be leaving the door open for those individuals concerned about density. A continuance would give the residents the opportunity to work with the applicant. The item(s) would return to the Council with an indication as to whether a reasonable compromise had been reached.

Council Member Sellers did not believe the Council was agreeing to move forward with the annexation should it decide to move forward with the general plan amendment this evening.

Mr. Bischoff did not believe the Council would be committing itself to a definitive number of units or a time frame for annexation should the Council agree to approve the general plan amendment this evening.

Mr. Hechtman stated that he would like an indication from the Council whether it believes this land is appropriate for ultimate urban development, and that it values the preservation of open space on DeWitt and Edmundson Avenues this evening. Would the City like the project proponents to work with the community to try and preserve the land? He said that the applicants would not look favorable at a deferral of all items for an undetermined amount of time. He noted the City is in a general plan cycle and that he was not sure whether the Council has the flexibility of bringing back a general plan amendment request. He noted that even two months is a critical amount of time based on the initiative being circulated.

Council Member Sellers noted the City is limited with the number of times a year it can make general plan amendments.

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Mayor Pro Tempore Grzan inquired whether the plan being reviewed by the Council is the plan to be approved, should the Council approve the general plan amendment.

Mr. Bischoff said that the general plan amendment would include 20-acres within the urban growth boundary and be designated as urban development. It would also include property within the urban limit line. The recommended general plan amendment designation is 1-3 du/acre. This general plan density would allow the development of 20-60 dwelling units. He said that there are a few locations within the urban growth boundary where there are no urban designations. However, it is the policy of the City that lands annexed should have an urban designation. He said that he put together a list of issues raised by the Council members and by the speakers. He said that the location of the ULL in the vicinity of Hill Road was one of the issues. There are properties on Spring and DeWitt Avenues that need to be addressed. Also, to be addressed is action Item 3.4 that the Council asked be amended.

Council Member Carr inquired whether inclusion of a large amount of land in the ULL creates a greater amount of developable land over a longer horizon than indicated in Measure C. Does this cause some threat to Measure C?

Mr. Bischoff did not believe that including additional land in the ULL would threaten Measure C. He noted that Measure C has a time horizon of 2020. He stated that the UGB has designated land for urban development that would not be developed by 2020. He clarified that it is being suggested that the City expand further into the foothills. However, the City has not designated any lands for urbanization or committed to a timeline for development.

Mayor Kennedy suggested the Council discuss and take action on each item one at time.

Mayor Pro Tempore Grzan noted that item 13 looks at the Black Rock application.

Mr. Bischoff clarified that the only thing item 13 does for the Black Rock application is to include it within the urban limit line and amends the general plan to include policies that state that whenever the project develops, it is to have a transition of density between the Quail Meadow project to the southeast, and the unincorporated subdivisions to the southwest.

Mayor Pro Tempore Grzan recommended the Council take item 13 separately as it addresses Oak Meadow and Black Rock. He indicated that he has additional comments regarding Black Rock that he needs to address prior to the approval of item 13. He inquired where the water would drain to should this area be developed.

John Sear, project manager, EIP, indicated that the water for the property drains to the east, as a seasonal branch, toward Little Llagas Creek. As drainage has the characteristics of a seasonal wetland, it could be habitat for the red legged frog. Given that water is draining to Little Llagas Creek, 20-30 foot setbacks should be required. He said that the Regional Water Quality Control Board would prefer to have a non structural approach to storm water collection; maintaining grassy green buffers. He clarified that he has proposed a mitigation at a program level. Once a subdivision application is submitted,

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specific requirements would be required to fulfill the C3 MPDS; including a permit pertaining to water detention, maintaining water quality, and reducing additional water runoff into the creek.

Mr. Bischoff said that the density and setbacks would be looked at as part of any development proposal. He informed the Council that the City requires all projects to retain storm water on site, or to make accommodations for storm water off site. He stated that this is typically included in some sort of open space or recreational aspect of a project. He anticipates this would be the case once the project develops.

Mayor Kennedy requested that staff respond to some of the questions raised by members of the public.

Mr. Bischoff noted that one of the speakers raised the issue of whether adopting a ULL within the timeframe larger than 20-years would cause legal problems with the City's RDCS. The same speaker suggested that one of the action items relates to acreages that did not add up. He said that there are 2-2½ acres on each of the lots that are not included in the open space easement as this is where homes would be built. If you add these acreages, the land would add up. The same speaker indicated that should the Council make a decision to include the property within the UGB, and it is to be 19-acres instead of 20-acres, this action item should be amended to reflect this. He stated his concurrence with this statement.

Mr. Bischoff said that should Mr. Maxey and his neighbor's property on DeWitt be included within the UGB/ULL, it would more than likely be assigned the same designation of residential estate that would allow up to 1 unit per acre. He said that both properties equal 2-2½ acres. Therefore, in theory, the property could accommodate another home on each of the lots. Based on Mr. Maxey's statement about the location of the existing homes, it would make the properties limited to subdivision. He noted that several individuals stated their opposition to the Oak Meadow Plaza project and does not believe a response is necessary. He said that a Church representative requested that a parcel be included within the ULL/UGB. He said that when the ULL/greenbelt committee looked at this area, it was his belief there was an understanding that the Anchorpoint-Oak Meadow individuals owned this parcel as well, but this is not the case. He noted that there is an existing home on the parcel. The Council could decide to include the parcel within the ULL/UGB. He noted that the .8 acre parcel is relatively steeply sloped and has limited development potential. Should the property be annexed into the City, it could be limited to no more than 1-3 homes; depending on the slope and a lot of different factors.

Mr. Bischoff noted that Mr. Garcia suggested the Council adopt all resolutions, but wanted to make sure that there is a condition included that dealt with feathering the development. He indicated that the condition of feathering from 1 acre lots adjacent to Quail Meadow and 2½ acres on the other side is included in the rezoning ordinance.

City Attorney Kern did not believe that an increase in the ULL would be inconsistent with Measure C. She noted that Measure C looked to the year 2020 and came up with a population cap of 48,000. She said that amending the ULL would not change the population cap, and that additional developable areas would not impact the number of units that could be developed.

Mr. Bischoff said that should the Council agree to include the Oak Meadow property in the UGB and honor the representative's request this evening, the next step would be to go to LAFCo. LAFCo would

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consider the request at the end of the year. If approved by LAFCo, the applicant would be able compete in the Measure C competition next year with the earliest possible allocation for Fiscal Year 2009-10 or 2010-11, in the best case scenario.

Mayor Pro Tempore Grzan noted that the property is on the outside fringe of the city limits and would more than likely lessen the probability that it would receive Measure C allocations.

Mr. Bischoff clarified that the project would receive fewer points from a project proposed closer to the downtown, under Measure C.

Mayor Kennedy indicated that there are a lot of actions included under item 13: approval of the mitigated negative declaration and adoption of a resolution on the various general plan amendments; including a series of steps. He noted that Mayor Pro Tempore Grzan has requested that the Black Rock property be considered separately. He inquired how the actions could be split.

Mr. Bischoff recommended the Council go through each item; taking a straw poll before proceeding. He said that the only relationship between item 13 and item 15, pertaining to the Black Rock property, is that item 13 would include the Black Rock property within the ULL and would include a general plan policy that states that when the property develops, it is to feather development from 1 acre to 2½ acre lots. Should the Council decide it does not want to entertain the Black Rock property and does not believe it should be included in the ULL; this would be good to know before acting on item 13 as the Council would need to delete the policy and exclude the property from the ULL.

Council Member Tate recommended the Council consider item 14, item 15 and the miscellaneous items; returning to item 13.

### Item 14 – Oak Meadow Plaza property

Council Member Tate noted that the City is being offered a deal. He said that the benefit being offered in return is the dedication of permanent open space that will not be violated; ensuring that no house tops are built on ridges, and that the 11 developable properties would be tempered in such a way that would allow the right kind of visual open space for the community. He indicated that a lot of work has been done in this community in order to reach the goal of having attractive open space. He felt that these hillsides, along with El Toro, are critical to the views and quality of life in Morgan Hill. He said that there is something to be said about making a deal to preserve the hillsides in open space. He noted the property owner is offering some potential for recreational opportunities in the open space in the future. Therefore, there are benefits beyond setting the hillsides aside for open space. The question is how much the City is willing to pay for this benefit. He noted the property owners are asking for the ability to develop 65-lots. He felt this was too high a price to pay. He disclosed that he met with the development team yesterday, and that he met with Mr. Garcia several times regarding his development. He noted that the Oak Meadow Plaza proponents are willing to put this item off and have started to talk about feathering back the density of development. In his conversations with the Oak Meadow Plaza proponents yesterday, they indicated there could be a 50-51 unit development. It was his position that the City needs to negotiate further as he felt that even 50-units was too much to pay, in addition to the 5

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units. He felt that 30-units may be the appropriate density to pay for the hillside. He acknowledged the City wants to receive the benefit of preserving open space. He felt this can be accomplished by approving item 13, and holding off on item 14 in order to allow negotiations to take place. He felt the project proponents have some great ideas on circulation, but that he does not know how you control the density. He noted that it was previously suggested that ½ acre to 1 acre lots be considered instead of 12,000 square foot lots. He did not believe this makes sense from the stand point of the 7,000 square foot lots that already exists in the development. He felt there needs to be a better transition.

Council Member Tate noted that the project proponents are requesting they be allowed to go up to 12½% slope because they want additional density. If less than 10% slope is allowed, it would equate to less density. If a 10% slope is used, it would preclude the approval of item 13. However, he felt this was a good suggestion. He felt there are things the City can do with an RPD overlay on the property as the City moves forward with the density. He suggested the property be feathered from 12,000 square feet to ½-1+ acre lots at the western edge of the property. He stated that he would support approximately 30 dwelling units for the Oak Meadow Plaza project.

Council Member Sellers disclosed that he met with the developers and that he has read every letter and e-mail forwarded to him. He said that the correspondence received had an impact. He was pleased to hear that there is an opportunity to continue the dialogue because there are a lot of unanswered questions. He did not believe the City has done a good job in communicating at the front end and talking about the direction to be taken. He felt it important to keep in mind what the City is trying to gain and what we risk losing. While there may not be a lot of homes built in the county, the City may be at risk of having the homes built in the wrong area, and do more to damage to the City's quality of life than having a few homes in the right place. He noted this is something the City has always tried to do. This is the reason he tried to get more development in the downtown as more housing is needed there. He felt that allowing more development in the downtown would make it difficult for development to occur in the outlying areas of the City. He stated that he does not support development south of Watsonville Road. However, the decision to develop in this area occurred 30+ years ago. As a result, the City is looking at infill for a lot of these properties off of the Spring-Edmundson and Santa Teresa-Watsonville properties. He recommended that the infill be done correctly as these are appropriate gateways, have all the benefits, and maximize what the community can receive for doing so. The Council can try to minimize the negative impacts and maximize the benefits. He stated that he was comfortable moving forward with the general plan amendment. He was pleased that the City was not moving forward on the annexation as he could not support 60-units this evening. He felt the density needs to be lower than 60-units. If the developer and the residents can work together, they can mitigate concerns. He recommended the City do a better job of communicating as the process moves forward.

Mayor Pro Tempore Grzan stated that he was not inclined to support this item at all. He said that the 11 homes that could be built on Oak Meadow Plaza property could still be built no matter what the City does. He hears the threat that should the 11 homes be allowed to proceed, they could be prominent homes. It was his recommendation that the City start working with the County and other cities about an agreement that not only deals with this area, but all unincorporated areas within the City's sphere of influence. He stated that he would not be agreeable to any type of development that would exceed 19-units in this area as it was his belief 30-units would be too much. He would also place other restrictions

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such as not allowing two story homes so as not to preclude views. He would support the development of single story homes at a lower density that is planned with the existing community to address traffic and other mitigating issues. He recommended the adjacent residents be involved in this process so that they have some determination on how their views and lives will be impacted by this development.

Council Member Carr announced that he was not in attendance at the last meeting where this item was discussed. However, he disclosed that he listened to the April 5 meeting on a compact disc. He stated that he read all e-mails submitted and that he appreciated the thoughts as presented. In reviewing the proposal, he was not sure whether the right side of this hill was being preserved. He noted that the majority of Morgan Hill residents view the east side of the hills being proposed for development; a concern to him. He felt there were some issues that can be resolved in order to achieve some of the goals addressed by Council Member Tate. The Council needs to figure out the right trade offs in order to preserve open space. He stated that he drove the neighborhood and stopped at several of the cul de sac areas where you can see a terrific view. He supported looking at the slope and what percentage of the slope should be considered for development. He noted that there is a flat area that can be looked at as it is the face of the hillside the City wants to protect for the rest of the valley floor. It is his hope that an arrangement can be achieved that would allow for less density. However, he was not sure what the density number should be. He was pleased that Mr. Hechtman was willing to talk about the RPD overlay. He indicated that the e-mails received expressed concern about the density, traffic and different restrictions. He was pleased that the project proponents are willing to talk about these issues. He would support finding ways to work through some of the issues over the 2-4 month period to see what returns to the Council, in terms of less density while preserving the open space.

Mayor Kennedy disclosed that he met with Mr. Hechtman, Mr. McClintock and Anchorpoint Academy as well as with Mr. Garcia regarding these properties. He noted that the applicant is requesting that item 14 be deferred in order to give them time (2-3 months) to meet with the residents to try and come up with a solution that works. Therefore, the appropriate action would be to table item 14.

Council Member Tate concurred that item 14 needs to be tabled. However, one of the items the Council will need to consider with item 13 is the request for 12½% slope as opposed to 10% slope. He stated that he concurs with the Planning Commission's recommendation of staying within the 10% slope.

Mayor Kennedy noted that comments were made by each Council Member. He recommended that these comments be made as part of a motion, and that this information be referred to staff and Mr. Hechtman as they go through this process.

Mayor Pro Tempore Grzan inquired whether the Council can change its action, should the applicant return to the Council without an agreement with the adjacent residents.

Mr. Bischoff noted that there are certain times in the year the Council amends the general plan. These dates are in April and October, by policy. Should the applicant return to the Council in August indicating that they did not reach an agreement with the residents; the Council would need to wait until October to remove the property from the UGB and eliminate the residential designation on the property.

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**14. URBAN SERVICE AREA APPLICATION, USA-05-02/ ZONING AMENDMENT APPLICATION, ZA-06-01/ ANNEXATION APPLICATION, ANX-03-01: EDMUNDSON-OAK MEADOW PLAZA (Continued from 04/05/06)**

**Action:** *Council Member Sellers made a motion, seconded by Council Member Tate to **Table** this item in order to allow the applicant to meet with the adjacent residents.*

Mayor Pro Tempore Grzan inquired whether the Council was requiring the applicant to return to the Council after meeting with the residents.

Mr. Bischoff said the Council could direct staff to return with progress reports every month to inform the Council as to the progress being made. However, if an application is tabled, there is a presumption that at some point, the applicant would return to the Council.

Council Member Sellers felt the applicant would return to the Council if they have reached an agreement with the residents, thus, the reason for his motion.

**Vote:** *The motion carried unanimously (5-0).*

**Item 13 – Hill Road ULL**

Mayor Kennedy inquired whether there was a desire to move the ULL further east, to the base of the foothills.

Mr. Bischoff clarified that it was the ULL Committee's recommendation that the ULL be at the base of the foot hills. He indicated that this was never a staff recommendation. The reason for recommending the ULL be placed on Hill Road as opposed to the base of the hill is based on the fact that staff believes that placing the line on the hills would be setting a policy direction. Individuals could look at the line and expect that at some point in the future, the City would be interested in expanding east of Hill Road. It is also staff's belief that a better decision would be to locate the ULL on Hill Road.

Mayor Kennedy noted that Mr. Thomas' argument was that by moving the ULL to the east and placing the property within the ULL, the City would have greater control of the property. He stated that Mr. Thomas made this argument at the ULL Committee, and that there was a close split vote of the ULL Committee to place the ULL at the base of the hill. He noted that the current proposal, as contained in the document, is to have the ULL on Hill Road. He hears consensus of the Council that it would like to leave the ULL on Hill Road.

Mayor Pro Tempore Grzan did not support moving the ULL further east, but would support the ULL following Hill Road to the south of Morgan Hill, to the end of the City's sphere of influence. Doing so would preserve some open space that is flat and gradually rising to the face of the foothills. He noted that the ULL Committee was made up with a number of property owners who had financial interests as to where the line was voted. If there was a different make up in this committee, he did not believe the line would be where it is being suggested today.

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Council Member Sellers felt that Mayor Pro Tempore Grzan's recommendation was premature because the City is still dealing with the southeast quadrant issue and the industrial land use study. He felt that the extension of the ULL could be addressed at the time the southeast quadrant and the industrial land use study are completed.

Mayor Pro Tempore Grzan felt that there is a significant amount of property that would be undertaken as part of a study. This significant amount of area would impact the core of downtown Morgan Hill. He was looking at reducing the study area. He felt that in its reduced form, there would be a significant amount of property.

Mayor Kennedy agreed with Council Member Sellers that extension of the ULL can be brought up at the time the Council looks at the whole southeast quadrant, in light of the conclusion of the ULL Committee.

Council Member Carr recommended that it be stated that the Council will deal with the ULL at the time the southeast quadrant returns to the Council. He felt that there is a good argument that the ULL line needs to be extended and that the Council should spend some time talking about it.

### Item 13 as it relates to the Black Rock property

Mayor Pro Tempore Grzan said that this is an awkward piece of property, noting that had there not been development along the west side of Santa Teresa, he did not believe the Council would be discussing Black Rock. He agreed the Council could extend the ULL along Santa Teresa to make it whole in this part. He suggested that there be significantly higher lot sizes. He disclosed that he met with Mr. Garcia and drove the property with him.

City Attorney Kern expressed concern with the comments made to Council with respect to item 14 in being able to adopt a general plan and changing it later. She felt that this would be placing the City at some risk. She noted that the project developer wants to move forward with the ULL and general plan amendment at this point in time because they have some issues about a potential open space initiative. The project proponents want to preserve their rights. It was her belief the project proponents will be looking at whether or not the Council will be giving them some direction that they can rely upon as to its intentions about the property. She expressed concern that the Council may believe it can proceed with a general plan amendment only to return in a few months to revoke the general plan amendment. She indicated that should the Council approve the general plan and the ULL there is no requirement the Council needs to move forward with the rezoning, etc. She reiterated that the developer is relying upon the action being taken this evening to make future decisions on development.

Mayor Kennedy noted that a general plan land use designation of single family low would equate to 1-3 dwelling units per acre. He noted that there may be a possibility of 19-acres that could equate to a minimum of up to 19 homes being developed, depending on the percentage slope agreed upon. Should the Council agree to this land use designation, there would be no expectation that this designation would change.

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Mr. Bischoff clarified that the resolutions before the Council indicates 10% slopes and 19-acres.

Council Member Tate felt that it was late in terms of figuring out if the Council wants to go with a lesser percent slope and what that would be in order to control the density. He suggested the Council proceed with a 10% slope and look at this as a means to control the RPD in the future.

Mr. Bischoff said that even though the Council may decide to include 19-acres in the boundary, the Council still has control over development through zoning. It may be that the Council does not want to see the entire 19 acres developed as it may suggest that 2-acres be preserved as open space. He said that with Council action this evening, it may stipulate 19 to 60 units. He said that the general plan designation provides a range and that in theory, an individual could develop within this range. Should the Council assign a single family low range, it would be a presumption to state that you would not have fewer than 19-units. He clarified that a single family low general plan designation does not give the applicant the right to develop 60-units on the property. The range of development the City would consider would be between 19 and 60 units. He said that the zoning designation would be the tool that would allow the City to control the overall development of the property.

Mayor Kennedy indicated that he hears a majority of the Council in support of approving the general plan amendment with a single family low general plan designation with the comments that have been expressed. This includes 10% slope, and support of the general plan text amendment to Action 3.4.

**Action:** *It was the consensus of the Council to support the general plan text amendments to Action 3.4; support the Planning Commission recommendations with respect to the south side of Spring Avenue; and supportive of including the two DeWitt properties in the ULL.*

Mr. Bischoff indicated that the Planning Commission did not consider the request to include the South Valley Christian Church property located adjacent to the Oak Meadow Plaza properties in the UGB or the ULL.

Council Member Sellers did not believe the South Valley Christian Church property was discussed because everyone may have thought it was a part of the bigger project. He inquired whether the City had another opportunity to refer the Church's request back to the Planning Commission for a recommendation.

Mayor Kennedy supported including the Church property within the ULL as it is contiguous with the rest of the properties and may provide some opportunities to develop an RPD that would incorporate the entire area.

Council Member Tate stated that he would not be comfortable acting on property not previously considered.

Council Member Carr felt that it may be the property was considered in the evaluation as it may have been assumed that it was part of the larger project.

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Mr. Bischoff said that it may have been an understanding that the Church property may have been a part of the Oak Meadow property and that Oak Meadow was not interested in the property. It may have been assumed that this area would be a part of the area that would be protected by an open space easement.

Mayor Kennedy indicated that he was not aware that the Church parcel being a separate, unique parcel. He doubted whether any of the ULL committee members were aware of the property. He recommended the Church property be included as it would allow for flexibility.

Council Member Carr felt the property may have been considered in the overall review of the ULL. He did not believe the Church property was called out or discussed separately. Had the property been called out, he felt that everyone would have supported including the property within the ULL.

Mr. Bischoff informed the Council that the Church property was not a part of the MOU. He noted that the Council is reviewing amendments to the general plan, and that the general plan has a specific policy that states the Council can amend the UGB at the time it undertakes the greenbelt study. He noted the Council is undertaking the greenbelt study at this time and that there is no provision for returning six months from now to amend the UGB again. He noted that this is a hilly piece of property. If left in the County, the property owner could probably build a home on the parcel. If included within the city limits, the property owner could place up to 2 homes under Measure C. He did not see any harm including the property within the UGB and the ULL.

Mayor Kennedy recommended that the Church property be included as it would provide more flexibility in solutions for the overall area. He indicated that the ULL Committee did not consider the Church property as it was located outside the line.

Mayor Pro Tempore Grzan agreed that the ULL Committee never considered the Church property.

Ms. Mareau inquired how the Council could sit here and discuss the request, and yet have so many issues unresolved; making changes and thinking about approving adding the church property this evening.

**Action:**     *It was the consensus of the majority of the Council to leave the Church property outside the ULL.*

Mr. Bischoff said that depending on the action to be taken with respect to the Oak Meadow Plaza, as part of item 13, it may involve some changes to the text amendments. He said that it appears as though the Council was leaning toward 10% slope instead of 12½% slope. If so, the Council will need to direct staff to amend page 4, item 7.5c, of the general plan amendments to reduce the number of acres from 20 to 19 acres. He recommended that language be included that stipulates the inclusion of 19-acres comprised of slopes 10% or less, and up to 57 homes.

Mayor Pro Tempore Grzan did not know why 57 homes needs to be indicated when it is known that the Council will agree to this number.

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Mayor Kennedy noted that the general plan designation of single family low would allow 1-3 dwelling units per acre.

In response to Mayor Pro Tempore Grzan's inquiry as to an alternate general plan designation; Mr. Bischoff indicated that a residential estate land use designation would allow 0-1 dwelling units per acre.

Mayor Kennedy recommended that the general plan amendments not talk about the number of units.

Council Member Sellers noted that the Council heard from the applicant and felt that if the Council does not identify parameters, they may walk away and start developing the property with large homes at the top of the hill.

Mayor Kennedy suggested the general plan land use designation be identified as 1-3 du per acre, and not talk about the number of housing units.

Mayor Pro Tempore Grzan said that should the Council approve the action, the Council would be extending the ULL in this area to include this acreage to which there is potential development of 1-3 dwelling units per acre. The determination of whether 1-3 dwelling units would be allowed is at the zoning application level. This is the time the adjacent residents need to return to the Council as it will be determined whether there will be 19-units or whatever number of units are to be determined.

Mr. Bischoff noted that the property owners' representative indicates that they will be meeting with the residents in order to reach an agreement as to the appropriate number of units that can be developed. He clarified that the general plan text would state that 19-acres would be included within the UGB. He indicated that the Council could approve a development plan that could stipulate that of the 19-acres, homes would be built on 10-acres and the other 9-acres would be preserved for parks or other uses, as an example.

Mayor Pro Tempore Grzan noted that the Council has a non binding MOU in place.

It was clarified that should the Council enter into discussions about zoning and the applicant is not in agreement as to what has been decided, the applicant or the City can walk away from the non binding MOU.

Council Member Tate noted that item 13 includes the Black Rock property within the ULL.

Council Member Sellers indicated that he expressed concern about the location of the Black Rock property at the last meeting. However, he toured the Black Rock property and realized that this is in effect an infill development.

Council Member Carr stated that he toured the site and discussed the Black Rock property with the owner. He agreed that the property is bounded on three sides by development. He felt that what is being proposed fills in development and feathers development with what exists today.

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Mayor Pro Tempore Grzan noted that a significant creek flows along the edge of the property and that it needs to be protected. He suggested that recreational opportunities be extended by implementing trails, etc.

Mayor Kennedy said that the blue heron habitat needs to be protected as well.

Council Member Sellers appreciated the endurance of the individuals who have stuck with these items. He clarified that the Council has set some general parameters and that the Council is not annexing properties this evening. The Council is providing the property owners with general parameters and directing them to go back and work with the neighbors in order to develop some opportunities that may show how they might mitigate neighbors' concerns and come up with a proposal that is viable. It was his hope that at some point down the road, the property owners will return to the Council with a proposal that is viable. He felt that the concerns expressed by the Council parallel with the concerns of the neighbors, in parts.

Mayor Kennedy noted that there is strong concern, on the part of the Council, to protect the adjacent residents' interest as the City goes through this process. He stated that there will be plenty of opportunities for future comments. He indicated that the developer will meet with the residents, working toward a solution that works for all parties involved.

**13. GENERAL PLAN AMENDMENT, GPA-05-05: CITY OF MORGAN HILL- URBAN LIMIT LINE/GREENBELT STUDY IMPLEMENTATION – Resolution No. 5996**

**Action:** *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5996, Approving General Plan Amendments, as amended this evening.*

Mayor Kennedy indicated that there were no Council Members who had a preconceived idea on how they would vote. He stated that the Council values the public's input.

**15. GENERAL PLAN AMENDMENT APPLICATION, GPA-05-06/ URBAN SERVICE AREA APPLICATION, USA-05-01/ ZONING AMENDMENT APPLICATION, ZA-05-27/ ANNEXATION APPLICATION, ANX-05-18: SANTA TERESA BOULEVARD-BLACKROCK (Continued from 04/05/06) – Resolution Nos. 5997, 5998, 5999 and Ordinance No. 1776, New Series**

Council Member Tate noted that item 15 contains a memo from staff that presents suggested options. He noted that the applicant has suggested the Council chose option 4, moving forward with all items this evening. He stated that he was inclined to approve item 2, including the property within the UGB and

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designate the property for residential estate use; denying the urban service area, prezone and annexation request. He said that this option would recognize that annexation and development of the property may be appropriate within the next 20-years, but felt that annexation and development at this time would be premature.

Council Member Carr said that he views this property as infill today as it has development on three sides of the property. He noted that services are located adjacent to the site. Denial would preclude the ability to hook up to city services.

Mayor Kennedy agreed that this is infill property.

Council Member Tate said that he would agree that it would be appropriate to develop the property within 20-years, but not at this time. He agreed with the speakers that have questioned the establishment of a ULL, and that the Council is including new properties. He did not believe it made sense to amend the ULL at this time.

Mayor Pro Tempore Grzan stated that he does not believe the property fits the classic description of infill as when the Council looks at something closer to the core of the City. He stated that it is an awkward situation in light of the existing homes. He noted that this area is pristine, open space and is located at the farthest extremities of the ULL. For the Council to immediately suggest development at this location, does not feel right at this time.

Mayor Kennedy noted that it was mentioned that this is a gateway to the City. He felt that the proposed designation of residential estate recognizes the property fits within the surrounding communities, noting that development would feather between both sides of development. It was his belief that long term; it makes sense to develop at the proposed density versus commercial or higher density at this location.

Council Member Sellers noted that this is an old decaying Christmas tree farm that would fall into further decay. He did not find old decaying Christmas tree farms being attractive. He expressed concern that the property would be left fallow and has minimal use for the next few years while the property awaits inclusion in the ULL. Given the fact the property is a gateway, he would be comfortable moving forward with option 4.

**Action:** *It was the consensus of the majority of the Council to support option 4.*

**Action:** *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Pro Tempore Grzan abstaining, **Adopted** Resolution No. 5997, Approving the general plan amendment.*

**Action:** *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 3-2 vote with Mayor Pro Tempore Grzan and Council Member Tate voting no, **Adopted** Resolution No. 5998, Approving the expansion of the urban service area.*

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### ORDINANCE NO. 1665, NEW SERIES

#### AN ORDINANCE OF THE CITY OF MORGAN HILL EXTENDING THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM THROUGH THE YEAR 2020, AND AMENDING PROVISIONS OF THE GENERAL PLAN AND ARTICLE I OF CHAPTER 18.78 OF THE MUNICIPAL CODE TO UPDATE AND EXTEND THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM

The people of the City of Morgan Hill do ordain as follows:

#### **Initiative Measure Section 1: Findings and Purposes**

In approving this initiative measure the voters of the City of Morgan Hill make the following findings:

- A. Since 1977 the City of Morgan Hill ("the City") has had in place a Residential Development Control System ("RDCS"), which sets a target future population for the City and provides a method for evaluating proposed residential developments and issuing a limited number of development allotments each year. The RDCS has helped to assure that residential development pays for itself and that the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. The system was first enacted by the voters through Measure E in 1977, and subsequently refined and extended through Measure P in 1990. By its terms Measure P shall remain in effect until fiscal year 2009/10, and can be amended only by a vote of the people. By this RDCS Update, the voters of the City are extending and updating Measure P.
- B. Under Measure P, the RDCS has fostered balanced growth in the City. The City has achieved a manageable level of development, and has encouraged more efficient patterns of development by directing growth to areas that are contiguous to existing development and served by adequate infrastructure. The RDCS has helped the City to preserve a diversity of housing opportunities, including a good stock of high-quality affordable housing, for its residents. It has helped to maintain the vitality of the City while preserving its open space resources. Accordingly, the people by this initiative measure are extending, through fiscal year 2019/20, the core provisions of the City's General Plan and zoning ordinances relating to the RDCS.
- C. Measure P established a population ceiling of 38,800 for the City in the year 2010. The City's current population is approximately 35,000. In 2001, the City updated its General Plan and incorporated in it an updated population projection of 48,000 for the year 2020. This RDCS Update will incorporate the updated 2020 population projection and adjust the allotment provisions of the RDCS accordingly.
- D. The Leroy F. Greene School Facilities Act of 1998 provides for the exclusive means of considering and mitigating impacts of development projects on school facilities and

limits the ability of a city to deny approval of a project on the basis that school facilities are inadequate. Conforming amendments to the RDCS are therefore appropriate.

- E. In reviewing the implementation of the numerical formulas and the scoring system of the RDCS, the City has concluded that, while on the whole the system works well and should be maintained and extended, certain aspects of the RDCS need to be further refined to provide a more consistent number of allotments each year and avoid extreme variations in the amount of residential development that takes place year to year, and otherwise to simplify the administration of the system.
- F. Measure P's requirement that one-third of all residential development allotments be awarded to projects on the west side of Monterey Road and one-third on the east side of Monterey Road, with the remaining third anywhere in the City, has resulted in undesirable effects including projects on the west side of Monterey Road being approved with lower point scores than projects on the east side. This RDCS Update would eliminate the required geographical distribution and instead adopt provisions encouraging new residential development in the downtown and near the central portion of the City.
- G. The City adopted a new Downtown Plan in 2003. A major strategy of the Downtown Plan is to encourage an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, to provide market support for new businesses, and to establish a viable neighborhood in this central area of the City. This RDCS Update will require the reservation of a certain number of allotments for projects in the downtown area through 2010. Reserving allotments for residential projects in the area covered by the Downtown Plan will help to ensure that this strategy is successfully implemented.
- H. Should the City in the future establish an Urban Limit Line or Greenbelt, no residential development or expansion of the Urban Growth Boundary or Urban Service Area could be approved pursuant to this RDCS Update that is inconsistent with such Urban Limit Line or Greenbelt.
- I. Based on the foregoing, the voters hereby enact the provisions set forth in sections 2, 3, and 4 below, amending the General Plan and Chapter 18.78 of the Morgan Hill Municipal Code, and extending the terms of Measure P, as amended, through fiscal year 2019/20.
- J. Attached to this initiative measure as Exhibit A is a map based on the Morgan Hill General Plan Land Use Diagram. On Exhibit A, the lands within the City designated as Open Space and retained as open space pursuant to Measure P and this initiative are highlighted, and the Urban Service Area referred to in this initiative is also illustrated. The map is for reference purposes and is not being adopted or amended by this initiative measure.

## **Initiative Measure Section 2: General Plan Amendment**

The City of Morgan Hill General Plan Community Development element contains the core provisions governing "Residential Development Control," as adopted by the voters of the City when they passed Measure P in November 1990. The people now wish to update and extend the provisions of the General Plan enacted by them in Measure P, and accordingly adopt the General Plan amendments set forth below. Changes to the text approved by the voters in 1990 are shown by strike-out text for deletions, and underscored text for additions. The "Residential Development Control" provisions appear at pages 25-28 of the July 2001 Morgan Hill General Plan. The provisions of the General Plan as amended by this initiative shall remain in effect through fiscal year 2019/20.

### **Residential Development Control**

The following provisions, enacted by voter initiative Measure P in 1990 and refined and extended by vote of the people of the City in 2004 shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year 2019/20.

#### **A. Requirement of Development Allotments for All Residential Development.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefor in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDCCS) set out in the Morgan Hill Municipal Code, except for secondary dwelling units ("granny units") and for a single dwelling unit, on the following conditions: If one unit is proposed on a parcel of sufficient size to accommodate additional units, it may be permitted without an allotment only if a deed restriction is placed upon the parcel which requires allotments to be obtained for any additional dwelling units on that parcel. Furthermore, if more than one contiguous parcel is proposed for development by the same individual or entity under the single dwelling unit exemption on each parcel, Residential Planned Development Zoning shall be required for such development.

The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

#### **B. Number of Development Allotments.**

The population ceiling for the City as of January 1, 2020 is forty-eight thousand (48,000). This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. However, if any of the following existing County subdivisions, which are already within the City's Urban Growth Boundary ("Existing County Subdivisions"), are annexed into the City, the population within them shall not count against the

48,000 person population limit: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III (at the southwest corner of Hill Rd. and Diana Ave.).

The number of allotments shall be determined biennially, using the California Department of Finance's most recently determined figures for the persons per household and total population of the City of Morgan Hill. The State's estimate will be adjusted for any relevant housing backlog not included in its population estimate, any Existing County Subdivision (as defined under the prior paragraph) that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between the population estimate date and 2020. This gross annual allotment is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined by the City Council, provided that no less than thirty-three percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The City Council may, if it chooses, further divide the allotments according to geography, price, development size, phasing (including the number of units and timing of allotments required to complete a project), and similar criteria as deemed necessary to provide for the general welfare.

For the competitions for allotments in fiscal years 2006-07 through 2009-10, the City Council shall reserve a certain number of allotments for projects in the Downtown Area. The number of allotments allocated, and the geographic limits of the Downtown Area for this purpose, shall be determined by the Council. The Council may amend the number of the reserved allotments and geographic limits of Downtown for this purpose, and may continue to reserve an appropriate number of allotments to Downtown area projects after the 2009-10 fiscal year.

The City Council may, in any year, reserve an appropriate number of allotments per year to vertical mixed-use projects, which are not restricted to the Downtown Area.

### **C. Development Allotment Applications and Evaluations.**

Development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals in an annual or biennial competition. The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development allotments, the City Council shall comply with Government Code Sections 66000 et seq. and other relevant provisions of the state Planning and Zoning Law.

**D. Emergency situations.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of mandatory water rationing, sewage system operating at 95 % capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

**E. Open Space Conversions.**

No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the

development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through November 19, 2003 are hereby reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the City Council from designating additional lands as open space.

**F. Urban Service Area Restrictions.**

The City of Morgan Hill shall neither apply to LAFCO for, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land in the existing Urban Service Area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition of land to the Urban Service Area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable in-fill. Desirable in-fill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary, (as determined by a perpendicular line drawn from the side of the parcel to the City boundary), and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden City services, and that the expansion would beneficially affect the general welfare of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those areas that promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially

affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements on which the City's findings are based, and/or convey the land needed for the public facilities, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in paragraph B, "Number of Development Allotments," of the Residential Development Control provisions of the General Plan.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any Court judgment.

In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered "infill" as defined above, the City shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County General Plan as of March 1, 1990.

#### **G. Urban Services Extensions.**

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that: 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by City facilities on County Land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Initiative Measure Section 3:**

#### **Amendments to Chapter 18.78 of the Morgan Hill Municipal Code**

The Residential Development Control System (RCDS) is codified at Chapter 18.78 of the Municipal Code. Article I of Chapter 18.78 contains the core provisions governing the RCDS as adopted by the voters of the City of Morgan Hill when they passed Measure P in November 1990. The people of Morgan Hill now wish to update and extend the provisions of Article I of Chapter 18.78, Parts 2, 3 and 4, and accordingly adopt the Code amendments set forth below.

Rather than revise the original findings supporting adoption of Measure P in 1990 and set forth in Part 1 of Article I of Chapter 18.78, the people have made additional and updated findings, which are set forth in Section 1 of the 2004 ballot measure refining and extending the RDCS.

Changes from the text of the Morgan Hill Municipal Code are shown in the following sections amending Article I, Parts 2, 3, and 4, by strike-out text for deletions, and double-underscored text for additions. These provisions of Chapter 18.78 as amended shall remain in effect through fiscal year 2019/20.

## **Article I**

### **Part 2. Residential Development Control**

#### **18.78.020 Development allotments--Required when.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the city unless a development allotment has been obtained therefor in accordance with the provisions of the general plan and the residential development control system (RDCS) set out in Parts 2 and 3 of this article, except secondary dwelling units ("granny units") and one-dwelling-unit developments as provided for below. One-dwelling-unit developments may be permitted without a development allotment, providing the following requirements are met:

A. If the parcel upon which the one-unit-development is proposed is of sufficient size to accommodate additional units, a deed restriction shall be placed on the parcel which requires allotments to be obtained for any additional unit on the parcel.

B. If more than one contiguous parcel is proposed for development by the same individual or entity, or entities with an identity of interest, under the single dwelling unit exemption on each parcel, Residential Planned Development zoning shall be required for such development.

The residential development control provisions of Part 2 of this article shall apply to all types of residential development in the city, including single-family (which includes mobile homes) and multifamily housing.

#### **18.78.030 Development allotments--Determination and distribution.**

A. The population ceiling for the city as of January 1, 2020, is forty-eight thousand persons. This ceiling shall not be increased, regardless of whether additional lands are annexed to the City or its urban service area.

If any of the following existing County subdivisions ("Existing County Subdivisions") are annexed into the City, the population within them shall not count against the 48,000 person limit, as set forth below in section 18.78.030B: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III. The population of these Existing County

Subdivisions shall be determined by multiplying the number of homes in each area by the average number of persons per household as determined by the most recent State Department of Finance estimates. Prior to the enactment of Measure P, Holiday Lake Estates Unit 1 and Casalegno's Subdivision (Casa Lane) were provided with City water service. The El Dorado III subdivision, at the southwest corner of Hill Road and Diana Ave., was developed in the County, and provided with sewer and water service, in order to eliminate a significant County health problem. These Existing County Subdivisions are all within Morgan Hill's UGB and were at least 95 percent developed as of November 19, 2003.

B. The number of allotments shall be determined biennially using the California Department of Finance's most recently determined persons per household figures and population for the City of Morgan Hill.

The California Department of Finance's population estimate will be adjusted for any relevant housing backlog not included in its population estimate, the population of any Existing County Subdivision enumerated in paragraph 18.78.030A that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between that population estimate date and 2020. This gross annual allotment number is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The biennial allotment calculation applies to each fiscal year after the fiscal year in which it is computed. For example, the Spring 2004 computation will be used to set the number of allotments for the competition to be held for fiscal years 2006/07 and 2007-08, as well as to make any positive supplemental adjustments for the previously awarded fiscal years 2004/05 and 2005/06, for projects that competed for 2004/05 and 2005/06 allotments.

C. The number of development allotments shall be divided between conventional single-family dwellings, mobile homes and multiple-family dwellings in a manner determined by the city council; provided, that no less than thirty-three percent of all allotments shall be awarded to single-family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The city council may, if it chooses, further divide the allotments according to geography, price, development size, phasing, including the number of units and timing of allotments required to complete a project, and similar criteria as deemed necessary to provide for the general welfare.

D. For the competitions for allotments in fiscal years 2006-07 through 2009-2010, the City Council shall reserve a certain number of allotments for projects in the Downtown area. The number of allotments allocated, and the geographic limits of the Downtown area for this purpose, shall be determined by the City Council and may be amended, as necessary, to reflect changes in circumstances and needs. The Council may continue to reserve a certain number of allotments for projects in the Downtown Area after the 2009/10 fiscal year.

**18.78.040 Development allotments--Applications and evaluations.**

A. Development allotments shall be allocated to proposed developments in accordance with a residential development control system set out in Part 3 of this article. This system shall provide for awards of development allotments based on the number of points scored for all development proposals within a competition. The City may conduct 1-year or 2-year competitions. The City may allocate a portion of the total allotment granted to an applicant as available in the subsequent year (i.e., in the event of a 1-year competition, a portion of the allotment is made available in the second year, and in the event of a 2-year competition, a portion is made available in the third year). The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

B. Proposed developments shall be awarded points for provision of schools, related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, diversity of housing types, and for quality of architectural design and site design.

C. Small residential developments provide special benefits to the city by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in-fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the residential development control system shall be designed to provide for small development through appropriate means selected by the city council, such as a separate small project competition and a more streamlined and less costly process.

D. In implementing the provisions of the residential development control system and making awards of development allotments, the city council shall comply with Government Code Sections 66000 et seq.

E. Up to 10 allotments per year may be set aside for vertical mixed-use projects. These reserved allotments may be awarded to projects that receive at least a minimum passing score through a competitive process or on a first-come, first-served basis.

The City Council may establish higher minimum passing scores for mixed-use projects and/or consistency with the guidelines for development contained in the City's Downtown Plan. The City Council may allow for a maximum of 20 unused mixed-use allotments to be carried over from year to year, if unused in prior years, for a maximum of 30 units potentially available for distribution in one year under this set-aside. Mixed-use projects eligible for allotments under this set-aside shall be no larger than 15 units. A single development project shall be eligible to receive allotments under this set-aside only once.

**18.78.050 Emergency situations--Restrictions on development.**

No residential development shall be permitted during a period of emergency or severe impactation of public facilities, as declared by the city council pursuant to provisions of this code. The declaration of an emergency or severe impactation situation may be based on determinations of mandatory water rationing, sewage system operating at ninety-five percent capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

**18.78.060 Open space conversions.**

A. No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under Part 2 of this article shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

B. With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

C. The lands within the city that are designated "open space" on the city's general plan land use/circulation elements map, as amended through November 19, 2003, are reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the city council from designating additional lands as open space.

**18.78.070 Urban service area restrictions.**

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable in-fill. "Desirable in-fill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services, and that the expansion would beneficially affect the general welfare of the citizens of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date the area is added to the Urban Services Area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the City's findings are based, or convey the land needed for the public facilities on which the findings are based, must be secured prior to official action adding the area to the Urban Services Area, through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the Existing County Subdivisions enumerated in section 18.78.030A may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these Existing County Subdivisions may be added to the City Urban Service Area and annexed into the City without otherwise meeting the test for desirable infill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any court judgment.

D. In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered in-fill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County general plan as of March 1, 1990.

**18.78.080 Urban services extensions.**

The city shall grant no new extensions of urban services for residences beyond its urban service area except in the event that:

A. Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by city facilities on county land; or

B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

**Part 3. Residential Development Control System**

**18.78.090 Application--Procedure and contents--Fees.**

A. An application for a development allotment shall be made to the city planning division on a form provided by the city. Such application shall contain the following information and be accompanied by the following documents:

1. Site utilization map including:
  - a. Vicinity map to show the relationship of the proposed development to adjacent development, the surrounding area and the city,
  - b. Site use layout map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. The site use layout map is of major importance; the vicinity map may be shown as a small inset map;
2. Site development plan including lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with city street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways;
3. Preliminary architectural plans including typical architectural elevations, types and numbers of dwelling units, proposed color of buildings;
4. Preliminary grading plans including a general indication of type, extent and timing of grading;
5. Narrative description of preliminary landscape plans including general indications of planting;

6. Housing marketability and price distribution including expected ranges of rental amounts or sales prices, low-income and moderate-income housing to be provided, and applicability to housing assistance plan, if any;

7. Statement regarding how the proposed development will comply with state law requirements regarding the mitigation of impacts of the development on school facilities. Description of other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities;

8. Development schedule including proposed schedule of development including phasing;

9. Such other information as may be required by the planning manager.

B. Each application shall be accompanied by a reasonable fee set by the city council based on the cost to the city of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc., and shall not be returned in the event that no development allotment is awarded.

C. An applicant may file only one application for any given property in any competition.

D. An application for a development allotment shall be filed with the city planning division on a date determined by the planning manager, which shall be no later than twenty-one months preceding the fiscal year during which the allotments must be utilized.

**18.78.100 Application--Evaluation by planning officer.**

A. The planning officer (hereinafter referred to as PO) shall review each application and determine whether or not the proposed development conforms to the city's general plan. If the PO determines that a proposed development does not conform to the general plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

B. Within fifteen days after such notice is mailed, the applicant may appeal the decision of the PO to the city council by filing a written notice of appeal with the city clerk, who shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of nonconformity with the plans, reverse the decision by finding that the proposed development is in conformity with the plans, or permit the applicant to modify his proposed development to bring it into conformity with the plans. The decision of the council shall be final and conclusive.

**18.78.110 Evaluation procedures--Generally.**

Proposed developments found by the PO or city council to conform to the general plan shall be evaluated by the PO and awarded points as set forth in Section 18.78.115. The planning commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections 18.78.115 and 18.78.120. The PO shall submit his

evaluation to the planning commission and the commission shall approve, disapprove or modify the PO's evaluation by simple majority vote.

**18.78.115 Evaluation procedures--Impact on existing facilities--Point system.**

A. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

B. The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from zero to two points for each of the following:

1. The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide (comments of the city director of public works);

2. The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the city director of public works);

3. The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the Santa Clara Valley Water District and the city director of public works);

4. The ability of the city-designated fire department to provide fire protection according to the established response standards of the city without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the police department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel (comments from the fire and police departments);

5. The ability and capacity of major street linkages to provide for the needs of the proposed development without substantially altering the existing street system (the desired target traffic level of service being no worse than ["D+"] level of service as defined in the 1985 Transportation Research Board Report # 209), except as otherwise allowed in the General Plan, and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer (comments from the appropriate department heads).

**18.78.120 Evaluation procedures--Design and amenity criteria.**

On quality of design and extent of contribution to public welfare and amenities, the PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

A. The provisions of school facilities and amenities, as attested by agreement with the MHUSD, to the extent such consideration is not in conflict with state law..... 25 points;

B. The provision of public and/or private usable open space and, where applicable, greenbelts..... 20 points;

C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than leapfrog development, by using land contiguous to urban development within the city limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors ..... 20 points;

(For purposes of this section, "the central core" is the area illustrated on the Central Core Map, attached as Exhibit B and described generally as that area bounded on the west by Del Monte Ave. from Wright Ave. to Ciolino Ave. and by West Little Llagas Creek from Ciolino Ave. to Cosmo St; on the east by the railroad tracks from the easterly prolongation of Wright Ave. to Main Ave., by Butterfield Blvd. from Main Ave. To Dunne Ave., and by Church St. from Dunne Ave. to the easterly prolongation of Cosmo St.; on the north by Wright Ave. and its easterly prolongation to the railroad tracks; and on the south by Cosmo St. and its easterly prolongation to Church St.)

D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities..... 10 points;

E. Provision of parks, foot or bicycle paths, equestrian trails or pathways . . 10 points;

F. The provision of units to meet the city's need for low-income and moderate income and elderly housing and the extent to which such provision meets the goals of the housing element of the general plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity..... 15 points;

G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the housing element of the general plan..... 15 points;

H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height ..... 15 points;

I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations..... 15 points;

J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on-site and off-site traffic safety and privacy..... 15 points;

K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures..... 10 points;

L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings..... 10 points;

M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features ..... 10 points;

N. The extent to which the proposed development exhibits overall project excellence and/or incorporates or otherwise embodies the concepts of Livable Communities, such as proximity to transit, pedestrian orientation, efficiency of street system, mixed-use, infill, and maximization of use of existing infrastructure..... 10 points.

**18.78.125 Award and issuance of allotments.**

A. The PO shall notify each applicant of his evaluation under Sections 18.78.110 through 18.78.120. Such notice shall be given in writing within seven days after the evaluation has been approved by the planning commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time, the PO shall notify in writing the

MHUSD and all other city departments and public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 of the result of that evaluation.

B. Proposed developments which have not been assigned a minimum of 7.5 points under Section 18.78.115 or a minimum of one hundred sixty (160) points under Section 18.78.120 shall not be given a development allotment, except for Micro projects (as defined by the City Council) and projects which are 100% affordable, for which the minimum passing score shall be one hundred fifty (150) points.

C. Subject to the limitations set forth in this subsection and subsection F of this section, proposed developments which have received a minimum of 7.5 points under Section 18.78.115 and a minimum of one hundred sixty points under Section 18.78.120 (or, for qualifying projects, one hundred fifty points) may be awarded an allotment. Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by planning commission's determination or by city council's determination on appeal) exceed the numerical limits established by the city council by competition category (micro, small, affordable, large market rate), development allotments for which the council-established numerical limit has thus been exceeded shall be awarded to the highest scoring projects based on the number of points received under Section 18.78.120. A project may be awarded fewer than the total number of allotments requested by it, and the surplus allotments awarded to the next highest scoring development(s) if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.

In the event that an applicant seeks a higher number of allotments than is available in a competition, the City Council may, in its discretion and in order to encourage high-scoring applicants to complete their projects, grant allotments for an additional fiscal year. For a one-year competition, the allotment may be allocated over two years, and for a two-year competition, the allotment may be allocated over three years.

D. Allotments shall be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. Allotments shall be awarded for no more than three fiscal years in a single competition.

E. Any applicant whose development evaluation has been completed and where any appeals, if applicable, have been resolved and who does not receive an allotment for the competition will not be considered automatically for the subsequent competition, but must reapply under Section 18.78.090 for the next or subsequent competition.

F. If a project receives an allotment in a competition for more than 50 percent of the units in the project but fewer than the total number of units needed to complete it, the additional units needed to complete it may be awarded to the project for the competition year immediately after that covered by the current competition. This additional allotment shall be considered a portion of the limited allotment for that future competition. The number of units awarded under this section for a future competition year shall be similar to the number of units awarded per year for the major portion of the project.

G. To ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their allotment and must reapply under the development allotment process outlined in Section 18.78.090 if development is still desired by the developer. An exception to the loss of allotment 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, delays not the result of developer inaction, or allotment appeals processing.

For projects that include the sale of individual lots for custom development by individual purchasers, purchasers of the custom lots shall be given an additional 24 months to physically commence construction. If this extension proves insufficient, an applicant for a custom home may apply for an additional extension subject to the same rules and circumstances as outlined in this paragraph for other projects.

**18.78.130 Appeal procedures.**

A. An applicant may appeal to the city council for a review of the scoring of its proposed development project pursuant to Sections 18.78.110 through 18.78.120 by filing a written notice of appeal with the city clerk within fifteen days after the notice of evaluation has been mailed as described in Section 18.78.125 (A).

B. The MHUSD or other public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 may appeal to the city council the evaluation under Sections 18.78.115 and 18.78.120 within fifteen days after notice has been mailed as described in Section 18.78.125 (A).

C. Any citizen or group of citizens may appeal to city council the evaluation of any applicant by filing with the city clerk a petition signed by one hundred registered voters of the city within fifteen days after the notice of evaluation has been mailed to the applicant as described in Section 18.78.125 (A).

D. In the event an appeal is filed under subsections A, B or C of this section, the city clerk shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting at which time the council will hear the applicant or his representative and such other persons as may be able to assist the council in the determination of the matter on appeal. The council may affirm or modify the project scoring and its decision shall be final and conclusive.

**18.78.140 Emergency situations--When declared--Action and review by council.**

A. An emergency or severe impaction situation shall be any one or more of the following:

1. A finding by the director of public works that the sewage facility usage level exceeds ninety-five percent of the capacity of the system;

2. Mandatory city water-rationing measures in effect;
3. MHUSD notifies the City Council that conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs, pursuant to Government Code section 65971;
4. Any public agency providing services essential to the public health and safety notifies city council in writing or by resolution that its ability to meet the public needs is severely impacted;
5. Any other endangerment to public health, safety or welfare which the city council determines to exist for the purposes of Part 3 of this article.

B. If any of these specified conditions exist, then the city council shall certify an emergency or severe impaction situation.

C. In addition, any citizen or group of citizens may petition the city council for declaration of an imposition of an emergency or severe impaction situation by filing with the city clerk a petition signed by four percent of the registered voters of the city. The city council, at their next available regularly scheduled meeting, must then vote on a resolution of emergency or severe impaction situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

D. In the event such an emergency or severe impaction is certified, no building permit and no allotment shall be issued unless the city council first specifically finds that the building permit or specific allotment will not contribute additionally to the existing emergency or severe impaction situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

E. The PO shall review all certified emergency or severe impaction situations at least quarterly, and shall determine whether conditions warrant continuation of the emergency or severe impaction. The PO shall report his findings to the city council, and notice of such findings shall be placed on the city council agenda and published in a newspaper of general circulation. If the city council finds, based on the PO's report, that the certified emergency or severe impaction situation no longer exists, it shall decertify the emergency.

F. In implementing Part 3 of this article, the city council shall comply with the provisions of Government Code Sections 65858, 65972, 65996, and other applicable state law requirements. Where those provisions conflict with this article, the state statute shall prevail.

**18.78.150 Quarterly progress review--Failure to comply.**

A. The planning officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the planning division.

B. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the city staff and council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points

awarded for its initial application, the PO shall report such failure or deviation to the city council. Thereafter, the council, after holding a hearing, may rescind all or part of the development allotment in favor of another development which has qualified for such allotment and which is capable of commencement in the year for which the allotment was awarded.

**Part 4. General Provisions**

**18.78.155 Duration of provisions.**

This article shall remain in effect until and including fiscal year 2019/20.

**18.78.160 Compliance with state and federal laws.**

The provisions of this article shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

**18.78.165 Severability.**

A. If any provision or application of any provision of this article is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this article are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by enactment of this article, to extend and expand the essential residential development control provisions and policies of Measure P. If this article is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of this article is held invalid, the remainder of the ordinance codified in this article shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

**18.78.170 Unconstitutional taking of private property prohibited.**

This article shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this article to a specific project would effect a taking, then pursuant to this article the city council may alter the provisions of this article, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this article to the maximum extent feasible.

**18.78.175 Amendment or repeal.**

This article and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election.

**Initiative Measure Section 4: General Provisions**

**1. Duration of provisions.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, and the "Residential Development Control" section of the General Plan, enacted by the voters, shall remain in effect through fiscal year 2019/20.

**2. Compliance with state and federal laws.**

The provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

**3. Severability.**

A. If any provision or application of any provision of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any other provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by their approval of the 2004 ballot measure amending the "Residential Development Control" section of the General Plan, and Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, to extend and expand the essential residential development control provisions and policies of Measure P. If Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or any provision of the "Residential Development Control" section of the General Plan is held invalid, the remainder of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General

Plan shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

**4. Unconstitutional taking of private property prohibited.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan to a specific project would effect a taking, then the city council may alter the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and/or the "Residential Development Control" section of the General Plan, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan to the maximum extent feasible.

**5. Amendment or repeal.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election. In the event of ongoing reorganizations, revisions and updates to the General Plan and Municipal Code, the policies and provisions enacted by this initiative measure shall be retained and remain in effect until their expiration or amendment or repeal by the voters.

**6. Implementation and Consistency.**

A. Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted into the Morgan Hill General Plan (unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case Section 2 of this initiative shall be deemed inserted into the General Plan on January 1 of the following calendar year). The General Plan and the Municipal Code of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative, as of the date Section 2 is deemed inserted into the General Plan.

B. As of the date the provisions of Section 2 of this initiative are deemed inserted into the Morgan Hill General Plan, Section 3 of this initiative shall likewise be deemed inserted into the Morgan Hill Municipal Code, and Measure P as enacted by the voters of Morgan Hill in November 1990, shall be deemed amended by the terms of this initiative ordinance, as set forth in Section 2 and Section 3 of this initiative measure, and the Municipal Code shall be interpreted to give immediate effect to the initiative provisions.

C. The City Council shall within 120 days of the enactment of this initiative amend the Morgan Hill General Plan as necessary to ensure internal consistency with all provisions of this

initiative. Also within 120 days the City Council shall amend Article II of Chapter 18.78 of the City Planning and Zoning Codes, entitled "Specific Policies," relating to the RDCS, and any other land use regulations as necessary to conform to all provisions of this initiative.

D. The development allotments distributed for fiscal years 2004/2005 through 2006/2007 awarded under Measure P shall remain in effect, except that under this initiative measure they may be supplemented based on the 2004 biennial computation of available development allotments, pursuant to section 18.78.030 (B). New allotments for fiscal year 2006/2007 and following shall be governed by the provisions of this initiative measure.

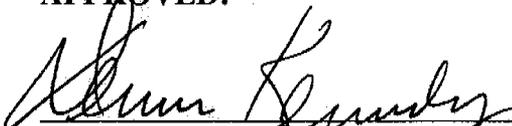
The foregoing Ordinance was passed, approved, and adopted by a majority of voters voting on the measure in a Special Municipal Election held and conducted in the City of Morgan Hill, California, on Tuesday, March 2, 2004, as required by law. This Ordinance is effective April 17, 2004. The City Clerk is hereby directed to publish this ordinance pursuant to section 36933 of the Government Code.

The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City of Morgan Hill by signing where indicated below.

**ATTEST:**

  
\_\_\_\_\_  
Irma Torrez, City Clerk

**APPROVED:**

  
\_\_\_\_\_  
Dennis Kennedy, Mayor

**❖ CERTIFICATE OF THE CITY CLERK ❖**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1665, New Series, passed, approved, and adopted by the people of the City of Morgan Hill, voting on the 2<sup>nd</sup> Day of March, 2004.

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

DATE: 4/26/04

  
\_\_\_\_\_  
IRMA TORREZ, City Clerk



CITY OF MORGAN HILL

Illustrative Map Showing Lands  
Designated As Open Space &  
Boundary of Urban Service Area

Exhibit A to

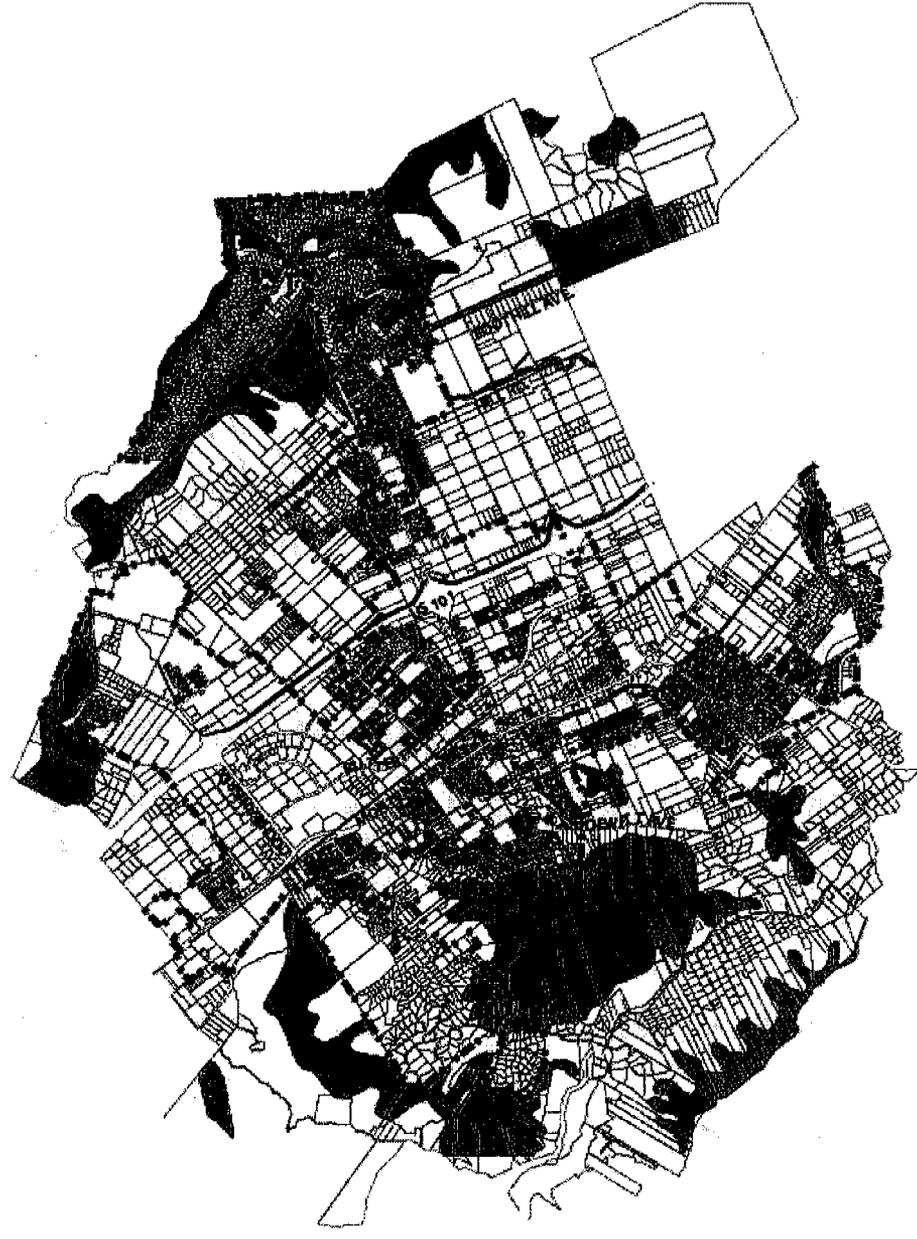
An Ordinance of the City of  
Morgan Hill Extending the  
City's Residential Development  
Control System Through the  
Year 2020, and Amending  
Provisions of the General Plan  
and Article I of Chapter 18.78  
of the Municipal Code to Update  
and Extend the Residential  
Development Control System

Urban Service Area

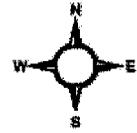
Open Space



Not to Scale



**Exhibit B**  
**Illustrative Maps Show Core Area**



— Central Core Area



Exhibit B to

An Ordinance of the City of Morgan Hill Extending the City's Residential Development Control System Through the Year 2020, and Amending Provisions of the General Plan and Article I of Chapter 18.78 of the Municipal Code to Update and Extend the Residential Development Control System

**SUPPLEMENTALS TO ITEM 1  
ORDINANCE NO. 1816, NEW SERIES**

**AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING  
THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM  
AS IT RELATES TO THE DOWNTOWN RESIDENTIAL UNIT  
ALLOTMENT PROCESS, AND AMENDING PROVISIONS OF THE  
GENERAL PLAN AND CHAPTER 18.78 OF THE MUNICIPAL CODE**

The people of the City of Morgan Hill do ordain as follows:

**Initiative Measure Section 1: Findings and Purposes**

In approving this initiative measure, the voters of the City of Morgan Hill make the following findings:

- A. Since 1977 the City of Morgan Hill ("the City") has had in place a Residential Development Control System ("RDCS"), which sets a target future population for the City and provides a method for evaluating proposed residential developments and issuing a limited number of development allotments each year. The RDCS has helped to assure that residential development pays for itself and that the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. The system was first enacted by the voters through Measure E in 1977, and subsequently refined and extended through Measure P in 1990 and Measure C in 2004. By its terms Measure C shall remain in effect until fiscal year 2019/20, and can be amended only by a vote of the people. By this RDCS Update, the voters of the City are amending Measure C to establish a process for allocating up to 100 additional residential unit allotments for projects of up to 25 units within the downtown core, defined as from south of Main, north of Dunne, east of Del Monte, and west of the railroad tracks ("Downtown Core"); and for adjusting the timing of existing allocations awarded in March 2006 within the Downtown RDCS Boundary; providing that all projects are consistent with the Downtown Plan and meet minimum RDCS scores.
- B. Under Measure C, the RDCS has fostered balanced growth in the City. The City has achieved a manageable level of development, and has encouraged more efficient patterns of development by directing growth to areas that are contiguous to existing development and served by adequate infrastructure. The RDCS has helped the City to preserve a diversity of housing opportunities, including a good stock of high-quality affordable housing, for its residents. It has helped to maintain the vitality of the City while preserving its open space resources.
- C. Measure C established a population ceiling of 48,000 for the City in the year 2020. The City's current population is approximately 37,100 persons. In 2001, the City updated its General Plan and incorporated in it an updated population projection of 48,000 for the year 2020.

- D. The City adopted a new Downtown Plan in 2003. A major strategy of the Downtown Plan is to encourage an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, to provide market support for new businesses, and to establish a viable neighborhood in this central area of the City. This RDCS Update will allow additional flexibility for projects of up to 25 units in the Downtown Core to obtain residential unit allotments outside of the established allotment process, thereby facilitating development in the Downtown area consistent with the Downtown Plan.
- E. The voters find that allowing for 100 additional allotments and a more concentrated timeframe for construction of downtown housing and mixed use projects may result in a higher than usual increase in population growth in the short term, as more than the usual average of 250 dwelling units per year may be constructed. The voters find that this is acceptable because earlier implementation of the Downtown Plan is desirable and beneficial to the general community welfare. While the 100 additional allotments may result in from 200 to 300 more residents downtown than presently anticipated to 2010, this would support achievement of public objectives for a vibrant downtown.
- F. Based on the foregoing, the voters hereby enact the provisions set forth in sections 2, 3, and 4 below, amending the General Plan and Chapter 18.78 of the Morgan Hill Municipal Code.

## **Initiative Measure Section 2: General Plan Amendment**

The City of Morgan Hill General Plan Community Development element contains the core provisions governing "Residential Development Control," as adopted by the voters of the City when they passed Measure C in March 2004. The people now wish to amend the provisions of the General Plan enacted by them in Measure C, and accordingly adopt the General Plan amendments set forth below. Changes to the text approved by the voters in 2006 are shown by strike-out text for deletions, and underscored text for additions. The "Residential Development Control" provisions appear at pages 25-28 of the July 2001 Morgan Hill General Plan. The provisions of the General Plan as amended by this initiative shall remain in effect through fiscal year 2019/20.

### **Residential Development Control**

The following provisions, enacted by voter initiative Measure P in 1990 and refined and extended by votes of the people of the City in 2004 and 2006 shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year 2019/20.

**A. Requirement of Development Allotments for All Residential Development.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefor in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDCS) set out in the Morgan Hill Municipal Code, except for secondary dwelling units ("granny units") and for a single dwelling unit, on the following conditions: If one unit is proposed on a parcel of sufficient size to accommodate additional units, it may be permitted without an allotment only if a deed restriction is placed upon the parcel which requires allotments to be obtained for any additional dwelling units on that parcel. Furthermore, if more than one contiguous parcel is proposed for development by the same individual or entity under the single dwelling unit exemption on each parcel, Residential Planned Development Zoning shall be required for such development.

The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

**B. Number of Development Allotments.**

The population ceiling for the City as of January 1, 2020 is forty-eight thousand (48,000). This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. However, if any of the following existing County subdivisions, which are already within the City's Urban Growth Boundary ("Existing County Subdivisions"), are annexed into the City, the population within them shall not count against the 48,000 person population limit: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III (at the southwest corner of Hill Rd. and Diana Ave.).

Except for the 100 allotments made available by the voters in November 2006 for projects of up to 25 units in the downtown core area defined as from south of Main, north of Dunne, east of Del Monte, and west of the railroad tracks ("Downtown Core"), which are in addition to the usual numbers as determined by this paragraph, the number of allotments shall be determined biennially, using the California Department of Finance's most recently determined figures for the persons per household and total population of the City of Morgan Hill. The State's estimate will be adjusted for any relevant housing backlog not included in its population estimate, any Existing County Subdivision (as defined under the prior paragraph) that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between the population estimate date and 2020. This gross annual allotment is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

Except for the 100 allotments made available by the voters in November 2006, the number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined by the City Council, provided that no less than thirty-three percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The City Council may, if it chooses, further divide the allotments according to geography, price, development size, phasing (including the number of units and timing of allotments required to complete a project), and similar criteria as deemed necessary to provide for the general welfare.

For the competitions for allotments in fiscal years 2006-07 through 2009-10, the City Council shall reserve a certain number of allotments for projects in the Downtown Area. The number of allotments allocated, and the geographic limits of the Downtown Area for this purpose, shall be determined by the Council. The Council may amend the number of the reserved allotments and geographic limits of Downtown for this purpose, and may continue to reserve an appropriate number of allotments to Downtown area projects after the 2009-10 fiscal year. Downtown housing and mixed use projects within the Downtown RDCS Boundary that were awarded allotments in March 2006 may be started and completed earlier than their allotment years. The City Council may establish procedures for scoring and awarding the 100 allotments made available by the voters in November 2006, which may not require a competition but which shall provide that all projects must achieve a minimum score for the project type, and which may allow for flexible project start and completion dates.

The City Council may, in any year, reserve an appropriate number of allotments per year to vertical mixed-use projects, which are not restricted to the Downtown Area.

### **C. Development Allotment Applications and Evaluations.**

Development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals in an annual or biennial competition, or outside of a competition but based on requiring projects to achieve a minimum point score, for the special 100 downtown allotments established by the voters in November 2006. The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development allotments, the City Council shall comply with Government Code Sections 66000 et seq. and other relevant provisions of the state Planning and Zoning Law.

**D. Emergency situations.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of mandatory water rationing, sewage system operating at 95 % capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

**E. Open Space Conversions.**

No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through November 19, 2003 are hereby reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the City Council from designating additional lands as open space.

**F. Urban Service Area Restrictions.**

The City of Morgan Hill shall neither apply to LAFCO for, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land in the existing Urban Service Area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition of land to the Urban Service Area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable in-fill. Desirable in-fill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary, (as determined by a perpendicular line drawn from the side of the parcel to the City boundary), and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden City services, and that the expansion would beneficially affect the general welfare of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those areas that promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements

on which the City's findings are based, and/or convey the land needed for the public facilities, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in paragraph B, "Number of Development Allotments," of the Residential Development Control provisions of the General Plan.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any Court judgment.

In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered "infill" as defined above, the City shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County General Plan as of March 1, 1990.

#### **G. Urban Services Extensions.**

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that: 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by City facilities on County Land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Initiative Measure Section 3:**

#### **Amendments to Chapter 18.78 of the Morgan Hill Municipal Code**

The Residential Development Control System (RCDS) is codified at Chapter 18.78 of the Municipal Code. Article I of Chapter 18.78 contains the core provisions governing the RCDS as adopted by the voters of the City of Morgan Hill when they passed Measure P in November 1990 and Measure C in 2004. The people of Morgan Hill now wish to amend the provisions of Article I of Chapter 18.78, Parts 2, 3 and 4, and accordingly adopt the Code amendments set forth below.

Rather than revise the original findings supporting adoption of Measure P in 1990 and Measure C in 2004 and set forth in Part 1 of Article I of Chapter 18.78, the people have made additional and updated findings, which are set forth in Section 1 of the 2006 ballot measure amending the RDCS.

Changes from the text of the Morgan Hill Municipal Code are shown in the following sections by strike-out text for deletions, and double-underscored text for additions. These provisions of Chapter 18.78 as amended shall remain in effect through fiscal year 2019/20.

## **Article I**

### **Part 2. Residential Development Control**

#### **18.78.020 Development allotments--Required when.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the city unless a development allotment has been obtained therefor in accordance with the provisions of the general plan and the residential development control system (RDCS) set out in Parts 2 and 3 of this article, except secondary dwelling units ("granny units") and one-dwelling-unit developments as provided for below. One-dwelling-unit developments may be permitted without a development allotment, providing the following requirements are met:

A. If the parcel upon which the one-unit-development is proposed is of sufficient size to accommodate additional units, a deed restriction shall be placed on the parcel which requires allotments to be obtained for any additional unit on the parcel.

B. If more than one contiguous parcel is proposed for development by the same individual or entity, or entities with an identity of interest, under the single dwelling unit exemption on each parcel, Residential Planned Development zoning shall be required for such development.

The residential development control provisions of Part 2 of this article shall apply to all types of residential development in the city, including single-family (which includes mobile homes) and multifamily housing.

#### **18.78.030 Development allotments--Determination and distribution.**

A. The population ceiling for the city as of January 1, 2020, is forty-eight thousand persons. This ceiling shall not be increased, regardless of whether additional lands are annexed to the City or its urban service area.

If any of the following existing County subdivisions ("Existing County Subdivisions") are annexed into the City, the population within them shall not count against the 48,000 person limit, as set forth below in section 18.78.030B: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III. The population of these Existing County

Subdivisions shall be determined by multiplying the number of homes in each area by the average number of persons per household as determined by the most recent State Department of Finance estimates. Prior to the enactment of Measure P, Holiday Lake Estates Unit 1 and Casalegno's Subdivision (Casa Lane) were provided with City water service. The El Dorado III subdivision, at the southwest corner of Hill Road and Diana Ave., was developed in the County, and provided with sewer and water service, in order to eliminate a significant County health problem. These Existing County Subdivisions are all within Morgan Hill's UGB and were at least 95 percent developed as of November 19, 2003.

B. Except for the 100 allotments made available by the voters in November 2006 for projects of up to 25 units in the downtown core area defined as from south of Main, north of Dunne, east of Del Monte, and west of the railroad tracks ("Downtown Core"), which are in addition to the usual numbers as determined by this section 18.78.030, the number of allotments shall be determined biennially using the California Department of Finance's most recently determined persons per household figures and population for the City of Morgan Hill.

The California Department of Finance's population estimate will be adjusted for any relevant housing backlog not included in its population estimate, the population of any Existing County Subdivision enumerated in paragraph 18.78.030A that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between that population estimate date and 2020. This gross annual allotment number is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The biennial allotment calculation applies to each fiscal year after the fiscal year in which it is computed. For example, the Spring 2004 computation will be used to set the number of allotments for the competition to be held for fiscal years 2006/07 and 2007-08, as well as to make any positive supplemental adjustments for the previously awarded fiscal years 2004/05 and 2005/06, for projects that competed for 2004/05 and 2005/06 allotments.

C. Except for the 100 allotments made available by the voters in November 2006 for projects of up to 25 units in the Downtown Core, the number of development allotments shall be divided between conventional single-family dwellings, mobile homes and multiple-family dwellings in a manner determined by the city council; provided, that no less than thirty-three percent of all allotments shall be awarded to single-family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The city council may, if it chooses, further divide the allotments according to geography, price, development size, phasing, including the number of units and timing of allotments required to complete a project, and similar criteria as deemed necessary to provide for the general welfare.

D. For the competitions for allotments in fiscal years 2006-07 through 2009-2010, the City Council shall reserve a certain number of allotments for projects in the Downtown area. The number of allotments allocated, and the geographic limits of the Downtown area for this purpose, shall be determined by the City Council and may be amended, as necessary, to reflect changes in circumstances and needs. The Council may continue to reserve a certain number of allotments for projects in the Downtown Area after the 2009/10 fiscal year. Downtown housing and mixed use projects within the Downtown RDCS Boundary that were awarded allotments in March 2006 may be started and completed earlier than their allotment years. The City Council may establish procedures for scoring and awarding the 100 allotments made available by the voters in November 2006, which may not require a competition but which shall provide that all projects must achieve a minimum score for the project type, and which may allow for flexible project start and completion dates.

**18.78.040 Development allotments--Applications and evaluations.**

A. Development allotments shall be allocated to proposed developments in accordance with a residential development control system set out in Part 3 of this article. This system shall provide for awards of development allotments based on the number of points scored for all development proposals within a competition, or outside of a competition but based on requiring projects to achieve a minimum point score, for the special 100 downtown allotments established by the voters in November 2006. The City may conduct 1-year or 2-year competitions. The City may allocate a portion of the total allotment granted to an applicant as available in the subsequent year (i.e., in the event of a 1-year competition, a portion of the allotment is made available in the second year, and in the event of a 2-year competition, a portion is made available in the third year). The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

B. Proposed developments shall be awarded points for provision of schools, related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, diversity of housing types, and for quality of architectural design and site design.

C. Small residential developments provide special benefits to the city by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in-fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the residential development control system shall be designed to provide for small development through appropriate means selected by the city council, such as a separate small project competition and a more streamlined and less costly process.

D. In implementing the provisions of the residential development control system and making awards of development allotments, the city council shall comply with Government Code Sections 66000 et seq.

E. Up to 10 allotments per year may be set aside for vertical mixed-use projects, however the City Council may set aside a higher number for downtown core small vertical mixed use projects. These reserved allotments may be awarded to projects that receive at least a minimum passing score through a competitive process or on a first-come, first-served basis.

The City Council may establish higher minimum passing scores for mixed-use projects and/or consistency with the guidelines for development contained in the City's Downtown Plan. The City Council may allow for a maximum of 20 unused mixed-use allotments to be carried over from year to year, if unused in prior years, for a maximum of 30 units potentially available for distribution in one year under this set-aside. Within the Downtown Core, the City Council may allow for a higher number of unused small mixed use allotments to be carried over from year to year, and may allow for a higher maximum. Mixed-use projects eligible for allotments under this set-aside shall be no larger than 15 units. A single development project shall be eligible to receive allotments under this set-aside only once.

**18.78.050 Emergency situations--Restrictions on development.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the city council pursuant to provisions of this code. The declaration of an emergency or severe impaction situation may be based on determinations of mandatory water rationing, sewage system operating at ninety-five percent capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

**18.78.060 Open space conversions.**

A. No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under Part 2 of this article shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

B. With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

C. The lands within the city that are designated "open space" on the city's general plan land use/circulation elements map, as amended through November 19, 2003, are reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the city council from designating additional lands as open space.

**18.78.070 Urban service area restrictions.**

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable in-fill. "Desirable in-fill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services, and that the expansion would beneficially affect the general welfare of the citizens of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for

public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date the area is added to the Urban Services Area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the City's findings are based, or convey the land needed for the public facilities on which the findings are based, must be secured prior to official action adding the area to the Urban Services Area, through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the Existing County Subdivisions enumerated in section 18.78.030A may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these Existing County Subdivisions may be added to the City Urban Service Area and annexed into the City without otherwise meeting the test for desirable infill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any court judgment.

D. In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered in-fill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County general plan as of March 1, 1990.

**18.78.080 Urban services extensions.**

The city shall grant no new extensions of urban services for residences beyond its urban service area except in the event that:

A. Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by city facilities on county land; or

B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

**Part 3. Residential Development Control System**

**18.78.090 Application--Procedure and contents--Fees.**

A. An application for a development allotment shall be made to the city planning division on a form provided by the city. Such application shall contain the following information and be accompanied by the following documents:

1. Site utilization map including:
  - a. Vicinity map to show the relationship of the proposed development to adjacent development, the surrounding area and the city,
  - b. Site use layout map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. The site use layout map is of major importance; the vicinity map may be shown as a small inset map;
2. Site development plan including lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with city street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways;
3. Preliminary architectural plans including typical architectural elevations, types and numbers of dwelling units, proposed color of buildings;
4. Preliminary grading plans including a general indication of type, extent and timing of grading;
5. Narrative description of preliminary landscape plans including general indications of planting;
6. Housing marketability and price distribution including expected ranges of rental amounts or sales prices, low-income and moderate-income housing to be provided, and applicability to housing assistance plan, if any;
7. Statement regarding how the proposed development will comply with state law requirements regarding the mitigation of impacts of the development on school facilities. Description of other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities;
8. Development schedule including proposed schedule of development including phasing;
9. Such other information as may be required by the planning manager.

B. Each application shall be accompanied by a reasonable fee set by the city council based on the cost to the city of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc., and shall not be returned in the event that no development allotment is awarded.

C. An applicant may file only one application for any given property in any competition.

D. An application for a development allotment shall be filed with the city planning division on a date determined by the planning manager, which shall be no later than twenty-one months preceding the fiscal year during which the allotments must be utilized.

**18.78.100 Application--Evaluation by planning officer.**

A. The planning officer (hereinafter referred to as PO) shall review each application and determine whether or not the proposed development conforms to the city's general plan. If the PO determines that a proposed development does not conform to the general plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

B. Within fifteen days after such notice is mailed, the applicant may appeal the decision of the PO to the city council by filing a written notice of appeal with the city clerk, who shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of nonconformity with the plans, reverse the decision by finding that the proposed development is in conformity with the plans, or permit the applicant to modify his proposed development to bring it into conformity with the plans. The decision of the council shall be final and conclusive.

**18.78.110 Evaluation procedures--Generally.**

Proposed developments found by the PO or city council to conform to the general plan shall be evaluated by the PO and awarded points as set forth in Section 18.78.115. The planning commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections 18.78.115 and 18.78.120. The PO shall submit his evaluation to the planning commission and the commission shall approve, disapprove or modify the PO's evaluation by simple majority vote.

**18.78.115 Evaluation procedures--Impact on existing facilities--Point system.**

A. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

B. The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from zero to two points for each of the following:

1. The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide (comments of the city director of public works);
2. The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the city director of public works);
3. The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the Santa Clara Valley Water District and the city director of public works);

4. The ability of the city-designated fire department to provide fire protection according to the established response standards of the city without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the police department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel (comments from the fire and police departments);

5. The ability and capacity of major street linkages to provide for the needs of the proposed development without substantially altering the existing street system (the desired target traffic level of service being no worse than ["D+"] level of service as defined in the 1985 Transportation Research Board Report # 209), except as otherwise allowed in the General Plan, and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer (comments from the appropriate department heads).

**18.78.120 Evaluation procedures--Design and amenity criteria.**

On quality of design and extent of contribution to public welfare and amenities, the PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

A. The provisions of school facilities and amenities, as attested by agreement with the MHUSD, to the extent such consideration is not in conflict with state law..... 25 points;

B. The provision of public and/or private usable open space and, where applicable, greenbelts..... 20 points;

C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than leapfrog development, by using land contiguous to urban development within the city limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors ..... 20 points;

(For purposes of this section, "the central core" is the area illustrated on the Central Core Map, attached as Exhibit B and described generally as that area bounded on the west by Del Monte Ave. from Wright Ave. to Ciolino Ave. and by West Little Llagas Creek from Ciolino Ave. to Cosmo St; on the east by the railroad tracks from the easterly prolongation of Wright Ave. to Main Ave., by Butterfield Blvd. from Main Ave. To Dunne Ave., and by Church St. from Dunne Ave. to the easterly prolongation of Cosmo St.; on the north by Wright Ave. and its easterly prolongation to the railroad tracks; and on the south by Cosmo St. and its easterly prolongation to Church St.)

D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities..... 10 points;

E. Provision of parks, foot or bicycle paths, equestrian trails or pathways . . 10 points;

F. The provision of units to meet the city's need for low-income and moderate income and elderly housing and the extent to which such provision meets the goals of the housing element of the general plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity..... 15 points;

G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the housing element of the general plan..... 15 points;

- H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height ..... 15 points;
- I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations..... 15 points;
- J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on-site and off-site traffic safety and privacy..... 15 points;
- K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures..... 10 points;
- L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings..... 10 points;
- M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features ..... 10 points;
- N. The extent to which the proposed development exhibits overall project excellence and/or incorporates or otherwise embodies the concepts of Livable Communities, such as proximity to transit, pedestrian orientation, efficiency of street system, mixed-use, infill, and maximization of use of existing infrastructure..... 10 points.

**18.78.125 Award and issuance of allotments.**

A. The PO shall notify each applicant of his evaluation under Sections 18.78.110 through 18.78.120. Such notice shall be given in writing within seven days after the evaluation has been approved by the planning commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time, the PO shall notify in writing the MHUSD and all other city departments and public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 of the result of that evaluation.

B. Proposed developments which have not been assigned a minimum of 7.5 points under Section 18.78.115 or a minimum of one hundred sixty (160) points under Section 18.78.120 shall not be given a development allotment, except for Micro projects (as defined by the City Council) and projects which are 100% affordable, for which the minimum passing score shall be one hundred fifty (150) points.

C. Subject to the limitations set forth in this subsection and subsection F of this section, proposed developments which have received a minimum of 7.5 points under Section 18.78.115 and a minimum of one hundred sixty points under Section 18.78.120 (or, for qualifying projects, one hundred fifty points) may be awarded an allotment. Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by planning commission's determination or by city council's determination on appeal) exceed the numerical limits established by the city council by competition category (micro, small, affordable, large market rate), development allotments for which the council-established numerical limit has thus been exceeded shall be awarded to the highest scoring projects based on the number of points received under Section 18.78.120. A project may be awarded fewer than the total number of allotments requested by it, and the surplus allotments awarded to the next highest scoring development(s) if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.

In the event that an applicant seeks a higher number of allotments than is available in a competition, the City Council may, in its discretion and in order to encourage high-scoring applicants to complete their projects, grant allotments for an additional fiscal year. For a one-year competition, the allotment may be allocated over two years, and for a two-year competition, the allotment may be allocated over three years.

D. Allotments shall be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. Allotments shall be awarded for no more than three fiscal years in a single competition. Flexible project start and completion dates are allowed for those downtown housing and mixed use projects awarded allotments in March 2006, and for those projects awarded allotments from the 100 downtown allotments made available by the voters in November 2006.

E. Any applicant whose development evaluation has been completed and where any appeals, if applicable, have been resolved and who does not receive an allotment for the competition will not be considered automatically for the subsequent competition, but must reapply under Section 18.78.090 for the next or subsequent competition.

F. If a project receives an allotment in a competition for more than 50 percent of the units in the project but fewer than the total number of units needed to complete it, the additional units needed to complete it may be awarded to the project for the competition year immediately after that covered by the current competition. This additional allotment shall be considered a portion of the limited allotment for that future competition. The number of units awarded under this section for a future competition year shall be similar to the number of units awarded per year for the major portion of the project.

G. Except as provided in above Sections 18.78.030(B) & (D), 18.78.040 (A) & (E), and 18.78.125(D), which allow for more concentrated and flexible timeframe for downtown housing and mixed use project construction, to ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their allotment and must reapply under the development allotment process outlined in Section 18.78.090 if development is still desired by the developer. An exception to the loss of allotment 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, delays not the result of developer inaction, or allotment appeals processing.

For projects that include the sale of individual lots for custom development by individual purchasers, purchasers of the custom lots shall be given an additional 24 months to physically commence construction. If this extension proves insufficient, an applicant for a custom home may apply for an additional extension subject to the same rules and circumstances as outlined in this paragraph for other projects.

**18.78.130 Appeal procedures.**

A. An applicant may appeal to the city council for a review of the scoring of its proposed development project pursuant to Sections 18.78.110 through 18.78.120 by filing a written notice of appeal with the city clerk within fifteen days after the notice of evaluation has been mailed as described in Section 18.78.125 (A).

B. The MHUSD or other public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 may appeal to the city council the evaluation under Sections 18.78.115 and 18.78.120 within fifteen days after notice has been mailed as described in Section 18.78.125 (A).

C. Any citizen or group of citizens may appeal to city council the evaluation of any applicant by filing with the city clerk a petition signed by one hundred registered voters of the city within fifteen days after the notice of evaluation has been mailed to the applicant as described in Section 18.78.125 (A).

D. In the event an appeal is filed under subsections A, B or C of this section, the city clerk shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting at which time the council will hear the applicant or his representative and such other persons as may be able to assist the council in the determination of the matter on appeal. The council may affirm or modify the project scoring and its decision shall be final and conclusive.

**18.78.140 Emergency situations--When declared--Action and review by council.**

A. An emergency or severe impaction situation shall be any one or more of the following:

1. A finding by the director of public works that the sewage facility usage level exceeds ninety-five percent of the capacity of the system;
2. Mandatory city water-rationing measures in effect;
3. MHUSD notifies the City Council that conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs, pursuant to Government Code section 65971;
4. Any public agency providing services essential to the public health and safety notifies city council in writing or by resolution that its ability to meet the public needs is severely impacted;
5. Any other endangerment to public health, safety or welfare which the city council determines to exist for the purposes of Part 3 of this article.

B. If any of these specified conditions exist, then the city council shall certify an emergency or severe impaction situation.

C. In addition, any citizen or group of citizens may petition the city council for declaration of an imposition of an emergency or severe impact situation by filing with the city clerk a petition signed by four percent of the registered voters of the city. The city council, at their next available regularly scheduled meeting, must then vote on a resolution of emergency or severe impact situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

D. In the event such an emergency or severe impact is certified, no building permit and no allotment shall be issued unless the city council first specifically finds that the building permit or specific allotment will not contribute additionally to the existing emergency or severe impact situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

E. The PO shall review all certified emergency or severe impact situations at least quarterly, and shall determine whether conditions warrant continuation of the emergency or severe impact. The PO shall report his findings to the city council, and notice of such findings shall be placed on the city council agenda and published in a newspaper of general circulation. If the city council finds, based on the PO's report, that the certified emergency or severe impact situation no longer exists, it shall decertify the emergency.

F. In implementing Part 3 of this article, the city council shall comply with the provisions of Government Code Sections 65858, 65972, 65996, and other applicable state law requirements. Where those provisions conflict with this article, the state statute shall prevail.

**18.78.150 Quarterly progress review--Failure to comply.**

A. The planning officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the planning division.

B. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the city staff and council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points awarded for its initial application, the PO shall report such failure or deviation to the city council. Thereafter, the council, after holding a hearing, may rescind all or part of the development allotment in favor of another development which has qualified for such allotment and which is capable of commencement in the year for which the allotment was awarded.

**Part 4. General Provisions**

**18.78.155 Duration of provisions.**

This article shall remain in effect until and including fiscal year 2019/20.

**18.78.160 Compliance with state and federal laws.**

The provisions of this article shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

**18.78.165 Severability.**

A. If any provision or application of any provision of this article is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this article are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by enactment of this article, to extend and expand the essential residential development control provisions and policies of Measure P. If this article is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of this article is held invalid, the remainder of the ordinance codified in this article shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

**18.78.170 Unconstitutional taking of private property prohibited.**

This article shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this article to a specific project would effect a taking, then pursuant to this article the city council may alter the provisions of this article, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this article to the maximum extent feasible.

**18.78.175 Amendment or repeal.**

This article and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election.

## **Initiative Measure Section 4: General Provisions**

### **1. Duration of provisions.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, and the "Residential Development Control" section of the General Plan, enacted by the voters, shall remain in effect through fiscal year 2019/20.

### **2. Compliance with state and federal laws.**

The provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

### **3. Severability.**

A. If any provision or application of any provision of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any other provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by their approval of the 2004 and 2006 ballot measures amending the "Residential Development Control" section of the General Plan, and Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, to extend and expand the essential residential development control provisions and policies of Measure P. If Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or any provision of the "Residential Development Control" section of the General Plan is held invalid, the remainder of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

**4. Unconstitutional taking of private property prohibited.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan to a specific project would effect a taking, then the city council may alter the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and/or the "Residential Development Control" section of the General Plan, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan to the maximum extent feasible.

**5. Amendment or repeal.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election. In the event of ongoing reorganizations, revisions and updates to the General Plan and Municipal Code, the policies and provisions enacted by this initiative measure shall be retained and remain in effect until their expiration or amendment or repeal by the voters.

**6. Implementation and Consistency.**

A. Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted into the Morgan Hill General Plan (unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case Section 2 of this initiative shall be deemed inserted into the General Plan on January 1 of the following calendar year). The General Plan and the Municipal Code of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative, as of the date Section 2 is deemed inserted into the General Plan.

B. As of the date the provisions of Section 2 of this initiative are deemed inserted into the Morgan Hill General Plan, Section 3 of this initiative shall likewise be deemed inserted into the Morgan Hill Municipal Code, and Measure C as enacted by the voters of Morgan Hill in March 2004, shall be deemed amended by the terms of this initiative ordinance, as set forth in Section 2 and Section 3 of this initiative measure, and the Municipal Code shall be interpreted to give immediate effect to the initiative provisions.

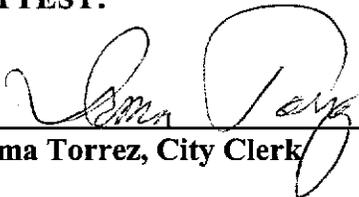
C. The City Council shall within 120 days of the enactment of this initiative amend the Morgan Hill General Plan as necessary to ensure internal consistency with all provisions of this initiative. Also within 120 days the City Council shall amend Article II of Chapter 18.78 of the City Planning and Zoning Codes, entitled "Specific Policies," relating to the RDCS, and any other land use regulations as necessary to conform to all provisions of this initiative.

D. The development allotments distributed for fiscal years 2004/2005 through 2006/2007 awarded under Measure P shall remain in effect, except that under this initiative measure they may be supplemented based on the 2004 biennial computation of available development allotments, pursuant to section 18.78.030 (B). New allotments for fiscal year 2006/2007 and following shall be governed by the provisions of this initiative measure.

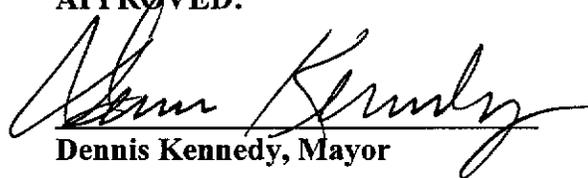
The foregoing Ordinance was passed, approved, and adopted by a majority of voters voting on the measure in a General Municipal Election held and conducted in the City of Morgan Hill, California, on Tuesday, November 7, 2006, as required by law. This Ordinance is effective upon certification of the election results. The City Clerk is hereby directed to publish this ordinance pursuant to section 36933 of the Government Code.

The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City of Morgan Hill by signing where indicated below.

**ATTEST:**

  
\_\_\_\_\_  
Irma Torrez, City Clerk

**APPROVED:**

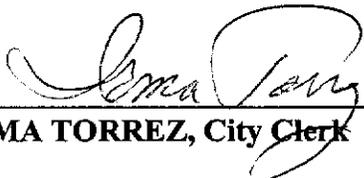
  
\_\_\_\_\_  
Dennis Kennedy, Mayor

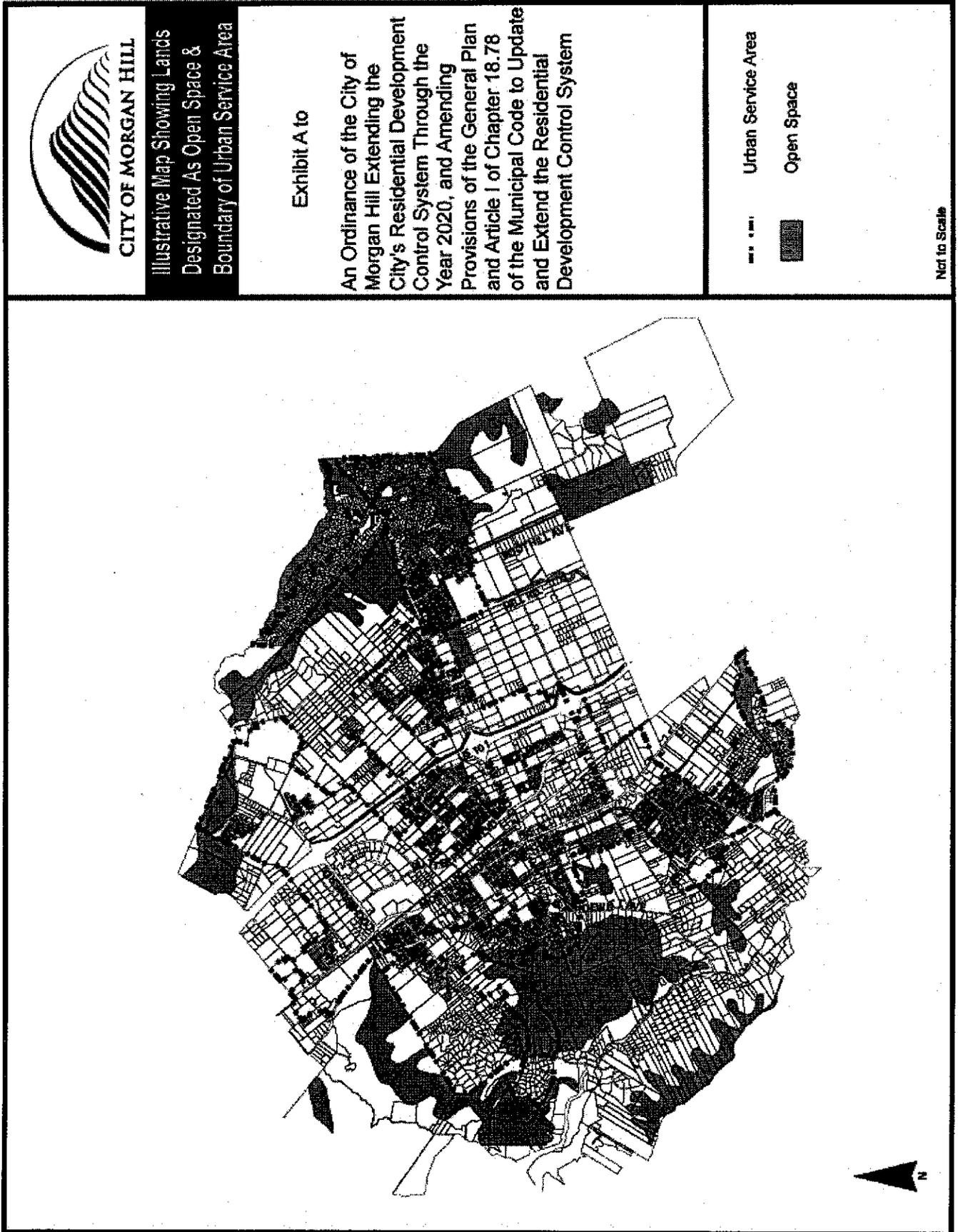
**☛ CERTIFICATE OF THE CITY CLERK ☛**

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1816, New Series, passed, approved, and adopted by the people of the City of Morgan Hill, voting on the 7<sup>th</sup> Day of November, 2006.

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

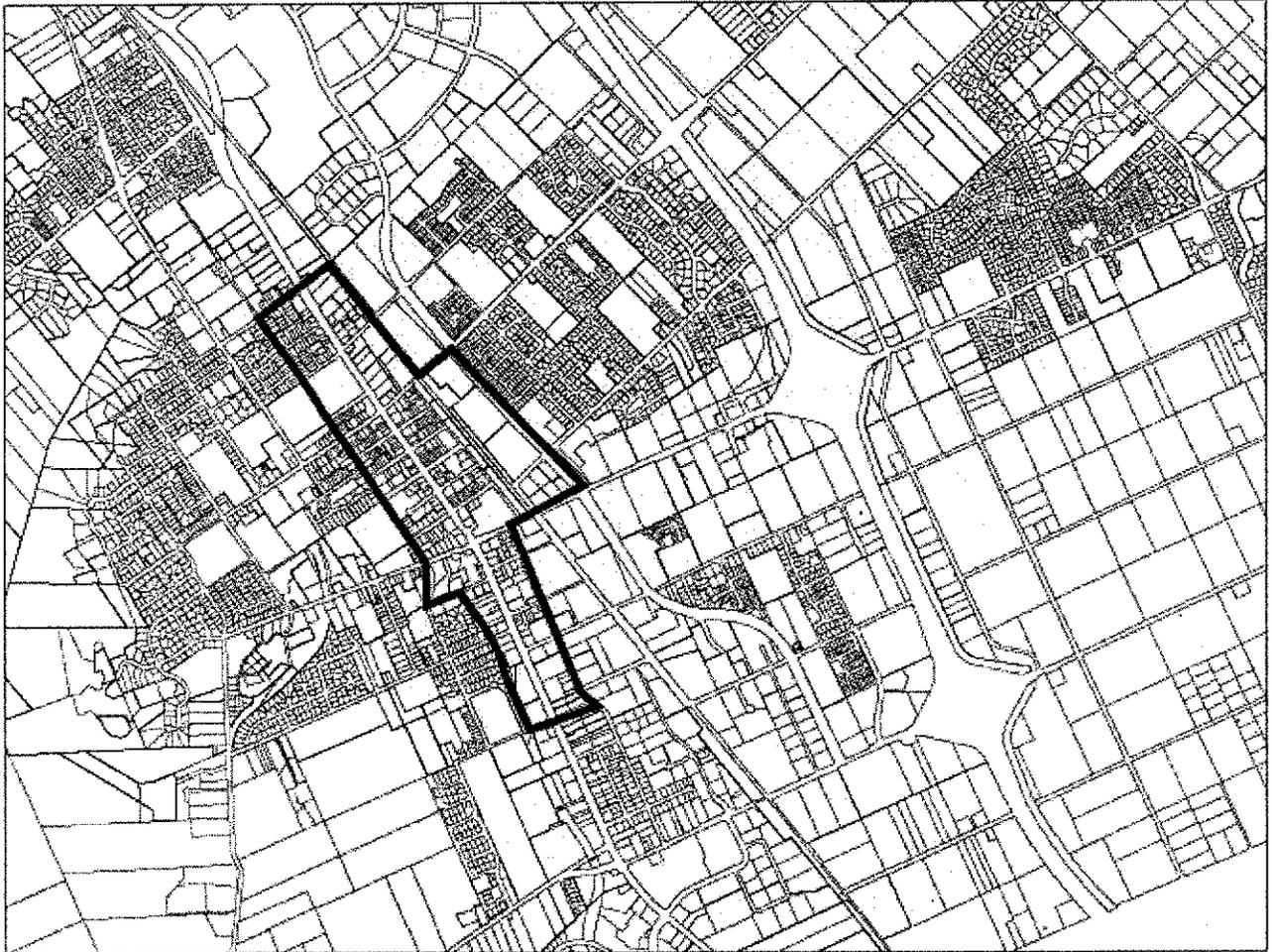
DATE: 2/5/07

  
\_\_\_\_\_  
IRMA TORREZ, City Clerk





## Exhibit B Illustrative Maps Show Core Area



—— Central Core Area



### Exhibit B to

An Ordinance of the City of Morgan Hill Extending the City's Residential Development Control System Through the Year 2020, and Amending Provisions of the General Plan and Article I of Chapter 18.78 of the Municipal Code to Update and Extend the Residential Development Control System

**Action:** On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, ~~Rejected~~ **Non-Responsive** Apparent Low Bid Numbers 3, 4, 13, and 20 as Shown on the Bid Results Summary and as Reviewed by the City Attorney.

**Action:** On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Awarded** Construction Contracts for Various Prime Contractors in the Total Amount of \$10,701,023, per Bid Results Summary; Subject to Review and Approval by the City Attorney.

**Action:** On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Authorized** the City Manager to Execute Consultant Agreements for Professional Services During Construction, per Staff Report Memo; Subject to Review and Approval by the City Attorney.

**Action:** On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Authorized** the City Manager to Execute a Sixth Amendment to the Noll & Tam Design Agreement, per Staff Report Memo; Subject to Review and Approval by the City Attorney.

**Action:** On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Adopted** Resolution No. 5992, Declaring the City's Intent to Reimburse Certain Library Project Expenditures from Bond Proceeds.

**18. GENERAL PLAN AMENDMENT, GPA 05-05: CITY OF MORGAN HILL-URBAN LIMIT LINE (ULL)/ GREENBELT STUDY IMPLEMENTATION**

Contract Planner Bischoff presented an overview for items 18, 19 and 20 as there were interrelationships between the three items. Regarding the ULL/Greenbelt Implementation, he indicated this is an item that was before the Council in April and June 2005 where it received the final report of the advisory committee regarding the creation of a greenbelt around the City. He said that the ULL is the culmination of three years of work by the ULL Committee, as well as the Planning Commission, in trying to draft a greenbelt plan for the City. He stated that the ULL Committee spent a lot of time deliberating, put a lot of hard work into this item, and came up with good solid recommendations that were presented to the Council last year. What is before the Council this evening is the implementation of the greenbelt. He identified the proposed amendments to the general plan text and certain maps contained in the general plan. The text amendments clarify the intent behind the greenbelt plan, defines where the ULL will be, the greenbelt areas, priorities for implementation of the greenbelt, etc., as

contained in the Council's agenda packet. He indicated that the ULL is shown on the diagram that has four areas where the urban growth boundary is proposed to be constricted, and two areas proposed to be expanded: West Hill Church area at DeWitt and the Oak Meadow Plaza property. He addressed the non binding Memorandum of Understanding (MOU) the City entered into with the property owners to better define what the City would be evaluating as part of the environmental document.

Mr. Bischoff addressed the Oak Meadow Plaza by stating that the property owners are requesting that 20-acres be added to the urban growth boundary and the urban service area. They are proposing that 14-acres be annexed into the city limits and be designated as open space, by means of an open space easement, to ensure that it will not develop. As the County and LAFCo do not like partial properties to be brought into city limits, the proposal is to bring all of the property into the city limits; recognizing that only 20-acres would be brought into the urban growth boundary and urban service area.

Mr. Bischoff addressed agenda item 20, the Black Rock application. He indicated that the ULL Committee recommended that the Black Rock property be included in the urban limit line, but took no action with respect to including the property within the urban growth boundary, or designating it for urban use. The Committee stated that when this property is ultimately developed, the density should transition between the 1 acre lots being developed on the Quail Creek project and 2½ acre lots, similar to the ones adjacent to the southwest, in the County. He informed the Council that the owners of the property have submitted applications to include all of the property within the urban growth boundary and to designate it residential estate, 1 unit per acre. The property owner has also filed applications to include the property within the urban service area, prezone the property R1-40,000/RPD and annexation. He stated that the RPD proposal would be consistent with the recommendation of the advisory committee regarding transitioning and density from 1-2½ acre lots.

Mr. Bischoff indicated that in June 2005, the Council directed staff to prepare general plan amendments that would implement the greenbelt study. The Council also directed staff to conduct an environmental evaluation on the potential impacts of the amendments. Following this direction, the Oak Meadow Plaza proponents submitted applications to expand the urban service area for the 20-acres; including a request to annex and prezone the property. It was after the Council's direction that the owners of the Black Rock properties filed applications for general plan amendments, etc. Based on the relationships between all properties, he felt it made sense to consider all applications under one single environmental evaluation.

Mr. Bischoff addressed the environmental evaluation conducted, indicating that the evaluation was done at a program level. Being addressed are the general plan amendments and annexations. The environmental evaluation does not address a specific development proposal. He indicated that the environmental document has been prepared in general terms. He said that the finding(s) of the document is that the overall amendments to the general plan would not have significant adverse impacts. However, the study identified three areas where the urban growth boundary is proposed to be expanded that have potential significant adverse environmental impact(s). The study identified mitigation measures which would reduce these impacts to a less than significant level. As a result, a mitigated negative declaration is proposed to be adopted. He informed the Council that staff received a number of comments from individuals regarding the mitigated negative declaration, and that many of these comments have been included in the Council's packet as well as responses. He indicated the City has received additional

comments that staff will package with other comments; returning with these comments to the Council on April 19; along with a mitigated negative declaration and mitigation monitoring program.

Regarding the public process for the three agenda items, Mr. Bischoff said that copies of the proposed general plan amendments were sent to all advisory committee members who served on the ULL/Greenbelt Study Committee. He indicated that the Planning Commission conducted two hearings regarding these amendments: March 14 and March 28. He informed the Council that a lot of testimony was received at these meetings, and the letters received were included in the Council's agenda packet. Staff has provided responses to comments for correspondence received prior to the March 28 Planning Commission meeting. He informed the Council that the testimony presented to the Planning Commission focused on four areas: 1) the area located on the south side of Spring Avenue, east of DeWitt Avenue; 2) the west side of Dewitt Avenue, south of the area proposed to be included in the urban growth boundary; 3) the 20-acres proposed to be included in the urban growth boundary on the west side of Sunset; and 4) the Black Rock property located on Santa Teresa-Watsonville Road.

Mr. Bischoff addressed the comments and actions taken by the Planning Commission with respect to these four areas.

1. The Planning Commission received testimony from property owners adjacent to the Westhill Church area. The owners questioned why their properties were not being included in the urban growth boundary as it is being recommended that their properties be included in the ULL. He said that at the time the ULL Committee reviewed the area, they were not aware of specific development applications or an interest for annexation. Therefore, the properties were not included in the urban growth boundary. The Planning Commission is recommending that the properties be included in the urban growth boundary.
2. The two property owners in the DeWitt area looked at the area being proposed to be included and requested their properties be included as well. He indicated that the ULL Committee dealt primarily with areas where urban services were being provided. He said that sewer and/or water is being provided to a number of parcels along DeWitt Avenue as well as the Church. He noted that two of the parcels do not receive city sewer or water service. Therefore, the ULL Committee did not recommend this area be included in the ULL or urban growth boundary.
3. The Planning Commission received significant testimony with respect to the Oak Meadow Plaza area. Although the property owner requested 20-acres be included within the urban growth boundary, the Planning Commission is recommending only 19-acres be included. He stated that the ULL Committee recommended that up to 20-acres be included. However, all 20-acres need to be on slopes of 10% or less. Engineers have found that there are not 20-acres on slopes of 10% or less, but only 19-acres of 10% or less slope. The Planning Commission believes the 10% slope, which equates to 19-acres, would be appropriate. Another issue the Planning Commission considered dealt with the creation of an open space easement over the 14-acres. The Planning Commission felt it would be better to have the property deeded to the City versus remaining in private ownership. He said this recommendation is, in part, associated with the issue of the desirable infill policy. The Planning Commission felt comfortable having these 14-acres under city ownership as opposed to having it in an easement. He clarified that the Planning Commission is at a difference from the

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applicant in two regards: 19-acres to be included instead of 20-acres, and that the open space be deeded to the City.

4. Regarding the Black Rock application, he indicated that there were a couple of pieces of correspondence received. Members of the public who attended the Planning Commission meetings spoke in opposition of including the property within the urban growth boundary or designating it for urban use.

Mr. Bischoff informed the Council that in addition to the correspondence included in the Council's packet, there is correspondence on the Dais. He indicated that letters from Sherri Sliter, Craig & Maria Hodges, three letters from the D'Elia family, Donna Agneta and Bart Hechtman were received. All letters, except that from Mr. Hechtman, are in opposition to the Oak Meadow Plaza project. Mr. Hechtman, attorney for the Oak Meadow Plaza proponents, is requesting that 20-acres be included in the urban growth boundary instead of the 19-acres. Mr. Hechtman requests the issue of whether or not the 14-acres is to be owned by the City or privately owned with an open space easement be deferred to a development agreement phase. With respect to the Black Rock property, he indicated that a letter was submitted by John Kilkenny. The Council also has the Planning Commission minutes from the March 14 and March 28 meetings on the Dais.

Mr. Bischoff stated that it is staff's recommendation the Council open the public hearing and receive public testimony, Council to ask questions of applicants and staff; and continue the matters to April 19. He requested the Council identify any additional information it needs. Staff will then make sure it provides the Council with a full packet of information at the next meeting. Also, the Council to identify the direction it wishes to proceed. Direction will assist staff in providing resolutions of approval for Council consideration at the April 19 meeting. At the April 19 Council meeting, staff will have the mitigation monitoring and reporting plan available.

Mayor Kennedy announced that it is not the Council's intent to make any decisions this evening. He said the Council will hear public comments, discuss the items, provide direction, and ask questions of staff. The Council will then continue these items to the meeting of April 19, with the possible exception of the desirable infill agenda item, as the Council may wish to take action on that item.

Mr. Bischoff said the Council may wish to consider opening the public hearing for agenda items 18 and 19; hearing these items concurrently. Should the Council come to a conclusion on these items in April, the next steps to move the urban limit line forward would include an industrial land study to determine what actions should be taken for the southeast quadrant. Once the industrial land study is completed, it would be the expectation that the Council would decide the next steps for the southeast quadrant. He stated that another item included in the implementation plan is that the City would begin to look at the specific implementation strategy. He said the City would look at using both regulations and acquisition as a means for preserving greenbelts. He informed the Council that staff is working with the County toward amending their hillside regulations. With respect to acquisition, it is being recommended that this be a part of the program where the City looks at buying some at risk, highly visible properties; hopefully as easements and not fee title. However, this plan would need to be developed. He said the ULL Committee is recommending priority areas where the City should be focusing its energy.

Mayor Pro Tempore Grzan stated that he has a concern with regard to Hill Road. He would like to study this area further when it comes to the southeast quadrant, east of Hill Road.

Council Member Tate disclosed that he met with a group of neighbors this afternoon.

Mayor Kennedy disclosed that he met with Jeff Pedersen.

Mayor Kennedy opened the public hearing for agenda items 18, 19 and 20.

Rocke Morton, a 30+ Spring Avenue resident, noted his property is not currently included in the ULL. He indicated that the city limits borders his property for approximately 50-100 feet. He requested his property be included in the ULL, indicating that his property is less than 10% slope.

Mr. Bischoff said the ULL Committee recommends property fronting Spring Avenue be included in the ULL who are receiving urban services. He indicated that the ULL is proposed to go along the northern boundary of Mr. Morton's property. He noted that Mr. Morton's property does not front Spring Avenue as there is another property between his property and Spring Avenue.

Jeff Pedersen stated that he would address agenda items 18 and 19. He indicated that he attended both Planning Commission meetings where these items were discussed; offering his comments. He addressed three basic concerns: 1) process; 2) need, and 3) density. He stated that he appeared before the Council on February 29, two days after a number of Parkside residents learned that the Council approved an MOU for the development of the Oak Meadow Plaza property. At the February 29 meeting, he questioned how the Council could approve the MOU without following the proper process. He expressed concern that the Council has gone on record taking discretionary actions; approving an MOU without an environmental assessment. He expressed concern that there is prejudice, at this point, based on earlier Council action. At the Planning Commission meeting, it was found that not only was the Council going on record approving the project before hand, but that there was no consultation on the initial study by LAFCo or the State Clearinghouse. He noted that LAFCo responses came to the City after the first meeting of the Planning Commission. He felt the comments at the Planning Commission and the Council meetings should tell the Council the negative declaration is not adequate. He noted the City has a greenbelt planning concept and is imposing a ULL that is not complete. He felt the environmental review process conducted thus far is inadequate and warrants an EIR. He did not believe the City needs to annex land if it really wants to preserve open space. He noted the Oak Meadow Plaza parcels are currently zoned County agricultural and are Williamson Act property. He said that it is hard for residents to understand how the City will protect open space by allowing development to occur; creating additional sprawl. He inquired how the approval of 60-units was determined.

Zoe Gustlin stated that she read through the ULL document and found it difficult to understand. It was her understanding the document was for a 20-year growth span. She felt the process is turning into how you can move the ULL in order to get property into the City and annexed. In looking at the ULL drawn according to the ULL Committee, it is now being discussed how you can move the concept of the lines out and get property added to the ULL. She said that in looking at the Sunnyside/Santa Teresa line, you will see that the property is a gateway to the western foothills and is the gateway to the scenic beauty of what Morgan Hill residents like. If you start moving the line across Sunnyside and Santa Teresa, the City is moving into the foothills. Doing so will start to destroy the beauty that sits there. She requested

the ULL be defined so that everyone knows where it is before it is moved. She did not believe it was the City's intent to keep moving the line into the western foothills. She requested the Council take a look at what the ULL is, where it is drawn, and its intent. It was her sense from the Planning Commission that it was a way to get property from developers annexed into the City. She requested the area be kept green and beautiful, and not let the City start encroaching to the west. It was her belief that there was plenty of infill and downtown land to focus development upon without the need to bring development out to these areas.

Jon Maxey stated he owns property contiguous to property being considered be included in the ULL. He would like to obtain city services; primarily water. He said that water is available on the street, but that he cannot have city water unless he is in the ULL. He stated that he was under the impression that had he attended the first meeting, his property would have been included in the ULL. He requested Council consideration in bringing his parcel into the ULL so that he can have access to city services.

George Thomas, Jr. indicated that he served on the ULL Committee. He stated that he was disappointed that the Committee did not get notified when this issue first came before the Council as he would have liked to have made his comments then. He stated that he met with Mayor Kennedy and Council Member Tate about this concern; acknowledging that it was an oversight. He requested the Council adopt the recommendation of the ULL Committee along the east hills. He said that his family is not interested in development, but do not want to leave this section of Hill Road surrounding by the City, Holiday Lake, and Cochrane Road, as an island for the future. His family would feel a lot safer with the City of Morgan Hill and the citizens' residential development control system. He was not talking about changing the lot sizes or discussing urban development. He noted the City adopted recommendations for "feathering" of larger lot sizes toward the hills. He noted the City abuts the family's 88-acres and that they have problems with enforcement of zoning issues with the County at this time. He is concerned with private sewer plants in the future that would allow more development in the County than is seen today. He did not know what the County will allow to develop if the City does not control the area. He said that there is a lot line being created on one of the urgent parcels discussed by the ULL Committee. He indicated that there are surveyors on the 72-acre property looking at creating three parcels in excess of 20-acres each. He felt this was a key piece of land, and that this would be a good time for the City to approach the property owner before he completes the process in order to preserve the hills above 10% slope.

Ron Key introduced Pete Gale, residents on Spring Avenue. He indicated that he submitted a letter to the Planning Commission and resubmitted the letter to the Council. He pointed out that the letter submitted this evening contains additional signatures. He urged the Council to follow the Planning Commission's recommendation for inclusion of the properties listed in the letters to the urban growth boundary.

Michele Beasley, representing Greenbelt Alliance, indicated that the Greenbelt Alliance submitted comments to the mitigated negative declaration. Since the establishment of the ULL is creating an envelop for future development, she felt it reasonable that development would occur on what is currently prime farm land. She felt it may be a good time to consider something along the lines of an agricultural mitigation policy; perhaps one acre for one acre, which could also be used as a tool to permanently protect agricultural lands on the other side of the ULL. She stated that the creation of a greenbelt area is a great way to maintain the quality of life in Morgan Hill and promotes centered growth. However, now

that the ULL is no longer considered permanent, she felt it is a moving target as more properties are being included in the ULL. This could threaten the rural charm that is part of Morgan Hill. It will also define the community as Morgan Hill continues to sprawl out instead of using existing vacant land that is within the urban growth boundary. She recommended the City place more emphasis on investing in the downtown, the vibrant center of community life.

Brian Schmidt stated that the Committee for Green Foothills submitted comments to the Planning Commission. After submitting comments, he realized there was a mistake in discussing Black Rock. He requested the Council disregard this particular comment in his letter. He said that one theme that can be seen tonight is confusion about what the ULL means. He felt the confusion extends to LAFCo. He suggested a way to clear up this confusion; treat the ULL as a second urban growth boundary as this will redirect growth. He felt that the conversion of farm land needs to be addressed in an environmental impact report. The City could extend the urban growth boundary with subsequent approvals being necessary before farm land conversion could occur. It was his belief that individuals would agree that soon after the ULL is established, individuals would be approaching the City to be included within the urban growth boundary. Therefore, an impact would result. He raised a concern regarding wetlands. He said that there is a statement contained in the negative declaration that states that if a wetland is not a jurisdictional wetland, under the Clean Water Act, then there is no impact. He stated that the Clean Water Act is limited to what wetlands it can cover. He noted that isolated wetlands are not covered by the Clean Water Act. However, he felt isolated wetlands can still have a tremendous environmental value. He recommended the Council study all wetlands and mitigates all impacts associated with wetlands. He further recommended the Council proceed with the greenbelt recommendations as it can proceed independently. Further, that the Council take no action on the ULL requests; sending them back for an environmental impact report.

Bill McClintock spoke on behalf of the Oak Meadow Plaza project. He informed the Council that Bart Hechtman was not in attendance this evening, but that he submitted a letter for Council consideration. He was pleased to see the City is moving forward with a greenbelt study as it is important for land owners to know their position long term. He said that the reason Oak Meadow Plaza is before the Council is because there is eminent development rights associated with the hillsides. With this eminent development and the greenbelt study moving forward, he felt this to be a golden opportunity for the City to preserve pristine lands in the City for long range public use. He stated that Oak Meadow Plaza will be providing 84-acres of open space in exchange for support of their application for urban service area, urban growth boundary and annexation. He said that the hill may not be eminent for development and sees the area being used as hiking trails and pathways that circulate around the hill to the top. He noted that there are 50+ acres of land already in open space in a development agreement to the north. Therefore, there is significant acreage for something to take place in the city. He said the reason that larger acres are desired is to allow for bigger back yards, not to gain additional units. He said that 60-units are being planned for this property. With regards to Mr. Pedersen's comments about the process, he said that LAFCo will be hearing this application and that it is his hope the City will recommend approval to LAFCo.

Angelo Starink addressed the annexation of the Oak Meadow Plaza project. He stated that in 1999, when he and his wife were looking for a home, they found their home adjacent to the Oak Meadow Plaza property. His builder told him the Oak Meadow Plaza was in the County and could only develop 1 house per acre. He verified this information with the City and proceeded to purchase his home. He stated that it

was disappointing to learn the City is considering annexing the land and the development of 60 homes. He felt the builders of the Oak Meadow Plaza are only concerned about maximizing their profits. He inquired whether the City considered allowing the development of 20 homes, still resulting in a profit for the developer. He recommended the City maximize the benefits for citizens, and not maximize the profits for builders.

Desiree Lehrbaum, a Parkside resident, indicated that she and her husband considered moving to Morgan Hill in 1999 as they wanted to get away from the cement development of San Jose. Prior to moving to Morgan Hill, they contacted the planning department to understand the intention for the acreage surrounding Parkside. They were informed that development would be acreage development. She felt that a lot of the neighbors have made a good faith effort in investigating the future growth plan; acknowledging that Morgan Hill has a great growth policy in place. She echoed a lot of what she has heard this evening regarding identifying the long term goals for what is to be achieved for Morgan Hill and how to manage growth. She felt good policies and rules are put into place and then managed by exception. As a citizen of Morgan Hill, she would like to understand how you affect changes in the process when changes come forward. While she appreciates the work of the ULL Committee, she did not believe the Committee took into consideration the impacts to existing neighborhoods. Placing access for 60 homes in front of her on a road that currently dead ends, would equate to approximately 500-650 additional car trips per day. She felt this to be a significant change to the way of life. While the 85 acres may sound like a good deal for the City, she requested the Council consider how development will impact existing neighborhoods.

Bill Moreau stated that he and his wife moved to Morgan Hill almost 3 years ago. They moved out of San Jose because it was starting to look like Los Angeles. He was told by his real estate agent that the property owner could not construct high density on this property. He indicated that he submitted a letter to the Planning Commission and one to the City Council. He noted a letter was submitted in support, but that it was his understanding that this letter was from the attorney representing the landowners. He noted that everyone, except the developer, is opposed to development. He expressed concern with drainage, noting that the baseball fields are under water, and that additional land development in the area would result in additional runoff. He clarified that he was not opposed to development and that he would find it acceptable to see 20-acre subdivisions. Development of 60 homes would give a San Jose feel with all the traffic it would generate.

Maria Hodges agreed with Bill McClintock that the lots should be bigger, but not in the way he was addressing. When you have open space, she did not believe you would want cramped high density housing. She recommended larger lots feathering out with a nice transition into the hills be considered. She stated that she and her husband oppose the annexation and zoning application for the Oak Meadow Plaza. She felt there was enough land within the city limits to build for many years to come. She did not believe this was the time to bring more land into the City. Although the City has expectations of receiving open space in return for housing development, she requested the City consider what it will be receiving in return for concessions. She felt the City needs to be careful of the return on investment for special considerations to land owners and builders. This consideration should apply to annexation of lands so that Oak Meadow Plaza lands would fall within the annexation requirements of being adjacent or being a certain distance from city land. While Morgan Hill will receive open space, she noted that some of this space is not buildable. She did not believe that a tradeoff for land that is not buildable is a tradeoff. She felt it admirable that the City wishes to maintain open space. However, a question needs to

be asked whether the 12,000 square foot lots were appropriate for the 19 acres. It was her belief that an appropriate alternative would be to have one acre lots feathering to 2-5 acre lots; providing a much better transition to the open space.

Mayor Kennedy indicated that there was a lot of confusion regarding the ULL and the greenbelt. He stated the City had a goal to establish a greenbelt around Morgan Hill as was identified in the City's general plan. The mechanism used by staff and the ULL Committee to establish the greenbelt was to create an urban limit line. He stated that the urban limit line was intended to be the ultimate growth limit line. He said that there is a 20-year urban growth boundary line in place today that is subject to change. This urban limit line was intended to be an alternate growth boundary line. Outside of this line, greenbelt would be designated on maps and plans. The City would take action to acquire lands or somehow permanently guarantee they would stay in a greenbelt. He said the goal with the Oak Meadow Plaza is to try to acquire and preserve as much of the property in open space as possible; creating a greenbelt. He indicated that the Bevelaqua property has entitlements for development under County rules. He stated that 10-12 housing units could be allowed under the County's ordinance, and the City would have very little control over where houses would be built. They could be placed on ridgelines or in locations that would destroy the views of the residents of Morgan Hill. An effort was made to come up with a plan that would try to create a greenbelt and preserve open space. He said that if you cannot acquire or acquire a conservation easement, the property would eventually develop.

Mr. Bischoff indicated that the ULL Committee recommended, in the definition of the urban limit line that it be referred to as the ultimate boundaries of the City. When this matter was brought before the Council in April and June 2005, there was some question whether or not the ultimate boundaries was appropriate or possible. Based on the advice of the City Attorney, the language has been modified. He noted that the specific language states that it is a longer term version of the urban growth boundary and that it is intended to reflect the City's long term policy for the growth of Morgan Hill beyond the 20-year timeframe of the urban growth boundary.

Mr. Bischoff noted that a speaker stated there was no early consultation with LAFCo and the State Clearinghouse. While it is true there was not early consultation with LAFCo, the information was provided to the State Clearinghouse. The City received a letter from the State Clearinghouse indicating that there were no agencies desiring to comment. He noted that the City has received a letter from LAFCo. There was a comment made that the assessor's records show the 20-acres in the Oak Meadow Plaza property under the Williamson Act. He clarified that the property is not under the Williamson Act. He indicated that the property owner filed for non renewal of the Williamson Act contracts in the early 1990s and that the County misplaced the application. It was in the last couple of years the County was able to straighten this out.

Regarding the confusion about the urban growth boundary and the urban limit line, Mr. Bischoff noted that it was suggested that the urban growth boundary could be expanded without the need to mitigate for the loss of agricultural land. He stated that this is not a true statement. He noted that in the review of the Black Rock application, it was found that it was agricultural land and that a mitigation measure has been included for the loss of agricultural land. Therefore, any expansion of the urban growth boundary would require review of environmental affects, including impacts on agricultural lands.

Mr. Bischoff said that the interest in preserving the hillside (the Bevelaqua Ranch) existed for a long time. He noted there is an action item in the City's general plan that states the City should conduct a greenbelt study that includes an evaluation of the prominent hillside bounded by Edmundson, DeWitt, Spring and Del Monte-Sunset; including the properties on the eastern face of El Toro. Strategies are to be included for the preservation of these important visual resources. Therefore, the direction to the ULL Committee to come up with a solution on preserving these lands dates back to the 90s. It was his recollection that at the time the ULL Committee reviewed this issue, the property owner was interested in including some land adjacent to Sunset within the City. The desirable infill policy the City has in place states you cannot annex more than 20-acres of land. Therefore, the 20 acres came from this. It was also his recollection that the ULL Committee was looking at something that would provide a transition from 7,000 square foot lots from the Parkside-Kendall Hill development up to the open space so that there would be some feathering provided. This was the reason they looked at a lower density. He noted the City has a zoning category of R-1-12,000. Having R-1-20,000 square foot lots was not raised at the Committee level. There was discussion that should the land owners sell each of the lots individually in the county, they would realize a certain amount of money. However, if they were not allowed to site homes on prime locations, there is a lower value that could be achieved. Thus, the request for 60 units.

Ms. Molloy Previsich responded to the comment that approval of the MOU without CEQA review was inappropriate. She clarified that the structure of the MOU was carefully worded to state that the purpose of the MOU was to define a project description on the part of the property owners. She noted that the City is one of the property owners of land involved in the proposed project. Therefore, the MOU's intent was to clarify what was being proposed by all property owners, including the City. This is a non binding agreement and that it was defined so that the environmental review would address the project description. She noted that the environmental review has been completed, a mitigated negative declaration has been prepared, and the City is proceeding with the public hearings. Therefore, all possible actions are still open for Council consideration. She stated that staff supports the mitigated negative declaration as the appropriate environmental document, and does not believe an EIR is necessary.

Mayor Kennedy noted that it was suggested by Ms. Hodges that perhaps one solution would be to feather lower density as a compromise. Instead of 3 units per acre, the City could approve 2 units per acre and that development is feathered so that it does not become a hard edge; blending into the surrounding area. He requested that staff take a look at this to see if this solution will work.

Council Member Tate agreed the City wants to get the benefit of having the open space dedicated and not having houses built on ridgelines. He felt it worthwhile pursuing open space. However, the question is how much you pay for the open space. When you allow 5 homes in the County, plus 60 additional units, he felt this too high a price to pay. Further, it does not include the feathering as suggested by the urban limit line. He supported looking at the feasibility of creating ½ acre lots feathered out to full 1 acre lots (less dense development). He stated that the preservation of open space is worth pursuing. He felt the need to preserve open space exists, but not at the density being suggested.

Mayor Pro Tempore Grzan indicated that the Council considered this recommendation at an early date where he informed the Council that there were a number of residents who were concerned about the development of homes behind their homes. At that time, he did not vote in support of the request. He felt the proponents of the Oak Meadow Plaza development were getting a great deal. He suggested

eliminating the 60 homes and pursuing another agreement. He recommended the City pursue an agreement with the County that would protect lands in the unincorporated/hillside areas.

Council Member Sellers said that there are three significant issues that need to be reviewed and considered: 1) Projects need to make sense in terms of their contiguousness/adjacencies. 2) Adding any additional lands should require significant public benefit/public investment. 3) There should be substantial mitigations of the impacts for allowing these projects to be incorporated. He felt there were a lot of unanswered questions. He recommended that staff elaborate on what will need to happen in order for a single home to be built in this valley. He acknowledged that plans have not been submitted or prepared for potential development. An elaboration on what is being proposed would be helpful to him, and perhaps the community.

Council Member Tate clarified that his comments only addressed the Sunset area, not the area along DeWitt or Spring Avenues. He noted the Council has a recommendation from the Planning Commission to include all properties along Spring Avenue, except Rocke Morton's property because his property does not front Spring Avenue. There is no recommendation to include the two lots that want to be included on DeWitt Avenue. He did not believe it made sense to exclude the two DeWitt lots because they are surrounded by the City. He felt it was the Council's intent to have a boundary that remains an ultimate line, even though it cannot be stated it is an ultimate line. He felt this an area that would be changed at some time in the future.

Council Member Sellers agreed with Council Member Tate as it relates to the ultimate line. He felt the Planning Commission had a reason for recommending inclusion of lands that had existing city services, and not include lands that did not have city services. He requested staff provide an explanation why these two parcels were not recommended for inclusion and the possible benefits that inclusions would give the City.

Mayor Kennedy noted that the ULL follows Hill Road from Main to Dunne Avenues. Mr. Thomas is suggesting that the line be moved further to the east. He noted that this was the subject of a lot of discussion at the ULL Committee level. He requested Council thoughts on this particular issue.

Mayor Pro Tempore Grzan recalled the discussions at the ULL Committee level about the Hill Road area were contentious and that there was a close vote. It was staff's initial recommendation to follow Hill Road. When the item was reviewed by the Council, the Council made the determination that staff's recommendation was the proper determination. He still believes this to be the proper determination. He agreed the land east of Hill Road is precious as it moves up toward the foothills. He indicated that Morgan Hill is known for its open space and recommended their preservation; extending to Maple Avenue.

Council Member Tate said that he likes the arguments as presented by Mr. Thomas as they give pause to reflect on what is trying to be accomplished. He noted that there are requests to extend the urban limit line beyond the Black Rock and the Oak Meadow Plaza areas; noting that the City has annexation requests for both properties. When the City has control, there is pressure for development. He felt the purpose of the study was to define the areas where there are limits and the City does not want to see development. The suggestion of working with the County and trying to get cooperation in terms of having control of these areas is a good way to go.

Council Member Sellers felt that Mr. Thomas' comments were somewhat counter intuitive to state that the City needs to protect the east foothills from the County that has a much lower density. He noted that there has been significant growth in Morgan Hill over the past years. It has to be acknowledged that there will be growth. He has advocated that more growth is needed in the center of the City and the contiguous areas. The City needs to figure out what the future will hold and the best course of action to take; given the fact the City cannot predict the future. He inquired whether it would be better to bring hillside areas into the City so that it can be protected in perpetuity, or to leave it in the County where there is less pressure to develop.

Mayor Pro Tempore Grzan noted the staff report for item 18 contains a number of descriptions for policies. He felt that some of the strikeouts proposed in the policy weaken the intent of what the Council wants to do. He referred to item 7, paragraph 3.4, page 171. This statement would allow the Council to look at expanding the urban growth boundary line within the ULL every five years.

Mr. Bischoff clarified that staff found that a lot of the language did not make sense. Staff also thought two items were contradictory and confusing. The sections talks about ensuring the City has a 20-year supply of vacant developable land within the urban growth boundary. However, it did not talk about what happens if the City drops below the 20-year supply before the major updates to the general plan. The modifications proposed would allow expansion of the urban growth boundary with a major update of the general plan, or at such time the City finds it has less than a 20-year supply. He did not believe it would allow a lot of permissiveness. He noted that evaluation of the supply of land every 5-years already exists and is not proposed to be changed.

Mayor Pro Tempore Grzan did not believe the residents in attendance would want to return to the City in a couple years to address the issue again. It was his belief that the intent of having a ULL and having it permanent is to give the residents some sense of comfort that precious open land and the rural atmosphere can be preserved.

Mr. Bischoff said that if it is the goal to ensure that an urban growth boundary has a 20-year supply, the City needs to evaluate this supply periodically. He said that the words can be changed, but that evaluating the supply of land every 5-years to determine whether there is a 20-year supply is an appropriate thing to do.

Mayor Kennedy recommended the use of smart growth concepts. He felt the City needs to change the way it looks at the future supply of land; developing upwards instead of outward. Maybe the City needs to make the urban growth boundary a more rigid requirement so that when the City looks at the future needs for housing, the City looks up instead of outward.

Mayor Pro Tempore Grzan suggested that the decision of where the line is to be drawn be taken to the voters. Once approved by the voters, the only way the line can be changed is by the voters. Should the City determine it needs additional land in the future; the voters will decide whether it will take in more land as opposed to five members on the Council. He would advocate bringing this issue to the voters sometime in the future to make some permanency to the line.

Council Member Sellers cautioned against stating the City will come up with a solution in perpetuity. He felt that citizens in the community and members of the Council have to be diligent and cautious. He noted that a majority of residents moved to Morgan Hill because of the policies established 30-years ago. He did not agree with the statement of telling individuals that it will never be an issue again as it will always be an issue. He wanted to be cautious that you never allow complacency to set in the community as this is something the City will always have to be diligent about.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Continued** agenda item 18 to April 19, 2006.*

**19. URBAN SERVICE AREA APPLICATION, USA-05-02/ ZONING AMENDMENT APPLICATION, ZA-06-01/ ANNEXATION APPLICATION, ANX-03-01: EDMUNDSON-OAK MEADOW PLAZA**

See comments as listed under agenda item 18.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Continued** this item to April 19, 2006.*

**20. GENERAL PLAN AMENDMENT APPLICATION, GPA-05-06/ URBAN SERVICE AREA APPLICATION, USA-05-01/ ZONING AMENDMENT APPLICATION, ZA-05-27/ ANNEXATION APPLICATION, ANX-05-18: SANTA TERESA BOULEVARD-BLACK ROCK**

Mayor Kennedy opened the public hearing.

Zoe Gustlin said that as much as she would like to see the city limit along the Sunnyside-Santa Teresa boundary, this may or may not happen. She requested the Council consider that the property adjacent to the Black Rock development to be rural. In looking at what happened when development occurred at the corner of Watsonville and Sunnyside, city standards were imposed. Now, at the intersection of Sycamore and Sunnyside, you have lines drawn all over the street that are confusing. There are also street lights every 20 feet that light up the area. If the City is going to allow development in these areas, she requested that thought be given to city standards and what they will look in this area as it is too much over kill. She also noted that developers are installing cement walls along rural areas (e.g., Sunnyside and Sycamore Avenues). She recommended the installation of see through fencing in the future. She further requested the City change the standards to compliment rural areas. She noted that there are three pieces of land that are in the same position as the Black Rock property adjoining Sunnyside: the horse ranch at the corner of Sycamore and Sunnyside, and the two properties located along Sunnyside, between Watsonville Road and Sycamore. These properties have the same look and feel as the Black Rock property. She felt this whole stretch of land needs to be thought about; not allowing piece meal development to occur. She recommended that an urban limit line be placed along Sunnyside and Santa Teresa.

## SUPPLEMENTALS TO ITEM 1

### ORDINANCE NO. 1010, N.S.

#### **AN ORDINANCE OF THE CITY OF MORGAN HILL UPDATING AND EXTENDING THE TERMS OF MORGAN HILL'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE E) WITH AN AMENDMENT TO THE MORGAN HILL GENERAL PLAN AND AN AMENDMENT TO THE MORGAN HILL MUNICIPAL CODE.**

The people of the City of Morgan Hill do hereby ordain as follows:

#### **SECTION 1. FINDINGS AND PURPOSES**

The people of the City of Morgan Hill (hereinafter called "the City,") hereby find and declare as follows:

- A. Rapid residential growth is a matter of continuing concern to the people of the City.

The burdens on City services and related problems associated with the City's explosive growth between 1975 and 1977 led to the adoption of Measure E by the voters of the City in 1977. Measure E set a target population of 30,000 for the year 2000, and established the Residential Development Control System (RDCS), providing a method for evaluating proposed developments and issuing a limited number of development allotments each year.

Since passage of Measure E, however, the City's population growth rate has remained high and in the last five years has been the highest in Santa Clara County. It has been projected that Morgan Hill will reach its year 2000 population goal of 30,000 well before the year 2000. In 1988, the City's population grew 6.25%, as compared with the County's overall rate of 1.29%. The next two fastest growing cities were Milpitas (3.34%) and Gilroy (2.97%). The City's high rate of development continued in 1989 and has shown no signs of diminishing. Morgan Hill has been, and continues to be, accommodating more than its fair share of regional growth.

- B. Continuing rapid expansion over the last several years and expected future growth in the City threaten to overwhelm the City's ability to provide municipal services. For example:
1. The Morgan Hill Unified School District (MHUSD) has been forced to install temporary classrooms and facilities to handle increased school enrollment and has exceeded school site capacity;

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2. The City's sewer capacity is near exhaustion with long lead times to provide for additional capacity;
  3. In 1989, a combination of doubling the water rates and voluntary water conservation was necessary to achieve a reduction in water usage for the present City water users; again in March 1990, because of continued water shortages, the Santa Clara Valley Water District has recommended to the City of Morgan Hill that it reduce water consumption by 25%;
  4. Greatly increased traffic within the City has caused congestion on City streets and at major intersections;
  5. Demands on the City's police and fire protection forces continue to increase with the increasing population growth and expansion of the City's area.
- C. Extensive exploitation by developers of exemptions from Measure E requirements has allowed continued high growth rates despite the Measure E controls. Of the 908 dwelling units scheduled to be built by fiscal year 1990/1991, nearly half (452) are exempt from the RDCS. The result has been a widespread impression among the voters of the City that the Measure E limits are not being observed. There is a need to tighten up the loopholes of Measure E.
- D. The provision of Measure E requiring equal numbers of annual development allotments to the areas to the east and west of Monterey Road has led to development allotments being awarded to projects to the west of Monterey Road that scored lower than the scores of rejected applications for projects on the east side of Monterey Road. This provision should be modified.
- E. As a matter of fairness and policy, residential development should pay for itself. Developers must be required to provide funds and improvements necessary to provide all needed services to their development projects.

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- F. Development outside the City boundaries, as well as within the City, adversely affects the City's level of services and quality of life. Proposed developments outside the City's Urban Service Area, for example, would impose additional burdens on schools and City services, and add to traffic congestion in and around the City. In addition, this type of "leapfrog" development, on property not contiguous with existing developed land, contributes to urban sprawl, and can reduce the vitality of the City's urban center. Such "leapfrog" development should be discouraged, as it is an inefficient way to develop, and opposes greater burdens on the community than "infill" development within the City's existing Urban Service Area.
- G. Within the City and its Urban Service Area there are currently about 2,000 acres of undeveloped, residentially developable land. This stockpile of land within the boundaries of the City and its Urban Service Area will support 25 to 30 years worth of residential development, based on present growth projections. The indiscriminate continued expansion of the City and Urban Service Area boundaries further imbalances the jobs to housing ratio (only 1 job per 1.6 houses currently), adversely affects the City's ability to maintain its level of services, can adversely affect the quality of life in The City, and is not necessary to meet the City's fair share of regional growth.

The people of Morgan Hill are therefore opposed to any further expansions of the City and its Urban Service Area until such time as expansion is needed to support projected growth for the next five years. This five-year horizon is consistent with the provisions of the Santa Clara County General Plan, the South County Joint Area Plan, and the Morgan Hill General Plan.

The people of Morgan Hill recognize that under the Cortese-Knox Act, the Local Agency Formation Commission (LAFCO) makes final decisions regarding Urban Service Area boundaries, and that the provisions of the Cortese-Knox Act are controlling. For the purposes of (a) mandating City policy in those instances in which the City has discretion under the Cortese-Knox Act, and (b) advising the LAFCO of the City's position in those contexts in which it is relevant to LAFCO's exercise of its discretion, the People hereby go on record as opposing further expansion of the boundaries of the City and its Urban Service Area, except as necessary to maintain an area sufficiently large to provide for five years' worth of future growth.

- H. The unique character of the City of Morgan Hill depends on its rural surroundings. In order to maintain this rural atmosphere, provide a buffer against development and preserve a greenbelt legacy for future generations, the City must take steps to preserve open space and agricultural lands and public parklands in and around the City.

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- I. The report dated July 1988 prepared for the City by Economic Research Associates predicts the City of Morgan Hill will attain a population of 38,800 by January 1, 2010. This projection is based on a 2.6% compounded annual growth rate from 1987 to 2010, a rate that exceeds the present and projected growth rate for Santa Clara County, and more than meets the City's fair share of regional housing needs.
- J. Because City services such as water are finite and limited, and because development on the outskirts of the City causes the delivery of needed services to be more expensive and difficult, the rate of population growth of Morgan Hill should not be increased when lands are added to the City or its Urban Service Area.

### **SECTION 2 EXTENSION AND UPDATE OF THE MORGAN HILL RESIDENTIAL DEVELOPMENT CONTROL SYSTEM BY AMENDMENT TO MORGAN HILL GENERAL PLAN**

Paragraphs A through G of this section of this initiative shall be added in their entirety as a section of the General Plan of the City of Morgan Hill, entitled "Residential Development Control," and shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year 2009/2010.

### **RESIDENTIAL DEVELOPMENT CONTROL**

#### **A. REQUIREMENT OF DEVELOPMENT ALLOTMENTS FOR ALL RESIDENTIAL DEVELOPMENT**

For the years to and including fiscal year 2009/2010, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefore in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDCS) set out in the Morgan Hill Municipal Code, except one dwelling unit developments which are not part of a current, planned or potentially larger subdivision, and except secondary dwelling units ("granny units"). The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

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### **B. NUMBER OF DEVELOPMENT ALLOTMENTS**

The population ceiling for the City as of January 1, 2010 is 38,800. This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. The increased burden on City services imposed by development outside the present City limits adversely affects the City's ability to provide services to developments within the present City limits.

The number of residential development allotments for any fiscal year shall be limited to a number equal to the desired annual population increase for that fiscal year divided by the occupancy level per dwelling unit. For purposes of this determination, the annual desired population increase shall be equal to the difference between 38,800 and the population of the City of Morgan Hill on January 1 of the previous fiscal year, divided by the number of years remaining between said previous fiscal year and fiscal year 2009/2010. The population of the City of Morgan Hill on January 1 of said previous fiscal year shall be equal to the most recent population determination by the California State Department of Finance. The occupancy level per dwelling unit, for purposes of calculation of annual allocations, shall be determined by the State of California, Department of Finance estimate for the City of Morgan Hill.

The number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined each year by the City Council, provided that no less than 33 percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. No less than one third of the total annual allotments shall be awarded to developments to the east of Monterey Road and no less than one third of the total annual allotments shall be awarded to developments to the west of Monterey Road, with the remainder distributed on the basis of points received and without regard to the east/west distribution. The City Council may, if it chooses, further divide the allotments according to geography, price, development size, and similar criteria as deemed necessary to provide for the general welfare.

**C. DEVELOPMENT ALLOTMENT APPLICATIONS AND EVALUATIONS**

The annual development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals for each year. The point scale used shall take into account the impact of the proposed development on the following public facilities and services: schools, water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools, and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low and moderate income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be infill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development allocations, the City Council shall comply with Government Code Sections 66000 et seq.

**D. EMERGENCY SITUATIONS**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of emergency overcrowding of the schools, mandatory water rationing, sewage system operating at 95% capacity, or other endangerment to the public health, safety or welfare. The Council shall, in implementing this provision, comply with the provisions of Government Code Section 65858.

**E. OPEN SPACE CONVERSIONS**

1. No development allocations shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application through the use of permanent dedications, easements, or similar devices.
2. With respect to development allocations already awarded, wherever legally possible no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.
3. The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through March 1, 1990, are hereby reaffirmed and readopted through FY 2009/2010. This provision shall not prevent the City Council from designating additional lands as open space.

**F. URBAN SERVICE AREA RESTRICTIONS**

The City of Morgan Hill shall neither apply to LAFCO, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land either to the east of Monterey Road or to the west of Monterey Road within the existing Urban Service Area is insufficient to accommodate five years worth of residential growth for the land on that side of Monterey Road. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition to the Urban Service Area of land only on the side of Monterey Road having the insufficiency, and only to the extent necessary to support five or fewer years of growth on that side of Monterey Road.

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The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable infill. Desirable infill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary (as determined by a perpendicular line drawn from the side of the parcel to the City boundary) and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development, or parcel.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox Act or by any Court judgement.

Because of the shortage of services and resources facing the City of Morgan Hill (e.g., water, sewer, schools, streets, fire and police protection), and in order to assure that such services and resources are not unduly burdened further, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990 and the effective date of this initiative and not considered "infill" as defined above, the City shall not provide urban services to support any development at a higher density than is provided for in the Santa Clara County General Plan as of March 1, 1990.

### **G. URBAN SERVICES EXTENSIONS**

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire, or other emergency services to be provided by City facilities on County land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

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**SECTION 3 EXTENSION AND UPDATE OF THE MORGAN HILL RESIDENTIAL DEVELOPMENT CONTROL SYSTEM BY AMENDMENT TO MORGAN HILL MUNICIPAL CODE**

Paragraphs A through G of this section shall be added to the Municipal Code of the City of Morgan Hill and shall be entitled "Residential Development Control System." Nothing in these paragraphs shall prevent the City from making appropriate provisions for small residential developments in compliance with paragraph C in section 2 of this initiative.

**A. DEVELOPMENT ALLOTMENT APPLICATION**

1. An Application for a development allotment shall be made to the Planning Department of the City of Morgan Hill on a form provided by the City. Such application shall contain the following information and be accompanied by the following documents:

**A. Site Utilization Map including:**

- (1) Vicinity Map to show the relationship of the proposed development to adjacent development, the surrounding area, and the City.
- (2) Site Use Layout Map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. (The Site Use Layout Map is of major importance; the Vicinity Map may be shown as a small inset map.)

**B. Site Development Plan:**

Lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with City street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways.

**C. Preliminary Architectural Plans:**

Typical architectural elevations, types and numbers of dwelling units, proposed color of buildings.

**D. Preliminary Grading Plans:**

A general indication of type, extent, and timing of grading.

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E. Preliminary Landscape Plans:

General indications of planting.

F. Housing Marketability and Price Distribution:

Expected ranges of rental amounts or sales prices, low and moderate income housing to be provided, and applicability to Housing Assistance Plan, if any.

G. Schools and Other Public Facilities:

Needed schools, permanent or relocatable, or school impact mitigation measure to be provided. Other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities.

H. Development Schedule:

Proposed schedule of development including phasing.

I. Financial Information:

Financial information sufficient to enable the City to determine if the project has a reasonable chance of being undertaken and completed if a development allotment is awarded.

J. Such other information as may be required by the Planning Director.

2. Each application shall be accompanied by a reasonable fee set by the City Council based on the cost to the City of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc. and shall not be returned in the event that no development allotment is awarded.
3. An applicant may file only one application for any given property in any given year.

**B. PLANNING OFFICER'S EVALUATION**

The Planning Officer (hereafter PO) shall review each application and determine whether or not the proposed development conforms to the Morgan Hill General Plan. If the PO determines that a proposed development does not conform to the General Plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen (15) days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

Within fifteen (15) days after such notice is mailed, the applicant may appeal the decision of the PO to the City Council by filing a written notice of appeal with the City Clerk, who shall place the matter on the next agenda for a regular Council meeting. The City Council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of non-conformity with said plans, reverse said decision by finding that the proposed development is in conformity with said plans, or permit the applicant to modify his proposed development to bring it into conformity with said plans. The decision of the Council shall be final and conclusive.

**C. DEVELOPMENT ALLOTMENT EVALUATION**

Proposed developments found by the PO or City Council to conform to the General Plan shall be evaluated by the PO and awarded points as hereinafter set forth. The Planning Commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections C(1) and C(2) below. The PO shall submit his evaluation to the Planning Commission and the Commission shall approve, disapprove, or modify the PO's evaluation by simple majority vote.

1. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from 0 to 2 points for each of the following:

- A. The capacity of the appropriate school to absorb the children expected to inhabit a proposed development without necessitating or adding to double sessions or other unusual scheduling or site or classroom overcrowding. (Written evaluation of the MHUSD.)

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- B. The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide. (Comments of the Morgan Hill Director of Public Works.)
  - C. The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide. (Comments from the Morgan Hill Director of Public Works.)
  - D. The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide. (Comments from the Santa Clara Valley Water District and the Morgan Hill Director of Public Works.)
  - E. The ability of the Fire Department of the City of Morgan Hill to provide fire protection according to the established response standards of the City without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the Police Department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel. (Comments from the Fire and Police Departments.)
  - F. The ability and capacity of major street linkage to provide for the needs of the proposed development without substantially altering existing street system (the desired target traffic level of service being no worse than "C" level service as defined in the 1985 Transportation Research Board Report #209), and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer. (Comments from the appropriate department heads.)
2. Quality of Design and Extent of Contribution to Public Welfare and Amenities.

The PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

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- A. The provisions of needed school rooms in the form of permanent or relocatable buildings or the provision of other mitigating measures as attested by agreement with the MHUSD. A minimum of one third of the points in this category shall be reserved for criteria such as the development's impact on existing bus routes, or classroom or site overcrowding. (25 points)
- B. The provision of public and/or private usable open space and, where applicable, greenbelts. (20 points)
- C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than "leap frog" development, by using land contiguous to urban development within the City limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors. (20 points)
- D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities. (10 points)
- E. Provision of parks, foot or bicycle paths, equestrian trails, or pathways. (10 points)
- F. The provision of units to meet the City's need for low and moderate income and elderly housing and the extent to which such provision meets the goals of the Housing Element of the General Plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity. (15 points)
- G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the Housing Element of the General Plan. (15 points)
- H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height. (15 points)
- I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations. (15 points)
- J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on and off-site traffic safety and privacy. (15 points)

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- K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures. (5 points)
- L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings. (10 points)
- M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features. (15 points)

### **D. AWARD OF ALLOTMENTS**

1. The PO shall notify each applicant of his evaluation under Section C. Such notice shall be given in writing within (7) days after the evaluation has been approved by the Planning Commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time the PO shall notify in writing the MHUSD and all other city departments and public agencies which provided input for the evaluation under Section C of the result of that evaluation.
2. Proposed developments which have not been assigned a minimum of 9 points under Section C(1) or a minimum of 125 points under Section C(2) shall not be given a development allotment. Any applicant whose proposed development has not been given the required number of points may appeal the matter of allotment evaluation to the City Council as hereinafter provided.
3. Subject to the limitations hereinafter set forth in this paragraph and paragraph D(6), proposed developments which have received a minimum of 9 points under Section C(1) and a minimum of 125 points under Section C(2) may be awarded an allotment for the following fiscal year. Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by Planning Commission's determination or by City Council's determination on appeal) exceed the numerical limits established by the City Council by housing-type category, development allotments for which the Council-established numerical limit has thus been exceeded shall be awarded on the basis of the number of points received under Section C(2) starting with those proposed developments receiving the most evaluation points for the affected housing-type category and

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proceeding in order down the list until the numerical limit established by the Council has been reached. Where allotments are made on the basis of comparative standing on the list, any applicant who has received the required minimum number of points, but who is not high enough on the list to receive a development allotment, may appeal the matter of allotment evaluation to the City Council as provided in Section E.

4. Allotments for the next fiscal year shall be issued by April 1 of the preceding year and shall be limited to those applicants whose evaluations under Section C are completed at least thirty (30) days prior to the date of the issuance of allotments and whose application or evaluation is not being appealed to City Council either by the applicant or by any other interested party at the time the allotments are issued. Allotments shall be awarded for no more than two fiscal years in a single competition.
5. Any applicant whose development evaluation has been completed and where any appeals (if applicable) have been resolved and who does not receive an allotment for the fiscal year will not be considered automatically for the subsequent fiscal year, but must reapply under Section A for the next or subsequent fiscal year.
6. If an applicant desires approval of residential units in a single residential development to be phased over more than one fiscal year, the applicant may apply to the City Council for such approval. The City Council may give such approval if it is demonstrated that the proposed project if limited to one fiscal year is not economically feasible because of the required off-site or other improvements required and other factors beyond the developers control. The applicant shall be given the necessary additional allotments to complete the project in the next fiscal year; however, these additional allotments shall be considered a portion of the limited allotment for that next fiscal year.
7. To ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their allocation and must re-apply under the development allotment process outlined in Section A if development is still desired by the developer. 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 F; or extended delays in environmental reviews, permit delays not the result of developer inaction, or allocation appeals processing.

**E. APPEALS TO CITY COUNCIL**

1. An applicant may appeal to the City Council pursuant to D(2) or D(3) hereof by filing a written notice of appeal with the City Clerk within ten (10) days after the notice of evaluation has been mailed.
2. The MHUSD or other public agencies which provided input for the evaluation under Section C may appeal to the City Council the evaluation under Section C(1) and C(2) within thirty (30) days after notice has been mailed as described in Section D(1).
3. Any citizen or group of citizens may appeal to City Council the evaluation of any applicant by filing with the City Clerk a petition signed by one hundred (100) registered voters of the City of Morgan Hill within thirty (30) days after the notice of evaluation has been mailed to the applicant.
4. In the event an appeal is filed under 1, 2, or 3 above, the City Clerk shall place the matter on the next agenda for a regular Council meeting. The City Council shall consider the appeal at such regular meeting at which time the Council will hear the applicant or his representative and such other persons as may be able to assist the Council in the determination of the matter on appeal. The Council may affirm or modify the allotment evaluation and its decision shall be final and conclusive.

**F. EMERGENCY SITUATIONS OR SEVERE IMPACTION OF PUBLIC FACILITIES**

An emergency or severe impaction situation shall be any one or more of the following:

1. A finding by the Director of Public Works that the sewage facility usage level exceeds 95% of the capacity of the system.
2. Mandatory City water rationing measures in effect.
3. Schools in MHUSD on "double sessions", or the MHUSD has declared that an emergency overcrowding exists. "Emergency overcrowding" may be declared for one or more schools, based on criteria established by the MHUSD, including but not limited to a specified percent of student enrollment beyond a determined capacity of the affected schools.

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4. The MHUSD or other public agency providing services essential to the public health and safety notifies City Council in writing or by resolution that its ability to meet the public needs is severely impacted.
5. Any other endangerment to public health, safety, or welfare which the City Council determines to exist for the purposes of this section.

If any of these specified conditions exist, then the City Council shall certify an emergency or severe impaction situation.

In addition, any citizen or group of citizens may petition the City Council for declaration of an imposition of an emergency or severe impaction situation by filing with the City Clerk a petition signed by the greater of five hundred (500) or four percent of the registered voters of the City of Morgan Hill. The City Council at their next regularly scheduled meeting must then vote on a resolution of emergency or severe impaction situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

In the event such an emergency or severe impaction is certified, no building permit and no allotment shall be issued unless the City Council first specifically finds that the building permit or specific allotment allocation will not contribute additionally to the existing emergency or severe impaction situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

The PO shall review all certified emergency or severe impaction situations at least quarterly, and shall determine whether conditions warrant continuation of said emergency or severe impaction. The PO shall report his findings to the City Council, and notice of such findings shall be placed on the City Council agenda and published in a newspaper of general circulation. If the City Council finds, based on the PO's report, that the certified emergency or severe impaction situation no longer exists, it shall decertify the emergency.

In implementing this section, the City Council shall comply with the provisions of Government Code Section 65858. Where those provisions conflict with this ordinance, the state statute shall prevail.

**G. REVIEW OF PROGRESS**

The Planning Officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the Planning Department. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the City staff and Council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points awarded for its initial application, the PO shall report such failure or deviation to the City Council which, after holding a hearing, may rescind all or part of the development allotment in favor of the next development on the list which has qualified for such allotment and which is capable of commencement in the fiscal year.

**SECTION 4 IMPLEMENTATION AND CONSISTENCY**

Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted in Morgan Hill's General Plan, unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case this general plan amendment shall be deemed inserted on January 1 of the following calendar year. As of the date this section is deemed inserted, the General Plan and Municipal Code of the City of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative.

As of the date the provisions of Section 2 of this initiative are deemed inserted into Morgan Hill's General Plan, Measure E, as enacted and codified at Sections 18.78.010-18.78.170 of the Morgan Hill Municipal Code, shall be deemed repealed and replaced by the terms of this initiative ordinance. Upon said insertion date, Section 3 of this initiative shall be deemed inserted in the Morgan Hill Municipal Code, and the Municipal Code shall be interpreted so as to give immediate effect to the provisions of this initiative.

The City Council shall within 120 days of the enactment of this initiative ordinance amend the Morgan Hill General Plan as necessary to achieve consistency with all provisions of this initiative. Also within 120 days, the City Council shall amend the "specific provisions" for implementation of the RDCS now set forth at Sections 18.78.180 - 18.78.330 of the Municipal Code and other land use regulations as necessary to conform to all provisions of this initiative.

## SUPPLEMENTALS TO ITEM 1

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If the City adopts a new general plan or amended general plan elements, the provisions added by this ordinance shall continue to be included in the general plan through fiscal year 2009/2010. Upon the date of the insertion of this initiative into the General Plan and Municipal Code, all rezonings, specific plans, development agreements, tentative or final subdivision maps, parcel maps, conditional use permits, building permits and other ministerial or discretionary entitlements for use in process or submitted in the future, shall be consistent with the policies and provisions of this initiative.

The development allotments for fiscal years 1990/91 and 1991/92 awarded under Measure E shall remain in effect and shall constitute the allotments for those fiscal years.

### **SECTION 5 DURATION**

This ordinance shall remain in effect until and including fiscal year 2009/2010.

### **SECTION 6 CONSISTENCY WITH STATE AND FEDERAL LAW**

The provisions of this ordinance shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the State of California.

### **SECTION 7 SEVERABILITY**

If any provision or application of any provision of this ordinance is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this ordinance are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

It is the intent of the Voters of Morgan Hill, by enactment of this initiative ordinance, to extend and expand the essential residential development control provisions and policies of Measure E. If this initiative measure is held invalid in its entirety, then the provision of Section 4 of this initiative repealing Measure E shall be inoperative, and Measure E shall remain in effect, as presently codified.

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If any provision of Section 2 or Section 3 of this initiative is held invalid, the remainder of the initiative shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure E that correspond to the invalidated initiative provision. Thus, the repeal of Measure E, provided for in Section 4 of this initiative, shall be inoperative with respect to those provisions of Measure E corresponding to any invalidated provisions of this initiative.

**SECTION 8 NO UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY**

This initiative shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this initiative to a specific project would effect a taking, then pursuant to this initiative the City Council may alter the provisions of this initiative, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this initiative to the maximum extent feasible.

**SECTION 9 AMENDMENT OR REPEAL**

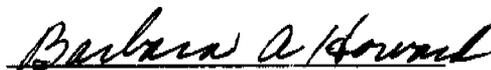
This initiative, including the amendments to the General Plan and Municipal Code, may be amended or repealed only by the voters of the City of Morgan Hill at a municipal election.

Passed by the citizens of the City of Morgan Hill at the General Municipal Election held on November 6, 1990. This ordinance will become effective on December 8, 1990. The vote for Measure "P" follows:

AYES: 4,734

NOES: 2,361

ATTEST:



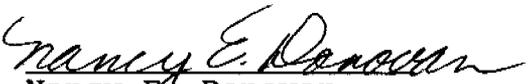
Barbara A. Howard, CMC  
City Clerk

SUPPLEMENTALS TO ITEM 1

CERTIFICATE OF THE DEPUTY CITY CLERK

I, NANCY E. DONOVAN, DEPUTY CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that this is a true and correct copy of Ordinance No. 1010, N.S., that was passed and adopted by the City Council.

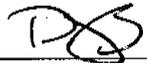
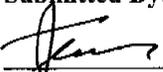
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL on this 8th day of December, 1990.

  
Nancy E. Donovan  
Deputy City Clerk



**CITY COUNCIL STAFF REPORT**

**MEETING DATE:** April 5, 2006

<b>SUPPLEMENTALS TO ITEM 1</b> Agenda Item # <b>21</b>
<b>Prepared By:</b>  Project Planner
<b>Approved By:</b>  Community Development Director
<b>Submitted By:</b>  City Manager

**AMENDMENT TO DESIRABLE INFILL POLICY**

**RECOMMENDED ACTION(S):**

Approve amendment to policy by minute action.

**EXECUTIVE SUMMARY:**

The Desirable Infill Policy, which was authorized by Measures P and C, establishes standards for expansion of the Urban Service Area for small areas. The Policy was first adopted by the City Council in 1993 and has been amended several times since that time. However, application of the policy to the Oak Meadow Plaza Urban Service Area application (USA 05-02), currently under consideration, has identified a number of aspects of the policy that may result in unanticipated consequences.

Staff has proposed amendments to the Policy that would align it more closely with the specific language contained in the Measure C initiative and clarify that the provision of permanent open space would beneficially affect the general welfare of the citizens of the City, as required by the initiative. Attached are two staff reports to the Planning Commission that fully explain the proposed changes and respond to questions/issues raised by the Commission. Also attached is a memo from the City Attorney which addresses the consistency of the proposed changes to the Policy with the language of Measure C.

The Planning Commission considered the proposed changes to the Policy at its meeting of March 14 and 28. The Commission recommends approval of the changes to the Policy as shown in the attachment. Language that is proposed to be added to the Policy is underlined and language that is proposed to be deleted is lined out.

**FISCAL IMPACT:**

No budget adjustment required.

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**CITY OF MORGAN HILL  
CITY COUNCIL POLICIES AND PROCEDURES**

CP 94-02

**SUBJECT: CRITERIA FOR ADJUSTMENT OF THE URBAN SERVICE BOUNDARY**

**EFFECTIVE DATE: APRIL 7, 1994**

**REVISION DATE: June 15, 1994, September 21, 2005, April 5, 2006**

**DESIRABLE INFILL STANDARDS**

It shall be the policy of the City of Morgan Hill to utilize the following criteria to evaluate and approve boundary adjustments to forward to the County Local Agency Formation Commission (LAFCO) based on the Desirable Infill exception allowed by Section 18.78.070(B) of the Municipal Code.

**Residentially Planned Properties**

The City may petition LAFCO for expansion of the Urban Service Area (USA) irrespective of the amount of vacant land available for residential development currently within the Urban Service Area provided that the property subject to the proposed expansion meets the definition of "Desirable Infill". That definition includes criteria which addresses physical characteristics of the property, provision of services to the property, and benefits to the City from inclusion of the property. All three criteria must be met for a property to be added to the Urban Service Area.

**Physical Criteria**

1. Complete or pPartial properties may shall not be included. Partial properties may only be included subject to the following standards:
  - a. The portions of the properties not proposed for inclusion within the USA must be annexed at the same time as the portions proposed for inclusion; and
  - b. The portions of the properties not proposed for inclusion within the USA must be planned for open space or greenbelt use and owned by a public agency or, if not owned by a public agency, protected by a conservation easement for the benefit of the public;
2. The total acreage of land to be added to the USA a parcel shall not exceed 20 acres; and
3. The land to be included Each parcel shall be abutted at least 50% on each of two sides by property within the ascribed boundaries ~~on December 7, 1990;~~ or is abutted at least 50%

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on one side by property within the ascribed boundaries ~~on December 7, 1990~~ and has two other sides within 1320 ft. of the ascribed boundaries ~~on December 7, 1990~~ (as

determined by perpendicular lines drawn from the two other sides of the land to be included property to the ascribed boundaries). For the purpose of this determination, the ascribed boundaries shall be defined as follows:

- a. In instances where the urban service boundary is within the city limits, the ascribed boundary is the urban service boundary.
  - b. In instances where the urban service boundary is coterminous with or extends beyond the city limits, the ascribed boundary is the city limits.
  - c. A parcel which does not touch property within the ascribed boundaries but is on the opposite side of the street from property within the ascribed boundaries will be considered to abut property within those boundaries.
4. Land Parcels not contiguous to the urban service area may be eligible for inclusion in the urban service area if the land parcels meets the standards contained in criteria 1 and 2 above and the property's inclusion is necessary to avoid the potential for creation of an unincorporated peninsula or island within the City. Such non-contiguous land parcels may only be included within the USA if the entire area of consideration in which the land parcels are contained does not exceed 20 acres.
5. The City Council, prior to approving expansion of the USA, shall make finding(s) documenting that the expansion is not being granted to an applicant, development or land previously included within the USA under the terms of this policy.

### City Service Criteria

The City shall only add land parcels to the Urban Service Area which would potentially be eligible to receive a passing score under Part 1 of the Residential Development Control System criteria (Section 18.78.200 of the Municipal Code).

For the purposes of this determination, properties will be evaluated against Part I of the RDCS using the following standards:

2 Points assigned if the necessary facility is currently in place and is of adequate capacity to serve the potential development of the parcel (as recommended by the City Engineer).

1 or 1.5 points assigned if the necessary facility could be reasonably installed or improved as a condition of a development of the parcel (as recommended by the City Engineer).

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0 points assigned if the necessary facility could not be reasonably installed or improved as a condition of development of the parcel (as recommended by the City Engineer).

### **Beneficial Criteria**

The City shall only add land parcels to the Urban Service Area which would beneficially affect the general welfare of the citizens of the City.

Land Parcels which would be considered to beneficially affect the citizens of the City includes those which promote orderly and contiguous development ~~by~~ and allowing for the provision of needed infrastructure or allowing for the establishment of public facilities such as parks, open space and greenbelt lands under conservation easements, schools or other buildings to be owned or operated by the City, School District, Water District or any other public agency.

For the purpose of this determination, the following standards shall apply:

~~Orderly and Contiguous Development: To be considered “orderly and contiguous development” parcels must be adjacent to the Urban Service Boundary on at least 50 percent or more of the property boundary.~~

Provision of Needed Infrastructure: To allow for the completion of needed infrastructure, land parcels must be capable of providing for one or more of the following:

- a. The gridding of the existing water system.
- b. The elimination of an existing dead end street(s) or the improvement of an existing substandard street which has been identified as creating a potentially hazardous situation or provision of a new street which substantially improves circulation in an area.
- c. The installation or improvement of a sewer line(s) where the existing line or service levels are determined to be substandard.
- d. The installation or improvement of storm drainage facilities where the existing facilities or service levels are determined to be substandard.
- e. The establishment of water tanks or lift stations in areas where determined necessary by the City.

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Establishment of Needed Public Facilities: To allow for the establishment of public facilities, ~~land a parcel~~ must be identified as a location for the establishment of a public

facility (park, school, public buildings) to be owned or operated by the City, School District, Water District or any other public agency.

The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements on which the City's findings are based, and/or convey the land needed for the public facilities or record a conservation easement for the benefit of the public, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in section 18.78.030.A, "Development allotments – Determination and distribution" of the Residential Development Control provisions of the Morgan Hill Municipal Code

### Commercially and Industrially Planned Properties

To encourage economic development, the City may approve expansions of the Urban Service Boundary which include properties which are contiguous to the Urban Service Boundary and are designated in the Land Use Element of the Morgan Hill General Plan for commercial or industrial use. Properties so added to the Urban Service Area shall not be eligible for conversion to residential use except as provided by Section 18.62.070 of the Morgan Hill Municipal Code.

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

**APPROVED:**

\_\_\_\_\_  
**DENNIS KENNEDY, MAYOR**



## Memorandum

**Date:** MARCH 14, 2006  
**To:** PLANNING COMMISSION  
**From:** COMMUNITY DEVELOPMENT DEPARTMENT  
**Subject:** AMENDMENT TO DESIRABLE INFILL POLICY

### REQUEST

Review of recommended changes to the City Council policy regarding amendment to the Urban Service Area – Desirable Infill.

### RECOMMENDATION

Recommend City Council adoption of amendments to Desirable Infill Policy, as shown in Exhibit A, by minute action.

### BACKGROUND

The voters of Morgan Hill approved Measure P in 1990. In addition to regulating residential growth, the initiative included restrictions regarding expansion of the City's Urban Service Area (USA) for future residential development. Those restrictions prohibit the City from requesting LAFCO approval for expansion of the USA until such time as there is less than a five-year supply of vacant, residentially planned land within the current USA. An exception to the prohibition was included in the initiative for small areas that meet certain standards. The exception is defined by the initiative as Desirable Infill. The initiative limits the eligibility of land to be included in the USA under this exception by the following criteria:

1. The area cannot be larger than 20 acres in size;
2. The area must be adjacent to the city limits on two sides or adjacent to the city limits on one side and within one quarter of a mile of the city limits on two other sides;
3. Inclusion of the area within the USA must not unduly burden city services, and
4. Inclusion of the area must beneficially affect the general welfare of the citizens of the City.

The initiative specifies that in order to allow exceptions under Desirable Infill, the City must establish standards for their approval that would “prevent repetitively granting exceptions to the same applicant, development or parcel.”

In 2004, the voters approved Measure C. That Measure updated Measure P and extended residential growth control ten years to the year 2020. Measure C strengthened the requirements for Desirable Infill by establishing more definitive standards for the benefits that must accrue to the City as a result of adding land to the USA.

Measure C is codified in the Municipal Code as the Residential Development Control System (RDCS).

The City Council first adopted a policy for Desirable Infill in 1993. The policy has been amended several times since its adoption. A copy of the current policy, with proposed amendments that are described below, is attached for Commission review.

**PROPOSED POLICY AMENDMENTS**

The Desirable Infill policy has served the City well for a number of years. However, application of the policy to the Oak Meadow Plaza Urban Service Area application (USA 05-02) and Annexation application (ANX 06-01), currently under consideration, has identified a number of aspects of the policy that may result in unanticipated consequences. Following is a description of the sections of the policy that staff believes warrant further review and amendment.

Physical Criteria #1:

This criterion currently reads as follows:

1. Partial properties shall not be included.

Staff believes the purpose of this standard is to prohibit partial properties from being annexed into the city limits. Annexation of partial properties is strongly discouraged by LAFCO policy and prohibited by State law.

The Oak Meadow Plaza Urban Service Area and Annexation applications propose to annex 34 acres into the city limits. Twenty of those acres, including partial properties, would be included in the USA and planned for residential development. The other 14 acres are steeply sloped and would be maintained as open space. The entire 34-acre area would be part of a single project with the open space maintained by the homeowners association formed for the residential portion of the property.

Staff recommends the prohibition against adding partial properties to the USA be modified to allow partial properties to be included within the USA provided that the portions of the properties not proposed for inclusion be annexed along with the portions in the USA. It is

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further recommended that this only be allowed when it would promote preservation of open space and/or greenbelts. Allowance for open space or greenbelt areas within the city limits, yet outside the USA, would enhance the City's ability to achieve its planning objectives at the City's edges.

Physical Criteria #2:

This criterion currently reads as follows:

2. The total acreage of a parcel shall not exceed 20 acres.

If Physical Criteria 1, above, is to be changed, amendment to Criteria 2 would also be appropriate to limit acreage of "land to be added to the USA" to 20 acres or less. Consistent with this amendment, language throughout the policy should be changed to, where appropriate, to refer to "land" being added to the USA instead of "parcels."

Physical Criteria #3:

This criterion currently reads as follows:

3. Each parcel shall be abutted at least 50% on each of two sides by property within the ascribed boundaries on December 7, 1990; or is abutted at least 50% on one side by property within the ascribed boundaries on December 7, 1990 and has two other sides within 1320 ft. of the ascribed boundaries on December 7, 1990 (as determined by perpendicular lines drawn from the two other sides of the property to the ascribed boundaries). For the purpose of this determination, the ascribed boundaries shall be defined as follows:
  - a. In instances where the urban service boundary is within the city limits, the ascribed boundary is the urban service boundary.
  - b. In instances where the urban service boundary is coterminous with or extends beyond the city limits, the scribed boundary is the city limits.
  - c. A parcel which does not touch property within the ascribed boundaries but is on the opposite side of the street from property within the ascribed boundaries will be considered to abut property within those boundaries.

This criterion was developed in response to a provision contained in Measure P (and extended into Measure C) regarding limitations for Desirable Infill. Specifically, the provision provides that if the City allows exceptions for Desirable Infill, it must "include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel." The establishment of a fixed date (December 7, 1990, the effective date of Measure P) in the policy was intended to prevent such repetitive approvals.

The applicant who filed the Oak Meadow Plaza application is not the same as prior applicants for USA expansion and the subject property is not part of a development or parcel that previously received USA expansion approval. Yet the current criterion would preclude the property from being added to the USA.

Staff recommends this standard be amended to more closely reflect the language in the RDCS. Specifically, reference to a specific date associated with the city boundaries should be replaced with more direct findings regarding the applicant, development and property proposed for addition to the USA. The specific language proposed is shown in the attached policy.

#### Beneficial Criteria - Orderly and Contiguous Development

The Desirable Infill policy limits additions to the Urban Service Area to land that would meet certain physical criteria, service criteria, and would beneficially affect the general welfare of the citizens of the City. Benefit is defined by the criteria to include land that would result in "orderly and contiguous development" and (*emphasis added*) that would 1) provide needed infrastructure or 2) allow for the establishment of public facilities. The portion dealing with orderly and contiguous development currently reads as follows:

Orderly and Contiguous Development: To be considered "orderly and contiguous development" parcels must be adjacent to the Urban Service Boundary on at least 50 percent or more of the property boundary.

This provision of the Desirable Infill policy exceeds the standard established for beneficial effects as contained in the RDCS. The RDCS defines beneficial effects as those "which promote orderly and contiguous development by (*emphasis added*) facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency." The requirement that an area proposed to be added to the USA be adjacent to the current USA on at least 50 percent of its boundary significantly exceeds the RDCS standard that would allow additions that are adjacent to the city limits on one side and within one-quarter mile on two other sides. In that this policy standard would potentially preempt an application of a provision of the RDCS, staff recommends it be eliminated.

Establishment of Public Facilities: The RDCS and Desirable Infill policy identifies parks, schools and public buildings as examples of the types of public facilities that would beneficially affect the general welfare of the citizens of the City. Staff would recommend adding to the list of examples open space and greenbelt lands which are under conservation easement as such lands would also beneficially affect the welfare of the citizens of the community.

#### Attachments

1. Exhibit A, Recommended Amendments to the City Council Policy establishing standards for Desirable Infill.
2. Section 18.78.070 of the RDCS, addressing Desirable Infill

**18.78.070 Urban Service Area Restrictions.**

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable infill. "Desirable infill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The city council, prior to approving any expansion of the urban service area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services and that the expansion would beneficially affect the general welfare of the citizens of the city, as defined in the following paragraph.

Areas whose addition to the urban service area would be considered to beneficially affect the general welfare of the citizens of the city include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools or other buildings to be owned or operated by the city, school district, water district or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns) or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the city's findings that the expansion would beneficially affect the general welfare of the city must be installed, or the land needed for public facilities that are the basis of the city's findings that the expansion would beneficially affect the general welfare of the city must be conveyed to the public agency, within five years of the date the area is added to the urban services area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the city's findings are based or convey the land needed for the public facilities on which the findings are based must be secured prior to official action

## SUPPLEMENTALS TO ITEM 1

adding the area to the urban services area through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the existing county subdivisions enumerated in Section 18.78.030(A) may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these existing county subdivisions may be added to the city urban service area and annexed into the city without otherwise meeting the test for desirable in-fill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any court judgment.

D. In order to assure that city services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered infill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County general plan as of March 1, 1990. (Ord. 1665 N.S. § 3 (part), 2004; Ord. 1010 N.S. § 2 (F), 1990)



## Memorandum

**Date:** MARCH 28, 2006  
**To:** PLANNING COMMISSION  
**From:** COMMUNITY DEVELOPMENT DEPARTMENT  
**Subject:** AMENDMENT TO DESIRABLE INFILL POLICY

### REQUEST

Review of recommended changes to the City Council policy regarding amendment to the Urban Service Area – Desirable Infill.

### RECOMMENDATION

Recommend City Council adoption of amendments to Desirable Infill Policy, as shown in Exhibit A, by minute action.

### BACKGROUND

This request was considered by the Commission at its March 14 meeting and continued to this date. Attached are the staff report and supporting documents from that meeting.

At the meeting, Commissioners raised a number of questions and comments regarding the proposed amendments to the Desirable Infill policy. Following are those questions and comments and Staff's responses to the first two of them. The City Attorney is drafting a memo in response to the last two questions and comments. Copies of that memo will be distributed to the Commission on Monday.

1. Should the Orderly and Contiguous requirement be eliminated from the Beneficial Criteria?

Response: The Orderly and Contiguous standard of Desirable Infill Policy requires any property proposed to be added to the Urban Service Area (USA) must be adjacent to the Urban Service Boundary on at least 50 percent or more of the property boundary. There is no basis for this requirement in Measure C. Further, the requirement significantly exceeds the RDCS standard that would potentially allow

additions to the USA that are adjacent to the city limits on one side and within one-quarter mile on two other sides. Staff is unaware of the number of areas that have the potential to be added to the USA under the Desirable Infill Policy that would be preempted by the existing Orderly and Contiguous standard. Insofar as this standard significantly exceeds the requirements of Measure C and has the potential to preempt approval of applications that meet all Measure C standards, staff continues to recommend its elimination.

2. In lieu of elimination of the December 7, 1990 date from the Physical Criteria, replace it with the effective date of Measure C.

Response: Neither Measure P nor Measure C require property to be within one-quarter of a mile of the city limits as they existed on any date. Both Measures require that the policy regulating Desirable Infill "include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel." The establishment of a fixed date (December 7, 1990, the effective date of Measure P) in the policy was intended to prevent such repetitive approvals. Replacement of the December 7, 1990 date with the effective date of Measure C (March 2, 2004) would, in the near term, provide more flexibility in review of USA requests. In the long term, it may create the same problem as currently exists.

3. Replacement of the word "parcel" with "land" throughout the policy, and
4. Addition of conservation easements to the list of infrastructure improvements that would beneficially affect the general welfare.

#### Attachments

1. March 14, 2006 Staff Report
2. Exhibit A, Recommended Amendments to the City Council Policy establishing standards for Desirable Infill.
3. Section 18.78.070 of the RDCS, addressing Desirable Infill



**MEMORANDUM**

**TO:** Kathy Molloy Previsich, Director of Community Development  
Jim Rowe, Planning Manager  
David Bischoff, Planning Consultant

**COPY:** Ed Tewes, City Manager

**FROM:** Janet Kern, City Attorney

**DATE:** March 27, 2006

**SUBJECT:** Issues Relating to Desirable Infill Standards Policy

Tomorrow, March 28, 2006, the City Planning Commission will consider certain proposed amendments to the City Council policy regarding expansion of the Urban Service Boundary for Desirable Infill. In light of that upcoming discussion, Staff has requested clarification of certain terms in the Morgan Hill Municipal Code Chapter 18.78, Residential Development Control System (Measure C).

ISSUE

1. Does a permanent open space easement satisfy the requirement set forth in Section 18.78.070 for any proposed expansion of the City's urban service area to "beneficially affect the general welfare of the citizens of the city"?
2. May only a portion of a legal parcel be included in a proposed expansion of the City's urban service area?

BACKGROUND

Subsection A of Section 18.78.070 prohibits the addition of land to the City's urban service area until such time as land within the existing urban service area is insufficient to accommodate five years of future residential growth in accordance with the development allotment process. Subsection B of Section 18.78.070 sets forth an exception to that prohibition for "desirable infill". Subsection B authorizes the City Council to formulate standards to determine "desirable infill" and also provides certain direction and guidance to the City Council in formulating those standards.



## SUPPLEMENTALS TO ITEM 1

Kathy Molloy Previsich; Jim Rowe; David Bischoff  
Re: Issues Relating to Desirable Infill Standards Policy  
March 27, 2006  
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The first paragraph of Subsection B provides direction that the City Council "shall make findings documenting that the expansion would not unduly burden city services and that the expansion would beneficially affect the general welfare of the citizens of the city, as defined in the following paragraph." (Underlining added.)

The second paragraph of Subsection B provides guidance to the City Council in making those findings. Rather than using mandatory language, the second paragraph describes "areas whose addition to the urban service area would be considered to beneficially affect the general welfare of the citizens of the city [to] include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities, such as parks, schools or other buildings to be owned or operated by the city, school district, water district or any other public agency." (Underlining added.)

Effective April 7, 1994, and in accordance with Subsection B of Section 18.78.070, the City Council did adopt Criteria for Adjustment of the Urban Service Boundary and has revised that policy on June 15, 1994 and September 21, 2005 ("Infill Policy"). A recommendation on further revision to the Infill Policy will be before the City Planning Commission tomorrow.

### ANALYSIS

#### The First Issue

On February 4, 2006, the City Council approved the Predevelopment Memorandum of Understanding Regarding Certain Undeveloped Property Located on Sunset, Edmundson and DeWitt in Unincorporated Santa Clara County (the "MOU"). Section 4(b)(iv) of the MOU provides: "The permanent open space easements and other limitations on the Edmundson Property and DeWitt Property would provide the required community benefit for inclusion of the 19.99 acre portion of the Sunset Property in the Urban Service Area as "infill development" pursuant to Measure C."

The proposed revision to the Infill Policy will clarify that a permanent open space easement, granted to and recorded for the benefit of the City, qualifies as an acceptable method of satisfying the requirements of Chapter 18.78.070, Subsection B. There is no language in Chapter 18.78.070 which prohibits the City Council from making such a determination. There is support for such a determination in the Findings and Purposes of Chapter 18.78.010, Subsection H (enacted with passage of Measure P) which states: "The unique character of the city depends on its rural surroundings. In order to maintain this rural atmosphere, provide a buffer against development and preserve a greenbelt legacy for future generations, the city must take steps to preserve open space and

## SUPPLEMENTALS TO ITEM 1

Kathy Molloy Previsich; Jim Rowe; David Bischoff  
Re: Issues Relating to Desirable Infill Standards Policy  
March 27, 2006  
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agricultural land and public parklands in and around the city." Upon adoption of Measure C, the foregoing language was retained and supplemented with by findings stating "Should the City in the future establish an Urban Limit Line or Greenbelt, no residential development or expansion of the Urban Growth Boundary or Urban Service Area could be approved pursuant to the RDCS Update that is inconsistent with such Urban Limit Line or Greenbelt." Therefore, it appears the intent is to allow the City Council discretion to establish acceptable criteria for "desirable infill" and to encourage greenbelts. Permanent open space easements are consistent with greenbelt uses.

### The Second Issue

The proposed revision to the Infill Policy also will clarify the conditions under which a partial legal parcel may qualify for treatment as "desirable infill." Subsection B of Chapter 18.78.070 describes "desirable infill" as "a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel."

As stated above, Subsection B of Chapter 18.78.070 provides guidance to the City Council in establishing criteria for "desirable infill." The use of the word "parcel," "land," "area," "development," "boundary," etc. appear to be descriptive rather than attempting to convey any precise legal meaning. Therefore, the City Council should not be restricted from taking an otherwise legal action that satisfies other Local Agency Formation Commission requirements due to the use of the word "parcel."

### CONCLUSION

The City Council is authorized by Measure C to adopt criteria for "desirable infill". For the City Council to find that the general welfare of the citizens of the city have been beneficially affected by obtaining a permanent open space easement, granted to and recorded for the benefit of the City, would seem a reasonable and defensible determination. Further, there does not appear to be any restriction on the City Council adding partial parcels of land as "desirable infill" assuming all other conditions have been met.

- 3) GPA-05-05:  
CITY OF M.H.,  
ULL/GREENBELT  
STUDY IMPLE-  
MENTATION**
- An amendment to the Morgan Hill General Plan Land Use Diagram to accomplish the following:
1. Establish an Urban Limit Line (ULL) around most of the City,
  2. Expand the Urban Growth Boundary and designate Single Family Low approximately 20 acres of land located on the west side of Sunset Ave., opposite Denali Dr., Yellowstone Dr., Whitney Way and Bryce Dr. (APNs 767-19-028 & a portion of 024 and 767-15-026),
  3. Expand the Urban Growth Boundary and designate Residential Estate approximately 23 acres of land located on the west side of DeWitt Ave. opposite Spring Ave. (APNs 773-09-001,002, 005, 006, a portion of 010, 011, 018, 027 & 028),
  4. Contract the Urban Growth Boundary to exclude approximately 92 acres of land on the northeast side of Malaguerra Ave. (APNs 728-34-019, 020 & 021, 728-35-001, 002 & 039),
  5. Contract the Urban Growth Boundary to exclude approximately 38 acres of land on northern slopes of El Toro, north of John Telfer Dr. and south of Llagas Rd. (APNs 764-31-001 (a portion of), 764-38-006, 008 & 009, a portion of 773-32-004 & 008),
  6. Contract the Urban Growth Boundary to exclude approximately 28 acres of land on west side of Casino Real (APN 773-30-005), and
  7. Contract the Urban Growth Boundary to exclude approximately 10 acres of land on east side of Water Ave. (APN 779-06-023).

In addition, the Goals, Policies and Actions of the Community Development Element and the Open Space and Conservation Element of the General Plan are proposed to be amended to identify Greenbelt areas and to provide guidance regarding the intent and implementation of the ULL and Greenbelt areas.

- 4) AMENDMENT  
TO DESIRABLE  
INFILL POLICY**
- Proposed amendments to the City Council policy regarding expansion of the Urban Service Boundary for Desirable Infill.

- 5) USA-05-02/  
ZA-06-01/  
ANX-06-01:  
EDMUNDSON-  
OAK MEADOW  
PLAZA**
- Proposed amendments to the plans of the City of Morgan Hill regarding a 34-acre area involving 4 parcels located on the west side of Sunset Ave. opposite Denali Dr., Yellowstone Dr., Whitney Way and Bryce Dr. Proposed are the following actions: pre-zoning 14 acres of the area Open Space and 20 acres of the area R-1 12,000, including the 20-acre area to be pre-zoned R-1 12,000 into the City's Urban Service Area, and annexing the 34-acre area into the city limits.

CP Bischoff, Consultant for the studies, provided a comprehensive overview of the history of the three agenda items and the contents of each.

Chair Lyle inquired as to LAFCO involvement in the Urban Limit Line Study process? CP Bischoff responded that the agency had some attendance at meetings but personnel had not been as active as those from the County.

It was noted that considerable correspondence had been recently regarding the studies and that staff had not had the opportunity of review of the letters. A letter of support, CP Bischoff, had been received from the County.

Commissioners raised the following:

- concern of additional 'lines' to delineate areas of the City - possible need to

- simplify
- benefit to owners in specific areas
- restrictions of Measure C
- pressure of lands in County / need for setting expectations to set limits of growth and then no further
- 'starting point' for the southeast quadrant which contains 1200 acres of 'untouched lands' within the City Sphere of Influence
- plan - since the early 1990s - to have the Greenbelt be part of the City's General Plan
- implementation of such plans 'really proves the City is trying to plan the future of Morgan Hill: what will be where and what kind of housing will be developed
- Greenbelt Area / City parkland
- golf course not allowed within open space
- area nearby Church to be included in the USA
- slope explains area [potential for industrial use; CDD Molloy Previsich advised consideration of same is in progress but limited to this point]
- need to look at amount of land needed for industry + what does business part of future look like now [sub-discussion of classic model of industrial development versus new business park model: business workplace close to homes and readily available service - describes as 'very different from present']

**BY CONSENSUS, THE COMMISSIONERS AGREED THE ENVIRONMENTAL ASSESSMENT WOULD BE CONSIDERED AT THE MARCH 28, 2006 PLANNING COMMISSION MEETING.**

It was noted that the Environmental Assessment is readily available for review by the public.

Chair Lyle opened the public hearing for those wishing to address agenda item 3.

Hong-Duc Parker, 620 Spring Ave. distributed a letter to the Commissioners expressing her views.

Jon Maxey and Dan Frame, 16615 DeWitt, asked for the inclusion of 2 parcels into the Urban Service Line and distributed a letter supporting the request.

Barton Hechtman, 848 The Alameda, San Jose, voiced support for the staff's recommendations on agenda items 3, 4, and 5. Mr. Hechtman commended staff for making clear the recommendations of the issues that the MOU is non-binding. Mr. Hechtman stressed the MOU was conceived as a 'roadmap': how to get from the concepts of the Advisory Committee to implementation which will preserve 84 acres. Chair Lyle discussed the language concerning the MOU (section e page 3) with Mr. Hechtman assuring that the concept was I not to act as any type of guarantee for any number of points in Measure C and stating clearly that the owners know they may not get and allocations nor were they trying to pin down number of points in advance of Measure C. "If this project goes forward, the owners are aware they must complete as others do", Mr. Hechtman said. Responding to a question from Commissioner Escobar, Mr. Hechtman said, "The owner understands there is no pledge by the City."

CP Bischoff echoed Mr. Hechtman's statements, telling the Commissioners, "This is the City's language and the owner knows of the eligibility requirements under Measure C

and that there is no guarantee.”

CDD Molloy Previsich advised the open space easements would be recorded at the time of implementation, but Measure C matters would be within future competitions. Chair Lyle said, “I just want to make it clear as I have concern that no promises be made.” Mr. Hechtman responded, “The MOU is non-binding; tonight you have full discretion.”

Jeff Pederson, 403 Cascades Ct., distributed written comments from which he spoke on issues of the draft Environmental Assessment and potential non-compliance with CEQA. Mr. Pederson spoke at length on the potential for secondary dwelling units to be constructed in the Oak Meadow Plaza area and impact those units would have. He indicated that impact was not addressed in the Assessment.

Commissioner Acevedo reminded members of the audience that the role of the Commissioners is to recommend the report to the City Council for dis/approval or not.

Pete Gale, 650 Spring Ave., asked about the Church site and telling of confusion as to the Urban Growth Boundary and the Urban Limit Line on land to be owned by the City and saying he was curious as to the ‘split’ for the 20 acres west of Sunset.

Bill McClintock, 15685 Vineyard Blvd., was present to address the inclusion of the 20 acres west of Sunset Ave. Mr. McClintock told the Commissioners the owners were clear that the dedications were to be recorded before any action would be possible (considered) by the City regarding possible allocations, meaning the owners knew that the competition for allocations was a requirement. Mr. McClintock said, “Greenbelting in some places (other locations) involves a condemnation with compensation but I think that here we are moving density to more appropriate areas. The City realized the need to preserve open space in the near future to avoid undesirable development of County property. These 20 acres can support multiple amounts of units and the owners are sensitive to the neighbors.”

With no others present to address items dealing with agenda item 3, the public hearing was continued to the March 28, 2006 Planning Commission meeting.

Commissioner Acevedo commented, “The Commissioners make recommendations to the City Council and therefore no certifiable action would be made before the review period is completed with official action only by the City Council,” as he stressed the requirements of CEQA. Chair Lyle agreed, but said the issue is that sometimes the City Council may get new information at meetings, which was not received during the public comment period. Commissioner Mueller reminded that action will not be taken at this meeting regarding the environmental assessment with new information being received by the Commissioners which could be presented to the Consultants for response at the March 28, 2006 meeting.

Commissioners engaged in discussion of points of concerns:

- Exhibit A, page 3 (recommended text) 3e under item 6 contains contradictions [2 sentences] Urban Limit Lines within the City limits etc
- Page 5, policy 15d to community development line needs more specificity
- Page 4, item 7.5d recordation of Open Space easements appears to be violation of Measure C
- Exhibit A, page 4, Items 7.4, 7.5 and 7.6 may be too specific for the General

Plan. (CP Bischoff responded the Advisory Committee spent much time on this issue and wanted to ensure development occurred in certain methods. He declared this seems the best place for these issues to be placed.

- West side of El Toro: General Plan identifies properties on both sides of El Toro; this is a second level of priority of preservation for El Toro
- MOU: page 3 - issue of points perhaps should be reworded to ensure clarity that the property must undergo the completion of Measure C/future competition(s)
- MOU: page 5 (iv) for Open Space to provide community benefit, it must be publicly owned/operated
- Need for identification in the Table of Contents of authors and consultants (have to go to page 104 of document to see)
- Appendix reference to maps; however, no maps are present if and where indicated
- Policies of uses [appendix a, page 8, item 2(r)]; land uses in Greenbelt missing reference to schools; discussion of Sobrato high school location/agreements

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE THE PUBLIC HEARING FOR AGENDA ITEM 3 TO THE MARCH 28, 2006 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE CONSENT OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.**

*CP Bischoff recommended deliberation of agenda item 5 at this time; The Commissioners concurred.*

CP Bischoff presented the staff report.

Chair Lyle expressed the concern that the open space easements may not be permanent. CP Bischoff tells of open space easement in City and how owners have been told of the firm obligation.

Commissioner Mueller advised that it would take vote of people to change the open space easements. He cited Measure C having language that Measure P did not: if Open Space is designated on the General Plan that Open Space has been agreed by the people (voters) and can't change without a vote of the people

Chair Lyle opened the public comment period for agenda item 5.

W.E. Moreau, 415 Cascades Ct. expressed concern that developers seem to have some advantages in the studies. Mr. Moreau said that if 60 new houses were to be built, that could create 600 more car trips in the area. He said he walks the area and sees kids playing freely on the streets. "If development occurs, the neighborhood will be changed forever." He continued by saying he understood the City has 10% restrictions on the slopes and thinks a variance to 12.5% is planned. He also spoke on the flood plain in the area and asked about earthquake faults? Mr. Moreau concluded by saying the questions he asked reflected concerns of his own, but believed them to be reflective of others as well.

Yvette Castañon, 401 Yellowstone Dr., wondered if the Advisory Committee, in considering the benefits for the City, had considered the neighbors in the area. Ms. Castañon, said that the area residents - about six years ago - had expressed concerns of

having Olympic Dr. go all the way through to Cosmo. Ms. Castañon reminded that the City had consultants who said the area would not be negatively impacted – however, compromise was necessary so a stop sign was placed. “And now cars go right through with no regard to the residents nor the ‘tot lot’ which the residents pay for,” she said. Ms. Castañon said that when she moved in eight years ago, the developers promised that the land would remain as promised for at least a decade but now there is this proposal for 60 new houses in the and that’s of concern. “We’ve had considerable discussion about the ‘benefits’ and as a neighbor in the area, I just don’t see the benefit of having 60 new houses on that beautiful land,” Ms. Castañon declared.

Jerry Whitaker, 393 Yellowstone Dr., told the Commissioners he had come to speak against the proposal. Mr. Whitaker said that the benefit of the open space is highly ‘debatable’. Mr. Whitaker spoke of the Open Space area of 20 acres just west of Sunset where 60 homes could be built.

“I think there is need to protect against castles. The City should recognize the potential of additional housing development,” and he suggested focusing on the downtown core area of the City for development, leaving green areas. Mr. Whitaker said development of the 20 acres would not benefit the public.

Maria Hodges, 407 Whitney Way, told the Commissioners she had sent the e-mail to them through the Planning Department. Ms. Hodges expressed dismay at being told the owner has no plan for development – but the developer had shown area residents a plan at a recent neighborhood meeting. “Now there appears to be attempts to invalidate concerns of area residents,” Ms. Hodges said. She continued by telling of abundant numbers of children in the area which prompted concern of increased cars on Whitney Way. Ms. Hodges said, “If there is annexation, the City needs to consider people in the area. We need to have restrictions.” Ms. Hodges concluded by saying it seems to her that this owner is getting some kind of preferential treatment – such preferential treatment may not be intentional, but it is there. Ms. Hodges noted she was reflecting the concerns of a nearby neighbor who had to leave the meeting.

John Skeen, 402 Yellowstone Dr. told Commissioners he has ‘strong opposition’ to development on Sunset. Mr. Skeen said he was unsure of the Advisory Committee’s recommendation and had just been invited two weeks ago by the developer to a meeting. Mr. Skeen talked about the location of the City’s water tower and the easement to Yellowstone where drainage is of concern. Mr. Skeen told of the path of drainage overflow to the pond and asked if, in the traffic study, consideration had been made of the location of the nearby indoor recreational facilities as well as the lots south of Edmondson? Mr. Skeen said he had concerns, too, about public safety: if you add population, what does the City need to do about adding fire protection. “I want to have public safety addressed,” Mr. Skeen declared.

Jeff Pederson spoke again; telling the Commissioners it ‘gets down to a question of *when* it is the proper time to take action. Mr. Pederson indicted he was very much in favor of the efforts – and highly applauded those efforts - of the City trying to protect open space. “This is a great city because of the surrounding area containing the open space,” Mr. Pederson asserted. “Again,” he said, “it is a question of *when* to include this area in the Urban Service Line. In some respects it is good to question how land is being controlled and further to question the true benefit to the public.” Mr. Pederson clarified concern about the potential for development of the 60 lots would be the availability of

construction of 60 accessory units (one per lot) which could equate into 120 units. Mr. Pederson stressed that fact should be considered when considering ultimate density. "I don't know if the time has come - but I don't think so - for including that area [the 20 acres] in the Urban Limit Line," Mr. Pederson told the Commissioners.

Barb Sullivan, 16135 Olympic Drive, indicated she appreciated the work completed on the entire plan. Ms. Sullivan termed this to be a 'huge accomplishment' and said that part of the reason she had left the Planning Commission was the frustration with people who insist that their 'right is more important than the City'. "This discussion tonight is not a case of landowners saying that. This is important. This is a change to the General Plan and should be taken very seriously," as she reminded that: "Many residents bought on the basis of the General Plan and consider it to be a contract." Ms. Sullivan said she really thought 60 houses on the proposed annexation might be too many. "Maybe 20," she said. "This is truly a change in the General Plan and needs in-depth conservation."

Barton Hechtman raised the following topics with the Commissioners:

- the concept is a plan for neighbors to have a starting point and definitely is not a final plan
- adoption of MOU does not violate CEQA
- MOU crafted in non binding nature so not in violation
- MOU was approved by City Council first of February 2005 with property owner signing and can now be signed by the City
- language of Measure C promotes creative interpretation (Mr., Hechtman thinks this document provides a broad enough tone to encompass concerns raised at this meeting)

Mr. Hechtman engaged in discussion with Chair Lyle regarding the ownership of the easement stating that it appears to be in favor of the City and is enforceable by the City. He also referenced:

- 10% slope restriction is a misnomer - requirement is restriction on 20%
- question of *when* - time for action is now - if there is action later Mr. Hechtman said he did not think the land for Open Space would be available

Commissioner Mueller, CP Bischoff, and Mr. Hechtman had discussion during which the percentage of slope permissible for building was clarified and explained. Commissioner Mueller said a concern of backyards up the slope(s) would create a violation and the intent of the Task Force was to avoid that.

Mr. McClintock responded to questions mentioned by area residents regarding the meeting to which they had been invited. Mr. McClintock said that, based on the outcome of an election where the downtown might be exempted, and if the election were held in June, there would be the possibility of having a (Measure C allocation) competition in 2006 with allocations for 2008 being awarded. "However, if there is a November election, then a different award timeline would be in effect," he said.

Mr. Pederson responded to a question from Commissioner Mueller regarding the 'right time' he had referenced earlier. "When are we at risk," Commissioner Mueller asked, "and when is it time to protect?" Commissioner Mueller advised that now the City has no control on the subject property as it is under the county's jurisdiction. Mr. Pederson said that currently the property owner can build 10 homes on the entire property. Mr. Pederson says there seems to be a theory that a concession is being made by the property

owner, but the parcels are at risk by County standards and will remain so until they are brought into the City.

Chair Lyle indicated earlier statements about accessory housing made by Mr. Pederson were inconsistent with the current practices in Morgan Hill, which result in accessory units on approximately 10% of the lots.

Chair Lyle asked Mr. Hechtman if the owner was look at opinions other than 60 lots? Mr. Hechtman said they were looking at other different options but research had not produced appreciable 'different numbers'.

Susan Collins, 392 Cascade Ct., asks about the ¼ mile proximity requirements referenced in the studies. She told Commissioners of concerns of traffic and stop signs, telling of numerous conversations with the Police Department and the Mayor relative to the stop sign in the intersection. Mrs. Collins spoke on concerns of

- small number of police personnel for area due to staffing deficiencies
- added traffic and drainage

CP Bischoff addressed questions raised by the speaker:

- City limits and the relation of requirements of annexed land(s) being within one-fourth mile of the City limits
- drainage: all projects must take care of own drainage issues
- clarification of the numbers of sworn peace officers in the City (four per shift)
- further investigation of traffic from the indoor recreation center
- scoring for RCDS competition under Measure C – scoring of public safety is based distance from public fire station – proximity to CDF and El Toro Fire Station in this instance, and there is also identified criteria for police to score the applications
- public was invited with several announcements into the process; earlier the City Council had difficulty getting people to sit on the Advisory Committee, but continued to try to get diversity of geographic location and also different interests

Commissioner Koepp-Baker said she wants a part of the Resolution for the next meeting to include language from the Hillside Ordinance which would clarify the 10 – 12.5% slope issues. CP Bischoff advised the current City Ordinance regulates development on slopes between 10 and 20 percent and prohibits development above 20 percent. Commissioner Koepp-Baker said she wanted it made very clear in the Resolution. CP Bischoff was given direction to address the flood plain and the earthquake maps.

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE THE PUBLIC HEARING ON AGENDA ITEM 5 TO THE MARCH 28 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Item 4 amendment to desirable infill policy

CP Bischoff presented the staff report.

Responding to a question from Commissioner Acevedo, CP Bischoff spoke of the language added a year ago which recognized items of benefit to the general community.

Commissioner Mueller and Chair Lyle further cited the need for incorporation of language consistent with Measure C.

Chair Lyle opened the floor for comment on agenda item 4.

Noting that the item had been addressed as part of discussion/comment on agenda items 3 and 5 and with none present to address the current discussion, **COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE AGENDA ITEM 4 TO THE MARCH 28, 2006 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Chair Lyle suggested Physical Criteria 3 could be changed to reference the effective date of Measure C.

Discussion followed regarding:

- ownership of public facilities
- wording changed in document from 'parcels' to 'lands' with Chair Lyle noting that – in some places such word change might not be appropriate 187.807.0 (b)

Commissioner Acevedo called attention to the annexation of the Church and indicated that using the term "land" instead of "parcel" may create other problems

**ANNOUNCEMENTS:** CDD Molloy Previsich advised of the groundbreaking for the new City Library project on April 15 and reminded that access on the north side of the building housing the meeting room will be closed. She further advised that the Commissioner's mailboxes are to be moved. "Just remember," she said, "to get to the Commission meetings, enter through the south side"; adding the entrances 'may be flexible as time goes on'.

**ADJOURNMENT:** With no further business to come before the Commission at this meeting, Chair Lyle declared the meeting adjourned at 11:09 p.m.

**MINUTES PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**

**Teresa Crue**

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**From:** Ann Molica [amolica50@gmail.com]  
**Sent:** Monday, July 13, 2015 3:22 PM  
**To:** Planning\_Commission  
**Subject:** Oak Meadow

Dear Planning Commissioner,

This email comes with concerns, there are too many negatives for (Oak Meadow) to be annexed to city zone. Please abide with fairness.

The drought is a huge concern, another major concern is traffic, safe playing for neighborhood children, at the corner of Olympic and Bryce Drive traffic laws are not followed (stop signs) and with added traffic it could become a disaster.

We deserve justice,  
help us protect our rights,

C. A. Molica

Parkside resident

Sent from my iPhone

**Teresa Crue**

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**From:** Anne Vranicic [avranicic@yahoo.com]  
**Sent:** Monday, July 13, 2015 4:08 PM  
**To:** Planning\_Commission; Steve Tate; Rich Constantine; Larry Carr; Marilyn Librers; Gordon Siebert; Aleks Vranicic  
**Subject:** Re: Oak Meadow Plaza (15-441)

Commission and Council,

I am writing to you with regard to the Oak Meadow Development project asking that you deny all requests with relation to the project. We recently bought a house and moved to Morgan Hill from San Jose largely due to the City's commitment to uphold its slow population growth initiative. The charm of Morgan Hill comes from its many views and agricultural open space and it would be heart breaking to see those open spaces permanently destroyed.

We are looking to you as leaders of the community to use your voice and make the best decision not only for the city but also the residents of Morgan Hill. In 1977, the city's first RCDS (Measure E) was passed with a population target of 30,000 residents by 2000. However, during the 1980's due to loopholes and exemptions the city was going to be well over that number by the year 2000. In 1990, the residents voted for Measure P, which reduced exemptions and eliminated loopholes in Measure E, which also extended the RCDS to 2010 and changed the population target to 38,000 by 2010. Measure P was working to prevent urban sprawl and focus on growth in the center of the city by prohibiting the city from annexing land to its urban service area with the exception of "desirable infill". Measure P was set to expire in 2010 so the residents of Morgan Hill spoke up yet again and passed Measure C in 2004.

Measure C continued the work of Measure P maintaining that the 'desirable infill' requirement was met and City Council could determine that the amount of developable land within the City's borders could not accommodate 5 years of residential growth. However, in 2006, after the residents of Morgan Hill voiced their opinion in a vote to prevent urban sprawl and maintain the amount of annexed land in Morgan Hill, City Council chose to overlook the larger community opinion of Measure C and changed the definition of 'desirable infill' which conveniently allows the Oak Meadow project to meet the requirement.

In addition to the residents passing the above Measures and a review of Morgan Hill City's General Plan it is clear that the community continues to have a desire for open space and agricultural land. The community is not against building but wants to keep the building to the available spaces within the city limits. There is plenty of buildable land and this hill along with other county land does not need the dense housing, which decreases the Morgan Hill quality of life that all enjoy. We ask that you carefully consider the voices of Morgan Hill when voting and deny any recommendation of the Oak Meadow Project.

Thank you for your time and consideration,  
Anne Vranicic  
407 Scotts Bluff Pl.  
Morgan Hill, CA 95037

On Sunday, July 12, 2015 9:45 PM, Sean Parent <sean\_parent@mac.com> wrote:

Commission and Council,

I'm writing in opposition to the Oak Meadow Plaza project and ask that the Commission deny the request to expand the urban service area boundary and deny the request to enter into a memorandum of understanding to allow development on this property.

Oak Meadow is beautiful agricultural land and viewshed. It is exactly the type of parcel that should be protected by Measure C as passed by the residents of Morgan Hill in 2004. In fact, this parcel would be protected by Measure C if the City Council had not, in 2006, changed the definition of "infill" specifically to accommodate the annexation of this piece of property.

Dennis Kennedy was mayor when this was done and later worked as a consultant for the developer on the Oak Meadow project. This raises the legal and ethical issue of conflict of interest. At the June 15, 2015 community meeting I asked staff specifically to have the city's legal counsel review the issue of redefining "infill" specifically for this project and under these circumstances. That request is not reflected in the staff report, and staff claimed that this was not done solely for Oak Meadow although the records would indicate otherwise: <http://www.savemorganhill.org/s/MH-PC-3-28-06-Agda-Rpt.pdf>

The stated motivation to bring this land into the city is to protect it from development within the county, and to provide trail access. The city already owns the top portion of the tallest peak however, along with the water tower on the property. PG&E has an easement across the ridgeline for high voltage power lines. Within the proposed new development, the trail access would consist of a small easement between two homes, to provide access to city property. Access can easily be achieved without developing this property.

The GPAC, with members who are realtors, developers, and other pro-growth constituents discussed the Oak Meadow project and voted 14-0 (unanimously) in opposition. Neighboring residents have attended every meeting where this project has been discussed to voice opposition. Agencies from the Audubon Society to MHUSD have written letters of opposition.

At the time of this writing, more than 750 residents have signed petitions objecting to the development of this property.

Please listen to the residents of Morgan Hill. Stop this project now. Deny the requests.

Save Morgan Hill.

<http://www.savemorganhill.org/oak-meadow-plaza/>

Sincerely,  
Sean Parent

408 Scotts Bluff Pl  
Morgan Hill, CA 9507  
[sean\\_parent@mac.com](mailto:sean_parent@mac.com)

## ORDINANCE NO. 1665, NEW SERIES

### AN ORDINANCE OF THE CITY OF MORGAN HILL EXTENDING THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM THROUGH THE YEAR 2020, AND AMENDING PROVISIONS OF THE GENERAL PLAN AND ARTICLE I OF CHAPTER 18.78 OF THE MUNICIPAL CODE TO UPDATE AND EXTEND THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM

The people of the City of Morgan Hill do ordain as follows:

#### **Initiative Measure Section 1: Findings and Purposes**

In approving this initiative measure the voters of the City of Morgan Hill make the following findings:

- A. Since 1977 the City of Morgan Hill ("the City") has had in place a Residential Development Control System ("RDSCS"), which sets a target future population for the City and provides a method for evaluating proposed residential developments and issuing a limited number of development allotments each year. The RDSCS has helped to assure that residential development pays for itself and that the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. The system was first enacted by the voters through Measure E in 1977, and subsequently refined and extended through Measure P in 1990. By its terms Measure P shall remain in effect until fiscal year 2009/10, and can be amended only by a vote of the people. By this RDSCS Update, the voters of the City are extending and updating Measure P.
- B. Under Measure P, the RDSCS has fostered balanced growth in the City. The City has achieved a manageable level of development, and has encouraged more efficient patterns of development by directing growth to areas that are contiguous to existing development and served by adequate infrastructure. The RDSCS has helped the City to preserve a diversity of housing opportunities, including a good stock of high-quality affordable housing, for its residents. It has helped to maintain the vitality of the City while preserving its open space resources. Accordingly, the people by this initiative measure are extending, through fiscal year 2019/20, the core provisions of the City's General Plan and zoning ordinances relating to the RDSCS.
- C. Measure P established a population ceiling of 38,800 for the City in the year 2010. The City's current population is approximately 35,000. In 2001, the City updated its General Plan and incorporated in it an updated population projection of 48,000 for the year 2020. This RDSCS Update will incorporate the updated 2020 population projection and adjust the allotment provisions of the RDSCS accordingly.
- D. The Leroy F. Greene School Facilities Act of 1998 provides for the exclusive means of considering and mitigating impacts of development projects on school facilities and

limits the ability of a city to deny approval of a project on the basis that school facilities are inadequate. Conforming amendments to the RDCS are therefore appropriate.

- E. In reviewing the implementation of the numerical formulas and the scoring system of the RDCS, the City has concluded that, while on the whole the system works well and should be maintained and extended, certain aspects of the RDCS need to be further refined to provide a more consistent number of allotments each year and avoid extreme variations in the amount of residential development that takes place year to year, and otherwise to simplify the administration of the system.
- F. Measure P's requirement that one-third of all residential development allotments be awarded to projects on the west side of Monterey Road and one-third on the east side of Monterey Road, with the remaining third anywhere in the City, has resulted in undesirable effects including projects on the west side of Monterey Road being approved with lower point scores than projects on the east side. This RDCS Update would eliminate the required geographical distribution and instead adopt provisions encouraging new residential development in the downtown and near the central portion of the City.
- G. The City adopted a new Downtown Plan in 2003. A major strategy of the Downtown Plan is to encourage an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, to provide market support for new businesses, and to establish a viable neighborhood in this central area of the City. This RDCS Update will require the reservation of a certain number of allotments for projects in the downtown area through 2010. Reserving allotments for residential projects in the area covered by the Downtown Plan will help to ensure that this strategy is successfully implemented.
- H. Should the City in the future establish an Urban Limit Line or Greenbelt, no residential development or expansion of the Urban Growth Boundary or Urban Service Area could be approved pursuant to this RDCS Update that is inconsistent with such Urban Limit Line or Greenbelt.
- I. Based on the foregoing, the voters hereby enact the provisions set forth in sections 2, 3, and 4 below, amending the General Plan and Chapter 18.78 of the Morgan Hill Municipal Code, and extending the terms of Measure P, as amended, through fiscal year 2019/20.
- J. Attached to this initiative measure as Exhibit A is a map based on the Morgan Hill General Plan Land Use Diagram. On Exhibit A, the lands within the City designated as Open Space and retained as open space pursuant to Measure P and this initiative are highlighted, and the Urban Service Area referred to in this initiative is also illustrated. The map is for reference purposes and is not being adopted or amended by this initiative measure.

## **Initiative Measure Section 2: General Plan Amendment**

The City of Morgan Hill General Plan Community Development element contains the core provisions governing “Residential Development Control,” as adopted by the voters of the City when they passed Measure P in November 1990. The people now wish to update and extend the provisions of the General Plan enacted by them in Measure P, and accordingly adopt the General Plan amendments set forth below. Changes to the text approved by the voters in 1990 are shown by strike-out text for deletions, and underscored text for additions. The “Residential Development Control” provisions appear at pages 25-28 of the July 2001 Morgan Hill General Plan. The provisions of the General Plan as amended by this initiative shall remain in effect through fiscal year 2019/20.

### **Residential Development Control**

The following provisions, enacted by voter initiative Measure P in 1990 and refined and extended by vote of the people of the City in 2004 shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year 2019/20.

#### **A. Requirement of Development Allotments for All Residential Development.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefor in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDCCS) set out in the Morgan Hill Municipal Code, except for secondary dwelling units (“granny units”) and for a single dwelling unit, on the following conditions: If one unit is proposed on a parcel of sufficient size to accommodate additional units, it may be permitted without an allotment only if a deed restriction is placed upon the parcel which requires allotments to be obtained for any additional dwelling units on that parcel. Furthermore, if more than one contiguous parcel is proposed for development by the same individual or entity under the single dwelling unit exemption on each parcel, Residential Planned Development Zoning shall be required for such development.

The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

#### **B. Number of Development Allotments.**

The population ceiling for the City as of January 1, 2020 is forty-eight thousand (48,000). This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. However, if any of the following existing County subdivisions, which are already within the City’s Urban Growth Boundary (“Existing County Subdivisions”), are annexed into the City, the population within them shall not count against the

48,000 person population limit: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III (at the southwest corner of Hill Rd. and Diana Ave.).

The number of allotments shall be determined biennially, using the California Department of Finance's most recently determined figures for the persons per household and total population of the City of Morgan Hill. The State's estimate will be adjusted for any relevant housing backlog not included in its population estimate, any Existing County Subdivision (as defined under the prior paragraph) that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between the population estimate date and 2020. This gross annual allotment is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined by the City Council, provided that no less than thirty-three percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The City Council may, if it chooses, further divide the allotments according to geography, price, development size, phasing (including the number of units and timing of allotments required to complete a project), and similar criteria as deemed necessary to provide for the general welfare.

For the competitions for allotments in fiscal years 2006-07 through 2009-10, the City Council shall reserve a certain number of allotments for projects in the Downtown Area. The number of allotments allocated, and the geographic limits of the Downtown Area for this purpose, shall be determined by the Council. The Council may amend the number of the reserved allotments and geographic limits of Downtown for this purpose, and may continue to reserve an appropriate number of allotments to Downtown area projects after the 2009-10 fiscal year.

The City Council may, in any year, reserve an appropriate number of allotments per year to vertical mixed-use projects, which are not restricted to the Downtown Area.

### **C. Development Allotment Applications and Evaluations.**

Development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals in an annual or biennial competition. The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development allotments, the City Council shall comply with Government Code Sections 66000 et seq. and other relevant provisions of the state Planning and Zoning Law.

#### **D. Emergency situations.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of mandatory water rationing, sewage system operating at 95 % capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

#### **E. Open Space Conversions.**

No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the

development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through November 19, 2003 are hereby reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the City Council from designating additional lands as open space.

#### **F. Urban Service Area Restrictions.**

The City of Morgan Hill shall neither apply to LAFCO for, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land in the existing Urban Service Area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition of land to the Urban Service Area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable in-fill. Desirable in-fill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary, (as determined by a perpendicular line drawn from the side of the parcel to the City boundary), and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden City services, and that the expansion would beneficially affect the general welfare of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those areas that promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially

affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements on which the City's findings are based, and/or convey the land needed for the public facilities, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in paragraph B, "Number of Development Allotments," of the Residential Development Control provisions of the General Plan.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any Court judgment.

In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered "infill" as defined above, the City shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County General Plan as of March 1, 1990.

#### **G. Urban Services Extensions.**

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that: 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by City facilities on County Land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Initiative Measure Section 3:**

#### **Amendments to Chapter 18.78 of the Morgan Hill Municipal Code**

The Residential Development Control System (RCDS) is codified at Chapter 18.78 of the Municipal Code. Article I of Chapter 18.78 contains the core provisions governing the RCDS as adopted by the voters of the City of Morgan Hill when they passed Measure P in November 1990. The people of Morgan Hill now wish to update and extend the provisions of Article I of Chapter 18.78, Parts 2, 3 and 4, and accordingly adopt the Code amendments set forth below.

Rather than revise the original findings supporting adoption of Measure P in 1990 and set forth in Part 1 of Article I of Chapter 18.78, the people have made additional and updated findings, which are set forth in Section 1 of the 2004 ballot measure refining and extending the RDCS.

Changes from the text of the Morgan Hill Municipal Code are shown in the following sections amending Article I, Parts 2, 3, and 4, by strike-out text for deletions, and double-underscored text for additions. These provisions of Chapter 18.78 as amended shall remain in effect through fiscal year 2019/20.

## **Article I**

### **Part 2. Residential Development Control**

#### **18.78.020 Development allotments--Required when.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the city unless a development allotment has been obtained therefor in accordance with the provisions of the general plan and the residential development control system (RDCS) set out in Parts 2 and 3 of this article, except secondary dwelling units ("granny units") and one-dwelling-unit developments as provided for below. One-dwelling-unit developments may be permitted without a development allotment, providing the following requirements are met:

A. If the parcel upon which the one-unit-development is proposed is of sufficient size to accommodate additional units, a deed restriction shall be placed on the parcel which requires allotments to be obtained for any additional unit on the parcel.

B. If more than one contiguous parcel is proposed for development by the same individual or entity, or entities with an identity of interest, under the single dwelling unit exemption on each parcel, Residential Planned Development zoning shall be required for such development.

The residential development control provisions of Part 2 of this article shall apply to all types of residential development in the city, including single-family (which includes mobile homes) and multifamily housing.

#### **18.78.030 Development allotments--Determination and distribution.**

A. The population ceiling for the city as of January 1, 2020, is forty-eight thousand persons. This ceiling shall not be increased, regardless of whether additional lands are annexed to the City or its urban service area.

If any of the following existing County subdivisions ("Existing County Subdivisions") are annexed into the City, the population within them shall not count against the 48,000 person limit, as set forth below in section 18.78.030B: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III. The population of these Existing County

Subdivisions shall be determined by multiplying the number of homes in each area by the average number of persons per household as determined by the most recent State Department of Finance estimates. Prior to the enactment of Measure P, Holiday Lake Estates Unit 1 and Casalegno's Subdivision (Casa Lane) were provided with City water service. The El Dorado III subdivision, at the southwest corner of Hill Road and Diana Ave., was developed in the County, and provided with sewer and water service, in order to eliminate a significant County health problem. These Existing County Subdivisions are all within Morgan Hill's UGB and were at least 95 percent developed as of November 19, 2003.

B. The number of allotments shall be determined biennially using the California Department of Finance's most recently determined persons per household figures and population for the City of Morgan Hill.

The California Department of Finance's population estimate will be adjusted for any relevant housing backlog not included in its population estimate, the population of any Existing County Subdivision enumerated in paragraph 18.78.030A that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between that population estimate date and 2020. This gross annual allotment number is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The biennial allotment calculation applies to each fiscal year after the fiscal year in which it is computed. For example, the Spring 2004 computation will be used to set the number of allotments for the competition to be held for fiscal years 2006/07 and 2007-08, as well as to make any positive supplemental adjustments for the previously awarded fiscal years 2004/05 and 2005/06, for projects that competed for 2004/05 and 2005/06 allotments.

C. The number of development allotments shall be divided between conventional single-family dwellings, mobile homes and multiple-family dwellings in a manner determined by the city council; provided, that no less than thirty-three percent of all allotments shall be awarded to single-family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The city council may, if it chooses, further divide the allotments according to geography, price, development size, phasing, including the number of units and timing of allotments required to complete a project, and similar criteria as deemed necessary to provide for the general welfare.

D. For the competitions for allotments in fiscal years 2006-07 through 2009-2010, the City Council shall reserve a certain number of allotments for projects in the Downtown area. The number of allotments allocated, and the geographic limits of the Downtown area for this purpose, shall be determined by the City Council and may be amended, as necessary, to reflect changes in circumstances and needs. The Council may continue to reserve a certain number of allotments for projects in the Downtown Area after the 2009/10 fiscal year.

**18.78.040 Development allotments--Applications and evaluations.**

A. Development allotments shall be allocated to proposed developments in accordance with a residential development control system set out in Part 3 of this article. This system shall provide for awards of development allotments based on the number of points scored for all development proposals within a competition. The City may conduct 1-year or 2-year competitions. The City may allocate a portion of the total allotment granted to an applicant as available in the subsequent year (i.e., in the event of a 1-year competition, a portion of the allotment is made available in the second year, and in the event of a 2-year competition, a portion is made available in the third year). The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

B. Proposed developments shall be awarded points for provision of schools, related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, diversity of housing types, and for quality of architectural design and site design.

C. Small residential developments provide special benefits to the city by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in-fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the residential development control system shall be designed to provide for small development through appropriate means selected by the city council, such as a separate small project competition and a more streamlined and less costly process.

D. In implementing the provisions of the residential development control system and making awards of development allotments, the city council shall comply with Government Code Sections 66000 et seq.

E. Up to 10 allotments per year may be set aside for vertical mixed-use projects. These reserved allotments may be awarded to projects that receive at least a minimum passing score through a competitive process or on a first-come, first-served basis.

The City Council may establish higher minimum passing scores for mixed-use projects and/or consistency with the guidelines for development contained in the City's Downtown Plan. The City Council may allow for a maximum of 20 unused mixed-use allotments to be carried over from year to year, if unused in prior years, for a maximum of 30 units potentially available for distribution in one year under this set-aside. Mixed-use projects eligible for allotments under this set-aside shall be no larger than 15 units. A single development project shall be eligible to receive allotments under this set-aside only once.

**18.78.050 Emergency situations--Restrictions on development.**

No residential development shall be permitted during a period of emergency or severe impactation of public facilities, as declared by the city council pursuant to provisions of this code. The declaration of an emergency or severe impactation situation may be based on determinations of mandatory water rationing, sewage system operating at ninety-five percent capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

**18.78.060 Open space conversions.**

A. No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under Part 2 of this article shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

B. With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

C. The lands within the city that are designated "open space" on the city's general plan land use/circulation elements map, as amended through November 19, 2003, are reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the city council from designating additional lands as open space.

**18.78.070 Urban service area restrictions.**

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable in-fill. "Desirable in-fill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services, and that the expansion would beneficially affect the general welfare of the citizens of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date the area is added to the Urban Services Area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the City's findings are based, or convey the land needed for the public facilities on which the findings are based, must be secured prior to official action adding the area to the Urban Services Area, through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the Existing County Subdivisions enumerated in section 18.78.030A may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these Existing County Subdivisions may be added to the City Urban Service Area and annexed into the City without otherwise meeting the test for desirable infill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any court judgment.

D. In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered in-fill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County general plan as of March 1, 1990.

#### **18.78.080 Urban services extensions.**

The city shall grant no new extensions of urban services for residences beyond its urban service area except in the event that:

A. Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by city facilities on county land; or

B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Part 3. Residential Development Control System**

#### **18.78.090 Application--Procedure and contents--Fees.**

A. An application for a development allotment shall be made to the city planning division on a form provided by the city. Such application shall contain the following information and be accompanied by the following documents:

1. Site utilization map including:
  - a. Vicinity map to show the relationship of the proposed development to adjacent development, the surrounding area and the city,
  - b. Site use layout map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. The site use layout map is of major importance; the vicinity map may be shown as a small inset map;
2. Site development plan including lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with city street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways;
3. Preliminary architectural plans including typical architectural elevations, types and numbers of dwelling units, proposed color of buildings;
4. Preliminary grading plans including a general indication of type, extent and timing of grading;
5. Narrative description of preliminary landscape plans including general indications of planting;

6. Housing marketability and price distribution including expected ranges of rental amounts or sales prices, low-income and moderate-income housing to be provided, and applicability to housing assistance plan, if any;

7. Statement regarding how the proposed development will comply with state law requirements regarding the mitigation of impacts of the development on school facilities. Description of other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities;

8. Development schedule including proposed schedule of development including phasing;

9. Such other information as may be required by the planning manager.

B. Each application shall be accompanied by a reasonable fee set by the city council based on the cost to the city of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc., and shall not be returned in the event that no development allotment is awarded.

C. An applicant may file only one application for any given property in any competition.

D. An application for a development allotment shall be filed with the city planning division on a date determined by the planning manager, which shall be no later than twenty-one months preceding the fiscal year during which the allotments must be utilized.

#### **18.78.100 Application--Evaluation by planning officer.**

A. The planning officer (hereinafter referred to as PO) shall review each application and determine whether or not the proposed development conforms to the city's general plan. If the PO determines that a proposed development does not conform to the general plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

B. Within fifteen days after such notice is mailed, the applicant may appeal the decision of the PO to the city council by filing a written notice of appeal with the city clerk, who shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of nonconformity with the plans, reverse the decision by finding that the proposed development is in conformity with the plans, or permit the applicant to modify his proposed development to bring it into conformity with the plans. The decision of the council shall be final and conclusive.

#### **18.78.110 Evaluation procedures--Generally.**

Proposed developments found by the PO or city council to conform to the general plan shall be evaluated by the PO and awarded points as set forth in Section 18.78.115. The planning commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections 18.78.115 and 18.78.120. The PO shall submit his

evaluation to the planning commission and the commission shall approve, disapprove or modify the PO's evaluation by simple majority vote.

**18.78.115 Evaluation procedures--Impact on existing facilities--Point system.**

A. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

B. The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from zero to two points for each of the following:

1. The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide (comments of the city director of public works);

2. The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the city director of public works);

3. The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the Santa Clara Valley Water District and the city director of public works);

4. The ability of the city-designated fire department to provide fire protection according to the established response standards of the city without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the police department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel (comments from the fire and police departments);

5. The ability and capacity of major street linkages to provide for the needs of the proposed development without substantially altering the existing street system (the desired target traffic level of service being no worse than ["D+"] level of service as defined in the 1985 Transportation Research Board Report # 209), except as otherwise allowed in the General Plan, and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer (comments from the appropriate department heads).

**18.78.120 Evaluation procedures--Design and amenity criteria.**

On quality of design and extent of contribution to public welfare and amenities, the PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

A. The provisions of school facilities and amenities, as attested by agreement with the MHUSD, to the extent such consideration is not in conflict with state law..... 25 points;

B. The provision of public and/or private usable open space and, where applicable, greenbelts..... 20 points;

C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than leapfrog development, by using land contiguous to urban development within the city limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors ..... 20 points;

(For purposes of this section, "the central core" is the area illustrated on the Central Core Map, attached as Exhibit B and described generally as that area bounded on the west by Del Monte Ave. from Wright Ave. to Ciolino Ave. and by West Little Llagas Creek from Ciolino Ave. to Cosmo St; on the east by the railroad tracks from the easterly prolongation of Wright Ave. to Main Ave., by Butterfield Blvd. from Main Ave. To Dunne Ave., and by Church St. from Dunne Ave. to the easterly prolongation of Cosmo St.; on the north by Wright Ave. and its easterly prolongation to the railroad tracks; and on the south by Cosmo St. and its easterly prolongation to Church St.)

D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities..... 10 points;

E. Provision of parks, foot or bicycle paths, equestrian trails or pathways . . 10 points;

F. The provision of units to meet the city's need for low-income and moderate income and elderly housing and the extent to which such provision meets the goals of the housing element of the general plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity..... 15 points;

G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the housing element of the general plan..... 15 points;

H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height ..... 15 points;

I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations..... 15 points;

J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on-site and off-site traffic safety and privacy..... 15 points;

K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures..... 10 points;

L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings..... 10 points;

M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features ..... 10 points;

N. The extent to which the proposed development exhibits overall project excellence and/or incorporates or otherwise embodies the concepts of Livable Communities, such as proximity to transit, pedestrian orientation, efficiency of street system, mixed-use, infill, and maximization of use of existing infrastructure..... 10 points.

**18.78.125 Award and issuance of allotments.**

A. The PO shall notify each applicant of his evaluation under Sections 18.78.110 through 18.78.120. Such notice shall be given in writing within seven days after the evaluation has been approved by the planning commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time, the PO shall notify in writing the

MHUSD and all other city departments and public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 of the result of that evaluation.

B. Proposed developments which have not been assigned a minimum of 7.5 points under Section 18.78.115 or a minimum of one hundred sixty (160) points under Section 18.78.120 shall not be given a development allotment, except for Micro projects (as defined by the City Council) and projects which are 100% affordable, for which the minimum passing score shall be one hundred fifty (150) points.

C. Subject to the limitations set forth in this subsection and subsection F of this section, proposed developments which have received a minimum of 7.5 points under Section 18.78.115 and a minimum of one hundred sixty points under Section 18.78.120 (or, for qualifying projects, one hundred fifty points) may be awarded an allotment. Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by planning commission's determination or by city council's determination on appeal) exceed the numerical limits established by the city council by competition category (micro, small, affordable, large market rate), development allotments for which the council-established numerical limit has thus been exceeded shall be awarded to the highest scoring projects based on the number of points received under Section 18.78.120. A project may be awarded fewer than the total number of allotments requested by it, and the surplus allotments awarded to the next highest scoring development(s) if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.

In the event that an applicant seeks a higher number of allotments than is available in a competition, the City Council may, in its discretion and in order to encourage high-scoring applicants to complete their projects, grant allotments for an additional fiscal year. For a one-year competition, the allotment may be allocated over two years, and for a two-year competition, the allotment may be allocated over three years.

D. Allotments shall be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. Allotments shall be awarded for no more than three fiscal years in a single competition.

E. Any applicant whose development evaluation has been completed and where any appeals, if applicable, have been resolved and who does not receive an allotment for the competition will not be considered automatically for the subsequent competition, but must reapply under Section 18.78.090 for the next or subsequent competition.

F. If a project receives an allotment in a competition for more than 50 percent of the units in the project but fewer than the total number of units needed to complete it, the additional units needed to complete it may be awarded to the project for the competition year immediately after that covered by the current competition. This additional allotment shall be considered a portion of the limited allotment for that future competition. The number of units awarded under this section for a future competition year shall be similar to the number of units awarded per year for the major portion of the project.

G. To ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their allotment and must reapply under the development allotment process outlined in Section 18.78.090 if development is still desired by the developer. An exception to the loss of allotment 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, delays not the result of developer inaction, or allotment appeals processing.

For projects that include the sale of individual lots for custom development by individual purchasers, purchasers of the custom lots shall be given an additional 24 months to physically commence construction. If this extension proves insufficient, an applicant for a custom home may apply for an additional extension subject to the same rules and circumstances as outlined in this paragraph for other projects.

#### **18.78.130 Appeal procedures.**

A. An applicant may appeal to the city council for a review of the scoring of its proposed development project pursuant to Sections 18.78.110 through 18.78.120 by filing a written notice of appeal with the city clerk within fifteen days after the notice of evaluation has been mailed as described in Section 18.78.125 (A).

B. The MHUSD or other public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 may appeal to the city council the evaluation under Sections 18.78.115 and 18.78.120 within fifteen days after notice has been mailed as described in Section 18.78.125 (A).

C. Any citizen or group of citizens may appeal to city council the evaluation of any applicant by filing with the city clerk a petition signed by one hundred registered voters of the city within fifteen days after the notice of evaluation has been mailed to the applicant as described in Section 18.78.125 (A).

D. In the event an appeal is filed under subsections A, B or C of this section, the city clerk shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting at which time the council will hear the applicant or his representative and such other persons as may be able to assist the council in the determination of the matter on appeal. The council may affirm or modify the project scoring and its decision shall be final and conclusive.

#### **18.78.140 Emergency situations--When declared--Action and review by council.**

A. An emergency or severe impaction situation shall be any one or more of the following:

1. A finding by the director of public works that the sewage facility usage level exceeds ninety-five percent of the capacity of the system;

2. Mandatory city water-rationing measures in effect;
3. MHUSD notifies the City Council that conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs, pursuant to Government Code section 65971;
4. Any public agency providing services essential to the public health and safety notifies city council in writing or by resolution that its ability to meet the public needs is severely impacted;
5. Any other endangerment to public health, safety or welfare which the city council determines to exist for the purposes of Part 3 of this article.

B. If any of these specified conditions exist, then the city council shall certify an emergency or severe impactation situation.

C. In addition, any citizen or group of citizens may petition the city council for declaration of an imposition of an emergency or severe impactation situation by filing with the city clerk a petition signed by four percent of the registered voters of the city. The city council, at their next available regularly scheduled meeting, must then vote on a resolution of emergency or severe impactation situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

D. In the event such an emergency or severe impactation is certified, no building permit and no allotment shall be issued unless the city council first specifically finds that the building permit or specific allotment will not contribute additionally to the existing emergency or severe impactation situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

E. The PO shall review all certified emergency or severe impactation situations at least quarterly, and shall determine whether conditions warrant continuation of the emergency or severe impactation. The PO shall report his findings to the city council, and notice of such findings shall be placed on the city council agenda and published in a newspaper of general circulation. If the city council finds, based on the PO's report, that the certified emergency or severe impactation situation no longer exists, it shall decertify the emergency.

F. In implementing Part 3 of this article, the city council shall comply with the provisions of Government Code Sections 65858, 65972, 65996, and other applicable state law requirements. Where those provisions conflict with this article, the state statute shall prevail.

#### **18.78.150 Quarterly progress review--Failure to comply.**

A. The planning officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the planning division.

B. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the city staff and council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points

awarded for its initial application, the PO shall report such failure or deviation to the city council. Thereafter, the council, after holding a hearing, may rescind all or part of the development allotment in favor of another development which has qualified for such allotment and which is capable of commencement in the year for which the allotment was awarded.

#### **Part 4. General Provisions**

##### **18.78.155 Duration of provisions.**

This article shall remain in effect until and including fiscal year 2019/20.

##### **18.78.160 Compliance with state and federal laws.**

The provisions of this article shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

##### **18.78.165 Severability.**

A. If any provision or application of any provision of this article is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this article are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by enactment of this article, to extend and expand the essential residential development control provisions and policies of Measure P. If this article is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of this article is held invalid, the remainder of the ordinance codified in this article shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

##### **18.78.170 Unconstitutional taking of private property prohibited.**

This article shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this article to a specific project would effect a taking, then pursuant to this article the city council may alter the provisions of this article, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this article to the maximum extent feasible.

### **18.78.175 Amendment or repeal.**

This article and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election.

## **Initiative Measure Section 4: General Provisions**

### **1. Duration of provisions.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, and the "Residential Development Control" section of the General Plan, enacted by the voters, shall remain in effect through fiscal year 2019/20.

### **2. Compliance with state and federal laws.**

The provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

### **3. Severability.**

A. If any provision or application of any provision of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any other provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by their approval of the 2004 ballot measure amending the "Residential Development Control" section of the General Plan, and Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, to extend and expand the essential residential development control provisions and policies of Measure P. If Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or any provision of the "Residential Development Control" section of the General Plan is held invalid, the remainder of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General

Plan shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

#### **4. Unconstitutional taking of private property prohibited.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan to a specific project would effect a taking, then the city council may alter the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and/or the "Residential Development Control" section of the General Plan, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan to the maximum extent feasible.

#### **5. Amendment or repeal.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election. In the event of ongoing reorganizations, revisions and updates to the General Plan and Municipal Code, the policies and provisions enacted by this initiative measure shall be retained and remain in effect until their expiration or amendment or repeal by the voters.

#### **6. Implementation and Consistency.**

A. Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted into the Morgan Hill General Plan (unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case Section 2 of this initiative shall be deemed inserted into the General Plan on January 1 of the following calendar year). The General Plan and the Municipal Code of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative, as of the date Section 2 is deemed inserted into the General Plan.

B. As of the date the provisions of Section 2 of this initiative are deemed inserted into the Morgan Hill General Plan, Section 3 of this initiative shall likewise be deemed inserted into the Morgan Hill Municipal Code, and Measure P as enacted by the voters of Morgan Hill in November 1990, shall be deemed amended by the terms of this initiative ordinance, as set forth in Section 2 and Section 3 of this initiative measure, and the Municipal Code shall be interpreted to give immediate effect to the initiative provisions.

C. The City Council shall within 120 days of the enactment of this initiative amend the Morgan Hill General Plan as necessary to ensure internal consistency with all provisions of this

initiative. Also within 120 days the City Council shall amend Article II of Chapter 18.78 of the City Planning and Zoning Codes, entitled "Specific Policies," relating to the RDCS, and any other land use regulations as necessary to conform to all provisions of this initiative.

D. The development allotments distributed for fiscal years 2004/2005 through 2006/2007 awarded under Measure P shall remain in effect, except that under this initiative measure they may be supplemented based on the 2004 biennial computation of available development allotments, pursuant to section 18.78.030 (B). New allotments for fiscal year 2006/2007 and following shall be governed by the provisions of this initiative measure.

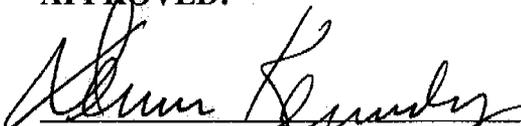
The foregoing Ordinance was passed, approved, and adopted by a majority of voters voting on the measure in a Special Municipal Election held and conducted in the City of Morgan Hill, California, on Tuesday, March 2, 2004, as required by law. This Ordinance is effective April 17, 2004. The City Clerk is hereby directed to publish this ordinance pursuant to section 36933 of the Government Code.

The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City of Morgan Hill by signing where indicated below.

ATTEST:

  
\_\_\_\_\_  
Irma Torrez, City Clerk

APPROVED:

  
\_\_\_\_\_  
Dennis Kennedy, Mayor

❖ CERTIFICATE OF THE CITY CLERK ❖

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1665, New Series, passed, approved, and adopted by the people of the City of Morgan Hill, voting on the 2<sup>nd</sup> Day of March, 2004.

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

DATE: 4/26/04

  
\_\_\_\_\_  
IRMA TORREZ, City Clerk



CITY OF MORGAN HILL

Illustrative Map Showing Lands  
Designated As Open Space &  
Boundary of Urban Service Area

Exhibit A to

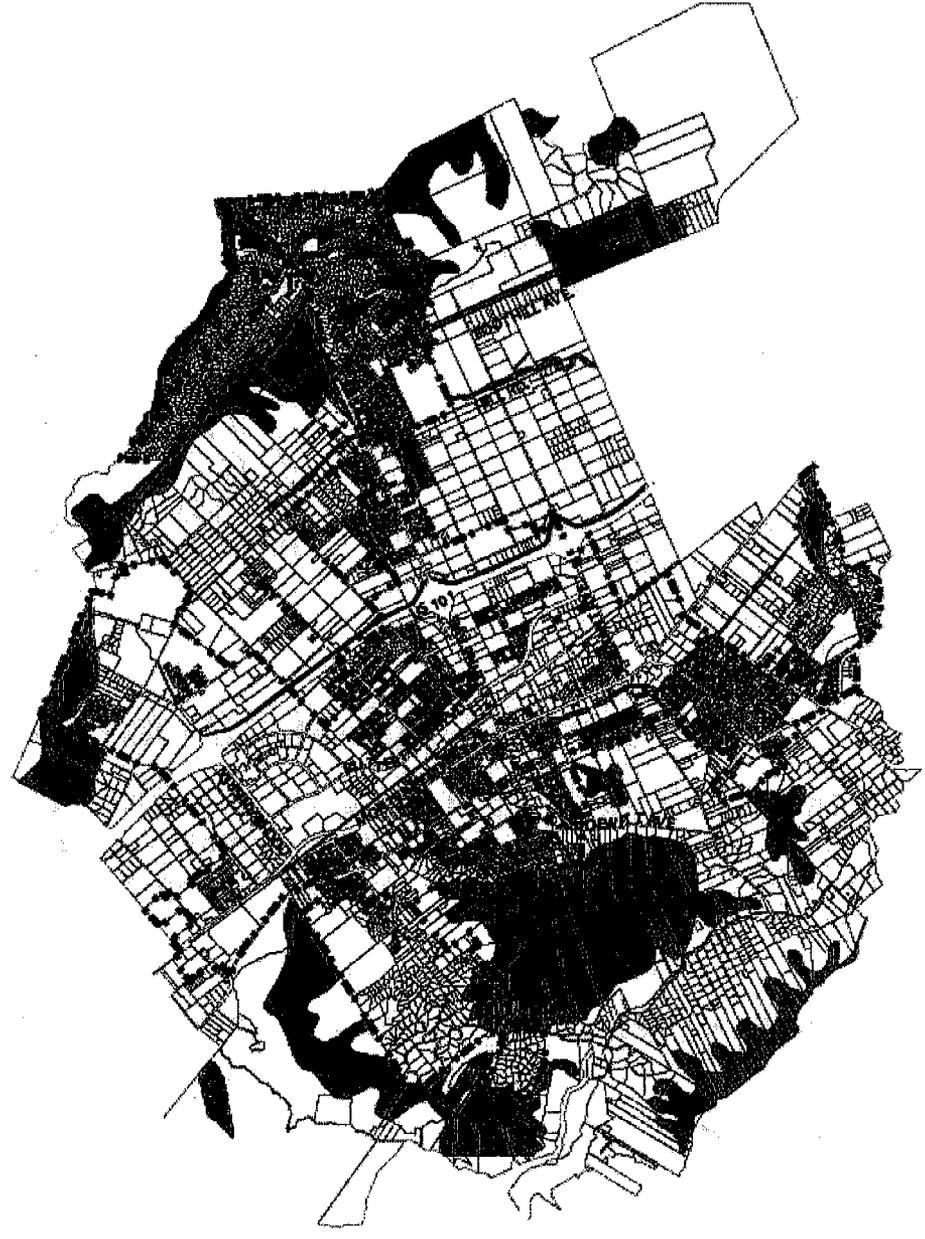
An Ordinance of the City of  
Morgan Hill Extending the  
City's Residential Development  
Control System Through the  
Year 2020, and Amending  
Provisions of the General Plan  
and Article I of Chapter 18.78  
of the Municipal Code to Update  
and Extend the Residential  
Development Control System

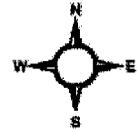
Urban Service Area

Open Space



Not to Scale





## Exhibit B Illustrative Maps Show Core Area



— Central Core Area



Exhibit B to

An Ordinance of the City of Morgan Hill Extending the City's Residential Development Control System Through the Year 2020, and Amending Provisions of the General Plan and Article I of Chapter 18.78 of the Municipal Code to Update and Extend the Residential Development Control System

**ORDINANCE NO. 1010, N.S.**

**AN ORDINANCE OF THE CITY OF MORGAN HILL  
UPDATING AND EXTENDING THE TERMS OF MORGAN  
HILL'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM  
(MEASURE E) WITH AN AMENDMENT TO THE MORGAN  
HILL GENERAL PLAN AND AN AMENDMENT TO THE  
MORGAN HILL MUNICIPAL CODE.**

The people of the City of Morgan Hill do hereby ordain as follows:

**SECTION 1. FINDINGS AND PURPOSES**

The people of the City of Morgan Hill (hereinafter called "the City,") hereby find and declare as follows:

- A. Rapid residential growth is a matter of continuing concern to the people of the City.

The burdens on City services and related problems associated with the City's explosive growth between 1975 and 1977 led to the adoption of Measure E by the voters of the City in 1977. Measure E set a target population of 30,000 for the year 2000, and established the Residential Development Control System (RDCS), providing a method for evaluating proposed developments and issuing a limited number of development allotments each year.

Since passage of Measure E, however, the City's population growth rate has remained high and in the last five years has been the highest in Santa Clara County. It has been projected that Morgan Hill will reach its year 2000 population goal of 30,000 well before the year 2000. In 1988, the City's population grew 6.25%, as compared with the County's overall rate of 1.29%. The next two fastest growing cities were Milpitas (3.34%) and Gilroy (2.97%). The City's high rate of development continued in 1989 and has shown no signs of diminishing. Morgan Hill has been, and continues to be, accommodating more than its fair share of regional growth.

- B. Continuing rapid expansion over the last several years and expected future growth in the City threaten to overwhelm the City's ability to provide municipal services. For example:
1. The Morgan Hill Unified School District (MHUSD) has been forced to install temporary classrooms and facilities to handle increased school enrollment and has exceeded school site capacity;

2. The City's sewer capacity is near exhaustion with long lead times to provide for additional capacity;
  3. In 1989, a combination of doubling the water rates and voluntary water conservation was necessary to achieve a reduction in water usage for the present City water users; again in March 1990, because of continued water shortages, the Santa Clara Valley Water District has recommended to the City of Morgan Hill that it reduce water consumption by 25%;
  4. Greatly increased traffic within the City has caused congestion on City streets and at major intersections;
  5. Demands on the City's police and fire protection forces continue to increase with the increasing population growth and expansion of the City's area.
- C. Extensive exploitation by developers of exemptions from Measure E requirements has allowed continued high growth rates despite the Measure E controls. Of the 908 dwelling units scheduled to be built by fiscal year 1990/1991, nearly half (452) are exempt from the RDCS. The result has been a widespread impression among the voters of the City that the Measure E limits are not being observed. There is a need to tighten up the loopholes of Measure E.
- D. The provision of Measure E requiring equal numbers of annual development allotments to the areas to the east and west of Monterey Road has led to development allotments being awarded to projects to the west of Monterey Road that scored lower than the scores of rejected applications for projects on the east side of Monterey Road. This provision should be modified.
- E. As a matter of fairness and policy, residential development should pay for itself. Developers must be required to provide funds and improvements necessary to provide all needed services to their development projects.

- F. Development outside the City boundaries, as well as within the City, adversely affects the City's level of services and quality of life. Proposed developments outside the City's Urban Service Area, for example, would impose additional burdens on schools and City services, and add to traffic congestion in and around the City. In addition, this type of "leapfrog" development, on property not contiguous with existing developed land, contributes to urban sprawl, and can reduce the vitality of the City's urban center. Such "leapfrog" development should be discouraged, as it is an inefficient way to develop, and opposes greater burdens on the community than "infill" development within the City's existing Urban Service Area.
- G. Within the City and its Urban Service Area there are currently about 2,000 acres of undeveloped, residentially developable land. This stockpile of land within the boundaries of the City and its Urban Service Area will support 25 to 30 years worth of residential development, based on present growth projections. The indiscriminate continued expansion of the City and Urban Service Area boundaries further imbalances the jobs to housing ratio (only 1 job per 1.6 houses currently), adversely affects the City's ability to maintain its level of services, can adversely affect the quality of life in The City, and is not necessary to meet the City's fair share of regional growth.

The people of Morgan Hill are therefore opposed to any further expansions of the City and its Urban Service Area until such time as expansion is needed to support projected growth for the next five years. This five-year horizon is consistent with the provisions of the Santa Clara County General Plan, the South County Joint Area Plan, and the Morgan Hill General Plan.

The people of Morgan Hill recognize that under the Cortese-Knox Act, the Local Agency Formation Commission (LAFCO) makes final decisions regarding Urban Service Area boundaries, and that the provisions of the Cortese-Knox Act are controlling. For the purposes of (a) mandating City policy in those instances in which the City has discretion under the Cortese-Knox Act, and (b) advising the LAFCO of the City's position in those contexts in which it is relevant to LAFCO's exercise of its discretion, the People hereby go on record as opposing further expansion of the boundaries of the City and its Urban Service Area, except as necessary to maintain an area sufficiently large to provide for five years' worth of future growth.

- H. The unique character of the City of Morgan Hill depends on its rural surroundings. In order to maintain this rural atmosphere, provide a buffer against development and preserve a greenbelt legacy for future generations, the City must take steps to preserve open space and agricultural lands and public parklands in and around the City.

- I. The report dated July 1988 prepared for the City by Economic Research Associates predicts the City of Morgan Hill will attain a population of 38,800 by January 1, 2010. This projection is based on a 2.6% compounded annual growth rate from 1987 to 2010, a rate that exceeds the present and projected growth rate for Santa Clara County, and more than meets the City's fair share of regional housing needs.
- J. Because City services such as water are finite and limited, and because development on the outskirts of the City causes the delivery of needed services to be more expensive and difficult, the rate of population growth of Morgan Hill should not be increased when lands are added to the City or its Urban Service Area.

**SECTION 2 EXTENSION AND UPDATE OF THE MORGAN HILL RESIDENTIAL DEVELOPMENT CONTROL SYSTEM BY AMENDMENT TO MORGAN HILL GENERAL PLAN**

Paragraphs A through G of this section of this initiative shall be added in their entirety as a section of the General Plan of the City of Morgan Hill, entitled "Residential Development Control," and shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year 2009/2010.

**RESIDENTIAL DEVELOPMENT CONTROL**

**A. REQUIREMENT OF DEVELOPMENT ALLOTMENTS FOR ALL RESIDENTIAL DEVELOPMENT**

For the years to and including fiscal year 2009/2010, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefore in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDCS) set out in the Morgan Hill Municipal Code, except one dwelling unit developments which are not part of a current, planned or potentially larger subdivision, and except secondary dwelling units ("granny units"). The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

**B. NUMBER OF DEVELOPMENT ALLOTMENTS**

The population ceiling for the City as of January 1, 2010 is 38,800. This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. The increased burden on City services imposed by development outside the present City limits adversely affects the City's ability to provide services to developments within the present City limits.

The number of residential development allotments for any fiscal year shall be limited to a number equal to the desired annual population increase for that fiscal year divided by the occupancy level per dwelling unit. For purposes of this determination, the annual desired population increase shall be equal to the difference between 38,800 and the population of the City of Morgan Hill on January 1 of the previous fiscal year, divided by the number of years remaining between said previous fiscal year and fiscal year 2009/2010. The population of the City of Morgan Hill on January 1 of said previous fiscal year shall be equal to the most recent population determination by the California State Department of Finance. The occupancy level per dwelling unit, for purposes of calculation of annual allocations, shall be determined by the State of California, Department of Finance estimate for the City of Morgan Hill.

The number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined each year by the City Council, provided that no less than 33 percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. No less than one third of the total annual allotments shall be awarded to developments to the east of Monterey Road and no less than one third of the total annual allotments shall be awarded to developments to the west of Monterey Road, with the remainder distributed on the basis of points received and without regard to the east/west distribution. The City Council may, if it chooses, further divide the allotments according to geography, price, development size, and similar criteria as deemed necessary to provide for the general welfare.

**C. DEVELOPMENT ALLOTMENT APPLICATIONS AND EVALUATIONS**

The annual development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals for each year. The point scale used shall take into account the impact of the proposed development on the following public facilities and services: schools, water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools, and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low and moderate income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be infill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development allocations, the City Council shall comply with Government Code Sections 66000 et seq.

**D. EMERGENCY SITUATIONS**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of emergency overcrowding of the schools, mandatory water rationing, sewage system operating at 95% capacity, or other endangerment to the public health, safety or welfare. The Council shall, in implementing this provision, comply with the provisions of Government Code Section 65858.

**E. OPEN SPACE CONVERSIONS**

1. No development allocations shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application through the use of permanent dedications, easements, or similar devices.
2. With respect to development allocations already awarded, wherever legally possible no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.
3. The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through March 1, 1990, are hereby reaffirmed and readopted through FY 2009/2010. This provision shall not prevent the City Council from designating additional lands as open space.

**F. URBAN SERVICE AREA RESTRICTIONS**

The City of Morgan Hill shall neither apply to LAFCO, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land either to the east of Monterey Road or to the west of Monterey Road within the existing Urban Service Area is insufficient to accommodate five years worth of residential growth for the land on that side of Monterey Road. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition to the Urban Service Area of land only on the side of Monterey Road having the insufficiency, and only to the extent necessary to support five or fewer years of growth on that side of Monterey Road.

The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable infill. Desirable infill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary (as determined by a perpendicular line drawn from the side of the parcel to the City boundary) and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development, or parcel.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox Act or by any Court judgement.

Because of the shortage of services and resources facing the City of Morgan Hill (e.g., water, sewer, schools, streets, fire and police protection), and in order to assure that such services and resources are not unduly burdened further, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990 and the effective date of this initiative and not considered "infill" as defined above, the City shall not provide urban services to support any development at a higher density than is provided for in the Santa Clara County General Plan as of March 1, 1990.

**G. URBAN SERVICES EXTENSIONS**

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire, or other emergency services to be provided by City facilities on County land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

**SECTION 3 EXTENSION AND UPDATE OF THE MORGAN HILL RESIDENTIAL DEVELOPMENT CONTROL SYSTEM BY AMENDMENT TO MORGAN HILL MUNICIPAL CODE**

Paragraphs A through G of this section shall be added to the Municipal Code of the City of Morgan Hill and shall be entitled "Residential Development Control System." Nothing in these paragraphs shall prevent the City from making appropriate provisions for small residential developments in compliance with paragraph C in section 2 of this initiative.

**A. DEVELOPMENT ALLOTMENT APPLICATION**

1. An Application for a development allotment shall be made to the Planning Department of the City of Morgan Hill on a form provided by the City. Such application shall contain the following information and be accompanied by the following documents:

**A. Site Utilization Map including:**

- (1) Vicinity Map to show the relationship of the proposed development to adjacent development, the surrounding area, and the City.
- (2) Site Use Layout Map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. (The Site Use Layout Map is of major importance; the Vicinity Map may be shown as a small inset map.)

**B. Site Development Plan:**

Lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with City street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways.

**C. Preliminary Architectural Plans:**

Typical architectural elevations, types and numbers of dwelling units, proposed color of buildings.

**D. Preliminary Grading Plans:**

A general indication of type, extent, and timing of grading.

E. Preliminary Landscape Plans:

General indications of planting.

F. Housing Marketability and Price Distribution:

Expected ranges of rental amounts or sales prices, low and moderate income housing to be provided, and applicability to Housing Assistance Plan, if any.

G. Schools and Other Public Facilities:

Needed schools, permanent or relocatable, or school impact mitigation measure to be provided. Other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities.

H. Development Schedule:

Proposed schedule of development including phasing.

I. Financial Information:

Financial information sufficient to enable the City to determine if the project has a reasonable chance of being undertaken and completed if a development allotment is awarded.

J. Such other information as may be required by the Planning Director.

2. Each application shall be accompanied by a reasonable fee set by the City Council based on the cost to the City of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc. and shall not be returned in the event that no development allotment is awarded.
3. An applicant may file only one application for any given property in any given year.

**B. PLANNING OFFICER'S EVALUATION**

The Planning Officer (hereafter PO) shall review each application and determine whether or not the proposed development conforms to the Morgan Hill General Plan. If the PO determines that a proposed development does not conform to the General Plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen (15) days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

Within fifteen (15) days after such notice is mailed, the applicant may appeal the decision of the PO to the City Council by filing a written notice of appeal with the City Clerk, who shall place the matter on the next agenda for a regular Council meeting. The City Council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of non-conformity with said plans, reverse said decision by finding that the proposed development is in conformity with said plans, or permit the applicant to modify his proposed development to bring it into conformity with said plans. The decision of the Council shall be final and conclusive.

**C. DEVELOPMENT ALLOTMENT EVALUATION**

Proposed developments found by the PO or City Council to conform to the General Plan shall be evaluated by the PO and awarded points as hereinafter set forth. The Planning Commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections C(1) and C(2) below. The PO shall submit his evaluation to the Planning Commission and the Commission shall approve, disapprove, or modify the PO's evaluation by simple majority vote.

1. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from 0 to 2 points for each of the following:

- A. The capacity of the appropriate school to absorb the children expected to inhabit a proposed development without necessitating or adding to double sessions or other unusual scheduling or site or classroom overcrowding. (Written evaluation of the MHUSD.)

- B. The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide. (Comments of the Morgan Hill Director of Public Works.)
  - C. The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide. (Comments from the Morgan Hill Director of Public Works.)
  - D. The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide. (Comments from the Santa Clara Valley Water District and the Morgan Hill Director of Public Works.)
  - E. The ability of the Fire Department of the City of Morgan Hill to provide fire protection according to the established response standards of the City without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the Police Department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel. (Comments from the Fire and Police Departments.)
  - F. The ability and capacity of major street linkage to provide for the needs of the proposed development without substantially altering existing street system (the desired target traffic level of service being no worse than "C" level service as defined in the 1985 Transportation Research Board Report #209), and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer. (Comments from the appropriate department heads.)
2. Quality of Design and Extent of Contribution to Public Welfare and Amenities.

The PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

- A. The provisions of needed school rooms in the form of permanent or relocatable buildings or the provision of other mitigating measures as attested by agreement with the MHUSD. A minimum of one third of the points in this category shall be reserved for criteria such as the development's impact on existing bus routes, or classroom or site overcrowding. (25 points)
- B. The provision of public and/or private usable open space and, where applicable, greenbelts. (20 points)
- C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than "leap frog" development, by using land contiguous to urban development within the City limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors. (20 points)
- D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities. (10 points)
- E. Provision of parks, foot or bicycle paths, equestrian trails, or pathways. (10 points)
- F. The provision of units to meet the City's need for low and moderate income and elderly housing and the extent to which such provision meets the goals of the Housing Element of the General Plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity. (15 points)
- G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the Housing Element of the General Plan. (15 points)
- H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height. (15 points)
- I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations. (15 points)
- J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on and off-site traffic safety and privacy. (15 points)

- K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures. (5 points)
- L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings. (10 points)
- M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features. (15 points)

**D. AWARD OF ALLOTMENTS**

1. The PO shall notify each applicant of his evaluation under Section C. Such notice shall be given in writing within (7) days after the evaluation has been approved by the Planning Commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time the PO shall notify in writing the MHUSD and all other city departments and public agencies which provided input for the evaluation under Section C of the result of that evaluation.
2. Proposed developments which have not been assigned a minimum of 9 points under Section C(1) or a minimum of 125 points under Section C(2) shall not be given a development allotment. Any applicant whose proposed development has not been given the required number of points may appeal the matter of allotment evaluation to the City Council as hereinafter provided.
3. Subject to the limitations hereinafter set forth in this paragraph and paragraph D(6), proposed developments which have received a minimum of 9 points under Section C(1) and a minimum of 125 points under Section C(2) may be awarded an allotment for the following fiscal year. Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by Planning Commission's determination or by City Council's determination on appeal) exceed the numerical limits established by the City Council by housing-type category, development allotments for which the Council-established numerical limit has thus been exceeded shall be awarded on the basis of the number of points received under Section C(2) starting with those proposed developments receiving the most evaluation points for the affected housing-type category and

proceeding in order down the list until the numerical limit established by the Council has been reached. Where allotments are made on the basis of comparative standing on the list, any applicant who has received the required minimum number of points, but who is not high enough on the list to receive a development allotment, may appeal the matter of allotment evaluation to the City Council as provided in Section E.

4. Allotments for the next fiscal year shall be issued by April 1 of the preceding year and shall be limited to those applicants whose evaluations under Section C are completed at least thirty (30) days prior to the date of the issuance of allotments and whose application or evaluation is not being appealed to City Council either by the applicant or by any other interested party at the time the allotments are issued. Allotments shall be awarded for no more than two fiscal years in a single competition.
5. Any applicant whose development evaluation has been completed and where any appeals (if applicable) have been resolved and who does not receive an allotment for the fiscal year will not be considered automatically for the subsequent fiscal year, but must reapply under Section A for the next or subsequent fiscal year.
6. If an applicant desires approval of residential units in a single residential development to be phased over more than one fiscal year, the applicant may apply to the City Council for such approval. The City Council may give such approval if it is demonstrated that the proposed project if limited to one fiscal year is not economically feasible because of the required off-site or other improvements required and other factors beyond the developers control. The applicant shall be given the necessary additional allotments to complete the project in the next fiscal year; however, these additional allotments shall be considered a portion of the limited allotment for that next fiscal year.
7. To ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their allocation and must re-apply under the development allotment process outlined in Section A if development is still desired by the developer. 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 F; or extended delays in environmental reviews, permit delays not the result of developer inaction, or allocation appeals processing.

**E. APPEALS TO CITY COUNCIL**

1. An applicant may appeal to the City Council pursuant to D(2) or D(3) hereof by filing a written notice of appeal with the City Clerk within ten (10) days after the notice of evaluation has been mailed.
2. The MHUSD or other public agencies which provided input for the evaluation under Section C may appeal to the City Council the evaluation under Section C(1) and C(2) within thirty (30) days after notice has been mailed as described in Section D(1).
3. Any citizen or group of citizens may appeal to City Council the evaluation of any applicant by filing with the City Clerk a petition signed by one hundred (100) registered voters of the City of Morgan Hill within thirty (30) days after the notice of evaluation has been mailed to the applicant.
4. In the event an appeal is filed under 1, 2, or 3 above, the City Clerk shall place the matter on the next agenda for a regular Council meeting. The City Council shall consider the appeal at such regular meeting at which time the Council will hear the applicant or his representative and such other persons as may be able to assist the Council in the determination of the matter on appeal. The Council may affirm or modify the allotment evaluation and its decision shall be final and conclusive.

**F. EMERGENCY SITUATIONS OR SEVERE IMPACTION OF PUBLIC FACILITIES**

An emergency or severe impaction situation shall be any one or more of the following:

1. A finding by the Director of Public Works that the sewage facility usage level exceeds 95% of the capacity of the system.
2. Mandatory City water rationing measures in effect.
3. Schools in MHUSD on "double sessions", or the MHUSD has declared that an emergency overcrowding exists. "Emergency overcrowding" may be declared for one or more schools, based on criteria established by the MHUSD, including but not limited to a specified percent of student enrollment beyond a determined capacity of the affected schools.

4. The MHUSD or other public agency providing services essential to the public health and safety notifies City Council in writing or by resolution that its ability to meet the public needs is severely impacted.
5. Any other endangerment to public health, safety, or welfare which the City Council determines to exist for the purposes of this section.

If any of these specified conditions exist, then the City Council shall certify an emergency or severe impaction situation.

In addition, any citizen or group of citizens may petition the City Council for declaration of an imposition of an emergency or severe impaction situation by filing with the City Clerk a petition signed by the greater of five hundred (500) or four percent of the registered voters of the City of Morgan Hill. The City Council at their next regularly scheduled meeting must then vote on a resolution of emergency or severe impaction situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

In the event such an emergency or severe impaction is certified, no building permit and no allotment shall be issued unless the City Council first specifically finds that the building permit or specific allotment allocation will not contribute additionally to the existing emergency or severe impaction situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

The PO shall review all certified emergency or severe impaction situations at least quarterly, and shall determine whether conditions warrant continuation of said emergency or severe impaction. The PO shall report his findings to the City Council, and notice of such findings shall be placed on the City Council agenda and published in a newspaper of general circulation. If the City Council finds, based on the PO's report, that the certified emergency or severe impaction situation no longer exists, it shall decertify the emergency.

In implementing this section, the City Council shall comply with the provisions of Government Code Section 65858. Where those provisions conflict with this ordinance, the state statute shall prevail.

**G. REVIEW OF PROGRESS**

The Planning Officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the Planning Department. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the City staff and Council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points awarded for its initial application, the PO shall report such failure or deviation to the City Council which, after holding a hearing, may rescind all or part of the development allotment in favor of the next development on the list which has qualified for such allotment and which is capable of commencement in the fiscal year.

**SECTION 4 IMPLEMENTATION AND CONSISTENCY**

Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted in Morgan Hill's General Plan, unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case this general plan amendment shall be deemed inserted on January 1 of the following calendar year. As of the date this section is deemed inserted, the General Plan and Municipal Code of the City of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative.

As of the date the provisions of Section 2 of this initiative are deemed inserted into Morgan Hill's General Plan, Measure E, as enacted and codified at Sections 18.78.010-18.78.170 of the Morgan Hill Municipal Code, shall be deemed repealed and replaced by the terms of this initiative ordinance. Upon said insertion date, Section 3 of this initiative shall be deemed inserted in the Morgan Hill Municipal Code, and the Municipal Code shall be interpreted so as to give immediate effect to the provisions of this initiative.

The City Council shall within 120 days of the enactment of this initiative ordinance amend the Morgan Hill General Plan as necessary to achieve consistency with all provisions of this initiative. Also within 120 days, the City Council shall amend the "specific provisions" for implementation of the RDCS now set forth at Sections 18.78.180 - 18.78.330 of the Municipal Code and other land use regulations as necessary to conform to all provisions of this initiative.

If the City adopts a new general plan or amended general plan elements, the provisions added by this ordinance shall continue to be included in the general plan through fiscal year 2009/2010. Upon the date of the insertion of this initiative into the General Plan and Municipal Code, all rezonings, specific plans, development agreements, tentative or final subdivision maps, parcel maps, conditional use permits, building permits and other ministerial or discretionary entitlements for use in process or submitted in the future, shall be consistent with the policies and provisions of this initiative.

The development allotments for fiscal years 1990/91 and 1991/92 awarded under Measure E shall remain in effect and shall constitute the allotments for those fiscal years.

#### **SECTION 5 DURATION**

This ordinance shall remain in effect until and including fiscal year 2009/2010.

#### **SECTION 6 CONSISTENCY WITH STATE AND FEDERAL LAW**

The provisions of this ordinance shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the State of California.

#### **SECTION 7 SEVERABILITY**

If any provision or application of any provision of this ordinance is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this ordinance are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

It is the intent of the Voters of Morgan Hill, by enactment of this initiative ordinance, to extend and expand the essential residential development control provisions and policies of Measure E. If this initiative measure is held invalid in its entirety, then the provision of Section 4 of this initiative repealing Measure E shall be inoperative, and Measure E shall remain in effect, as presently codified.

If any provision of Section 2 or Section 3 of this initiative is held invalid, the remainder of the initiative shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure E that correspond to the invalidated initiative provision. Thus, the repeal of Measure E, provided for in Section 4 of this initiative, shall be inoperative with respect to those provisions of Measure E corresponding to any invalidated provisions of this initiative.

**SECTION 8 NO UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY**

This initiative shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this initiative to a specific project would effect a taking, then pursuant to this initiative the City Council may alter the provisions of this initiative, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this initiative to the maximum extent feasible.

**SECTION 9 AMENDMENT OR REPEAL**

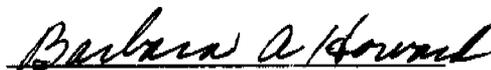
This initiative, including the amendments to the General Plan and Municipal Code, may be amended or repealed only by the voters of the City of Morgan Hill at a municipal election.

Passed by the citizens of the City of Morgan Hill at the General Municipal Election held on November 6, 1990. This ordinance will become effective on December 8, 1990. The vote for Measure "P" follows:

AYES: 4,734

NOES: 2,361

ATTEST:

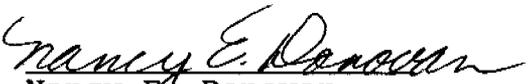


Barbara A. Howard, CMC  
City Clerk

**CERTIFICATE OF THE DEPUTY CITY CLERK**

I, NANCY E. DONOVAN, DEPUTY CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that this is a true and correct copy of Ordinance No. 1010, N.S., that was passed and adopted by the City Council.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL on this 8th day of December, 1990.

  
Nancy E. Donovan  
Deputy City Clerk

**Teresa Crue**

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**From:** Don Ostheimer [dono@mandisate.com]  
**Sent:** Tuesday, July 14, 2015 10:58 AM  
**To:** Planning\_Commission  
**Subject:** Opposition Letter regarding the proposed Oak Meadow development

Dear Planning Commission Representatives,

I am writing this letter to express strong opposition regarding this proposed development.

This is a unique view shed property that visibly expresses the beauty, serenity, & atmosphere that makes Morgan Hill such a desirable community.

There are so many other locations within the city boundaries that are suitable for expansion & controlled growth, without having to infringe on precious county lands.

I live at 399 Scotts Bluff PL, which is located in the Kendall Hill tract, adjacent to this proposed development. I have been a resident at this location since the home was completed in August of 2000.

I have attended numerous planning commission meetings regarding this subject. There are numerous documented reasons for this opposition, which the Planning Commission has been in sync with. There has been overwhelming opposition from the community for this project, & it seems that the only parties that are in favor are those that have a vested financial interest.

This proposed development has been in a state of squabble for what seems like 12-15 years. If this proposed development had support of the community, it would have been completed years ago.

I was quite appalled at the previous City Council meeting, where the City Council seemed to ignore the recommendations of the Planning Commission, as well as the voices of the community.

Please listen to the concerned voices of the community,

Best Regards,

Don & Marinela Ostheimer  
399 Scotts Bluff Pl  
Morgan Hill, CA 95037



Donald R. Ostheimer  
Vice President, Sales & Acquisitions  
Mandis ATE Technologies, Inc.  
365 Digital Drive  
Morgan Hill, CA 95037  
Tel: 408-776-7878  
Fax: 408-776-7888

Cel: 408-722-1460

**Teresa Crue**

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**From:** Marty Frank [marty@berrypack.com]  
**Sent:** Tuesday, July 14, 2015 9:31 AM  
**To:** Planning\_Commission  
**Subject:** FW: Opposition Letter for Oak Meadow Neighborhood

Dear Planning Commission,

We are writing to you with regard to the Oak Meadow Development project asking that you deny all requests with relation to the project. As Morgan Hill residents for 16 years we have come to enjoy the many views and agricultural open space the town offers.

We are looking to you as leaders of the community to use your voice and make the best decision not only for the city but also the residents of Morgan Hill. In 1977, the city's first RCDS (Measure E) was passed with a population target of 30,000 residents by 2000. However, due to loopholes and exemptions the city was going to be well over that number by the year 2000. In 1990, the residents voted for Measure P, which reduced exemptions and eliminated loopholes in Measure E, which also extended the RCDS to 2010 and changed the population target to 38,000 by 2010. Measure P was working to prevent urban sprawl and focus on growth in the center of the city by prohibiting the city from annexing land to its urban service area with the exception of "desirable infill". Measure P was set to expire in 2010 so the residents of Morgan Hill spoke up yet again and passed Measure C in 2004.

Measure C continued the work of Measure P maintaining that the 'desirable infill' requirement was met and City Council could determine that the amount of developable land within the City's borders could not accommodate 5 years of residential growth. However, shortly after the residents of Morgan Hill voiced their opinion in a vote to prevent urban sprawl and maintain the amount of annexed land in Morgan Hill, City Council chose to overlook the larger community opinion of Measure C and changed the definition of 'desirable infill' which conveniently allows the Oak Meadow project to meet the requirement.

In addition to the residents passing the above Measures and a review of Morgan Hill City's General Plan it is clear that the community continues to have a desire for open space and agricultural land. The community is not against building but wants to keep the building to the available spaces within the city limits. There is plenty of buildable land and this hill along with other county land does not need the dense housing, which decreases the Morgan Hill quality of life that all enjoy.

We ask that you carefully consider the voices of Morgan Hill when voting and deny any recommendation of the Oak Meadow Project.

Thank you for your time and consideration,

Martin Frank and Susan Collins  
392 Cascades Ct

**Teresa Crue**

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**From:** alexdi@att.net  
**Sent:** Tuesday, July 14, 2015 1:03 PM  
**To:** Planning\_Commission  
**Subject:** Oak Meadow Plaza annexation

To the Commission and Council members,

I'm writing to you to voice my opposition to the Oak Meadow Plaza project and ask that the Commission reject the request to expand the urban service area boundary. This proposed expansion does not conform to the guidelines and goals defined in the City's General Plan. It does not preserve the scenic hillsides that surround the city. It does not preserve the agricultural and open space uses on the unincorporated lands outside the UGB. Please consider the ramifications of your decision on the future quality of life aspect of all Morgan hill residents who, I am sure, will be equally alarmed *when* they are made aware of the commission's current and future expansion plans.

Respectfully,

Alex Dininno (original owner)  
396 Denali Drive  
Morgan Hill CA 95037

**Teresa Crue**

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**From:** Ms Mary Sperry [maryhsperry@charter.net]  
**Sent:** Sunday, July 12, 2015 7:21 PM  
**To:** Planning Commission  
**Subject:** Oak Meadow OPPOSED

Dear planning commission,

Why are you selling out our beautiful hillside to the developers? We have plenty of land inside our city to develop. We should never have changed the definition of infill to accommodate this developer. Kennedy worked on the council at the time it was changed and then for the developer. Doesn't that reek to you? Is MH that kind of town? This developer wants the Oak Meadow property to build homes for her family. This is a 'project' for her. She is here doing her family's bidding. It is OUR town and OUR life. It is not a project or a prize to be had for some foreigner with lots of money. You are on this commission to represent US the citizens of MH , not the developers.

Thank you and please reconsider your recommendation to approve this development.

Mary Sperry  
(MH resident)

Sent from my Verizon Wireless 4G LTE smartphone

Sent from my Verizon Wireless 4G LTE smartphone

**Teresa Crue**

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**From:** Olivia/Mike Holt [mikeandolivia@yahoo.com]  
**Sent:** Monday, July 13, 2015 2:51 PM  
**To:** Planning Commission  
**Subject:** Oak Meadow Annexation

Dear Planning Commission,

We are writing to you with regard to the Oak Meadow Development project asking that you deny all requests with relation to the project. As Morgan Hill residents for seven years we have come to enjoy the many views and agricultural open space the town offers.

We are looking to you as leaders of the community to use your voice and make the best decision not only for the city but also the residents of Morgan Hill. In 1977, the city's first RCDS (Measure E) was passed with a population target of 30,000 residents by 2000. However, due to loopholes and exemptions the city was going to be well over that number by the year 2000. In 1990, the residents voted for Measure P, which reduced exemptions and eliminated loopholes in Measure E, which also extended the RCDS to 2010 and changed the population target to 38,000 by 2010. Measure P was working to prevent urban sprawl and focus on growth in the center of the city by prohibiting the city from annexing land to its urban service area with the exception of "desirable infill". Measure P was set to expire in 2010 so the residents of Morgan Hill spoke up yet again and passed Measure C in 2004.

Measure C continued the work of Measure P maintaining that the 'desirable infill' requirement was met and City Council could determine that the amount of developable land within the City's borders could not accommodate 5 years of residential growth. However, shortly after the residents of Morgan Hill voiced their opinion in a vote to prevent urban sprawl and maintain the amount of annexed land in Morgan Hill, City Council chose to overlook the larger community opinion and changed the definition of 'desirable infill' which conveniently allows the Oak Meadow project to meet the requirement.

In addition to the residents passing the above Measures and a review of Morgan Hill City's General Plan it is clear that the community continues to have a desire for open space and agricultural land. The community is not against building but wants to keep the building to the available spaces within the city limits. There is plenty of buildable land and this hill along with other county land does not need the dense housing, which decreases the Morgan Hill quality of life that all enjoy.

We ask that you carefully consider the voices of Morgan Hill when voting to deny the recommendation of the Oak Meadow Project.

Thank you for your time and consideration,

Mike and Olivia Holt  
Bryce Drive

**Teresa Crue**

---

**From:** Sherril Nathan [sherril@glenloma.com]  
**Sent:** Monday, July 13, 2015 10:02 AM  
**To:** Planning Commission  
**Subject:** Oak Meadow Annexation

Dear Planning Commission,

I am writing to urge you to vote against the annexation of Oak Meadows tomorrow night. This is a beautiful piece of property that should be preserved for as long as possible, there is plenty of less attractive land that should be developed first. Annexing this land is inconsistent with the General Plan which favors agriculture and views. Annexing this land violates Smart Growth Principles.

Please do not take pity on this developer because the process "has been dragging on for so long." Bethany Liou has no one but herself to blame for how long this process has "dragged on." Like many developers, she chose to not pursue the annexation during the housing market crash. When she did resurface, she completely ignored Commissioner Mueller's request to come back with a plan for "20 or less" houses. She feels that because of all the concessions she has made, she deserves at least 44. As far as I know, she never showed us any analysis which showed what her breakeven point would be. What is very disturbing is that the City Council members who are in favor of this project think there should be more than the 44 homes she is currently proposing.

Thank you for your careful consideration.

Sherril Nathan, CPA  
Resident Bryce Dr



This email has been checked for viruses by Avast antivirus software.  
[www.avast.com](http://www.avast.com)

DRAFT

**MEMORANDUM OF UNDERSTANDING**

**By and Between**

**THE CITY OF MORGAN HILL**

**“CITY”**

**and**

**OAK MEADOW PLAZA, LLC, DR. STEVEN SPISAK AND RAELENE  
SPISAK AND DR. BILLY HUKILL AND DR. JULIANA HUKILL**

**“DEVELOPERS”**

**for the**

**SUNSET, EDMUNDSON, DE WITT AVENUES PROJECT**

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF MORGAN HILL (the "City") and OAK MEADOW PLAZA LLC, a California limited liability company ("Oak Meadow"), DR. BILLY HUKILL and DR. JULIANA HUKILL (the "Hukills"), and DR. STEVEN SPISAK AND RAELENE SPISAK (the "Spisaks"). Oak Meadow, the Hukills and the Spisaks are sometimes hereafter collectively referred to as the "Developers". For purposes of this MOU, the City and the Developers are sometimes referred to collectively as "the parties" or individually as "a party." The City and the Developers agree as follows:

### I. **[§ 100] SUBJECT OF MOU**

#### A. **[§ 101] Purpose and Limitations of this MOU**

Developers collectively own 117.5 acres of land comprised of 11 separate parcels (the "Developers Parcels"). A small portion of that land (0.52 acres) is located within the City limits, but the majority is located in unincorporated Santa Clara County, California. The unincorporated parcels are located within the City's Sphere of Influence. Adjacent to the Developers Parcels is a City-owned parcel which includes a City water tank.

The purpose of this MOU is to establish a common understanding for the envisioned reconfigurations and title transfers of the Developers Parcels for the purpose of open space preservation, annexation and development. The parties agree that this MOU is non-binding and creates no obligations or vested development rights and that the performance of its provisions would require voluntary actions by the Developers and discretionary legislative actions by the City, the Local Agency Formation Commission ("LAFCO") and other governmental and regulatory agencies, which actions may or may not be taken.

Subject to the terms and conditions set forth below, Developers, as their interests may be, are willing (a) to pursue development of a concentrated number of single family residential units on a portion of the site which is proximate to existing subdivisions within the City; (b) to limit the number of housing units on other properties and locate them so as to minimize their visibility from public rights of way; (c) to establish permanent private open space easements over portions of certain parcels; and (d) to convey in fee title a certain part of one of Oak Meadow's Parcels on DeWitt to the City in exchange for the City's conveyance of a like amount of City property to Oak Meadow.

#### B. **[§ 102] The Site**

The site (the "Site") is depicted on the Map of the Site (Attachment No. 1).

**1. [§ 102A] Parcels Comprising the Site.**

For purposes of this MOU, the Site consists of the following parts:

(a) Oak Meadow owns six parcels located on or near Sunset Road, being Lots 39 (portion), 40 (portion), 50, 51, 52 and 53 as depicted on the Map. The Hukills own a parcels depicted on the Map as Lot 48. The Spisaks own a parcel depicted on the Map as Lot 49. An approximately 66 acre portion of the Subject Property consisting of Lots 39 (portion), 40 (portion), 50, 51, 52 and 53 is sometimes collectively referred to as the "Sunset Property". A small portion (0.52 acres) of Lots 39 and 40 is already annexed to the City of Morgan Hill, and is within the City's Urban Growth Boundary, Urban Limit Line, and Urban Service Area. An approximately 25 acre portion of the Subject Property consisting of Lots 48 and 49 is sometimes collectively referred to as the "Edmundson Property". Oak Meadow also owns three parcels comprising approximately 29 acres and depicted on the Map as Lots 36, 37 and 38 (the "DeWitt Property").

(b) City owns the roughly 36 acre parcel depicted on the Map as portions of Lots 38, 39, 40 and 41 (the "City Parcel").

**2. [§ 102B] Reconfiguration of Site.**

Subject to the terms and conditions set forth in this MOU, the parties have indicated an interest in pursuing a reconfiguration of the Site as depicted on Attachment No. 2, regarding which the anticipated future segregated land areas are referred to hereinafter as "Lots". Such reconfiguration would require that:

(a) The City convey certain portions of the City Parcel (Lot 10) to Oak Meadow in exchange for conveyance of certain portions of Lot 7 of the DeWitt Property by Oak Meadow to the City, as more fully set forth in Section 201.

(b) The Developers establish private open space easements over certain portions of the Developers Parcels as more fully set forth in Section 202.

(c) The City grant to the applicable developers an access easement across the City Parcel (Lot 10) to benefit the restricted residential development on certain Developer Parcels (Lot 7, and if applicable, Lot 6) as more fully set forth in Section 203.

(d) Oak Meadow to complete a merger to merge Lots 7, 8 and 9 into a single parcel.

**D. [§ 103] The Project**

On April 19, 2006, the City amended it General Plan to designate Lot No. 1 as depicted on Attachment No. 2 to Single Family Low Density Residential and Lot No. 2 as depicted on Attachment No. 2 to Open Space, relocated its

Urban Growth Boundary and Urban Limit Line to include said Lot No. 1. Consistent with these prior actions of City, the project that the parties desire to explore and pursue (the "Project") includes the following:

(a) Reconfiguration of the Site as described in Section 102 and depicted on Attachment No. 2.

(b) Application by Oak Meadow for a pre-annexation zoning as "Single Family – R-1 12000 – Planned Development" on the portion of the Sunset Property depicted on Attachment No. 2 as Lot No. 1, including but not limited to a minimum of 40 units and a maximum of 48 units.

(c) Application by the City (at Developers' cost) to LAFCO to extend the City's Urban Service Area to the 19.99 acre portion of the Sunset Property depicted on Attachment No. 2 as Lot No. 1, consistent with the City's Infill Policy. It is the intent of the parties that the permanent private open space easements and other limitations on the portions of the Sunset Property annexed but not added to the City's Urban Service Area would provide the required community benefit for inclusion of the 19.99 acre portion of the Sunset Property in the Urban Service Area as "desirable infill" pursuant to City's General Plan and Zoning Code.

(d) Upon approval of the expansion of the City's Urban Service Area by LAFCO, application by Oak Meadow to the City for annexation of the Sunset Property, consistent with the City's Infill Policy.

(e) Application by Oak Meadow for residential unit development allotments pursuant to the RDCS process for the portion of the Sunset Property identified on Attachment No. 2 as Lot No. 1. Oak Meadow agrees that such application would include, among other things, a height restriction on all homes proposed to be constructed on the annexed and General Plan LDR-designated portion of what is currently Lot 51 so that the maximum elevation of those homes would not exceed the maximum elevation of any immediately adjacent homes on what is currently Lot 52 as measured from sea level.

(f) Construction of homes and associated permitted structures only below the 10% slope line on the Developer Parcels identified on Attachment No. 2 as Lot Nos. 3 and 4. It is understood and agreed between the parties that a material consideration of City's in being willing to consider approval of the Project would be the siting of structures on these two lots below the 10% slope line to minimize visibility of the development from public rights of way and preserve hillside open space.

It is the intent of the parties that, because Lot Nos. 3 and 4 are contemplated to be annexed into the City but not into the Urban Service Area, the construction of one home and associated structures on each of the said Lots Nos. 3 and 4 could be allowed, provided that the structures are located in the building envelopes indicated on

Attachment No. 2, and that open space easements are recorded over all portions of those lots outside the building envelopes.

Alternatively to developing a single home on each of Lot Nos. 3 and 4 while those Lots are outside the Urban Service Area, the parties agree that Developers may, at some future date, seek to annex into the City's Urban Service Area the portions of those Lots Nos. 3 and 4 which are below the 10% line and develop those annexed portions at residential densities and in manners consistent with the applicable zoning regulations at the time of development.

(g) Construction of only one home and associated permitted structures on each of the three Developers Parcels identified on Attachment No. 2 as Lot Nos. 5, 6 and 7 within the building envelopes designated on Attachment No. 2. It is agreed between the parties that a material consideration of City's being willing to consider approval of the Project would be the siting of structures on Lot Nos. 6 and 7 within their individual building envelopes to minimize visibility of the development from public rights of way and preservation of hillside open space.

Excluding Lot No. 5, regarding which Building Site Approval has already been obtained from the County of Santa Clara by Spisak, as part of this Developer covenant, the applicable Developer would ensure that City is timely provided a copy of any application to the County for a building permit for a new home on its Lot with sufficient opportunity to the City to review the permit and comment in advance of any action by the County of Santa Clara to issue a building permit.

The parties intend and envision that City would agree not to object to the construction of one home and associated structures on each of the said Lots, provided that the structures are located in the building envelopes indicated on Attachment No. 2, that the home on Lot 6 is not significantly visible from Edmundson Avenue, and that the home on the Lot No. 7 is not significantly visible from DeWitt Avenue and that private open space easements are recorded over all portions of Lots 5, 6 and 7 outside the building envelopes, over the entirety of Lot 8, and over the portion of Lot 9 above the 10% line, all as shown on Attachment No. 2.

(h) Application by the Hukills to the County of Santa Clara and a covenant by the Hukills to use their best reasonable efforts to obtain access to the home constructed on Lot No. 6 (as identified on Attachment No. 2) from DeWitt Avenue. The Hukills would represent to and covenant with the City that they would only seek access to Lot No. 6 from Edmundson Avenue if the County determines access from DeWitt Avenue is infeasible or otherwise will not permit it.

As part of this covenant, the Hukills would ensure that the City is provided timely information of any discussions with the County of Santa Clara relating to obtaining necessary access so the City is able to participate in those discussions as may be appropriate.

(i) Construction by Oak Meadow (and the Hukills if the County approves their access from DeWitt Avenue) of a driveway to be used for access to the residence of the homeowner(s) of Lot No(s). 7 (and 6, if applicable) and to be used for access by the City to the City's water tank located on Lot No. 10. Design and construction of the driveway and any electronic gate would require prior approval of the City Public Works Director and would be done at the sole cost of Oak Meadow (and the Hukills if the County approves their access from DeWitt Avenue).

The parties contemplate that the costs of maintaining of the driveway would be shared equitably by all property owners using the driveway as set forth in an access easement agreement recorded against all of the affected properties, whereby City would grant to each of the Lots using the driveway an ingress, egress and utility easement subject to the terms and conditions stated therein. Costs of maintaining the electronic gate would be borne by the affected property owners except for the City.

(j) In addition, the Developers agree that the following would be components of the Project, and receive credits in the Measure C competition as applicable:

- a. The Project would have no gates at roadways;
- b. Oak Meadow would provide trail easements across its private property per the City's Trail Master Plan (identified on Attachment No. 3) and as well as a trail easement from the City's water tank property southerly to Edmundson Avenue. In addition, Oak Meadow would provide a trail easement along Edmundson Avenue toward Community Park;
- c. The Project would construct improvements, including the trail in accordance with the City's Trail Master Plan over said easements.
- d. The Project would incorporate and construct trail heads into the development;
- e. Clustering, open space, and the establishment of view sheds would be incorporated into design of 19.99 acre portion of Project within the Urban Service Area;
- f. Development of design guidelines (discussing height, etc.);
- g. Oak Meadow would dedicate Right-of-Way for the straightening of DeWitt Avenue per County Roads and Airports realignment project; and
- h. Oak Meadow would relocate a major 10" water main currently without physical access for maintenance, to an accessible location under a paved street within the Project.

## **II. [§ 200] PROPERTY TRANSFERS AND EASEMENTS**

### **A. [§ 201] Exchange of Portion of City Parcel for a Portion of DeWitt Parcel.**

The parties also envision and intend that Oak Meadow would acquire from the City and the City would convey to Oak Meadow the portion of the City Parcel designated as Lot No. 10 on Attachment No. 2 in exchange for City's agreement to

acquire from Oak Meadow and Oak Meadow's agreement to convey to the City a portion of Oak Meadow's Parcel designated as Lot No. 7 on Attachment No. 2.

**B.    [§ 202]       Establishment of Private Open Space Easements.**

The parties further envision and intend that the Developers would establish permanent private open space easements restricting the use of all of Lot 8, the shaded portions of Lots 2, 3, 4 and 9 (generally above the 10% slope line) and the shaded portions of Lot Nos. 5, 6 and 7 (located outside of the building envelopes) reflected on Attachment No. 2. The easements would generally prohibit construction of structures and prohibits grading beyond that which is necessary for normal hillside agricultural operations, provided that backyard landscaping and fences, and those uses permitted on private open space describe in Section 2.20.070.B.5 of the Santa Clara County Zoning Ordinance, would be allowed whether the open space was located in the City or in the unincorporated County.

Notwithstanding the fact that the open space easements are referred to herein as "permanent", the open space easements would provide that, in the event that Lot No. 1 is removed from the Urban Service Area after the easements are recorded, all of the open space easements on the Developer Parcels would terminate and be of no further force or effect.

**C.    [§ 203]       Grant of Access and Utility Easement from City.**

Additionally, the parties envision and intend that City would convey, and Oak Meadow as the owner of Lot 7 (and the Hukills as the owner of Lot 6, if applicable) would acquire, without compensation to City an easement across City Parcel for the benefit of the owner of Lot No. 7 (and for the benefit of Lot 6, if applicable) for ingress, egress and utilities serving each applicable owner's single family; provided however that such easement would be extinguished if the County does not permit the use of said easement for said purposes.

**III.   [§ 300] GENERAL PROVISIONS**

**A.    [§ 301] Applicable Law**

The laws of the State of California shall govern the interpretation of this MOU.

**B.    [§ 302] Conflicts of Interest**

No member, official or employee of the City shall have any personal interest, direct or indirect, in this MOU, nor shall any such member, official or employee participate in any decision relating to this MOU which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Each Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this MOU.

C. **[\$ 303] Distinction from Regulatory Authority of the City and City**

Developers understand and agree that this MOU does not and shall not be construed to indicate or imply that the City acting as a regulatory or permitting authority has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Site as contemplated by this MOU.

**IV [\$ 400] EFFECTIVE DATE**

The effective date of this MOU shall be the date when this MOU has been approved by action of the City Council, or if the City Council authorizes the City Manager to negotiate and execute this MOU, when the City Manager signs this MOU.

CITY OF MORGAN HILL, a municipal corporation

OWNERS

By: \_\_\_\_\_  
Steve Tate, Mayor

Oak Meadow Plaza LLC,  
a California limited liability company

By: \_\_\_\_\_  
Bethany S. Liou, Managing Member

Attest

By: \_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dr. Steven Spisak

APPROVED AS TO FORM:

\_\_\_\_\_  
Raelene Spisak

By: \_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Dr. Billy Hukill

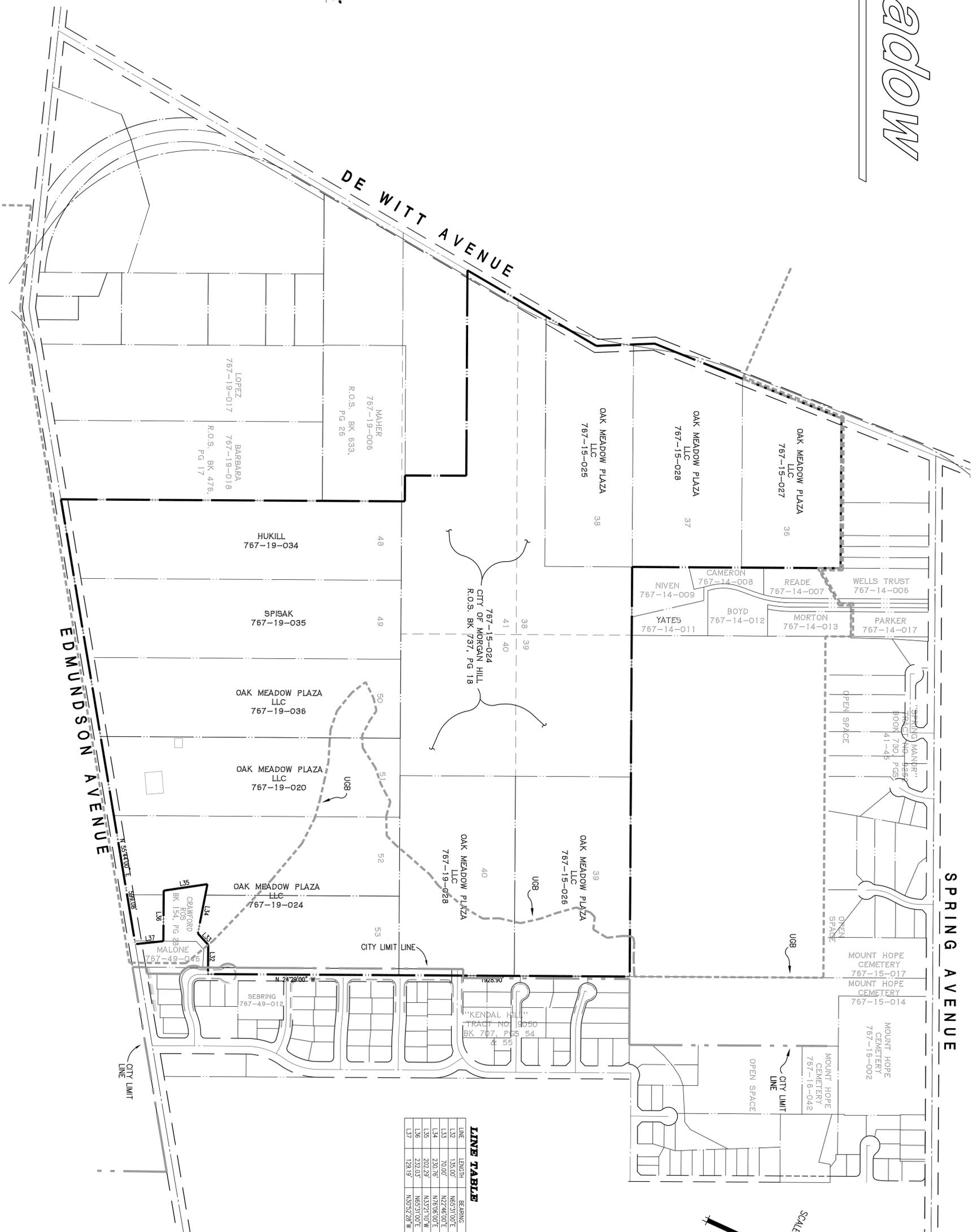
\_\_\_\_\_  
Dr. Juliana Hukill

# Oak Meadow

## Attachment 1

**applicant:**  
 OAK MEADOW PLAZA, LLC  
 7738 OAK MEADOW COURT  
 CUPERTINO, CA 95014

**engineer/  
 prepared by:**  
 MH ENGINEERING  
 16075 VINEYARD BLVD.  
 MORGAN HILL, CA 95037  
 (408) 779-7381



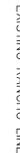
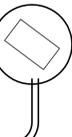
**LINE TABLE**

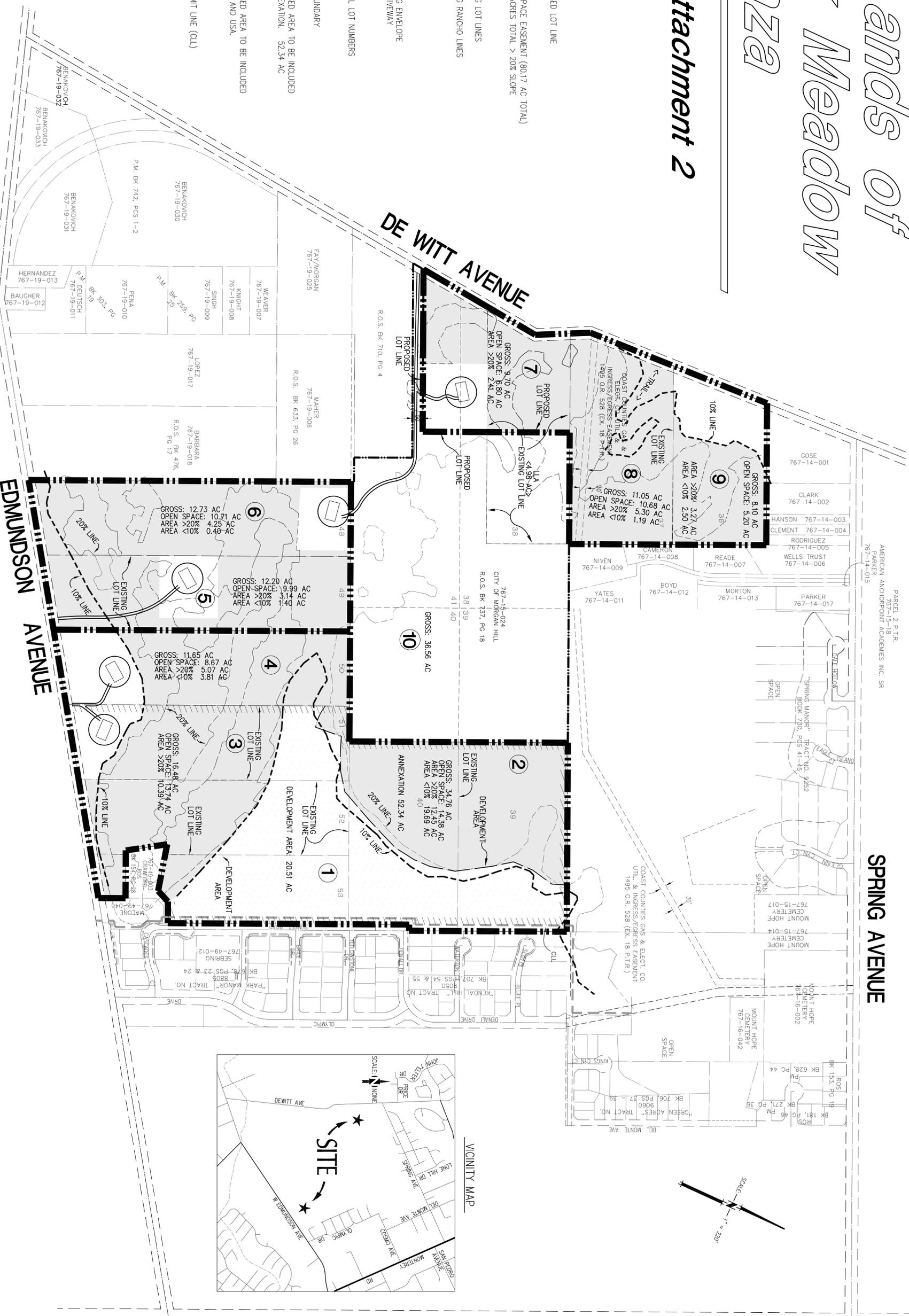
LINE	LENGTH	BEARING
L32	135.00'	N62.5100°E
L33	70.00'	N72.2430°E
L34	230.76'	N76.0630°E
L35	202.29'	N53.2100°W
L36	232.03'	N65.3100°E
L37	129.19'	N50.5228°W

# Lands of Oak Meadow Plaza

## Attachment 2

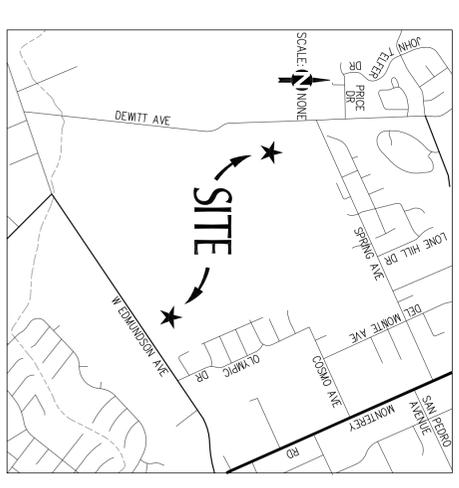
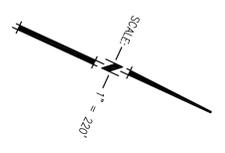
### LEGEND

-  PROPOSED LOT LINE
-  OPEN SPACE EASEMENT (80.17 AC TOTAL)  
46.28 ACRES TOTAL > 20% SLOPE
-  EXISTING LOT LINES
-  EXISTING RANCHO LINES
-  BUILDING ENVELOPE AND DRIVEWAY
-  ORIGINAL LOT NUMBERS
-  LOT BOUNDARY
-  PROPOSED AREA TO BE INCLUDED IN ANNEXATION. 52.34 AC
-  PROPOSED AREA TO BE INCLUDED IN UGB AND USA.
-  CITY LIMIT LINE (CLL)



SPRING AVENUE

MONTEREY ROAD



**MH engineering Co.**

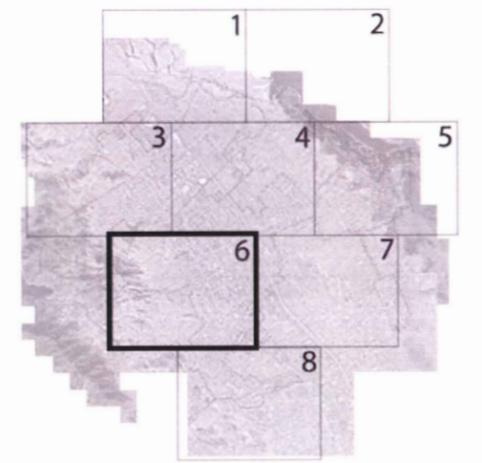
10075 Whittaker Boulevard  
Morgan Hill, CA 95037

DATE: 7/14 DRAWN: MM CHECKED: MM



### Map 6 Legend

- City Limits
- Existing Unpaved Trails
- Proposed Unpaved Trails
- Existing Improved Trails
- Proposed improved Trails
- Existing Paved Trails
- Proposed Paved Trails
- Existing Sidewalk Trail Connections
- Proposed Sidewalk Trail Connections
- Trail Route Within Private Property  
Note: proposed trail route to be considered when landowner is a willing participant
- Existing Staging Area
- Proposed Pedestrian Bridge
- Designated Open Space
- Open Space and City-Owned Land
- City-Owned Land



### Trails and Natural Resources Study City of Morgan Hill



R | H | A | A

COUNCIL APPROVAL 11/07/07

**PLANNING COMMISSION MEETING MINUTES**

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- 3) GPA-05-05:  
CITY OF M.H.,  
ULL/GREENBELT  
STUDY IMPLE-  
MENTATION**
- An amendment to the Morgan Hill General Plan Land Use Diagram to accomplish the following:
1. Establish an Urban Limit Line (ULL) around most of the City,
  2. Expand the Urban Growth Boundary and designate Single Family Low approximately 20 acres of land located on the west side of Sunset Ave., opposite Denali Dr., Yellowstone Dr., Whitney Way and Bryce Dr. (APNs 767-19-028 & a portion of 024 and 767-15-026),
  3. Expand the Urban Growth Boundary and designate Residential Estate approximately 23 acres of land located on the west side of DeWitt Ave. opposite Spring Ave. (APNs 773-09-001,002, 005, 006, a portion of 010, 011, 018, 027 & 028),
  4. Contract the Urban Growth Boundary to exclude approximately 92 acres of land on the northeast side of Malaguerra Ave. (APNs 728-34-019, 020 & 021, 728-35-001, 002 & 039),
  5. Contract the Urban Growth Boundary to exclude approximately 38 acres of land on northern slopes of El Toro, north of John Telfer Dr. and south of Llagas Rd. (APNs 764-31-001 (a portion of), 764-38-006, 008 & 009, a portion of 773-32-004 & 008),
  6. Contract the Urban Growth Boundary to exclude approximately 28 acres of land on west side of Casino Real (APN 773-30-005), and
  7. Contract the Urban Growth Boundary to exclude approximately 10 acres of land on east side of Water Ave. (APN 779-06-023).

In addition, the Goals, Policies and Actions of the Community Development Element and the Open Space and Conservation Element of the General Plan are proposed to be amended to identify Greenbelt areas and to provide guidance regarding the intent and implementation of the ULL and Greenbelt areas.

- 4) AMENDMENT  
TO DESIRABLE  
INFILL POLICY**
- Proposed amendments to the City Council policy regarding expansion of the Urban Service Boundary for Desirable Infill.

- 5) USA-05-02/  
ZA-06-01/  
ANX-06-01:  
EDMUNDSON-  
OAK MEADOW  
PLAZA**
- Proposed amendments to the plans of the City of Morgan Hill regarding a 34-acre area involving 4 parcels located on the west side of Sunset Ave. opposite Denali Dr., Yellowstone Dr., Whitney Way and Bryce Dr. Proposed are the following actions: pre-zoning 14 acres of the area Open Space and 20 acres of the area R-1 12,000, including the 20-acre area to be pre-zoned R-1 12,000 into the City's Urban Service Area, and annexing the 34-acre area into the city limits.

CP Bischoff, Consultant for the studies, provided a comprehensive overview of the history of the three agenda items and the contents of each.

Chair Lyle inquired as to LAFCO involvement in the Urban Limit Line Study process? CP Bischoff responded that the agency had some attendance at meetings but personnel had not been as active as those from the County.

It was noted that considerable correspondence had been recently regarding the studies and that staff had not had the opportunity of review of the letters. A letter of support, CP Bischoff, had been received from the County.

Commissioners raised the following:

- concern of additional 'lines' to delineate areas of the City - possible need to

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**MARCH 14, 2006**

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- simplify
- benefit to owners in specific areas
- restrictions of Measure C
- pressure of lands in County / need for setting expectations to set limits of growth and then no further
- 'starting point' for the southeast quadrant which contains 1200 acres of 'untouched lands' within the City Sphere of Influence
- plan - since the early 1990s - to have the Greenbelt be part of the City's General Plan
- implementation of such plans 'really proves the City is trying to plan the future of Morgan Hill: what will be where and what kind of housing will be developed
- Greenbelt Area / City parkland
- golf course not allowed within open space
- area nearby Church to be included in the USA
- slope explains area [potential for industrial use; CDD Molloy Previsich advised consideration of same is in progress but limited to this point]
- need to look at amount of land needed for industry + what does business part of future look like now [sub-discussion of classic model of industrial development versus new business park model: business workplace close to homes and readily available service - describes as 'very different from present']

**BY CONSENSUS, THE COMMISSIONERS AGREED THE ENVIRONMENTAL ASSESSMENT WOULD BE CONSIDERED AT THE MARCH 28, 2006 PLANNING COMMISSION MEETING.**

It was noted that the Environmental Assessment is readily available for review by the public.

Chair Lyle opened the public hearing for those wishing to address agenda item 3.

Hong-Duc Parker, 620 Spring Ave. distributed a letter to the Commissioners expressing her views.

Jon Maxey and Dan Frame, 16615 DeWitt, asked for the inclusion of 2 parcels into the Urban Service Line and distributed a letter supporting the request.

Barton Hechtman, 848 The Alameda, San Jose, voiced support for the staff's recommendations on agenda items 3, 4, and 5. Mr. Hechtman commended staff for making clear the recommendations of the issues that the MOU is non-binding. Mr. Hechtman stressed the MOU was conceived as a 'roadmap': how to get from the concepts of the Advisory Committee to implementation which will preserve 84 acres. Chair Lyle discussed the language concerning the MOU (section e page 3) with Mr. Hechtman assuring that the concept was I not to act as any type of guarantee for any number of points in Measure C and stating clearly that the owners know they may not get and allocations nor were they trying to pin down number of points in advance of Measure C. "If this project goes forward, the owners are aware they must complete as others do", Mr. Hechtman said. Responding to a question from Commissioner Escobar, Mr. Hechtman said, "The owner understands there is no pledge by the City."

CP Bischoff echoed Mr. Hechtman's statements, telling the Commissioners, "This is the City's language and the owner knows of the eligibility requirements under Measure C

and that there is no guarantee.”

CDD Molloy Previsich advised the open space easements would be recorded at the time of implementation, but Measure C matters would be within future competitions. Chair Lyle said, “I just want to make it clear as I have concern that no promises be made.” Mr. Hechtman responded, “The MOU is non-binding; tonight you have full discretion.”

Jeff Pederson, 403 Cascades Ct., distributed written comments from which he spoke on issues of the draft Environmental Assessment and potential non-compliance with CEQA. Mr. Pederson spoke at length on the potential for secondary dwelling units to be constructed in the Oak Meadow Plaza area and impact those units would have. He indicated that impact was not addressed in the Assessment.

Commissioner Acevedo reminded members of the audience that the role of the Commissioners is to recommend the report to the City Council for dis/approval or not.

Pete Gale, 650 Spring Ave., asked about the Church site and telling of confusion as to the Urban Growth Boundary and the Urban Limit Line on land to be owned by the City and saying he was curious as to the ‘split’ for the 20 acres west of Sunset.

Bill McClintock, 15685 Vineyard Blvd., was present to address the inclusion of the 20 acres west of Sunset Ave. Mr. McClintock told the Commissioners the owners were clear that the dedications were to be recorded before any action would be possible (considered) by the City regarding possible allocations, meaning the owners knew that the competition for allocations was a requirement. Mr. McClintock said, “Greenbelting in some places (other locations) involves a condemnation with compensation but I think that here we are moving density to more appropriate areas. The City realized the need to preserve open space in the near future to avoid undesirable development of County property. These 20 acres can support multiple amounts of units and the owners are sensitive to the neighbors.”

With no others present to address items dealing with agenda item 3, the public hearing was continued to the March 28, 2006 Planning Commission meeting.

Commissioner Acevedo commented, “The Commissioners make recommendations to the City Council and therefore no certifiable action would be made before the review period is completed with official action only by the City Council,” as he stressed the requirements of CEQA. Chair Lyle agreed, but said the issue is that sometimes the City Council may get new information at meetings, which was not received during the public comment period. Commissioner Mueller reminded that action will not be taken at this meeting regarding the environmental assessment with new information being received by the Commissioners which could be presented to the Consultants for response at the March 28, 2006 meeting.

Commissioners engaged in discussion of points of concerns:

- Exhibit A, page 3 (recommended text) 3e under item 6 contains contradictions [2 sentences] Urban Limit Lines within the City limits etc
- Page 5, policy 15d to community development line needs more specificity
- Page 4, item 7.5d recordation of Open Space easements appears to be violation of Measure C
- Exhibit A, page 4, Items 7.4, 7.5 and 7.6 may be too specific for the General

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Plan. (CP Bischoff responded the Advisory Committee spent much time on this issue and wanted to ensure development occurred in certain methods. He declared this seems the best place for these issues to be placed.

- West side of El Toro: General Plan identifies properties on both sides of El Toro; this is a second level of priority of preservation for El Toro
- MOU: page 3 - issue of points perhaps should be reworded to ensure clarity that the property must undergo the completion of Measure C/future competition(s)
- MOU: page 5 (iv) for Open Space to provide community benefit, it must be publicly owned/operated
- Need for identification in the Table of Contents of authors and consultants (have to go to page 104 of document to see)
- Appendix reference to maps; however, no maps are present if and where indicated
- Policies of uses [appendix a, page 8, item 2(r)]; land uses in Greenbelt missing reference to schools; discussion of Sobrato high school location/agreements

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE THE PUBLIC HEARING FOR AGENDA ITEM 3 TO THE MARCH 28, 2006 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE UNANIMOUS AFFIRMATIVE CONSENT OF ALL COMMISSIONERS PRESENT; NONE WERE ABSENT.**

*CP Bischoff recommended deliberation of agenda item 5 at this time; The Commissioners concurred.*

CP Bischoff presented the staff report.

Chair Lyle expressed the concern that the open space easements may not be permanent. CP Bischoff tells of open space easement in City and how owners have been told of the firm obligation.

Commissioner Mueller advised that it would take vote of people to change the open space easements. He cited Measure C having language that Measure P did not: if Open Space is designated on the General Plan that Open Space has been agreed by the people (voters) and can't change without a vote of the people

Chair Lyle opened the public comment period for agenda item 5.

W.E. Moreau, 415 Cascades Ct. expressed concern that developers seem to have some advantages in the studies. Mr. Moreau said that if 60 new houses were to be built, that could create 600 more car trips in the area. He said he walks the area and sees kids playing freely on the streets. "If development occurs, the neighborhood will be changed forever." He continued by saying he understood the City has 10% restrictions on the slopes and thinks a variance to 12.5% is planned. He also spoke on the flood plain in the area and asked about earthquake faults? Mr. Moreau concluded by saying the questions he asked reflected concerns of his own, but believed them to be reflective of others as well.

Yvette Castañon, 401 Yellowstone Dr., wondered if the Advisory Committee, in considering the benefits for the City, had considered the neighbors in the area. Ms. Castañon, said that the area residents - about six years ago - had expressed concerns of

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having Olympic Dr. go all the way through to Cosmo. Ms. Castañon reminded that the City had consultants who said the area would not be negatively impacted – however, compromise was necessary so a stop sign was placed. “And now cars go right through with no regard to the residents nor the ‘tot lot’ which the residents pay for,” she said. Ms. Castañon said that when she moved in eight years ago, the developers promised that the land would remain as promised for at least a decade but now there is this proposal for 60 new houses in the and that’s of concern. “We’ve had considerable discussion about the ‘benefits’ and as a neighbor in the area, I just don’t see the benefit of having 60 new houses on that beautiful land,” Ms. Castañon declared.

Jerry Whitaker, 393 Yellowstone Dr., told the Commissioners he had come to speak against the proposal. Mr. Whitaker said that the benefit of the open space is highly ‘debatable’. Mr. Whitaker spoke of the Open Space area of 20 acres just west of Sunset where 60 homes could be built.

“I think there is need to protect against castles. The City should recognize the potential of additional housing development,” and he suggested focusing on the downtown core area of the City for development, leaving green areas. Mr. Whitaker said development of the 20 acres would not benefit the public.

Maria Hodges, 407 Whitney Way, told the Commissioners she had sent the e-mail to them through the Planning Department. Ms. Hodges expressed dismay at being told the owner has no plan for development – but the developer had shown area residents a plan at a recent neighborhood meeting. “Now there appears to be attempts to invalidate concerns of area residents,” Ms. Hodges said. She continued by telling of abundant numbers of children in the area which prompted concern of increased cars on Whitney Way. Ms. Hodges said, “If there is annexation, the City needs to consider people in the area. We need to have restrictions.” Ms. Hodges concluded by saying it seems to her that this owner is getting some kind of preferential treatment – such preferential treatment may not be intentional, but it is there. Ms. Hodges noted she was reflecting the concerns of a nearby neighbor who had to leave the meeting.

John Skeen, 402 Yellowstone Dr. told Commissioners he has ‘strong opposition’ to development on Sunset. Mr. Skeen said he was unsure of the Advisory Committee’s recommendation and had just been invited two weeks ago by the developer to a meeting. Mr. Skeen talked about the location of the City’s water tower and the easement to Yellowstone where drainage is of concern. Mr. Skeen told of the path of drainage overflow to the pond and asked if, in the traffic study, consideration had been made of the location of the nearby indoor recreational facilities as well as the lots south of Edmondson? Mr. Skeen said he had concerns, too, about public safety: if you add population, what does the City need to do about adding fire protection. “I want to have public safety addressed,” Mr. Skeen declared.

Jeff Pederson spoke again; telling the Commissioners it ‘gets down to a question of *when* it is the proper time to take action. Mr. Pederson indicted he was very much in favor of the efforts – and highly applauded those efforts - of the City trying to protect open space. “This is a great city because of the surrounding area containing the open space,” Mr. Pederson asserted. “Again,” he said, “it is a question of *when* to include this area in the Urban Service Line. In some respects it is good to question how land is being controlled and further to question the true benefit to the public.” Mr. Pederson clarified concern about the potential for development of the 60 lots would be the availability of

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construction of 60 accessory units (one per lot) which could equate into 120 units. Mr. Pederson stressed that fact should be considered when considering ultimate density. "I don't know if the time has come – but I don't think so - for including that area [the 20 acres] in the Urban Limit Line," Mr. Pederson told the Commissioners.

Barb Sullivan, 16135 Olympic Drive, indicated she appreciated the work completed on the entire plan. Ms. Sullivan termed this to be a 'huge accomplishment' and said that part of the reason she had left the Planning Commission was the frustration with people who insist that their 'right is more important than the City'. "This discussion tonight is not a case of landowners saying that. This is important. This is a change to the General Plan and should be taken very seriously," as she reminded that: "Many residents bought on the basis of the General Plan and consider it to be a contract." Ms. Sullivan said she really thought 60 houses on the proposed annexation might be too many. "Maybe 20," she said. "This is truly a change in the General Plan and needs in-depth conservation."

Barton Hechtman raised the following topics with the Commissioners:

- the concept is a plan for neighbors to have a starting point and definitely is not a final plan
- adoption of MOU does not violate CEQA
- MOU crafted in non binding nature so not in violation
- MOU was approved by City Council first of February 2005 with property owner signing and can now be signed by the City
- language of Measure C promotes creative interpretation (Mr., Hechtman thinks this document provides a broad enough tone to encompass concerns raised at this meeting)

Mr. Hechtman engaged in discussion with Chair Lyle regarding the ownership of the easement stating that it appears to be in favor of the City and is enforceable by the City. He also referenced:

- 10% slope restriction is a misnomer - requirement is restriction on 20%
- question of *when* - time for action is now – if there is action later Mr. Hechtman said he did not think the land for Open Space would be available

Commissioner Mueller, CP Bischoff, and Mr. Hechtman had discussion during which the percentage of slope permissible for building was clarified and explained. Commissioner Mueller said a concern of backyards up the slope(s) would create a violation and the intent of the Task Force was to avoid that.

Mr. McClintock responded to questions mentioned by area residents regarding the meeting to which they had been invited. Mr. McClintock said that, based on the outcome of an election where the downtown might be exempted, and if the election were held in June, there would be the possibility of having a (Measure C allocation) competition in 2006 with allocations for 2008 being awarded. "However, if there is a November election, then a different award timeline would be in effect," he said.

Mr. Pederson responded to a question from Commissioner Mueller regarding the 'right time' he had referenced earlier. "When are we at risk," Commissioner Mueller asked, "and when is it time to protect?" Commissioner Mueller advised that now the City has no control on the subject property as it is under the county's jurisdiction. Mr. Pederson said that currently the property owner can build 10 homes on the entire property. Mr. Pederson says there seems to be a theory that a concession is being made by the property

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owner, but the parcels are at risk by County standards and will remain so until they are brought into the City.

Chair Lyle indicated earlier statements about accessory housing made by Mr. Pederson were inconsistent with the current practices in Morgan Hill, which result in accessory units on approximately 10% of the lots.

Chair Lyle asked Mr. Hechtman if the owner was look at opinions other than 60 lots? Mr. Hechtman said they were looking at other different options but research had not produced appreciable 'different numbers'.

Susan Collins, 392 Cascade Ct., asks about the ¼ mile proximity requirements referenced in the studies. She told Commissioners of concerns of traffic and stop signs, telling of numerous conversations with the Police Department and the Mayor relative to the stop sign in the intersection. Mrs. Collins spoke on concerns of

- small number of police personnel for area due to staffing deficiencies
- added traffic and drainage

CP Bischoff addressed questions raised by the speaker:

- City limits and the relation of requirements of annexed land(s) being within one-fourth mile of the City limits
- drainage: all projects must take care of own drainage issues
- clarification of the numbers of sworn peace officers in the City (four per shift)
- further investigation of traffic from the indoor recreation center
- scoring for RCDS competition under Measure C – scoring of public safety is based distance from public fire station – proximity to CDF and El Toro Fire Station in this instance, and there is also identified criteria for police to score the applications
- public was invited with several announcements into the process; earlier the City Council had difficulty getting people to sit on the Advisory Committee, but continued to try to get diversity of geographic location and also different interests

Commissioner Koepp-Baker said she wants a part of the Resolution for the next meeting to include language from the Hillside Ordinance which would clarify the 10 – 12.5% slope issues. CP Bischoff advised the current City Ordinance regulates development on slopes between 10 and 20 percent and prohibits development above 20 percent. Commissioner Koepp-Baker said she wanted it made very clear in the Resolution. CP Bischoff was given direction to address the flood plain and the earthquake maps.

**COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE THE PUBLIC HEARING ON AGENDA ITEM 5 TO THE MARCH 28 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Item 4 amendment to desirable infill policy

CP Bischoff presented the staff report.

Responding to a question from Commissioner Acevedo, CP Bischoff spoke of the language added a year ago which recognized items of benefit to the general community.

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Commissioner Mueller and Chair Lyle further cited the need for incorporation of language consistent with Measure C.

Chair Lyle opened the floor for comment on agenda item 4.

Noting that the item had been addressed as part of discussion/comment on agenda items 3 and 5 and with none present to address the current discussion, **COMMISSIONERS MUELLER/ESCOBAR MOTIONED TO CONTINUE AGENDA ITEM 4 TO THE MARCH 28, 2006 PLANNING COMMISSION MEETING. THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, KOEPP-BAKER, BENICH, DAVENPORT, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Chair Lyle suggested Physical Criteria 3 could be changed to reference the effective date of Measure C.

Discussion followed regarding:

- ownership of public facilities
- wording changed in document from 'parcels' to 'lands' with Chair Lyle noting that – in some places such word change might not be appropriate 187.807.0 (b)

Commissioner Acevedo called attention to the annexation of the Church and indicated that using the term "land" instead of "parcel" may create other problems

**ANNOUNCEMENTS:** CDD Molloy Previsich advised of the groundbreaking for the new City Library project on April 15 and reminded that access on the north side of the building housing the meeting room will be closed. She further advised that the Commissioner's mailboxes are to be moved. "Just remember," she said, "to get to the Commission meetings, enter through the south side"; adding the entrances 'may be flexible as time goes on'.

**ADJOURNMENT:** With no further business to come before the Commission at this meeting, Chair Lyle declared the meeting adjourned at 11:09 p.m.

**MINUTES PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**

Ms. Maskell said that there was a laborious process on the committee voting on every aspect of design, and that the design before the Agency Board was unanimously supported by the committee.

Agency Member Lee inquired as to how much of the sign an individual would see from a distance driving or walking by.

Mr. Andrews stated that he was satisfied that as you approach the entry sign, it would be prominent and noticeable.

Vote:            *The motion carried unanimously (5-0).*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **20.    REVIEW OF COUNCIL POLICIES RELATED TO COMMUNITY DEVELOPMENT DEPARTMENT**

Community Development Director Molloy-Previsich presented the staff report relating to 14 City Council policies regarding planning issues; several specifically relating to the City's Residential Development Control System (RDSCS). She indicated that staff is recommending that several of the policies be deleted; consolidating items not yet codified into one new RDSC Council policy. She informed the Council that several other policies relate to design guidelines and standards. She recommended that these policies be deleted with the understanding that the design guidelines and standards will be incorporated into the new design guidelines and standards handbook. One policy relates to the schedule when individuals can apply for major land use decisions.

#### **Criteria for Adjustment of the Urban Service Boundary**

Ms. Molloy Previsich indicated that the current policy is meant to provide urban guidance to an existing RDSCS ordinance section; clarifying what is meant by "abutting." She addressed and explained the recommended changes to this policy as addressed in the supplemental staff report.

Council Member Grzan noted that a domino affect would occur when you bring property into the city limits: making adjacent parcel(s) eligible. He did not know if this was the intended desire.

Ms. Molloy Previsich informed the Council that there is somewhat of a domino affect even with the existing policy. She indicated that the voter approved RDSCS allows for desirable infill proposals to expand the urban service boundary.

City Manager Tewes clarified that property owners would be eligible to apply to have the Council make a subsequent discretionary decision about whether or not to allow the property(ies) to come into the urban service boundary. Today's rules do not give some property owners the ability to apply for an urban service boundary adjustment. The existing rules outline the properties eligible to apply for a discretionary approval by the City Council.

Ms. Molloy Previsich said that the proposed change offers the greatest amount of potential for straightening out the variety of ins and outs of boundaries that occur on the south Monterey Road area. She clarified that any property(ies) proposed for inclusion into the urban service area has (have) to be within the urban limit line. She stated that the proposed amendment offers a little more flexibility for applicants to be eligible to propose an adjustment to the urban service boundary.

Council Member Grzan noted that when you redefine this policy, many properties on the edges could be eligible to apply for an urban service boundary adjustment; subject to discretionary approval by the Council.

Ms. Molloy Previsich identified the application process relating to urban service boundary adjustment; including CEQA review and a public hearing; with the Council making the ultimate decision on whether to forward the application to LAFCo. She indicated that LAFCo can overturn the City's approval; noting that LAFCo will only accept one application per year from the City.

Mayor Pro Tempore Carr noted that this is only one of three tests to qualify for urban service boundary adjustment.

Ms. Molloy Previsich brought to the Council's attention the fact that language is contained in the policy pertaining to commercial and industrial planned properties. She stated that the RDCS ordinance imposes a limitation on properties being brought into the urban service area as commercial and industrial, only to later change to residential zoning. She indicated that the existing policy contains language that stipulates that in order to encourage economic development the City may approve expansion of the urban service boundary. This includes properties contiguous to the urban service area boundary and are designated in the land use element for commercial or industrial use. The policy further states that properties so added to the urban service area, shall not be eligible for conversion to residential use except as provided by the zoning amendment chapter. She informed the Council that staff received an application for a general plan amendment for property currently zoned public facilities (PF). Staff sought an opinion from the City Attorney who ruled the property was eligible to file a zoning amendment application, and that staff needed to process the application. Therefore, staff is currently processing an application for a general plan amendment to change the land use designation from PF to residential.

Ms. Molloy Previsich informed the Council that the existing policy was silent on PF properties. Staff is suggesting the inclusion of a paragraph relating to public facility properties; including State law provisions in the policy. This amendment would limit changes for two years. She informed the Council that there was some discussion at the Planning Commission level with some Commissioners feeling that the intent of the RDCS was that commercial/industrial restriction was supposed to apply to all none residential lands. However, this is not stated in the RDCS ordinance, zoning amendment chapter or the existing Council policy. She informed the Council that the Planning Commission recommends the City not add the policy and that the City be silent on this. She recommended the Council make a deliberate decision on whether or not to amend the policy to add State law provisions.

Council Member Grzan noted that this is a complex matter, making it difficult for the potential applicant and the City, should the policy remain silent. It may also subject the City to litigation. He inquired why the City has not drawn the line and state that the line would remain in place until the next general plan amendment. He did not know why the City would want to have a policy in place that would allow the Council to move the line because the applicant believes he is justified to do so.

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Ms. Molloy Previsich felt that the authors of the RDCS may have wanted to incorporate flexibility due to geographic location as well as the city services criteria; providing the necessary public facilities. She stated that there is flexibility in the proposal; however, a property owner would have a high hurdle to jump because they would have to demonstrate beneficial improvements that benefit the public in terms of public infrastructure/services. She noted that this is still a discretionary application where the Council decides whether the application gets forwarded to LAFCo; with LAFCo making the ultimate decision.

Council Member Grzan reiterated that this creates a domino affect for adjacent properties that were not eligible; making them eligible.

Mayor Tate recommended that the policy state that it would apply to public use facilities. He stated his support of the first part of staff's recommendation, but does not support the second part where it is being recommended that PF properties added to the urban service area shall not be eligible to convert to residential for a period of two years from the date added to the urban service area, and officially annexed to the City of Morgan Hill. He supported the conditions that would have to apply to commercial properties rather than an arbitrary two year limitation.

Ms. Molloy Previsich informed the Council that current State law stipulates two years for changes. She noted that it would be the City's discretion on how it wants to implement its policies and ordinance.

City Manager Tewes felt that it would be better to be clear about what the City's policy is with respect to this type of land use, whether the PF land use can be converted and under what circumstances. He stated that some commissioners prefer to be silent to allow interpretation of the policy. It is staff's belief that it would be better to clarify the policy.

Mayor Tate stated his support of the suggestion to provide clarity, but did not support the two year period. He would support a policy that reviews the years of supply of land the City has.

Ms. Molloy Previsich said that the Council could amend the current zoning amendment chapter to apply to PF zoned property that currently applies to commercial and industrial planned properties.

Mayor Pro Tempore Carr expressed concern with the two year proposal. It was his belief that the test for commercial and industrial would be difficult to apply to a quasi public/public use. As proposed, PF properties deemed as having a public use could be brought into the urban service boundary, and never be used for its intended purpose. He felt that PF zoned property could be changed to a residential use and the developer would make a lot of money. He did not believe this was the intent of the policy. He did not know if it was just a matter of timing, or whether another test should be included before the City considers a change to the PF zoning designation.

City Attorney Kern clarified that the applicant is processing an application. However, this does not mean the zoning automatically gets converted. In order to process a general plan amendment application, it would require all the individuals/bodies in the process to determine that the general plan designation needs to be changed. She stated that there has to be substantially good reasons/justification why the land use designation should be converted from its current general plan designation.

City Manager Tewes stated that the City cannot prejudge an application for a general plan amendment. He did not believe there would be a significant increase in the number of opportunities for applications that would result in any of the changes being discussed.

Mayor Tate agreed with Mayor Pro Tempore Carr's comments. However, he felt that requests to change the general plan from public facilities to residential would not be a common occurrence. If State law precludes a two year minimum before a property owner can request a general plan change, he could accept this time limit because he did not believe the City would be faced with such requests. He supported being specific about the statement.

**Action:** *It was the consensus of the City Council to concur with staff's recommendation to include the paragraph, as recommended by staff.*

#### RDSC Implementation Policies

Ms. Molloy Previsich recommended the deletion of the current RDSC policies as staff is proposing a new policy entitled "RDSC Implementation Policies." She clarified that staff has taken portions of the other existing RDSC policies that are not codified; and consolidating them into one new policy.

#### Native Tree Policy

Ms. Molloy Previsich said that it is being proposed to shift the policy regarding native trees into the design guidelines and standards.

#### Offsite Improvements for Industrial Areas

Ms. Molloy Previsich indicated that staff noted this policy is codified in the Municipal Code; therefore, this policy is no longer needed.

#### Schedule for Consideration of Major Land Use Planning Decisions

Ms. Molloy Previsich indicated that this policy relates to general plan amendments and urban service area boundary amendments, as well as deadlines for filing applications for RDSC allocations. She stated that the RDSC policies have been moved into the proposed policy or are codified. She informed the Council that general plan amendments and the urban service area applications have established submittal deadlines and dates for Council consideration. She stated that CEQA needs to be conducted, and takes a lot of time; misleading applicants about the timing for Council consideration. She said that State law allows general plan amendments to be considered up to four times a year per element. Staff recommends expansion of the policy to address the schedule and to include State law regarding filing general plan amendment applications. Staff recommends retaining the twice a year timeframe for private

applications, and that the policy indicate that the City will accept applications for general plan amendment during the months of January and June with the planning commission or the Council initiating general plan amendments any time of the year. It is further recommended that the Community Development Director manage the processing and scheduling of applications; possibly considering the consolidation of certain applications and conducting one CEQA document/traffic study. Staff would make sure the City does not exceed the State law provisions of amending the general plan elements more than for times per year. The policy is also being amended to include other sections of State law and instructions to staff about referring general plan amendments to other agencies. She informed the Council that the Planning Commission recommends adding an explicit provision with respect to the timing of public hearings; clarifying that the public hearing is not to occur until after the public review period and the CEQA documents are completed.

#### Urban Service Area (USA) Boundary Amendment Schedule

Ms. Molloy Previsich indicated that the previous policy stated that applications for USA needed to be filed by March 15, and that the Council would consider the request during the month of May. She stated that due to CEQA and other scheduling matters, this timing does not really take place. The recommended policy states that the application may be initiated by the Council, Planning Commission or owners of the property. The Planning Commission or Council could initiate a boundary amendment any time of the year. The City is to accept applications from private property owners in January of each year. She stated that staff would manage the preparation of the CEQA document and the timing of hearings; submitting only one application per year to LAFCo.

#### Street Naming Policy

Ms. Molloy Previsich noted that initially, the staff report before the Council suggested one additional change. She informed the Council that the Planning Commission supported the policy. Staff had a question regarding a lane indicating a private street and not a public right of way. She said that the Planning Commission recommends the Council include a clarifying statement that a lane is not necessarily a private street. However, she heard from the Public Works Director who supports private streets being called lanes as the City would not be responsible for street maintenance. She informed the Council that staff is recommending that it retain the policy as written (no changes proposed).

#### Lane Use Near Streams

Ms. Molloy Previsich indicated that land use near streams was an interim policy while the City was working on the Water District's water collaborative process for creating guidelines and standards for properties that have streams or are adjacent to streams. She stated that this effort has been completed. She informed the Council that the design review chapter will be coming to the Council in a workshop this fall. The proposed ordinance will make reference to the guidelines and standards of the water collaborative - one has to be substantially in conformance with the guidelines and standards. She stated that the Council will be adopting the guidelines and standards as part of the design guidelines. She said that the policy language and the handbook will become a part of the City's regulation. Therefore, staff recommends this policy be deleted

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Early Start of Construction Policy for RDCS

Ms. Molloy Previsich indicated that one minor amendment is being proposed. She stated that all timelines and deadlines used to be a part of the statutory development agreement approved by the Council. The City shifted most of the deadlines into resolutions that the Planning Commission has authority over; only keeping the hard deadline under the RDCS in the development agreement. She stated that there is some language contained in the policy to reflect this practice.

Tentative Subdivision Map Approval Prior to the Award of Building Allocations through the RDCS (CP-06-04)

Ms. Molloy Previsich informed the Council that no changes are proposed to this policy.

Score and Award of 100 allotments made Available through Measure F, adopted in 2006

Ms. Molloy Previsich indicated that these are policies recently adopted in 2007 on how to score and award the 100 allotments made available through Measure F in November 2006. However, recently, a question was put forth regarding a particular type of application filed for Measure F allocation. In reviewing the policy, the policy proposes an obstacle to filing a Measure F application. The policy in place is stricter than Measure F, adopted by the voters. She informed the Council that the policy states that the project should represent the ultimate development of a parcel created before December 6, 2006; an eligibility criteria. It was her belief the intent of Measure F, in limiting projects to 25 or fewer allotments, was that projects with allocations would not return to get Measure F allocations. It was felt that individuals with Measure C allotments would not use these allotments and would come in for Measure F allotments instead. She said that additional language is being recommended to address currently allocated projects to clarify that you cannot substitute allocations that were previously awarded. The policy is proposed to remove the restriction on whether the project has to be the ultimate development of the site. It is being suggested by staff that the Council delete provisions 4 and 6.

Ms. Molloy Previsich recommended that the timing of when the Measure F competitions are to occur be clarified. She noted that the policy was adopted in April 2007. Since that time, staff has been talking to possible applicants, and is reviewing development standards for the downtown; trying to generate interest in filing applications to take advantage of Measure F allotments. Staff suggests the City shift back the deadline of filing for the first batch of 50 allotments available. The City is to establish a filing date of December 1 for the first competition. For the remaining 50 units, applications would need to be submitted by September 2008, or later, should so be directed by the Council.

Council Member Sellers indicated that the City should have designated how Measure F would be implemented (process) when it placed Measure F on the ballot. He appreciated the efforts made to catching some of the problems that were put into place, via a policy, that may be counter to what the voters wanted, and counter to what may be a good policy associated with the Downtown Plan. He felt it would be important to identify how the City would go through the process as it moves forward.

City Manager Tewes informed the Council that staff would return to the Council on August 22 with the final versions of whatever policy direction is given by the Council this evening. The Council can review clear, clean copies of the proposed policies. However, he said that it would be helpful to staff if the Council indicates its consensus on policy choices.

**Action:** *It was the consensus of the majority of the Council to concur with staff's recommendation for the criteria of the adjustment of the urban service boundary; including the statement relating to quasi public land use, and pull back a little bit from the either/or boundary.*

Council Member Grzan stated that he does not want the Council to open a can of worms where the City would have a number of applicants applying for expansion, and that based upon the makeup of the Council, the urban limit line starts to expand greatly. He stated that he would like the line to be contained as it is, and be careful as the City moves out in this direction. He stated that he was not comfortable with the policy.

Mayor Pro Tempore Carr noted that this is just one of three tests that would need to be applied, per voter approval mandate.

**Action:** *It was the consensus of the Council to support the deletions, and the creation of the new policy that consolidate all policies, per staff's recommendation.*

Council Member Grzan expressed concern with the word "delete" because in actuality, staff is not deleting, but shifting the policies. Expressing deletion of the policies gives the impression that the City no longer has a native tree policy; noting that it is going into a different area.

Mayor Tate stated that as the policies are being taken away as an identified policy number, this is the reason staff used the nomenclature of "deletion." However, he concurred with what Council Member Grzan is stating.

**Action:** *It was clarified that there is Council consensus on everything presented this evening; all current versions of all recommendations before it.*

Council Member Grzan noted that some of the proposed changes, as listed in the supplemental staff report, have not gone back to the Planning Commission. He inquired whether staff would be proposing to take the new amendments back to the Planning Commission.

Ms. Molloy Previsich stated that she did not believe it would be necessary to take back the new changes to the Planning Commission because the current recommendations are more restrictive than what was forwarded to the Council by the Planning Commission. She did not believe the Planning Commission would have any concerns about policies being more restrictive.

Mayor Tate opened the floor to public comment. No comments were offered.

**Action:** *Staff to return with amendments, as identified above, for Council review/approval.*

11. **THIRD QUARTER REPORT FROM THE CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT PARTNERSHIP**

*Action: Accepted the Report.*

***City Council and Redevelopment Agency Action***

**CONSENT CALENDAR:**

Council/Agency Member Carr requested that item 12 be removed from the Consent Calendar.

*Action: On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board, on a 4-0-1 vote with Council/Agency Member Carr abstaining, Approved Consent Calendar Item 12 as follows:*

12. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 5, 2006**

*Action: Approved the Minutes as Submitted.*

***City Council Action***

**CONTINUED PUBLIC HEARINGS:** (Continued from April 5, 2006)

13. **GENERAL PLAN AMENDMENT, GPA-05-05: CITY OF MORGAN HILL- URBAN LIMIT LINE/GREENBELT STUDY IMPLEMENTATION**

Mayor Kennedy indicated that items 13, 14 and 15 all relate to the Urban Limit Line (ULL) and that item 13, is a general plan amendment to implement the ULL and the Greenbelt Study Implementation. He indicated that item 14 is an urban service area/zoning amendment application for the Oak Meadow Plaza project. Item 15 is a general plan, urban service area, zoning amendment and annexation application for Santa Teresa Boulevard-Black Rock project. He stated that he met with staff earlier today. It is being suggested that staff present a report on items 13, 14 and 15; followed by the opening of the public hearing for all three items. The Council will enter into discussion on all three items after the closure of the public hearing. The Council will then take the appropriate actions, one at a time.

Contract Planner Bischoff noted that there are a lot of interrelationships between items 13, 14 and 15. Therefore, he would be presenting a single staff report. He proceeded to present the staff reports for the three items.

Agenda Item 13

Contract Planner Bischoff said that item 13 represents the recommendation of the advisory committee for the urban limit line/greenbelt study. He clarified that item 13 only amends the general plan text, and adds policies and actions regarding the implementation of the study. The implementation of the ULL Committee recommendations has been added to the land use diagram of the General Plan Map. It also adds an additional map to the general plan that identifies locations of greenbelts. He stated that the map reduces the size of the urban growth boundary (UGB) in four areas involving approximately 160-170 acres. He noted that these areas are already zoned open space or have open space easements over them. However, it also expands the urban growth boundary in two locations and designates the locations as residential use. The first area is the West Hills Community Church 23-acre area located on the west side of DeWitt Avenue; designating the area as residential estate. The second area is the Oak Meadow Plaza property; consisting of approximately 118-acres on Edmundson, DeWitt and Sunset Avenues. The Oak Meadow Plaza application includes approximately 20-acres, adjacent to Sunset Avenue, in the UGB. The 20-acres would be designated as single family low and would allow up to 60 units to be built upon the land. He stated that a non binding memorandum of understanding (MOU) was entered into by the City and the property owners in order to understand the extent of the environmental review needed. The non binding MOU stipulates that should the area be included within the UGB and designated for residential use, open space easements would be created over 84-acres. There would be 5 homes built on 74-acres of property located outside the city limits.

Item 14 – Expansion of the urban service area, rezoning and annexation – Oak Meadow Plaza

Contract Planner Bischoff addressed the Oak Meadow Plaza project. The proposal is to add 20-acres to the urban service area, the same 20-acres the ULL Advisory Committee recommended be added to the UGB. The action would prezone 20-acres of the property to R-1-12,000 and 14-acres as open space; annexing 34-acres. He informed the Council that in order to include the 20-acres within the urban service area, the City would need to make findings regarding the benefits that are to be accrued to the community, overall, as a result of inclusion. He stated that the beneficial affect proposed by the applicant, and recommended by the Planning Commission, is the preservation of the open space associated with the application.

Item 15 – Black Rock applications

Contract Planner Bischoff addressed item 15, the Black Rock property, an 18-acre parcel located at the southwest corner of Santa Teresa Boulevard and Watsonville Road. Being proposed is a general plan amendment to include property within the UGB and that it be designated residential estate, and expansion of the urban service area to include the 18-acre parcel. Also, proposed is rezoning of the parcel to RE-40,000; including annexation. He stated that in order to include the area within the urban service area, certain findings need to be made with respect to the benefits that would accrue to the general public as a result of its inclusion. He informed the Council that the Planning Commission's findings and recommendations are that the overlay of Watsonville Road in front of the property would result in annexation and the ultimate development that would be allowed to take place. There would also be the provision of an additional well site to the City.

Contract Planner Bischoff indicated that staff conducted an environmental evaluation on the three items as there was an interrelationship between the three. The environmental document was prepared at a program level as there are no specific development projects being proposed at this time; looking at impacts at a program level. With respect to the recommendation of the ULL advisory committee, the environmental study did not find there were significant impacts that would result from the city-wide proposals to amend the general plan, and inclusion of the ULL on the general plan map. However, the study did find there were potential significant impacts that would result from expanding the UGB to include the West Hills Community Church area, the 20-acre Oak Meadow Plaza, as well as the Black Rock area. However, mitigation measures were identified that would reduce the impacts to a less than significant level. It is staff's belief that it would be appropriate that a mitigated negative declaration be proposed and adopted for all three separate agenda items. He informed the Council that included in the Council's agenda packet is a mitigation monitoring and reporting program as required by law. This document will ensure that the mitigation measures are carried out when needed.

Contract Planner Bischoff noted the City received a lot of public testimony regarding the applications and the environmental review. A couple of the comments addressed the mitigated negative declaration and resulted in changes to this document. He indicated that the attorney for the Black Rock applicant suggested the mitigation that required a 50-foot setback from the creek is too specific, given the City does not have a development proposal. The attorney suggested it would be more general to state that the setback would be whatever is required by the Department of Fish and Game and the City of Morgan Hill, in consultation with each another. He felt this was an appropriate modification to make and that it has been added to the mitigated negative declaration. Another amendment to the mitigated negative declaration was attributed to a comment made by the Committee for Green Foothills stating that the way wetlands were being treated was inappropriate. It was their belief that whether wetlands falls within the Army Corp of Engineer's purview or not, mitigations still need to be considered. He said that staff discussed this concern with the City's consultant and as such, this mitigation measure has been modified as well.

Contract Planning Bischoff informed the Council that it received a lot of comments with respect to the mitigated negative declaration. There were comments that suggested that a mitigation measure(s) needs to occur for loss of agricultural land throughout the City, not just for the Black Rock property because the City was establishing an urban limit line. With respect to the Oak Meadow Plaza evaluation, he indicated that there were a number of comments made by individuals who believe the environmental review was inadequate in the way it addressed issues such as geology, biology, traffic, and aesthetics. There was an individual who felt the mitigated negative declaration to be inappropriate; suggesting that a full EIR was needed. He informed the Council that staff met with the City's consultant and that it was felt that the mitigated negative declaration is appropriate. With respect to the other comments made, he stated that the City's environmental consultant provided two memos. There are also two memos from the City's traffic consultant that addresses the concerns raised by the public at prior meetings. He informed the Council that in attendance were the City's environmental and traffic consultants, should the Council have any questions relating to the mitigation measures, or to respond to comments that may be raised by the public. He stated that prior to taking any actions this evening, the Council needs to approve the mitigated negative declaration and the mitigation monitoring program.

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Contract Planner Bischoff informed the Council that there were a number of outstanding questions and issues raised by the public:

- Should action item 3.4 be amended? The action had to do with how frequently the City should amend the UGB. He indicated that a concern was expressed that amendments to the UGB would occur too frequently. He stated that included in the Council's packet is revised language proposed by staff that would address concerns expressed by the Council.
- A concern was expressed regarding the location of the ULL. He said that a representative who served on the ULL committee felt the ULL should not be located on Hill Road, east of Highway 101, but located at the base of the hills, as recommended by the advisory committee.
- The Council heard comments from a number of individuals stating that the property located on the south side of Spring Avenue should be included within the UGB. He indicated that the Planning Commission heard these concerns and they are recommending that these areas be included within the UGB. The two property owners on Spring Avenue requested that they be included in the ULL and UGB. The Planning Commission, on a 4-3 vote did not recommend these two parcels be included within the ULL or UGB. He said the Planning Commission felt the property was part of the Oak Meadow Plaza property and had an open space easement attached. The Planning Commission would like to keep the areas as open as possible. Therefore, they did not believe it appropriate to include the properties in the ULL.
- There was a question whether the Oak Meadow Plaza project should be included within any of the City's boundaries and planned for residential development. If included, what density would be appropriate. It was staff's belief the potential impacts associated with proposed development have been adequately evaluated and mitigated. He informed the Council that the Planning Commission recommends that 19-acres be included within the UGB and planned for residential development instead of the 20-acres being requested. The difference between the 19 and 20 acres is whether you use the 12½% slope proposed by the applicant or the 10% slope line as recommended by the ULL advisory committee. Also, recommended by the Planning Commission is that rather than having an open space easement being assigned or attached to the 14-15 acres that the property be deeded to the City in fee title.
- Regarding the Black Rock property, a couple of neighbors felt it would be inappropriate to include the property within any of the City's boundaries or planned for residential development.

Mr. Bischoff informed the Council that the Planning Commission recommends Council approval of item 13, the urban limit line/greenbelt study with the addition of the Spring Avenue mentioned, but not the DeWitt area. The Planning Commission is recommending approval of the Oak Meadow Plaza application with 19-acres being included within the UGB instead of the 20 acres, and the dedication of open space for 14-15 acres. The Planning Commission further recommends approval of the Black Rock property application.

Mr. Bischoff informed the Council that there are four pieces of correspondence in front of the Council regarding these items: 1) a memo from EIP that was left out of the Council's packet; 2) an e-mail from Mary Sue Rice and 3) letters from Brandy Moreau and Bart Hechtman regarding the Oak Meadow Plaza project.

Mr. Bischoff indicated that the General Plan was adopted in 2001 and called for a greenbelt to be established around the City. He said that the ULL Committee worked on the greenbelt for two years and spent a lot of time considering a lot of different aspects. He felt the job of identifying areas to be protected as greenbelt for the long term and establishment of the beginnings of an implementation plan needs to be done in order to make sure greenbelts are protected in perpetuity.

Mayor Kennedy reopened the public hearings for items 13, 14 and 15.

Jeff Pedersen inquired whether the ULL Committee ever considered the affect of establishing a 30-year timeline on the City's Residential Development Control (RDCCS) Ordinance. He expressed concern that there is a greater chance for legal challenge to the City's growth control ordinance by planning even further outside the line that would indicate a greater expectation for growth. He expressed concern with any challenges to the growth control ordinance because the City is now identifying a greater inventory of land that could be developed. He requested the Council provide an indication of whether this was ever considered at all in the new concept the City is trying to create. He referred to Exhibit A of the ULL/greenbelt plan; specifically, page 4 of 11 that speaks to the Oak Meadow Plaza project. He noted that this page indicates this project is subject to 118-acres. If you perform the addition of the acreage being spoken to as far as what would be developable and what would be placed into an open space easement, he did not believe the acreage adds up. He felt there were 12-acres that were not accounted for in the statements. He would like to see item 9c expanded, or that the Council applies the 19-acres as recommended by the Planning Commission. The 19-acres are not to exceed the 10% contour line as so specified. He noted there were statements made by a number of council members about an R-1-20,000 density at the last meeting. He requested the Council enforce its comments and apply this density.

Jon Maxey requested that his property and neighbor's property be included within the ULL. He indicated that both properties are currently developed with at least 100-foot setbacks from DeWitt Avenue. Further, both properties have City water lines in front of the properties, but cannot get approved for connection unless the properties are included in the ULL. He did not believe there were opportunities for further development on these properties.

Michele Beaseley, representing Greenbelt Alliance, indicated that the Council is making an important decision about the future of Morgan Hill this evening. She agreed the Council needs to plan for and allow for future growth. However, consideration should be given to what this future growth would look like. Should future growth occur on the fringes, it may lead to more suburban sprawl; or blend into neighboring communities. She felt that focus should be on true infill with more compact development in the downtown area. She agreed that growth is inevitable, but felt that it is how the City defines this growth that will determine whether Morgan Hill will retain its unique identity and rural charm, or whether Morgan Hill will start to resemble the City's neighbors to the north. She encouraged the Council to keep the ULL as close to the UGB as possible. Further, that the City not allow too much land

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within the ULL. She felt the creation of a greenbelt was a commendable effort, but expressed concern that the process would allow more development to occur. She felt the City has plenty of vacant land within the UGB. She recommended that development occur in lands within the current UGB.

Ron Key, Spring Avenue resident, informed the Council that he and neighbors were in attendance at Planning Commission meetings and the Council's April 5 meeting. He requested Council follow the recommendation of the Planning Commission with respect to the Spring Avenue properties; inclusion of the properties within the ULL and the UGB.

Brandy Moreau informed the Council that she sent a letter that she understands was included in the Council's packet. She requested that her correspondence be considered before the Council makes a decision. She did not recommend the Council approval of the Oak Meadow Plaza property for annexation because there are too many unanswered questions.

Bart Hechtman, speaking on behalf of the Oak Meadow Plaza property owners, informed the Council that he submitted a letter for Council consideration that addresses items 13 and 14. He requested the Council approve item 13 as it relates to Oak Meadow Plaza that includes the general plan, ULL, and UBG, but differ item 14 that relates to the rezoning, annexation and the urban service area. He is requesting the Council differ item 14 as it is the heart of the issue. He said that the density of the project and the traffic impact arise out of zoning. He said that Oak Meadow Plaza representatives have heard the neighbors and have determined they can work with the neighbors to ameliorate some of their concerns. He foresees a process where Oak Meadow Plaza proponents can work with the neighbors and staff to prepare and revise the plans; allowing for dialogue to occur with the property owners and adjacent neighbors that would take approximately 2-3 months to try and come up with a workable solution. He would return to the Council in the form of a development agreement and an RPD zoning overlay that would impose some restrictions on the development that would give some comfort to the neighbors (e.g., restrict density, address traffic impacts, address the open space easement versus the fee acquisition, address/restrict granny units, etc.).

Mr. Hechtman addressed the difference between the 10% and 12½% slope through the development agreement and/or the RPD zoning. He said that it can be made clear that there is to be no development above the 10% line other than rear yard fences and associated landscaping. He stated that they would like to take the time to engage the neighborhood in an open dialogue to see what can be accomplished; working cooperatively. This is the reason he requests the Council take no action on any of the items related to agenda item 14 this evening. He indicated that the owners of the properties have been keeping open the DeWitt and Edmundson Avenue properties for more than two years while they engage in dialogue; working with the task force. He said that Oak Meadow Plaza is working on a concept with the City to preserve the open vistas in perpetuity. However, they are at a crossroad where property owners need an indication from the City if it desires to move forward with the project in some form. Property owners would like to know that they are not holding the properties open needlessly. Should the City not act at this time and continues the decision to the next general plan cycle, it would result in waiting until October or November 2006 for a decision. He informed the Council that there is an open space initiative that is being circulated that may appear on the November 2006 ballot. If approved, it will take affect in January 2007, absent legal challenge. If this happens, the visual safe guard/provisions of the initiative

will impact how individuals can use properties on DeWitt and Edmundson. If they are not able to work something out with the City to permanently preserve lands in open space, now is the time for these owners to take these properties to market so that potential buyers can get into the County and make their applications, obtaining appropriate approvals before the initiative becomes affective.

Mr. Hechtman stated that he would like the Council to approve the general plan amendment with a designation of single family low, and a zoning designation of 1-3 dwelling units per acre. This could result in a range of 20-60 homes on 20-acres. He felt this to be an appropriate range to work within without binding the Council to a particular figure. He requested the Council allow the property owners the latitude to have the 20-acres, using the 12½% line. There would be an understanding that when they return to the Council with a development agreement and the RPD zoning designation, a provision will be included that would make it absolutely clear that there will never be any development above the 10% line other than a rear yard fence and landscaping at the 12½% line.

Mayor Pro Tempore Grzan noted that Mr. Hechtman mentioned the open space initiative. He did not believe it matters what the initiative does as the Council could decide at a later date to move into the unincorporated areas, negating whatever restrictions are put into place.

Mr. Hechtman clarified that the open space initiative would only apply to unincorporated lands, if approved. He stated that by the time the City decides to incorporate these lands, homes may have already been constructed. He clarified that he was suggesting that if Oak Meadow Plaza properties are not allowed to move forward with the City on a mutually agreeable proposal, and home designs are submitted to the County, the City will end up with homes in places where it wants to see open fields. Once annexed, it is true that the properties would be under the City's control and the initiative would not apply.

Bob Costamagna, representing South Valley Community Church, informed the Council that the Church owns a small parcel of land adjacent to the Oak Meadow Plaza consisting of less than 1 acre. He requested the Council include APN 767-49-4600 into the ULL and UGB.

Bill Moreau expressed concern that there are a number of individuals on the Council, Planning Commission and staff who are not backing the citizens, but are backing the developers in their ability to develop this property. He noted that the northwest section of the property is on a steep hill and that it is too steep to build upon, regardless if it is dedicated as open space or not. He expressed concern that Council members have already made up their minds and that citizens are wasting their voice this evening.

Rocke Garcia, owner of the Black Rock property, stated his support of the Planning Commission and ULL task force recommendations as the property is a gateway into the City from Watsonville Road and the County areas. It is also the gateway to County rural properties and wineries along Watsonville Road. He felt this to be a major intersection and is adjacent to Quail Creek, a 54-unit development, and Quail Meadows, a 1-acre large custom home subdivision similar to what he is proposing. He noted that Quail Meadows has stubbed their street into his property. He has upgraded the sewer. He requested the Council adopt item 4 that would include the property within the UGB, designate the property for

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residential estate, add the property into the urban service area and prezone it RE-40,000; feathering the property from east to west from 1 acre to 2½ acres, followed by annexation into the City. He stated that inclusion in the UGB would allow dedication of an easement to the Santa Clara Valley Water District. He indicated that he has been a home builder and developer for over 25-years. He felt that what is being proposed is smart growth as he would be filling a need in the community to supply executive high end housing.

Alex Kennett said that no matter where the line is drawn, someone will want to be included/excluded. He recommended the Council keep in mind the quality of life we have in Morgan Hill and that the Council keeps this philosophy in mind as it makes decisions about the 10% versus the 12½% slope as well as the location of the line on Hill Road. He felt that a compact ULL would be better as it represents the continuation of the quality of life. He said that there are advantages to being on either side of the line. He said that the line should be allowed to be reviewed on a regular basis. He recommended that the Council take this matter to the voters so that it is kept, and reviewed with the general plan cycle or whatever timeline is chosen. Doing so would allow Morgan Hill to retain its quality of life, yet flexibility.

Brad Mortenson, pastor for West Hills Community Church, requested the Council adopt the recommendations of the Planning Commission with respect to the West Hills Community Church property.

Tim Russell addressed the Oak Meadow Plaza project. He inquired as to the value proposition this project would represent to the residents of Morgan Hill. He identified three possible scenarios for the Oak Meadow Plaza properties. 1) Allow the property to remain as is, beautiful rolling hills and pastures. 2) Property to remain in the county and be zoned 10-acres per lot; having estate homes developed on each of the lots. This would have the characteristics of being low density, attractive homes, and potentially increase the value of the surrounding neighborhood. Further, it would not add to the burden of additional traffic or safety concerns associated with the tot lots and Community Park. 3) Annex the properties and allow 60± homes to be developed; reserving 14 acres in open space. This would cause an increase in traffic to neighboring streets, reduce the safety for the residents and children, and depreciates the associated property values for the properties in the area. He felt that the City would see the 14-acres of open space regardless of any scenarios; therefore, the City is not gaining anything by allowing the development of the remaining 19 or 20 acres. Should the Council allow opening up the 14-acres to additional public access, this would increase the traffic beyond the 650-700 trips per day that was estimated for the 60+ homes to be developed. It also has the potential of having negative impacts such as drug use, assaults, etc. that may require additional mitigations such as lighting and additional street patrol. He stated his preference to the first or second option versus the third option.

Bill McClintock, MH Engineering, requested urban service area expansion and annexation because of the desirable infill criteria provided for in Measure P and C. He said that if a property has a significant benefit to the City and it has been made more difficult in Measure C, the Council can review and approve annexations beyond that needed for residential development in a 5-year period. He sees a significant benefit in that the Council has adopted a greenbelt study. The greenbelt study targets the Oak Meadow Plaza area, the old Bevelaqua Ranch, as one of the key properties that has significance to the

City. It is his vision to be able to open the area to the public in the future. He noted the City owns 35-acres in the area and that there are 34-acres of open space easements already dedicated on a project on Spring Avenue. He informed the Council that the developer is willing to work with the City on a staging area for a parking lot on DeWitt Avenue so that the neighbors residing in the development on Olympic would not be impacted with this traffic. He would like to see some trails open up with the project being proposed. In working with the City and the adjacent neighbors, he felt this proposal would be a benefit to everyone. He noted that development of the area was eminent and that the ULL Committee was working on the greenbelt study. The owners of the property have worked with the City in developing the MOU. If allowed to remain in the County, development could occur on 30% slope. He did not believe the City and its residents would like to see large estate houses built in the County. He felt this was an opportunity the City should not pass up. Regarding the development proposal, it was his belief that in working with the neighborhood and mitigating their concerns, the number of units could be negotiated. The development plan could address lessening the traffic by cul de sacing the five streets that touch this project; spreading the traffic out. He felt that working cooperatively, everyone would benefit.

No further comments being offered, the public hearing was closed for items 13, 14 and 15.

Mayor Kennedy said that it was his recollection that when the ULL Committee discussed Oak Meadow Plaza the goal was to preserve large number of acres in open space. The parcels of lands owned by Anchorpoint Academy were for sale and would have eminently been developed into large lot parcels with 11-12 homes being built on these parcels. The goal of this effort was to preserve the majority of the hill in open space through a concept of clustering. Higher density development would be clustered together to protect larger amounts of open space. He inquired as to how many acres of open space would be protected under this proposal.

Mr. Bischoff said that approximately 84-acres would be preserved as permanent open space that would allow agricultural uses with the exception of two homes that could be built in the general location of the existing house and barn on Edmundson Avenue. The 84-acres do not include the 34 acres owned by the City. He said that two other homes, near the water tank, could be built that would not be visible from Edmundson Avenue. In order to find a place for a house on DeWitt that would not be visible, it would require a land swap of about approximately 5-acres between the City and Oak Meadow Plaza land. By transferring land, it would allow a house to be sited on DeWitt that would not be visible. He said that you can expect homes to be large and be located in prominent locations, should the land be allowed to remain in the County. Without this proposal, there is nothing that would preclude the owners of the parcels from constructing homes or out buildings/associated structures on the property.

Mayor Kennedy noted there would be at least 118-acres in addition to the 34-acres for a total of approximately 150 acres of hilltop open space that would be protected by this action. The City is interested in protecting this open space, thus the interest for looking at the Oak Meadow Plaza proposal in the first place.

Council Member Carr noted that some speakers suggested that some of the acreage to be placed in open space is not truly developable. He inquired how much of the 84-acres could be developed as large lot estates as mentioned by staff.

Mr. Bischoff said that there are approximately 11 lots that could be developed with estate homes. He said that the 14-15 acres being proposed for open space or deeded to the City are steep areas that could not be built upon. Should properties be sold, homes could be built at the hilltop, including accessory structures that would have visual impacts.

Mayor Pro Tempore Grzan inquired how many homes could be developed without being brought into the City.

Mr. Bischoff said that with 11 lots, there could be 10 more homes built. It could be expected that the existing small home could be replaced with a larger home.

Council Member Sellers requested the Council ULL Committee members address their thoughts and ideas on developing the Oak Meadow Plaza proposal, tradeoffs, and where it should be headed.

Mayor Kennedy said that the ULL Committee was established approximately 3-years ago with the goal of establishing a greenbelt around the City of Morgan Hill. In order to establish a greenbelt, it needed to be determined where the greenbelt begins and ends; noting the greenbelt ends at the City's sphere of influence. It was the majority opinion of the ULL committee members to preserve as much of this hill as possible as a greenbelt. However, the property was up for sale by Anchorpoint Academy and was capable of being subdivided into individual parcels. The ULL Committee urged him and staff to meet with the property owners to see if there was a way to preserve the majority of this prime real estate property in open space as a greenbelt. He stated that the ULL Committee tried to find a solution that would be a win win situation, and benefit everyone. He understands that it is difficult for those living adjacent to pristine open space to see any development take place. He said that it was the Council's role to look at the greater good of the entire community and that it may require some compromises, on everyone's part. He felt the suggestion being proposed by Mr. Hechtman was a good one (e.g., changing the general plan to allow 1-3 du/acre, allow negotiations to take place with the property owners and residents to come up with a solution that addresses the residents' concerns regarding traffic, visual impacts, etc., over a course of 3-4 months. He did not believe that development would ever be the maximum of 3 du/acre. He recommended the Council support the general plan change to single family low (1-3 du/acre) as it would allow flexibility. He stated that there would be a whole series of steps that would need to occur after this. The first step is to have staff and the developer meet with the neighborhood to try and find a solution that would work for the residents.

Mr. Bischoff said that should the applicant and the adjacent property owners reach some sort of agreement, the agreement would return to the Council. If supported by the Council, the Council would be asked to act on the three applications: expansion of the urban service area, rezoning, and annexation. Should the Council take favorable action on all three applications, the application would go to LAFCo. He indicated that the LAFCo process could be a 6-12 month long process.

Mayor Kennedy noted that a development proposal would need to go through Measure C before being allowed to develop. He said the Planning Commission would have strict control on what kind of

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development would be allowed. He indicated that there would be a series of steps that would need to take place before allowing development to move forward.

Mayor Pro Tempore Grzan stated that the same proposal to add additional homes in this area came before the general plan task force. He indicated that the general plan task force was not in support of this development. He noted that the general plan task force, comprised of 21 members, did not have the conflict of interest the ULL task force had. He stated that he has concerns regarding any development in this area. He did not like being threatened that development would occur on the hillsides and be prominent, should the City not approve the applicant's proposal. He said that this same issue will be felt all around the City. He urged the Council to move forward with an agreement with the County in order to protect this area as well as other areas throughout the City. He noted that the applicant has requested the Council approve the general plan amendment at this time; deferring other applications to a later date.

Council Member Sellers said that should the Council agree with the applicant's request, the Council would be identifying general parameters and a range of development. He noted the Council would not be annexing property this evening. If not annexed at all, it may result in large estate homes being built, but fewer of them.

Mr. Bischoff said that he heard certain members of the public express concern about the density. Others stated they did not want to see any type of development occur at all. Should the Council approve the general plan amendment this evening, the Council would not be satisfying those individuals who have stated they do not want any type of development. The Council would be leaving the door open for those individuals concerned about density. A continuance would give the residents the opportunity to work with the applicant. The item(s) would return to the Council with an indication as to whether a reasonable compromise had been reached.

Council Member Sellers did not believe the Council was agreeing to move forward with the annexation should it decide to move forward with the general plan amendment this evening.

Mr. Bischoff did not believe the Council would be committing itself to a definitive number of units or a time frame for annexation should the Council agree to approve the general plan amendment this evening.

Mr. Hechtman stated that he would like an indication from the Council whether it believes this land is appropriate for ultimate urban development, and that it values the preservation of open space on DeWitt and Edmundson Avenues this evening. Would the City like the project proponents to work with the community to try and preserve the land? He said that the applicants would not look favorable at a deferral of all items for an undetermined amount of time. He noted the City is in a general plan cycle and that he was not sure whether the Council has the flexibility of bringing back a general plan amendment request. He noted that even two months is a critical amount of time based on the initiative being circulated.

Council Member Sellers noted the City is limited with the number of times a year it can make general plan amendments.

Mayor Pro Tempore Grzan inquired whether the plan being reviewed by the Council is the plan to be approved, should the Council approve the general plan amendment.

Mr. Bischoff said that the general plan amendment would include 20-acres within the urban growth boundary and be designated as urban development. It would also include property within the urban limit line. The recommended general plan amendment designation is 1-3 du/acre. This general plan density would allow the development of 20-60 dwelling units. He said that there are a few locations within the urban growth boundary where there are no urban designations. However, it is the policy of the City that lands annexed should have an urban designation. He said that he put together a list of issues raised by the Council members and by the speakers. He said that the location of the ULL in the vicinity of Hill Road was one of the issues. There are properties on Spring and DeWitt Avenues that need to be addressed. Also, to be addressed is action Item 3.4 that the Council asked be amended.

Council Member Carr inquired whether inclusion of a large amount of land in the ULL creates a greater amount of developable land over a longer horizon than indicated in Measure C. Does this cause some threat to Measure C?

Mr. Bischoff did not believe that including additional land in the ULL would threaten Measure C. He noted that Measure C has a time horizon of 2020. He stated that the UGB has designated land for urban development that would not be developed by 2020. He clarified that it is being suggested that the City expand further into the foothills. However, the City has not designated any lands for urbanization or committed to a timeline for development.

Mayor Kennedy suggested the Council discuss and take action on each item one at time.

Mayor Pro Tempore Grzan noted that item 13 looks at the Black Rock application.

Mr. Bischoff clarified that the only thing item 13 does for the Black Rock application is to include it within the urban limit line and amends the general plan to include policies that state that whenever the project develops, it is to have a transition of density between the Quail Meadow project to the southeast, and the unincorporated subdivisions to the southwest.

Mayor Pro Tempore Grzan recommended the Council take item 13 separately as it addresses Oak Meadow and Black Rock. He indicated that he has additional comments regarding Black Rock that he needs to address prior to the approval of item 13. He inquired where the water would drain to should this area be developed.

John Sear, project manager, EIP, indicated that the water for the property drains to the east, as a seasonal branch, toward Little Llagas Creek. As drainage has the characteristics of a seasonal wetland, it could be habitat for the red legged frog. Given that water is draining to Little Llagas Creek, 20-30 foot setbacks should be required. He said that the Regional Water Quality Control Board would prefer to have a non structural approach to storm water collection; maintaining grassy green buffers. He clarified that he has proposed a mitigation at a program level. Once a subdivision application is submitted,

specific requirements would be required to fulfill the C3 MPDS; including a permit pertaining to water detention, maintaining water quality, and reducing additional water runoff into the creek.

Mr. Bischoff said that the density and setbacks would be looked at as part of any development proposal. He informed the Council that the City requires all projects to retain storm water on site, or to make accommodations for storm water off site. He stated that this is typically included in some sort of open space or recreational aspect of a project. He anticipates this would be the case once the project develops.

Mayor Kennedy requested that staff respond to some of the questions raised by members of the public.

Mr. Bischoff noted that one of the speakers raised the issue of whether adopting a ULL within the timeframe larger than 20-years would cause legal problems with the City's RDCS. The same speaker suggested that one of the action items relates to acreages that did not add up. He said that there are 2-2½ acres on each of the lots that are not included in the open space easement as this is where homes would be built. If you add these acreages, the land would add up. The same speaker indicated that should the Council make a decision to include the property within the UGB, and it is to be 19-acres instead of 20-acres, this action item should be amended to reflect this. He stated his concurrence with this statement.

Mr. Bischoff said that should Mr. Maxey and his neighbor's property on DeWitt be included within the UGB/ULL, it would more than likely be assigned the same designation of residential estate that would allow up to 1 unit per acre. He said that both properties equal 2-2½ acres. Therefore, in theory, the property could accommodate another home on each of the lots. Based on Mr. Maxey's statement about the location of the existing homes, it would make the properties limited to subdivision. He noted that several individuals stated their opposition to the Oak Meadow Plaza project and does not believe a response is necessary. He said that a Church representative requested that a parcel be included within the ULL/UGB. He said that when the ULL/greenbelt committee looked at this area, it was his belief there was an understanding that the Anchorpoint-Oak Meadow individuals owned this parcel as well, but this is not the case. He noted that there is an existing home on the parcel. The Council could decide to include the parcel within the ULL/UGB. He noted that the .8 acre parcel is relatively steeply sloped and has limited development potential. Should the property be annexed into the City, it could be limited to no more than 1-3 homes; depending on the slope and a lot of different factors.

Mr. Bischoff noted that Mr. Garcia suggested the Council adopt all resolutions, but wanted to make sure that there is a condition included that dealt with feathering the development. He indicated that the condition of feathering from 1 acre lots adjacent to Quail Meadow and 2½ acres on the other side is included in the rezoning ordinance.

City Attorney Kern did not believe that an increase in the ULL would be inconsistent with Measure C. She noted that Measure C looked to the year 2020 and came up with a population cap of 48,000. She said that amending the ULL would not change the population cap, and that additional developable areas would not impact the number of units that could be developed.

Mr. Bischoff said that should the Council agree to include the Oak Meadow property in the UGB and honor the representative's request this evening, the next step would be to go to LAFCo. LAFCo would

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consider the request at the end of the year. If approved by LAFCo, the applicant would be able compete in the Measure C competition next year with the earliest possible allocation for Fiscal Year 2009-10 or 2010-11, in the best case scenario.

Mayor Pro Tempore Grzan noted that the property is on the outside fringe of the city limits and would more than likely lessen the probability that it would receive Measure C allocations.

Mr. Bischoff clarified that the project would receive fewer points from a project proposed closer to the downtown, under Measure C.

Mayor Kennedy indicated that there are a lot of actions included under item 13: approval of the mitigated negative declaration and adoption of a resolution on the various general plan amendments; including a series of steps. He noted that Mayor Pro Tempore Grzan has requested that the Black Rock property be considered separately. He inquired how the actions could be split.

Mr. Bischoff recommended the Council go through each item; taking a straw poll before proceeding. He said that the only relationship between item 13 and item 15, pertaining to the Black Rock property, is that item 13 would include the Black Rock property within the ULL and would include a general plan policy that states that when the property develops, it is to feather development from 1 acre to 2½ acre lots. Should the Council decide it does not want to entertain the Black Rock property and does not believe it should be included in the ULL; this would be good to know before acting on item 13 as the Council would need to delete the policy and exclude the property from the ULL.

Council Member Tate recommended the Council consider item 14, item 15 and the miscellaneous items; returning to item 13.

#### Item 14 – Oak Meadow Plaza property

Council Member Tate noted that the City is being offered a deal. He said that the benefit being offered in return is the dedication of permanent open space that will not be violated; ensuring that no house tops are built on ridges, and that the 11 developable properties would be tempered in such a way that would allow the right kind of visual open space for the community. He indicated that a lot of work has been done in this community in order to reach the goal of having attractive open space. He felt that these hillsides, along with El Toro, are critical to the views and quality of life in Morgan Hill. He said that there is something to be said about making a deal to preserve the hillsides in open space. He noted the property owner is offering some potential for recreational opportunities in the open space in the future. Therefore, there are benefits beyond setting the hillsides aside for open space. The question is how much the City is willing to pay for this benefit. He noted the property owners are asking for the ability to develop 65-lots. He felt this was too high a price to pay. He disclosed that he met with the development team yesterday, and that he met with Mr. Garcia several times regarding his development. He noted that the Oak Meadow Plaza proponents are willing to put this item off and have started to talk about feathering back the density of development. In his conversations with the Oak Meadow Plaza proponents yesterday, they indicated there could be a 50-51 unit development. It was his position that the City needs to negotiate further as he felt that even 50-units was too much to pay, in addition to the 5

units. He felt that 30-units may be the appropriate density to pay for the hillside. He acknowledged the City wants to receive the benefit of preserving open space. He felt this can be accomplished by approving item 13, and holding off on item 14 in order to allow negotiations to take place. He felt the project proponents have some great ideas on circulation, but that he does not know how you control the density. He noted that it was previously suggested that ½ acre to 1 acre lots be considered instead of 12,000 square foot lots. He did not believe this makes sense from the stand point of the 7,000 square foot lots that already exists in the development. He felt there needs to be a better transition.

Council Member Tate noted that the project proponents are requesting they be allowed to go up to 12½% slope because they want additional density. If less than 10% slope is allowed, it would equate to less density. If a 10% slope is used, it would preclude the approval of item 13. However, he felt this was a good suggestion. He felt there are things the City can do with an RPD overlay on the property as the City moves forward with the density. He suggested the property be feathered from 12,000 square feet to ½-1+ acre lots at the western edge of the property. He stated that he would support approximately 30 dwelling units for the Oak Meadow Plaza project.

Council Member Sellers disclosed that he met with the developers and that he has read every letter and e-mail forwarded to him. He said that the correspondence received had an impact. He was pleased to hear that there is an opportunity to continue the dialogue because there are a lot of unanswered questions. He did not believe the City has done a good job in communicating at the front end and talking about the direction to be taken. He felt it important to keep in mind what the City is trying to gain and what we risk losing. While there may not be a lot of homes built in the county, the City may be at risk of having the homes built in the wrong area, and do more to damage to the City's quality of life than having a few homes in the right place. He noted this is something the City has always tried to do. This is the reason he tried to get more development in the downtown as more housing is needed there. He felt that allowing more development in the downtown would make it difficult for development to occur in the outlying areas of the City. He stated that he does not support development south of Watsonville Road. However, the decision to develop in this area occurred 30+ years ago. As a result, the City is looking at infill for a lot of these properties off of the Spring-Edmundson and Santa Teresa-Watsonville properties. He recommended that the infill be done correctly as these are appropriate gateways, have all the benefits, and maximize what the community can receive for doing so. The Council can try to minimize the negative impacts and maximize the benefits. He stated that he was comfortable moving forward with the general plan amendment. He was pleased that the City was not moving forward on the annexation as he could not support 60-units this evening. He felt the density needs to be lower than 60-units. If the developer and the residents can work together, they can mitigate concerns. He recommended the City do a better job of communicating as the process moves forward.

Mayor Pro Tempore Grzan stated that he was not inclined to support this item at all. He said that the 11 homes that could be built on Oak Meadow Plaza property could still be built no matter what the City does. He hears the threat that should the 11 homes be allowed to proceed, they could be prominent homes. It was his recommendation that the City start working with the County and other cities about an agreement that not only deals with this area, but all unincorporated areas within the City's sphere of influence. He stated that he would not be agreeable to any type of development that would exceed 19-units in this area as it was his belief 30-units would be too much. He would also place other restrictions

such as not allowing two story homes so as not to preclude views. He would support the development of single story homes at a lower density that is planned with the existing community to address traffic and other mitigating issues. He recommended the adjacent residents be involved in this process so that they have some determination on how their views and lives will be impacted by this development.

Council Member Carr announced that he was not in attendance at the last meeting where this item was discussed. However, he disclosed that he listened to the April 5 meeting on a compact disc. He stated that he read all e-mails submitted and that he appreciated the thoughts as presented. In reviewing the proposal, he was not sure whether the right side of this hill was being preserved. He noted that the majority of Morgan Hill residents view the east side of the hills being proposed for development; a concern to him. He felt there were some issues that can be resolved in order to achieve some of the goals addressed by Council Member Tate. The Council needs to figure out the right trade offs in order to preserve open space. He stated that he drove the neighborhood and stopped at several of the cul de sac areas where you can see a terrific view. He supported looking at the slope and what percentage of the slope should be considered for development. He noted that there is a flat area that can be looked at as it is the face of the hillside the City wants to protect for the rest of the valley floor. It is his hope that an arrangement can be achieved that would allow for less density. However, he was not sure what the density number should be. He was pleased that Mr. Hechtman was willing to talk about the RPD overlay. He indicated that the e-mails received expressed concern about the density, traffic and different restrictions. He was pleased that the project proponents are willing to talk about these issues. He would support finding ways to work through some of the issues over the 2-4 month period to see what returns to the Council, in terms of less density while preserving the open space.

Mayor Kennedy disclosed that he met with Mr. Hechtman, Mr. McClintock and Anchorpoint Academy as well as with Mr. Garcia regarding these properties. He noted that the applicant is requesting that item 14 be deferred in order to give them time (2-3 months) to meet with the residents to try and come up with a solution that works. Therefore, the appropriate action would be to table item 14.

Council Member Tate concurred that item 14 needs to be tabled. However, one of the items the Council will need to consider with item 13 is the request for 12½% slope as opposed to 10% slope. He stated that he concurs with the Planning Commission's recommendation of staying within the 10% slope.

Mayor Kennedy noted that comments were made by each Council Member. He recommended that these comments be made as part of a motion, and that this information be referred to staff and Mr. Hechtman as they go through this process.

Mayor Pro Tempore Grzan inquired whether the Council can change its action, should the applicant return to the Council without an agreement with the adjacent residents.

Mr. Bischoff noted that there are certain times in the year the Council amends the general plan. These dates are in April and October, by policy. Should the applicant return to the Council in August indicating that they did not reach an agreement with the residents; the Council would need to wait until October to remove the property from the UGB and eliminate the residential designation on the property.

**14. URBAN SERVICE AREA APPLICATION, USA-05-02/ ZONING AMENDMENT APPLICATION, ZA-06-01/ ANNEXATION APPLICATION, ANX-03-01: EDMUNDSON-OAK MEADOW PLAZA** (Continued from 04/05/06)

**Action:** *Council Member Sellers made a motion, seconded by Council Member Tate to **Table** this item in order to allow the applicant to meet with the adjacent residents.*

Mayor Pro Tempore Grzan inquired whether the Council was requiring the applicant to return to the Council after meeting with the residents.

Mr. Bischoff said the Council could direct staff to return with progress reports every month to inform the Council as to the progress being made. However, if an application is tabled, there is a presumption that at some point, the applicant would return to the Council.

Council Member Sellers felt the applicant would return to the Council if they have reached an agreement with the residents, thus, the reason for his motion.

**Vote:** *The motion carried unanimously (5-0).*

**Item 13 – Hill Road ULL**

Mayor Kennedy inquired whether there was a desire to move the ULL further east, to the base of the foothills.

Mr. Bischoff clarified that it was the ULL Committee's recommendation that the ULL be at the base of the foot hills. He indicated that this was never a staff recommendation. The reason for recommending the ULL be placed on Hill Road as opposed to the base of the hill is based on the fact that staff believes that placing the line on the hills would be setting a policy direction. Individuals could look at the line and expect that at some point in the future, the City would be interested in expanding east of Hill Road. It is also staff's belief that a better decision would be to locate the ULL on Hill Road.

Mayor Kennedy noted that Mr. Thomas' argument was that by moving the ULL to the east and placing the property within the ULL, the City would have greater control of the property. He stated that Mr. Thomas made this argument at the ULL Committee, and that there was a close split vote of the ULL Committee to place the ULL at the base of the hill. He noted that the current proposal, as contained in the document, is to have the ULL on Hill Road. He hears consensus of the Council that it would like to leave the ULL on Hill Road.

Mayor Pro Tempore Grzan did not support moving the ULL further east, but would support the ULL following Hill Road to the south of Morgan Hill, to the end of the City's sphere of influence. Doing so would preserve some open space that is flat and gradually rising to the face of the foothills. He noted that the ULL Committee was made up with a number of property owners who had financial interests as to where the line was voted. If there was a different make up in this committee, he did not believe the line would be where it is being suggested today.

Council Member Sellers felt that Mayor Pro Tempore Grzan's recommendation was premature because the City is still dealing with the southeast quadrant issue and the industrial land use study. He felt that the extension of the ULL could be addressed at the time the southeast quadrant and the industrial land use study are completed.

Mayor Pro Tempore Grzan felt that there is a significant amount of property that would be undertaken as part of a study. This significant amount of area would impact the core of downtown Morgan Hill. He was looking at reducing the study area. He felt that in its reduced form, there would be a significant amount of property.

Mayor Kennedy agreed with Council Member Sellers that extension of the ULL can be brought up at the time the Council looks at the whole southeast quadrant, in light of the conclusion of the ULL Committee.

Council Member Carr recommended that it be stated that the Council will deal with the ULL at the time the southeast quadrant returns to the Council. He felt that there is a good argument that the ULL line needs to be extended and that the Council should spend some time talking about it.

Item 13 as it relates to the Black Rock property

Mayor Pro Tempore Grzan said that this is an awkward piece of property, noting that had there not been development along the west side of Santa Teresa, he did not believe the Council would be discussing Black Rock. He agreed the Council could extend the ULL along Santa Teresa to make it whole in this part. He suggested that there be significantly higher lot sizes. He disclosed that he met with Mr. Garcia and drove the property with him.

City Attorney Kern expressed concern with the comments made to Council with respect to item 14 in being able to adopt a general plan and changing it later. She felt that this would be placing the City at some risk. She noted that the project developer wants to move forward with the ULL and general plan amendment at this point in time because they have some issues about a potential open space initiative. The project proponents want to preserve their rights. It was her belief the project proponents will be looking at whether or not the Council will be giving them some direction that they can rely upon as to its intentions about the property. She expressed concern that the Council may believe it can proceed with a general plan amendment only to return in a few months to revoke the general plan amendment. She indicated that should the Council approve the general plan and the ULL there is no requirement the Council needs to move forward with the rezoning, etc. She reiterated that the developer is relying upon the action being taken this evening to make future decisions on development.

Mayor Kennedy noted that a general plan land use designation of single family low would equate to 1-3 dwelling units per acre. He noted that there may be a possibility of 19-acres that could equate to a minimum of up to 19 homes being developed, depending on the percentage slope agreed upon. Should the Council agree to this land use designation, there would be no expectation that this designation would change.

Mr. Bischoff clarified that the resolutions before the Council indicates 10% slopes and 19-acres.

Council Member Tate felt that it was late in terms of figuring out if the Council wants to go with a lesser percent slope and what that would be in order to control the density. He suggested the Council proceed with a 10% slope and look at this as a means to control the RPD in the future.

Mr. Bischoff said that even though the Council may decide to include 19-acres in the boundary, the Council still has control over development through zoning. It may be that the Council does not want to see the entire 19 acres developed as it may suggest that 2-acres be preserved as open space. He said that with Council action this evening, it may stipulate 19 to 60 units. He said that the general plan designation provides a range and that in theory; an individual could develop within this range. Should the Council assign a single family low range, it would be a presumption to state that you would not have fewer than 19-units. He clarified that a single family low general plan designation does not give the applicant the right to develop 60-units on the property. The range of development the City would consider would be between 19 and 60 units. He said that the zoning designation would be the tool that would allow the City to control the overall development of the property.

Mayor Kennedy indicated that he hears a majority of the Council in support of approving the general plan amendment with a single family low general plan designation with the comments that have been expressed. This includes 10% slope, and support of the general plan text amendment to Action 3.4.

**Action:** *It was the consensus of the Council to support the general plan text amendments to Action 3.4; support the Planning Commission recommendations with respect to the south side of Spring Avenue; and supportive of including the two DeWitt properties in the ULL.*

Mr. Bischoff indicated that the Planning Commission did not consider the request to include the South Valley Christian Church property located adjacent to the Oak Meadow Plaza properties in the UGB or the ULL.

Council Member Sellers did not believe the South Valley Christian Church property was discussed because everyone may have thought it was a part of the bigger project. He inquired whether the City had another opportunity to refer the Church's request back to the Planning Commission for a recommendation.

Mayor Kennedy supported including the Church property within the ULL as it is contiguous with the rest of the properties and may provide some opportunities to develop an RPD that would incorporate the entire area.

Council Member Tate stated that he would not be comfortable acting on property not previously considered.

Council Member Carr felt that it may be the property was considered in the evaluation as it may have been assumed that it was part of the larger project.

Mr. Bischoff said that it may have been an understanding that the Church property may have been a part of the Oak Meadow property and that Oak Meadow was not interested in the property. It may have been assumed that this area would be a part of the area that would be protected by an open space easement.

Mayor Kennedy indicated that he was not aware that the Church parcel being a separate, unique parcel. He doubted whether any of the ULL committee members were aware of the property. He recommended the Church property be included as it would allow for flexibility.

Council Member Carr felt the property may have been considered in the overall review of the ULL. He did not believe the Church property was called out or discussed separately. Had the property been called out, he felt that everyone would have supported including the property within the ULL.

Mr. Bischoff informed the Council that the Church property was not a part of the MOU. He noted that the Council is reviewing amendments to the general plan, and that the general plan has a specific policy that states the Council can amend the UGB at the time it undertakes the greenbelt study. He noted the Council is undertaking the greenbelt study at this time and that there is no provision for returning six months from now to amend the UGB again. He noted that this is a hilly piece of property. If left in the County, the property owner could probably build a home on the parcel. If included within the city limits, the property owner could place up to 2 homes under Measure C. He did not see any harm including the property within the UGB and the ULL.

Mayor Kennedy recommended that the Church property be included as it would provide more flexibility in solutions for the overall area. He indicated that the ULL Committee did not consider the Church property as it was located outside the line.

Mayor Pro Tempore Grzan agreed that the ULL Committee never considered the Church property.

Ms. Mareau inquired how the Council could sit here and discuss the request, and yet have so many issues unresolved; making changes and thinking about approving adding the church property this evening.

**Action:**     *It was the consensus of the majority of the Council to leave the Church property outside the ULL.*

Mr. Bischoff said that depending on the action to be taken with respect to the Oak Meadow Plaza, as part of item 13, it may involve some changes to the text amendments. He said that it appears as though the Council was leaning toward 10% slope instead of 12½% slope. If so, the Council will need to direct staff to amend page 4, item 7.5c, of the general plan amendments to reduce the number of acres from 20 to 19 acres. He recommended that language be included that stipulates the inclusion of 19-acres comprised of slopes 10% or less, and up to 57 homes.

Mayor Pro Tempore Grzan did not know why 57 homes needs to be indicated when it is known that the Council will agree to this number.

Mayor Kennedy noted that the general plan designation of single family low would allow 1-3 dwelling units per acre.

In response to Mayor Pro Tempore Grzan's inquiry as to an alternate general plan designation; Mr. Bischoff indicated that a residential estate land use designation would allow 0-1 dwelling units per acre.

Mayor Kennedy recommended that the general plan amendments not talk about the number of units.

Council Member Sellers noted that the Council heard from the applicant and felt that if the Council does not identify parameters, they may walk away and start developing the property with large homes at the top of the hill.

Mayor Kennedy suggested the general plan land use designation be identified as 1-3 du per acre, and not talk about the number of housing units.

Mayor Pro Tempore Grzan said that should the Council approve the action, the Council would be extending the ULL in this area to include this acreage to which there is potential development of 1-3 dwelling units per acre. The determination of whether 1-3 dwelling units would be allowed is at the zoning application level. This is the time the adjacent residents need to return to the Council as it will be determined whether there will be 19-units or whatever number of units are to be determined.

Mr. Bischoff noted that the property owners' representative indicates that they will be meeting with the residents in order to reach an agreement as to the appropriate number of units that can be developed. He clarified that the general plan text would state that 19-acres would be included within the UGB. He indicated that the Council could approve a development plan that could stipulate that of the 19-acres, homes would be built on 10-acres and the other 9-acres would be preserved for parks or other uses, as an example.

Mayor Pro Tempore Grzan noted that the Council has a non binding MOU in place.

It was clarified that should the Council enter into discussions about zoning and the applicant is not in agreement as to what has been decided, the applicant or the City can walk away from the non binding MOU.

Council Member Tate noted that item 13 includes the Black Rock property within the ULL.

Council Member Sellers indicated that he expressed concern about the location of the Black Rock property at the last meeting. However, he toured the Black Rock property and realized that this is in effect an infill development.

Council Member Carr stated that he toured the site and discussed the Black Rock property with the owner. He agreed that the property is bounded on three sides by development. He felt that what is being proposed fills in development and feathers development with what exists today.

Mayor Pro Tempore Grzan noted that a significant creek flows along the edge of the property and that it needs to be protected. He suggested that recreational opportunities be extended by implementing trails, etc.

Mayor Kennedy said that the blue heron habitat needs to be protected as well.

Council Member Sellers appreciated the endurance of the individuals who have stuck with these items. He clarified that the Council has set some general parameters and that the Council is not annexing properties this evening. The Council is providing the property owners with general parameters and directing them to go back and work with the neighbors in order to develop some opportunities that may show how they might mitigate neighbors' concerns and come up with a proposal that is viable. It was his hope that at some point down the road, the property owners will return to the Council with a proposal that is viable. He felt that the concerns expressed by the Council parallel with the concerns of the neighbors, in parts.

Mayor Kennedy noted that there is strong concern, on the part of the Council, to protect the adjacent residents' interest as the City goes through this process. He stated that there will be plenty of opportunities for future comments. He indicated that the developer will meet with the residents, working toward a solution that works for all parties involved.

**13. GENERAL PLAN AMENDMENT, GPA-05-05: CITY OF MORGAN HILL- URBAN LIMIT LINE/GREENBELT STUDY IMPLEMENTATION – Resolution No. 5996**

**Action:** *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5996, Approving General Plan Amendments, as amended this evening.*

Mayor Kennedy indicated that there were no Council Members who had a preconceived idea on how they would vote. He stated that the Council values the public's input.

**15. GENERAL PLAN AMENDMENT APPLICATION, GPA-05-06/ URBAN SERVICE AREA APPLICATION, USA-05-01/ ZONING AMENDMENT APPLICATION, ZA-05-27/ ANNEXATION APPLICATION, ANX-05-18: SANTA TERESA BOULEVARD-BLACKROCK (Continued from 04/05/06) – Resolution Nos. 5997, 5998, 5999 and Ordinance No. 1776, New Series**

Council Member Tate noted that item 15 contains a memo from staff that presents suggested options. He noted that the applicant has suggested the Council chose option 4, moving forward with all items this evening. He stated that he was inclined to approve item 2, including the property within the UGB and

designate the property for residential estate use; denying the urban service area, prezone and annexation request. He said that this option would recognize that annexation and development of the property may be appropriate within the next 20-years, but felt that annexation and development at this time would be premature.

Council Member Carr said that he views this property as infill today as it has development on three sides of the property. He noted that services are located adjacent to the site. Denial would preclude the ability to hook up to city services.

Mayor Kennedy agreed that this is infill property.

Council Member Tate said that he would agree that it would be appropriate to develop the property within 20-years, but not at this time. He agreed with the speakers that have questioned the establishment of a ULL, and that the Council is including new properties. He did not believe it made sense to amend the ULL at this time.

Mayor Pro Tempore Grzan stated that he does not believe the property fits the classic description of infill as when the Council looks at something closer to the core of the City. He stated that it is an awkward situation in light of the existing homes. He noted that this area is pristine, open space and is located at the farthest extremities of the ULL. For the Council to immediately suggest development at this location, does not feel right at this time.

Mayor Kennedy noted that it was mentioned that this is a gateway to the City. He felt that the proposed designation of residential estate recognizes the property fits within the surrounding communities, noting that development would feather between both sides of development. It was his belief that long term; it makes sense to develop at the proposed density versus commercial or higher density at this location.

Council Member Sellers noted that this is an old decaying Christmas tree farm that would fall into further decay. He did not find old decaying Christmas tree farms being attractive. He expressed concern that the property would be left fallow and has minimal use for the next few years while the property awaits inclusion in the ULL. Given the fact the property is a gateway, he would be comfortable moving forward with option 4.

**Action:** *It was the consensus of the majority of the Council to support option 4.*

**Action:** *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Pro Tempore Grzan abstaining, **Adopted** Resolution No. 5997, Approving the general plan amendment.*

**Action:** *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 3-2 vote with Mayor Pro Tempore Grzan and Council Member Tate voting no, **Adopted** Resolution No. 5998, Approving the expansion of the urban service area.*

- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Rejected** Non-Responsive Apparent Low Bid Numbers 3, 4, 13, and 20 as Shown on the Bid Results Summary and as Reviewed by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Awarded** Construction Contracts for Various Prime Contractors in the Total Amount of \$10,701,023, per Bid Results Summary; Subject to Review and Approval by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Authorized** the City Manager to Execute Consultant Agreements for Professional Services During Construction, per Staff Report Memo; Subject to Review and Approval by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Authorized** the City Manager to Execute a Sixth Amendment to the Noll & Tam Design Agreement, per Staff Report Memo; Subject to Review and Approval by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Adopted** Resolution No. 5992, Declaring the City's Intent to Reimburse Certain Library Project Expenditures from Bond Proceeds.*

**18. GENERAL PLAN AMENDMENT, GPA 05-05: CITY OF MORGAN HILL-URBAN LIMIT LINE (ULL)/ GREENBELT STUDY IMPLEMENTATION**

Contract Planner Bischoff presented an overview for items 18, 19 and 20 as there were interrelationships between the three items. Regarding the ULL/Greenbelt Implementation, he indicated this is an item that was before the Council in April and June 2005 where it received the final report of the advisory committee regarding the creation of a greenbelt around the City. He said that the ULL is the culmination of three years of work by the ULL Committee, as well as the Planning Commission, in trying to draft a greenbelt plan for the City. He stated that the ULL Committee spent a lot of time deliberating, put a lot of hard work into this item, and came up with good solid recommendations that were presented to the Council last year. What is before the Council this evening is the implementation of the greenbelt. He identified the proposed amendments to the general plan text and certain maps contained in the general plan. The text amendments clarify the intent behind the greenbelt plan, defines where the ULL will be, the greenbelt areas, priorities for implementation of the greenbelt, etc., as

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contained in the Council's agenda packet. He indicated that the ULL is shown on the diagram that has four areas where the urban growth boundary is proposed to be constricted, and two areas proposed to be expanded: West Hill Church area at DeWitt and the Oak Meadow Plaza property. He addressed the non binding Memorandum of Understanding (MOU) the City entered into with the property owners to better define what the City would be evaluating as part of the environmental document.

Mr. Bischoff addressed the Oak Meadow Plaza by stating that the property owners are requesting that 20-acres be added to the urban growth boundary and the urban service area. They are proposing that 14-acres be annexed into the city limits and be designated as open space, by means of an open space easement, to ensure that it will not develop. As the County and LAFCo do not like partial properties to be brought into city limits, the proposal is to bring all of the property into the city limits; recognizing that only 20-acres would be brought into the urban growth boundary and urban service area.

Mr. Bischoff addressed agenda item 20, the Black Rock application. He indicated that the ULL Committee recommended that the Black Rock property be included in the urban limit line, but took no action with respect to including the property within the urban growth boundary, or designating it for urban use. The Committee stated that when this property is ultimately developed, the density should transition between the 1 acre lots being developed on the Quail Creek project and 2½ acre lots, similar to the ones adjacent to the southwest, in the County. He informed the Council that the owners of the property have submitted applications to include all of the property within the urban growth boundary and to designate it residential estate, 1 unit per acre. The property owner has also filed applications to include the property within the urban service area, prezone the property R1-40,000/RPD and annexation. He stated that the RPD proposal would be consistent with the recommendation of the advisory committee regarding transitioning and density from 1-2½ acre lots.

Mr. Bischoff indicated that in June 2005, the Council directed staff to prepare general plan amendments that would implement the greenbelt study. The Council also directed staff to conduct an environmental evaluation on the potential impacts of the amendments. Following this direction, the Oak Meadow Plaza proponents submitted applications to expand the urban service area for the 20-acres; including a request to annex and prezone the property. It was after the Council's direction that the owners of the Black Rock properties filed applications for general plan amendments, etc. Based on the relationships between all properties, he felt it made sense to consider all applications under one single environmental evaluation.

Mr. Bischoff addressed the environmental evaluation conducted, indicating that the evaluation was done at a program level. Being addressed are the general plan amendments and annexations. The environmental evaluation does not address a specific development proposal. He indicated that the environmental document has been prepared in general terms. He said that the finding(s) of the document is that the overall amendments to the general plan would not have significant adverse impacts. However, the study identified three areas where the urban growth boundary is proposed to be expanded that have potential significant adverse environmental impact(s). The study identified mitigation measures which would reduce these impacts to a less than significant level. As a result, a mitigated negative declaration is proposed to be adopted. He informed the Council that staff received a number of comments from individuals regarding the mitigated negative declaration, and that many of these comments have been included in the Council's packet as well as responses. He indicated the City has received additional

comments that staff will package with other comments; returning with these comments to the Council on April 19; along with a mitigated negative declaration and mitigation monitoring program.

Regarding the public process for the three agenda items, Mr. Bischoff said that copies of the proposed general plan amendments were sent to all advisory committee members who served on the ULL/Greenbelt Study Committee. He indicated that the Planning Commission conducted two hearings regarding these amendments: March 14 and March 28. He informed the Council that a lot of testimony was received at these meetings, and the letters received were included in the Council's agenda packet. Staff has provided responses to comments for correspondence received prior to the March 28 Planning Commission meeting. He informed the Council that the testimony presented to the Planning Commission focused on four areas: 1) the area located on the south side of Spring Avenue, east of DeWitt Avenue; 2) the west side of Dewitt Avenue, south of the area proposed to be included in the urban growth boundary; 3) the 20-acres proposed to be included in the urban growth boundary on the west side of Sunset; and 4) the Black Rock property located on Santa Teresa-Watsonville Road.

Mr. Bischoff addressed the comments and actions taken by the Planning Commission with respect to these four areas.

1. The Planning Commission received testimony from property owners adjacent to the Westhill Church area. The owners questioned why their properties were not being included in the urban growth boundary as it is being recommended that their properties be included in the ULL. He said that at the time the ULL Committee reviewed the area, they were not aware of specific development applications or an interest for annexation. Therefore, the properties were not included in the urban growth boundary. The Planning Commission is recommending that the properties be included in the urban growth boundary.
2. The two property owners in the DeWitt area looked at the area being proposed to be included and requested their properties be included as well. He indicated that the ULL Committee dealt primarily with areas where urban services were being provided. He said that sewer and/or water is being provided to a number of parcels along DeWitt Avenue as well as the Church. He noted that two of the parcels do not receive city sewer or water service. Therefore, the ULL Committee did not recommend this area be included in the ULL or urban growth boundary.
3. The Planning Commission received significant testimony with respect to the Oak Meadow Plaza area. Although the property owner requested 20-acres be included within the urban growth boundary, the Planning Commission is recommending only 19-acres be included. He stated that the ULL Committee recommended that up to 20-acres be included. However, all 20-acres need to be on slopes of 10% or less. Engineers have found that there are not 20-acres on slopes of 10% or less, but only 19-acres of 10% or less slope. The Planning Commission believes the 10% slope, which equates to 19-acres, would be appropriate. Another issue the Planning Commission considered dealt with the creation of an open space easement over the 14-acres. The Planning Commission felt it would be better to have the property deeded to the City versus remaining in private ownership. He said this recommendation is, in part, associated with the issue of the desirable infill policy. The Planning Commission felt comfortable having these 14-acres under city ownership as opposed to having it in an easement. He clarified that the Planning Commission is at a difference from the

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applicant in two regards: 19-acres to be included instead of 20-acres, and that the open space be deeded to the City.

4. Regarding the Black Rock application, he indicated that there were a couple of pieces of correspondence received. Members of the public who attended the Planning Commission meetings spoke in opposition of including the property within the urban growth boundary or designating it for urban use.

Mr. Bischoff informed the Council that in addition to the correspondence included in the Council's packet, there is correspondence on the Dais. He indicated that letters from Sherri Sliter, Craig & Maria Hodges, three letters from the D'Elia family, Donna Agneta and Bart Hechtman were received. All letters, except that from Mr. Hechtman, are in opposition to the Oak Meadow Plaza project. Mr. Hechtman, attorney for the Oak Meadow Plaza proponents, is requesting that 20-acres be included in the urban growth boundary instead of the 19-acres. Mr. Hechtman requests the issue of whether or not the 14-acres is to be owned by the City or privately owned with an open space easement be deferred to a development agreement phase. With respect to the Black Rock property, he indicated that a letter was submitted by John Kilkenny. The Council also has the Planning Commission minutes from the March 14 and March 28 meetings on the Dais.

Mr. Bischoff stated that it is staff's recommendation the Council open the public hearing and receive public testimony, Council to ask questions of applicants and staff; and continue the matters to April 19. He requested the Council identify any additional information it needs. Staff will then make sure it provides the Council with a full packet of information at the next meeting. Also, the Council to identify the direction it wishes to proceed. Direction will assist staff in providing resolutions of approval for Council consideration at the April 19 meeting. At the April 19 Council meeting, staff will have the mitigation monitoring and reporting plan available.

Mayor Kennedy announced that it is not the Council's intent to make any decisions this evening. He said the Council will hear public comments, discuss the items, provide direction, and ask questions of staff. The Council will then continue these items to the meeting of April 19, with the possible exception of the desirable infill agenda item, as the Council may wish to take action on that item.

Mr. Bischoff said the Council may wish to consider opening the public hearing for agenda items 18 and 19; hearing these items concurrently. Should the Council come to a conclusion on these items in April, the next steps to move the urban limit line forward would include an industrial land study to determine what actions should be taken for the southeast quadrant. Once the industrial land study is completed, it would be the expectation that the Council would decide the next steps for the southeast quadrant. He stated that another item included in the implementation plan is that the City would begin to look at the specific implementation strategy. He said the City would look at using both regulations and acquisition as a means for preserving greenbelts. He informed the Council that staff is working with the County toward amending their hillside regulations. With respect to acquisition, it is being recommended that this be a part of the program where the City looks at buying some at risk, highly visible properties; hopefully as easements and not fee title. However, this plan would need to be developed. He said the ULL Committee is recommending priority areas where the City should be focusing its energy.

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Mayor Pro Tempore Grzan stated that he has a concern with regard to Hill Road. He would like to study this area further when it comes to the southeast quadrant, east of Hill Road.

Council Member Tate disclosed that he met with a group of neighbors this afternoon.

Mayor Kennedy disclosed that he met with Jeff Pedersen.

Mayor Kennedy opened the public hearing for agenda items 18, 19 and 20.

Rocke Morton, a 30+ Spring Avenue resident, noted his property is not currently included in the ULL. He indicated that the city limits borders his property for approximately 50-100 feet. He requested his property be included in the ULL, indicating that his property is less than 10% slope.

Mr. Bischoff said the ULL Committee recommends property fronting Spring Avenue be included in the ULL who are receiving urban services. He indicated that the ULL is proposed to go along the northern boundary of Mr. Morton's property. He noted that Mr. Morton's property does not front Spring Avenue as there is another property between his property and Spring Avenue.

Jeff Pedersen stated that he would address agenda items 18 and 19. He indicated that he attended both Planning Commission meetings where these items were discussed; offering his comments. He addressed three basic concerns: 1) process; 2) need, and 3) density. He stated that he appeared before the Council on February 29, two days after a number of Parkside residents learned that the Council approved an MOU for the development of the Oak Meadow Plaza property. At the February 29 meeting, he questioned how the Council could approve the MOU without following the proper process. He expressed concern that the Council has gone on record taking discretionary actions; approving an MOU without an environmental assessment. He expressed concern that there is prejudice, at this point, based on earlier Council action. At the Planning Commission meeting, it was found that not only was the Council going on record approving the project before hand, but that there was no consultation on the initial study by LAFCo or the State Clearinghouse. He noted that LAFCo responses came to the City after the first meeting of the Planning Commission. He felt the comments at the Planning Commission and the Council meetings should tell the Council the negative declaration is not adequate. He noted the City has a greenbelt planning concept and is imposing a ULL that is not complete. He felt the environmental review process conducted thus far is inadequate and warrants an EIR. He did not believe the City needs to annex land if it really wants to preserve open space. He noted the Oak Meadow Plaza parcels are currently zoned County agricultural and are Williamson Act property. He said that it is hard for residents to understand how the City will protect open space by allowing development to occur; creating additional sprawl. He inquired how the approval of 60-units was determined.

Zoe Gustlin stated that she read through the ULL document and found it difficult to understand. It was her understanding the document was for a 20-year growth span. She felt the process is turning into how you can move the ULL in order to get property into the City and annexed. In looking at the ULL drawn according to the ULL Committee, it is now being discussed how you can move the concept of the lines out and get property added to the ULL. She said that in looking at the Sunnyside/Santa Teresa line, you will see that the property is a gateway to the western foothills and is the gateway to the scenic beauty of what Morgan Hill residents like. If you start moving the line across Sunnyside and Santa Teresa, the City is moving into the foothills. Doing so will start to destroy the beauty that sits there. She requested

the ULL be defined so that everyone knows where it is before it is moved. She did not believe it was the City's intent to keep moving the line into the western foothills. She requested the Council take a look at what the ULL is, where it is drawn, and its intent. It was her sense from the Planning Commission that it was a way to get property from developers annexed into the City. She requested the area be kept green and beautiful, and not let the City start encroaching to the west. It was her belief that there was plenty of infill and downtown land to focus development upon without the need to bring development out to these areas.

Jon Maxey stated he owns property contiguous to property being considered be included in the ULL. He would like to obtain city services; primarily water. He said that water is available on the street, but that he cannot have city water unless he is in the ULL. He stated that he was under the impression that had he attended the first meeting, his property would have been included in the ULL. He requested Council consideration in bringing his parcel into the ULL so that he can have access to city services.

George Thomas, Jr. indicated that he served on the ULL Committee. He stated that he was disappointed that the Committee did not get notified when this issue first came before the Council as he would have liked to have made his comments then. He stated that he met with Mayor Kennedy and Council Member Tate about this concern; acknowledging that it was an oversight. He requested the Council adopt the recommendation of the ULL Committee along the east hills. He said that his family is not interested in development, but do not want to leave this section of Hill Road surrounding by the City, Holiday Lake, and Cochrane Road, as an island for the future. His family would feel a lot safer with the City of Morgan Hill and the citizens' residential development control system. He was not talking about changing the lot sizes or discussing urban development. He noted the City adopted recommendations for "feathering" of larger lot sizes toward the hills. He noted the City abuts the family's 88-acres and that they have problems with enforcement of zoning issues with the County at this time. He is concerned with private sewer plants in the future that would allow more development in the County than is seen today. He did not know what the County will allow to develop if the City does not control the area. He said that there is a lot line being created on one of the urgent parcels discussed by the ULL Committee. He indicated that there are surveyors on the 72-acre property looking at creating three parcels in excess of 20-acres each. He felt this was a key piece of land, and that this would be a good time for the City to approach the property owner before he completes the process in order to preserve the hills above 10% slope.

Ron Key introduced Pete Gale, residents on Spring Avenue. He indicated that he submitted a letter to the Planning Commission and resubmitted the letter to the Council. He pointed out that the letter submitted this evening contains additional signatures. He urged the Council to follow the Planning Commission's recommendation for inclusion of the properties listed in the letters to the urban growth boundary.

Michele Beasley, representing Greenbelt Alliance, indicated that the Greenbelt Alliance submitted comments to the mitigated negative declaration. Since the establishment of the ULL is creating an envelop for future development, she felt it reasonable that development would occur on what is currently prime farm land. She felt it may be a good time to consider something along the lines of an agricultural mitigation policy; perhaps one acre for one acre, which could also be used as a tool to permanently protect agricultural lands on the other side of the ULL. She stated that the creation of a greenbelt area is a great way to maintain the quality of life in Morgan Hill and promotes centered growth. However, now

that the ULL is no longer considered permanent, she felt it is a moving target as more properties are being included in the ULL. This could threaten the rural charm that is part of Morgan Hill. It will also define the community as Morgan Hill continues to sprawl out instead of using existing vacant land that is within the urban growth boundary. She recommended the City place more emphasis on investing in the downtown, the vibrant center of community life.

Brian Schmidt stated that the Committee for Green Foothills submitted comments to the Planning Commission. After submitting comments, he realized there was a mistake in discussing Black Rock. He requested the Council disregard this particular comment in his letter. He said that one theme that can be seen tonight is confusion about what the ULL means. He felt the confusion extends to LAFCo. He suggested a way to clear up this confusion; treat the ULL as a second urban growth boundary as this will redirect growth. He felt that the conversion of farm land needs to be addressed in an environmental impact report. The City could extend the urban growth boundary with subsequent approvals being necessary before farm land conversion could occur. It was his belief that individuals would agree that soon after the ULL is established, individuals would be approaching the City to be included within the urban growth boundary. Therefore, an impact would result. He raised a concern regarding wetlands. He said that there is a statement contained in the negative declaration that states that if a wetland is not a jurisdictional wetland, under the Clean Water Act, then there is no impact. He stated that the Clean Water Act is limited to what wetlands it can cover. He noted that isolated wetlands are not covered by the Clean Water Act. However, he felt isolated wetlands can still have a tremendous environmental value. He recommended the Council study all wetlands and mitigates all impacts associated with wetlands. He further recommended the Council proceed with the greenbelt recommendations as it can proceed independently. Further, that the Council take no action on the ULL requests; sending them back for an environmental impact report.

Bill McClintock spoke on behalf of the Oak Meadow Plaza project. He informed the Council that Bart Hechtman was not in attendance this evening, but that he submitted a letter for Council consideration. He was pleased to see the City is moving forward with a greenbelt study as it is important for land owners to know their position long term. He said that the reason Oak Meadow Plaza is before the Council is because there is eminent development rights associated with the hillsides. With this eminent development and the greenbelt study moving forward, he felt this to be a golden opportunity for the City to preserve pristine lands in the City for long range public use. He stated that Oak Meadow Plaza will be providing 84-acres of open space in exchange for support of their application for urban service area, urban growth boundary and annexation. He said that the hill may not be eminent for development and sees the area being used as hiking trails and pathways that circulate around the hill to the top. He noted that there are 50+ acres of land already in open space in a development agreement to the north. Therefore, there is significant acreage for something to take place in the city. He said the reason that larger acres are desired is to allow for bigger back yards, not to gain additional units. He said that 60-units are being planned for this property. With regards to Mr. Pedersen's comments about the process, he said that LAFCo will be hearing this application and that it is his hope the City will recommend approval to LAFCo.

Angelo Starink addressed the annexation of the Oak Meadow Plaza project. He stated that in 1999, when he and his wife were looking for a home, they found their home adjacent to the Oak Meadow Plaza property. His builder told him the Oak Meadow Plaza was in the County and could only develop 1 house per acre. He verified this information with the City and proceeded to purchase his home. He stated that it

was disappointing to learn the City is considering annexing the land and the development of 60 homes. He felt the builders of the Oak Meadow Plaza are only concerned about maximizing their profits. He inquired whether the City considered allowing the development of 20 homes, still resulting in a profit for the developer. He recommended the City maximize the benefits for citizens, and not maximize the profits for builders.

Desiree Lehrbaum, a Parkside resident, indicated that she and her husband considered moving to Morgan Hill in 1999 as they wanted to get away from the cement development of San Jose. Prior to moving to Morgan Hill, they contacted the planning department to understand the intention for the acreage surrounding Parkside. They were informed that development would be acreage development. She felt that a lot of the neighbors have made a good faith effort in investigating the future growth plan; acknowledging that Morgan Hill has a great growth policy in place. She echoed a lot of what she has heard this evening regarding identifying the long term goals for what is to be achieved for Morgan Hill and how to manage growth. She felt good policies and rules are put into place and then managed by exception. As a citizen of Morgan Hill, she would like to understand how you affect changes in the process when changes come forward. While she appreciates the work of the ULL Committee, she did not believe the Committee took into consideration the impacts to existing neighborhoods. Placing access for 60 homes in front of her on a road that currently dead ends, would equate to approximately 500-650 additional car trips per day. She felt this to be a significant change to the way of life. While the 85 acres may sound like a good deal for the City, she requested the Council consider how development will impact existing neighborhoods.

Bill Moreau stated that he and his wife moved to Morgan Hill almost 3 years ago. They moved out of San Jose because it was starting to look like Los Angeles. He was told by his real estate agent that the property owner could not construct high density on this property. He indicated that he submitted a letter to the Planning Commission and one to the City Council. He noted a letter was submitted in support, but that it was his understanding that this letter was from the attorney representing the landowners. He noted that everyone, except the developer, is opposed to development. He expressed concern with drainage, noting that the baseball fields are under water, and that additional land development in the area would result in additional runoff. He clarified that he was not opposed to development and that he would find it acceptable to see 20-acre subdivisions. Development of 60 homes would give a San Jose feel with all the traffic it would generate.

Maria Hodges agreed with Bill McClintock that the lots should be bigger, but not in the way he was addressing. When you have open space, she did not believe you would want cramped high density housing. She recommended larger lots feathering out with a nice transition into the hills be considered. She stated that she and her husband oppose the annexation and zoning application for the Oak Meadow Plaza. She felt there was enough land within the city limits to build for many years to come. She did not believe this was the time to bring more land into the City. Although the City has expectations of receiving open space in return for housing development, she requested the City consider what it will be receiving in return for concessions. She felt the City needs to be careful of the return on investment for special considerations to land owners and builders. This consideration should apply to annexation of lands so that Oak Meadow Plaza lands would fall within the annexation requirements of being adjacent or being a certain distance from city land. While Morgan Hill will receive open space, she noted that some of this space is not buildable. She did not believe that a tradeoff for land that is not buildable is a tradeoff. She felt it admirable that the City wishes to maintain open space. However, a question needs to

be asked whether the 12,000 square foot lots were appropriate for the 19 acres. It was her belief that an appropriate alternative would be to have one acre lots feathering to 2-5 acre lots; providing a much better transition to the open space.

Mayor Kennedy indicated that there was a lot of confusion regarding the ULL and the greenbelt. He stated the City had a goal to establish a greenbelt around Morgan Hill as was identified in the City's general plan. The mechanism used by staff and the ULL Committee to establish the greenbelt was to create an urban limit line. He stated that the urban limit line was intended to be the ultimate growth limit line. He said that there is a 20-year urban growth boundary line in place today that is subject to change. This urban limit line was intended to be an alternate growth boundary line. Outside of this line, greenbelt would be designated on maps and plans. The City would take action to acquire lands or somehow permanently guarantee they would stay in a greenbelt. He said the goal with the Oak Meadow Plaza is to try to acquire and preserve as much of the property in open space as possible; creating a greenbelt. He indicated that the Bevelaqua property has entitlements for development under County rules. He stated that 10-12 housing units could be allowed under the County's ordinance, and the City would have very little control over where houses would be built. They could be placed on ridgelines or in locations that would destroy the views of the residents of Morgan Hill. An effort was made to come up with a plan that would try to create a greenbelt and preserve open space. He said that if you cannot acquire or acquire a conservation easement, the property would eventually develop.

Mr. Bischoff indicated that the ULL Committee recommended, in the definition of the urban limit line that it be referred to as the ultimate boundaries of the City. When this matter was brought before the Council in April and June 2005, there was some question whether or not the ultimate boundaries was appropriate or possible. Based on the advice of the City Attorney, the language has been modified. He noted that the specific language states that it is a longer term version of the urban growth boundary and that it is intended to reflect the City's long term policy for the growth of Morgan Hill beyond the 20-year timeframe of the urban growth boundary.

Mr. Bischoff noted that a speaker stated there was no early consultation with LAFCo and the State Clearinghouse. While it is true there was not early consultation with LAFCo, the information was provided to the State Clearinghouse. The City received a letter from the State Clearinghouse indicating that there were no agencies desiring to comment. He noted that the City has received a letter from LAFCo. There was a comment made that the assessor's records show the 20-acres in the Oak Meadow Plaza property under the Williamson Act. He clarified that the property is not under the Williamson Act. He indicated that the property owner filed for non renewal of the Williamson Act contracts in the early 1990s and that the County misplaced the application. It was in the last couple of years the County was able to straighten this out.

Regarding the confusion about the urban growth boundary and the urban limit line, Mr. Bischoff noted that it was suggested that the urban growth boundary could be expanded without the need to mitigate for the loss of agricultural land. He stated that this is not a true statement. He noted that in the review of the Black Rock application, it was found that it was agricultural land and that a mitigation measure has been included for the loss of agricultural land. Therefore, any expansion of the urban growth boundary would require review of environmental affects, including impacts on agricultural lands.

Mr. Bischoff said that the interest in preserving the hillside (the Bevelaqua Ranch) existed for a long time. He noted there is an action item in the City's general plan that states the City should conduct a greenbelt study that includes an evaluation of the prominent hillside bounded by Edmundson, DeWitt, Spring and Del Monte-Sunset; including the properties on the eastern face of El Toro. Strategies are to be included for the preservation of these important visual resources. Therefore, the direction to the ULL Committee to come up with a solution on preserving these lands dates back to the 90s. It was his recollection that at the time the ULL Committee reviewed this issue, the property owner was interested in including some land adjacent to Sunset within the City. The desirable infill policy the City has in place states you cannot annex more than 20-acres of land. Therefore, the 20 acres came from this. It was also his recollection that the ULL Committee was looking at something that would provide a transition from 7,000 square foot lots from the Parkside-Kendall Hill development up to the open space so that there would be some feathering provided. This was the reason they looked at a lower density. He noted the City has a zoning category of R-1-12,000. Having R-1-20,000 square foot lots was not raised at the Committee level. There was discussion that should the land owners sell each of the lots individually in the county, they would realize a certain amount of money. However, if they were not allowed to site homes on prime locations, there is a lower value that could be achieved. Thus, the request for 60 units.

Ms. Molloy Previsich responded to the comment that approval of the MOU without CEQA review was inappropriate. She clarified that the structure of the MOU was carefully worded to state that the purpose of the MOU was to define a project description on the part of the property owners. She noted that the City is one of the property owners of land involved in the proposed project. Therefore, the MOU's intent was to clarify what was being proposed by all property owners, including the City. This is a non binding agreement and that it was defined so that the environmental review would address the project description. She noted that the environmental review has been completed, a mitigated negative declaration has been prepared, and the City is proceeding with the public hearings. Therefore, all possible actions are still open for Council consideration. She stated that staff supports the mitigated negative declaration as the appropriate environmental document, and does not believe an EIR is necessary.

Mayor Kennedy noted that it was suggested by Ms. Hodges that perhaps one solution would be to feather lower density as a compromise. Instead of 3 units per acre, the City could approve 2 units per acre and that development is feathered so that it does not become a hard edge; blending into the surrounding area. He requested that staff take a look at this to see if this solution will work.

Council Member Tate agreed the City wants to get the benefit of having the open space dedicated and not having houses built on ridgelines. He felt it worthwhile pursuing open space. However, the question is how much you pay for the open space. When you allow 5 homes in the County, plus 60 additional units, he felt this too high a price to pay. Further, it does not include the feathering as suggested by the urban limit line. He supported looking at the feasibility of creating ½ acre lots feathered out to full 1 acre lots (less dense development). He stated that the preservation of open space is worth pursuing. He felt the need to preserve open space exists, but not at the density being suggested.

Mayor Pro Tempore Grzan indicated that the Council considered this recommendation at an early date where he informed the Council that there were a number of residents who were concerned about the development of homes behind their homes. At that time, he did not vote in support of the request. He felt the proponents of the Oak Meadow Plaza development were getting a great deal. He suggested

eliminating the 60 homes and pursuing another agreement. He recommended the City pursue an agreement with the County that would protect lands in the unincorporated/hillside areas.

Council Member Sellers said that there are three significant issues that need to be reviewed and considered: 1) Projects need to make sense in terms of their contiguousness/adjacencies. 2) Adding any additional lands should require significant public benefit/public investment. 3) There should be substantial mitigations of the impacts for allowing these projects to be incorporated. He felt there were a lot of unanswered questions. He recommended that staff elaborate on what will need to happen in order for a single home to be built in this valley. He acknowledged that plans have not been submitted or prepared for potential development. An elaboration on what is being proposed would be helpful to him, and perhaps the community.

Council Member Tate clarified that his comments only addressed the Sunset area, not the area along DeWitt or Spring Avenues. He noted the Council has a recommendation from the Planning Commission to include all properties along Spring Avenue, except Rocke Morton's property because his property does not front Spring Avenue. There is no recommendation to include the two lots that want to be included on DeWitt Avenue. He did not believe it made sense to exclude the two DeWitt lots because they are surrounded by the City. He felt it was the Council's intent to have a boundary that remains an ultimate line, even though it cannot be stated it is an ultimate line. He felt this an area that would be changed at some time in the future.

Council Member Sellers agreed with Council Member Tate as it relates to the ultimate line. He felt the Planning Commission had a reason for recommending inclusion of lands that had existing city services, and not include lands that did not have city services. He requested staff provide an explanation why these two parcels were not recommended for inclusion and the possible benefits that inclusions would give the City.

Mayor Kennedy noted that the ULL follows Hill Road from Main to Dunne Avenues. Mr. Thomas is suggesting that the line be moved further to the east. He noted that this was the subject of a lot of discussion at the ULL Committee level. He requested Council thoughts on this particular issue.

Mayor Pro Tempore Grzan recalled the discussions at the ULL Committee level about the Hill Road area were contentious and that there was a close vote. It was staff's initial recommendation to follow Hill Road. When the item was reviewed by the Council, the Council made the determination that staff's recommendation was the proper determination. He still believes this to be the proper determination. He agreed the land east of Hill Road is precious as it moves up toward the foothills. He indicated that Morgan Hill is known for its open space and recommended their preservation; extending to Maple Avenue.

Council Member Tate said that he likes the arguments as presented by Mr. Thomas as they give pause to reflect on what is trying to be accomplished. He noted that there are requests to extend the urban limit line beyond the Black Rock and the Oak Meadow Plaza areas; noting that the City has annexation requests for both properties. When the City has control, there is pressure for development. He felt the purpose of the study was to define the areas where there are limits and the City does not want to see development. The suggestion of working with the County and trying to get cooperation in terms of having control of these areas is a good way to go.

Council Member Sellers felt that Mr. Thomas' comments were somewhat counter intuitive to state that the City needs to protect the east foothills from the County that has a much lower density. He noted that there has been significant growth in Morgan Hill over the past years. It has to be acknowledged that there will be growth. He has advocated that more growth is needed in the center of the City and the contiguous areas. The City needs to figure out what the future will hold and the best course of action to take; given the fact the City cannot predict the future. He inquired whether it would be better to bring hillside areas into the City so that it can be protected in perpetuity, or to leave it in the County where there is less pressure to develop.

Mayor Pro Tempore Grzan noted the staff report for item 18 contains a number of descriptions for policies. He felt that some of the strikeouts proposed in the policy weaken the intent of what the Council wants to do. He referred to item 7, paragraph 3.4, page 171. This statement would allow the Council to look at expanding the urban growth boundary line within the ULL every five years.

Mr. Bischoff clarified that staff found that a lot of the language did not make sense. Staff also thought two items were contradictory and confusing. The sections talks about ensuring the City has a 20-year supply of vacant developable land within the urban growth boundary. However, it did not talk about what happens if the City drops below the 20-year supply before the major updates to the general plan. The modifications proposed would allow expansion of the urban growth boundary with a major update of the general plan, or at such time the City finds it has less than a 20-year supply. He did not believe it would allow a lot of permissiveness. He noted that evaluation of the supply of land every 5-years already exists and is not proposed to be changed.

Mayor Pro Tempore Grzan did not believe the residents in attendance would want to return to the City in a couple years to address the issue again. It was his belief that the intent of having a ULL and having it permanent is to give the residents some sense of comfort that precious open land and the rural atmosphere can be preserved.

Mr. Bischoff said that if it is the goal to ensure that an urban growth boundary has a 20-year supply, the City needs to evaluate this supply periodically. He said that the words can be changed, but that evaluating the supply of land every 5-years to determine whether there is a 20-year supply is an appropriate thing to do.

Mayor Kennedy recommended the use of smart growth concepts. He felt the City needs to change the way it looks at the future supply of land; developing upwards instead of outward. Maybe the City needs to make the urban growth boundary a more rigid requirement so that when the City looks at the future needs for housing, the City looks up instead of outward.

Mayor Pro Tempore Grzan suggested that the decision of where the line is to be drawn be taken to the voters. Once approved by the voters, the only way the line can be changed is by the voters. Should the City determine it needs additional land in the future; the voters will decide whether it will take in more land as opposed to five members on the Council. He would advocate bringing this issue to the voters sometime in the future to make some permanency to the line.

Council Member Sellers cautioned against stating the City will come up with a solution in perpetuity. He felt that citizens in the community and members of the Council have to be diligent and cautious. He noted that a majority of residents moved to Morgan Hill because of the policies established 30-years ago. He did not agree with the statement of telling individuals that it will never be an issue again as it will always be an issue. He wanted to be cautious that you never allow complacency to set in the community as this is something the City will always have to be diligent about.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Continued** agenda item 18 to April 19, 2006.*

19. **URBAN SERVICE AREA APPLICATION, USA-05-02/ ZONING AMENDMENT APPLICATION, ZA-06-01/ ANNEXATION APPLICATION, ANX-03-01: EDMUNDSON-OAK MEADOW PLAZA**

See comments as listed under agenda item 18.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Continued** this item to April 19, 2006.*

20. **GENERAL PLAN AMENDMENT APPLICATION, GPA-05-06/ URBAN SERVICE AREA APPLICATION, USA-05-01/ ZONING AMENDMENT APPLICATION, ZA-05-27/ ANNEXATION APPLICATION, ANX-05-18: SANTA TERESA BOULEVARD-BLACK ROCK**

Mayor Kennedy opened the public hearing.

Zoe Gustlin said that as much as she would like to see the city limit along the Sunnyside-Santa Teresa boundary, this may or may not happen. She requested the Council consider that the property adjacent to the Black Rock development to be rural. In looking at what happened when development occurred at the corner of Watsonville and Sunnyside, city standards were imposed. Now, at the intersection of Sycamore and Sunnyside, you have lines drawn all over the street that are confusing. There are also street lights every 20 feet that light up the area. If the City is going to allow development in these areas, she requested that thought be given to city standards and what they will look in this area as it is too much over kill. She also noted that developers are installing cement walls along rural areas (e.g., Sunnyside and Sycamore Avenues). She recommended the installation of see through fencing in the future. She further requested the City change the standards to compliment rural areas. She noted that there are three pieces of land that are in the same position as the Black Rock property adjoining Sunnyside: the horse ranch at the corner of Sycamore and Sunnyside, and the two properties located along Sunnyside, between Watsonville Road and Sycamore. These properties have the same look and feel as the Black Rock property. She felt this whole stretch of land needs to be thought about; not allowing piece meal development to occur. She recommended that an urban limit line be placed along Sunnyside and Santa Teresa.

**Teresa Crue**

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**From:** Joy B [joyb@cando-productions.com]  
**Sent:** Sunday, July 12, 2015 7:29 PM  
**To:** Planning\_Commission  
**Subject:** Home owner Morgan hill

Hello,

I'm a home owner in Morgan Hill and in strong opposition to any homes being approved on the oak meadow proposal/ development.

Our family moved to Morgan Hill a couple years ago and are appalled at all the new development given the terrible commute traffic that already exists- we are looking to sell and move away from Morgan Hill due to the out of control development we are going up everyone around town (and hit all looks like high density housing / tiny lots with huge houses).

The city needs a better master Plan that keeps the small town feel Morgan hill is known for.

Sincerely,

Joy Thompson  
16275 Denali dr  
Morgan Hill, CA

Sent from a smart phone. Please forgive any typos.

**Teresa Crue**

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**From:** sherrisliter@aol.com  
**Sent:** Sunday, July 12, 2015 1:21 PM  
**To:** Planning\_Commission  
**Subject:** EDMUNDSON OAK MEADOW PROJECT

Dear Planning Commission and City Council Members,  
My name is Sherri Sliter and I am the original owner of 16204 Sunset Ave. My home is directly across the street where the proposed Oak Meadow housing development would be. I am totally against this development, period!!! There are NO benefits to this project for Morgan Hill at all. There is plenty of flat land available in Morgan Hill and there are numerous construction of homes being built throughout the entire town!!! No one has brought up the fact of water (we are in a drought) situation, safety and traffic. This land needs to stay in the county. I am against the annexation to the city.

Thank you,  
Sherri J. Sliter (Morgan Hill resident for 39 years)

# Comments

Name	Location	Date	Comment
Kristie Starink	Morgan Hill, CA	2015-06-27	Want to preserve land and beauty.
Yvette Castanon	Morgan Hill, CA	2015-06-27	Building houses on this beautiful meadow will not benefit the citizens of Morgan Hill. It will only benefit the developers. One of the reasons Morgan Hill remains a desirable place to live are the open areas, such as Oak Meadow. If the Morgan Hill City Council approved the annexation of Oak Meadow, it will be lost to the citizens of Morgan Hill, forever.
Sean Parent	Morgan Hill, CA	2015-06-27	I want to see Morgan Hill focus development on actual infill and connecting the community. Don't sprawl and take away our views.
Raymond Grzan	Morgan Hill, CA	2015-06-27	Protection of our AG and Farmlands is consistent with the values of Morgan Hill. The Oak Meadows project does not. This response is not only for me but for four voter-registered adults living in Morgan Hill.
Mary Sperry	Morgan Hill, CA	2015-06-27	The land did not fit criteria/ definition for infill until the council (under Kennedys leadership at time) changed it specifically for this developer. Kennedy worked for developer later. This seems a conflict of interest.
PAUL SPERRY	Morgan Hill, CA	2015-06-27	Foreign funded development of high density housing is not the right fit for this grazing/open space site.
Dianna Yang-Dininno	Morgan Hill, CA	2015-06-28	Irresponsible development practice will have big negative impact on our environment and wildlife. In 2012, Santa Clara Valley Audubon Society send a letter to City, pointing out: Oak Meadow annexation project deferred mitigation for impacts on California Tiger Salamanders, Inadequate mitigation for impacts on Burrowing owls, Loss of agricultural land, stops movement of wildlife through the project site, etc.  Environment need open space, especially along hillside. We are against annexation of Oak Meadow, a county land.
Sherril Nathan	Morgan Hill, CA	2015-06-29	When Morgan Hill has built on every parcel that is less attractive than our beautiful meadow, then I will consider supporting this project. The city has more than 20 yrs of buildable land already within the city limits they do not need to annex anymore.
Elaine Loewenstein	morgan hill, CA	2015-06-30	Elaine Loewenstein
Richard Ruso	Los Gatos, CA	2015-06-30	Save the pristine view of the foothills!!!
Maria Hodges	Morgan Hill, CA	2015-07-01	Before annexation of county land into Morgan Hill for development, city land should be developed first. Additionally. the definition of infill should not be changed to accommodate a single developer. True infill should occur before annexing any new land into the city.
Jayne Perryman	Morgan Hill, CA	2015-07-01	As a long term (since 1972) resident of Morgan Hill, I appreciate the need for open space. Do not annex hillsides due to the pressure from a developer.
Rossana Sigal	Morgan Hill, CA	2015-07-01	There is enough development happening in Morgan Hill. Soon we will have no open spaces with little regard to the wildlife that live here and to the people who love Morgan Hill as it is. too many changes are taking place - some good and some NOT good. Please consider what is being said. I hate to see our urban city turn into another San Jose.
kristy Sermersheim	Morgan Hill, CA	2015-07-01	I live nearby; we moved to Morgan Hill because of the open space, farm-like environment. Homes should be built within the current limits, not on the foothills.
jennifer chiou	摩根山丘, CA	2015-07-01	love our home, earth

## SUPPLEMENTAL 1 ITEM 1

Name	Location	Date	Comment
Ron Thompson	Morgan Hill, CA	2015-07-01	This is an inappropriate location for this project.
GEN CHESTER	MORGAN HILL, CA	2015-07-01	genc
Mike Herrera	Morgan Hill, CA	2015-07-02	When I moved to Morgan Hill, I thought I was moving to the country, but not with the city limits at the edge of my property line. And the street getting busier. Just too fast.
Mary Johnson	Morgan Hill, CA	2015-07-05	I live in the neighborhood and disagree with the methods used to approve this development
Sandra Lim	Morgan Hill, CA	2015-07-07	The town is growing too fast and getting more and more crowded.
Helen Lindsey	Morgan Hill, CA	2015-07-07	Enough annexation. We enjoy rural areas. Leave Oak Meadow as is.
Barbara Fels	Morgan Hill, CA	2015-07-11	Way too much home building in Morgan Hill, especially considering our water shortage!!!
Brett Rickard	Morgan Hill, CA	2015-07-11	The project violates precepts of our General Plan (GP). The project does not conform to LAFCO's principles and guiding authority for annexation. City has sufficient land for residential development within its current city limits.
Matt wicklander	Morgan hill, CA	2015-07-12	Current resident. Keep Morgan hill as is
Caroline Lopez	Morgan Hill, CA	2015-07-12	Growth is getting out of control in Morgan Hill!!
Julia Merrill	Morgan Hill, CA	2015-07-12	This project would ruin our beautiful nature space and lessen our quality of life. It goes against what the voters have previously approved. Keep Mogan Hill Green!
Gina Gaitan	San Jose, CA	2015-07-12	i dont want mh to end up like sj. Keep Mh small!
james kristoff	Kihei, HI	2015-07-12	I have lived here 40 years and the growth has gotten completely out of hand. We have no water and way too much traffic.
Debbie Roth	San Martin, CA	2015-07-12	Morgan Hills developing/housing is totally out of control!!! We moved here 38 years ago for the small town atmosphere and beautiful surrounding hills.
Ben Marquez	Morgan Hill, CA	2015-07-12	Megan hill is growing too fast
larry breniman	Morgan Hill, CA	2015-07-12	Unchecked growth merely for profit must be stopped.
Don Ostheimer	Morgan Hill, CA	2015-07-12	I am opposed to the development of this unique open space view corridor.
Deborah Miller	San Jose, CA	2015-07-12	I'm tired of the destruction of the natural beauty of this area. Enough already!!!
Jessica Fry	Morgan Hill, CA	2015-07-13	I support the well planned growth that Morgan Hill has been following for years!
Randy Merrill	san jose, CA	2015-07-13	IT'S IMPORTANT to keep a balance of undeveloped and developed lands.
George Meyer	Morgan Hill, CA	2015-07-13	Limit Growth in Morgan Hill!!!
Mary Treacy	Kingston, PA	2015-07-13	I moved here a few months ago because Morgan Hill was small and cared about the residents. Please don't change that.
Matthew Meininger	Morgan Hill, CA	2015-07-13	I love our rolling hills and the cattle that graze on them!
Leslie Daniel	Morgan Hill, CA	2015-07-13	This town is getting so big with all the building, too much traffic, more crime, this is getting like San Jose it's not going to be the nice country town it was before and it's a shame, this was a beautiful town and some parts still are but with more building it will be another City! Please stop. Building!
Amy Tate	Morgan Hill, CA	2015-07-13	I used to live adjacent to this hillside and that's how it should remain. We are enough vacant lots in the city to develop before ruining our beautiful hillsides which make Morgan Hill beautiful

## SUPPLEMENTAL 1 ITEM 1

Name	Location	Date	Comment
Wendy Mosgrove	Morgan Hill, CA	2015-07-13	The project does not conform to LAFCO's principles and guiding authority for annexation. City has sufficient land for residential development within its current city limits.
Dan Yetso	Morgan Hill, CA	2015-07-13	Please STOP over-developing our great city!
Terrell Day	Morgan Hill, CA	2015-07-13	I want to keep Morgan hill beautiful
Victoria Owens	Morgan Hill, CA	2015-07-13	The reason so many people love Morgan Hill is because of the beautiful hillsides and natural state the land is currently in. We need to protect the lands for agriculture and grazing and not use for additional housing development. I don't want to see our little town turn into other nearby cities whose housing development is taking over their natural hillsides. Enough already!
Steve Lee	Morgan Hill, CA	2015-07-13	There is already too much building and new housing development in the city of Morgan Hill. This area of town is beautiful and should remain grazing land and a view-shed. There are numerous places to build and this does not need to be one of them. Have the developer move on permanently. This seems to come up for development over and over again and is simply wasting tax dollars and time of the city government. How do we permanently tell this developer "NO" and be done with this?!
Steven Wheat	Morgan Hill, CA	2015-07-13	There are other more appropriate zones within Morgan Hill that should be developed prior to this area.
Michele Petersen	Morgan Hill, CA	2015-07-13	I disapprove of annexation of Oak Meadow for development!
Stuart Dicker	Morgan Hill, CA	2015-07-13	I disagree with the over development of Morgan Hill
vickie Nelson	Morgan Hill, CA	2015-07-13	Stop the development, save the hills
Colleen Loop	Morgan Hill, CA	2015-07-13	To much building already inMH!
Margaret Snively	Morgan Hill, CA	2015-07-13	Morgan hill has adequate area for development at this time. Our focus now should be providing more housing at affordable prices near transit.
Julie Cabrerros	Morgan Hill, CA	2015-07-13	to protect Morgan Hill from overcrowding and the use of our resources.
Robin Realini	Morgan Hill, CA	2015-07-13	This agricultural land needs to be protected.
diane moffett	San Jose, CA	2015-07-13	Lets keep some of the hillside as it was and limit the area to development.
Leonard Kurtz	Morgan Hill, CA	2015-07-13	Morgan Hill City Council needs to protect green open areas, prevent overall over development of our community!
Alan Truscott	Los Altos, CA	2015-07-13	I like open space.
Ryan Lokey	Morgan Hill, CA	2015-07-13	It's a small town!!!! Stop building!!!! It's already not the same!!!!
Tim Zapien	San Jose, CA	2015-07-13	•Agricultural lands, including lands for grazing are to be protected
Luana Crotteau	Morgan Hill, CA	2015-07-13	We are getting toooo big.. less housing needs to approved. Slow Down please.. MH will loose it's charm that we all love and why we moved here.
Marina Espinosa	Morgan Hill, CA	2015-07-13	I would like to keep Morgan Hill agriculture as it is today, We have enough housing and stores! We can't maintain anymore, and I like the small town feel Morgan Hill had in 1999. The growth is enough already!!
Matilda Winans	Morgan Hill, CA	2015-07-13	I love the open fields in our town. I don't want them to disappear.
Beth Wyman	Morgan Hill, CA	2015-07-13	Deja vu, all over again!
Connie Erdman	Morgan Hill, CA	2015-07-13	stop the building.. keep this a small town area.. with beautiful country side
Trish Catalano	Morgan Hill, CA	2015-07-13	I have lived here since 1977 and do not like how every square inch of space is being built/paved over. Stop it!
Gloria Wolff	Morgan Hill, CA	2015-07-13	WE NEED TO STOP BUILDING

## SUPPLEMENTAL 1 ITEM 1

Name	Location	Date	Comment
Cynthia Jensen	Morgan Hill, CA	2015-07-13	City council needs to listen to what the residents of Morgan Hill want, not what they want. Please restrict growth.
gina wilson	Morgan Hill, CA	2015-07-14	enough development. We dont need to be another san jose or santana row.

**Teresa Crue**

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**From:** Dianna [dianyang@att.net]  
**Sent:** Monday, July 13, 2015 9:18 AM  
**To:** Planning Commission  
**Subject:** Against annexation of Oak Meadows

To Morgan Hill Planning Commission,

I am Dianna Dininno, a home owner in Kendal Hill community. I am against annexation of Oak Meadows off of Denali Drive in Morgan Hill.

I was from China and I know first hand what terrible consequences irresponsible development and ignore citizen's voice can lead to.

There are a lot of developers and builders in China, they make secret, illegal deals with government officials, they override civilian's voice and rights.

They take away farmland, wilderness, and build at alarming rate. Now in most of the cities, there are empty houses that can last until year 2033 without building more.

Their environment is badly damaged, streets are clogged, and air is polluted. Now China is the most polluted country in the world, including water, soil, and air.

We don't want that to happen in our community in Morgan Hill.

The Oak Meadows project is heavily influenced by developer and special interest so far. Even the outside consultants who makes recommendation for the annexation are paid indirectly by Developers' application fee. Citizen's opposing voice has not been considered despite of home owners in the community repeatedly opposing it in the meetings and email letters.

There are evidence that there has been unethical, even illegal practice, which deliberately prevent or make it hard for the community to participant in the decision making of the project.

For example the MOU to remove Urban boundary at Oak Meadows is approved by the city in 2006 without noticing the impacted community.

For recent Meetings of Planning Commission to recommend annexation of Oak Meadows, there is ether short notice, or claiming that notice has been sent, but in reality no notice has been sent to home owners of impacted community.

Here are some more facts: (This document is a work in progress)

[https://docs.google.com/document/d/1IRJAeIPCiyt39VXK5rQVTkEk7scOoNp1qh9\\_rd6\\_o5w/edit?usp=sharing](https://docs.google.com/document/d/1IRJAeIPCiyt39VXK5rQVTkEk7scOoNp1qh9_rd6_o5w/edit?usp=sharing)

In year 2013, according to LAFCO there were 33 years manufacturable land, and according to City of Morgan Hill there were 18 years manufacturable land for housing development. And since then, there might have been more land annexed from the County. So we don't need to annex more land from county for many years to come!

Now I am a US citizen, a tax payer. I would like to exercise my democratic rights.

I would like to request vote on any annexation of county land by home owners of the community. These matters should not only be decided by planning commission and developers.

Regards,  
Dianna

## ORDINANCE NO. 1816, NEW SERIES

### AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING THE CITY'S RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS IT RELATES TO THE DOWNTOWN RESIDENTIAL UNIT ALLOTMENT PROCESS, AND AMENDING PROVISIONS OF THE GENERAL PLAN AND CHAPTER 18.78 OF THE MUNICIPAL CODE

The people of the City of Morgan Hill do ordain as follows:

#### **Initiative Measure Section 1: Findings and Purposes**

In approving this initiative measure, the voters of the City of Morgan Hill make the following findings:

- A. Since 1977 the City of Morgan Hill ("the City") has had in place a Residential Development Control System ("RDCS"), which sets a target future population for the City and provides a method for evaluating proposed residential developments and issuing a limited number of development allotments each year. The RDCS has helped to assure that residential development pays for itself and that the rate of development does not outstrip the availability of public services and infrastructure to serve the City's residents. The system was first enacted by the voters through Measure E in 1977, and subsequently refined and extended through Measure P in 1990 and Measure C in 2004. By its terms Measure C shall remain in effect until fiscal year 2019/20, and can be amended only by a vote of the people. By this RDCS Update, the voters of the City are amending Measure C to establish a process for allocating up to 100 additional residential unit allotments for projects of up to 25 units within the downtown core, defined as from south of Main, north of Dunne, east of Del Monte, and west of the railroad tracks ("Downtown Core"); and for adjusting the timing of existing allocations awarded in March 2006 within the Downtown RDCS Boundary; providing that all projects are consistent with the Downtown Plan and meet minimum RDCS scores.
- B. Under Measure C, the RDCS has fostered balanced growth in the City. The City has achieved a manageable level of development, and has encouraged more efficient patterns of development by directing growth to areas that are contiguous to existing development and served by adequate infrastructure. The RDCS has helped the City to preserve a diversity of housing opportunities, including a good stock of high-quality affordable housing, for its residents. It has helped to maintain the vitality of the City while preserving its open space resources.
- C. Measure C established a population ceiling of 48,000 for the City in the year 2020. The City's current population is approximately 37,100 persons. In 2001, the City updated its General Plan and incorporated in it an updated population projection of 48,000 for the year 2020.

- D. The City adopted a new Downtown Plan in 2003. A major strategy of the Downtown Plan is to encourage an increase in the number of residential units in the downtown area, in order to strengthen the base of support for existing businesses, to provide market support for new businesses, and to establish a viable neighborhood in this central area of the City. This RDCS Update will allow additional flexibility for projects of up to 25 units in the Downtown Core to obtain residential unit allotments outside of the established allotment process, thereby facilitating development in the Downtown area consistent with the Downtown Plan.
- E. The voters find that allowing for 100 additional allotments and a more concentrated timeframe for construction of downtown housing and mixed use projects may result in a higher than usual increase in population growth in the short term, as more than the usual average of 250 dwelling units per year may be constructed. The voters find that this is acceptable because earlier implementation of the Downtown Plan is desirable and beneficial to the general community welfare. While the 100 additional allotments may result in from 200 to 300 more residents downtown than presently anticipated to 2010, this would support achievement of public objectives for a vibrant downtown.
- F. Based on the foregoing, the voters hereby enact the provisions set forth in sections 2, 3, and 4 below, amending the General Plan and Chapter 18.78 of the Morgan Hill Municipal Code.

## **Initiative Measure Section 2: General Plan Amendment**

The City of Morgan Hill General Plan Community Development element contains the core provisions governing "Residential Development Control," as adopted by the voters of the City when they passed Measure C in March 2004. The people now wish to amend the provisions of the General Plan enacted by them in Measure C, and accordingly adopt the General Plan amendments set forth below. Changes to the text approved by the voters in 2006 are shown by strike-out text for deletions, and underscored text for additions. The "Residential Development Control" provisions appear at pages 25-28 of the July 2001 Morgan Hill General Plan. The provisions of the General Plan as amended by this initiative shall remain in effect through fiscal year 2019/20.

### **Residential Development Control**

The following provisions, enacted by voter initiative Measure P in 1990 and refined and extended by votes of the people of the City in 2004 and 2006 shall apply to all residential development in the City, and to any residential development that requires provision of urban services by the City, to and including fiscal year 2019/20.

**A. Requirement of Development Allotments for All Residential Development.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the City of Morgan Hill unless a development allotment has been obtained therefor in accordance with the provisions of this section of the General Plan and the Residential Development Control System (RDCS) set out in the Morgan Hill Municipal Code, except for secondary dwelling units ("granny units") and for a single dwelling unit, on the following conditions: If one unit is proposed on a parcel of sufficient size to accommodate additional units, it may be permitted without an allotment only if a deed restriction is placed upon the parcel which requires allotments to be obtained for any additional dwelling units on that parcel. Furthermore, if more than one contiguous parcel is proposed for development by the same individual or entity under the single dwelling unit exemption on each parcel, Residential Planned Development Zoning shall be required for such development.

The Residential Development Control provisions of this section shall apply to all types of residential development in the City of Morgan Hill, including single family (which includes mobile homes) and multi-family housing.

**B. Number of Development Allotments.**

The population ceiling for the City as of January 1, 2020 is forty-eight thousand (48,000). This ceiling shall not be increased, regardless of whether additional lands are added to the City or its Urban Service Area. However, if any of the following existing County subdivisions, which are already within the City's Urban Growth Boundary ("Existing County Subdivisions"), are annexed into the City, the population within them shall not count against the 48,000 person population limit: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III (at the southwest corner of Hill Rd. and Diana Ave.).

Except for the 100 allotments made available by the voters in November 2006 for projects of up to 25 units in the downtown core area defined as from south of Main, north of Dunne, east of Del Monte, and west of the railroad tracks ("Downtown Core"), which are in addition to the usual numbers as determined by this paragraph, the number of allotments shall be determined biennially, using the California Department of Finance's most recently determined figures for the persons per household and total population of the City of Morgan Hill. The State's estimate will be adjusted for any relevant housing backlog not included in its population estimate, any Existing County Subdivision (as defined under the prior paragraph) that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between the population estimate date and 2020. This gross annual allotment is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

Except for the 100 allotments made available by the voters in November 2006, the number of development allotments shall be divided between conventional single family dwellings, mobile homes and multiple family dwellings in a manner determined by the City Council, provided that no less than thirty-three percent of all allotments shall be awarded to single family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The City Council may, if it chooses, further divide the allotments according to geography, price, development size, phasing (including the number of units and timing of allotments required to complete a project), and similar criteria as deemed necessary to provide for the general welfare.

For the competitions for allotments in fiscal years 2006-07 through 2009-10, the City Council shall reserve a certain number of allotments for projects in the Downtown Area. The number of allotments allocated, and the geographic limits of the Downtown Area for this purpose, shall be determined by the Council. The Council may amend the number of the reserved allotments and geographic limits of Downtown for this purpose, and may continue to reserve an appropriate number of allotments to Downtown area projects after the 2009-10 fiscal year. Downtown housing and mixed use projects within the Downtown RDCS Boundary that were awarded allotments in March 2006 may be started and completed earlier than their allotment years. The City Council may establish procedures for scoring and awarding the 100 allotments made available by the voters in November 2006, which may not require a competition but which shall provide that all projects must achieve a minimum score for the project type, and which may allow for flexible project start and completion dates.

The City Council may, in any year, reserve an appropriate number of allotments per year to vertical mixed-use projects, which are not restricted to the Downtown Area.

### **C. Development Allotment Applications and Evaluations.**

Development allotments shall be allocated to proposed developments in accordance with a Residential Development Control System set out in the Morgan Hill Municipal Code. This system shall provide for awards of development allotments based on the number of points scored for all development proposals in an annual or biennial competition, or outside of a competition but based on requiring projects to achieve a minimum point score, for the special 100 downtown allotments established by the voters in November 2006. The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

Proposed developments shall be awarded points for provision of schools and related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, and diversity of housing types; and for quality of architectural design and site design.

Small residential developments provide special benefits to the City by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the Residential Development Control System shall be designed to provide for small development through appropriate means selected by the City Council, such as a separate small project competition and a more streamlined and less costly process.

In implementing the provisions of the Residential Development Control System and making awards of development allotments, the City Council shall comply with Government Code Sections 66000 et seq. and other relevant provisions of the state Planning and Zoning Law.

**D. Emergency situations.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the City Council pursuant to provisions of the Municipal Code. The declaration of an emergency or severe impaction situation may be based on determinations of mandatory water rationing, sewage system operating at 95 % capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

**E. Open Space Conversions.**

No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under this section shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

The lands within the City of Morgan Hill that are designated "Open Space" on the Morgan Hill General Plan Land Use/Circulation Elements map, as amended through November 19, 2003 are hereby reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the City Council from designating additional lands as open space.

#### **F. Urban Service Area Restrictions.**

The City of Morgan Hill shall neither apply to LAFCO for, nor otherwise request or support, the addition of any land to its Urban Service Area, until such time as the City Council finds that the amount of undeveloped, residentially developable land in the existing Urban Service Area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by this section of the General Plan and the RDCS. After making such a finding of space insufficiency, the City may support the addition of land to the Urban Service Area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

The City Council may formulate standards by which it may make exceptions to the above-stated provision, for desirable in-fill. Desirable in-fill is defined as a tract of land not exceeding twenty acres and abutted on at least two sides by the City or abutted on one side by the City and having two other sides within a quarter mile of a City boundary, (as determined by a perpendicular line drawn from the side of the parcel to the City boundary), and whose inclusion into the Urban Service Area would not unduly burden City services and would beneficially affect the general welfare of the citizens of the City. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden City services, and that the expansion would beneficially affect the general welfare of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those areas that promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements

on which the City's findings are based, and/or convey the land needed for the public facilities, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in paragraph B, "Number of Development Allotments," of the Residential Development Control provisions of the General Plan.

This section is not intended to, and shall not be applied to, restrict or constrain the discretion of the LAFCO, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any Court judgment.

In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the Urban Service Area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered "infill" as defined above, the City shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County General Plan as of March 1, 1990.

#### **G. Urban Services Extensions.**

The City of Morgan Hill shall grant no new extensions of urban services for residences beyond its Urban Service Area except in the event that: 1) Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by City facilities on County Land; or 2) an owner of an existing development requests an extension due to the failure of an existing septic system or well and the City Council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Initiative Measure Section 3: Amendments to Chapter 18.78 of the Morgan Hill Municipal Code**

The Residential Development Control System (RCDS) is codified at Chapter 18.78 of the Municipal Code. Article I of Chapter 18.78 contains the core provisions governing the RCDS as adopted by the voters of the City of Morgan Hill when they passed Measure P in November 1990 and Measure C in 2004. The people of Morgan Hill now wish to amend the provisions of Article I of Chapter 18.78, Parts 2, 3 and 4, and accordingly adopt the Code amendments set forth below.

Rather than revise the original findings supporting adoption of Measure P in 1990 and Measure C in 2004 and set forth in Part 1 of Article I of Chapter 18.78, the people have made additional and updated findings, which are set forth in Section 1 of the 2006 ballot measure amending the RDCS.

Changes from the text of the Morgan Hill Municipal Code are shown in the following sections by strike-out text for deletions, and double-underscored text for additions. These provisions of Chapter 18.78 as amended shall remain in effect through fiscal year 2019/20.

## **Article I**

### **Part 2. Residential Development Control**

#### **18.78.020 Development allotments--Required when.**

For the years to and including fiscal year 2019/20, no residential development shall be undertaken, and no discretionary permit or building permit shall be issued, in the city unless a development allotment has been obtained therefor in accordance with the provisions of the general plan and the residential development control system (RDCS) set out in Parts 2 and 3 of this article, except secondary dwelling units ("granny units") and one-dwelling-unit developments as provided for below. One-dwelling-unit developments may be permitted without a development allotment, providing the following requirements are met:

A. If the parcel upon which the one-unit-development is proposed is of sufficient size to accommodate additional units, a deed restriction shall be placed on the parcel which requires allotments to be obtained for any additional unit on the parcel.

B. If more than one contiguous parcel is proposed for development by the same individual or entity, or entities with an identity of interest, under the single dwelling unit exemption on each parcel, Residential Planned Development zoning shall be required for such development.

The residential development control provisions of Part 2 of this article shall apply to all types of residential development in the city, including single-family (which includes mobile homes) and multifamily housing.

#### **18.78.030 Development allotments--Determination and distribution.**

A. The population ceiling for the city as of January 1, 2020, is forty-eight thousand persons. This ceiling shall not be increased, regardless of whether additional lands are annexed to the City or its urban service area.

If any of the following existing County subdivisions ("Existing County Subdivisions") are annexed into the City, the population within them shall not count against the 48,000 person limit, as set forth below in section 18.78.030B: Holiday Lake Estates Unit 1, Casalegno's Subdivision (Casa Lane), and El Dorado III. The population of these Existing County

Subdivisions shall be determined by multiplying the number of homes in each area by the average number of persons per household as determined by the most recent State Department of Finance estimates. Prior to the enactment of Measure P, Holiday Lake Estates Unit 1 and Casalegno's Subdivision (Casa Lane) were provided with City water service. The El Dorado III subdivision, at the southwest corner of Hill Road and Diana Ave., was developed in the County, and provided with sewer and water service, in order to eliminate a significant County health problem. These Existing County Subdivisions are all within Morgan Hill's UGB and were at least 95 percent developed as of November 19, 2003.

B. Except for the 100 allotments made available by the voters in November 2006 for projects of up to 25 units in the downtown core area defined as from south of Main, north of Dunne, east of Del Monte, and west of the railroad tracks ("Downtown Core"), which are in addition to the usual numbers as determined by this section 18.78.030, the number of allotments shall be determined biennially using the California Department of Finance's most recently determined persons per household figures and population for the City of Morgan Hill.

The California Department of Finance's population estimate will be adjusted for any relevant housing backlog not included in its population estimate, the population of any Existing County Subdivision enumerated in paragraph 18.78.030A that has been annexed, and any other quantifiable factor which improves the accuracy of the estimate. The adjusted population is then subtracted from 48,000, the result divided by the Department of Finance's most recently determined figure for persons per household in Morgan Hill, and then divided by the number of years remaining between that population estimate date and 2020. This gross annual allotment number is then reduced for any fiscal year by its previously awarded allotments (awarded in prior years) and the number of exempt units anticipated for that fiscal year.

The biennial allotment calculation applies to each fiscal year after the fiscal year in which it is computed. For example, the Spring 2004 computation will be used to set the number of allotments for the competition to be held for fiscal years 2006/07 and 2007-08, as well as to make any positive supplemental adjustments for the previously awarded fiscal years 2004/05 and 2005/06, for projects that competed for 2004/05 and 2005/06 allotments.

C. Except for the 100 allotments made available by the voters in November 2006 for projects of up to 25 units in the Downtown Core, the number of development allotments shall be divided between conventional single-family dwellings, mobile homes and multiple-family dwellings in a manner determined by the city council; provided, that no less than thirty-three percent of all allotments shall be awarded to single-family dwelling units. The number of affordable/elderly dwelling units shall be assigned in a manner consistent with state law for the total number of allotments to be assigned for that year. The city council may, if it chooses, further divide the allotments according to geography, price, development size, phasing, including the number of units and timing of allotments required to complete a project, and similar criteria as deemed necessary to provide for the general welfare.

D. For the competitions for allotments in fiscal years 2006-07 through 2009-2010, the City Council shall reserve a certain number of allotments for projects in the Downtown area. The number of allotments allocated, and the geographic limits of the Downtown area for this purpose, shall be determined by the City Council and may be amended, as necessary, to reflect changes in circumstances and needs. The Council may continue to reserve a certain number of allotments for projects in the Downtown Area after the 2009/10 fiscal year. Downtown housing and mixed use projects within the Downtown RDCS Boundary that were awarded allotments in March 2006 may be started and completed earlier than their allotment years. The City Council may establish procedures for scoring and awarding the 100 allotments made available by the voters in November 2006, which may not require a competition but which shall provide that all projects must achieve a minimum score for the project type, and which may allow for flexible project start and completion dates.

**18.78.040 Development allotments--Applications and evaluations.**

A. Development allotments shall be allocated to proposed developments in accordance with a residential development control system set out in Part 3 of this article. This system shall provide for awards of development allotments based on the number of points scored for all development proposals within a competition, or outside of a competition but based on requiring projects to achieve a minimum point score, for the special 100 downtown allotments established by the voters in November 2006. The City may conduct 1-year or 2-year competitions. The City may allocate a portion of the total allotment granted to an applicant as available in the subsequent year (i.e., in the event of a 1-year competition, a portion of the allotment is made available in the second year, and in the event of a 2-year competition, a portion is made available in the third year). The point scale used shall take into account the impact of the proposed development on the following public facilities and services: water supply system, sanitary sewer and treatment plant, drainage and runoff, fire and police protection, traffic and other municipal services.

B. Proposed developments shall be awarded points for provision of schools, related facilities, open space, orderly and contiguous development, public facilities, parks and trails, low-income and moderate-income housing and housing for the elderly, diversity of housing types, and for quality of architectural design and site design.

C. Small residential developments provide special benefits to the city by encouraging local developers, providing design variety, and promoting utilization of smaller lots. These developments do not impose as high a burden on municipal services as do larger projects, because their demands are incremental and they tend to be in-fill developments. Such small developments may be unable to compete with larger developments in terms of the levels of amenities provided. In order to treat small developments in a manner reflecting their benefits to the community, the residential development control system shall be designed to provide for small development through appropriate means selected by the city council, such as a separate small project competition and a more streamlined and less costly process.

D. In implementing the provisions of the residential development control system and making awards of development allotments, the city council shall comply with Government Code Sections 66000 et seq.

E. Up to 10 allotments per year may be set aside for vertical mixed-use projects, however the City Council may set aside a higher number for downtown core small vertical mixed use projects. These reserved allotments may be awarded to projects that receive at least a minimum passing score through a competitive process or on a first-come, first-served basis.

The City Council may establish higher minimum passing scores for mixed-use projects and/or consistency with the guidelines for development contained in the City's Downtown Plan. The City Council may allow for a maximum of 20 unused mixed-use allotments to be carried over from year to year, if unused in prior years, for a maximum of 30 units potentially available for distribution in one year under this set-aside. Within the Downtown Core, the City Council may allow for a higher number of unused small mixed use allotments to be carried over from year to year, and may allow for a higher maximum. Mixed-use projects eligible for allotments under this set-aside shall be no larger than 15 units. A single development project shall be eligible to receive allotments under this set-aside only once.

**18.78.050 Emergency situations--Restrictions on development.**

No residential development shall be permitted during a period of emergency or severe impaction of public facilities, as declared by the city council pursuant to provisions of this code. The declaration of an emergency or severe impaction situation may be based on determinations of mandatory water rationing, sewage system operating at ninety-five percent capacity, or other endangerment to the public health, safety or welfare. In the event of overcrowding in any public school serving Morgan Hill, the City Council shall work with the school district pursuant to Government Code sections 65970 et seq. to seek appropriate mitigation and prevent further overcrowding, including, as authorized by state statute, prohibiting residential development within the overcrowded school attendance area. The Council shall, in implementing this provision, comply with the provisions of Government Code Sections 65858, 65996, and any other applicable provisions of law.

**18.78.060 Open space conversions.**

A. No development allotments shall be awarded for a development proposal pursuant to this chapter and the RDCS unless the public benefits included in the proposal are secured in a permanent and enforceable manner. Lands that are designated for private or public open space, greenbelts, parks, paths, trails, or similar scenic and recreational uses in a residential development allotment application under Part 2 of this article shall, once the application is approved, be limited to the uses specified in the application, through the use of permanent dedications, easements or similar devices.

B. With respect to development allotments already awarded, wherever legally possible, no further building permits shall be granted for a project until such public benefits specified in the development application, particularly but not exclusively open space dedications, have been secured in a permanent and enforceable manner.

C. The lands within the city that are designated "open space" on the city's general plan land use/circulation elements map, as amended through November 19, 2003, are reaffirmed and readopted through fiscal year 2019/20. This provision shall not prevent the city council from designating additional lands as open space.

#### **18.78.070 Urban service area restrictions.**

A. The city shall neither apply to LAFCo, nor otherwise request or support, the addition of any land to its urban service area, until such time as the city council finds that the amount of undeveloped, residentially developable land within the existing urban service area is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotments available in the next competition. The projected rate of growth for purposes of this determination shall be the rate of growth provided for by the general plan and the RDCS, set out in Parts 2 and 3 of this article. After making such a finding of space insufficiency, the city may support the addition of land to the urban service area only to the extent necessary to support approximately five or fewer years of growth beyond that required to accommodate the number of development allotments available in the next competition.

B. The city council may formulate standards by which it may make exceptions to subsection A of this section for desirable in-fill. "Desirable in-fill" means a tract of land not exceeding twenty acres and abutted on at least two sides by the city or abutted on one side by the city and having two other sides within a quarter-mile of a city boundary, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the urban service area would not unduly burden city services and would beneficially affect the general welfare of the citizens of the city. The standards set up for granting such exceptions must include criteria to prevent repetitively granting exceptions to the same applicant, development or parcel. The City Council, prior to approving any expansion of the Urban Service Area for desirable in-fill, shall make findings documenting that the expansion would not unduly burden city services, and that the expansion would beneficially affect the general welfare of the citizens of the City, as defined in the following paragraph.

Areas whose addition to the Urban Service Area would be considered to beneficially affect the general welfare of the citizens of the City include those which promote orderly and contiguous development by facilitating the provision of infrastructure improvements, or allow for the establishment of public facilities such as parks, schools, or other buildings to be owned or operated by the city, school district, water district, or any other public agency. Infrastructure improvements that would promote orderly and contiguous development are those that connect to the existing infrastructure (for example, the continuation of a dead-end street that would improve traffic circulation patterns), or otherwise complete or complement the existing system. The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for

public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date the area is added to the Urban Services Area or upon its development, whichever occurs first. The commitment by the applicant to install the infrastructure improvements on which the City's findings are based, or convey the land needed for the public facilities on which the findings are based, must be secured prior to official action adding the area to the Urban Services Area, through a development agreement or other legally binding agreement recorded against the property. The infrastructure or land required to be provided by an applicant shall not exceed that needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The future annexation of one or more of the Existing County Subdivisions enumerated in section 18.78.030A may be necessary to allow the residents of those areas to receive additional municipal services. Given the developed status and the current provision of municipal services to these subdivisions, any of these Existing County Subdivisions may be added to the City Urban Service Area and annexed into the City without otherwise meeting the test for desirable infill development.

C. Part 2 provisions of this article are not intended, and shall not be applied, to restrict or constrain the discretion of the LAFCo, nor to prevent any action required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 or other state statute or by any court judgment.

D. In order to assure that City services and resources are not unduly burdened, urban sprawl and noncontiguous development must be discouraged. Therefore, for any land added to the urban service area between March 1, 1990, and the effective date of Measure P, December 8, 1990, and not considered in-fill as defined in subsection B of this section, the city shall not provide urban services to support any development at a higher density than that provided for in the Santa Clara County general plan as of March 1, 1990.

#### **18.78.080 Urban services extensions.**

The city shall grant no new extensions of urban services for residences beyond its urban service area except in the event that:

A. Morgan Hill has entered into a mutual aid or reciprocal emergency agreement for police, fire or other emergency services to be provided by city facilities on county land; or

B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.

### **Part 3. Residential Development Control System**

#### **18.78.090 Application--Procedure and contents--Fees.**

A. An application for a development allotment shall be made to the city planning division on a form provided by the city. Such application shall contain the following information and be accompanied by the following documents:

1. Site utilization map including:
  - a. Vicinity map to show the relationship of the proposed development to adjacent development, the surrounding area and the city,
  - b. Site use layout map showing the extent, location and type of proposed residential use or uses, the nature and extent of open space, and the nature and extent of any other uses proposed. The site use layout map is of major importance; the vicinity map may be shown as a small inset map;
2. Site development plan including lot layout to preliminary subdivision map standards; topography; lot sizes; street alignments showing coordination with city street system; existing and proposed buildings, trees, landscaped areas; open space; bicycle paths, equestrian trails or pathways;
3. Preliminary architectural plans including typical architectural elevations, types and numbers of dwelling units, proposed color of buildings;
4. Preliminary grading plans including a general indication of type, extent and timing of grading;
5. Narrative description of preliminary landscape plans including general indications of planting;
6. Housing marketability and price distribution including expected ranges of rental amounts or sales prices, low-income and moderate-income housing to be provided, and applicability to housing assistance plan, if any;
7. Statement regarding how the proposed development will comply with state law requirements regarding the mitigation of impacts of the development on school facilities. Description of other needed public facilities to be provided, if any, such as critical linkages in the major street system, or other vital public facilities;
8. Development schedule including proposed schedule of development including phasing;
9. Such other information as may be required by the planning manager.

B. Each application shall be accompanied by a reasonable fee set by the city council based on the cost to the city of the processing of the application. Such fee is in addition to any other fees such as rezoning fees, annexation fees, etc., and shall not be returned in the event that no development allotment is awarded.

C. An applicant may file only one application for any given property in any competition.

D. An application for a development allotment shall be filed with the city planning division on a date determined by the planning manager, which shall be no later than twenty-one months preceding the fiscal year during which the allotments must be utilized.

**18.78.100 Application--Evaluation by planning officer.**

A. The planning officer (hereinafter referred to as PO) shall review each application and determine whether or not the proposed development conforms to the city's general plan. If the PO determines that a proposed development does not conform to the general plan, the application shall be rejected. The applicant shall be given a notice of such rejection within fifteen days after the submission of his application. Such notice shall be given by the PO by mailing a copy of the notice to the applicant at his address as shown in the application.

B. Within fifteen days after such notice is mailed, the applicant may appeal the decision of the PO to the city council by filing a written notice of appeal with the city clerk, who shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting, and shall either affirm the decision of the PO to reject the application on the basis of nonconformity with the plans, reverse the decision by finding that the proposed development is in conformity with the plans, or permit the applicant to modify his proposed development to bring it into conformity with the plans. The decision of the council shall be final and conclusive.

**18.78.110 Evaluation procedures--Generally.**

Proposed developments found by the PO or city council to conform to the general plan shall be evaluated by the PO and awarded points as set forth in Section 18.78.115. The planning commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Sections 18.78.115 and 18.78.120. The PO shall submit his evaluation to the planning commission and the commission shall approve, disapprove or modify the PO's evaluation by simple majority vote.

**18.78.115 Evaluation procedures--Impact on existing facilities--Point system.**

A. Each proposed development shall be examined for its relations to and impact upon local public facilities and services.

B. The appropriate city department or outside public agencies shall provide recommendations to the PO and the PO shall rate each development by assigning from zero to two points for each of the following:

1. The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide (comments of the city director of public works);
2. The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the city director of public works);
3. The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide (comments from the Santa Clara Valley Water District and the city director of public works);

4. The ability of the city-designated fire department to provide fire protection according to the established response standards of the city without the necessity of establishing a new station or requiring addition of major equipment to an existing station, and the ability of the police department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel (comments from the fire and police departments);

5. The ability and capacity of major street linkages to provide for the needs of the proposed development without substantially altering the existing street system (the desired target traffic level of service being no worse than ["D+"] level of service as defined in the 1985 Transportation Research Board Report # 209), except as otherwise allowed in the General Plan, and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer (comments from the appropriate department heads).

**18.78.120 Evaluation procedures--Design and amenity criteria.**

On quality of design and extent of contribution to public welfare and amenities, the PO shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following:

A. The provisions of school facilities and amenities, as attested by agreement with the MHUSD, to the extent such consideration is not in conflict with state law..... 25 points;

B. The provision of public and/or private usable open space and, where applicable, greenbelts..... 20 points;

C. The extent to which the proposed development accomplishes an orderly and contiguous extension of existing development rather than leapfrog development, by using land contiguous to urban development within the city limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors ..... 20 points;

(For purposes of this section, "the central core" is the area illustrated on the Central Core Map, attached as Exhibit B and described generally as that area bounded on the west by Del Monte Ave. from Wright Ave. to Ciolino Ave. and by West Little Llagas Creek from Ciolino Ave. to Cosmo St; on the east by the railroad tracks from the easterly prolongation of Wright Ave. to Main Ave., by Butterfield Blvd. from Main Ave. To Dunne Ave., and by Church St. from Dunne Ave. to the easterly prolongation of Cosmo St.; on the north by Wright Ave. and its easterly prolongation to the railroad tracks; and on the south by Cosmo St. and its easterly prolongation to Church St.)

D. The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities..... 10 points;

E. Provision of parks, foot or bicycle paths, equestrian trails or pathways . . 10 points;

F. The provision of units to meet the city's need for low-income and moderate income and elderly housing and the extent to which such provision meets the goals of the housing element of the general plan including the distribution of housing types to provide neighborhoods of ethnic and economic diversity..... 15 points;

G. The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the housing element of the general plan..... 15 points;

H. Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings judged in terms of architectural styles, size and height ..... 15 points;

I. Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design considerations..... 15 points;

J. Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on-site and off-site traffic safety and privacy..... 15 points;

K. Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures..... 10 points;

L. Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings..... 10 points;

M. Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features ..... 10 points;

N. The extent to which the proposed development exhibits overall project excellence and/or incorporates or otherwise embodies the concepts of Livable Communities, such as proximity to transit, pedestrian orientation, efficiency of street system, mixed-use, infill, and maximization of use of existing infrastructure..... 10 points.

**18.78.125 Award and issuance of allotments.**

A. The PO shall notify each applicant of his evaluation under Sections 18.78.110 through 18.78.120. Such notice shall be given in writing within seven days after the evaluation has been approved by the planning commission by mailing a copy of such notice to the applicant at his address as shown in his application. At the same time, the PO shall notify in writing the MHUSD and all other city departments and public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 of the result of that evaluation.

B. Proposed developments which have not been assigned a minimum of 7.5 points under Section 18.78.115 or a minimum of one hundred sixty (160) points under Section 18.78.120 shall not be given a development allotment, except for Micro projects (as defined by the City Council) and projects which are 100% affordable, for which the minimum passing score shall be one hundred fifty (150) points.

C. Subject to the limitations set forth in this subsection and subsection F of this section, proposed developments which have received a minimum of 7.5 points under Section 18.78.115 and a minimum of one hundred sixty points under Section 18.78.120 (or, for qualifying projects, one hundred fifty points) may be awarded an allotment. Where the number of residential units in proposed developments which have received the required number of points for a development allotment (either by planning commission's determination or by city council's determination on appeal) exceed the numerical limits established by the city council by competition category (micro, small, affordable, large market rate), development allotments for which the council-established numerical limit has thus been exceeded shall be awarded to the highest scoring projects based on the number of points received under Section 18.78.120. A project may be awarded fewer than the total number of allotments requested by it, and the surplus allotments awarded to the next highest scoring development(s) if doing so would help create a more balanced and equitable distribution of allotments and help to achieve the goals of the General Plan.

In the event that an applicant seeks a higher number of allotments than is available in a competition, the City Council may, in its discretion and in order to encourage high-scoring applicants to complete their projects, grant allotments for an additional fiscal year. For a one-year competition, the allotment may be allocated over two years, and for a two-year competition, the allotment may be allocated over three years.

D. Allotments shall be issued no less than 16 months prior to the start of the first fiscal year in which the allotments must be used. Allotments shall be awarded for no more than three fiscal years in a single competition. Flexible project start and completion dates are allowed for those downtown housing and mixed use projects awarded allotments in March 2006, and for those projects awarded allotments from the 100 downtown allotments made available by the voters in November 2006.

E. Any applicant whose development evaluation has been completed and where any appeals, if applicable, have been resolved and who does not receive an allotment for the competition will not be considered automatically for the subsequent competition, but must reapply under Section 18.78.090 for the next or subsequent competition.

F. If a project receives an allotment in a competition for more than 50 percent of the units in the project but fewer than the total number of units needed to complete it, the additional units needed to complete it may be awarded to the project for the competition year immediately after that covered by the current competition. This additional allotment shall be considered a portion of the limited allotment for that future competition. The number of units awarded under this section for a future competition year shall be similar to the number of units awarded per year for the major portion of the project.

G. Except as provided in above Sections 18.78.030(B) & (D), 18.78.040 (A) & (E), and 18.78.125(D), which allow for more concentrated and flexible timeframe for downtown housing and mixed use project construction, to ensure that growth is orderly and not sporadic, dwelling units that are allocated for one fiscal year and not physically commenced according to an approved development schedule by the end of that fiscal year, shall lose their allotment and must reapply under the development allotment process outlined in Section 18.78.090 if development is still desired by the developer. An exception to the loss of allotment 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, delays not the result of developer inaction, or allotment appeals processing.

For projects that include the sale of individual lots for custom development by individual purchasers, purchasers of the custom lots shall be given an additional 24 months to physically commence construction. If this extension proves insufficient, an applicant for a custom home may apply for an additional extension subject to the same rules and circumstances as outlined in this paragraph for other projects.

**18.78.130 Appeal procedures.**

A. An applicant may appeal to the city council for a review of the scoring of its proposed development project pursuant to Sections 18.78.110 through 18.78.120 by filing a written notice of appeal with the city clerk within fifteen days after the notice of evaluation has been mailed as described in Section 18.78.125 (A).

B. The MHUSD or other public agencies which provided input for the evaluation under Sections 18.78.110 through 18.78.120 may appeal to the city council the evaluation under Sections 18.78.115 and 18.78.120 within fifteen days after notice has been mailed as described in Section 18.78.125 (A).

C. Any citizen or group of citizens may appeal to city council the evaluation of any applicant by filing with the city clerk a petition signed by one hundred registered voters of the city within fifteen days after the notice of evaluation has been mailed to the applicant as described in Section 18.78.125 (A).

D. In the event an appeal is filed under subsections A, B or C of this section, the city clerk shall place the matter on the next available agenda for a regular council meeting. The city council shall consider the appeal at such regular meeting at which time the council will hear the applicant or his representative and such other persons as may be able to assist the council in the determination of the matter on appeal. The council may affirm or modify the project scoring and its decision shall be final and conclusive.

**18.78.140 Emergency situations--When declared--Action and review by council.**

A. An emergency or severe impaction situation shall be any one or more of the following:

1. A finding by the director of public works that the sewage facility usage level exceeds ninety-five percent of the capacity of the system;
2. Mandatory city water-rationing measures in effect;
3. MHUSD notifies the City Council that conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs, pursuant to Government Code section 65971;
4. Any public agency providing services essential to the public health and safety notifies city council in writing or by resolution that its ability to meet the public needs is severely impacted;
5. Any other endangerment to public health, safety or welfare which the city council determines to exist for the purposes of Part 3 of this article.

B. If any of these specified conditions exist, then the city council shall certify an emergency or severe impaction situation.

C. In addition, any citizen or group of citizens may petition the city council for declaration of an imposition of an emergency or severe impact situation by filing with the city clerk a petition signed by four percent of the registered voters of the city. The city council, at their next available regularly scheduled meeting, must then vote on a resolution of emergency or severe impact situation. Certification and decertification of a petitioned emergency condition requires a minimum of three affirmative votes for passage.

D. In the event such an emergency or severe impact is certified, no building permit and no allotment shall be issued unless the city council first specifically finds that the building permit or specific allotment will not contribute additionally to the existing emergency or severe impact situation, or that the building permit or specific allotment has adequately mitigated its additional impact.

E. The PO shall review all certified emergency or severe impact situations at least quarterly, and shall determine whether conditions warrant continuation of the emergency or severe impact. The PO shall report his findings to the city council, and notice of such findings shall be placed on the city council agenda and published in a newspaper of general circulation. If the city council finds, based on the PO's report, that the certified emergency or severe impact situation no longer exists, it shall decertify the emergency.

F. In implementing Part 3 of this article, the city council shall comply with the provisions of Government Code Sections 65858, 65972, 65996, and other applicable state law requirements. Where those provisions conflict with this article, the state statute shall prevail.

#### **18.78.150 Quarterly progress review--Failure to comply.**

A. The planning officer shall review, on a quarterly basis, each proposed development which has received a development allotment to determine whether satisfactory progress is being made with the processing of the appropriate plans with the planning division.

B. Should a developer fail to comply with the development schedule submitted with his application or as agreed with the city staff and council, or should he fail to initiate the processing of the appropriate plans, or should the development deviate below the points awarded for its initial application, the PO shall report such failure or deviation to the city council. Thereafter, the council, after holding a hearing, may rescind all or part of the development allotment in favor of another development which has qualified for such allotment and which is capable of commencement in the year for which the allotment was awarded.

#### **Part 4. General Provisions**

#### **18.78.155 Duration of provisions.**

This article shall remain in effect until and including fiscal year 2019/20.

**18.78.160 Compliance with state and federal laws.**

The provisions of this article shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

**18.78.165 Severability.**

A. If any provision or application of any provision of this article is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of this article are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by enactment of this article, to extend and expand the essential residential development control provisions and policies of Measure P. If this article is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of this article is held invalid, the remainder of the ordinance codified in this article shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

**18.78.170 Unconstitutional taking of private property prohibited.**

This article shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of this article to a specific project would effect a taking, then pursuant to this article the city council may alter the provisions of this article, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of this article to the maximum extent feasible.

**18.78.175 Amendment or repeal.**

This article and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election.

## **Initiative Measure Section 4: General Provisions**

### **1. Duration of provisions.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, and the "Residential Development Control" section of the General Plan, enacted by the voters, shall remain in effect through fiscal year 2019/20.

### **2. Compliance with state and federal laws.**

The provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not apply to the extent, but only to the extent, that they would violate the Constitution or laws of the United States or the state of California.

### **3. Severability.**

A. If any provision or application of any provision of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held unconstitutional or violative of any state or federal law, the invalidation shall not affect the validity of any other provision or application of any other provision. The voters of Morgan Hill declare that the provisions and applications of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan are severable and would have been enacted as they were even though any other provision or application or applications are held unconstitutional or otherwise violative of law.

B. It is the intent of the voters of Morgan Hill, by their approval of the 2004 and 2006 ballot measures amending the "Residential Development Control" section of the General Plan, and Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes, to extend and expand the essential residential development control provisions and policies of Measure P. If Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan is held invalid in its entirety, then Measure P shall remain in effect, as previously codified.

C. If any provision of Part 2 or 3 of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or any provision of the "Residential Development Control" section of the General Plan is held invalid, the remainder of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall be given effect, and to the maximum extent feasible, shall be combined with the provision or provisions of Measure P that correspond to the invalidated provision.

#### **4. Unconstitutional taking of private property prohibited.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan shall not operate to deprive any landowner of substantially all the market value of his property or otherwise constitute an unconstitutional taking without compensation. If application of the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes or the "Residential Development Control" section of the General Plan to a specific project would effect a taking, then the city council may alter the provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and/or the "Residential Development Control" section of the General Plan, but only to the extent necessary to avoid such a taking. Any such adjustments shall be designed to carry out the goals and provisions of Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan to the maximum extent feasible.

#### **5. Amendment or repeal.**

Chapter 18.78, Article I of the Morgan Hill Planning and Zoning Codes and the "Residential Development Control" section of the General Plan, were enacted into law by the voters and accordingly, may be amended or repealed only by the voters of the city at a municipal election. In the event of ongoing reorganizations, revisions and updates to the General Plan and Municipal Code, the policies and provisions enacted by this initiative measure shall be retained and remain in effect until their expiration or amendment or repeal by the voters.

#### **6. Implementation and Consistency.**

A. Upon the effective date of this initiative ordinance, Section 2 of this initiative shall be deemed inserted into the Morgan Hill General Plan (unless all general plan amendments allowed by state and local law have already been approved during the calendar year in which this initiative is enacted, in which case Section 2 of this initiative shall be deemed inserted into the General Plan on January 1 of the following calendar year). The General Plan and the Municipal Code of Morgan Hill shall be interpreted so as to give immediate effect to the provisions of this initiative, as of the date Section 2 is deemed inserted into the General Plan.

B. As of the date the provisions of Section 2 of this initiative are deemed inserted into the Morgan Hill General Plan, Section 3 of this initiative shall likewise be deemed inserted into the Morgan Hill Municipal Code, and Measure C as enacted by the voters of Morgan Hill in March 2004, shall be deemed amended by the terms of this initiative ordinance, as set forth in Section 2 and Section 3 of this initiative measure, and the Municipal Code shall be interpreted to give immediate effect to the initiative provisions.

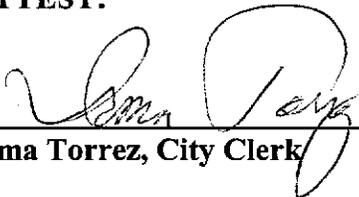
C. The City Council shall within 120 days of the enactment of this initiative amend the Morgan Hill General Plan as necessary to ensure internal consistency with all provisions of this initiative. Also within 120 days the City Council shall amend Article II of Chapter 18.78 of the City Planning and Zoning Codes, entitled "Specific Policies," relating to the RDCS, and any other land use regulations as necessary to conform to all provisions of this initiative.

D. The development allotments distributed for fiscal years 2004/2005 through 2006/2007 awarded under Measure P shall remain in effect, except that under this initiative measure they may be supplemented based on the 2004 biennial computation of available development allotments, pursuant to section 18.78.030 (B). New allotments for fiscal year 2006/2007 and following shall be governed by the provisions of this initiative measure.

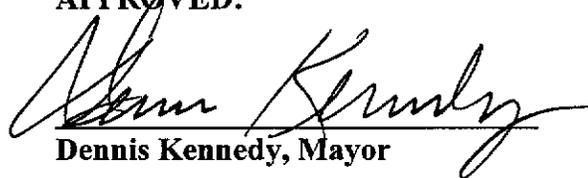
The foregoing Ordinance was passed, approved, and adopted by a majority of voters voting on the measure in a General Municipal Election held and conducted in the City of Morgan Hill, California, on Tuesday, November 7, 2006, as required by law. This Ordinance is effective upon certification of the election results. The City Clerk is hereby directed to publish this ordinance pursuant to section 36933 of the Government Code.

The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City of Morgan Hill by signing where indicated below.

ATTEST:

  
\_\_\_\_\_  
Irma Torrez, City Clerk

APPROVED:

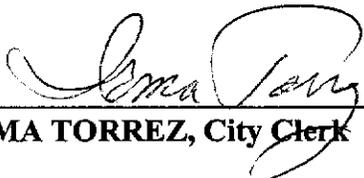
  
\_\_\_\_\_  
Dennis Kennedy, Mayor

☪ CERTIFICATE OF THE CITY CLERK ☪

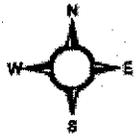
I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1816, New Series, passed, approved, and adopted by the people of the City of Morgan Hill, voting on the 7<sup>th</sup> Day of November, 2006.

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

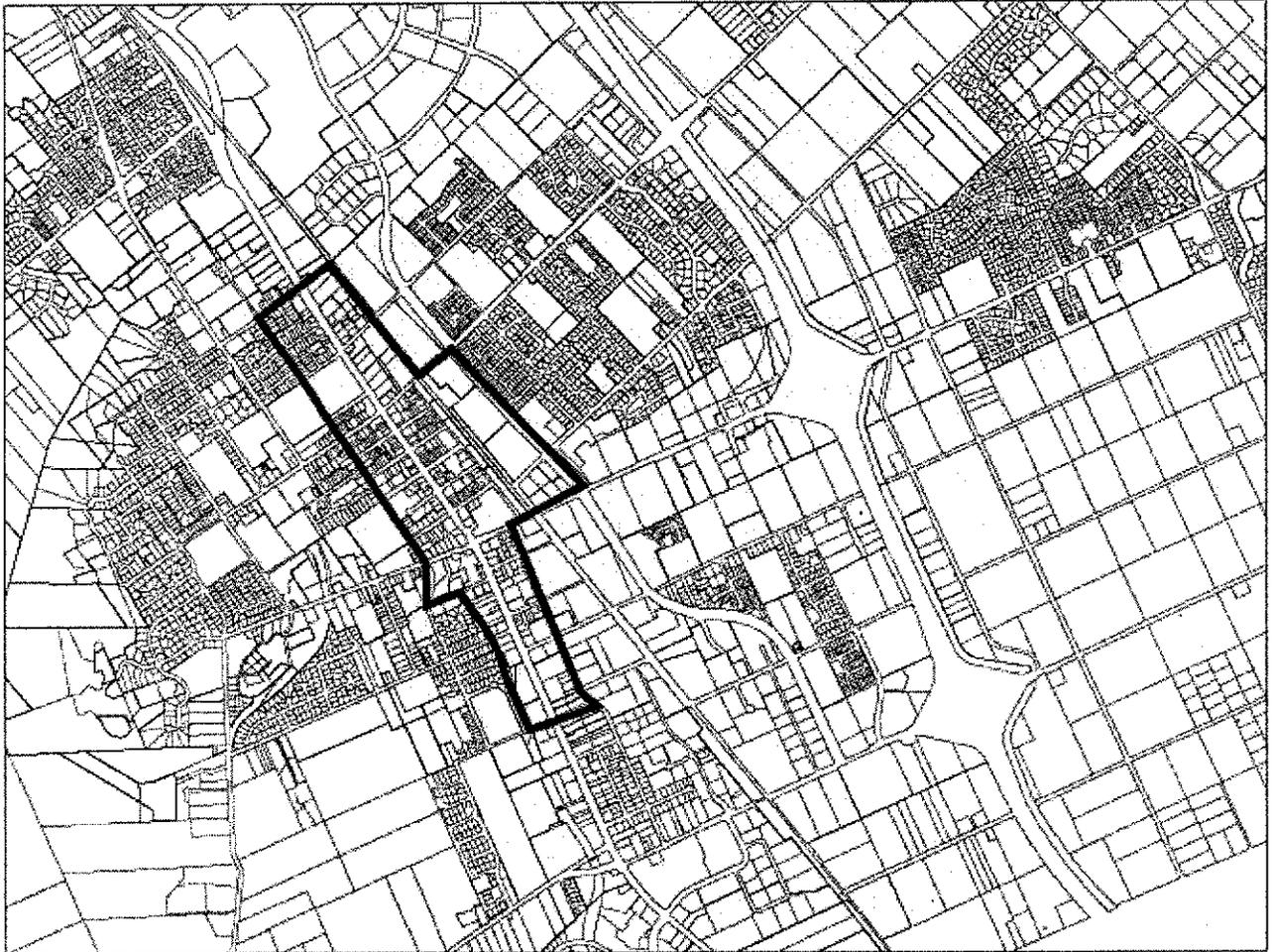
DATE: 2/5/07

  
\_\_\_\_\_  
IRMA TORREZ, City Clerk





## Exhibit B Illustrative Maps Show Core Area



—— Central Core Area



Exhibit B to

An Ordinance of the City of Morgan Hill Extending the City's Residential Development Control System Through the Year 2020, and Amending Provisions of the General Plan and Article I of Chapter 18.78 of the Municipal Code to Update and Extend the Residential Development Control System

**Teresa Crue**

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**From:** Kevin Pfeil [kpfeil94@gmail.com]  
**Sent:** Monday, July 13, 2015 5:36 PM  
**To:** Planning\_Commission  
**Subject:** Voices of Morgan Hill against Oak Meadow and Annexation of Ag land for development  
**Attachments:** comments\_1436832760 (1).pdf

We posted an online petition on [change.org](http://change.org) which besides out hundreds of paper signatures has over 200 online signatures and allows residents to also add comments.

Attached is a pdf of the comments from [change.org](http://change.org) to date. We had almost 100 from Morgan Hill not in our neighborhood sign the petition in the last 24 hour and many made comments, the 1st 5-10 are from neighborhood but from there on is other citizens of MH. These are similar comments to what we are getting from the 600+ people who signed paper petition since July 4.

Here is the petition site, see for yourself how many people are viewing and signing from around the city. The best part is this is we can contact and update everyone who signs this online with updates on what is going on with the project.

<http://tinyurl.com/SaveMorganHill>

Regards,  
Kevin

Recipient: Morgan Hill City Council

Letter: Greetings,

Support smart growth and foothill view-sheds in Morgan Hill. Disapprove annexation of Oak Meadow for development and put annexation applications of county land for the purpose of development to a general vote by the citizens of Morgan Hill.

# Comments

Name	Location	Date	Comment
Kristie Starink	Morgan Hill, CA	2015-06-27	Want to preserve land and beauty.
Yvette Castanon	Morgan Hill, CA	2015-06-27	Building houses on this beautiful meadow will not benefit the citizens of Morgan Hill. It will only benefit the developers. One of the reasons Morgan Hill remains a desirable place to live are the open areas, such as Oak Meadow. If the Morgan Hill City Council approved the annexation of Oak Meadow, it will be lost to the citizens of Morgan Hill, forever.
Sean Parent	Morgan Hill, CA	2015-06-27	I want to see Morgan Hill focus development on actual infill and connecting the community. Don't sprawl and take away our views.
Raymond Grzan	Morgan Hill, CA	2015-06-27	Protection of our AG and Farmlands is consistent with the values of Morgan Hill. The Oak Meadows project does not. This response is not only for me but for four voter-registered adults living in Morgan Hill.
Mary Sperry	Morgan Hill, CA	2015-06-27	The land did not fit criteria/ definition for infill until the council (under Kennedys leadership at time) changed it specifically for this developer. Kennedy worked for developer later. This seems a conflict of interest.
PAUL SPERRY	Morgan Hill, CA	2015-06-27	Foreign funded development of high density housing is not the right fit for this grazing/open space site.
Dianna Yang-Dininno	Morgan Hill, CA	2015-06-28	Irresponsible development practice will have big negative impact on our environment and wildlife. In 2012, Santa Clara Valley Audubon Society send a letter to City, pointing out: Oak Meadow annexation project deferred mitigation for impacts on California Tiger Salamanders, Inadequate mitigation for impacts on Burrowing owls, Loss of agricultural land, stops movement of wildlife through the project site, etc.  Environment need open space, especially along hillside. We are against annexation of Oak Meadow, a county land.
Sherril Nathan	Morgan Hill, CA	2015-06-29	When Morgan Hill has built on every parcel that is less attractive than our beautiful meadow, then I will consider supporting this project. The city has more than 20 yrs of buildable land already within the city limits they do not need to annex anymore.
Elaine Loewenstein	morgan hill, CA	2015-06-30	Elaine Loewenstein
Richard Ruso	Los Gatos, CA	2015-06-30	Save the pristine view of the foothills!!!
Maria Hodges	Morgan Hill, CA	2015-07-01	Before annexation of county land into Morgan Hill for development, city land should be developed first. Additionally. the definition of infill should not be changed to accommodate a single developer. True infill should occur before annexing any new land into the city.
Jayne Perryman	Morgan Hill, CA	2015-07-01	As a long term (since 1972) resident of Morgan Hill, I appreciate the need for open space. Do not annex hillsides due to the pressure from a developer.
Rossana Sigal	Morgan Hill, CA	2015-07-01	There is enough development happening in Morgan Hill. Soon we will have no open spaces with little regard to the wildlife that live here and to the people who love Morgan Hill as it is. too many changes are taking place - some good and some NOT good. Please consider what is being said. I hate to see our urban city turn into another San Jose.
kristy Sermersheim	Morgan Hill, CA	2015-07-01	I live nearby; we moved to Morgan Hill because of the open space, farm-like environment. Homes should be built within the current limits, not on the foothills.
jennifer chiou	摩根山丘, CA	2015-07-01	love our home, earth

## SUPPLEMENTAL 1 ITEM 1

Name	Location	Date	Comment
Ron Thompson	Morgan Hill, CA	2015-07-01	This is an inappropriate location for this project.
GEN CHESTER	MORGAN HILL, CA	2015-07-01	genc
Mike Herrera	Morgan Hill, CA	2015-07-02	When I moved to Morgan Hill, I thought I was moving to the country, but not with the city limits at the edge of my property line. And the street getting busier. Just too fast.
Mary Johnson	Morgan Hill, CA	2015-07-05	I live in the neighborhood and disagree with the methods used to approve this development
Sandra Lim	Morgan Hill, CA	2015-07-07	The town is growing too fast and getting more and more crowded.
Helen Lindsey	Morgan Hill, CA	2015-07-07	Enough annexation. We enjoy rural areas. Leave Oak Meadow as is.
Barbara Fels	Morgan Hill, CA	2015-07-11	Way too much home building in Morgan Hill, especially considering our water shortage!!!
Brett Rickard	Morgan Hill, CA	2015-07-11	The project violates precepts of our General Plan (GP). The project does not conform to LAFCO's principles and guiding authority for annexation. City has sufficient land for residential development within its current city limits.
Matt wicklander	Morgan hill, CA	2015-07-12	Current resident. Keep Morgan hill as is
Caroline Lopez	Morgan Hill, CA	2015-07-12	Growth is getting out of control in Morgan Hill!!
Julia Merrill	Morgan Hill, CA	2015-07-12	This project would ruin our beautiful nature space and lessen our quality of life. It goes against what the voters have previously approved. Keep Mogan Hill Green!
Gina Gaitan	San Jose, CA	2015-07-12	i dont want mh to end up like sj. Keep Mh small!
james kristoff	Kihei, HI	2015-07-12	I have lived here 40 years and the growth has gotten completely out of hand. We have no water and way too much traffic.
Debbie Roth	San Martin, CA	2015-07-12	Morgan Hills developing/housing is totally out of control!!! We moved here 38 years ago for the small town atmosphere and beautiful surrounding hills.
Ben Marquez	Morgan Hill, CA	2015-07-12	Megan hill is growing too fast
larry breniman	Morgan Hill, CA	2015-07-12	Unchecked growth merely for profit must be stopped.
Don Ostheimer	Morgan Hill, CA	2015-07-12	I am opposed to the development of this unique open space view corridor.
Deborah Miller	San Jose, CA	2015-07-12	I'm tired of the destruction of the natural beauty of this area. Enough already!!!
Jessica Fry	Morgan Hill, CA	2015-07-13	I support the well planned growth that Morgan Hill has been following for years!
Randy Merrill	san jose, CA	2015-07-13	IT'S IMPORTANT to keep a balance of undeveloped and developed lands.
George Meyer	Morgan Hill, CA	2015-07-13	Limit Growth in Morgan Hill!!!
Mary Treacy	Kingston, PA	2015-07-13	I moved here a few months ago because Morgan Hill was small and cared about the residents. Please don't change that.
Matthew Meininger	Morgan Hill, CA	2015-07-13	I love our rolling hills and the cattle that graze on them!
Leslie Daniel	Morgan Hill, CA	2015-07-13	This town is getting so big with all the building, too much traffic, more crime, this is getting like San Jose it's not going to be the nice country town it was before and it's a shame, this was a beautiful town and some parts still are but with more building it will be another City! Please stop. Building!
Amy Tate	Morgan Hill, CA	2015-07-13	I used to live adjacent to this hillside and that's how it should remain. We are enough vacant lots in the city to develop before ruining our beautiful hillsides which make Morgan Hill beautiful

## SUPPLEMENTAL 1 ITEM 1

Name	Location	Date	Comment
Wendy Mosgrove	Morgan Hill, CA	2015-07-13	The project does not conform to LAFCO's principles and guiding authority for annexation. City has sufficient land for residential development within its current city limits.
Dan Yetso	Morgan Hill, CA	2015-07-13	Please STOP over-developing our great city!
Terrell Day	Morgan Hill, CA	2015-07-13	I want to keep Morgan hill beautiful
Victoria Owens	Morgan Hill, CA	2015-07-13	The reason so many people love Morgan Hill is because of the beautiful hillsides and natural state the land is currently in. We need to protect the lands for agriculture and grazing and not use for additional housing development. I don't want to see our little town turn into other nearby cities whose housing development is taking over their natural hillsides. Enough already!
Steve Lee	Morgan Hill, CA	2015-07-13	There is already too much building and new housing development in the city of Morgan Hill. This area of town is beautiful and should remain grazing land and a view-shed. There are numerous places to build and this does not need to be one of them. Have the developer move on permanently. This seems to come up for development over and over again and is simply wasting tax dollars and time of the city government. How do we permanently tell this developer "NO" and be done with this?!
Steven Wheat	Morgan Hill, CA	2015-07-13	There are other more appropriate zones within Morgan Hill that should be developed prior to this area.
Michele Petersen	Morgan Hill, CA	2015-07-13	I disapprove of annexation of Oak Meadow for development!
Stuart Dicker	Morgan Hill, CA	2015-07-13	I disagree with the over development of Morgan Hill
vickie Nelson	Morgan Hill, CA	2015-07-13	Stop the development, save the hills
Colleen Loop	Morgan Hill, CA	2015-07-13	To much building already inMH!
Margaret Snively	Morgan Hill, CA	2015-07-13	Morgan hill has adequate area for development at this time. Our focus now should be providing more housing at affordable prices near transit.
Julie Cabrerros	Morgan Hill, CA	2015-07-13	to protect Morgan Hill from overcrowding and the use of our resources.
Robin Realini	Morgan Hill, CA	2015-07-13	This agricultural land needs to be protected.
diane moffett	San Jose, CA	2015-07-13	Lets keep some of the hillside as it was and limit the area to development.
Leonard Kurtz	Morgan Hill, CA	2015-07-13	Morgan Hill City Council needs to protect green open areas, prevent overall over development of our community!
Alan Truscott	Los Altos, CA	2015-07-13	I like open space.
Ryan Lokey	Morgan Hill, CA	2015-07-13	It's a small town!!!! Stop building!!!! It's already not the same!!!!
Tim Zapien	San Jose, CA	2015-07-13	•Agricultural lands, including lands for grazing are to be protected
Luana Crotteau	Morgan Hill, CA	2015-07-13	We are getting toooo big.. less housing needs to approved. Slow Down please.. MH will loose it's charm that we all love and why we moved here.
Marina Espinosa	Morgan Hill, CA	2015-07-13	I would like to keep Morgan Hill agriculture as it is today, We have enough housing and stores! We can't maintain anymore, and I like the small town feel Morgan Hill had in 1999. The growth is enough already!!
Matilda Winans	Morgan Hill, CA	2015-07-13	I love the open fields in our town. I don't want them to disappear.
Beth Wyman	Morgan Hill, CA	2015-07-13	Deja vu, all over again!
Connie Erdman	Morgan Hill, CA	2015-07-13	stop the building.. keep this a small town area.. with beautiful country side
Trish Catalano	Morgan Hill, CA	2015-07-13	I have lived here since 1977 and do not like how every square inch of space is being built/paved over. Stop it!
Gloria Wolff	Morgan Hill, CA	2015-07-13	WE NEED TO STOP BUILDING

## SUPPLEMENTAL 1 ITEM 1

Name	Location	Date	Comment
Cynthia Jensen	Morgan Hill, CA	2015-07-13	City council needs to listen to what the residents of Morgan Hill want, not what they want. Please restrict growth.
gina wilson	Morgan Hill, CA	2015-07-14	enough development. We dont need to be another san jose or santana row.

**Teresa Crue**

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**From:** Kevin Pfeil [kevinp@sgi.com]  
**Sent:** Tuesday, July 14, 2015 3:54 PM  
**To:** Planning\_Commission  
**Subject:** Oak Meadow project

I am resending what I sent Sunday as I see my attachments did not go through last time

Planning Commission,

I assume you are as confused as the neighborhood how a proposal almost exactly the same from Jan 13<sup>th</sup> 2014 which was 40ish homes and was recommended for denial is now recommended for approval. There is no explanation what changed (compare the two) just now all the sudden everything is in compliance with the general plan. We were told by the staff it was because of the trail but that was in this plan in Jan and as far back offered in 2006 ( Apr 16 minutes pg 14) and as recent as the Jan 13<sup>th</sup> 2014 page 6 when the recommendation was denial.

**URBAN SERVICE AREA ADJUSTMENT, GENERAL PLAN AMENDMENT, ZONING AMENDMENT & ANNEXATION – USA-05-02/GPA-11-04/ZA-11-13/ANX-06-01: Edmundson-Oak Meadow Plaza**

**RECOMMENDATION**

1) Environmental Assessment (CEQA)	Recommend City Council Adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
2) Urban Service Area Boundary Adjustment (USA-05-02)	Recommend City Council Denial
3) Annexation (ANX-06-01)	Recommend City Council Denial
4) General Plan Amendment (GPA-11-04)	Recommend City Council Denial
5) Zoning Amendment (ZA-11-13)	Recommend City Council Denial

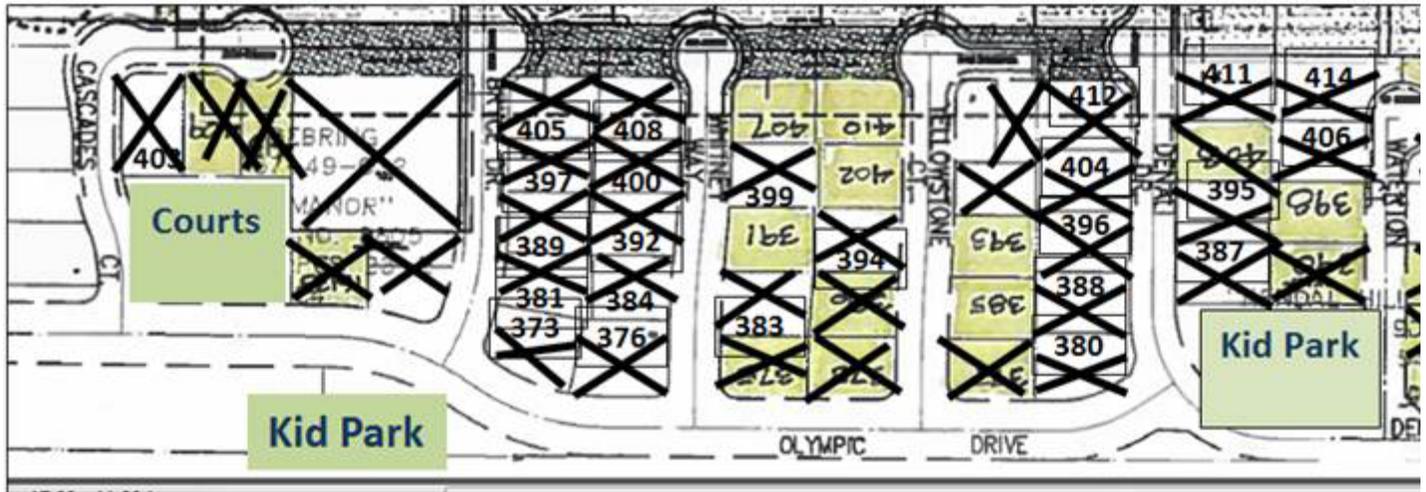
The project violates precepts of our General Plan

- City has sufficient land for residential development within its current city limits.
- Agricultural lands, including lands for grazing are to be protected
- Our view-shed of our foothills are also to be protected
- The long term costs will impact this City’s sustainability
- The project violates Smart-Growth guidelines a key city council goal
- Building and expanding at our core and at or near transit centers prevents urban sprawl while it optimizes ever limited city resources and existing infrastructure.

Community involvement

They staff report does not include the city council meeting from April 19 2006 where this whole site was MOU’d and ULL with very specific caveats from the city council direction and agreement from the developer around working with and reaching agreement with the community. Community involvement was a divide and conquer promising cul-de-sac to some streets and the second time around sent someone through the neighborhood trying to get them to sign something (38 homes) with tactics that backfired and created outrage in the neighborhood. This person is specifically angling to have a road from this proposed development to access the back of their county property. Where is the neighborhood on this proposed development?

## 85% confirmed opposition



### Other documented opposition

- The General Plan Advisory Committee voted unanimously (14-0) against developing this property
- Hundreds of petition signatures
- School district - MHUSD
- Greenbelt Alliance
- Audubon Society
- Voted against several times at the planning commission – same plan
- LAFCO has written this does conform to their principles

### Trail -

We met with the Community Developer Chris Ghione and he said this trail link was not meant to have parking when they designed the map and it was purely for the neighborhood to access - by which logic we should have a say at what cost, and surely not when it mean having to walk most of it though a development that destroys view sheds. A trail that exist so you can walk through a development is

Morgan Hills input in general input – To date we have been circulating issue around the community starting on the 4<sup>th</sup> of July, we have over 700 petition signatures in just 3 weeks. Just like the GPAC, who is even more pro-developer the rest of the community is against this annexation. I will bring the pile of signatures to the meeting.

Up a hill – this is not a development with the same topographical features as adjacent neighborhood. It is literally up a hill which is viewable from Monterey Hwy and city park. It is clearly developing up and out in hillside ag land.



Real beautiful hillside ag land a mile from downtown – we must come up with a better way to preserve it besides hiding it behind a development.



Please hear the voices of the neighborhood and the citizens of Morgan Hill and deny recommendation of annexation, USA, GB, zoning etc. You can help save this special piece of land and promote development in other areas.

Regards,  
Kevin Pfeil  
404 Denali Dr  
Morgan Hill