

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL DENYING DEVELOPMENT
AGREEMENT AMENDMENT APPLICATION DAA:
EAST DUNNE - BUSK (APN 817-19-044)**

WHEREAS, on February 25, 2014, the Planning Commission,, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded seven building allotments for application MC-13-16: East Dunne – MDMH Investors for FY 2015-16 and six building allotments for FY 2016-17; and

WHEREAS, the applicant filed a zoning amendment and Subdivision and Development Agreement applications with the City Planning Division on October 29, 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 April 6, 2016, the City Council adopted Ordinance No. 2195, N.S., which approved a Development Agreement for application MC-13-16: East Dunne – MDMH Investors; and

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 of the Municipal Code, 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, the Development Agreement approved by the City Council on April 6, 2016, included a six-month extension to the seven FY 2015-16 allocations to account for the delays caused by the City for multiple circulation and site plan amendments as these delays were agreed to be not a result of developer inaction; and

WHEREAS, in accordance with Council 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; and

WHEREAS, 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, the project to date has had two years and ten months from the date of allocation to commence construction on seven units and, in that two year ten month timeframe, the project has completed only one of the eight steps in permit process and recently has lacked progress from April 6, 2016 to October 24, 2016; 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 CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. That all the foregoing recitals are true and correct.

SECTION 2. That the project applicant has not demonstrated that there are circumstances unique to the project that have precluded the project from completing steps one, two, four and six and therefore does not meet the criteria for favorable consideration of approving an exception to loss of building allotment (ELBA).

SECTION 3. That based on the findings required in Municipal Code Section 18.78.125 and Council Policy CP-09-02, the City Council denies the request for a six-month ELBA for the seven Fiscal Year 2015-16 building allotments for MC-13-16: East Dunne-MDMH Investors (Busk).

SECTION 4. That this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 14TH DAY OF DECEMBER 2016, AT A SPECIAL MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

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 Resolution No. XXXX , adopted by the City Council at the special meeting held on December 14, 2016.

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

DATE: _____

Irma Torrez, CITY CLERK