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Filing Requirements for URBAN SERVICE AREA BOUNDARY AMENDMENTS

PURPOSE

The Urban Service Area Amendment process is intended to allow land, whether developed or undeveloped, incorporated or unincorporated, to be placed within the City's urban service area.

The City will only accept applications from private property owners for Urban Service Area Boundary Amendments during January of each year (**See City Council Policy CP 07-05**).

FILING REQUIREMENTS

An application shall be made by the property owner or agent thereof and must be accompanied by the following information in order to be accepted for processing. Complete project filing details are provided on the Application Filing and Plan Specifications Requirements Handout:

1. **Completed Uniform Application:** Complete all sections of the application. If a section of the application is not applicable to your project, please write, "Not applicable," or N/A. Please do not write in the staff-only section of the application.
2. **Planning Entitlement Project Information Sheet:** This application will provide important project information that will help to expedite the application review process. Please complete all sections, providing as much detail as possible regarding the scope of your proposal. If a section of the application is not applicable to your project, please write, "Not applicable," or N/A.
3. **Project Narrative/Letter of Request:** Provide a written description of the project being proposed and how it would meet the Desirable Infill Standards set by City Council Policy CP 94-02 (**See City Council Policy CP94-02- Desirable Infill Information**).
4. **Current Title Report:** Maximum 90 days old
5. **Santa Clara Valley Habitat Plan (SCVHP) Application:** Application materials can be found online at: [Santa Clara Valley Habitat Agency website](#).
6. **Additional Filing Requirements:** See Application Filing and Plan Specifications handout and Submittal Matrix.

USA

Application Filing Requirements

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7. **Application Fees:** Fees to be paid to the City of Morgan Hill at the time of submittal.

8. **Public Hearing Notice:** Fee to be collected

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 07-05

SUBJECT: PROCESSING APPLICATIONS FOR GENERAL PLAN AMENDMENTS AND URBAN SERVICE AREA (USA) BOUNDARY AMENDMENTS

EFFECTIVE DATE: AUGUST 22, 2007

REVISION DATE: _____

It shall be the policy of the City of Morgan Hill to utilize the following procedures for accepting and processing applications for General Plan Amendments and Urban Service Area (USA) Boundary Amendments.

GENERAL PLAN AMENDMENTS

The City of Morgan Hill will periodically review the General Plan in order to determine whether amendments of one or more of its elements may be needed or desirable in order to reflect changes in goals, policies, or physical, social and economic conditions. This City Council Policy establishes procedures that apply to proposed General Plan Amendments.

Initiation of Proposed Amendments. General Plan Amendment (GPA) applications may be initiated by the City Council, the Planning Commission, or owners of property included in the subject amendment.

Timing of Filing Applications for Amendments. The Planning Commission and the City Council may initiate General Plan Amendments at any time of the year. **The City will accept applications from private property owners for amendments to the Land Use Element during the months of January and June of each year.** The Community Development Director has the authority to determine how and when to carry out environmental review under the California Environmental Quality Act (CEQA), and may decide to defer processing private applications for General Plan Land Use Amendments for up to six months or more, so that a consolidated environmental review process may be conducted. The Director will also manage scheduling of public hearings, in order to ensure compliance with State laws that limit the frequency of amendments.

Limitations on Frequency of Amendments. Except as specifically provided in State Government Code Section 65358, no mandatory element of the General Plan may be amended more frequently than four times per year. Each amendment may include more than one change. Mandatory elements under State law, and the corresponding element within the adopted 2001 Morgan Hill General Plan, are listed below:

<i>Required Elements</i>	<i>Morgan Hill General Plan (2001) Chapter where Required Element Located</i>
Land Use	Community Development; Economic Development; Regional Coordination
Housing	Housing
Circulation	Circulation
Noise	Public Health and Safety
Conservation	Open Space and Conservation
Open Space	Open Space and Conservation
Safety	Public Health and Safety

One of the exceptions in State law regarding limits of frequency of amendment is that the limitation does not apply to amendments of the General Plan requested and necessary for a single development of residential units, at least 25% of which will be occupied by or available to persons and families of low or

moderate income, as defined by Section 50093 of the Health and Safety Code. The specified percentage of low- or moderate-income housing may be developed on the same site as the other residential units proposed for development, or on another site or sites encompassed by the General Plan, in which case the combined total number of residential units shall be considered a single development proposal for the purpose of applying the exception.

Referral of Plan Amendment Applications. Proposals to substantially amend the General Plan must be referred to other entities prior to Planning Commission and City Council public hearings. The Community Development Director has the authority to determine whether a proposed amendment is substantial. The entities to be sent copies of the project description and environmental document shall include but not be limited to the following:

Santa Clara County Planning Department
Santa Clara County Fire Department
Morgan Hill Unified School District
Santa Clara County Local Agency Formation Commission
Santa Clara Valley Transportation Agency (VTA)

Morgan Hill Public Works Department
Santa Clara Valley Water District
Gavilan College
Bay Area Air Quality Management District

In addition to these agencies, proposals shall be referred to Native American tribes with traditional lands located in Morgan Hill area that are on contact list maintained by Native American Heritage Commission; as well as to the Association of Bay Area Governments (ABAG) if the proposal is regionally significant.

Timing of Planning Commission Public Hearings. Planning Commission public hearings shall be scheduled such that the hearings are held after the public comment period for a Negative Declaration or Mitigated Negative Declaration has concluded, or after a Final EIR is completed.

URBAN SERVICE AREA (USA) BOUNDARY AMENDMENTS

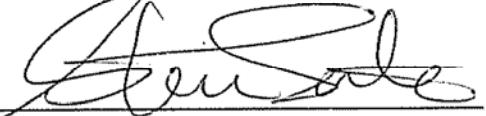
The City of Morgan Hill will periodically review the Urban Service Area Boundary in order to determine whether amendments may be needed or desirable in order to maintain consistency with the goals of the adopted General Plan. This City Council Policy establishes procedures that apply to proposed USA Boundary Amendments. Criteria for evaluating proposed adjustments of the USA Boundary are contained in Council Policy 94-02, as amended.

Initiation of Proposed Amendments. USA Boundary Amendment applications may be initiated by the City Council, the Planning Commission, or owners of property included in the subject amendment.

Timing of Filing Applications for Amendments. The Planning Commission and the City Council may initiate USA Boundary Amendments at any time of the year. **The City will accept applications from private property owners for Urban Service Area Boundary Amendments during January of each year.** The Community Development Director has the authority to determine how and when to carry out environmental review under the California Environmental Quality Act (CEQA), and may decide to defer processing private applications for USA Boundary Amendments to up to six months or more, so that a consolidated environmental review process may be conducted. The Director will also manage scheduling of public hearings and the timing of submittal of the annual USA Boundary Amendment application by the City to the Santa Clara County Local Agency Formation Commission (LAFCO).

LAFCO Limitations on Frequency of Amendments. LAFCO will review/amend the USA once a year, if such review is initiated by city resolution and application. Until the city's application has been heard and acted upon by LAFCO, no further USA amendments are accepted for filing. LAFCO may make an exception to the once a year limitation on USA amendment requests where amendment is needed to carry out some special institutional development or activity that is in the public interest. Such exceptions are not normally extended in connection with proposed residential, commercial, or industrial development.

APPROVED:



STEVE TATE, MAYOR

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CITY OF MORGAN HILL CITY COUNCIL POLICIES AND PROCEDURES

CP 94-02

SUBJECT: CRITERIA FOR ADJUSTMENT OF THE URBAN SERVICE BOUNDARY

EFFECTIVE DATE: APRIL 7, 1994

REVISION DATE: June 15, 1994, September 21, 2005, April 5, 2006, August 22, 2007

ORIGINATING DEPT: Planning

DESIRABLE INFILL STANDARDS

It shall be the policy of the City of Morgan Hill to utilize the following criteria to evaluate and approve boundary adjustments to forward to the County Local Agency Formation Commission (LAFCO) based on the Desirable Infill exception allowed by Section 18.78.070(B) of the Municipal Code.

Residentially Planned Properties

The City may petition LAFCO for expansion of the Urban Service Area (USA) irrespective of the amount of vacant land available for residential development currently within the Urban Service Area provided that the property subject to the proposed expansion meets the definition of "Desirable Infill". That definition includes criteria which addresses physical characteristics of the property, provision of services to the property, and benefits to the City from inclusion of the property. All three criteria must be met for a property to be added to the Urban Service Area.

Physical Criteria

1. Complete or partial properties may be included. Partial properties may only be included subject to the following standards:
 - a. The portions of the properties not proposed for inclusion within the USA must be annexed at the same time as the portions proposed for inclusion; and
 - b. The portions of the properties not proposed for inclusion within the USA must be planned for open space or greenbelt use and owned by a public agency or, if not owned by a public agency, protected by a conservation easement for the benefit of the public;
2. The total acreage of land to be added to the USA shall not exceed 20 acres; and
3. The land to be included shall be within the Urban Limit Line and abutted at least 50% on each of two sides by property within either the city limits or the urban service area; or is abutted at least 50% on one side by property within the urban service area and has two other

sides of the property within 1320 ft. of the urban service area (as determined by perpendicular lines drawn from the two other sides to the urban service area boundary lines). A parcel which does not touch property within the subject boundaries but is on the opposite side of the street from property within the subject boundaries will be considered to abut property within those boundaries.

4. Land not contiguous to the urban service area may be eligible for inclusion in the urban service area if the land meets the standards contained in criteria 1 and 2 above and the property's inclusion is necessary to avoid the potential for creation of an unincorporated peninsula or island within the City. Such non-contiguous land may only be included within the USA if the entire area of consideration in which the land is contained does not exceed 20 acres of residential land.
5. The City Council, prior to approving expansion of the USA, shall make finding(s) documenting that the expansion is not being granted to an applicant, development or land previously included within the USA under the terms of this policy.

City Service Criteria

The City shall only add land to the Urban Service Area which would potentially be eligible to receive a passing score under Part 1 of the Residential Development Control System criteria (Section 18.78.200 of the Municipal Code).

For the purposes of this determination, properties will be evaluated against Part I of the RDCS using the following standards:

2 Points assigned if the necessary facility is currently in place and is of adequate capacity to serve the potential development of the parcel (as recommended by the City Engineer).

1 or 1.5 points assigned if the necessary facility could be reasonably installed or improved as a condition of a development of the parcel (as recommended by the City Engineer).

0 points assigned if the necessary facility could not be reasonably installed or improved as a condition of development of the parcel (as recommended by the City Engineer).

Beneficial Criteria

The City shall only add land to the Urban Service Area which would beneficially affect the general welfare of the citizens of the City. Land which would be considered to beneficially affect the citizens of the City includes that which promotes orderly and contiguous development by allowing for the provision of needed infrastructure or allowing for the establishment of

public facilities such as parks, open space and greenbelt lands under conservation easements, schools or other buildings to be owned or operated by the City, School District, Water District or any other public agency.

For the purpose of this determination, the following standards shall apply:

Provision of Needed Infrastructure: To allow for the completion of needed infrastructure, land must be capable of providing for one or more of the following:

- a. The gridding of the existing water system.
- b. The elimination of an existing dead end street(s) or the improvement of an existing substandard street which has been identified as creating a potentially hazardous situation or provision of a new street which substantially improves circulation in an area.
- c. The installation or improvement of a sewer line(s) where the existing line or service levels are determined to be substandard.
- d. The installation or improvement of storm drainage facilities where the existing facilities or service levels are determined to be substandard.
- e. The establishment of water tanks or lift stations in areas where determined necessary by the City.

Establishment of Needed Public Facilities: To allow for the establishment of public facilities, land must be identified as a location for the establishment of a public facility (park, school, public buildings) to be owned or operated by the City, School District, Water District or any other public agency.

The infrastructure improvements that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be installed, or the land needed for public facilities that are the basis of the City's findings that the expansion would beneficially affect the general welfare of the City must be conveyed to the public agency, within five years of the date that the area is added to the Urban Service Area or upon its development, whichever occurs first. The commitment by the applicant to install the needed infrastructure improvements on which the City's findings are based, and/or convey the land needed for the public facilities or record a conservation easement for the benefit of the public, must be secured prior to official action adding the area to the Urban Service Area, through a development agreement or other legally binding agreement recorded against the property. The City shall not require an applicant to provide infrastructure or land in a quantity exceeding that which is needed to fully offset and mitigate all direct and cumulative impacts on services and infrastructure from new development proposed by the applicant.

The City Council may make exceptions to these requirements for, and support the annexation to the City of, Existing County Subdivisions as defined in section 18.78.030.A, “Development allotments – Determination and distribution” of the Residential Development Control System provisions of the Morgan Hill Municipal Code

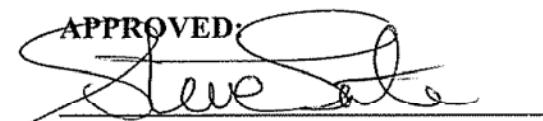
Commercially and Industrially Planned Properties

To encourage economic development, the City may approve expansions of the Urban Service Boundary which include properties which are contiguous to the Urban Service Boundary and are designated in the Land Use Element of the Morgan Hill General Plan for commercial or industrial use. Properties so added to the Urban Service Area shall not be eligible for conversion to residential use except as provided by Section 18.62.070 of the Morgan Hill Municipal Code.

Public and Quasi-Public Land Uses

To allow for establishment of needed public and quasi-public uses and facilities, the City may approve expansions of the Urban Service Boundary to include properties which are contiguous on at least a portion of one side to the Urban Service Boundary and are designated in the Land Use Element of the Morgan Hill General Plan for Public Facilities or Public/Quasi-Public Use. Properties so added to the Urban Service Area shall not be eligible for conversion to residential use for a period of two years from the date that the property is added to the Urban Service Area and officially annexed to the City of Morgan Hill.

This policy shall remain in effect until modified by the City Council.

APPROVED:

STEVE TATE, MAYOR

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of February 1, 2017 ("Effective Date") by and between the Local Agency Formation Commission of Santa Clara County ("LAFCO") and the City of Morgan Hill ("City"). LAFCO and City are collectively referred to as the "Parties" and individually referred to as a "Party."

RECITALS

A. Pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA") the City prepared an Environmental Impact Report for its proposed 2035 General Plan Update ("General Plan EIR").

B. Consistent with LAFCO's duties as a responsible agency, LAFCO submitted extensive comments to the City regarding the adequacy of the General Plan EIR under CEQA.

C. On or about July 27, 2016, after considering and responding to all of the comments on the General Plan EIR, City adopted the Morgan Hill 2035 General Plan pursuant to the General Plan EIR.

D. On or about August 2, 2016, City filed a Notice of Determination regarding its adoption of the Morgan Hill 2035 General Plan pursuant to the General Plan EIR. Pursuant to Public Resources Code section 21167, this Notice of Determination began a 30-day statute of limitations for bringing an action to set aside certification of the General Plan EIR.

E. On August 25, 2016, the Parties entered into a Tolling Agreement ("Tolling Agreement") to toll the statute of limitations for LAFCO to bring a challenge to the General Plan EIR.

F. On September 29, 2016, the Parties entered into the First Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until December 31, 2016.

G. On December 19, 2016, the Parties entered into the Second Amendment to the Tolling Agreement to extend the period for which the statute of limitations is tolled until February 15, 2017.

H. During this tolling period, the Parties have been engaged in discussions regarding the means by which to address LAFCO's concerns with the EIR without proceeding with litigation.

I. LAFCO and City have now agreed to compromise and settle all matters and disputes between themselves in order to achieve a full and complete resolution of all claims that have been asserted or that could be asserted by LAFCO in any future disputes, claims, or legal action in relation to the General Plan EIR.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, promise, and covenant as follows:

1. Recitals and Definitions Incorporated. Each recital and definition set forth above is incorporated herein by reference and is made part of this Agreement.
2. No Admission. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission of error or wrongdoing by any Party or of any inadequacy or impropriety in connection with City's certification of the EIR.
3. City Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Agreement, City shall implement the following terms and actions:
 - 3.1. The City shall conduct environmental review under CEQA prior to any decision as to whether to initiate and carry-out a project (as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378) concerning Urban Service Area ("USA") amendments and/or annexation of property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan attached as "Exhibit A" and incorporated herein by reference.
 - 3.2. The nature of the project to be carried out by the City may be developed at the discretion of the City, but shall, in any event, result in the preparation and certification of an Environmental Impact Report considering the potential impacts of USA amendments and/or annexation of the property located within the City's Urban Growth Boundary as defined in Figure CNF-1 of the Morgan Hill 2035 General Plan ("Annexation EIR") and shall not tier from, or rely in any way (e.g., pursuant to CEQA, including but not limited to Public Resources Code sections 21094, 21083.3 and 21166 and/or CEQA Guidelines sections 15152, 15153, 15162, 15168, 15183, and 15385), on the General Plan EIR.
 - 3.2.1. The Annexation EIR's analysis of environmental impacts will be based on the level of development authorized by the voters of the City on November 8, 2016 in its Ordinance updating and extending the City's Residential Development Control System until the year 2035 by amending the General Plan and Chapter 18.78 of the Municipal Code, also known as "Measure S."
 - 3.2.2. The Annexation EIR will include:
 - 3.2.2.1. A full water supply assessment; and

3.2.2.2. An assessment of the City's Water Infrastructure Master Plan and Wastewater Infrastructure Master Plan.

3.3. Environmental review under CEQA of any proposal made to LAFCO for a USA amendment shall only rely on, or tier from, the Annexation EIR.

3.4. The City shall not consider any proposal for USA amendment until such time as the Annexation EIR has been certified. However, projects within the USA as it exists as of the Effective Date of this Agreement may rely on and tier off of the General Plan EIR.

3.5. This Agreement does not apply to, and is not intended to limit, the City's use of any previously certified EIR as the basis for submitting an annexation application to LAFCO.

4. LAFCO Obligations. Without admitting any liability, and in consideration of the terms of this Agreement, upon execution of the Settlement Agreement LAFCO shall implement the following terms and actions:

- 4.1. LAFCO will not file any lawsuit challenging the General Plan EIR.
- 4.2. LAFCO will not seek any fees or costs from City associated with LAFCO's participation in the administrative process for the General Plan EIR or associated with LAFCO's contemplated litigation regarding the General Plan EIR.
- 4.3. LAFCO reserves its rights, as a responsible agency, with regard to its review and consideration of the adequacy of the Annexation EIR and any CEQA documents that City may approve, adopt, or certify in support of any future application it may submit to LAFCO.

5. Joint Obligations. The City and LAFCO will work together to ensure preparation of adequate CEQA documents for any proposed annexation application.

6. Third Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights or benefits under or by reason of this Agreement.

7. Enforcement of Agreement. No action for breach of this Agreement shall be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) days after receipt of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

8. Mutual Release. LAFCO and the City mutually release each other's affiliates, members, directors, officers, employees, agents, assigns, and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that the City and LAFCO have as of the effective date of this Agreement arising out of, or connected to, the General Plan EIR, whether known, unknown or suspected. Upon the Effective Date of this Agreement, the City and LAFCO have read and have otherwise been informed of the meaning of Section 1542 of the California Civil Code, and have consulted with their respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. The City and LAFCO hereby expressly waive the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."



LAFCO Initials



City Initials

9. Damages. The Parties agree that (i) the performance of the obligations of this Agreement are paramount; (ii) in the event of a breach, monetary damages will provide inadequate relief; and (iii) that each may seek equitable relief to enforce such obligations. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled to reimbursement for costs and reasonable attorney's fees.

10. Miscellaneous Provisions.

10.1. Notices. Any notice, request, or communication required to be given to either Party under this Agreement shall be given in writing and shall be personally delivered or mailed by prepaid registered or certified mail to the addresses below:

If to LAFCO:

Neelima Palacherla, Executive Officer
70 W. Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Telephone: (408) 993-4713
Email: Neelima.Palacherla@ceo.sccgov.org

With copies sent to:

Mala Subramanian
Best Best & Krieger LLP

2001 N. Main Street, Suite 390
Walnut Creek, CA 94596
Telephone: (925) 977-3303
Email: msubramanian@bbklaw.com

If to City:

City Manager
17575 Peak Avenue
Morgan Hill, CA 95037-4128
city.manager@morganhill.ca.gov

With copies sent to:

City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037-4128
city.attorney@morganhill.ca.gov

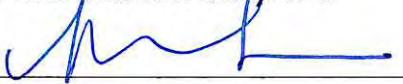
In the event that any Party's address or contact information changes, that Party shall be responsible for notifying the other Party within five (5) working days of the change.

- 10.2. Entire Agreement. The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties, or representations made by either Party or by any representative of any Party, other than those which are expressly contained within this Agreement. This Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.
- 10.3. Amendments and Modifications. This Agreement may only be amended or modified through writing executed by all the Parties.
- 10.4. Choice of Law and Choice of Forum. This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed, and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Santa Clara.
- 10.5. Authorized Signatory. Each Party represents and warrants to each other Party that its signature to this Agreement has the authority to bind the Party, and this Agreement does in fact bind the Party.

- 10.6. Counterparts. This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.
- 10.7. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 10.8. Effective Date. This Agreement is effective as of the Effective Date written in the first paragraph.

IN WITNESS WHEREOF, this Agreement is executed and agreed to by the following:

**LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY**

By:  Date: 2/1/2017

Name: Malathy Subramanian

Title: General Counsel

CITY OF MORGAN HILL

By:  Date: 1/23/2017

Name: Donald A. Harkin

Title: City Attorney

EXHIBIT A

Figure CNF-1 of the Morgan Hill 2035 General Plan

[Attached behind this page]

Figure CNF-1 City Boundaries

