



# City of Morgan Hill

## Legislation Details (With Text)

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**Title:** DEVELOPMENT AGREEMENT AMENDMENT, DAA 14-10 (AAE2016-0003): E. DUNNE - BUSK: REQUEST FOR A SIX MONTH EXTENSION TO A COMMENCEMENT OF CONSTRUCTION DATE WITHIN AN APPROVED DEVELOPMENT AGREEMENT FOR A 14-UNIT SINGLE FAMILY PROJECT LOCATED ON THE SOUTH EAST CORNER OF THE INTERSECTION OF EAST DUNNE AVENUE AND MURPHY AVENUE (APN 817-19-044)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. November 22 Planning Commission report, 2. Applicant's Letter, 3. City Council Policy CP 09-02, 4. Resolution denying extension request, 5. Ordinance approving extension request, 6. 17 Supplement 1.pdf, 7. 17 presentation.pdf

Date	Ver.	Action By	Action	Result
12/14/2016	1	City Council	extended	Pass
12/14/2016	1	City Council	waived reading of the Ordinance	Pass
12/14/2016	1	City Council	introduced	Pass

## CITY COUNCIL STAFF REPORT MEETING DATE: DECEMBER 14, 2016

**PREPARED BY:** T. Linder, Interim Planning Manager/Community Development  
**APPROVED BY:** Steve Rymer, City Manager

**DEVELOPMENT AGREEMENT AMENDMENT, DAA 14-10 (AAE2016-0003): E. DUNNE - BUSK: REQUEST FOR A SIX MONTH EXTENSION TO A COMMENCEMENT OF CONSTRUCTION DATE WITHIN AN APPROVED DEVELOPMENT AGREEMENT FOR A 14-UNIT SINGLE FAMILY PROJECT LOCATED ON THE SOUTH EAST CORNER OF THE INTERSECTION OF EAST DUNNE AVENUE AND MURPHY AVENUE (APN 817-19-044)**

### RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt resolution denying extension request;

**OR**

1. Waive the first and second reading of Development Agreement Amendment Ordinance; and
2. Introduce Development Agreement Amendment Ordinance.

### COUNCIL PRIORITIES, GOALS & STRATEGIES:

## **Ongoing Priorities**

Enhancing public safety  
Protecting the environment

## **2016 Focus Areas**

Planning Our Community

### **REPORT NARRATIVE:**

On April 6, 2016, the City Council approved a Precise Development Plan and Development Agreement (DA) allowing for the development of 10 detached single-family residences, two single family attached homes and retention of two single family detached homes on a 3.65 acre site located at the southeast corner of the intersection of East Dunne Avenue and Murphy Avenue.

On October 7, 2016, the applicant filed the Development Agreement Amendment (DAA) request specifically requesting a six month extension to the seven building allocations awarded to the project for FY 2016-2017. The project is to commence construction of the first seven homes no later than December 30, 2016.

The applicant has indicated in the DAA request that an extension of time is requested due to extended processing of the tentative subdivision map resulting in the need to make major changes to the subdivision map and the need for the architectural plans to be revised to include one additional single story floor plan.

Section 18.78.125(G) of the Morgan Hill Municipal Code allows for the City Council to grant an exception to the loss of allotment 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, or extended delays in environmental reviews, delays not the result of developer inaction, or allotment appeals processing. The City Council also further refined the loss of allotments in City Council Policy CP 09-02 (attached), which allows for "Exception to the Loss of Building Allocations (ELBA)", when the need for the ELBA is not the result of developer inaction and, instead, is due to circumstances outside of the developer's control.

Pursuant to the policy, projects that have completed steps 1-6 in the eight step development process will be considered more favorably for extensions. An extension may be considered for a project that has not completed these steps, 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 project has almost completed three of the eight steps as described in Council Policy CP 09-02.

The applicant explains, in the letter dated October 4, 2016, that a six month extension of time is being requested due to City delays (attached). The project was awarded building allocations on February 25, 2014. Subdivision Map and Development Agreement applications were submitted to the City on October 31, 2014. The project was found complete in January 14, 2016 and was presented to the Planning Commission on February 9, 2016 for approval of the Subdivision Map and recommended approval of the Zoning Amendment and Development Agreement. The Zoning Amendment and Development Agreement were approved by the City Council on April 6, 2016. The Final Map and Improvement Plans were filed with the Public Works Department on October 24, 2016 and the applicant has yet to submit a Site Review application.

Based on Council Policy CP 09-02, the project was previously granted a six month extension to the commencement of construction deadline based on the delay of Planning and Public Works processing times for the Tentative Subdivision Map and Development Agreement. This extension was already factored into the approval of the Development Agreement and the Exhibit "B" Development Schedule where the original FY 2015-2016 commence construction deadline was extended from June 30, 2016 to December 30, 2016. The current delay is due to the applicant's inaction, since no action has occurred for the past six months. As stated previously, Final Map and Improvement Plans were recently submitted October 24, 2016 and a Site Review application has yet to be submitted. The applicant's delay does not warrant a further six month extension. If the Council is inclined to grant the six month extension request, an ordinance granting the extension has been attached to facilitate such action.

**COMMUNITY ENGAGEMENT: Inform**

The required public hearing notice was published in the Morgan Hill Times for the minimum 10-day noticing period and property owners within 300 feet of the subject property were notified of the DAA hearing 10 days prior to the scheduled public hearing via a mailed notice.

**ALTERNATIVE ACTIONS:**

Approval of the request would allow for a six month extension of the seven FY 2015-2016 building allocations.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

In February 2014, the Planning Commission awarded seven FY 2015-16 and six 2016-17 allocations to MC 13-16: Dunne-MDMH. In April 2016, the City Council approved Ordinance No. 2195 approving the Development Agreement that requires commencement of seven units prior to December 30, 2016.

On November 22, 2016, the Planning Commission considered the DAA extension request and voted 2-2 (commissioners Liam and Toombs absent). Commissioners Mueller and McKay felt the applicant's explanation for the delay (architect and engineering firms are overly busy and are unable to respond in a timely manner) was circumstance beyond the developer's control. The commissioners agreed that the staff shortage is real and did not want to see a small project penalized for not getting the same attention from design professionals as the larger projects. Also, if the extension is not granted, the project would have to shut down for two years since it would not be unable to secure on-going allocations until the 2017 competition and those allocations would be for FY 2020-21. Commissioners Orosco and Tanda did not see the under-staffing of the architect's office as circumstances beyond the developer's control and felt that the developer's inaction for the last six months did not warrant a second six month extension.

All commissioners agreed that as part of the current RDCS manual development, the allocation of on-going small projects should be reviewed to potentially allow on-going projects to receive allocations from earlier fiscal years, avoiding project shut downs for two or more years.

**FISCAL AND RESOURCE IMPACT:**

Application filing fees were submitted to cover cost of processing application request.

**CEQA (California Environmental Quality Act):**

## Statutory Exemption

In accordance with Section 15162 of the CEQA Guidelines (Subsequent Negative Declarations), there is no substantial evidence, in light of the whole record, that the projects as revised may have a significant effect on the environment; therefore no further environmental analysis is required. A Mitigated Negative Declaration was adopted for the project and a Notice of Determination was filed.

### **LINKS/ATTACHMENTS:**

November 22 Planning Commission report

Applicant's Letter

Council Policy CP 09-02

Resolution denying extension request

Ordinance approving extension request