EXHIBIT C

DRAFT RESOLUTION

BEFORE THE PLANNING COMMISSION OF THE TOWN OF MORAGA

In the Matter of:

Approving the Precise Development Plan (PDP) for the Palos Colorados Project with Conditions Of Approval	)))	RES XX-09 PC Adoption Date: March 16, 2009 Effective Date: March 27, 2009 If not appealed

WHEREAS, Bigbury Company, ("Owner"), owns property within the Town of Moraga; and

WHEREAS, on October 30, 1996, the Town of Moraga Town Council denied an appeal and approved a Conceptual Development Plan for a 146-lot residential development project with an 18-hole golf course in the Town of Moraga; and

WHEREAS, subsequent to the Town approval, a lawsuit was filed regarding the project; and

WHEREAS, a Settlement Agreement was entered into in 1999 for the processing of future applications on the Palos Colorados site; and

WHEREAS, an application was submitted on March 15, 2006 by Richfield Investment Corporation (Applicant) on behalf of Bigbury Corporation for a General Development Plan for the 123-lot Palos Colorados residential development project on a 460-acre site off of Moraga Road in the Town of Moraga just south of the Sky-Hy development in Lafayette; and

WHEREAS, on May 24, 2006, the Moraga Town Council denied the appeal of the City of Lafayette and confirmed the May 1, 2006 decision of the Moraga Planning Commission to process the application without a golf course as a General Development Plan in accordance with the Settlement Agreement and Town of Moraga Municipal Code; and

WHEREAS, on July 18, 2006, the Applicant submitted a revised General Development Plan and Conditional Use Permit applications; and

WHEREAS, on August 11, 2006, the Town of Moraga provided notice to residents within 1,000 feet of the subject property that the Town of Moraga Planning Commission would conduct three public study sessions on the revised applications; and

WHEREAS, on August 21, September 5, and September 18, 2006, the Planning Commission conducted a public study session on the revised application and accepted comments from the applicant and the public; and

WHEREAS, on September 21, 2006, the Town of Moraga determined the application for a General Development Plan and Conditional Use Permits complete; and

WHEREAS, on September 22, 2006, public hearing notices were mailed to all property owners within 1,000 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on October 2, 2006, the Planning Commission continued consideration of this matter to October 16, 2006; and

WHEREAS, on October 16, 2006, the Planning Commission held a duly noticed public hearing and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on October 16, 2006, the Planning Commission again continued consideration of this matter; and

WHEREAS, on December 18 and 21, 2006, the Applicant submitted a revised General Development Plan and Conditional Use Permit applications; and additional applications for a Vesting Tentative Subdivision Map and a Hillside Development Permit; and

WHEREAS, on January 5, 2007, public meeting notices were mailed to all property owners within 1,000 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on January 16, 2007, the Planning Commission held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on January 26, 2007, public hearing notices were mailed to all property owners within 1,000 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on February 5, 2007, the Planning Commission held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, prior to taking action on the General Development Plan, the Planning Commission considered the addendum with the Final EIR ; and

WHEREAS, the "Final EIR" for the project includes the Initial Study, the Draft EIR (and the appendices and other documents attached thereto), the Final EIR (which consists of responses to comments to the Draft EIR), studies conducted for the EIR, the Modification to the EIR and the Second Modification to the EIR.

WHEREAS, on February 5, 2007, the Planning Commission approved the General Development Plan for the project; and

WHEREAS, on April 6, 2007, the Town of Moraga provided notice to residents within 1,000 feet of the subject property that the Town of Moraga Planning Commission would conduct a public study sessions on the Vesting Tentative Map and Hillside Development Permit applications; and

WHEREAS, on April 16, 2007, the Planning Commission conducted a public study session on the application and accepted comments from the applicant and the public; and

WHEREAS, on April 25, 2007, the Town Geotechnical Consultant concluded his review of the corrective grading plan report for the project; and

WHEREAS, the proposed grading is consistent with the requirements of Title 14 of the Municipal Code; and

WHEREAS, a grading permit application consistent with the requirements of Chapter 14.24 et seq. shall be required prior to issuance of a grading permit; and

WHEREAS, on April 27, 2007**,** public hearing notices were mailed to all property owners within 1,000 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on May 7, 2007, the Planning Commission held a duly noticed public hearing and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on May 7, 2007, the Planning Commission approved the Vesting Tentative Subdivision Map and Hillside Development Permit for the project; and

WHEREAS, on January 28, 2008, the Applicant submitted the application for the Precise Development Plan; and

WHEREAS, on March February 29, 2008**,** public meeting notices were mailed to all property owners within 1,000 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on March 10, 2008, the Planning Commission and Design Review Board held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on April 22, 2008, the Applicant submitted the revised plans for the Palos Colorados Precise Development Plan; and

WHEREAS, on April 25, 2008**,** public hearing notices were mailed to all property owners within 1,000 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on May 5, 2008, the Planning Commission held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on June 6, 2008**,** public hearing notices were mailed to all property owners within 1,000 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on June 17, 2008, the Parks and Recreation Commission held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on June 17, 2008, the Parks and Recreation Commission recommended approval of the pocket park and consideration for enhanced facilities at the park; and

WHEREAS, on June 23, 2008, the Design Review Board held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on June 23, 2008, the Design Review Board approved the fencing design and recommended approval of the pocket park and consideration for enhanced facilities at the park; and

WHEREAS, on January 23, 2009, public hearing notices were mailed to all property owners within 300 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on February 2, 2009, the Planning Commission held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on February 6, 2009, public hearing notices were mailed to all property owners within 300 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on February 17, 2009, the Planning Commission held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on February 13, 2009, public hearing notices were mailed to all property owners within 300 feet of the property and posted at three public locations within the Town of Moraga; and

WHEREAS, on February 23, 2009, the Planning Commission and Design Review Board held a duly noticed public meeting and received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, on February 23, 2009, the Planning Commission and Design Review Board continued consideration of the application to March 16, 2009; and

WHEREAS, on March 16, 2009, the Planning Commission and Design Review Board received testimony from the applicant, applicant's consultants and interested parties; and

WHEREAS, prior to taking action on the Precise Development Plan, the Planning Commission considered the recommendations of the Planning Director, Design Review Board and Park and Recreation Commission; and

WHEREAS, prior to taking action on this Resolution, the Planning Commission considered the staff report and public testimony which provided substantial evidence for approval of the application, including a determination that as conditioned, the Precise Development Plan is consistent with the Palos Colorados General Development Plan and Vesting Tentative Subdivision Map.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the Town of Moraga hereby finds and determines as follows:

1) The Town Council certified the Final EIR for the project on October 30, 1996 and the Planning Commission adopted the addendum to the Final EIR on February 5, 2007;

2) The Planning Commission approved the General Development Plan that the Precise Development Plan will implement on February 5, 2007;

3) There are no substantial changes proposed in the project, substantial changes with respect to the circumstances under which the project will be undertaken or new information of substantial importance of the kind that would require additional environmental review pursuant to Section 15162 of the CEQA Guidelines; and

4) The Precise Development Plan is consistent with the General Development Plan and Vesting Tentative Subdivision Map and all relevant conditions of approval.

BE IT FURTHER RESOLVED that the Planning Commission of the Town of Moraga hereby approves the Precise Development Plan subject to the conditions of approval set forth below.

BE IT FURTHER RESOLVED that any interested person may appeal this Resolution of the Planning Commission to the Town Council within ten calendar days of its passage pursuant to Moraga Municipal Code ("MMC") Section 8.12.200.

CONDITIONS OF APPROVAL:

Approval of the Precise Development Plan is subject to the conditions contained herein. New Precise Development Plan conditions are indicated by the letters PDP. General Development Plan conditions are indicated by the letters GDP and a number such as GDP.1. – Conceptual Development Plan conditions are indicated by a Roman numeral and a number – Settlement Agreement General Development Plan Conditions are identified by the letters GDPSA and a number. Revisions to pre-VTM conditions are indicated by an R. Conditions of approval are organized by section in relation to time of compliance. Conditions that were required to be addressed at the Precise Development Plan stage that have been satisfied have been eliminated.

Section A. Ongoing conditions:

A.VTM.1
The "Project" is defined as the 123 lot subdivision presented on Vesting Tentative Map (VTM) No 8378. Certain lot numbers have been adjusted since approval of the Conceptual Development Plan and Settlement Agreement.

General Development Plan (GDP) and VTM Lots 22 through 27, E, F, G and 29 are now Precise Development Plan Lots 16 through 25. General Development Plan Lots 37 through 47 and lot H are now Lots 33 through 44. All references to lot numbers in these Conditions of Approval are to the PDP lot numbers.

A.VTM.2 . In order to maintain consistency with the Town of Moraga General Plan, the Applicant shall pay the Town of Moraga the sum of $14.5 million dollars in four installments as described below. The 1999 Palos Colorados Settlement Agreement authorized development of 123 single-family residences and an 18-hole championship golf course on the Palos Colorados

property in part in recognition of the 1990 General Plan Parks and Recreation Element Goal 2, Policy 1 whereby the Parks and Recreation Commission was required to review development proposals for the adequacy of parks and recreation facilities and open space. Due to the inability of the Applicant to secure the State and Federal permits and approvals necessary to construct the golf course, the property owner and developer agreed to revise the Palos Colorados Project to eliminate the golf course and preserve the existing open space and habitat. The property owner and developer further agreed to provide an extensive system of on-site trails and an age-appropriate park in order to maintain open space and recreational components of the Project. Given that the nature of these improvements, however, is different from the 18-hole championship golf course, the Town will now need to provide alternative facilities and/or benefits to the community with funds provided by the Applicant as follows:

1. **First Installment:** $3.5 Million to be paid to the Town of Moraga within 120 days of VTM Approval.

2. **Second Installment:** $3.5 Million to be paid to the Town of Moraga within 120 days of Grading Permit Issuance.

3. **Third Installment:** $3.1 Million to be paid to the Town of Moraga on a pro rata basis for each residential unit proposed to be constructed at the time of building permit issuance for each unit. 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.

4. **Fourth Installment:** $4.4 Million to be paid to the Town of Moraga on a pro rata basis for each residential unit at the time of issuance of the Certificate of Occupancy for that unit.

Except as specifically stated in these Conditions of Approval, The above specified payments shall satisfy any and all (1) Town imposed development impact fees, (2) permit fees imposed solely by the Town with the exception of grading permit fees, (3) Town imposed exactions, and (4) any recreational requirements applicable to the Palos Colorados Project necessitated by the replacement of the golf course with open space as contemplated by the approved Palos Colorados General Development Plan. For purposes of this condition, any and all Town imposed development impact fees shall include the following specific development impact fees: Public Building Fee, Public Safety Fee, Parks and Recreation Fee, Storm Drainage Fee, Moraga Traffic Impact Fees, and the Open Space Management Fee. The $14.5 Million Fee further satisfies any obligations to offset 1) the loss of recreational, or employment opportunities, 2) any possible affects on the community identity, or 3) any potential loss of economic benefits which may result from the elimination of the golf course. The $14.5 Million Fee shall not offset any Fees or costs otherwise specifically required to be paid under these Conditions of Approval.

A.PDP.VTM.3 These Conditions of Approval apply to and condition the approval of the Palos Colorados **Precise Development Plan**. These approvals are collectively referred to as the "**Precise Development Plan** Approvals." These Conditions of Approvals are referred to as the "**Precise Development Plan** Conditions of Approval," "Conditions of Approvals" or "Conditions." All future applications and permits from the Town of Moraga ("Town") are referred to collectively as the "Subsequent Palos Colorados Project Applications."

A.VTM.4 The Applicant shall comply with these Conditions of Approval in further development and permit applications (e.g., Precise Development Plan, Final Map, grading permit), until the conditions are satisfied or amended and/or superseded by Town conditions of approvals for Subsequent Palos Colorados Applications. The Applicant and the Town shall continue to apply and implement the Palos Colorados Settlement Agreements with respect to Subsequent Palos Colorados Project Applications in a manner consistent with the Conditions of Approval. Certain Settlement Agreement obligations of the Town of Moraga (and the City of Lafayette) are confirmed and clarified in these Conditions of Approval for purposes of consistency and convenient referral.

A.II.1. The Applicant or its successors shall be responsible for paying all applicable processing and review fees and charges and all of the funding for studies and consultants retained by the Town for the subject Project.

A.VTM.5 The approval of the Vesting Tentative Subdivision Map (tract 8378) shall expire 24 months after approval unless otherwise extended as allowed by the Subdivision Map Act or the Town of Moraga Subdivision Ordinance. An extension, not to exceed 12 months, may be granted by the Planning Commission, if the Applicant has made a proper application to the Planning Department prior to the original expiration date or the date of the extension.

A.PDP.VTM.6 All improvements shall be designed to meet Town standards unless a specific exemption is granted by the Town, or other applicable agency standards to the extent the other agency has jurisdiction. **In the event of a conflict between the Town of Moraga Design Guidelines and the Palos Colorados Design Guidelines, the Town of Moraga Design Guidelines shall prevail.**

A.VTM.7. All improvements shall be inspected during construction to verify compliance with approved plans.

A.VTM.8 The Project shall be constructed in one phase. Precise Development Plan approval and construction of, or security for completion of the subdivision Improvement Plans shall be required prior to approval of the final map. Precise Development Plan and/or Design Review improvements are not required prior to final map approval.

A.V.1-R-VTM. The Applicant shall provide emergency vehicle access (EVA) routes meeting Fire District standards at the locations indicated on the Vesting Tentative Map. The EVAs and fire trails shall be maintained by the property owner, Geologic Hazard Abatement District (GHAD) and/or the Homeowner's Association (Mitigation Measure for IMPACT 4.7-3, part (a))

A.V.5-R-VTM. The Applicant shall cause the formation of a Homeowners Association or private maintenance assessment district to guarantee maintenance of all commonly shared facilities within the planned development including but not limited to private roads, EVAs (including gates and locks), fire trails, storm drain systems, and open space.

A.VTM.9 The Homeowner's Articles of Incorporation and Conditions, Covenants and Restrictions (CC&R's) shall be submitted for review and approval by the Town Attorney. The Homeowners Association shall maintain all private streets at a minimum Pavement Condition Index of 70 as determined using the Metropolitan Transportation Commission (MTC) Pavement Management Condition (PMC) Rating System rating system.

A.VIII.5 The Applicant shall implement recommendations of the project's habitat mitigation and monitoring plan intended to mitigate for the loss of native wildlife habitat. (Mitigation measure for IMPACT 4.4-2, part (e)) Compliance with this condition shall be confirmed by the Town and in accordance with the state and federal permit terms and conditions as may be required which compliance shall be confirmed by the Town's consulting biologist.

A.VIII.6 The Applicant shall implement recommendations of the project's habitat mitigation and monitoring plan intended to mitigate for the loss of trees, including Valley Oaks and heritage trees. The habitat enhancement plan includes extensive monitoring of re-vegetated sites for a period of 5 years or as otherwise required by state and federal permit terms and conditions, with reports submitted to the Town, Army Corps of Engineers (ACOE), California Department of Fish and Game (CDFG), and other agencies. During the monitoring, the following information will be evaluated: average tree height, percent tree cover, tree density, percent cover of woody shrubs, seedling recruitment, and invasion by non-native species. Reports will present the survey results, and if appropriate, analysis of failed plantings with corrective measures. Details of the plan shall be finalized to the satisfaction of the Town's consulting biologist. Compliance with this condition shall be confirmed by the Town.

A.GDP.4-R-VTM. Wildlife corridors within the development area including areas of remedial grading shall be landscaped and/or revegetated using native plants to promote wildlife passage. Plant species shall be selected by the Applicant subject to the Town's consulting biologist's approval to provide cover as appropriate. Street lights shall be shielded to direct light onto the street to avoid adverse impacts to wildlife. All installed street lighting shall be annexed into the Town Lighting District. (11/12/01 memo from Town Engineer)

With respect to the corridor which crosses the main access road immediately north of Pond 1, curbs shall be designed, with direction from a qualified wildlife biologist, to allow free passage of small terrestrial animals. "Rolled" curbs, ramps at regular intervals, or other alternatives to the full use of vertical curbs, shall be used to allow small animals unable to climb vertical curbs to exit the roadway.

A.GDP.5-R-VTM. The two proposed red-legged frog breeding ponds which do not require natural resources agency approval to construct shall be completed and ready to accept relocated frogs prior to disturbance of the existing ponds. The new ponds should be constructed during the fall, prior to the spring commencement of grading (no later than October 15) so that they have been filled by the winter rains and are ready to accept relocated frogs, when grading begins as determined by the Town's consulting biologist when grading begins. The three breeding ponds which require natural resource agency approval to construct will also be built at this time if the necessary permits have been obtained.

A.VTM.10 The Applicant shall obtain an encroachment permit from the Town prior to performing any work within the public right-of-way. *(11/12/01 memo from Town Engineer)*

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.

A.PDP.VTM.12-R In accordance with the 1999 Settlement Agreement, house sizes for primary residences shall generally range from 2,800 square feet to 4,500 square feet. In addition to these primary residences, the Applicant may submit plans for *no more than 30* secondary living units in accordance with Moraga Municipal Code Section 8.124, to the extend applicable. Secondary living units may provide a maximum of 750 square feet of living area in addition to the area of the primary residence.

A.VTM.13 The Applicant shall submit a plan for recycling building and construction materials that are generated from the waste materials from the construction of the Project. The plan shall be subject to review and approval by the Town prior to the issuance of any building permits. Prior to the issuance of each certificate of occupancy, the Applicant shall submit documentation to the Planning Department that the materials have been recycled in accordance with the approved plan.

A.VTM.14 Driveways that require a driver to back out of a garage shall not be located opposite a parking bay on streets that are narrower than 28 feet.

A.II.7-R-VTM. Any lot without frontage on a street with curbside parking on at least one side of the street shall have two additional guest parking spaces provided on the lot over and above the minimum parking requirement for a single-family dwelling unit.

A.VTM.15 Development on a MOSO or non-MOSO open space lot shall be in conformance with the development standards established for the lot in the General Development Plan and Conditional Use Permit for the subject lot.

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.

A.GDPSA.1-R-VTM. BART Station Viewshed
Settlement Agreement General Development Plan Condition No. 1
Future permits for grading, site development, lot landscaping and home construction shall be consistent with the detailed plan and guidelines for Lots 16 through 25 approved as part of the Precise Development Plan, which shall eliminate rooflines of homes protruding above the skyline behind any of those lots as viewed from the platform of the Lafayette BART Station. This plan and guidelines for Lots 16 through 25 shall be further and fully implemented through subsequent review and permit processes for the Project.

A.GDPSA.4-R-VTM. Lafayette Valley Estates Drainage
Settlement Agreement General Development Plan Condition No. 4
As presented in the GDP and VTM, the site arrangement is now such that no drainage from the new construction of the Palos Colorados Project is directed toward Lafayette Valley Estates. Should there be future changes in the project that result in discharge of runoff from Project construction to the Lafayette Valley Estates drainage system, design and improvements shall be provided as follows:

The private drain system to be installed on the Project site along its eastern perimeter next to Lafayette Valley Estates shall be consistent with the drain system design approved with the

General Development Plan. Any additional drainage volume that is added to the Lafayette Valley Estates public drain system as a result of the private drain system being installed on the Project site shall be addressed by the Project Applicant making corrections to identified deficiencies in the public concrete ditch system and the connecting CMP storm drain pipes between the Project site and the outfall at Las Trampas Creek. The CMP storm drain pipe is approximately 1,500 linear feet.

A.GDPSA.5. Lamorinda Subregional Transportation Mitigation Fee Program
Settlement Agreement General Development Plan Condition No. 5
At the time of issuance of each building permit for a single-family home, the Project Applicant shall pay to the Town the per single-family dwelling unit traffic mitigation fee of $3,795 (1998 dollars, to be adjusted annually thereafter for inflation), which is consistent with the Lamorinda Subregional Transportation Mitigation Fee Program ("Program"). This represents a total of $466,785 (1998 dollars) for the entire 123 residential lots in the Project. At the time of issuance of each building permit for any building other than single-family homes (including, for example, restrooms, and maintenance buildings), the Project Applicant shall also be responsible for the recreational development traffic mitigation fee of $1.60 per square foot of gross floor area of that building (1998 dollars, to be adjusted annually thereafter for inflation). Such a required fee on the issuance of each building permit necessary to construct the recreational facilities development and use component of the Project is consistent with the Program. Following receipt of such fees, the Town shall transfer monies as may be required by the Lamorinda Fee and Financing Authority.

A.GDPSA.6-R-VTM. The Golf Course Municipal Fund
Settlement Agreement General Development Plan Condition No. 6
In accordance with Condition GDPSA-6, the property owner shall make two separate payments; one each to the Town of Moraga and the City of Lafayette in the amount of Two Million and Five Hundred Thousand Dollars ($2,500,000) each for a total of Five Million dollars ($5,000,000) which will fully satisfy the Golf course Operation Municipal fund payment requirement pursuant to the 1999 Settlement Agreement.

This agreement was memorialized in a written document on February 14, 2007 (2007 Settlement Agreement). Richfield shall be obligated to make an initial payment of $250,000 to both the Town of Moraga and the City of Lafayette (total of $500,000) within 10 days of approval of the Vesting Tentative Map for the Project, which money shall be non-refundable; the remaining $2,250,000 of the Fund shall be made payable to the Town of Moraga and the City of Lafayette ($4.5 million total) within 30 days of the issuance of all local, state and federal agency approvals, including grading permit but excluding design review and building permits. In the event payment of the remaining $4.5 million is not made by April 30, 2008, Richfield shall pay interest on any unpaid portion of the Fund at the rate of 5% annually which will begin accruing on April 30, 2008, even if Richfield has not received Final Vesting Map approval by that date.

A.GDPSA.7 No EVA to Mildred Lane
Settlement Agreement General Development Plan Condition No. 7
There shall be no emergency vehicle access (EVA) to Mildred Lane.

A.GDP.1-R-VTM All Conceptual Development Plan conditions shall remain in effect except the following Conceptual Development Plan conditions that have been deleted due to elimination of the golf course: I.6, I.18, II.3, II.8, IV.1-18, VI.22, and VII.11. Furthermore, the following conditions shall remain in effect only to the extent that they have not been modified or

superseded by the Settlement Agreement: I.11, I.12, I.13, I.19, I.20, II.2, III.1A-D, VI.16-18, and VII.16. Additionally, certain conditions have been refined in these VTM condition.

A.GDP.3. The Applicant shall defend, indemnify, and hold harmless the Town, its agents, officers and employees from any claim, action or proceeding against the Town to attack, set aside, void or annul, the Town's approval of the Vesting Tentative Map or Hillside Development Permit. Town agrees to promptly notify Applicant of any claim, action, or proceeding. Applicant's duty to defend, indemnify or hold harmless the Town shall continue so long as the Town cooperates fully in the defense. Applicant shall thereafter not be obligated to defend, indemnify or hold harmless the Town. However, Applicant shall still be obligated to pay for any attorney's fees incurred by the Town prior to any decision to cease cooperating fully with the defense.

A.GDP.6-R-VTM. The operation of the signal at the intersection of the Palos Colorados access road and Moraga Road will allow free flowing traffic on Moraga Road. The right of way for the Palos Colorados entry road will be allocated by detector loops that will sense cars waiting for access to Moraga Road. In the signal is installed per condition L.III.3, the signal shall be offered for acceptance by the Town of Moraga. The Applicant shall propose a plan for long term maintenance, including funding of the required maintenance if the signal is installed.

A.II.6. Driveways serving more than one house shall be at least 20 feet wide, with no parking allowed on the driveway unless otherwise approved by the Planning Commission. Driveways longer than 100 feet shall have a turnaround acceptable to the Moraga Fire Protection District (or successor District, thereto). No more than four homes may have access from the same private driveway. A maximum of 17 lots in the entire Project may have access from private driveways.

A.I.5.-R-VTM Further conditions of approval may be imposed by the Town of Moraga as long as the conditions for the Project are substantially consistent with the approved General Development Plan and General Plan.

A.II.5-R-VTM. Sidewalks or other all-weather, Americans with Disabilities Act (ADA) compliant, permeable Town-approved pedestrian pathways shall be provided on at least one side of all streets unless otherwise approved by the Planning Commission. Access to all trails, sidewalks and pathways shall be made available to the public. Applicant shall provide a pedestrian access easement as shown on the Vesting Tentative Map, subject to conditions required and approved by the Town Attorney.

Section B. Conditions to be confirmed during the subdivision application/process:

B.VTM.17 The Improvement Plan Submittals and Precise Development Plan Submittals shall demonstrate that all improvements have been designed to provide adequate sight distance (including but not limited to the street grades and landscaping approaching intersections) to the satisfaction of the Town Engineer. Site distances for driveways shall comply with Town requirements.

B.VTM.18 The Improvement Plan Submittals shall include a street lighting system per Town standards. Information shown in the plan shall include, but is not limited to, the following: pole type(s), luminaire type(s), conductor and wiring schedule, points of connection, lamp wattage, pull box locations, load and intensity calculations. (11/12/01 memo from Town Engineer)

B.V.15. The Applicant shall underground all new on site utilities related to the proposed project per the provisions of Section 96-10.006 of the Town Subdivision Ordinance.

B.VTM.19 Improvement Plan Submittals shall include a pedestrian/bicycle trail along the north side of the east-west street at the northern portion of the Project Site. This pedestrian/bicycle trail replaces the typical sidewalk and is an exception to the Town of Moraga Street Improvement Standards. The Town Engineer shall review and approve this special design.

B.VTM.20 Prior to approval of the improvement plans, the Applicant shall provide written approval of the improvement plans for the proposed development from all affected utility companies, including but not limited to Central Contra Costa Sanitary District, East Bay Municipal Utility District, Pacific Gas and Electric Company, Pacific Bell, and AT&T. The Applicant shall coordinate all required and necessary facility adjustments, relocations, or additions with the appropriate utility companies. *(11/12/01 memo from Town Engineer)*

B.VTM.21 Prior to expiration of the VTM approval, the Applicant shall submit to the Town of Moraga a Final Subdivision Map prepared by a qualified civil engineer or licensed land surveyor in accordance with the State Subdivision Map Act and all local ordinances. The Applicant shall submit current title reports (including the entire legal boundary of the property being subdivided) with the Final Subdivision Map Submittal. The Applicant shall also submit closure calculations with the Final Map. All information shown on the map shall be directly verifiable by information shown on the closure calculation printout. The points of beginning shall be clearly identified and all lot acreage shall be shown and verifiable from information shown on the closure calculation printout.

GDPSA.2-R-VTM. Trails

Settlement Agreement General Development Plan Condition No. 2

Easements on the Project site consistent with the trail locations shown on the General Development Plan for pedestrian dirt hiking trails and a combination pedestrian/bicycle trail shall be formally offered for dedication at the time of approval of the first final subdivision map for future public ownership, maintenance and use. The easement on the Project site shall be for use as a future public pedestrian hiking trail and combination pedestrian/bicycle trail system which shall generally connect with the East Bay Municipal Utility District (EBMUD) trail system of the Lafayette reservoir area and the East Bay Regional Park District (EBRPD) Lafayette/Moraga Regional Trail, and a north-south hiking trail on the western portion of the property along the existing fire road leading to the Rheem-Saratoga property line. The offer for dedication and its acceptance shall be contingent on the Town of Moraga identifying a public entity that is prepared to accept the easement and maintenance of the trails on or before approval of the Precise Development Plan. Richfield shall be required to make the improvement to the public combination pedestrian/bicycle trail and the dirt hiking trails only if the improvements and specifications for the trails are set forth by the Town of Moraga at or before approval of the Precise Development Plan.

Minor modifications to the final trail easement alignments may be proposed by the Applicant during construction of the Project, subject to the approval of the Town and the public entity accepting the easements for maintenance and liability purposes.

B.VTM.22 Prior to approval of the Final Map, the Applicant shall demonstrate that where street grades are less than 5%, the sidewalk shall be designed in accordance with Title 24 (Handicap Access including allowed exceptions) and the Americans with Disabilities Act, including pedestrian ramps at all curb returns or round corners. Furthermore, the Applicant shall also

demonstrate that where trails are constructed, they shall be constructed with gradients which will permit at least partial use by wheelchair occupants while not materially damaging the natural environment *(Conceptual Development Plan Condition of Approval #IV.11 as modified per 11/12/01 memo from Town Engineer)*

B. XI.3. Prior to approval of the final map, the Applicant shall submit proposed street names for review and approval by the Moraga Historical Society, Moraga Police Department and Fire Protection District.

B.VTM.23 Prior to approval of any final map, grading plan or improvement plan, the Applicant shall submit verification that services will be provided from PG&E, AT&T and CATV. In addition, the Applicant shall provide written verification from Central Contra Costa Sanitary District to the Town Engineer that sanitary sewer systems both existing and proposed will satisfactorily convey the additional discharge created by this development.

B.VTM.24 Prior to the approval of the Final Map, Applicant shall make pro-rata fair share payments to the Orinda-Moraga Fire District in accordance with Orinda-Moraga Fire District Fire Code Ordinance #02-02, Standards of Coverage, and the Fire District/Applicant Agreement.

B.II.4-R-VTM. The Project includes approximately 15.15 acres for new roads. All new streets shall be private streets that meet private street standards unless otherwise approved by the Town. The private street shall be designated as a single parcel on the Final Map. The Applicant shall submit a plan for the maintenance and liability coverage for the private streets to the Town Council. The Town Council shall review the plan for approval with the Final Map.

B.III.6-R-VTM. Prior to approval of the final map, the Applicant shall provide a fire trail easement from the end of the Project's main east-west road to the Project's boundary with the City of Lafayette, consistent with the revised General Development Plan.

B.VTM.25 Prior to approval of the final map, the Applicant shall request the Town Council to adopt a resolution to provide for the enforcement of the provisions of the California Vehicle Code on private streets in the Project. If the resolution is adopted, "Park Parallel" signs shall be installed, at the Applicant's expense, along all private streets at locations to be confirmed by the Town.

B.VTM.26 All streets shall be described as parcels and shall have a public access easement thereon.

B.VTM.27 *The* following parcels shall include a scenic easement as appropriate: non-residential parcels except for streets, including the park and ride lot, and protected habitat open space areas. The Applicant shall execute an instrument satisfactory to the Town Attorney granting the scenic easements to the Town of Moraga in perpetuity pursuant to Government Code 51070, et seq. The execution of these deeds shall occur simultaneously with the recordation of the Final Subdivision Map and shall be subject to review and approval by the Town Council at the time of approval of the Final Subdivision Map. (Conceptual Development Plan Condition of Approval #II.3, as modified per 11/12/01 memo from Town Engineer)

B.VTM.28 Conservation easements shall be as granted by the property owner as shown in the Habitat Mitigation and Monitoring Plan. The Applicant shall execute an instrument satisfactory to the Town Attorney granting the conservation easements to the Town of Moraga in perpetuity pursuant to Government Code 51070, et seq. The execution of these deeds shall

occur simultaneously with the recordation of the Final Subdivision Map and shall be subject to review and approval by the Town Council at the time of approval of the Final Subdivision Map.

B. VII.13. Prior to approval of the final map the Applicant shall create an easement for natural creeks and streams located on common areas within the project or placed in a conservation easement and maintained by the homeowners association or non-profit organization which may include a conservation entity or benefit assessment district. For natural creeks and streams that are located and preserved on private property, such creeks and streams shall be protected by a conservation easement. The development area including cells for any residential lots abutting a creek or stream shall be located a minimum distance equivalent to the width of a drainage easement as specified by the Town Engineer and may be increased as recommended by the Town's geotechnical consultant to avoid creek bank instability problems.

B.VTM.29 Lots 16 through 25 have the potential to be viewed from the Lafayette BART platform. Where oak woodland on a lot must be added to eliminate rooflines of homes protruding above the skyline as viewed from the platform of the Lafayette BART Station, then prior to occupancy of that lot, a scenic easement shall be recorded against that lot in favor of the City of Lafayette. The scenic easement shall require the lot owner and successor owners of such a lot to retain existing and any added oak woodland. The scenic easement shall apply to the oak woodland area on the lot and it shall provide that no trees in the oak woodland shall be removed or reduced in height without the prior written approval of the City of Lafayette. The scenic easement shall further provide that removal of any proposed tree(s) or reduction in tree height in the oak woodland scenic easement area on such a lot shall be authorized by the Lafayette City Council on behalf of the City of Lafayette, if it finds that the home behind the tree(s) will not protrude above the skyline as viewed from the platform of the Lafayette BART Station once the tree(s) is removed or reduced in height. Any scenic easement decision by the City of Lafayette on such a tree removal or height reduction request shall be supported by substantial evidence. A note referencing such scenic easements shall be set forth on the final subdivision map that includes these lots. Tree removal or tree height reduction on these lots shall be subject to any of the usual permit processes in the Town of Moraga. (Settlement Agreement Provision #6.c)

B.VTM.30 All easements offered by the Property Owner and accepted by the Town or other entity shall be recorded upon recordation of the Final Map, by the Applicant.

B.VTM.31 Prior to occupancy of any homes on Lots 16 through 25, a deed restriction shall be recorded on each lot in favor of the City of Lafayette, limiting the house to one story and no more than 19 feet (one story) unless it can be shown to the satisfaction of the Town that a higher building (up to 25 feet in height) is not visible from the Lafayette BART platform. It shall further provide that no addition proposed by a successor owner of a house and lot following its initial sale shall exceed one story or be more than 25 feet in height as provided above, unless an exception to the height restriction is granted by the City of Lafayette. At the request of any such successor owner, the Lafayette City Council shall grant an exception to the residential height deed restriction for a proposed addition, unless it makes a written finding that the proposed addition, upon completion of construction, will protrude above the skyline as viewed from the platform of the Lafayette BART Station. Any finding in that regard shall be supported by substantial evidence. A note referencing this deed restriction shall be set forth on the final subdivision map that includes Lots 16 through 25. Any changes or improvements to these lots shall be subject to the usual planning, design and building permit processes in the Town of Moraga. (Settlement Agreement Provision #6.b)

B.VTM.32 Prior to approval of the final map, the Town Council shall approval a Geologic Hazard Abatement District Plan of Control for maintenance of required facilities including financing.

B.VTM.33 Prior to recordation of the Final Subdivision Map, the Applicant shall dedicate private storm drainage easements where storm water runoff crosses private lot lines from pad to pad. Storm water run-off shall not be allowed to drain from lot to lot within the subdivision or to cross the boundaries of the Project site and freely flow onto developed adjacent property to the extent that these flows exceed pre-development levels *(11/12/01 memo from Town Engineer)*

B.VTM.34 Prior to recordation of the Final Subdivision Map, the Applicant shall obtain necessary rights-of-way, rights-of-entry, permits and/or easements for the construction of off-site, temporary or permanent, public and private road, and drainage, sewer, or water improvements necessary to complete the entire Project. (11/12/01 memo from Town Engineer)

B.VTM.35 *A* subdivision agreement shall be executed by the Applicant guaranteeing the completion of construction and payment for infrastructure improvements within a specified time consistent with the time limits allowed in the agreement. The agreement shall guarantee that all street and storm drain improvements and equipment necessary for the use of the subdivision or the proper drainage of it including, but not limited to, street and storm drain improvements. The agreement shall provide for a performance bond guaranteeing all construction costs associated with the development including, but not limited to, grading (including re-vegetation of building site prior to building construction) and installation of all surface and subsurface improvements (e.g., perimeter fencing, sewers, utilities, storm drains, sidewalks, curbs, gutters, paving, street lighting, etc.). These improvements shall be completed within two (2) years of commencement of work, unless an extension is agreed to by the Town for extenuating circumstances. Bonds shall also cover any remedial work necessary to restore habitat and to provide an acceptable aesthetic and safe condition for the public and as necessary to prevent wind and water caused erosion in the event the Project is abandoned or left incomplete.

B.VTM.36 *Existing* public facilities damaged during the course of construction shall be repaired by the Applicant, at his sole expense, to the satisfaction of the Town, prior to the Town's acceptance of public improvements or acknowledgement of completion of subdivision improvements. *(11/12/01 memo from Town Engineer)*

B.PDP.C.VTM.41-R Prior to the approval of the subdivision improvement plans, the Applicant shall obtain approval from the Fire District of the final hydrant locations.

B.PDP.C.VTM.39 Minor adjustments in the grading plan, lot lines, design of the rear yard improvements and design of the landscaping for Lots 33 through 44 shall be undertaken during consideration of the Precise Development Plan Submittals, in order to address the visibility, if any, of the rear portions of those lots from off-site locations. The submittal of the Vesting Tentative Map has demonstrated that the lot arrangement has effectively blocked view of the rear yards from off-site locations by intervening high ground, lot relocation and lot pad elevation lowering. 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. (*While this condition was satisfied at the PDP stage, it should not be eliminated because it may be relevant in the future.)*

Section D. Conditions to be confirmed prior to the issuance of a grading permit:

D. VIII.13 Prior to the issuance of a grading permit, the Applicant shall cause a focused survey for the red-legged frog to be conducted by a qualified biologist in all areas of suitable habitat within the project site boundaries. Any red-legged frogs observed in habitat proposed to be graded shall be collected, in coordination with the USFWS and the CDFG, and relocated to preserved habitat areas on the project site, as determined by USFWS and/or CDFG. In addition to Pond #2, other open water areas within Coyote Gulch to be created or preserved shall be evaluated as potential relocation sites for the red-legged frog. Appropriate vegetation planting and/or enhancement shall be evaluated and implemented as necessary, pursuant to the measures identified in the mitigation plan and as approved during Section 7 consultation, for any pond on the site used as a red-legged frog relocation area in order to enhance the value of the pond habitat for the frog, and to serve as a buffer to human encroachment. (Mitigation Measure for IMPACT 4.4-7, part (c))

D.VIII.11 Prior to issuance of a grading permit, the Applicant shall cause consultation between the ACOE and USFWS, pursuant to Section 7 of the federal Endangered Species Act because the red-legged frog is listed as a Federally Threatened species and because the proposed project will require action by another federal agency (ACOE permitting), prior to any action on the site that has the potential to take, harass, or in any way harm, any red-legged frogs or its habitat. The consultation will result in a determination by the USFWS as to whether or not the proposed project will jeopardize the continued existence of red-legged frogs on the site and whether or not incidental take of the species will be allowed. As part of the Section 7 process, the project Applicant will prepare a Biological Assessment that describes the status of red-legged frogs and their habitat on the project site, proposed project impacts on this species and habitat, and proposed measures to avoid or minimize the effects of these impacts. The Applicant shall prepare a plan that results in a Section 7 finding of "no jeopardy" to red-legged frogs on the site. This finding may require project modifications, habitat creation or some combination, pending the results of the Biological Opinion. (Mitigation Measure for IMPACT 4.4-7, part (a)) *Compliance with this condition shall be confirmed by the Town or in accordance with the state and federal permit terms and conditions as may be required which compliance shall be confirmed by the Town's consulting biologist.*

D.VIII.12 Prior to the issuance of a grading permit, the Applicant shall, as part of the Biological Assessment under Mitigation Measure 4.4-7a prepare a mitigation plan for the red-legged frog. The plan shall be approved by the United States Fish and Wildlife Service.

D.VTM.45 Prior to the issuance of the grading permit, the Applicant shall submit a design level geotechnical report and corrective grading plan and report, which addresses and provides recommendations for grading, drainage, slope stability, landslide repair, retaining walls, building foundations, and pavement structural sections, as well as other details as required by the Town Engineer and T.G.C. The report and permit issuance shall be subject to peer review and approval by the Town in accordance with Moraga Municipal Code Section 14.20 through 14.48.030.

D.VTM.46 Any soils conditions or instabilities on the Project site or adjacent properties that may have a detrimental effect on land within the Project area are to be identified by the Applicant's Geotechnical Engineer and reviewed by the Town Geotechnical Consultant. The Planning Commission has the authority to deny development on any or all lots, within the Project affected by such detrimental soils conditions or instabilities based on this review, provided appropriate remedial measures cannot be demonstrated to the reasonable satisfaction

of the Town Geotechnical Consultant *(Conceptual Development Plan Condition of Approval #VI.16)*

D.VI.20. The Applicant shall, in the final grading plan mitigate geologic and geotechnical hazards caused by the Palos Colorados project that impact the proposed project development or adjacent development in accordance with the terms of the Palos Colorado's Settlement Agreement. The proposed remedial mitigation measures shall be reviewed by the Town appointed C.E.G. and G.E. The Town appointed C.E.G. and G.E. shall provide opinions to the Town regarding the adequacy of the proposed mitigation measures and confirmation that geologic and/or geotechnical hazards caused by the project will not impact the proposed project development or adjacent development.

D.VI.2. The Applicant shall, prior to the issuance of a grading permit, or earlier in the process as determined by the Town's Geotechnical Consultant, conduct a detailed subsurface exploration in the entire area to be developed. The exploration shall consist of the appropriate number of borings and test pits necessary as determined by a Certified Engineering Geologist (C.E.G.) and the project Geotechnical Engineer (G.E.). The C.E.G. and G.E. shall determine the depth of borings, but shall require borings deep enough to delineate the depth of the landslides. Trenches shall be excavated to investigate the extent of landsliding and to define the limits and activity of faulting. A representative testing program of the EIR is provided in the "Mitigation Measures" section (Section 4.1.3) of Appendix D. The exploration program shall be approved by the Town of Moraga. The Town shall retain a C.E.G. and G.E. for peer review and monitoring.

D.VI.4 If slopes steeper than 3:1 (horizontal to vertical) are necessary, the Applicant's Geotechnical Engineer and Consulting Engineering Geologist shall perform the necessary analysis to evaluate the long-term stability of the proposed slope. The Town's Consulting Engineering Geologist and Geotechnical Engineer shall review grading plans for areas where slopes steeper than 3:1 are needed. At the time of application for a grading permit, the Applicant shall request a modification in accordance with Moraga Municipal Code Section 14.48.030 should one be required. (Mitigation Measure for IMPACT 4.1-3) *Compliance with this condition will be confirmed prior to issuance of a grading permit.*

D.VI.6. Prior to issuance of a grading permit, a detailed settlement analysis shall be performed by the project geotechnical engineer to predict the long-term settlement characteristics of the engineered fills deeper than 50 feet. The engineered fills shall be monitored by the project geotechnical engineer to confirm their predicted performance. Based on these results, appropriate modifications to the project will be made as deemed necessary by the project geotechnical engineer. The detailed settlement analysis and modifications shall be reviewed by the Town appointed geotechnical engineer.

D.VI.7. The project geotechnical engineer shall develop remediation measures that ensure that expansive soils do not adversely affect structures built on the project site. Remediation measures for expansive soils could include: pre-saturation of the fill soils and placement above optimum moisture content, placing a non-expansive imported soil in the upper portion of the building pad, burial of expansive soils deep in the fill, lime soil treatment, mixing expansive soils with less expansive soils, strengthening foundations, drilled pier and grade beam foundations, floating slabs and pre-stressed (post-tensioned) slabs-on-grade, chemical treatment and/or a combination of the aforementioned. The project engineer shall determine the appropriate remediation based upon professional engineering standards. These remediation measured shall be reviewed by the Town appointed G.E. (Mitigation Measure for IMPACT 4.1-5, part (b)) *Compliance with this condition will be confirmed prior to issuance of a grading permit.*

D.VTM.47 Prior to the issuance of a grading permit, the Applicant shall submit a stability analysis of existing and proposed slopes for peer review and approval by the Town. The stability analysis shall include engineering mitigation measures (such as additional subdrainage, setbacks, and shallower slope inclinations) as appropriate. Such analysis shall assess the seismic stability of slopes in accordance with guidelines and methodologies described in California Geological Survey Special Publication 117, Guidelines for Evaluating and Mitigating Seismic Hazards in California, 1997. Depending on the findings of the seismic stability analysis, some lots may be relocated within the project as part of the Precise Development Plan or in accordance with Precise Development Plan approvals. The data shall be reviewed by the T.G.C. *and approved by the Town. (Conceptual Development Plan Condition of Approval #VI.18)*

D.VI.5. Selected slopes greater than 3:1 (to be determined by a C.E.G. and G.E.) shall be reinforced to the satisfaction of the Town's C.E.G. Stabilization landscaping shall also be implemented to improve stability and enhance the slopes' visual character. (Mitigation Measure for IMPACT 4.1-4, part (a))

D.GDPSA .3. Las Trampas Creek Drainage

Settlement Agreement General Development Plan condition No. 3

The Project Applicant shall construct on-site detention facilities necessary to detain the incremental peak flow generated by the Project site improvements into Las Trampas Creek. The on-site detention facilities and their design shall be as identified and described in the hydrology report and the facilities shall be as depicted on the approved General Development Plan. Flow restriction in Coyote Gulch below the southernmost pond shall continue to be avoided unless there is no other way on the site to meet the design criteria. The facilities shall be designed such that the stormwater peak runoff rate to Las Trampas Creek from the Project site during the 100-year-return storm event is equal to or less than the existing (i.e., historic) stormwater peak runoff rate contribution. The facilities shall also be designed, to the extent reasonably feasible, to limit the duration of the associated design peak runoff into Las Trampas Creek from the Project site during the 100-year-return storm event. The length of the design peak runoff duration should also be consistent with the basin dewatering guidelines of the Contra Cost Flood Control District, unless an exception thereto is acceptable to the District. Substantially all the proposed development areas within the Project site drain to Coyote Gulch. The potential incremental increase in stormwater flow through Coyote Gulch resulting from proposed Project improvements is determined at the Coyote Gulch outfall point on the southern boundary of the Project site. Additionally, the hydrology study of the Las Trampas Creek drainage basin will determine the existing (historic) maximum peak runoff rate and associated peak runoff duration at a study point on the creek. A point on Las Trampas Creek at or near the border between the City of Lafayette and the Town of Moraga is used as the study point. To the extent it is shown that proposed Project improvements increase stormwater runoff to Las Trampas Creek at the study point, then such impacts shall be mitigated by including compensatory storage in design of the on-site stormwater detention facilities, so that the stormwater contribution from the proposed Project improvements does not increase the existing (historic) maximum peak flow rate and associated peak flow duration in Las Trampas Creek at the study point.

No later than September 15th of each year, the Project owner, or GHAD, shall perform all necessary work to maintain the effectiveness of the detention facilities. This commitment to maintain shall be memorialized by a recorded maintenance agreement between the Project owner and the Town of Moraga or through the obligations of the Geologic Hazard Abatement District (GHAD) as required by the Town of Moraga in its approval of the GHAD.

D.PDP.III.7. Prior to issuance of a grading permit, a detailed site plan and landscaping plan shall be submitted for the park and ride lot for review and approval by the Design Review Board. In accordance with this Settlement Agreement modified condition, the Applicant shall construct the park and ride lot as shown on the GDP prior to the certificate of occupancy for the 50th residence. The park and ride lot shall be maintained by the homeowners' association. **The plan for the park and ride lot shall include a drinking fountain and pedestrian access to the end of Campolindo Drive.**

D.I.14. The Applicant shall prepare a detailed landscape plan that includes a combination of native plants and trees in sensitive biological habitats (see Section 4.4 of the EIR) and native and ornamental plants and trees in non-sensitive locations. Common landscaping in the area of the project entry (Lots 1 through 15 and 111 through 123) facing Moraga Road and Sky-Hy development shall be completed as soon as practicable after rough grading of these lots is completed, and no more than 6 months, following completion of grading, unless approved by the Town. Species shall be selected in the non-sensitive habitat areas that favor more rapid growth and dense coverage, while still meeting the character of the Town. The common area landscape plan shall be approved by the Design Review Board prior to the issuance of any grading permits. (Mitigation Measure for IMPACT 4.9-2)

D.VTM.48 The Applicant shall submit a grading and erosion control plan consistent with the Project geotechnical engineer's recommendations, for review and approval by the Town Engineer and Town Geotechnical Consultant *(T.G.C.).* Where grading and or development occur immediately adjacent to the Project boundaries, the toes of slopes shall be set back from the property lines. A reasonable grading transition shall be provided between the Project and adjoining neighborhoods.

D.VTM.49 The proposed location of lined drainage ditches shall be specified on the development plan accompanying the design-level geotechnical investigation report, which shall be reviewed by the Town's Geotechnical Consultant prior to the issuance of the grading permit.

D.VTM.50 Prior to the issuance of any permits, a certificate of insurance shall be provided to the Town to verify that both the owner of the subdivision and the grading contractor have public liability insurance. The amount and type of insurance shall be reviewed by the Town and shall be sufficient to cover damages that may result from the grading operation, such as mudflows or flooding onto adjacent properties. The insurance limits shall be a minimum of $1,000,000 combined single limit coverage and the policy shall be subject to review and approval the Town Attorney.

D.VTM.51 Prior to issuance of the grading permit and approval of improvement plans the Applicant shall obtain required approvals from other agencies including, but not limited to: U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Game.

D.VI.18. The Applicant shall obtain prior to the issuance of a grading permit; a Streambed Alteration Agreement shall be obtained from CDFG, pursuant to Section 1600 of the California Fish and Game Code, for each stream crossing and any other activities affecting the bed, bank, or riparian vegetation of the stream. Specific measures to mitigate the loss of riparian habitat will be contained in his agreement. (Mitigation Measure for IMPACT 4.4-12, part (c)) *Compliance with this condition will be confirmed prior to issuance of a grading permit.*

D.VIII.15 If required by the California Department of Fish and Game, the Applicant shall acquire any authorization required under from the California Department of Fish and Game Code Section 3503.5 prior to issuance of a grading permit, regarding potential disturbance to raptor nests. (Mitigation Measure for IMPACT 4.4-8, part (a)) *Compliance with this condition shall be confirmed prior to issuance of a grading permit.*

D.VIII.16 The Applicant shall, if grading and/or tree cutting is proposed during the raptor nesting season (March-July), conduct a focused survey for raptor nests prior to grading activities by a qualified raptor biologist in order to identify active nests in areas potentially impacted by project

implementation. Mitigations to avoid disturbance or removal shall be implemented. (Mitigation Measure for IMPACT 4.4-8, part (b)) *Compliance with this condition shall be confirmed prior to issuance of a grading permit.*

D.VIII.17 If grading is proposed to take place during the breeding season, the Applicant shall ensure that such grading activity shall take place with adequate separation from any identified active nest until the young have fledged (as determined by a qualified raptor biologist). Adequate separation distance shall be established in consultation with a qualified raptor biologist, consistent with state requirements. Trees containing nests to be removed as a result of project implementation shall be removed during the non-breeding season only. (Mitigation Measure for IMPACT 4.4-8, part (c)) *Compliance with this condition shall be confirmed prior to issuance of a grading permit.*

D.VIII.19. The Applicant shall, prior to the issuance of a grading permit, receive authorization to fill wetlands from the Army Corps of Engineers (ACOE). Specific measures to mitigate the loss of filled wetlands will be contained in the provisions of the Section 404 permit. (Mitigation Measure for IMPACT 4.4-12, part (b)) *Compliance with this condition shall be confirmed prior to the issuance of a grading permit.*

D.VI.8 The Applicant shall, prior to the start of grading, establish a wind station on-site to be used in monitoring wind speeds. Grading activities shall cease during periods of sustained high winds (over 20 mph). Wind speeds will be monitored by the County grading inspector and/or consultant retained by the Town and funded by the Applicant. (Mitigation Measure for IMPACT 4.2-3, parts (a) and (b)) *Compliance with this condition will be required as a condition of issuance of a grading permit.*

D.VI.10. The Applicant shall install foundations as soon as practical. If pads are rough-graded and not planned for foundations within six months of grading, they shall be revegetated. (Mitigation Measure for IMPACT 4.2-3, part (d)) *Compliance with this condition will be confirmed prior to issuance of a grading permit and throughout grading and construction.*

D.VI.22. For purposes of construction period dust emissions control, grading and construction efforts shall minimize dust generation through implementation of the following dust suppression techniques:

a. Periodic watering of all disturbed sites.

b. Use of chemical soil binders and/or revegetative materials (15 to 65 percent emission reduction efficiency).

c. Wheel washing of all construction vehicles before they leave the site. (Mitigation Measure for IMPACT 4.2-3, part (a));

Compliance with this condition will be required as a condition of issuance of a grading permit.

D.VIII.18 The Applicant shall obtain the required federal authorization to fill wetlands, including federal approval of an associated wetland mitigation and monitoring plan, prior to issuance of a grading permit.

D.VTM.52 *Duplicate condition deleted. Number not used.*

D.VTM.53 The Applicant shall guarantee implementation and maintenance of the Storm Water Pollution Prevention Plan throughout construction through a cash bond or certificate of deposit. The Town of Moraga shall be authorized to draw against the cash bond or certificate of deposit for erosion control and to take appropriate action as may be required to protect off-site properties or water quality under the following circumstances:

a. The Applicant has, in the Town's opinion, failed to install or maintain the erosion control measures in accordance with the approved plan.

b. The installation or correction of erosion control measures is not proceeding in accordance with the approved time schedule.

c. The Town Engineer finds that an emergency situation exists or is threatened whereby damage to off-site properties or water quality may result due to the discharge of soils, earthen material or debris.

Section E. Conditions to be confirmed prior issuance of a grading permit and during grading and/or construction:

E.VTM.54 Prior to the issuance of the grading permit, the Applicant shall submit a grading plan prepared by the Project Civil Engineer for review and approval by the Town. The grading plan shall include but not be limited to the following: existing contours; existing improvements; tree exhibit showing all trees, their sizes and species, identified to be removed, and details about tree preservation for trees adjacent to limits of grading that may have their drip line encroached upon, limits of grading, and proposed stockpile areas if known.; cut/fill lines; *land*slide remediation details; limits of existing landslides as identified by the *Project* Geotechnical Engineer.; lot boundaries and road right-of-ways; proposed pad elevations, finished contours, and lot grading details; top of curb elevations at all curb returns, drainage inlets, and at high points and low points; limits of grading; cross-sections as needed to show areas of cut, fill, and grading; perimeter cross-sections along the sides of the Project to show the proposed Project's interface with abutting properties and streets; plan view of proposed drainage facilities including storm drains, catch basins, manholes, underdrains, and detention facilities; street grades and gutter flow directions; ditch grades and flow directions; details for proposed drainage ditches; details for proposed detention facilities; retaining walls details. The Grading Plan Submittals shall provide for a balanced cut and fill Project so that import or export of dirt is not required to complete the grading. Sand, topsoil or other specific soils may be imported for landscape areas and/or for other specific improvements.

The grading plan shall be consistent with the recommendations of the Geotechnical Reports for the Project and shall be signed for conformity by the Applicant's geotechnical engineer. The Applicant's geotechnical engineer and grading contractor shall take precautions to see that the topsoil is not utilized as engineered fill. Topsoil shall be spread over the lots following grading to assist in the establishment of a vegetative cover. The Applicant's geotechnical engineer shall prepare a final grading report. The grading report shall contain the following:

1. An as-graded plan prepared by the civil engineer of record, that includes the original ground surface elevations, as-graded ground surface elevations, lot drainage patterns, locations of any keyways, slide repair areas, and "as-constructed" locations and elevations of all surface and subsurface drainage facilities. The engineer of record shall provide certification that the work was done in accordance with the final approved grading plan. The project geotechnical engineer or certified engineering geologist shall also sign the plan indicating that the work was performed in accordance with the

recommendations contained in the projects geotechnical and/or geological reports and subsequent approved revisions,
2. A "Building Pad Certification" drawing or set of drawings prepared by the civil engineer of record indicating that all building pads are located horizontally and vertically in accordance with the approved grading plans,
3. A final grading report prepared by the geotechnical engineer or certified engineering geologist, that includes locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data, and comments on any changes made during grading and their effect on the recommendations made in the geotechnical report and/or geologic report. The geotechnical engineer or certified engineering geologist shall provide an opinion as to the adequacy of the site for the intended use,
4. A final report by the civil engineer of record certifying that all grading, lot drainage and drainage facilities have been completed and the slope planting installed in conformance with the approved plans and the requirements of this chapter,
5. A final engineering geology report based on the final contour map including specific approval of the grading as affected by geological factors. The report shall include a revised geologic map and cross-sections, with recommendations regarding the location of buildings.

E.VTM.55 Should off haul or import of earth material be required, prior to the start of construction, the Applicant shall submit a plan showing haul routes and traffic control for review and approval of the Town Engineer. Hauling of materials including construction materials exceeding 500 CY in aggregate shall require a Hauling Permit from the Town of Moraga. The grading contractor and Applicant for the grading permit shall be responsible for preventing spills of soil, rock or other debris on Town streets. If any spills occur, then the Applicant and grading contractor will be held responsible for the immediate cleanup of the spill and repair of any damage that may have been done to the street. The correction of the problem shall be made to the satisfaction of the Town Engineer. In order to avoid loaded water trucks (e.g., water for compacting soil and dust control) using the local haul routes, whenever possible those trucks shall fill up from hydrants close to the Project Site.

E.VTM.56 The parking of grading equipment, tractor tread vehicles and all other types of construction vehicles and equipment on any existing street is prohibited. These vehicles shall be delivered to the property by trailer and kept on-site during grading and construction operations. The Applicant shall establish a staging area for vehicles utilized by construction employees. The size, location and details of the staging area shall be subject to review and approval by the Town.

E.VTM.57 All grading and excavation shall be conducted under the direct supervision of the project geotechnical engineer.

E.VTM.58 Grading operations shall be scheduled between April 15 and October 1, to avoid the fall and winter rains. Grading operations shall not disturb the erosion control.

Except as otherwise permitted by the provisions of this chapter, grading is prohibited as follows:
A. Where dirt, soil, rock, debris, or other material that if washed, eroded, or moved from the property by natural or artificial means would create a public hazard, or an unlawful encroachment on other property, watercourse, or on a public road or street, easement or right-of-way;
B. During the wet season (October 1 through April 15), except that the Town may approve wet season grading if all of the following conditions are met: