

# NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy Growth Management Board (GMB)** is hereby called for:

**Date/Time:**            **Thursday, October 25, 2018, 9:00 a.m.**  
(or as soon thereafter as possible)

**Location:**            **Tracy City Hall, Conference Room 109**  
**333 Civic Center Plaza, Tracy, CA**

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the GMB on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. *Items from the Audience - In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2008-140 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request a Board Member to sponsor the item for discussion at a future meeting.*
4. Old Business
  - A. PUBLIC HEARING CONTINUED FROM OCTOBER 11, 2018: GROWTH MANAGEMENT BOARD DETERMINATION OF REVERTED RESIDENTIAL GROWTH ALLOTMENTS
5. New Business—None.
6. Items From The Audience
7. Adjournment

**Posting Date: October 23, 2018**

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6000), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy Growth Management Board regarding any item on this agenda will be made available for public inspection in the Development Services Department located at 333 Civic Center Drive, Tracy, during normal business hours.

AGENDA ITEM NO. 5-A

REQUEST

**GROWTH MANAGEMENT BOARD DETERMINATION OF ALLOCATION OF RESIDENTIAL GROWTH ALLOTMENTS FOR USE IN 2018**

DISCUSSION

This is a continuation of the Growth Management Board (GMB) public hearing to determine if the applicants qualify for allocation of Residential Growth Allotments (RGAs) that have reverted to the City and possible allocation of RGAs.

GMO Guidelines section D.3.(c) states that “RGAs must be used to obtain a building permit no later than September 30<sup>th</sup> of the year following the allocation in accordance with GMB action....In the event an RGA has not been used to obtain a building permit by September 30<sup>th</sup>, then such RGAs automatically revert back to the City and shall be available for the GMB to allocate to projects with complete applications in accordance with the criteria set forth in Section F. The GMB shall meet as needed to address such RGA allocations.”

The GMB allocated 750 RGAs to six projects in December 2017 for use in 2018. A total of 190 of those RGAs were not perfected (i.e. no building permit was issued for these RGAs) by various projects and reverted back to the City for allocation (Attachment A).

The City sent a notice to representatives of all eligible projects on September 25, 2018 and published a notice in the Tracy Press regarding the availability of RGAs that have not been perfected. The City received three applications: Brookview West, Ellis, and Tracy Hills.

October 11, 2018 GMB Meeting

The GMB conducted a hearing and discussed the applications received with staff and all three applicants present. Prior to the meeting, Ellis and Tracy Hills submitted letters expressing concerns about staff's recommendation for allocating RGAs that were not perfected (Attachment B). The main points of contention between staff and these applicants were eligibility of the applicants and the methodology of distribution of these RGAs. The potential for this round of RGA allocations to set precedent in future years was also a significant concern to the applicants. Given the lack of detail regarding the process for allocating RGAs that revert to the City in the existing GMO Guidelines, the GMB directed staff to work with the applicants to try to resolve these issues and continued the hearing to a meeting on October 25, 2018.

October 16, 2018 Meeting with Applicants

Staff and the applicants (as well as other interested parties) met on October 16th and discussed the eligibility and distribution methodology for these RGAs.

*Proposed Methodology from Ellis and Tracy Hills*

During the October 16<sup>th</sup> meeting, representatives for Ellis and Tracy Hills presented a proposal for how unperfected RGAs should be allocated that establish certain eligibility requirements and involve various rounds of allocations. Staff believes that in order to implement the proposal, the GMO Guidelines would have to be amended by Council because the current GMO Guidelines, adopted by Council Resolution No. 2012-214, do not contain the specific eligibility restrictions proposed nor a clear allocation methodology for reverted RGAs.

*Proposed Eligibility Requirements from Ellis and Tracy Hills*

The Ellis and Tracy Hills proposals grant projects that submitted applications for RGAs during the previous application deadline cycle priority access to unperfected RGAs.

While the City has identified both Tracy Hills and Ellis projects as clear priorities, staff believes that this eligibility requirement is not consistent with the language or intent of the Guidelines, which indicate that the purpose of RGAs reverting to the City is so they can be distributed to all qualified applicants in accordance with the priority categories, rather than first going back to the original applicants who were unable to use them. In other words, Tracy Hills and Ellis have a clear priority to the majority of the annual RGAs, but if the RGAs are not perfected, then the RGAs are eligible for allocation according to the criteria and order in the GMO Guidelines (F1, followed by F2, F3, F4, and F5 categories).

*Proposed Methodology from Ellis and Tracy Hills*

The methodology proposed by Ellis and Tracy for allocating unperfected RGAs differs from the current GMO Guidelines and is as follows:

- 1<sup>st</sup> Round: Projects that did not perfect their RGAs by September 30<sup>th</sup> would be able to apply for RGAs that have not been perfected up to the amount they were originally allocated as a matter of priority.
- 2<sup>nd</sup> Round: The GMO Guidelines criteria contain fixed numerical limits and the allocation for this round cannot exceed those limits in any category.
- 3<sup>rd</sup> Round: Only at this stage is the application process open to both applicants from the original allocation and projects that received approval in the interim. Any remaining RGAs would then be allocated in accordance with the proportionate share of each project category identified in F1 through F5 and in that order of priority.

If implemented, the proposed methodology would result in the 190 reverted RGAs being allocated as follows:

	Projects Eligible to Apply	Allocations
1 <sup>st</sup> Round	Tracy Hills Ellis	Tracy Hills – 28 Ellis - 129
2 <sup>nd</sup> Round	Tracy Hills Ellis	Tracy Hills – 0 <sup>1</sup> Ellis – 0
3 <sup>rd</sup> Round	Tracy Hills Ellis Brookview West	Tracy Hills - 7 <sup>2</sup> Ellis-3 Brookview West - 23

Staff’s Recommendation for Allocating Unperfected RGAs

Following discussions with applicants, staff have revised the methodology proposed for allocating RGAs. In the October 11<sup>th</sup> staff report, staff indicated that the allocation method was relying on F.6. However, given concerns raised by applicants, staff recommends that the Board allocate the RGAs in accordance with F in order to be consistent with the language in D.3 (c). Such an allocation is consistent with how RGAs are allocated during the annual cycle.

Staff, including the City Attorney’s Office, believes that this methodology is consistent with the terms of the current GMO Guidelines. As stated above, the current GMO Guidelines do not identify specific eligibility requirements nor a clear methodology for allocating RGAs that have reverted to the City. However, staff’s position is that the recommended allocation is consistent with Section F and how the Board allocates RGAs during the annual allocation cycle. Thus, the Board may adopt staff’s recommendation without Council approval.

Based on Section F of the GMO Guidelines and the submitted applications, the reverted RGAs are divided by percentage to the following areas and in the following order:

Primary Growth Areas (Sec. F.2)-13.33% - In a year in which the GMO Board issues 750 RGAs, the Primary Growth Areas are eligible for 100 RGAs, or 13.33 percent of the total. 13.33 percent of the currently-available 190 reverted RGAs is 25.33, which is rounded down to 25 because the Board cannot allocate a partial RGA. Because the one application for Primary Area RGAs is for 23 RGAs, the remaining two additional RGAs can be allocated to projects in other categories.

Ellis and Tracy Hills Specific Plan Projects (Sec. F.4)-80% - In a year in which the Board issues 750 RGAs, the Tracy Hills and Ellis Specific Plan projects are eligible for 600 RGAs, or 80% of the total. Section F.4 further provides that Tracy

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<sup>1</sup> Tracy Hills and Ellis would not receive any RGAs in the 2<sup>nd</sup> round of allocations since they were allocated the maximum number of RGAs in accordance with F.4.

<sup>2</sup> During the October 16<sup>th</sup> meeting, Tracy Hills and Ellis stated that they would be amending their application for RGAs to be consistent with the proposed methodology and to ensure that Brookview West be allocated the 23 RGAs they requested.

Hills is eligible for 67.67 percent of those RGAs, while Ellis is eligible for 32.33 percent. The remaining RGAs (167) per the Guidelines are divided 67.67 percent for Tracy Hills and 32.3 percent to Ellis. That calculates to 113 for Tracy Hills and 54 for Ellis.

Other Projects (Sec. F.5)-6.66% - In a year in which the Board issues 750 RGAs, the Other Projects are eligible for 6.66% of the total. However, this year, no property owners in the Other Projects category applied for these RGAs, so all remaining RGAs have been made available to the three existing applicants based on their respective proportions of eligibility and submitted applications.

#### **RGA18-0010 – Brookview West – 23 reverted RGAs recommended**

The Brookview West subdivision (23 units on South Tracy Boulevard) was approved in July of 2018. The project is located in the City's Primary Growth Area. The project was not eligible to apply for RGAs in the 2018 cycle last September, but since their Tentative Subdivision map was approved the Developer has actively pursued Improvement Plans, Grading Permits, and Building Permits. They have submitted an application for 23 RGAs so that they can obtain RGAs this year and therefore get building permits for their entire project this calendar year.

#### **RGA18-0007 – Tracy Hills – 113 reverted RGAs recommended**

Tracy Hills received 406 RGAs for 2018 and was issued 378 building permits. The 28 unused RGAs reverted to the City. They submitted an application for "702 RGAs less the number of building permits issued as of 9/30/18", which calculate to 579 RGAs.

#### **RGA18-0011 – Ellis – 54 reverted RGAs recommended**

The Ellis project received 194 RGAs for 2018 and was issued 65 building permits. Thus, 129 of those RGAs went unused and reverted to the City. They submitted an application for 234 RGAs.

#### Growth Management Board Options

Staff has identified the following two options for the Board to consider in this allocation of RGAs that reverted to the City:

1. Approve the staff recommendation of October 11<sup>th</sup> outlined above that follows the current regulations of the GMO and GMO Guidelines.
2. Reject staff's recommendation and refer the matter to City Council to discuss and consider an amendment that would effectuate the proposal by Ellis and Tracy Hills. It should be noted that Tracy Hills and Ellis have both requested the ability to amend their applications consistent with their proposal.

#### RECOMMENDATION

Staff recommends that the Growth Management Board allocate 23 RGAs to the Brookview West project, 113 RGAs to the Tracy Hills project, and 54 RGAs to the Ellis project in accordance with the 2012 GMO Guidelines.

Prepared by: Victoria Lombardo, Senior Planner  
Leticia Ramirez, Assistant City Attorney  
Approved by: Bill Dean, Assistant Development Services Director

ATTACHMENTS:

Attachment A - Reverted RGA Data

Attachment B - Correspondence regarding October 11, 2018 GMB Meeting

## SEPTEMBER RGA REVERSION DATA

Application Number	Applicant	Project Name	Project Description	Existing 2017 RGAs	BPs Issued in 2017	Requested RGAs	Allocated RGAs	Permits Issued as of 10/1/18	Reverted RGAs
<b><u>Tracy Hills and Ellis Specific Plan Projects</u></b>									
RGA17-0003	Tracy Phase 1, LLC	Tracy Hills	1,160-lot single-family subdivision	406	0	406	406	378	28
RGA17-0002	Surland	Ellis	296-lot single-family subdivision	194	72	350	194	65	129
<b><u>Other Projects</u></b>									
RGA17-0001	CalAtlantic Homes	Kagehiro III-Primrose	225-lot single-family subdivision	0	33	83	83	52	31
<b><u>Primary Growth Areas</u></b>									
RGA17-0006	Taylor Morrison of CA, LLC	Barcelona Infill	51-lot single-family subdivision	51	26	27	27	25	2
RGA17-0005	LTMT Tracy, LLC	Harvest in Tracy	304-unit condominium project	0	N/A	304	9	304* (295 via RHNA)	0
<b><u>2005 GMO</u></b>									
RGA17-0004	Brookview Properties, LLC	Brookview	80-unit single-family subdivision	49	29	31	31	33* (2 via prior year RGAs per 2005 GMO)	0
<b>Totals</b>						<b>1201</b>	<b>750</b>		<b>190</b>

**Steven A. Herum**  
sherum@herumcrabtree.com

October 10, 2018

BY ELECTRONIC MAIL

Honorable Members of the City of Tracy Growth Management Committee  
Tracy City Hall  
333 Civic Center  
Tracy, California 95376  
[cityclerk@cityoftracy.org](mailto:cityclerk@cityoftracy.org)

Re: Staff Report to Growth Management Committee and Allocation of  
Residential Growth Allocations (October 11, 2018)

Dear Honorable Members of the City of Tracy Growth Management Committee:

This office represents the Surland Companies. My client received the staff report to the Growth Management Committee late Tuesday afternoon. We have just completed our review of the report and on behalf of our client express the following significant and serious concerns about the method used to allocate RGAs. We respectfully ask for the report be corrected to conform to the GMO, GMO Guidelines and the interpretive assistance provided by the recent Second Amended Development Agreement between Surland and the City.

Surland Companies concerns generally fall into the following topical areas.

First, an entity that did not participate in the September 2017 process is not an applicant under the GMO Guidelines and therefore should be at the "back of the line" instead of being permitted to "cut to the front of the line".

We understand Brookview West (RGA 18-0010) did not apply for RGAs in September 2017 and therefore did not participate in the process. Nothing in the Growth Management Ordinance or the Growth Management Guidelines authorize a party that did not participate in the September 2017 RGA allocation process to participate in the subsequent process. However, Surland has no objection to Brookview West participating, so long as its priority to obtain RGAs is subordinate to the rights of September 2017 applicants/participants to secure allocated but unperfected RGAs. In this instance this means that Tracy Hills and Ellis, each participants in the September 2017 process, have the first right to unperfected RGAs and if any unperfected RGAs



remain then Brookview has a right to secure them. Establishing the priority in this manner is the only method to comply with the GMO guideline definitions of "applicant" and "application due dates", and protect current priorities and vested rights held by September 2017 applicants/participants.

Brookview does not satisfy the GMO Guideline definition of an "Applicant". An applicant must have certain enumerated characteristics (GMO Guideline section 2.C.2. (a)(i)-(v)) and furthermore qualified Applicants must satisfy the "Application due dates" established by GMO Guideline section 2.C.3. The rule is clearly enunciated by subsection 2.C.3: "the applications for RGAs...shall be first Thursday in September each year for RGAs to be used to obtain building permits". The staff report concedes Brookview did not file an application in compliance with mandatory deadline established by 2.C.3. This mandatory deadline for requesting RGAs is confirmed by section 2.D.1.

To put a finer point on it, nothing in the controlling documents authorize, expressly or impliedly, that a party that did not participate in the September 2017 RGA allocation by applying for RGAs should suddenly have a priority superior to applicants fully participating in the September 2017 process. To afford a non-participant and non-applicant a superior priority works a manifest injustice.

Second, the GMO Guidelines specifically reserve certain RGAs to Tracy Hills and Surland and such reserved RGAs cannot be subject reallocation through a proportional basis.

GMO Guideline section 2.F.4(c) provides if either Tracy Hills or Surland receive less than the number of total RGAs then unallocated or unperfected RGAs "shall be reserved". This reservation is for purposes of affording either Tracy Hills or Surland the right to secure unallocated or allocated but unperfected RGAs against any other entity seeking RGAs. This process was confirmed by the recent Second Amendment to the Surland/City of Tracy Development Agreement.

Thus the staff report errs by subjecting such RGAs to a proportionality division contained in section 2.F.6. RGAs reserved by Section 2.F.4(c) should be excluded from such proportional reallocation under section 2.F.6.

Third, the staff report is in error because section 2.F.6 does not apply in this instance.

Section 2.F.6's provisions are only triggered in instances where "the number of RGAs *allocated* does not meet or exceed the number of RGAs available". (Italics added.) The facts for this RGA allocation cycle do not support invoking section 2.F.6's proportional allocation procedure. The language is narrowly limited to the number of RGAs *allocated* but not the number of RGAs *allocated but not perfected*. Here the number of RGAs allocated met or exceeded the number of RGAs available rendering section 2.F.6 as irrelevant to the allocation of unperfected RGAs.

Fourth, the footnote appearing at the end of Attachment One, "September RGA Reversion Data", contradicts the Second Amendment to the Surland/City of Tracy Development Agreement and should be omitted.

The footnote appearing at the end of Attachment One, "September RGA Reversion Data", is inconsistent with and squarely conflicts with the terms and conditions of the Second Amendment to the Surland/City of Tracy Development Agreement and therefore must be omitted from the report. New section 1.07 of the Second Amendment modifies the Ellis project's right to RGAs and preempts any previous limitation established by contract concerning the number of RGAs available to the Ellis project. Since the report contradicts the Second Amendment, which is an ordinance of the City of Tracy, the offending footnote must be removed.

My client appreciates the Committee's consideration of these concerns over the operation of the GMO and GMO Guidelines.

Very truly yours,

A handwritten signature in black ink that reads "Steven A. Herum". The signature is written in a cursive, slightly slanted style.

STEVEN A. HERUM  
Attorney-at-Law

SAH:lac

cc: Thomas Watson  
Andrew Malik  
Client

October 11, 2018

**VIA ELECTRONIC MAIL**

Chairperson and Members of the Tracy Growth  
Management Board  
c/o Andrew Malik, Director  
333 Civic Center Plaza  
Tracy, CA 95376

Thomas Watson  
City Attorney  
333 Civic Center Plaza  
Tracy, CA 95373

Re: October 11 Growth Management Board Meeting Item re Re-Allocation of RGAs

Dear Chair and Members of the Board and Mr. Watson:

This letter is sent on behalf of Tracy Phase I, LLC, the master developer of Tracy Hills Phase 1A currently under development, and an applicant for RGAs in the current cycle

We are in receipt of the Notice of Special Meeting, with included Staff Report, entitled “Discussion,” of the sole agenda item, the “Allocation of Reverted Residential Growth Allotments for Use in 2018.”

While we support the City’s efforts to faithfully follow the Growth Management Ordinance and the GMO Guidelines, we write to correct some errors in application of Guidelines, as set forth below.

First, we begin with a simple question – what is an “eligible project” for allocation of RGAs reverted to the City per Guideline? We note that nothing in the Guidelines allows for any “new” application for RGAs during a current cycle. We are unclear how a “mid-cycle” application can be treated as “in the queue” when in fact it was not complete at the start of the annual process, and be given the benefit of a priority under F(1)-(5). (See Section 3, “Application due dates” [“Unless otherwise established in these Guidelines, the application for RGAs, other than Affordable Housing Project RGAs, shall be the first Thursday in September each year for RGAs to be used to obtain building permits in the following calendar year.”].) To be clear, we do not object to allocation of “reverted” RGAs to a mid-cycle application when all priorities have been satisfied, as from a purely practical standpoint there is no harm done to the process if a mid-cycle application receives RGAs that no project that timely applied (in September of the year before) has requested for re-allocation. It *does* contradict the express terms of the Guidelines to allow a new, mid-cycle application to be considered an application essentially in parity with a timely-filed application.

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Second, we note the Staff Report states:

Section F(6) of the GMO Guidelines provides that RGAs shall be made available on a proportionate basis in accordance with the priorities set forth in subsections F(1) through (5) when there are remaining RGAs.

Subsection F(6) actually makes no reference at all to *re-allocation* of “reverted” RGAs. Rather, Subsection F(6) deals with what occurs, after applying the F(1)-(5) “waterfall” of priorities, “[i]f the number of RGAs *allocated does not meet or exceed the number of RGAs available*, the remaining RGAs shall then be made available on a proportionate basis in accordance with the criteria set forth in subsections F 1-5 to the projects identified in subsections F 1-5, for which a complete application has been submitted. . . .” (Emphasis added.) Subsection F(6) clearly refers to what to do if there are “leftover” RGAs after applying, not ignoring, the priorities of F(1)-(5), in the allocation process.

This point is clearly made in the title to Section F, which is “RGA Allocation Criteria, order of priority for allocations of RGAs; *proportionate allocation of previously unallocated RGAs*” (Emphasis added.) RGAs that have “reverted” to the City are the opposite of “previously unallocated RGAs.”

Third, the Guidelines provide in Section D(3)(c) that reverted RGAs “shall be available for the GMB to allocate to projects with complete applications in accordance with the *criteria* set forth in *Section F*.” Note it does not say Subsection F(6), which would be singular. Rather, it clearly states “criteria” which is plural, and can only mean *all* the criteria in Section F. The Staff Report somehow ignores the actual criteria in Subsections F(1)-(5), and applies only Subsection F(6). By doing so, the priorities for Tracy Hills and Ellis, in Subsection F(4) are essentially ignored.

Fourth, and lastly, the Staff Report incorrectly includes model home permits in the totals of previously issued RGA converted to building permits. Per the GMO, model homes are excluded. (Tracy Muni. Code § 10.12.060(c).)

In sum, we contend the Staff recommendation fails to follow the Guidelines as approved by the City Council, and we believe the appropriate process applicable to the unique circumstances of this year results should be as follows:

Tracy Hill and Ellis are entitled to all RGAs requested necessary to reach a total allocation of 600 RGAs (406 and 194 respectively) for the 2018 allocation cycle (per Subsection F(5)). Then, Tracy Hills and Ellis are entitled to receive their proportionate share of available RGAs in excess of 600 RGAs (per Subsection F(6)). Thereafter, Tracy Hills has no objection to the City allocating

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remaining unallocated RGAs to what is essentially a “new” applicant (but note that such a new application is not contemplated by the adopted Guidelines).

Sincerely,

RUTAN & TUCKER, LLP



Hans Van Ligten

HVL

cc: John Stanek  
Drew Kusnick  
John Palmer  
Mike Souza  
Bill Dean