

RESOLUTION NO. 16-**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING CITY COUNCIL APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT APPLICATION DAA-09-05B: COCHRANE-BORELLO RECOMMENDING EXTENSION OF THE COMMENCEMENT OF CONSTRUCTION DATES FOR FISCAL YEARS 2013-14, AND 2015-16. (APN 728-34-008)**

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, has to date awarded 95 building allotments to applications MC-08-16, MC 09-04, MC 11-03 MC 12-07 for FYs 2010-11 thru 2014-15, MC 13-21: Cochrane-Borello, 25 building allotments for FY 2015-16 and 15 allotments to MC 14-12: Cochrane-Borello; and

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

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

WHEREAS, on March 27, 2013 the City Council adopted Ordinance No. 2065, N.S., which approved a development agreement and established a development schedule for the project; and

WHEREAS, on August 5, 2015 the City Council adopted Ordinance No. 2161, N.S., which approved an amendment to the development agreement incorporating the commitments and adding to exhibit B the development schedule for the 15 allotments to MC 14-12: Cochrane-Borello project; and

WHEREAS, on June 30, 2014, 23, FY 2010-11 allocations expired due to lack of commencement.

WHEREAS, on June 30, 2015, 57, FY 2011-12 and FY 2014-15 allocations expired due to lack of commencement.

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

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

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

WHEREAS, a 9-month ELBA is currently requested for the 15 allocations awarded for FY 2013-14, a 14 month extension of the 25 FY 2015-16 allocations and a 6 month extension of the FY 2016-17 allocations; and

WHEREAS, a 12-month processing delay occurred due to the project's repeated inability to secure a development partner; and

WHEREAS, a development agreement amendment request was considered by the Planning Commission at its regular meeting of April 26, 2016, at which time the Planning Commission recommended Council's conditional approval of the development agreement amendment request to incorporate an 18-month extension of the 15, FY2013-14 allocations and a 24-month extension of the 25, FY 2014-15 allocations; and

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

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

SECTION 1. The proposed 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 EIR and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Environment Impact Report adopted by the City Council in January 2013, and the Planning Commission's independent judgment and analysis, and that the EIR was adopted prior to action taken to adopt the original project proposal. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

SECTION 3. **RECOMMENDATION OF APPROVAL OF DEVELOPMENT AGREEMENT AMENDMENT.** The Planning Commission hereby recommends the City Council conditional approval of the eighteen month extension of the FY 2013-14 allocations and 24-month extension of the FY 2015-16-12 allocations based on delays that were outside of the applicant's control.

SECTION 4. CONDITIONAL EXTENSION. The allocation extensions hereby recommended is affective only if the final map for phase I (21-lots) of the San Sebastian project is recorded prior to December 31, 2016.

PASSED AND ADOPTED THIS 26th 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:

JENNA LUNA, Deputy City Clerk

JOESPH MUELLER, Chair

EXHIBIT A of Resolution 16-

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

EXHIBIT D

**DEVELOPMENT SCHEDULE MC 11-03/MC 13-21/MC 14-12: Cochrane-Borello
Fiscal Year 2013-14 (15 allotments)/ Fiscal Year 2015-16 (25 allotments)/Fiscal Year 2016-17 (15
allotments)**

I.	SUBDIVISION AND ZONING APPLICATIONS Applications Filed:	September 1, 2009
II.	SITE REVIEW APPLICATION Application Filed:	April 8, 2013
III.	FINAL MAP SUBMITTAL Map, Improvements Agreement and Bonds: FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)	August 1, 2015 August 1, 2015 August 1, 2016
IV.	BUILDING PERMIT SUBMITTAL Submit plans to Building Division for plan check: FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)	March 1, 2016 March 1, 2016 March 1, 2017
V.	BUILDING PERMITS Obtain Building Permits: FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)	May 30, 2016 May 30, 2016 May 30, 2017 October 31, 2017 May 30, 2018
VI.	COMMENCE CONSTRUCTION FY 2013-14 – (15 units) FY 2015-16 – (25 units) FY 2016-17 – (15 units)	June 30, 2016 June 30, 2016 June 30, 2017 December 31, 2017 June 30, 2018

Failure to commence construction by the dates listed above, shall result in the 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 72 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.