



City of Morgan Hill

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Title:	TRANSITIONAL PROVISIONS OF RDCS AND GENERAL PLAN PIPELINE POLICY IMPLEMENTATION: CLARIFICATION OF INTENT TO APPLY GENERAL PLAN PIPELINE POLICY TO PENDING PROJECT; REQUEST TO DETERMINE THAT AWARDED RDCS ALLOTMENTS ARE PIPELINE PROJECTS SUCH THAT THE E. DUNNE-KYONO PROJECT, A 32-UNIT SINGLE-FAMILY ATTACHED RESIDENTIAL PROJECT IS A PRE-EXISTING PIPELINE PROJECT IN ACCORDANCE WITH THE 2035 GENERAL PLAN. THE PROPERTY IS LOCATED ON E. DUNNE AVENUE, EAST OF BUTTERFIELD BOULEVARD (APN 726-02-014)				

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Date	Ver.	Action By	Action	Result
10/19/2016	1	City Council	approved	Pass

CITY COUNCIL STAFF REPORT MEETING DATE: OCTOBER 19, 2016

PREPARED BY: Gina Paolini, Interim Principal Planner/Planning Department
APPROVED BY: City Manager

TRANSITIONAL PROVISIONS OF RDCS AND GENERAL PLAN PIPELINE POLICY IMPLEMENTATION: CLARIFICATION OF INTENT TO APPLY GENERAL PLAN PIPELINE POLICY TO PENDING PROJECT; REQUEST TO DETERMINE THAT AWARDED RDCS ALLOTMENTS ARE PIPELINE PROJECTS SUCH THAT THE E. DUNNE-KYONO PROJECT, A 32-UNIT SINGLE-FAMILY ATTACHED RESIDENTIAL PROJECT IS A PRE-EXISTING PIPELINE PROJECT IN ACCORDANCE WITH THE 2035 GENERAL PLAN. THE PROPERTY IS LOCATED ON E. DUNNE AVENUE, EAST OF BUTTERFIELD BOULEVARD (APN 726-02-014)

RECOMMENDATION(S)

Clarify the intent of the General Plan Pipeline policy and RDCS Transitional provisions to be used to determine that pending projects with awarded RDCS allotments, such that the E. Dunne-Kyono project, is a pre-existing pipeline project in accordance with the 2035 General Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES:

Ongoing Priorities

Protecting the environment

2016 Focus Areas

Planning Our Community

Developing Our Community

REPORT NARRATIVE:

Morgan Hill's General Plan Update process updated land use decisions in the community and simultaneously included revision of the City's Residential Development Control (RDCS) process. The latter, in Ordinance form, has been placed on the November 2016 ballot for the community's consideration.

During the 2035 General Plan Update adoption hearing, the City Council discussed projects that were processed to some degree under the prior General Plan, but that hadn't yet been completed (i.e., in the pipeline) and that could be plagued by consistency issues, with proposed changes contained in Morgan Hill 2035 General Plan (Morgan Hill 2035). The City Council adopted the following Pipeline Policy in Morgan Hill 2035:

***Policy CNF-1.4 Pipeline Provisions.** For a period of up to 24 months following the adoption date of the Morgan Hill 2035 General Plan, zoning amendment and discretionary development permit applications may be considered for General Plan conformance to the land use designations shown on the final adopted version of the 2001 General Plan Land Use Map. All of the "Pipeline" applications benefitting from this policy must have been submitted to the City, including full payment of fees, prior to adoption of this General Plan and their review must be completed within the same 24-month period.*

This Policy was created anticipating that applicants would use the land use designations that were in place at the time applications were submitted, with the understanding that many projects are phased, and or are awarded allotments over multiple years. However, because RDCS applications are not considered zoning amendments or discretionary development permits, the Pipeline Policy, as strictly worded, did not specifically include these type of applications. Staff does not believe it was the intent of the City Council to exclude RDCS applications from the Pipeline Policy that was adopted since the intent of the Policy - to honor land use designations that were in place at the time the applications were submitted - remains the same regardless of the fact that it is an RDCS application and not a zoning amendment or discretionary development permit application. Additionally, it is contrary to good planning to split a project mid-RDCS award, and require the applicant to start over and design for a different land use designation.

This intent to "grandfather in" previously awarded allotments was further refined in the replacement RDCS provisions. Section 18.78.030 (Transitional Provisions) of the replacement RDCS Ordinance adopted in City Council Resolution No. 16-129 on July 27, 2016 recognized the complexity of the RDCS and provided provisions for the transition from Measure C to Measure S. Those provisions state the following:

"C. *Previously Approved Allotments.*

- 1. Allotments awarded and exercised prior to March 1, 2017 shall remain valid and are not affected by this ordinance.*
- 2. Allotments awarded prior to March 1, 2017 but which have not yet been*

exercised shall remain valid until the expiration date established at the time of allotment or as established in the project's Development Agreement. Applicant requests for an extension to the date by which these allotments must be exercised and City action on these requests are governed by Section 18.78.170 (Extensions) of this ordinance."

The replacement RDCS Ordinance (Measure S) requires allotments awarded and exercised prior to March 1, 2017 to remain valid and not affected by the new Ordinance.

Several projects may be impacted by the transition between the General Plan adoption and new RDCS implementation. For example, the E. Dunne-Kyono project would be significantly impacted. In September 2015, Mana/VD submitted a project for RDCS review and competition in the Open/market category and successfully received 16 allotments for a 32-unit single-family attached residential project located on the north side of East Dunne Avenue, east of Butterfield Boulevard.

The 2016 RDCS applications were accepted on September 1, 2016. Dunne-Kyono submitted an application for the remaining units as well as two additional units. During the 15 day General Plan and zoning consistency review period, it was determined that the General Plan designation for the project site had been changed from Residential Attached Low (6-16 units/acre) to Residential Attached Medium (16-24 units/acre). As proposed, the project has a density of 7.7 units per acre.

In this case, it was not determined that the existing allotments were not exercised until the new competition year began. This creates an unusual situation where a project phased by allotment award, would have the prior year's award negated, and current year proposal inconsistent with the recently adopted General Plan. General Plan land use changes have occurred elsewhere in the City, but most changes have been minor, and none, that staff is aware of, have presented the same kind of General Plan land use designation inconsistency issue that we see with the Kyono property.

The applicant has subsequently submitted a Tentative Map application to exercise the 2015 allotments. It is recommended that the City Council clarify that the Pipeline Policy was intended to apply to RDCS commitments. This will deem the Kyono project a pre-existing pipeline project in accordance with the Morgan Hill 2035, and allow the project to compete in the 2016 RDCS review process for the original 32 units, under the previous General Plan land use designation.

COMMUNITY ENGAGEMENT: Inform

Morgan Hill 2035 and the RDCS revision process facilitated over 100 public meetings, with notices to property owners, flyers, web site, mailings, newspaper articles, and regular updates via the City's email distribution and social media.

On July 27, 2016, Morgan Hill 2035, including the Pipeline Policy, and RDCS Ordinance were adopted.

ALTERNATIVE ACTIONS:

The City Council could determine that awarded RDCS allotments were not intended to be included in the Pipeline Policy. This would mean that the Kyono project, specifically, would not be a pre-existing pipeline project and therefore, the project could not compete in the 2016 RDCS competition.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission adopted Resolution No. 16-02, awarding the Kyono project 16 allotments for FY 2017-18 on January 12, 2016.

FISCAL AND RESOURCE IMPACT:

If the City Council determines that awarded RDCS allotments were not intended to be included in the Pipeline Policy and thereby, the Kyono project would not be a pre-existing pipeline project, a refund of the 2016 RDCS processing fees would be issued in the amount of \$23,492.

CEQA (California Environmental Quality Act):

Not a Project

The City Council clarification is not a project subject to CEQA.

LINKS/ATTACHMENTS:

N/A