

**Toll Brothers**  
America's Luxury Home Builder®



*San Sebastian*  
GATED ESTATE HOMES  
BY: MH CREEKSIDE, INC.

City of Morgan Hill  
Attn: Terry Linder  
17575 Peak Avenue  
Morgan Hill, CA 95037

DEVELOPMENT  
SERVICES

MAR 18 2016

CITY OF MORGAN HILL

Re: Extension to the Loss of Building Allocation (ELBA)

Dear Terry,

The partners of the San Sebastian project as of March 4<sup>th</sup>, 2016 entered into contract with Toll Brothers, "America's Luxury Home Builder". They are number 6 (behind Apple, Walt Disney, Amazon, Alphabet and Nordstrom) on the world's top ten most admired companies for the quality of products/services offered.

Since initially receiving allocation in 2010 our project has struggled to find the right partner to bring our vision to reality. After experiencing several let downs going all the way back to 2010 from small private companies, private companies making the transition to public companies, established larger publics, local builders and at one point our own effort to launch the project independently we've finally secured what we believe to be the perfect partner. Our project will be the most luxurious development in town and Toll Brothers has the experience and track record to deliver our vision at an even higher level than what we could have dreamt on our own.

This process has taken longer than anyone could have imagined. Part of that was due to the great recession we experienced, a full blown environmental impact report that took considerably longer than any of us ever anticipated, a number of contracts that we entered into that failed to advance past the due diligence investigations and materialize into an actual closing, extended SCVWD approvals, the complexity of the design and approvals related to our project that do not necessarily always fall within the Measure C defined box and most recently a newly discovered soil issue. Please see the attached Entitlement Approvals that provides a chronology of events related to the project.

In late 2015 we discovered during one of the aforementioned due diligence investigation by UCP that the property had a pocket of Chlordane contaminated soil. As we had previously gone through a meticulous phase one/two investigation for the entire 124 acres this obviously was a surprise and yet another setback. We entered into a Voluntary Clean Up Agreement with DTSC to develop a plan to address the soil. We ended up excavating and off-hauling approximately 100 tons of soil and completing a detailed Parcel 1 (54 Units) Human Health Risk Assessment. The Voluntary Clean Up that we entered into with the DTSC was recently completed and a No Further Action (NFA) letter was issued on March 4, 2016. Please see attached NFA letter for your reference. The contaminated soils required action that caused tangible delays that

were beyond our control and totally unexpected considering we had previously completed a number of detailed studies including an Agrichemical Assessment.

The San Sebastian Project has experienced, extended environmental processing requirements as outlined above and extended approvals (SCVWD & DTSC) from outside agencies. Both of these circumstances are specifically listed in Council Policy CP-09-02 as justification/reasoning for providing an extension.

We have continued to show progress. Our goal is to assist Toll Brothers to build this special project, not spend money on securing allocations/entitlements only to see the project fall by the wayside. We have demonstrated **Developer Action** as outlined below and have paid all city fees.

1. Planning Applications
  - a. Zoning - **APPROVED**
  - b. Tentative Map - **APPROVED**
  - c. Vesting Tentative Map - **APPROVED**
  - d. Development Agreement - **APPROVED**
  - e. Design Permit/Site Review - **APPROVED**
2. Final Map - **APPROVED** on Phase 1 (21 Units)
3. Improvement Plans - **APPROVED** on Phase 1 (21 Units)
4. Final Map - **Submitted** on Phase 2 (33 Units)
5. Improvement Plans - **Submitted** on Phase 2 (33 Units).
6. Master Plan Check Submittal - **Submitted**
  - a. We anticipate the Master Plan being approved by the Building Department within the next 6-8 weeks.

Our project is close to becoming a reality. It's ready to start grading on 21 lots (contingent on map being recorded, bonds posted and insurances submitted to the City).

Our contract with Toll Brothers requires an extension to the remaining 55 allocations we currently have. If we aren't successful in securing the ELBA then I believe that San Sebastian will never be built and the time we have spent with staff, and the millions of dollars that we have invested to date will have been for nothing. I want to see San Sebastian get built and I believe that the City does as well. Below is the Development Schedule that is incorporated into our contract with Toll Brothers and securing an extension that provides adequate time to accomplish the stages below is a Buyers condition to close; meaning that without getting an extension that will accommodate this schedule they will not move forward with the deal.

Phase I Schedule for Allocation Extension	Start	Finish
Due Diligence	3/3/2016	5/2/2016
Close of Escrow	6/30/2016	
Grading	7/11/2016	8/15/2016
Undergrounds Utilities incl Laterals (SD, SS, W)	8/15/2016	10/22/2016
Dry Utilities	10/22/2016	11/22/2016
Street Improvements to full pave (Phase 1-3)	11/22/2016	1/15/2017
Model Construction	1/15/2017	10/12/2017
Start Production	7/29/2017	4/25/2018

Progress will be made and quickly once Toll closes as outlined by the above development schedule. Toll plans on improving all 54 lots in Parcel 1 concurrently. Charlie Ha from Public Works has confirmed that

our Phase 2 Improvement Plans are far enough along that the concurrent improvement of Phase 1 (21 Units) and Phase 2 (33 Units) totaling 54 units is feasible within the timelines outlined above.

We are specifically requesting the following extensions.

- MC 11-03 (15 Units) Commencement of Construction Date be extended to 3/31/17.
- MC 13-21 (25 Units) Commencement of Construction Date be extended to 8/31/17.
- MC 14-12 (15 Units) Commencement of Construction Date be extended to 12/31/17.

The allocation extension requested above will provide Toll Brothers the ability to deliver new product every year without a gap in construction as we were unsuccessful in securing additional allocations in last years competition, thus the extension requests are staggered slightly.

We need a small amount of time to make this work. Our project is in your hands. Your decision/recommendation will make or break it. My family and I sincerely request that you will look at the merits of this project, my family's history in the City and Toll Brothers proven track record. This project will move forward, with your support. Without an approved ELBA, we are left with nothing and we will be faced with yet another failed contract.

Thank you,

Chris Borello



Chris Borello | [chris.borello@sansebestates.com](mailto:chris.borello@sansebestates.com) | [chris.borello@me.com](mailto:chris.borello@me.com)

Mailing/Billing Address: PO Box 2107 | Morgan Hill, CA 95038

Physical Address: 2280 Cochrane Road | Morgan Hill | CA 95037

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**San Sebastian Gated Estate Homes**

On Skype at Chris.Borello | California Real Estate Broker: BRE ID: 01412135

Todd Callahan



Todd Callahan  
Vice President of Land Acquisition  
Toll Brothers Northern California  
925-249-6047



Matthew Rodriguez  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Barbara A. Lee, Director  
700 Heinz Avenue  
Berkeley, California 94710-2721



Edmund G. Brown Jr.  
Governor

March 4, 2016

Mr. Chris Borello  
MH Creekside, Inc.  
P.O. Box 2107  
Morgan Hill, California 95038

Dear Mr. Borello:

The Department of Toxic Substances Control (DTSC) entered into a Voluntary Cleanup Agreement with MH Creekside, Inc. on October 15, 2016 for The Estates at San Sebastian Property (Site), located at Peet Road in Morgan Hill, California. The scope of work for the Voluntary Cleanup Agreement primarily consisted of conducting a Preliminary Endangerment Assessment (or its equivalent) in order to determine whether a release of hazardous substances existed at the Site that could pose a potential risk to human health and to determine whether the Site could be deemed acceptable for residential land use. The following reports were submitted to and reviewed by DTSC:

- Phase I Environmental Site Assessment, The Estates at San Sebastian, APN 728-34-027, ENGEO, February 21, 2012
- Agrichemical Impact Assessment and Risk Evaluation, ENGEO, February 22, 2012
- Human Health Screening Risk Evaluation for Parcel 1 of San Sebastian Estates, SLR, September 14, 2015
- Agrichemical Evaluation Completion Report, ENGEO, January 27, 2016

Organochlorine pesticides from past agricultural use were detected in the shallow soil samples that were collected from the Site, and dieldrin was identified as the primary chemical of potential concern (COPC), with chlordane as a secondary COPC. The other organochlorine pesticides that were detected in soil were at relatively low concentrations. Arsenic was also detected in the samples collected from the Site in 2011 at concentrations ranging from 1.8 to 13 milligrams per kilogram (mg/kg). Dieldrin was detected in 53 soil samples at concentrations ranging from not detected to 96 micrograms per kilogram ( $\mu\text{g}/\text{kg}$ ); eighteen of the 53 soil samples had dieldrin

Mr. Chris Borello  
March 4, 2016  
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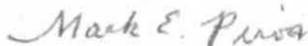
concentrations that exceeded their respective residential U.S. Environmental Protection Agency Regional Screening Level (RSL). A statistical evaluation of the dieldrin concentrations in soil was performed as part of the Human Health Screening Risk Evaluation and the 95 percent upper confidence limit of the mean concentration (95% UCL) was calculated using several statistical methods. The highest calculated 95% UCL was 30.43 µg/kg, which is below the residential RSL of 34 µg/kg. Based on this evaluation, it was concluded that the presence of dieldrin in onsite soil did not pose a human health risk for future residential receptors. The other reported pesticide concentrations were below levels of concern for residential development. Arsenic concentrations were consistent with naturally-occurring background concentrations in Santa Clara County.

Impacted soil was removed at two sampling locations where chlordane was detected at concentrations of 4,800 and 1,100 µg/kg. The final excavations each measured approximately 26 feet in length by 10 feet in width by 18 inches in depth. A total of approximately 30 cubic yards of soil was removed from the Site and disposed as non-hazardous waste at a permitted, off-Site landfill. The sampling performed following the soil removal work confirmed that chlordane concentrations in the remaining soil in the excavation areas are at or are below the residential RSL for chlordane.

Based on our review of the submitted reports, DTSC concludes that no further action is required at the Site and that the planned residential development on the Site is acceptable. As with any real property, if previously unidentified contamination is discovered, additional assessment, investigation, and/or cleanup may be required.

If you have any questions, please contact Nicole Yuen by phone at (510) 540-3881 or email at [Nicole.Yuen@dtsc.ca.gov](mailto:Nicole.Yuen@dtsc.ca.gov).

Sincerely,



Mark E. Piros  
Unit Chief  
Brownfields and Environmental Restoration Program – Berkeley Office

cc: Mr. Shawn Munger  
ENGE  
1956 Webster Street, Suite 450  
Oakland, California 94612  
[smunger@engeo.com](mailto:smunger@engeo.com)

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**San Sebastian**  
**March 9, 2016**

Entitlement Approvals

- Vesting Tentative Map approved by Planning Commission for 80-lots (includes 5 Open Space parcels), Resolution No. 13-12 on February 12, 2013.
- Non Vesting Tentative Map approved by Planning Commission for a 179-lots (includes 10 Open Space parcels), Resolution No. 13-13 on February 12, 2013.
- Environmental EA 09-23 approved by City Council, Resolution 6620 on February 27, 2013.
- Zoning and Precise Development Plan ZA 09-08 approved by City Council for amending the Zoning District from R1-12,000/RPD, R-1-20,000/RPD, RE 40,000/RPD to R1-20,000 PD, Ordinance No. 2064 on March 27, 2013.
- Development Agreement DA 09-05 approved by City Council, Ordinance No. 2065 on March 27, 2013.
- Site Review Application 13-07 approved by Approval Certificate No. 13-013 for lots 1-79/Phases 1-5 on August 30, 2013.
- Development Agreement recorded October 24, 2013.
- Development Agreement Amendment DAA 11-08B, approved by City Council, Ordinance No. 2107 on June 18, 2014.

<b>San Sebastian RDCS History</b>				
FY Award	RDCS Application	Allocations	Commence Construction	status
FY 10/11	MC-08-16	23	6/30/2014	allocations expired
FY 11/12	MC-09-04	37	6/30/2015	allocations expired
<b>FY 13/14</b>	<b>MC-11-03</b>	<b>15</b>	<b>6/30/2016</b>	<b>all entitlements approved, pending final map recordation and building permits</b>
FY 14/15	MC-12-07	20	6/30/2015	allocations expired
<b>FY 15/16</b>	<b>MC-13-21</b>	<b>25</b>	<b>6/30/2016</b>	<b>all entitlements approved, pending final map recordation and building permits</b>
FY 16/17	MC-14-12	15	6/30/2017	all entitlements approved, pending final map recordation and building permits
FY 17/18	MC-15-05	0	n/a	PC awarded no allocations

Total Allocations      135  
 Expired Allocations      80

<b>Available Allocations</b>	<b>55</b>
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Project Buildout      244  
 Allocations needed      189