

**RESOLUTION NO. 16-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT, DAA-14-03: BUTTERFIELD-DIVIDEND EXTENDING THE COMMENCEMENT OF CONTRUCTION DATE FOR THE 41, FISCAL YEAR 2015-2016 BUILDING ALLOCATIONS.**

**WHEREAS**, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded application MC 13-18: Butterfield-Dividend, 41 building allotments for FY 2015-16 on February 25, 2014; and

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

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

**WHEREAS**, on October 15, 2014, the City Council adopted Ordinance No. 2123, N.S. which approved a development agreement establishing 'commence construction' dates for a 41 unit portion of the 78-unit project which received allocations from MC 13-18: Butterfield-Dividend; and

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

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

**WHEREAS**, a 6-month extension is currently requested for the 41 allocations awarded for FY 2015-16 allocations; and

**WHEREAS**, a 12-month processing delay occurred with the processing of the final map and improvement plans for Valencia project; and

**WHEREAS**, the Development Agreement amendment request for the extension of the 41 Fiscal Year 2015-16 allocations awarded to MC 13-18: Butterfield-Dividend was considered by the Planning Commission at its regular meeting of April 26, 2016, at which time the Planning Commission recommended approval of a twelve month extension of commencement of construction dates for FY 2015-16 for application MC 13-18: Butterfield-Dividend; and

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

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

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

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

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

**PASSED AND ADOPTED THIS 26<sup>th</sup> DAY OF APRIL 2016, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:**

**NOES: COMMISSIONERS:**

**ABSTAIN: COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**JENNA LUNA, Deputy City Clerk**

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**JOESPH MUELLER, Chair**

EXHIBIT A of Resolution Number 16-

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

**EXHIBIT B**  
**DEVELOPMENT SCHEDULE**  
**MC-13-18: Butterfield-Dividend**  
**41, FY 2015-16 Allocations**

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<b>I. SUBDIVISION AND ZONING APPLICATIONS</b>		
Applications Filed:		03-21-2014
<b>II. SITE REVIEW APPLICATION</b>		
Application Filed:		12-30-2014
<b>III. FINAL MAP SUBMITTAL</b>		
Map, Improvements Agreement and Bonds: FY 2015-16 (41 allocations)		03-30-2015
<b>IV. BUILDING PERMIT SUBMITTAL</b>		
Submit plans to Building Division for plan check:		
FY 2015-16 (41 units)		12-30-2015
<b>V. BUILDING PERMITS</b>		
Obtain Building Permits:		
FY 2015-16 (41 units)	<b>03-30-2017</b>	<del>03-30-2016</del>
<b>VI. COMMENCE CONSTRUCTION:</b>		
FY 2015-16 (41 units)	<b>06-30-2017</b>	<del>06-30-2016</del>

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

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

If a portion of the project has been completed (physical commencement on at least 21 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.