

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

La Sala Building, Hacienda de las Flores  
2100 Donald Drive  
Moraga, CA 94556

March 2, 2009

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 Driver, Levenfeld, Obsitnik, Socolich, Whitley,  
Chairperson Goglia

Absent: Commissioner Daniels

Staff: Lori Salamack, Planning Director  
Mitch Wolfe, Town's Consulting Geologist

**B. Conflict of Interest**

There was no reported conflict of interest.

**C. Oath of Office – Jim Obsitnik and Dick Socolich**

Planning Director Salamack reported that she had administered the oath of office prior to the meeting for newly appointed Commissioners Obsitnik and Socolich.

**II. ADOPTION OF MEETING AGENDA**

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

**III. ANNOUNCEMENTS**

Ms. Salamack announced that Jim Obsitnik and Dick Socolich had been appointed to the Planning Commission. She noted that Commissioner Socolich had previously served on the Design Review Board. She welcomed both and thanked them for their volunteer service to the Town of Moraga.

**IV. PUBLIC COMMENTS**

There were no comments from the public.

**V. ADOPTION OF THE CONSENT CALENDAR**

**A. Approval of the February 17, 2009 Meeting Minutes**

On motion by Commissioner Whitley and seconded by Commissioner Driver to adopt the Consent Calendar, as shown. The motion carried by the following vote:

Ayes: Commissioners Driver, Levenfeld, Obsitnik, Socolich, Whitley,  
Goglia  
Noes: None  
Abstain: None  
Absent: Commissioner Daniels

**VI. CONTINUED PUBLIC HEARINGS**

A. None

**VII. NEW PUBLIC HEARINGS**

A. None

**VIII. PUBLIC MEETING**

**A. Hetfield Estates Environmental Impact Report Scoping Session.** The 58-2-acre property is located in the southeast portion of the Town of Moraga, California, directly south of Sanders Drive. Access to the project site will be via Hetfield Place. Residential development and open space surrounds the property. The applicant is proposing a 7-lot subdivision with lots ranging in size from 41,826 square feet (.96 acre) to 51.45 acres. The largest parcel will be retained as permanent open space. A trail will be provided to allow public access into the open space and onto existing trails. Single-family houses will be constructed on the remaining six lots. A creek borders the northern property line, separating an existing residential neighborhood from the property. Hetfield Place will be extended across the creek to serve the six residences. This crossing will require a bridge. Grading will be required to create building pads, debris benches and to repair existing slides. Subdrains will be installed along the drainage benches to intercept runoff from upslope. A detention basin will be constructed to detain flows during a storm. The project site is currently vacant and was previously used for cattle grazing. It is designated as open space and must meet the criteria of the Moraga Open Space Ordinance (MOSO). An Initial Study/Mitigated Negative Declaration of the project was prepared and heard by the Planning Commission and subsequently appealed to the Town Council.

Based upon comments raised by the public and new information provided by neighbors, the Town Council felt that substantial information had been presented to deny the Mitigated Negative Declaration (MND), thereby requiring an Environmental Impact Report (EIR). Future development of the project site could have a significant effect on a range of environmental issues. Consequently, an EIR will be prepared to analyze these effects, as well as to explore alternatives to the project and possible mitigation measures to avoid or lessen identified effects. The Town of Moraga will prepare an EIR for the project under the terms and requirements of the California Environmental Quality Act (CAL.PUB.RES.CODE Sections 21000, et seq.) (CEQA) and the implementing CEQA guidelines (14 CAL.PUB.RES.CODE Sections 15000, et seq.) (CEQA Guidelines). The purpose of the EIR is to provide decision-makers, public agencies, the general public and other interested parties with an analysis of potential environmental impacts associated with the project, and feasible alternatives to the project.

The purpose of the agenda item is: (1) to serve as the Notice of Preparation (NOP) to potential "Responsible Agencies" as required by Section 15082 of the CEQA Guidelines; and (2) to advise and solicit comments and suggestions regarding the preparation of the EIR, environmental issues to be addressed in the EIR, and any related issues from interested parties other than potential "Responsible Agencies," including interested or affected members of the public.

Planning Director Salamack advised that the application for a Conceptual Development Plan was the first step in a three-step process in the Town for Planned Development. The applicant proposed to develop six lots for residential use in the MOSO Open Space area where a residential use was a conditionally permitted use subject to findings and subject to the development standards within MOSO.

Ms. Salamack referred to a communication received by the Town this date and explained that she had consulted with the Town Attorney on that communication and questions which had been posed to the Town on the best way to move forward to provide information to the public. She reported that the current meeting was an optional process under CEQA and was not required by State law. She explained that a scoping session would glean information from the public and the Planning Commission about factors to be studied in preparing an EIR for the project. The Town Council had determined when it had considered the appeal in January 2009 that the MND that had been prepared for the project had not thoroughly addressed the issues of concern with respect to geology and hydrology, and some interest with respect to MOSO and the Town General Plan.

Ms. Salamack stated that the Commission was being asked what should be studied in the EIR, which she noted could include source documents in what the Town should consider in its review of materials to use in the preparation of an EIR. She explained that no decision would be made by the Commission at this time. Subsequently, staff and consultants would begin working on the EIR. Once prepared, it would be submitted to the Commission and the public for public review and comment. There would be a process of response to the EIR before that document could be certified.

Ms. Salamack explained that the Town Council had sought to narrow the focus of the report and had considered only some of the topics identified in the Initial Study to warrant review at the level of the EIR. Through the EIR process, alternatives to the proposed project would also be considered. She stated that the Commission should also identify any alternatives it believed should be discussed in the EIR. She identified possible alternatives as an increase in density in that there had been some comment that the lots, as proposed, were much larger than other lots in the neighborhood. Lots could therefore be smaller, there could be a reduction in the number of dwelling units, and other kinds of uses could be considered that were allowed conditional uses under MOSO such as a recreational facility.

Ms. Salamack stated that the Town was mindful of the fact that the public hearing process could be frustrating both for the applicant and for interested parties given that the public hearing process was not a back and forth exchange between the public and the Commission. She stated that the Commission was charged with hearing all of the evidence and to then make judgments regarding that evidence as related to Town standards. The Commission would then deliberate among itself. Questions posed by the public would not necessarily be answered by the Commission since it was not the Commission's responsibility to respond in the public forum. She stated that the public record would speak for itself.

Ms. Salamack announced that she was available during office hours to answer questions from the public about the Town's process or any project in particular but was not available to explain why a Commissioner voted the way he or she did. She stated that Planning Commissioners would state for the record why he or she voted the way they did.

Ms. Salamack referred to the correspondence received by the Town this date and by Commissioners over the weekend which had asked who would perform the MOSO cell analysis as directed by the Town Council, when it would occur and how it would be made available to the public. She advised that the MOSO cell analysis was prescribed by the Town guidelines for interpreting and implementing MOSO. She reported that the document was available on the Town website.

The MOSO guidelines stated that in order for there to be development in MOSO, the development must occur within a cell that is a polygon of at least 10,000 square feet and within that polygon the average slope must be less than 20 percent.

Ms. Salamack explained that there was a formula in the Moraga Municipal Code (MMC) to identify how that calculation would be done, by measuring the length of each contour line and the interval between those contour lines using the mathematical formula. She stated that work was typically prepared by the Town Consulting Engineer, Jim Kennedy.

Ms. Salamack added that the information would be made available to the public in a staff report or some document available for public review.

As to the question of the Palos Colorados materials, Ms. Salamack stated if there was an interest in having a public records request for materials pertaining to Palos Colorados that could be done subject to the rules in place in doing so. She suggested that there might be some confusion and explained that in the Palos Colorados case there had been a Conceptual Development Plan early on in the process although the Vesting Tentative Subdivision Map had not been considered until ten years later. She emphasized that the Town had not changed the way it calculated the area allowed for development within MOSO. The public had simply not seen both calculations at the same time for the individual lot and for the larger MOSO cell that would allow grading to occur under MOSO.

Ms. Salamack reiterated that in order for there to be development in MOSO, the development must occur within a cell of at least 10,000 square feet and the average slope must be less than 20 percent. Stating that there were two kinds of development proposed as part of the project, she described one as the grading in order to create the subdivision. That cell was considered as part of the entire 58 acre parcel. With respect to the individual residences, a cell for each individual lot would have to be at least 10,000 square feet on an average slope less than 20 percent.

As to the determination of high risk and who would make that determination, Ms. Salamack advised that staff would advance an assessment of high risk as part of the staff report although the ultimate decision would be made by the Planning Commission which would either accept or reject that determination. Staff would also advance a recommendation to the Planning Commission in the staff report with respect to consistency with the General Plan and MOSO and the Commission would accept or reject that recommendation.

With respect to notice to the public, Ms. Salamack acknowledged that a mailed notice took longer to receive than an electronic notice.

Ms. Salamack invited anyone who would like to be included in the Town's electronic notification list, which would include an electronic notification of every Town meeting. She stated that the Town could not select individual applicants for the various projects for electronic noticing.

When asked, Ms. Salamack verified that the correspondence received would be included as part of the public record. All comments submitted would be comments relative to the Draft EIR subject to evaluation in that document. The documents referenced would be sources to be considered in the preparation of the Draft EIR. The Commission would receive the EIR which would include an analysis of the project and the consideration of alternatives to the site. She explained that the primary difference between an EIR and a Negative Declaration was the consideration of alternatives.

John Wyro, speaking on behalf of the owners, recognized that the Commission was well aware of the project. For the benefit of the new Commissioners, he stated that the project related to the subdivision of land. No houses were being proposed at this time. He added that issues related to house size would be more appropriately considered by the Design Review Board (DRB). Individual conditional use permits would also be required along with the design review of each lot.

Mr. Wyro noted that the Town Council had determined that it needed more environmental information. He looked forward to getting the answers to the questions and putting to rest the outstanding issues with a more thorough analysis. He advised that he was available to walk any Commissioner or neighbor through the proposed site.

#### PUBLIC COMMENTS OPENED

Robert Ellerbeck, 1164 Sanders Drive, Moraga, reported that he and the neighbors of the Sanders/Hetfield homeowners group remained concerned with the project and the environmental effect, specifically with the hills behind the Sanders Drive homes. He asked the Commission to consider focusing on what the Town Council had concluded at its meeting in January. He stated that the homeowners had retained the services of William Cotton an engineer/geologist, and Laurel Collins of Watershed Sciences, to establish the scope of the focused EIR.

Mr. Ellerbeck described Mr. Cotton and Ms. Collins' extensive background and provided Commissioners with information from each identifying the significant geological and hydrological issues that should be analyzed as part of the focused EIR. He reported that a technical memo dated January 9, 2009 from Ms. Collins had identified a fault at the project site and the potential influence of groundwater movement along the fault trace which ran through all six proposed lots.

The technical memo also included related and significant concerns that needed to be addressed. Mr. Ellerbeck urged the Commission to require sufficient analysis in the focused EIR of the issues raised by Mr. Cotton and Ms. Collins.

Mr. Ellerbeck understood that in order to analyze some of the significant issues there would need to be additional drilling on the property. He requested that the Commission require the developer or the Planning Department to provide thirty days e-mail notification of such activities and that the residents or their representatives be permitted to observe the process and the results.

Mr. Ellerbeck also remained concerned with the issues recounted in the Town Council's resolution related to the consistency of the project with MOSO with respect to slope calculations and the high risk areas, and the project's consistency with the Town General Plan. He explained that a cover letter had been presented to the Town and made available to the Commission to list those concerns. He requested written answers via e-mails to those concerns.

Mr. Ellerbeck asked the Commission to consider the alternatives of no homes and an alternative for two homes.

Laurel Collins of Watershed Sciences, also representing William Cotton, referred to the technical letter earlier referenced and stated that the letter addressed six issues; landslide and slope instability, debris benches, in construction geologic inspection, false structure and potential groundwater problems, placement of mitigation ponds on active landslides and groundwater, drainage and its potential influences on the hydrology of Larch Creek.

Ms. Collins stated that a heightened level of scrutiny was needed in order to identify the geologic hazards and assess the full extent of environmental impacts that would be associated with sufficiently reducing those geologic risks. She explained that at this point no one knew the maximum depths of the landslides that extended over 100 percent of the property that also reached more than 550 feet from ridge to the base of the hill, nor was it known what impact the fault would have on the underlying bedrock.

Ms. Collins explained that it was also unknown how the fault might have influenced the occurrence of large landslides, possibly through the creation of weak bedrock or the formation of a groundwater barrier on its uphill side that might have initially been responsible for the movement of the landslides. She stated it was known that to trigger landslides of the size involved, typically either a lot of groundwater was needed to move so much soil downslope or severe seismic shaking was needed from an active fault, such as the Hayward fault five miles away. She suggested that the combination of saturated soils and seismic shaking could pose a serious threat.

Ms. Collins added that because it was unknown how much groundwater might be transported along the fault from the southeast beyond Lot 6 or if artesian groundwater pressure might be intercepted along the fault once the slides had been excavated for the buttress fill, or if the landslides remaining uphill of the lots might have perched water tables that would require drainage for stabilization, it was not possible to assess the size of the drainage system, the extent of the grading or the area or extent of the mitigation wetland ponds that would be needed.

Ms. Collins stated it was also not possible to assess the impact of the altered stream flow in Larch Creek, which could result in the creek drying up earlier because of groundwater being diverted to mitigation ponds or increased bank erosion along properties given increased runoff from the holding ponds and subsurface drainage structures. She added that the deeper the excavations, the more the captured groundwater, the bigger the ponds, the greater the extent of grading, the greater the environmental disturbance, and the greater the total discharge released into the downstream Larch Creek. The influences on channel stability, flooding and sediment transport must be evaluated in light of the actual disturbances that would occur at the site.

Ms. Collins noted that the developer had asserted at the Town Council meeting that the slides would be eliminated, and the developer's consultant from ENGEO had indicated that the characterizations of the slides whether locational or translational did not need to be identified because the slides would be excavated. She suggested that the assertions clouded the issue and misled the public. She stated, for instance, that the slides uphill of the proposed grading boundary, which would still be over 150 feet in length, were not slated for excavation and would still point directly downslope at the proposed development.

Ms. Collins explained that if the slides were rotational and extended to the upper limits of the lot lines, the proposed debris benches would not be appropriate to prevent rotational movement beneath the benches. She stated that there were other examples of concern that she could offer.

Jane Ellerbeck, 1164 Sanders Drive, Moraga, provided the Commission with a copy of a letter from Suzanne Jones of Preserve Lamorinda Open Space, which had been presented to the Town Council at the time of the appeal in January 2009. She asked the Commission to consider the points in the letter and require the EIR to analyze the questions that had been raised.

Ms. Ellerbeck opposed the development because it jeopardized the character of the Town. Recognizing the applicant's assertions that the project would make the hillsides stable, having lived in the area for 15 years she did not believe that would be the case, particularly given the fault line in the area.

Ms. Ellerbeck used the Vista Encinas project as an example of why stabilization would not likely occur. She also suggested that the project was not consistent with MOSO. Noting that slides could occur under bedrock, she did not believe that the applicant had drilled far enough to identify the depth of the slides. She urged the Commission to consider all the information presented. She did not support the development of homes on the hill because she did not believe that the concerns could be mitigated.

Tadd Koziel, 1132 Sanders Drive, Moraga, suggested that the request for six oversized houses on top of six landslides in an open space hillside was not a good plan. He suggested that judgment and not science would determine if the proposal was a good plan, not based on the likelihood of an impact but primarily on the impacts of an event. He suggested that the impacts of extensive grading on the hillside, of eliminating the open space, of disturbing the creek and of changing the neighborhood if the homes were to slide, and the combined impact of all those things could not be answered at this time. He stated that now was the time to ask all the questions. He asked the Commission to evaluate all of the variables and not to rush to a decision.

Jennifer Koziel, 1132 Sanders Drive, Moraga, also shared the concerns that had been identified. She expressed an interest in the MOSO slope calculations where development was prohibited on slopes greater than 20 percent. She noted that she had detailed her concerns in a letter presented to the Commission. Having prepared a rough overlay of the project's calculations on top of the slope map, she questioned how the project could meet the MOSO requirements. She emphasized that the houses, when constructed, would be larger than anything in the adjoining neighborhood, or in Moraga, and at the highest extreme of affordability. She asked why the development was needed and whether it should be developed. She expressed concern for the permanent environmental impacts associated with the project. She urged the Commission to consider all the issues in its evaluation.

Larry Beans, 20 Carr Drive, Moraga, commented that while not directly impacted by the project he remained concerned with the project. He questioned how the project had initially been deemed to be high risk and unbuildable at one point and had then been deemed to be buildable. He asked if the actual house pad for each projected home was over 20 percent slope, whether the pad included the street, the front yard and the drainage basins, and whether the configuration of the pad allowed the MOSO property to go from high risk to buildable. He asked who decided which questions would be addressed by the EIR, how the questions were selected, and who selected the questions. He urged transparency in the process.

Lynne Fiorindo, 1112 Sanders Drive, Moraga, commented that her backyard had flooded twice. She requested that the Commission consider the hydrology and the fault that had earlier been discussed. She urged the Commission to consider the technical information provided by Mr. Cotton and Ms. Collins.

Ellen Voyles, 1156 Sanders Drive, Moraga, agreed with the comments and expressed concern for the objectivity of the EIR and whether or not it would be prepared by the same consultant who had prepared the MND. She supported the hiring of an independent contractor to prepare an unbiased assessment. Without an independent contractor, she suggested that even with a 30-day notice of the drilling to be done she would not think the residents' concerns were being fairly considered.

Tim Meltzer, the owner of 1160 Sanders Drive, Moraga, stated there was a disservice to the public when important information was concealed or downplayed in order to gain approval of a project. He used the example of outdated maps that did not identify the fault line. He explained that the adjacent residents had hired experts to provide up-to-date information and he stated that the Town should not have to depend on the residents to do that and the residents should not have to expend the funds to bring in outside experts for that same purpose. In terms of the scope of the focused EIR, he understood that the letters and the technical memo from the technical experts would be addressed as part of the EIR to help the Commission make a well-informed independent decision.

In terms of noticing, Mr. Meltzer asked how much notice residents would receive since current noticing provided insufficient time for the residents to respond. He requested that e-mails be sent as soon as some information was available to ensure appropriate input from residents, even before the designation of the meeting date and the preparation of the staff report or that meeting. He emphasized that greater consideration was required for the project at the conceptual development stage. He questioned the assertion by the applicant that there would be a number of opportunities in the future to raise and address all of the issues. He suggested that all the issues should be raised now.

Michael Torp, 1151 Sanders Drive, Moraga, asked that the issue of whether or not the project should move forward should be addressed. Given the constraints of the property related to the landslides, the potential excavation up to 40 feet, unsightly and widely visible debris benches and an almost certain disruption of the natural state of Larch Creek, he suggested that the extent of the mitigation was far in excess of the reasonableness of the project and would not meet what had been contemplated in the spirit of the General Plan and MOSO. He suggested that the impacts would be far too great on the community and on the environment.

With respect to the undisclosed inactive fault, Mr. Torp stated that the fault had never previously been mentioned and the existence of a fault active or inactive was critical to the determination of whether or not the property was considered a high hazard under the General Plan or MOSO. Noting that the applicant had indicated that all of the site hazards could be appropriately mitigated, he suggested that the omission of a fault line going directly through the center of the project was highly negligent since it had been mapped, and created a credibility issue. He asked the Commission to address that issue when evaluating the project.

Katherine Jarrett, 35 Hetfield Place, Moraga, commented that she had testified at the Town Council meeting on the appeal since she lived a quarter mile away from the project and her home had suffered from a deep seeded rotational landslide which started 28 feet under the first layer of bedrock under her home. She urged the Commission to follow Ms. Collins recommendations and pursue a thorough and technical evaluation to be able to learn what was occurring at the site to have confidence in the development and to ensure the safety of proposed and existing homes.

John O'Hare, 1120 Sanders Drive, Moraga, requested that the specific depth of the landslide in each of the building lots in the development should be clearly established, especially the landslide depth on the upslope side of the lots. During the appeal he noted it had been reported that only approximate depths had been determined on many of the lots. In order to have a clear understanding of the extent of excavation and grading that would be required and the impact on the environment, he stated that more than the approximation or projections of the landslide material needed to be identified. Criteria for established slopes on the building sites also needed to be clearly spelled out. He emphasized that the criteria needed to be clearly defined and be made available to the public so that an independent calculation by an outside professional would produce consistent results.

Mr. O'Hare also requested consideration to ensure that the EIR would be perceived by the public to be prepared in an objective non-bias manner using professionals that had not been involved in the preparation of the MND for the development to ensure a fresh non-biased perspective. He urged the Planning Commission, as representatives of the community, to determine whether or not the proposal was appropriate for the area, consistent with the goals and guidelines of MOSO, and whether or not the damage to the environment that would ensue was in keeping with the goals of the community.

Daran Santi, 1148 Sanders Drive, Moraga, also expressed concern for using the same firm that had prepared the MND for the focused EIR. He also expressed concern with the change in classification of the area of known landslides to no longer be high risk.

Mr. Santi emphasized it was unknown what the subsurface ground conditions would uncover and how the water runoff would affect Larch Creek and the current Sanders Ranch properties. He cited the Vista Encinas project as an example of what could occur when additional landslides had occurred after the initial grading that needed to be mitigated. He added that the additional landslides had not been unforeseen in spite of the engineering assessment. He noted that development sat vacant and did not produce the tax revenue that had been promised to the Town.

Mr. Santi suggested that no one could predict with any level of certainty what nature would do as a result of moving the amount of dirt and soil proposed as part of the development. He urged the rejection of the project.

Walter (Jim) Klippert, 27 Hetfield Place, Moraga, commented that he was familiar with the landslides in the area having walked the area over a long period of time and had seen whole parts of the hillsides slide. As a chemical engineer and as an amateur geologist, he agreed that nature was unpredictable and he urged the Commission to carefully consider potential surprises.

Malcolm Cooper, 1160 Sanders Drive, Moraga, commented that he was new to the area which was a beautiful area to live and where he had walked the hillsides on many occasions. He suggested that no amount of mitigation would be able to deal with the elements produced by nature. He noted that had not the neighbors been able to retain technical experts the project would already have been approved. He thanked Planning staff for the electronic notice of the meeting. He too expressed concern if the Town were to retain the same firm to prepare the focused EIR given that the fault lines through the property had been missed.

When asked, Mr. Wyro stated that he had no rebuttal given that the forum was to solicit public and Commission comment. His experts were not present to respond at this time. He explained that he had been satisfied with the former environmental document and he suggested the comfort with that document would be vindicated with further study.

#### PUBLIC COMMENTS CLOSED

When asked, Ms. Salamack reported that under CEQA the Town would put out a document, which would be presented for public review. Part of the purpose for public review was to get expert input on the document and neighborhood input as well given that neighbors would likely know more about the property than experts would.

Ms. Salamack suggested that if the Planning Commission had the same information that the Town Council had at the time of the appeal, the Commission may not have approved the MND.

Ms. Salamack added that the public process involved an exchange of ideas, expert opinions, theories, different ways of looking at the same set of facts, and the law, the same sort of exchange that had just occurred. She did not have a lack of confidence in the environmental consultant who had been hired to do the job. She reiterated that additional information had been submitted to the Town that would be explored in the documents as the process moved forward. She spoke to some of the comments that had been made by Mr. Cotton with respect to the work that had been done by the Town's regular consulting geologist, Mitch Wolfe of Cal Engineering & Geology where it was anticipated that the studies were conceptual in nature and where further design level work needed to occur before the project could move forward.

Ms. Salamack stated that if by some chance there was a document presented to the Planning Commission and the public that was not thorough, objective, complete, or well researched to describe the project to be developed, she stated that would be identified and addressed. She reiterated that the public process was working as it should.

As to who would develop the focused EIR, Ms. Salamack stated that the Town would receive a proposal from Carolyn Mills and her team and if the proposal was found to be acceptable there would be no reason to change from that team. If the Town did not find that proposal to be acceptable or the applicant decided not to pursue the project, that firm would not be hired and/or the Town could solicit a bid from someone else. She stated that the decision to hire was the Town's decision. If the ultimate document was unsatisfactory when presented to the Planning Commission, that would be determined. She added that there was nothing from the Negative Declaration process that would lead her to believe that there would not be a satisfactory result with the EIR.

Ms. Salamack stated that the Town had two engineers working on the team; Mitch Wolfe of Cal Engineering & Geology who had done work for the Town for many years and on many projects, and Dr. Darwood Myers who was part of the consultant's team in the preparation of the last document and who may or may not be part of the new team. She explained that the proposal from Carolyn Mills would not be received until after the current scoping session.

Commissioner Obsitnik asked about the process of what would be included in the EIR, to which Ms. Salamack explained that the minutes of the current meeting would be made available to the Commission and the public for review. The minutes from the meeting would be used to prepare the list of topics to be addressed in the EIR. If something had not been included, she stated that the minutes could be revised by the public to reflect what had been said. The written public documents provided to the Commission would also be included.

Ms. Salamack suggested that as the process continued and as additional information became available new information would be presented in a more complete analysis to the Commission and the public.

In response to the Chair as to whether or not there would be additional borings, Ms. Salamack explained that additional borings might be required.

With respect to transparency and the 30-day notification, Ms. Salamack stated that she had consulted with the Town Attorney this date. Since the property was private, the Town could not compel the applicant to make that access available. The applicant was hiring a licensed professional to do that work. The Town Attorney did not feel comfortable with the Town directing that those observations be allowed.

Chairperson Goglia asked if the Town Engineer would be present for those borings, to which Ms. Salamack stated that those conversations had not yet occurred.

Mitch Wolfe, Cal Engineering & Geology, the Town's Consultant, explained that with the Palos Colorado project there had been significant concerns as to subsurface exploration data. As part of that project, the applicant had consented to have a representative of his firm on site to observe all the test pits and borings that had been done for that project. There was therefore a precedence to have a representative present during the subsurface exploration of a project.

On behalf of the applicant, Mr. Wyro, invited Mr. Wolfe or his representative to be present during any and all future work related to the geology of the site.

Mr. Wolfe suggested there had been a significant issue raised as to site characterization and there were significant ideas by Ms. Collins and Mr. Cotton as to the scope of the subsurface exploration program. He suggested it would benefit the applicant for the consultants to work together to reach a consensus on the scope of the work to be done.

Mr. Wyro expressed a willingness to do that as well.

Chairperson Goglia asked the approach that would be taken for the various options included as part of the EIR.

Ms. Salamack referred to the suggestion for a no project alternative and the suggestion that the six homes be reduced to two homes. She stated that the Town would evaluate an increased density proposal and a MOSO allowed use that was not residential. She added, when asked, that an agricultural use would be a permitted use. A recreational facility would be a conditional use.

Ms. Salamack clarified that with a residential project staff would typically consider increased density, reduced density, no project, or some other use. In this case the permitted use was agriculture. Staff could also consider a conditional use other than residential.

Commissioner Socolich spoke to the material that had been presented and the testimony that had been provided which appeared to be extremely appropriate to the project and which needed to be analyzed in depth to allow a better basis for making a determination on the project.

#### Chairperson Goglia REOPENED PUBLIC COMMENTS

Glenn Voyles, 1156 Sanders Drive, Moraga, spoke to the comments with respect to a conflict of interest and an issue of competency with respect to having the same person who had prepared the MND prepare the focused EIR. He suggested the issue might better be described as a lack of disclosure as opposed to a lack of competency.

John O'Hare, 1120 Sanders Drive, Moraga, noted that a number of people had raised the same issue of a perception of bias allowing the same person who had prepared the MND to prepare the EIR. He asked why another consultant could not be selected.

Ms. Salamack advised that was not what the Town typically did. As an example, she referred to the EIR for the Specific Plan where over 400 comments had been received on the plan, which was an indication of the fact that people saw it differently from the way it had been presented in the report. She stated that the public process was what CEQA was all about. It was up to the authors of the report to look at a number of sources, to analyze the information and to present that information in the document. It was then up to the public, the Commission, staff and those who were reviewing the document to indicate what might be different about the material. She reiterated, therefore, that what was occurring was the way the process was designed. She added if every time there was an environmental document where someone had expressed some concern with the information contained in that document there would never be one consultant who would complete any project.

Mr. O'Hare asked if there was anything technically that would prevent the Town from hiring another firm.

Ms. Salamack advised that there was nothing technically that would prohibit the hiring of another consultant. She stated that she had not experienced any bias on the part of the environmental consultant and she did not see a reason to ask other consultants for proposals on the project.

Ms. Salamack reiterated that was not what the Town would typically do. Because it was not what the Town would typically do, she did not see a reason to do it in this case.

Laurel Collins asked about a process that would allow a number of the consultants from the developer, the Town and from the homeowners, if needed, to reach an agreement about a sampling design for an array of borings at the site given the complicated issues involving the landslides, the condition of the bedrock beneath the landslides, the groundwater and the extent of how much alteration would have to go beyond what had been shown as the proposed grading limits. She asked if there would be an opportunity for the public to at least review or potentially the consultants to review the sampling design to address those issues.

Chairperson Goglia noted that there was agreement with the applicant and the Town's consultant to allow all the consultants to meet to discuss those issues. She expressed a hope there could be some kind of consensus or agreement as a result of those discussions, which could produce input into the environmental document, or with better information allow the EIR to move forward and return to the Commission and the public for comment.

Ms. Collins asked for clarification on what would occur if there was no agreement.

Commissioner Whitley acknowledged the statements that had been made to cooperate in that process although he stated that was not binding on the applicant, the Town or the homeowners. He suggested that the Commission should not discuss that issue without comments from the Town Attorney.

Ms. Salamack announced for the benefit of the public that written comments could still be submitted on the environmental document until April 2, 2009. She encouraged all interested parties to submit comments.

Caroline Wood, 26 Hardie Drive, Moraga, noted that she did not live in the area in question. She too expressed concern having the same consultant who had prepared the MND prepare the focused EIR. With a new Town Council and new transparency in the community and being pleased with the new direction that the Town was moving in, she did not support business as usual and what she characterized as a rubber stamping of developments. She emphasized that the Commission was charged to address the needs and the wishes of the people of Moraga.

Robert Ellerbeck, 1164 Sanders Drive, Moraga, suggested that if there had been greater independence between the developer's team and the Town's consultants there may not have been the need for quite the level of response from the public. Referencing Mr. Wyro's willingness to meet with the experts and consultants, he asked who would be paying for those meetings. He did not believe it should be an expense to the citizens' group that was attempting to bring some objectivity to the process.

Daran Santi, 1148 Sanders Drive, Moraga, reiterated the concern for using the same firm to prepare the EIR. Speaking to the comments that the public processing was working, he questioned whether that was the case since the public's concern for the use of the same firm was not being addressed.

Jane Ellerbeck, 1164 Sanders Drive, Moraga, thanked the Commission for the second public process when the residents had been better prepared to address their concerns.

Malcolm Cooper, 1160 Sanders Drive, Moraga, questioned that the public process was working since the residents had to pay out of pocket to retain experts of their own when their tax dollars were supposed to be retaining experts through the Town for that same work. Without the time and the resources to do that, he stated that the project would have been approved and the consequences could have been detrimental.

Chris Bowen, 1108 Sanders Drive, Moraga, whose home was located across from Lot 1 of the proposed project, commented that he spent a lot of time hiking the hills and enjoying the wildlife. As such, he was concerned with the grading and the effect the project would have on that wildlife which included deer, bobcats, red and gray fox, a number of hawk species and other wildlife. Speaking to the creek, he reported that the creek had overflowed on more than one occasion in the past causing damage to adjacent properties. He noted that the creek directly opposite his property had a 12-foot wide fissure.

Mr. Bowen expressed concern for the liability of the creek corridor and if there were significant overflows whether or not the Geologic Hazardous Abatement District (GHAD) proposed for the Hetfield Estates property covered only that property and not the most vulnerable portion of the creek adjacent to the existing properties. He understood that a bond would cover damages to his and other properties and he asked if that was the case. He requested a verification of that bond and its purpose. He also suggested that would increase the homeowner's insurance for the existing properties.

Walter (Jim) Klippert, 27 Hetfield Place, Moraga, stated that he had recorded rainfall in the area since 1973 a quarter mile from the project site.

Mr. Klippert reported that the minimum rainfall experienced since 1973 was 11.4 inches for the rain year September through May while the maximum rainfall was 61.8 inches during that same period.

Chairperson Goglia asked the applicant if he wanted another rebuttal. Mr. Wyro declined.

#### PUBLIC COMMENTS CLOSED

Given the comments, Chairperson Goglia asked Ms. Salamack to look into the issue of who the consultant should be for the focused EIR. She recognized a lack of confidence in using the same consulting firm. She was aware that the consultants would be directed by staff what to prepare, whether an MND or an EIR which would often frame the work and prevent a consultant from doing more than would otherwise be done. She encouraged Ms Salamack to consider the possibility of entertaining the notion of other consultants given the lack of confidence expressed.

#### **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 advised that she had no reports on the Town Council. The next meeting agenda would consider the Palos Colorado project. The meeting after that would include Rancho Laguna or the Specific Plan.

**XII. ADJOURNMENT**

On motion by Commissioner Whitley, seconded by Commissioner Socolich to adjourn the meeting at approximately 9:30 P.M. to a regular meeting of the Planning Commission on Monday, March 16, 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