TOWN OF MORAGA
PLANNING COMMISSION MEETING

La Sala Building, Hacienda de las Flores — February 2, 2009
2100 Donald Drive
Moraga, CA 94556 — 7:30 P.M.

MINUTES

I. CALL TO ORDER

Chairperson Goglia called the regular meeting of the Planning Commission to order at 7:30 P.M.

ROLL CALL

Present: Commissioners Daniels, Driver, Hays, Levenfeld, Sayles, Chairperson Goglia
Absent: Commissioner Whitley
Staff: Lori Salamack, Planning Director
Richard Chamberlain, Senior Planner
Mitch Wolfe, Town Geological Consultant
Frank Kennedy, Town Consulting Engineer
Rafael Mendelmann, Town Attorney's Office

B. Conflict of Interest

Commissioner Sayles advised that he had a conflict of interest with respect to Item B, VAR-06-08 and would recuse himself from that item.

II. ADOPTION OF MEETING AGENDA

On motion by Commissioner Sayles, seconded by Commissioner Driver and carried unanimously to adopt the meeting agenda, as shown.

III. ANNOUNCEMENTS

There were no announcements.

IV. PUBLIC COMMENTS

There were no comments.

V. ADOPTION OF THE CONSENT CALENDAR

A. Approval of the January 20, 2008 Minutes

Commissioner Hays requested an amendment to the first sentence at the top of Page 11, as follows:

DRAFT

Commissioner Hays commented that a vapor barrier could be put down before the slab.

Commissioner Sayles requested an amendment to the first sentence in the first paragraph on Page 11, as follows:

Commissioner Sayles noted that the finish floor elevation was at elevation 483.9 and that the post tension slab was about a foot thick on what would have been a 479 foot elevation.

On motion by Commissioner Hays, seconded by Commissioner Sayles to adopt the Consent Calendar, as amended. The motion carried by the following vote:

Ayes:	Commissioners Hays, Sayles, Goglia
Noes:	None
Abstain:	Commissioners Daniels, Driver, Levenfeld
Absent:	Commissioner Whitley

VI. CONTINUED PUBLIC HEARINGS

A. None

VII. NEW PUBLIC HEARING

A. SUB. 8376 - PALOS COLORADOS - Richfield Investment Corporation (Applicant), Bigbury Company (Owner): Consideration and approval of the Precise Development Plan for the 123-lot Palos Colorados residential development project. The project is located on a 460-acre site with access from the east side of Moraga Road and 600 feet south of Sky-Hy Drive adjacent to the City of Lafayette. The Precise Development Plan is the third step in the three-step process for approval of a planned development in the Town of Moraga. On May 7, 2007, the Planning Commission approved the Vesting Tentative Subdivision Map and Hillside Development Permit for the Palos Colorados project. The property is zoned 1-DUA (One Dwelling Unit per Acre) and OS-M (Open Space – MOSO [Moraga Open Space Ordinance]}. APNs 256-370-004, 005, 006, 007 and 008

Planning Director Salamack presented the staff report dated January 27, 2009, for consideration of the Precise Development Plan (PDP) for the Palos Colorados project, the third step in the three-step planned development process in the Town. She noted that both the General Development Plan (GDP) and the Vesting Tentative Map (VTM) had been approved in 2007. Each of those approvals had been granted by the Town subject to numerous conditions of approvals.

Ms. Salamack stated that the current item related to whether or not the applicant had complied with the conditions of approval that were required upon approval of the Vesting Tentative Subdivision Map, at which time various conditions had been specified to be considered at the PDP stage. The Town would also need to make a determination that the project as submitted was in substantial compliance with the VTM as there were minor modifications to lot lines. She noted that the essential composition of the subdivision was believed to be consistent.

Ms. Salamack added that staff and numerous consultants had reviewed the various conditions and were recommending that the various conditions had been satisfied. She noted that Mike Mentink, the Moraga-Orinda Fire District Fire Marshal would address the wild land plan and the condition related to fire hydrant locations. He had requested the approval of the final hydrant location at the time of the Subdivision Improvement Plan stage. She noted that condition had been modified in the draft resolution.

Ms. Salamack advised that Mitch Wolfe, Cal Engineering & Geology, the Town Consulting Geologist had prepared a letter this date which had reviewed some work by ENGEO (the applicant's geotechnical consultant) with respect to the issue of setbacks from ascending and descending slopes. She noted that copies of a revised resolution presented to the Commission and the public included a table to satisfy Condition VTM.42 [Vesting Tentative Map] with respect to the setbacks from those slopes. A copy of ENGEO's letter was also made available.

Ms. Salamack also advised that Frank Kennedy, the Town Consulting Engineer was also available. He had reviewed the various improvement plans for the project and had offered revisions to the resolution in terms of refining the lot numbers for consistency with the PDP.

Ms. Salamack further advised that Rod McLain of Fehr & Peers was available to speak to any traffic issues. She noted that the actual approval of the signal required as part of the project was a condition that needed to be satisfied prior to the issuance of the building permit or the certificate of occupancy for the 50th residence. She stated that there would be time to evaluate that issue in greater detail in the future.

Ms. Salamack added that Rafael Mendelmann from the Town Attorney's Office was present. He had proposed modifications to the final resolution and had recommended that all of the conditions of approval be moved to an exhibit.

Ms. Salamack identified another document that had been distributed, a letter from the Planning Director of the City of Lafayette which spoke to issues with respect to conditions of approval having to do with the BART viewshed.

Reporting that the Lafayette City Council had considered the PDP at one of its meetings last year, Ms. Salamack stated that several members of the Council had viewed the installation of story poles. There had been some concern on the part of that City that the residence at Lot 106 would be visible from the Lafayette BART station. She noted that staff had worked with the applicant to address those concerns and several conditions of approval had been proposed.

Summarizing Lafayette's proposed conditions; Ms. Salamack stated that the first related to the request that the Landscape Mitigation Plan be incorporated into the PDP. She characterized that as a statement of fact since the PDP required that landscape plans be submitted as part of the PDP submittal, and a Landscape Mitigation Plan had been submitted as part of the PDP submittal.

Speaking to the second proposed condition, Ms. Salamack identified the request that the trees and landscaping shown on the Landscape Mitigation Plan be planted in conjunction with the subdivision improvements and prior to the issuance of the first building permit. She had advised that she would review that request with the Town Engineer since the Town Engineer was typically responsible for the requirements of the subdivision agreement and the improvement plans. It was expected that landscaping as a required element of the plan would be installed along with the other subdivision improvements. As such, she stated that Lafayette had been advised that the Town would continue to explore that topic with the Town Engineer.

With respect to Lot 106, Ms. Salamack reported that the applicant had suggested a condition that the building permit for Lot 106 not be issued pending an opportunity for an evaluation of the visibility of the proposed plan for that lot after the actual mitigation landscaping had been installed. She stated that was agreeable to the Town and to the City of Lafayette, although Lafayette had also requested that story poles be installed as part of that evaluation process. She noted that the Town had no objection to the installation of story poles.

Further, Ms. Salamack referred to the last condition recommended by the City of Lafayette that Settlement Agreement conditions related to the height of the pad lots be recorded against the lots. She suggested that a condition of approval already included that requirement.

Chairperson Goglia verified with Ms. Salamack that the condition with respect to Lot 106 had been included in the resolution issued last week as well as in the current resolution.

Commissioner Driver spoke to the City of Lafayette's request related to landscaping other than for Lot 106 and asked the resolution of that request, reported by Ms. Salamack that the Town understood it may be necessary to install landscaping on land other than on Lot 106 to screen that lot.

Those necessary screening elements would be required to be protected by way of a Landscape Maintenance Agreement or deed restriction, whatever was deemed to be appropriate at the time the building permit for Lot 106 was issued.

In response to Commissioner Sayles as to how the conditions of approval just presented differed from the prior conditions of approval, Ms. Salamack explained that the lot numbers had been made all PDP lot numbers whereas before they were a combination of GDP, Settlement Agreement and PDP lot numbers. In addition, the table from the ENGEO letter approved by Cal Engineering had been added to Page 27.

Town Attorney Mendelmann added that he had made minor reformatting and editing changes to the document and had moved the findings up in the resolution. Some of the language related to the findings under the California Environmental Quality Act (CEQA) had also been revised with respect to the standards the Town would need to meet.

Alicia Guerra, Briscoe Ivester & Bazel LLP, representing the applicant, Richfield Investment Corporation, thanked staff for their diligent efforts over the last few years to get to this point. She presented the background of the project which had initially started in 1986 for a project of 146 homes and an 18-hole golf course. In 1996, the Town had approved the Conceptual Development Plan (CDP) and had certified the Environmental Impact Report (EIR) when many of the traffic issues had already been addressed for a project of 146 homes and an 18-hole golf course which had resulted in three years of litigation and the creation of a 1999 Settlement Agreement. That Settlement Agreement had led to a 123-unit project with a golf course that Richland Development Company had pursued.

Ms. Guerra explained that Richfield Investment Corporation had taken over that project in 2005 for the GDP and the VTM. She noted that in early 2007, the Planning Commission had unanimously approved a 123-unit GDP/VTM with no golf course since the wildlife agencies had opposed the golf course. The PDP was now for 123 units with substantially less development, substantially less traffic and minimal wetland impacts.

Ms. Guerra presented the refinement of the VTM that the Commission had approved in 2007 and clarified that the PDP was before the Commission for approval at this time. She referred to some of the conditions in the draft resolution related to the emergency vehicle access (EVA), the setback lines, a deed notification regarding the setback from the power line easement and the final configuration of lots.

Referring to the Commission's May study session, Ms. Guerra stated that there had been questions as to the need for a traffic signal, which condition could be resolved or addressed prior to the issuance of the 50th Certificate of Occupancy.

Ms. Guerra added that through Omni Means, Richfield Investment had prepared a traffic report demonstrating that the vehicular traffic conditions did not warrant a traffic signal when viewed in light of the entire project and the traffic analysis for the project with a golf course. She stated that the traffic analysis had also taken into account secondary units.

With respect to secondary units, Ms. Guerra explained that the Planning Commission and Design Review Board (DRB) had questions as to the proposed number of secondary units that had been proposed. She stated that Richfield Investment had not proposed secondary units although Richfield had recognized the Town's request to attempt to accommodate space. As a result, she identified 30 lots in the subdivision that could accommodate four different plan types that could accommodate secondary units, which had been contemplated in terms of square footage in the 1999 Settlement Agreement and in the 2007 Settlement Agreement.

Ms. Guerra reiterated that the 30 secondary units could be provided and still result in less traffic than would have been generated by the original project and demonstrated in the addendum that had accompanied the GDP and the VTM.

Ms. Guerra noted that another question related to public facilities, the pocket park and hiking trails and an interest in having a restroom for the hiking trails and the pocket park. She stated that there were no requirements in all the prior approvals associated with the project, including the Settlement Agreement that would require public facilities at private parks. She suggested that could be a potential liability for the developer since the private park was intended to serve the use and provide a facility for the neighborhood itself. As a result, the private pocket park and hiking trails would not accommodate a public restroom.

Speaking to the bridge designed at Moraga Road to parallel the stream paralleling Moraga Road, Ms. Guerra reported that the bridge was a requirement of the US Army Corps of Engineers and the Regional Water Quality Control Board (RWQCB) to avoid and minimize impacts to the drainage course. In response to a request for a sloped side road crossing instead of a bridge, she stated that would result in some difficulties to the slope resulting in greater impacts to drainage. She added that was something that would not likely be approved by the resource agencies given their preference for a smaller footprint of impacts to wetlands in compliance with the 404 B1 guidelines to avoid and minimize impacts to resources. As such, a bridge had been reflected in the PDP.

With respect to mailbox clusters, Ms. Guerra noted that the DRB had requested six mailbox clusters. She reported that Richfield had raised that issue with the Postmaster. At this point the original configuration with four mailbox clusters had been approved by the Postmaster. All mailboxes would be locked.

The idea of a clustered location was to provide opportunities for neighborhood gathering places.

As to the most significant issue with respect to views of Lot 106, Ms. Guerra stated that Richfield had spent many months and significant effort since 2007 to address the City of Lafayette's concerns related to visual impacts and the views from the Lafayette BART Station. She stated that Richfield had prepared two photo simulations and had installed story poles to address the potential visual impacts associated with the roofline of Lot 106.

Ms. Guerra reported that as the photo simulation had demonstrated, it actually turned out that the existing vegetation and the landscape screening would screen the roofline of Lot 106 consistent with what had been envisioned in the 2007 Settlement Agreement. Given Lafayette's continuing concerns and in an effort to address the impacts to views, Richfield had proposed to the Town that the building permit for Lot 106 would be deferred. She stated that had been recommended because if the concern was for mature landscaping and the effectiveness of screening the view of the roofline of Lot 106, the building permit would be deferred until after landscaping had matured so that the views could really be identified. In addition, Richfield had also agreed to prepare a photo simulation again and to install story poles at the time a building permit for Lot 106 was to be considered.

Ms. Guerra noted the incorporation of the GDP/VTM lots and the corresponding PDP lot numbers. She added that Richfield had also prepared photo simulations for the other lots identified in the GDP/VTM and the 2007 Settlement Agreement, and had reported that all of the existing vegetation would provide screening in conjunction with the screening proposed as part of the Landscaping Mitigation Plan. As a result, she stated there would be no impacts associated with the other lots. The lots would not break the horizon if factoring in the existing vegetation and the landscape screening.

Ms. Guerra stated that the project complied with the 2007 Settlement Agreement, the GDP and the VTM. She requested that the PDP be approved at this point in time after 23 years of process, reviewing all the conditions and requirements resulting in a project that had been reduced, which had all the mitigation measures built in and where all the conditions of approval had been addressed.

Ms. Guerra requested a clarification of some conditions, specifically Condition B.PDP.C.VTM.39 which required demonstration of compliance during the subdivision application process. She suggested that the PDP satisfied that condition. She also suggested that the condition appeared to indicate an ongoing requirement which was not the case. She requested that the condition be eliminated or that it refer to a specific lot or two.

In addition, Ms. Guerra referred to Condition A.PDP.VTM.12-R related to the 30 secondary units. Since those units would be processed as part of the plan development itself, GDP and PDP, she suggested it appeared that in some instances Moraga Municipal Code (MMC) Section 8.124 (Secondary Living Units) referenced in the condition might not always be applicable to the specific lots that may trigger the need for secondary units. She requested a clarification to the extent applicable in case there were different sections of the MMC that would be applicable.

Ms. Salamack agreed to a revision to Condition A.PDP.VTM.12-R to add "*to the extent applicable*." She noted that Section 8.124 actually dealt with secondary dwelling units for existing residences which was not the case in this situation. She stated that the concept in the condition was the characteristics of the secondary living units related to size, parking requirements, number of bedrooms and the like which would be evaluated to determine if the secondary units proposed as part of the project would be appropriate.

Ms. Salamack added with respect to B.PDP.C.VTM.39, that the condition had been included as part of the PDP because of the last sentence in the condition that "Should it be determined in the future that revisions to grading or rearrangement of lot placement brings the lot rear yards into view from off-site, adjustment in the grading plan or lot lines shall be undertaken." She explained that the Town did not want to lose that condition and it had been included in the section that needed to be addressed prior to the approval of the Final Map. Once the Final Map had been approved, she advised that the lot lines could not be changed, grading would be established, and the condition would go away at that time.

In response to Commissioner Hays as to how the inclusion of a secondary living unit would affect the footprint of the home and the particulars of the home to comply with secondary living unit regulations and how that would affect the Town's fair share allocation, Ms. Salamack explained that the plan identified a space that could be a guest suite. She noted that the difference between a guest suite and a secondary living unit would be the presence of a kitchen. She added that a guest suite would have a separate exterior entrance to the living space and a full bath. The units approved as secondary dwelling units, which would be limited to 30 in number, would be allowed on a first-come, first-served basis.

Ms. Salamack added that if the 31st residence wanted a secondary living unit that could not be done given the limit of 30 units. She noted that the Settlement Agreement spoke to a range of square footage and the VTM spoke of allowing larger homes on larger lots, which was a decision for the Planning Commission to make. She suggested the Commission could stipulate that in order for the semi-residential custom designs to be in compliance with the Settlement Agreement a certain number of residences would be a particular size.

If the Commission wanted to be more limiting than what had been proposed, Ms. Salamack explained it had the ability to do that.

Ms. Salamack also explained that secondary living units could count towards the Town's affordable housing requirement. She commented that the Town did not have a strong history for approving secondary living units and making the case with the State that they would qualify for affordable units was uncertain. She stated that the General Plan did require a range of housing options and the Town required the inclusion of some secondary units in the project, which was one of the findings of consistency with the General Plan. She further explained that the number of units had not been identified. The applicant had proposed 30 because it was the number possible from a density bonus perspective.

Commissioner Hays verified that the space could be a guest suite or a secondary living unit and that there could be no more than 30 secondary living units in the plan.

Ms. Salamack clarified that the Commission could establish a minimum number of secondary units. She also clarified that just because a residence was constructed with a secondary living unit did not mean that it would be occupied as a second residence. She reiterated that the secondary units would be included in the Housing Element Update which would show good faith on the part of the Town in terms of trying to meet its affordable housing requirement. She also reiterated that the Town did not have a track record of being able to demonstrate what that type of unit could be rented for in the Town and it would be difficult to make the case that the unit could be rented as a low-income affordable unit. She suggested that there was reasonable data that an apartment of that size could be at least a moderate income rental which could reduce the number of moderate income units needed elsewhere in the Town.

Commissioner Daniels verified with Ms. Salamack that the space for the secondary unit could be in addition to the 4,500 square foot maximum allowed

Chairperson Goglia suggested that would be an attractive feature for both the developer and potential buyers.

In response to Commissioner Hays as to the wide range of square footage allowed, from 2,800 to 4,500 square feet, Ms. Salamack noted a condition of the VTM under Condition A.VTM.2 where "However, the applicant shall not be obligated to fund $500,000 of the third Installment, if the Town of Moraga does not authorize the construction of primary residences in excess of 5,000 square feet on all lots in excess of 20,000 square feet for which the applicant proposes to build such residences as part of the Precise Development Plan for the project."

PUBLIC HEARING OPENED

Helen Mazola, 740 Moraga Road, Moraga, stated that she had submitted a letter to the Commission. She referred to Page 28 of the conditions related to the need for a traffic signal unless the applicant could demonstrate that it was not necessary because of the elimination of the golf course. She asked how that would be decided. She also asked about the LOS [level of service] and emphasized her concern for traffic mitigation and the time required for those attempting to cross Moraga Road. She emphasized the importance of being able to make a right hand turn on red to be able to keep traffic moving.

Speaking to Page 29 of the conditions, Ms. Mazola also referred to construction traffic and the concern for the precariousness of Moraga Road. She commented that rear enders on Moraga Road were continuous. She was concerned for the effect of construction traffic on that already difficult roadway.

Charlotte Dethero, 694 Old Jonas Hill Road, Lafayette, stated that she had also submitted a letter. She noted that Old Jonas Hill Road entered and exited Moraga Road at the steepest part of the road and she was concerned with the traffic coming down through Lafayette. Her letter had offered suggestions as to how that could be changed. She also expressed concern with construction vehicles coming down Moraga Road into Lafayette. She commented on the difficulty of being able to turn left onto Moraga Road. She was also concerned with increased traffic in general on Moraga Road which would further increase with the completion of the homes. She asked how that would be addressed.

Dave Petersen, 65 Woodford Drive, Moraga, asked if all the construction vehicles would access the development through the main road or whether or not other roads would be used for access during the construction phase. He also asked about the EVA and whether or not it would be used for anything other than an emergency. He questioned whether the Country Stone development would be impacted with anything as far as construction equipment and noise. He also commented that since the opening of 24-Hour Fitness at Rheem Boulevard he had noticed a huge difference in traffic and he questioned whether or not that would add to the current traffic impacts.

Rob Tasher, 1530 Lori Court, Lafayette, asked if the Traffic Safety Advisory Committee (TSAC) had the opportunity to look at the current safety traffic flow regarding the final presentation.

Ken Telsey, 116 Natalie Drive, Moraga, asked about ridgeline views from the perspective of Natalie Drive.

PUBLIC HEARING CLOSED

Ms. Guerra spoke to the question related to whether or not there would be a public hearing to demonstrate compliance with Condition L.III.3 calling for demonstration of the fact that a traffic signal was not needed based on vehicular traffic conditions prior to the issuance of certificate of occupancy. She noted that because that would happen after building permits had already been issued there would not typically be a public hearing, which was why the traffic report had been provided now prior to approval of the PDP to allow the Commission to have that information.

Speaking to LOS A, Ms. Guerra explained that was a term used to describe level of service. She stated that LOS A conditions were free-flowing conditions while LOS E or F were congested conditions. She also explained that V/C referred to volume to capacity. With respect to comments related to traffic mitigation, the time it would take vehicles to cross Moraga Road, the concerns for uncontrolled operations and the ability to make left turns, along with construction vehicle and access issues, she stated that all those concerns had been addressed as part of the environmental review process since 1986.

Ms. Guerra added that over the years the traffic analyses had been updated and background conditions had been taken into consideration along with cumulative conditions. She stated that the traffic associated with 24-Hour Fitness might have been reflected in pending projects and had been anticipated as part of the traffic conditions. Further, all of the mitigation measures identified in the EIR and the subsequent documents prepared after the 1999 Settlement Agreement and in 2007 when the GDP/VTM had been approved all required further reevaluation and additional mitigation measures. The conditions of approval were additional requirements that had come out of the mitigation measures in the EIR that had been imposed on the project. She also explained that it was up to the applicant to comply with those conditions that would be carried forward in each approval. She emphasized the 20 plus year process and the mitigation measures that had been folded into the conditions over time.

With respect to concerns regarding ridgeline views and impacts from Natalie Drive, Ms. Guerra stated that photo simulations had been prepared as part of the original EIR and further simulations had been provided in the addendum with a focus on Lafayette views. All of the ridgeline view impacts had been addressed through landscape screening and through height restrictions. Landscaping screening would also have to be installed in order to mitigate views. Residual impacts had been addressed in the 1999 and 2007 Settlement Agreements. She

Ms. Guerra stated with respect to the City of Lafayette's letter, that the only remaining issue related to Lot 106 which had been addressed by Richfield's voluntary agreement to defer issuance of the building permit for that lot until the landscaping had matured. She suggested there was no further need for further mitigation contrary to what the City of Lafayette had suggested.

Adding that the landscaping would be installed in accordance with what was required for the lots; Ms. Guerra explained it was impossible as a legal matter for Richfield to record Landscape Maintenance Agreements on property it did not own. To obviate and avoid a visual impact, she reiterated that Richfield would defer the building permit for Lot 106.

Ms. Salamack commented that TSAC was a relatively new committee in the Town. As part of its charter, TSAC was required to review all signal installations prior to their installation. She noted that the condition identified that it was responding to an impact identified in the EIR. TSAC would have a role in reviewing that signal.

When asked, Ms. Salamack stated that construction access would be addressed by the second sentence of Condition L.III.5. where "Construction vehicles shall access the site via the main project entrance [off of Moraga Road] and shall not access the project site via Buckingham Drive, Woodford Drive, Sky-Hy Circle and Mildred Lane."

With respect to construction noise affecting the Country Stone development, Ms. Salamack stated that the hours of construction noise was typically regulated by the MMC.

Ms. Guerra added that there were mitigation measures to limit construction noise.

Commissioner Hays commented that a condition could be placed to prohibit the idling of construction equipment over a specific period of time.

Ms. Salamack reported that the Settlement Agreement plan would have allowed construction equipment much closer to adjacent homes than the current plan would have allowed.

When asked by Commissioner Levenfeld if construction vehicles could be prohibited from Moraga Road, Senior Planner Richard Chamberlain stated that as a dedicated public road it would be difficult to limit traffic on Moraga Road. He commented that much of the road was outside the Town's jurisdiction. He otherwise explained that there would be weight limits, loading and unloading requirements and that hauling permits may be required.

Frank Kennedy, the Town's Consulting Engineer, reported that a condition had been included that moving of construction equipment deliveries to the site shall be either before or after peak hour traffic to reduce impacts on Moraga Road. Outside of that, he stated that the contractor and developer were governed by the California Vehicle Code which allowed that equipment to travel on the road.

Commissioner Levenfeld wanted to ensure that the Town had some ability to minimize hazards on the road.

Mr. Kennedy clarified that the grading on site would be contained on site. Cut materials would be used for fill materials on site and there would be no mass movements of earth off the site although there would be movement of materials onto the site for rock materials for road base and those sorts of things. He referred to the first sentence of Condition L.III.5 where "Construction operations that occur Monday through Friday shall be scheduled so that employees arrive at the site before 7:30 A.M. or after 8:30 A.M., and leave the site before 4:30 P.M. or after 6:00 P.M." As such, he suggested that adequate controls had been included to prevent conflicts.

Commissioner Levenfeld supported the inclusion of some language to address heavy equipment. Concern was expressed for the close proximity of Campolindo High School and there was a desire to avoid traffic conflicts, particularly on Wednesdays when school would begin later in the morning.

Ms. Salamack referred to Condition E.VTM.55 which addressed the subject of the import of the material where some routes associated with that import could be considered.

Commissioner Levenfeld commented that she had earlier made a request to address the safety concerns with respect to construction vehicles on Moraga Road and the Town's ability to mitigate any potential harm related to activities related to the development. She suggested that another route would not be as steep or windy as Moraga Road.

From the Town's perspective, Ms. Salamack explained that staff would need to be able to identify what it was about the subject project that was different from other construction that occurred in the Town and why the condition would have to apply. She stated, for instance, that the East Bay Municipal Utility District (EBMUD) Pipeline Project had not been so conditioned and that heavy equipment had gone up and down Moraga Road.

Commissioners referred to the size of the project as the difference. There were also comments related to the traffic from the High School and impacts related to the start and stop of school hours.

To address the concerns, Mr. Kennedy recommended that the second sentence of Condition L.III.5. be modified as follows: "*Construction operations that occur Monday through Friday shall be scheduled so that employees, heavy equipment and materials arrive at the site before 7:30 A.M. or after 8:30 A.M., and leave the site before 4:30 P.M. or after 6:00 P.M."*

Mr. Kennedy explained that the requirement to leave before 4:30 P.M. or after 6:00 P.M. had been intended to address the peak commute period. He emphasized the need to present reasonable and workable conditions and constraints.

George Nicholson, Omni Means, Traffic Consultant, stated that most contractors wanted to start early. He spoke to the High School traffic, recognized that the afternoon could be an issue, but noted that most of the High School traffic was down the hill and there were few students from that part of Lafayette who would attend Campolindo. He added that once north of Campolindo Drive, most of the traffic would dissipate and the access to the project was approximately 1,100 feet farther to the north. He stated that there would be a balanced grading project and there would not be a constant stream of trucks hauling back and forth. He added that the import of material would be short term in nature.

Ms. Guerra advised that from a legal perspective, Richfield was comfortable with the modification to Condition L.III.5 recommended by Mr. Kennedy. She added, however, that as a matter of the Subdivision Map Act there was a rule called "the one bite at the apple." The conditions set forth in the VTM were the conditions that the Planning Commission thought would mitigate the impacts and address the concerns regarding construction vehicle traffic, particularly given that the project had been designed to further reduce grading on site to keep the balanced cut and fill on site and to minimize construction vehicle traffic impacts.

From a legal standpoint, Ms. Guerra stated that the PDP itself which was in substantial accordance with the VTM and the GDP already did those things and had mitigated the impact. While Richfield was voluntarily willing to accommodate the Commission's request she could not advise Richfield to go much beyond that to start regulating contractors and take it beyond the limits of what was involved with normal contractor activity.

Commissioner Hays verified that the development would adhere to the Town's Design Guidelines. He asked if the project complied with the Floor Area Ratio (FAR) Guidelines.

Mr. Chamberlain explained that the FAR would not be applicable to lots over 20,000 square feet in size. He added that under the FAR guidelines most new subdivisions were entirely exempt because it was considered there would not be an impact of a mansionization of a house in an existing neighborhood, which the FAR had been designed to address. With a new subdivision, the houses would all be designed in line with that subdivision.

Commissioner Hays asked if the DRB had reviewed the design guideline book submitted by the applicant and whether or not it would be required to be approved by the DRB before the project was finalized.

Commissioner Hays wanted to ensure that the applicant's design guidelines were within the parameters of the Town's Design Guidelines, particularly since the semi-custom homes might not require review as part of the normal DRB process.

Ms. Salamack advised that the project had been reviewed by the DRB at least twice; once at a joint meeting in March 2008 and later with respect to the fence and park design. She recalled that the DRB had the opportunity to review the design guidelines although the DRB had not made a specific recommendation with respect to those guidelines. She also recalled that the guidelines had been available when meeting last year.

Commissioner Hays strongly recommended that the DRB review the guidelines before the construction of the semi-custom residences.

Mike Mentink, Moraga-Orinda Fire District, explained in response to Commissioner Hays' concern for the 19.8 percent grade of the EVA that most of the emergency vehicles that would use the EVA were Type 3, four-wheel drive vehicles able to access the 19.8 percent grade. He stated that the District was willing to accept that grade due to the fact that it was willing to minimize the impact on the environment and reduce grading.

Commissioner Hays referred to the sample overall site planning and spoke to the square footage of the homes where 62 percent of the homes would be over 5,000 square feet in size. Speaking to size distribution, he did not support 123 homes of the same size. He sought some variation and wanted to establish a size distribution minimum percentage of the homes between single story and two-story homes. He suggested that the sample site plotting summary was a sample only and could be changed.

Chairperson Goglia suggested that there be a designated average size of home designated for the total development. She asked how size diversity would be achieved.

Commissioner Daniels suggested that an average home size designation could be problematic.

Commissioner Hays suggested that there would have to be a ratio of the seven plans in conjunction with the lots over 20,000 square feet in size. He also commented that the sidewalk would stop on Camino Colorados. He requested that the walkway extend the entire frontage on Moraga Road. He suggested that there would be students walking out of the development to access the High School. He wanted to see as much sidewalk as possible.

Ms. Salamack stated that with a light at the intersection students would have an opportunity to cross the street to the existing sidewalk.

Speaking to the light at the intersection and whether or not it would be required, Commissioner Hays stated that either a signal or a stop sign would be required. Since a signal could be synchronized with the existing stop light at the school, he asked how a stop sign would affect traffic in that situation. He suggested that a signal would require a public comment period given the major safety issues for those living in the area.

With respect to gates and fencing, Commissioner Hays referred to a fence around the entire open space in the community. He asked how that would affect wildlife corridors and whether or not there would be locking gates for the public trails. He referred to Page 34 of the applicant's design guidelines which had identified a decorative cattle fence (wire mesh fence with 2x4), a five-strand barbed wire cattle fence, or a decorative metal fence where there would be public views. He referred to some maintenance gates but did not see where they accessed the trail system.

Malcolm Sproul, LSA Associates, stated that the trail plan was not yet complete. The applicant was working with the East Bay Regional Park District (EBRPD) on the link between the Lafayette-Moraga trail and Moraga Road. He stated that all public trails would have a self-closing pedestrian gate. When entering an area with cattle there would be a mechanism to allow an automatic closing of the gate. He stated that the bottom strand on the five-wire barbed wire fence would likely be a smooth strand to allow greater wildlife movement.

Commissioner Hays asked about the GHAD [Geologic Hazard Abatement District], to which Ms. Salamack explained that the GHAD was not required prior to the approval of the PDP. She added that a condition had been included to address the requirement of the GHAD.

Commissioner Hays also recommended with respect to the Green Point Rating System that all houses within the development meet the minimum guidelines for Green Point Rating, which would be 60 points.

Ms. Salamack clarified that the 14 points earlier identified as part of the Green Point Rating System related to the subdivision design only and had nothing to do with the individual buildings. She also clarified that the condition with respect to the GHAD was Condition J.VI.3. related to the formation, funding and responsibility of the GHAD.

Ms. Guerra added that B.VTM.32 also stipulated that "Prior to approval of the final map, the Town Council shall approve a Geologic Hazard Abatement District Plan of Control for maintenance of required facilities including financing."

Commissioner Hays spoke to park access and restroom facilities. He agreed with the applicant that there was no need for restrooms at the park given that it was so small. He noted that the wording in the design guidelines had indicated that the park was for the use of the homeowners in the development although he suggested it was for public use by the Town of Moraga.

Ms. Salamack clarified that the park was absolutely for public use, privately owned but for public use. She stated that the Town's approval of the Park and Rec Master Plan last year had identified no neighborhood parks in the Town. A neighborhood park was defined as a park serving a half mile radius and one which could typically be walked to. Where the park was located in the development it would serve the neighborhood, which also happened to be the development. Its primary function within the Town's Master Plan was to serve the neighborhood.

Commissioner Hays further stated with respect to Green Point Rating that the applicant had agreed to modify the solar for the development. He recommended that the houses be prewired for solar.

Speaking to the secondary living units and noting that was still a concern given the size of the homes and whether or not they were two stories in size, Commissioner Hays suggested the Town needed to evaluate that size issue.

With respect to the bridge, Commissioner Hays noted that he looked more to the massing as opposed to the wetlands issue and did not believe that a concrete bridge with the footings involved would be less invasive than a corrugated metal pipe or reinforced pipe with dirt.

Commissioner Sayles referred to the Commission's joint meeting and stated that some issues that had not been resolved related to the potential number of two-story homes. He suggested that in some sections there were over ten two-story homes in a row. He also commented that when coming into the development, though set back there would be additional monoliths 20 feet plus tall, which he did not see as a seamless connection to the Town that had earlier been represented. He commented that the Town had not even approved that type of element for a shopping center.

When asked by Commissioner Sayles, Ms. Salamack explained that the basic residential designs would be approved as part of the PDP although not the siting of the residences on the particular lots. She otherwise clarified that the approval of the document would mean that the homes would be exempt from design review. She stated that the Commission was not deciding which design would go on which lot and the actual construction of the residences was not being approved. She explained that it would be up to the applicant to decide which of the various eligible designs would be placed on which lots.

Commissioner Driver asked how the number of 30 proposed secondary units had been determined, reported by Ms. Salamack that the applicant had proposed 30. She noted that was based on the thinking relative to a density bonus. Under State law, if a certain percentage of units were proposed as secondary living units, as affordable housing, the overall density of the project could be increased by 25 percent.

Ms. Salamack commented that 70 some units would be the number of units less than 50 peak hour trips, which was a threshold number relative to the Lamorinda Program Management Plan.

Commissioner Driver referred to some of the correspondence received by the Commission related to the number of covered parking spaces in the development and a potential reduction of the garage space as a way of reducing trip generation. He asked if that would be the case.

One of the transportation consultants in the room explained that trip generation was a function of the type of home, such as homes with a two-car garage where there were four cars.

Commissioner Driver asked about alternatives to having a streetlight in the development. He also asked if there was a proposal for a stop sign on Moraga Road to stop Moraga Road traffic or just to stop cross traffic. He was advised that stop sign would stop cross traffic coming out of the development.

Commissioner Driver suggested the Commission was not taking a firm enough stand with respect to committing features in the development to address the Green Point Rating System. Emphasizing the importance of those types of features particularly for homes in the area of 5,000 square feet in size, he did not believe that enough had been done at this point. While he understood that many of the homes would face south, he stated that nothing had been included with respect to local source materials, recycled materials or any of the other things found in the Green Building Practice Guidelines.

Ms. Salamack explained that when the Town Council had considered the issue of the Design Guidelines it had included in the guidelines the requirement that new residences in new subdivisions must meet the requirements of the Build It Green program, although the Council did not stipulate how that would be accomplished. The method of achieving a minimum score had been left to the applicant. The guidelines stated that “The applicant or successor shall use reasonable effort as determined by the Town to employ Green Building in the design and construction of the project.” As such, the Town would determine whether or not the applicant’s efforts were reasonable.

Ms. Salamack added that at the time of the application for a building permit there would be more information as to the heating systems, window systems and the type of paint and other building materials to be used as part of the project.

In response to Commissioner Hays' suggestion that could be made a condition of approval, Ms. Salamack advised that was already a requirement. She referred specifically to Condition A.VTM.16 "To conserve natural resources, increase energy efficiency, and improve indoor air quality, the applicant or its successor shall use reasonable efforts as determined by the Town to employ "Green Building" practices in the design and construction of the project."

Ms. Salamack reiterated that the Town Council had already determined that the reasonable efforts for new homes in new subdivisions in the Town of Moraga must be compliant with the Build It Green program. She clarified that the VTM had been approved in May 2008 and the Town's Design Guidelines where the "reasonable efforts" had been identified had been approved in July 2008. She stated that if the Town Council increased the efforts, those would be the reasonable effort. She emphasized that the Town would determine the reasonable effort and the point of determination would be at the time of the building permit.

Chairperson Goglia requested that A.VTM.16 be modified to clarify the intent to identify a minimum that all buildings shall meet the Build It Green new home construction green building guidelines in effect at the time of building permit submission with a minimum of 60 points (or whatever point range had been determined) as well as any stipulated specific category point minimums. The builder shall retain the services of an independent Green Point rater. The rater shall file certificates including performance and testing at construction completion certificate prior to the issuance of a Certificate of Occupancy by the Town. The certificate from the Green Point System shall also be provided to the real estate agent and the home purchaser." She suggested that would clarify things.

Ms. Salamack stated that aside from being a legal matter where it did not appear the Town had the authority to do that, she suggested that the Town already had what was required to get to the same place. She reiterated that the determination would be made by the Town. The Town Council had already specified the standard that as part of the Green Point Rated program the applicant would have to review the plan as identified by the Chair without entangling the Town in any unnecessary legal issues.

Ms. Guerra explained that there really was "one bite at the apple" as a legal matter. When the VTM conditions had been imposed with respect to Build It Green requirements, the Town did not have any adopted rules, regulations or policies in effect at the time the application had been deemed.

Ms. Guerra stated that meant that the determination of reasonable efforts was what had been in effect at that time based on the VTM approval in 2007, while the Town's Design Guidelines with the Build It Green requirements had been approved in May 2008.

Ms. Guerra added that as a legal matter Richfield had been trying to accommodate the Commission and Council's interest by folding in energy requirements. Everything complied with Title 24. While that did not satisfy the Build It Green measures, she stated to now mandate that requirement would be a "second bite at the apple" which was not allowed under the applicable rules, regulations and policies of the Subdivision Map Act since there was an approved VTM. She reiterated that the applicant had demonstrated a good faith effort by incorporating passive solar and cooling measures in the building design.

In response to Commissioner Hays as to a clarification of whether or not there would be what had been called a "second bite at the apple" even if the Town had discussed the green building issue although it had not previously made a decision on that issue, Mr. Mendelmann explained that the Town had vested something given the approved VTM condition that dealt with the issue. He noted that VTMs and PDPs were complicated although he stated it appeared as if the Town had specifically looked at that issue and had included something for the project.

Commissioner Hays expressed concern and recommended with respect to VTMs and PDPs that there be a clear distinction when moving forward as to the Town's ability to add conditions, particularly in this case with respect to Build It Green requirements..

Commissioner Driver verified with Mr. Mendelmann that whether or not the Build It Green point system would apply to the subject application was open to interpretation.

Commissioner Daniels asked about the issues open to the discretion of the Commission at this time relative to what had already been vested.

Ms. Salamack referred to MMC Section 8.48.120 which described the PDP process where certain documents should be submitted to the Planning Director for approval including the site plan, preliminary building plans, landscape plans and engineering plans, all of which she stated had been submitted to the Town. The section also indicated that the Planning Director shall submit the PDP to the Planning Commission together with recommendations by any other component member of the planning agency. The Commission shall review the PDP shall approve, approve with conditions, or disapprove. The action of the Planning Commission was final unless appealed to the Town Council.

Ms. Salamack advised that there were no specific findings to be made with respect to the PDP, which staff had taken to mean that it would need to be in substantial compliance with the earlier approved GDP and VTM. She stated that because of the prior approvals that stated that certain things had to happen at the PDP stage, the Commission would have to confirm whether or not those things had occurred. She referred specifically to the EMF [Electro Magnetic Fields] disclosure statement which had been submitted to the Town. The Town Attorney wanted to see some revisions to that disclosure statement and the revisions submitted had been found to be acceptable.

Beyond looking at the prior approvals of the GDP and the VTM, Ms. Salamack stated that the project itself was not being changed; the level of information associated with the project was being changed.

Commissioner Daniels verified that the applicant was already subject to a number of requirements subject to the previously approved Settlement Agreement, GDP and VTM and the Commission was determining compliance with those conditions of approval. She asked about the design guidelines and why they were being approved.

Ms. Salamack stated that the applicant had submitted the design guidelines as part of the PDP process for the project because that plan submittal called for a site plan showing each building, functional use areas, circulation and their relationship. She suggested that while the Commission could decide each and every lot as part of the subdivision as part of the PDP and while that had not previously been done on other PDPs other than the extension of the Moraga Country Club, in this case the building design contemplated for the various lots could be identified although the design guidelines could also be applied to the custom residences within the subdivision. She characterized that as a way of fine-tuning the Town's Design Guidelines to be design guidelines that were more project specific.

Chairperson Goglia asked if the Commission had previously seen the applicant's design guidelines.

Ms. Salamack verified with the applicant that the design guidelines had been submitted in August 2008 and the Commission may not have seen them.

Commissioner Daniels verified that the Commission was being asked to approve the contents of the applicant's design guidelines

Debi Chung, Richfield Investment Corporation, stated that draft design guidelines had been submitted with the GDP. She added that the latest design guidelines that had been delivered were a refinement to what had earlier been provided relative to the PDP.

Chairperson Goglia recognized that there had been a study session that had covered some of the material although the Commission had not previously seen what had currently been submitted. She noted that the document had indicated that the design guidelines could be amended at any time.

Ms. Salamack clarified that the DRB had not seen the latest design guidelines since the last time the DRB had reviewed the project was in June 2008.

Commissioner Driver referred to a flow chart on Page 17 of the applicant's design guidelines which was explicit that the designs would be submitted to the Town's DRB at preliminary design and final design stages. He stated that would provide some relief to his concern of ceding all review authority.

Ms. Salamack explained relative to semi-custom residences that the Town through the PDP process would be approving the designs that had been submitted to the Town for the various lots where identified. The Town would not be required to approve those designs. With respect to other residences, such as custom residences for any of the lots where semi-custom homes had been plotted, or for any of the MOSO lots, the design guidelines would govern the architectural review from the developer's perspective not from the Town's perspective. The Town would still be reviewing and approving those designs.

Ms. Salamack reiterated that the Town would still retain its decision making with respect to the Town findings that needed to be made. The applicant would be identifying to purchasers of the lots in the subdivision the design standards that would have to be met. While the semi-custom lots would be approved as part of the PDP, the custom lots would require Town approval. She also explained, when asked, that all the lots could be custom lots. There was no requirement for semi-custom lots.

Ms. Salamack further clarified with respect to setbacks that for the ascending and descending slopes and for any of the lots governed by a conditional use permit the setbacks, building height and the like would be set by the conditional use permit. She described those lots as the 20 or so MOSO lots and one non-MOSO open space lot.

Chairperson Goglia characterized the current session as a big DRB meeting since the Commission was being asked to approve potentially 100 or more homes without otherwise requiring DRB review.

When asked by Commissioner Daniels, Ms. Salamack stated that she had reviewed the design guidelines for the project and had spoken to the solar issue which had not been addressed. She stated that a memo had come in later on that subject.

Chairperson Goglia expressed concern for some statements shown on Page 42 of the document regarding solar and wind power systems which seemed to discourage their use in the project.

Ms. Salamack referred to Condition A.VTM.11, "Design Review approval for each custom residence shall be obtained prior to issuance of a building permit for the proposed residence. Plans for semi-custom residences may be submitted for a building permit without Design Review Board approval following a determination by the Planning Director that the proposed design is consistent with the Precise Development Plan approval for the Project. A custom residence is a residence of unique design that may be located on any lot. A semi-custom residence is a residence on a single family residential lot that is not subject to a view, scenic or conservation easement. A semi-custom residence is one that follows architectural guidelines as approved as part of the Precise Development Plan including a range of architectural styles, elevations, floor plans, landscaping colors, and building materials." She stated therefore that the process had been contemplated as part of the VTM.

Commissioner Sayles asked how lights shining vertically, for instance, would be addressed as part of the Town's review guidelines and planning ordinances and the Town's setbacks clear to sky. Further, how no more than two-story residences in a row would be addressed without consideration. He did not see any of those issues addressed through the applicant's design guidelines which he described as brief in comparison to the Town's Design Guidelines. He did not see how he could approve the application without more controls.

Ms. Salamack advised that it would be up to the Commission to approve the design guidelines. Given the Town's discretion, she suggested that the Commission could add guidelines to the applicant's document.

Commissioner Sayles stated that he would need an opportunity to compare the applicant's guidelines with the Town's guidelines.

Commissioner Hays recommended that the guidelines be reviewed and approved by the DRB with a recommendation to the Planning Commission.

Commissioner Sayles requested a staff report to compare the two sets of guidelines. He referred to Page 42 of the applicant's guidelines stating that there should be no more than two, two-story homes adjacent to each, which he supported. However, that section went on to note that the only exception would be if the home appeared as one story from the street. He suggested that would give a lot of discretion to the approvers. He was concerned that 11 two-story homes in a row had been shown in the document. He suggested that many of the issues that had been raised at the joint meeting had not been addressed.

Chairperson Goglia asked about the Palos Colorados Architectural Review Committee which was purportedly to be comprised of five members. She noted the statement that the committee would use the design guidelines to review but may individually consider the merits of any design. She expressed concern that the semi-custom homes could be approved using the proposed design guidelines, which she described as fairly loose. No identification of the five members was also a concern to her.

Ms. Salamack stated that the plans submitted to the Town were plans that an applicant could obtain a building permit for without design review, although for something other than the preapproved plans, the process would require review and approval by the Palos Colorados Architectural Review Committee and then review and approval by the Town of Moraga's DRB, after which the building permit could be attained. She described that process as no different from the process in other Homeowner's Associations (HOA).where the property owner would have to secure approval at the HOA level.

Commissioner Driver did not have an issue with that process. His concern related to the plans which were getting locked in a way he had not expected or been aware. While he was satisfied with the conditions, as reasonable, he was uncomfortable with the combination of the design review guidelines and the seven plans for homes that would get populated on the street. He suggested that those plans had not been adequately vetted to address concerns such as no more than two, two-story homes in a row, small side yards and other design issues. He commented that not a lot of time had been spent looking at those issues.

Commissioner Levenfeld agreed with the concerns and commented that she had also not understood the extent of the decision to be made by the Commission. She stated it would be helpful for her to have more time to review the maps in the context of the design guidelines.

Ms. Salamack suggested that was something that could be deferred to the DRB and something that could be done in conjunction with the DRB, or something that the Commission could decide itself. She suggested that the next step would be to decide which process the Commission preferred with the Commission to identify where it might like additional study.

Commissioner Driver supported input from the DRB on the design guidelines.

Commissioner Hays concurred given the detailed issues involved such as wall paint color, wall textures, setbacks and the like.

Commissioner Hays also referred to the statement that delivery of materials and heavy equipment by trucks in excess of 10,000 pounds shall be done prior to 7:00 A.M. He disagreed that should be the case. He was advised by Ms. Salamack that the condition earlier modified would have required delivery prior to 7:30 A.M. He did not object to a 7:30 A.M. timeframe.

Commissioner Sayles commented that the Town would never approve a house with so little information. His greatest concern was that while each design could be very nice having ten of the same plans in a row, for instance, would be a problem.

By consensus, the Commission supported DRB review of the applicant's design guideline packet, exhibits and model plans with staff input given a number of issues related to design for the DRB's review and recommendation to the Commission.

Ms. Salamack asked if the Commission wanted information other than what had been identified.

Commissioner Hays requested site plotting to show the size of the residence compared to the square footage of the lot along with some information related to the ratio of home sizes.

Chairperson Goglia requested more information on the Build It Green issue and how to make that appropriately apply to the project. She stated it had been her understanding that this would be the time to address energy conserving features of the homes in the development as a whole since this would have been the time when enough information would have been available to allow those decisions to be made.

Ms. Salamack stated that unlike the Hetfield Estates and Rancho Laguna projects, the Palos Colorados project had been approved prior to the approval of the Build It Green requirements in the Town's Design Guidelines. She reiterated that the Palos Colorados VTM had preceded those regulations.

Chairperson Goglia sought some analysis about the distribution of homes and what could be done to require the homes to be sized between 2,800 and 4,500 square feet in size.

Rick Sabella, Richfield Investment Corporation, explained that the design guidelines had been initiated due to economics and given that the project had been ongoing for 23 years and his concern for the level of review that would be required for each house. He stated that seven plans had been proposed to be able to start the project and avoid what he described as an economic nightmare.

Mr. Sabella added that the entitlement costs exceeded $400,000 per lot. He suggested that given the price of the homes, homebuyers would be very sensitive to energy and very sensitive to a house different from an adjoining house. He emphasized that there would be a variation with the seven plans. He therefore emphasized the necessity to be able to move forward.

Chairperson Goglia acknowledged the applicant's desire to offer a standard design to potential clients.

Mr. Sabella stated with respect to energy that he would guarantee that the homes would be built subject to energy conservation measures. He suggested that some of the existing homes in the Town should be retrofitted to also be energy efficient. He emphasized that the proposed homes would exceed the energy efficiency of existing homes.

Commissioner Levenfeld requested FAR information on the proposed lots.

Commissioner Hays suggested a minimum lot size of 25,000 square feet.

Ms. Salamack summarized the Commission's requests to have the DRB review and report to the Planning Commission regarding the design guidelines, the siting and the house plans for the proposed project with specific interest in not having a number of the same type of residences in a row. The Commission was also interested in an analysis of the site plotting, a ratio of home sizes to lot sizes, verification of the Build It Green guidelines, an analysis regarding the various homes in terms of development characteristics such as setbacks, FAR, the size of the various homes, and sensitivity to proposing conditions that may have to do with minimum lot size for the various plan types particularly for the larger sized residences.

Commissioner Driver also requested a comparison of the applicant's design guidelines with the Town's Design Guidelines.

Commissioner Sayles asked the DRB to consider how many if any of the same plans could be adjacent to one another to achieve diversity.

Commissioner Hays sought some resolution of the stop sign versus the signal, to which Ms. Salamack explained that the Town's consultant was recommending a signal at this stage which had to do with the need for pedestrians to cross Moraga Road in order to access a pocket park, trails, and a Park and Ride lot and in order for residents to get to the sidewalk network across from Moraga Road. She clarified that did not need to be resolved until prior to the issuance of the Certificate of Occupancy for the residences. She added that things could change prior to that time.

Commissioner Hays requested a recommendation from the Town Engineer as to whether or not the signal could be synchronized with the signal at the High School.

Ms. Salamack stated that the signals could be synchronized. She clarified that the signal would require a review by TSAC and be subject to public comment. She reiterated, when asked, that while that would not be the final determination on the subject the Town Engineer did not recommend a stop sign.

Chairperson Goglia asked if it was possible to require that secondary living units had to be leased or rented out. She suggested if the purpose of a secondary living unit was to provide additional housing as opposed to use as a guest room a requirement might be a way of making that happen.

Commissioner Hays did not have an issue with the additional square footage on a residence; he just wanted to make sure that the Town would be credited with the allocation of housing.

Commissioner Levenfeld spoke to the height of the spires at the entrance and asked that the DRB revisit that element.

Commissioner Hays commented that the DRB had previously considered that element. With respect to the conditions of approval, he asked about Condition A.VTM.8 where the project was to be constructed in one phase. He requested a clarification of that condition.

In response, Ms. Salamack explained that at one time the project had been proposed to be constructed in three phases. At this time, the grading and subdivision improvements would be pursued at one time.

Speaking to Condition A.GDP.6-R-VTM, Commissioner Hays requested that the condition be amended to require synchronization with the signal at Campolindo Drive.

Commissioner Levenfeld referenced the applicant's request for an amendment to Condition A.PDP.VTM.12-R to add "*to the extent applicable*."

Commissioner Hays asked if the trail locations should be finalized prior to the adoption of the PDP, reported by Mr. Sproul that the trails should be finalized with the EBRPD prior to the return of the item to the Commission.

Commissioner Levenfeld identified typos at the top of Pages 28 and 29.

Commissioner Levenfeld also referred to Mr. Kennedy's recommended modification for Condition L.III.5: *Construction operations that occur Monday through Friday shall be scheduled so that employees, heavy equipment and materials arrive at the site before 7:30 A.M. or after 8:30 A.M., and leave the site before 4:30 P.M. or after 6:00 P.M.*

Commissioner Hays suggested that the applicant's own guideline related to the delivery of materials and heavy equipment by trucks in excess of 10,000 pounds could be considered.

Commissioner Daniels verified that erosion control issues would be addressed at the time of the grading permit.

Commissioner Sayles described the process as similar to the Sonsara development. He asked how those homes had been approved.

Mr. Chamberlain explained that every single home in that development had gone through individual design review which was how every single project in the Town had been processed since incorporation, some more than once with different designs.

When asked about a continuation, Ms. Salamack explained that the membership of the Commission may change at the first meeting in March. As a result, she preferred to have the application reconsidered prior to that time. She suggested that there could be a joint meeting of the DRB to discuss the design guidelines. She recommended that the regular DRB meeting of February 23 be designated for that joint meeting. She added that she would make the Commission's comments and concerns available to the DRB prior to that time to make members aware of the Commission's concerns and the reason why the documents had been referred to the DRB.

On motion by Commissioner Hays, seconded by Commissioner Levenfeld to continue SUB. 8376 Palos Colorados, Richfield Investment Corporation to a joint meeting with the Design Review Board on Monday, February 23, 2009. The motion carried by the following vote:

Ayes:	Commissioners Daniels, Driver, Hays, Levenfeld, Sayles, Goglia
Noes:	None
Abstain:	None
Absent:	Commissioner Whitley

Chairperson Goglia declared a five minute recess at this time. After the recess, she reconvened the meeting with all Commissioners initially shown as present and absent,

Commissioner Sayles recused himself from the next item due to a conflict of interest.

B. VAR-06-08 – Steven and Laurie Hafener (Applicants/Owners) - 121 Brookline: A Public Hearing to consider a request for a variance 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. The additions included 262 square feet on the main floor and 278 square feet on the lower floor. The project also includes expansion of the decks at the east, west and south sides of the home with 470 square feet additional deck area. The maximum allowed floor area for the 7,482 square foot lot is 2,634 square feet under the Town's floor area ratio (FAR) guidelines. The existing home is 634 square feet over the maximum floor area and the proposed 540 square foot expansion of the home will require an exception to the FAR guidelines to allow the total floor area to be 1,174 square feet over the maximum floor area. The property is zoned 3 Dwelling Units per Acre. APN 257-541-013.

Mr. Chamberlain presented the staff report dated January 22, 2009, for a public hearing to consider a variance 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. Public hearing notices had been mailed to property owners within 300 feet on February 2, 2009. No correspondence had been received by the Town.

The proposed plans included an addition of 262 square feet on the main floor and 278 square feet on the lower floor. The addition on the main floor included enlargement of the master bedroom and a walk-in closet and reconfiguration of the kitchen, dining and living room areas. The modifications to the lower floor included conversion of an existing bedroom to a den and the addition of a new bedroom and bathroom. The project also included 470 square feet of addition to the deck area on the east, west and south sides of the home.

Mr. Chamberlain stated that prior to filing for the variance the applicant had submitted plans for a Hillside Development Permit application for expansion of the home on the north side behind the garage. Those previous plans did not require a variance.

Mr. Chamberlain explained that the Town's Geotechnical Peer Reviewer Cal Engineering & Geology had completed its review of the geotechnical investigation prepared by Cundey Geotechnical Consultants, Inc. on September 23, 2008, although after the completion of the technical review the adjacent neighbor at 119 Brookline had objected to the addition at the north side and any addition that would reduce the distance between the two homes.

Mr. Chamberlain noted that the Board of Directors of the Country Club and the Architectural Review Committee had reconsidered the project. The applicant had revised the plans to have the addition on the south side adjacent to private open space owned by the Moraga Country Club. At that time, staff had suggested a lot line adjustment as preferable to a variance, although the Town had been informed by the Board of Directors of the HOA that it was not authorized to sell any open space areas since bylaws required a quorum of the members of the Association to approve any sale, which it was noted would be nearly impossible to do.

Mr. Chamberlain reported that on December 9, 2009 the Moraga Country Club Architectural Review Committee had approved the revised plans on the south side subject to the Town granting the variance. On December 8, the Town had received a letter from the Cundey Geotechnical Consultants confirming that their recommendations remained valid for the revised plans.

Mr. Chamberlain stated that while the project site was zoned for 3 dwelling units per acre, the subdivision had originally been approved by Contra Costa County as a Planned Unit Development and most of the lots were smaller than 10,000 square feet. The building setbacks were also smaller than the setbacks established by the Town for the zoning district. The average lot size of residential properties within 300 feet of the project site was only 6,370 square feet. The applicant had submitted a table to compare the aggregate side yard setbacks of the lots within a 300 foot radius. The proposed aggregate of the sum of the side yards for the project was 11.8 feet. He added that 44 percent of the properties within 300 feet had aggregate side yards of less than 11.8 feet.

Mr. Chamberlain explained that except for the existing garage roof, the front roof eave of the home did not encroach into the 20-foot front setback and the rear roof eaves did not encroach into the required 15-foot rear setback. The expansion of the deck at the back of the home would be 13 feet from the rear property line at the back of the home but the posts for the deck complied with the 15-foot setback. While building setbacks did not generally apply to decks, since the deck was attached to the building it was appropriate that the deck conform to the setbacks.

The existing home was 634 square feet over the maximum floor area and the proposed 540 square foot expansion would require an exception to the FAR guidelines to allow the total floor area to be 1,174 square feet over the maximum floor area.

Mr. Chamberlain stated that approval of a variance was considered to be an adverse design characteristic where an exception to the FAR guidelines should not be considered by the DRB.

Mr. Chamberlain reported that staff had prepared a comparison of the FAR with other homes within 300 feet and had determined that the project did not present an out-of-scale appearance since 11 of the 27 homes were larger than the proposed expansion. Two of the homes had total floor areas that exceeded the maximum by 1,814 square feet, greater than the exception request. The adjacent home had a total floor area of 3,908 square feet, 100 feet larger than the proposed expansion.

Mr. Chamberlain explained that MMC Section 8.12.130 required that the Commission make three findings in order to grant a variance. The first finding was that "A variance is necessary because of special circumstances concerning the subject property including size, shape, topography, location or surroundings, the strict application of the zoning regulations deprives the property of privileges enjoyed by other properties in the vicinity and in the same zoning district." He stated since the south side of the lot was adjacent to private open space the proposed addition would not impact adjacent homes whereas an addition complying with the setbacks on the north side would impact the adjacent neighbor.

As to the second finding that "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," Mr. Chamberlain stated that the variance would not be a grant of special privilege since most of the homes in Moraga Country Club did not conform to the setback requirements in the 3 dwelling units per acre zoning district.

With respect to the third finding "The variance substantially complies with the intent and purpose of the zoning district in which the property is classified," Mr. Chamberlain stated that the proposed addition would not obstruct light and ventilation on any adjacent parcel and the floor area analysis did not present an out-of-scale appearance to other homes in the neighborhood.

Mr. Chamberlain advised that staff had prepared a draft resolution for approval of the project with findings appropriate to the circumstances. He stated that while the applicant could build an addition to conform to the 10-foot side yard on the north side of the home, the request was unusual in that the construction of an addition on the south side of the home would have no impact to any neighbor.

David Bowie, Pleasant Hill, an attorney speaking on behalf of the applicant Steven Hafener, and on behalf of Allen Sayles who was the project architect, advised that a representative of Moraga Country Club Architectural Review Committee had earlier been present to confirm that the Committee had approved the variance request and the application for the addition. He advised that the representative had been unable to remain at the meeting.

Mr. Bowie stated that he had reviewed the draft resolution. He urged the Commission to approve the resolution. Speaking to the nature of a variance itself, he emphasized that variances were to be fairly out of the ordinary, not a grant of special privilege and to be compelled by special circumstances. In this case, he stated that the variance was appropriate given that the construction on the north side of the home would have impacted the adjacent neighbor. With the addition proposed on the south side of the property, no one would be impacted by the addition, meeting the intent of setback requirements to preserve privacy all the way around.

Mr. Bowie explained that the proposal would be consistent in general with 44 percent of the homes meeting some kind of a variance or setback exception. He stated that the proposal was unique given the physical circumstances of the isolated setting to the south, would not impact anyone and had been supported by the adjacent neighbor.

PUBLIC HEARING OPENED

There was no one to speak.

PUBLIC HEARING CLOSED

Commissioner Hays had no issue with the application. He commented that the findings supported the application. He stated that the Moraga Country Club was an anomaly in the Town and there had been prior applications of a similar nature. He had no issue particularly since the variance was on a side where there was no home.

Chairperson Goglia suggested that exceptions to setbacks and floor area ratios should not be approved lightly although in this case setting the project in a neighborhood full of exceptions was not such an issue, particularly on a side surrounded by open space.

Commissioner Driver concurred that the setback issue more than mitigated by being on a side of the house with open space. He was more troubled with FAR exceptions and the growing size of homes. He agreed that the proposal was consistent with the neighborhood full of exceptions. He suggested it would be the opposite of fair treatment not to allow the variance in this case.

On motion by Commissioner Daniels, seconded by Commissioner Hays to adopt Resolution next in number to approve VAR-06-08 for Hafener at 121 Brookline, subject to the findings and conditions as shown, The motion carried by the following vote:

Ayes: Commissioners Daniels, Driver, Hays, Levenfeld, Goglia
Noes: None
Abstain: None
Absent: Commissioners Whitley, Sayles [recused]

Mr. Chamberlain advised that there was a ten day right of appeal for anyone wishing to appeal the decision of the Planning Commission to the Town Council by filing a letter stating the grounds for the appeal and through the payment of an appeal fee, through the Planning Department.

VIII. PUBLIC MEETING

A. None

IX. ROUTINE & OTHER MATTERS

A. None

X. COMMUNICATIONS

A. None

XI. REPORTS

A. Commission

There were no reports.

B. Staff

1. Update on Town Council Actions and Future Agenda Items

Ms. Salamack reported that the Town Council had considered the Hetfield Estates project on appeal and had required a focused EIR, which process would be commenced with a scoping session for the EIR at the Commission meeting on March 2. She explained that there would be a March 16 meeting of the Commission for the Specific Plan and advised of a potential Commission meeting on Monday, March 30 to consider the Final EIR and revised Moraga Center Specific Plan. She clarified that the Commission would be making a recommendation to the City Council. It was her hope to be able to do that work in March to allow two opportunities for Town Council review by April 22 to be able to transform the specific plan into a Housing Element that would need to be completed by June 30, 2009.

Ms. Salamack added that a subcommittee of Mayor Trotter and Councilmember Metcalf had been appointed by the Town Council to work on that issue and that the Chair of both the Commission and DRB had been invited to work on the considerations related to the Specific Plan with some input by the subcommittee into the final document.

Ms. Salamack advised as earlier reported that there may be the need for a special meeting potentially during the week of February 23 to continue the work on the Palos Colorados application, along with the special meeting in March. She added that the Rancho Laguna project would be returning to the Commission after the applicant had reviewed the lots along Rheem Boulevard to determine if they could be adequately sized to avoid the need for debris benches along the lots, and creating view corridors between the dwelling units to avoid the need for a statement of overriding considerations related to an adverse impact relative to the scenic corridor.

XII. ADJOURNMENT

On motion by Commissioner Hays, seconded by Commissioner Daniels to adjourn the meeting at approximately 11:10 P.M. to a regular meeting of the Planning Commission on Tuesday, February 17, 2009 at 7:30 P.M. in the La Sala Building at the Hacienda de las Flores, 2100 Donald Drive, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission