EXHIBIT H

DRAFT RESOLUTION

D-R-A-F-T

BEFORE THE TOWN OF MORAGA PLANNING COMMISSION

In the Matter of:

Resolution No. xx-2009

Approval of a variance at 121 Brookline in the Moraga Country Club to allow a 540 square foot addition to encroach 4-feet into the required 10-foot side yard at the south side of the home.)

F File No. VAR-06-08

Adoption Date: February 2, 2009
(if approved)

Effective Date: February 12, 2009
(if not appealed)

WHEREAS, on December 11, 2008, an application for a variance was filed by Steven and Laurie Hafener to allow a 540 square foot addition to encroach 4-feet into the required 10-foot side yard at the south side of an existing 3,268 square foot home at 121 Brookline in the Moraga Country Club; and

WHEREAS, prior to filing the variance application, the applicant had prepared plans for expansion of the home on the north side behind the garage, which complied with the required 10-foot side yard setback; and

WHEREAS, on September 23, 2008, the Town's geotechnical peer review consultant, Cal Engineering and Geology, completed review of the applicant's geological and geotechnical investigation prepared by Cundey Geotechnical Consultants, Inc. for the Hillside Development Permit application; and

WHEREAS, on September 23, 2008, the Town received a letter from the Moraga Country Club Homeowners Association that the adjacent neighbor at 119 Brookline had objected to any addition on the north side that would reduce the existing distance between the two homes and that the project was scheduled to be reconsidered by the Architectural Committee on October 14, 2008; and

WHEREAS, on November 26, 2008 the Moraga Country Club Homeowners Association sent a letter stating that the Board of Directors was not authorized to sell any of the adjacent open space areas for a lot line adjustment because Section 14.03 of their Bylaws required conditions including a majority vote by a quorum of the member of the association for the sale of any recreational areas; and

WHEREAS, on December 8, 2008, Cundey Geotechnical Consultants, Inc. sent a letter confirming that the recommendations in their geological and geotechnical investigation dated September 10, 2008 remain valid for the revised plans with the addition at the south side of the home at 121 Brookline; and

(3) *Although the applicant could build an addition at the north side of the home behind the garage that would conform to the building setbacks for Zone 3, the adjacent neighbor does not want any addition that would decrease the distance between their homes.*

(4) *The south side of the lot is adjacent to private open space, where the proposed addition will not impact any adjacent homes.*

(5) *The applicant cannot obtain a lot line adjustment to expand the property due to the requirements imposed by the Moraga Country Club Homeowners Association Bylaws for the sale of recreational properties owned by the association.*

Finding 2: The variance will not constitute a grant of special privilege, which is not generally available to other property in the vicinity and in the same zoning district;

The variance will not constitute a grant of special privilege because an analysis of the aggregate setbacks of homes within 300-feet of the project site shows that 44% of the homes have an aggregate side yard setback of less than 11.8-feet, which is the same as the sum of side yards with the proposed addition at 121 Brookline.

Finding 3: The variance substantially complies with the intent and purpose of the zoning district in which the property is classified.

The proposed variance would substantially comply with the intent and purpose of building setbacks to insure a measure of privacy between adjacent property owners because:

(1) *The encroachment on the south side of the home would not impinge upon the privacy or obstruct light and ventilation on any adjacent residential property because the adjacent property is private open space owned by the Moraga Country Club Homeowners Association.*

(2) *No other residential structure will be built at the south side of 121 Brookline.*

(3) *Building on the north side of the home would impinge on the open space between 119 and 121 Brookline.*

The proposed variance would substantially comply with the intent and purpose of building setbacks to insure than the expansion of the home will not contribute to the perception that the property is "over built" because:

(1) *Many of the homes on in the Moraga Country Club exceed the FAR guidelines because the project was built as a planned unit development with clustered housing on smaller lots.*

(2) *The FAR analysis showed that the project does not present an out-of-scale appearance relative to other homes in a neighborhood because 11 of the 27 homes within 300-feet of the project site are actually larger in floor area than the proposed expansion at 121 Brookline.*