

BACKGROUND

In preparation for the March RDCS Quarterly report, the following eleven projects were identified as having un-used building allocations that will expire June 30, 2016.

1. MC 04-26/DAA 05-01: Cochrane-Mission Ranch
2. MC 08-16/MC11-03/MC 13-21/DA 09-05: Cochrane-Borello
3. MC 08-18/MC 10-04/DA 09-07: Monterey-Dynasty
4. MC 10-01/DAA 12-03: Watsonville-Dividend
5. MC 10-03/DAA 06-04F: Diana-Sherimar/Martinez
6. MC 11-11/DA 13-10: Diana-Bagoye
7. MC 11-16/DAA 12-05A: Main-Garcia
8. MMC 12-03/DAA 13-11A Del Monte-Giovanni
9. MMC 13-08/DA 14-05: CampoliNorth-Cox
10. MC 13-13/DA 14-02: Old Monterey-City Ventures
11. MC 13-18/DA 14-03: Butterfield-Dividend

Notices were sent in early February to each project applicant informing them of the pending June 30, 2016 commencement deadline. Applicants unable to commence construction by that date were advised to apply for either a Development Agreement Amendment DAA.

Four of the 11 notified applicants filed for amendment to their development agreement. An ELBA request was considered separately for the MC 13-13/DA 14-02: Old Monterey-City Ventures (Solara Ranch). The City Council unanimously voted to grant a six month extension to the 38, FY 2015-16 allocations because the project had reached step eight of the Council policy, with 14 of the 38 allocations before the wet weather delayed the project, and may potentially delay the project further.

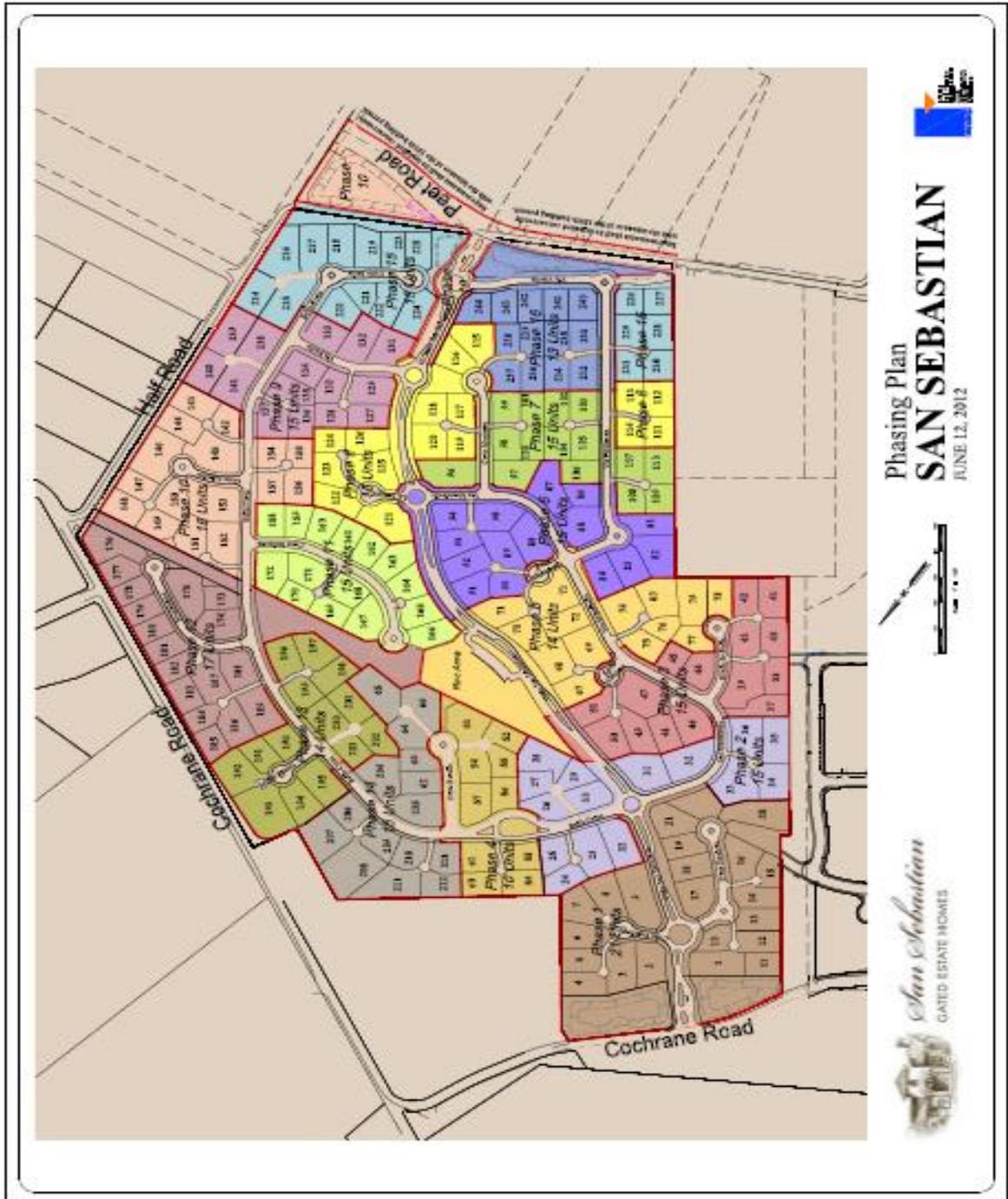
The remaining three DAA requests are further described and discussed below. Letters of request from the applicants are also attached at the end of this report and labeled to correspond with their individual requests as titled within this report.

DAA-06-04G: DIANA - SHERIMAR

This is a request for an amendment to a development agreement specifically requesting a 12-month extension for two building allotments awarded to the Sherimar Ranch development, a 117-unit residential project located on the south side of Diana Avenue west of Ringel Drive and east of Murphy Avenue.

DAA-09-05C: COCHRANE - BORELLO:

This is a request for an amendment to the development agreement for the 244-unit single family San Sebastian project located on the northeast quadrant of Morgan Hill adjacent to Alicante Estates and Alicante Ranch bordered by Peed Road, Cochrane Road and Coyote Road. The specific request is to extend the expiration dates for the project building allocations by nine to 18 months.



DAA-14-03: BUTTERFIELD - DIVIDEND

This is a request for an amendment to a development agreement specifically requesting a six month extension for 41 building allotments awarded to the 80-unit Valencia project approved on the northwest corner of the intersection of Butterfield Boulevard and Central Avenue. A small portion of the project site is also located on the northeast corner of the intersection of Butterfield Boulevard and Central Avenue.



ANALYSIS

The following analysis addresses the consistency of the three requests with the City Council Policy CP-09-02, Policy Guidance for Decisions on ELBA Requests Filed by Developers (attached), which establishes criteria for when the City Council will grant such requests.

Pursuant to General Plan page 27, Requirement of Development Allotments for all Residential Development and per Morgan Hill Municipal Code Section 18.78.125(G), *“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.”*

The City Council further refined the criteria for evaluating ELBA requests in Council Policy CP-09-02. This Policy establishes direction to staff on which factors may be considered in the granting of extensions, specifically stating that the need for an extension must not be due to developer inaction and that the need for an extension must be due to circumstances beyond the developer's control. The Policy provides a definition of developer action, identifying eight steps in the entitlement process to consider and also provides a definition of one circumstance, economic hardship, which may be justification for a delay.

In reference to the eight identified steps in the entitlement process, the Policy states *“Projects that have completed steps 1-6 will be considered more favorably for extensions, as those actions demonstrate good faith effort by the developer toward completing the project.”* Steps 1-6 include the following steps:

1. Planning Applications submitted;
2. Planning Applications approved;
3. Final map/Improvement plans submitted;
4. Final map/Improvement plans approved;
5. Master plan check submitted;
6. Master plan check approved;
7. Final map/Improvement plans recorded; and,
8. Building permits issued/construction commenced.

An extension may be considered for a project that has not completed steps one through six, if evidence of circumstances outside developer control or other circumstances unique to the project that has precluded the developer from completing steps 1-6. A developer must be able to demonstrate timely submittals and that the developer has not contributed to the delay.

The following table summarizes the status of each project in terms of meeting these eight steps. The specific circumstances for each project are discussed as well.

<u>Steps completed</u>	<u>1. DAA-06-04G: DIANA- SHERIMAR/ MARTINEZ</u>	<u>2. DAA-09-05 B: COCHRANE- BORELLO</u>	<u>3. DAA-14-03: BUTTERFIELD - DIVIDEND</u>
1. Planning Applications submitted	√	√	√
2. Planning Applications approved	√	√	√
3. Final map/Improvement plans submitted	√	√	√
4. Final map/Improvement plans approved	√		√
5. Master plan check submitted		√	√
6. Master plan check approved			√
7. Final map/Improvement plans recorded	√		
8. Building permits issued/construction commenced			

1. DEVELOPMENT AGREEMENT AMENDMENT, DAA-06-04G: DIANA-

SHERIMAR/MARTINEZ: Sherimar Ranch is a 117 unit single-family detached development located on a 42 acre site on the south side of Diana Ave. between Murphy Avenue and Ringel Drive. The final phase of Sherimar Ranch was awarded 22, FY 2014-15 on-going allocations in February 2013. In March of 2014, Tract map 10171 recorded with 23 lots. The developer at that time, KB homes immediately constructed homes on 20 of the 23 lots. Lots one and three remain vacant and lot two contains an existing single family home. The construction of homes on lots one and three would require building allocations. The applicant (see attached “Letter 1”) is requesting a 12-month extension of the remaining two unused building allocations. The reason given for the delay is the family has had to focus on an aging family member and has not been able to direct their attention to preparing plans for homes on lots one and three.

The project tract map has been recorded, creating the lots, which is Step 7 of the Council Policy. KB Homes had clearly moved to Step 8 on 20 of the lots but now the applicant/owner of lots 1 and 3 must redo steps 5 (building permit submittal) and 6 (building permit approval). Since the original builder is no longer involved, the lots are left to the original property owners to develop as custom lots. Traditionally custom lot developments were granted an extra year for lots sold to individuals and not completed by the original developer. The reason for the extra time was a recognition of the extra time it took an individual lot owner to select an architect, have plans drafted, submitted to and approved by the City.

The Sherimar project has reached Step 8 as a whole but the last two lots are technically at Step 5. The circumstances where the two remaining lots have been retained by the original land owner is unique. The absence of a developer to construct units on the lots creates a circumstance where the lots will be developed as custom lots, which traditionally take more time to develop. Therefore it is recommended that a 12 month extension be granted for use of the project's final two allotments.

COMMENCEMENT OF CONSTRUCTION SCHEDULE FOR SHERIMAR RANCH

Commence Construction	Original Dates	May 2015 Extension	Current Request	Staff Recommendation
FY 2014-15 (22 units)	06-30-15	06-30-16 (+12mo)	06-30-17 (+12mo)	Concur with applicants request

2. DAA-09-05 B: COCHRANE-BORELLO: This project (San Sebastian) is a 244 unit single family project on 122-acres located north of Half Road, west of Cochrane Road, east of Peet Road, and adjacent to the south side of the Santa Clara Valley Water District (SCVWD) pump station. The project has been granted allocations in multiple RDCS competitions; most recently in February 2014 when it was granted 25 FY 2015-16 allocations.

The applicant is requesting 6 to 14 month extensions to the project building allocation commencement of construction deadlines. The project has previously received extensions to some of the deadlines and has had 80 allocations expire to date. The prior and requested extensions are shown in the following table:

COMMENCEMENT OF CONSTRUCTION SCHEDULE FOR SAN SEBASTIAN

Allocation Year and Units	Original Commencement Date	April 2011 Extension	January 2013 Extension	May 2014 Extension	Current Request	Staff Recommendation
MC 08-16 FY 2010-11 (23 units)	06-30-11	(+24 mo) 06-30-13	(+12 mo) 06-30-14	<i>Not granted</i>	<i>Expired</i>	
MC 09-04 FY 2011-12 (37 units)	06-30-12	(+24 mo) 06-30-14	(+12 mo) 06-30-15	<i>Not granted</i>	<i>Expired</i>	
MC 11-03 FY 2013-14 (15 units)	06-30-14	(+12 mo) 06-30-15	(+12 mo) 06-30-16		(+9 mo) 03-31-17	Recommend (+18) 12-31-2017
MC 12-07 FY 2014-15 (20 units)	06-30-15				<i>Expired</i>	
MC 13-21 FY 2015-16 (25 units)	06-30-16				(+14 mo) 08-31-17	Recommend (+24) 06-31-2018
MC 14-15 FY 2016-17 (15 units)	06-30-17				(+6 mo) 12-31-17	<i>Extension not recommended</i>

The project was originally granted four years worth of extension in 2011 and 2013 due to an extended environmental review process. The project also consistently competed

in the annual RDCS competitions and received additional allocations yearly. In 2014 the applicant requested extensions to the FY 2010-11, and 2011-12 allocations. At that time the project had completed Planning entitlements (Step 2), and final map/improvement plans submittal (Step 3), but has yet to complete Step 4 which is the approval of the final map and improvement plans. In accordance with the Council policy, projects not completing Step 6 may be considered for extension if there were circumstances beyond the developer's control. The 2014 ELBA request was denied and 80 allocations have since expired. Since the last extension request the developer has however continued to advance the project as follows:

- 04-30-14 Submitted improvement plans for 21 lots. (previous submittal was 75 lots).
- 05-28-14 Final map submitted for 21 lots.
- 07-11-14 Comments returned from City.
- 07-24-14 City notifies applicant that an executed Subdivision Improvement Agreement, bonds, and insurance are required before final map can be brought to City Council for approval.
- 09-30-14 Final map and improvement plans resubmitted.
- 11-18-14 Comments returned from City.
- 04-10-15 City notifies applicant that an executed Subdivision Improvement Agreement, bonds, and insurance are required before final map can be brought to City Council for approval.
- 09-10-15 Final map and improvement plans resubmitted.
- 09-22-15 Comments returned from City
- 10-23-15 Mylar Final map submitted
- 12-07-15 Improvement plans approved by the SCVWD contingent on signed improvement plans by the City. Mylar improvement plans, executed Subdivision Improvement Agreement, bonds, and insurance have yet to be submitted.
- 03-08-16 Submitted for Master Plan review with the Building Division (Step 5).
- 04-07-16 Updated improvement agreement, final map fee and impact fees provided to Toll Brothers.

In accordance with the Council policy, projects not completing Step 6 may be considered for extension of allocations but must present evidence of circumstances outside of their control or other circumstance unique to the project that has precluded the project from completing Step 6. The reasons offered for the delay in the attached letter are; several failed partnerships with various developers; extended environmental processing and "extended SCVWD approvals" from the Santa Clara Valley Water District, and Department of Toxic Substances Control DTSC.

As mentioned earlier, the project initially received four years of extensions in 2011 and 2013 to account for the extended time it took to complete the project EIR. No further environmental processing delays have been encountered.

Prior to final map approval by City Council, approval from the SCVWD is required for project improvements that involve the SCVWD property along Cochrane Road and

within their easement area adjacent to Saint Katherine Drive. In December 2015, the SCVWD gave their approval contingent upon signed approved final improvement plans from the City. Final map approval has been on hold since October 2015 due to the absence of final improvement plans, executed subdivision improvement agreement, bonds and insurance.

The clearance approval from the DTSC appears to have started in October 2015 and concluded in March 2016. The DTSC clearance would have been needed prior to the issuance of a building permit, but was not a requirement for the submittal of the Master Plan set to the Building Division or final improvement plans to Public Works.

The project has completed Step 3, has Step 4 pending submittal of a final improvement plan, an executed subdivision improvement agreement, bonds, and insurance, has completed Step 5 with the submittal to the Building Division in March and could have Step 6 (Master Plans approved by Building Division) completed within the next 2-3 months. In absence of reaching Step 6, the applicant explains circumstances of having partnered with multiple developers that wanted to pursue the completion of the project but after a couple months effort abandoned the partnership for various reasons. The failed partnerships have left the project owner without the resources to pursue the project and have resulted in several six month long delays. The project owner has recently partnered with Toll Brothers, which is a large experienced builder who the applicant believes has the financial resources necessary to move the project forward. The applicant has indicated that Toll Brothers could commence grading within 2-3 months if granted an extension.

Per the Policy, other circumstances may be identified which warrant an extension. In such a case, an 18-month extension for the FY 2013-14 allocations and a 24-month extension of the FY 2015-16 allocations would provide an adequate amount of time for the project to move forward at a logical pace without having to seek further extensions. The applicant's extension request (see letter #2) does not align with the City's standard December or June commencement dates and asks to extend a deadline that is over one year away. Staff recommends no extension be granted to the 15, FY 2016-17 allocations, thus requiring 15 units to commence by June 30, 2017. An 18 month extension is recommend for the 15, FY 2013-14 allocations, thus requiring another 15 units to be commence by December 31, 2017 and finally a 24 month extension to the FY 2015-16 allocations which would result in commencement of another 25 units by June 30 2018. Staff recommends these extensions with the condition that the applicant **record the phase one (21 lots) final map by December 31, 2016**. Failure to record the final map by December 31, 2016 would void the extension.

Alternatively, if an extension is not granted, loss of the 40 allocations (15, FY 2013-14 and 25 FY 2015-16) would still allow the project to move forward with the remaining 15 allocations for FY 2016-17. Once the project is under-construction it will be considered as an "on-going" project and may receive up to 15 allocations per RDCS cycle until it is fully allocated or the project can compete for additional allocations.

3. DEVELOPMENT AGREEMENT AMENDMENT, DAA-14-03 BUTTERFIELD-DIVIDEND:

The request is for an amendment to the development agreement specifically requesting a six month extension of the 41 building allotments awarded to the 80-unit Valencia project approved on the northwest corner and northeast corners of the intersection of Butterfield Boulevard and Central Avenue. No previous extensions have been granted.

Allocation Year and Units	Original Commencement Date	Current Request	Staff Recommendation
MC 13-18 FY 2015-16 41 units	06-30-16	+6 Months	Recommend (+12) 06-31-2017

The Valencia project completed their Planning entitlements in February 2015, had their final map approved by City Council on March 23, 2016 and their Master plans approved on April 11, 2016 thus completing Step 6. The project has incurred a number of delays as outlined in the applicant’s letter (see attached letter #3). The project has been subject to numerous redesigns at the request of the City, most recently the redesign of the Central/Butterfield intersection. The project has waited one-year for a response from the Union Pacific Railroad on their drainage plan and has incurred a six month delay from the County for approval to off-haul dirt to the Valencia site. The applicant feels confident about commencing construction in accordance with the current 6-30-2016 agreement date but commencing on all 41 units may not be possible with the delays incurred thus far. Due to the delays incurred thus far and the expedient completion of steps 1-6, it is recommended a one year extension be granted to cushion against any unforeseen weather or permitting delays.

Conclusion

As discussed above, all three projects have completed a majority of the identified steps in the entitlement process. The majority of the Diana-Sherimar/Martinez project has been constructed and only two units require an extension. The Cochrane-Borello project is actively in the process of obtaining the necessary entitlements and appears to be likely to commence construction in the near future. The Butterfield-Dividend project has completed the identified entitlement steps and the applicant has provided an explanation of outside circumstances that have contributed to a delay of the project. For these reasons staff recommends that the Planning Commission recommend extensions for each of the projects as described.

LINKS/ATTACHMENTS

1. Applicant Letters 1, 2 & 3
2. Resolutions 1, 2 & 3
3. Council Policy CP 09-02