EXHIBIT A

FEBRUARY 23, 2009
JOINT MEETING MINUTES

TOWN OF MORAGA
PLANNING COMMISSION MEETING

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

February 23, 2009

7:30 P.M.

MINUTES

I. CALL TO ORDER

Chairperson Goglia called the Special Joint Meeting of the Planning Commission and the Design Review Board (DRB) to order at 7:30 P.M.

ROLL CALL

Planning Commission

Present: Commissioners Daniels, Driver, Hays, Whitley, Chairperson Goglia
Absent: Commissioners Levenfeld, Sayles

Design Review Board

Present: Boardmembers Glover, Kline, Murray, Socolich, Chair Kuckuk

Absent: None

Staff: Lori Salamack, Planning Director
Richard Chamberlain, Senior Planner
Mitch Wolfe, Town Geological Consultant
Frank Kennedy, Town Consulting Engineer
Rafael Mendelmann, Town Attorney's Office

B. Conflict of Interest

There was no reported conflict of interest from either the Planning Commission or the DRB.

II. ADOPTION OF MEETING AGENDA

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

III. ANNOUNCEMENTS

Planning Director Lori Salamack announced that this would be the last Commission meeting for Commissioners Hays and Sayles, and the last meeting for the DRB for Boardmember Socolich.

Ms. Salamack reported that Commissioner Sayles would return to the DRB to serve as a Boardmember, and Boardmember Socolich would move to the Planning Commission to serve as a Commissioner. She took this opportunity to thank Commissioner Hays for his many year of service on both the DRB and the Planning Commission. She thanked all three for their volunteer service to the Town of Moraga over many years.

Senior Planner Richard Chamberlain announced that this would have been a regular meeting of the DRB when two items had previously been scheduled. For the benefit of the audience, he advised that those items would be on the DRB's next meeting agenda on March 9.

IV. PUBLIC COMMENTS

Linda Deschambault, 2066 Donald Drive, Moraga, encouraged the Commission and the DRB in light of the work of the Tree Planting and Beautification Committee to consider revisions to the Tree Planting Ordinance to more closely follow those of the cities of Hercules and El Cerrito which required a 4:1 replanting ratio.

With respect to the building at 533 Moraga Road, Ms. Deschambault commented that the bright lights in the garage of that building detracted from the scenic corridor. She urged some way to mitigate that glare with a wrought iron gate or a lowering of the lights at night, and to consider in the future a condition to prohibit such brightly lit garages from impacting the scenic corridor.

Ms. Deschambault also announced a solar financing workshop in Walnut Creek from 9:00 A.M. to noon on February 26. She urged all those interested to attend that free workshop sponsored by a non-profit.

V. ADOPTION OF THE CONSENT CALENDAR

A. None

VI. CONTINUED PUBLIC HEARINGS

A. **SUB. 8376 - PALOS COLORADOS - Richfield Investment Corporation (Applicant), Bigbury Company (Owner)**: Consideration and approval of the Precise Development Plan for the 123-lot Palos Colorados residential development project. The project is located on a 460-acre site with access from the east side of Moraga Road and 600 feet south of Sky-Hy Drive adjacent to the City of Lafayette. The Precise Development Plan is the third step in the three step process for approval of a Planned Development in the Town of Moraga.

On May 7, 2007, the Planning Commission approved the Vesting Tentative Subdivision Map (VTM) and Hillside Development Permit for the Palos Colorados project. The property is zoned 1-DUA (One Dwelling Unit Per Acre) and OS-M (Open Space-MOSO [Moraga Open Space Ordinance]). APNs 256-370-004, 005, 006, 007 and 008

Planning Director Salamack advised that at the last meeting on February 17, the staff report had been introduced for the current meeting to describe the fit matrix that had been reviewed by staff and the analysis that had been prepared relative to the Settlement Agreement and size guidance that existed in the Settlement Agreement, the Town Floor Area Ratio (FAR) and the VTM Conditions of Approval. While there had been no changes to the staff report since that meeting, she stated that there had been a slight revision to the draft resolution for approval of the project, which had been provided to the Commission and the DRB and which had been made available to the public at the meeting.

Ms. Salamack referred to two new conditions related to what was actually being approved with the Precise Development Plan (PDP) and how landscaping would be addressed. She noted that while there were design prototypes for each residence, there was no specific landscaping for each lot and the prototype of each lot since it was not possible to evaluate that on a semi-custom basis. She explained that staff had experience considering landscaping plans for residential designs approved by the DRB and could use that same process.

Ms. Salamack stated that the additional condition of approval, JP.P6 was that prior to the issuance of the building permit the applicant would submit a plan to the Planning Department to confirm compliance with Section 3 of the Palos Colorados Design Guidelines and the memorandum from January 5. For Condition JP.P7, prior to the issuance of the building permit the Planning Director shall verify compliance with the PDP approved prototype plotting plan and the prototype designs, which would mean that a building permit could only be approved for the prototypes approved by the Planning Commission, and the plotting approved by the Planning Commission, for the semi-custom residences.

Ms. Salamack referred to Condition B.PDP.C.VTM.39, and explained that condition should be included in Section D and would be moved down accordingly.

Ms. Salamack presented the Town Attorney and the Town Consultants who were present to assist the Commission. She noted that a representative of the Town's Traffic Engineer, Fehr & Peers, was to be available to respond to questions. She noted if that representative was not available traffic issues could be addressed separately since those issues were not required to be resolved prior to approval of the PDP.

When asked, Ms. Salamack verified that each residence was required to have landscaping installed either prior to the Certificate of Occupancy or if at the wrong season, a bond would be required and the landscaping would need to be installed within six months of the Certificate of Occupancy.

Ms. Salamack clarified that the proposed new conditions would be placed in the resolution, where appropriate after discussion, for purposes of specificity. She also verified the differences in the draft resolution from what had previously been presented to the Commission beyond the new conditions by reiterating that the conditions included were those from the VTM, with the exception of those required to be satisfied prior to the PDP, and those that had been moved to another location. She explained that any condition that had been revised had been shown in bold in the draft resolution for the PDP.

Commissioner Hays referred to the conditions related to compliance with green building requirements and asked of those requirements, reported by Ms. Salamack that currently the Town required compliance with the Build It Green Program although it was unknown what the Town requirements would be in the future when the residences were constructed. The condition had therefore been worded to ensure compliance with the Town's program at the time of construction. She clarified that the VTM required compliance with green building as determined by the Town at the time of building permit compliance as shown in Condition J.PDP.3, where "Prior to the issuance of building permit and prior to final approval of the same permit the Town shall verify compliance with the green building requirements of Condition A.VTM.16."

Ms. Salamack verified that at this stage the materials to be used were unknown and that determination could not be made, although it could be made at the time of issuance of a building permit to ensure compliance with the Town's green building requirement at that time. Prior to the approval of the final building permit, the Town would verify that adequate green building measures had been employed.

Ms. Salamack also verified in response to Commissioner Daniels that the language in A.VTM.16 related to "reasonable efforts" had been included as opposed to requiring compliance since the Town did not have an adopted green building program as part of the Town's Design Guidelines. She emphasized that the condition preceded the Town's adoption of the Build It Green Program or equivalent as the Town's green building standard.

Rafael Mendelmann, Town Attorney's Office, explained that at the time of the building permit the Town would have the ability to decide whether or not the applicant had made reasonable efforts. He stated that the Town could not apply a standard that had been approved after the condition approved for the VTM.

When asked by Boardmember Glover about Condition JDP.7, Ms. Salamack verified that the condition would involve the retention of all of the approved plans so that the plans could be compared in detail for compliance. She agreed with Boardmember Glover's suggestion to include a reference by prototype number and date.

Alicia Guerra, Briscoe Ivester & Bazel LLP, representing the applicant, Richfield Investment Corporation, spoke to the comments that had been raised at prior meetings with respect to the request for a detailed comparison of the Town's Design Guidelines with the Palos Colorados Design Guidelines, along with other issues. She requested that the Commission find that the PDP was consistent with the 1999 Settlement Agreement, the approved General Development Plan (GDP), and the approved VTM, all of which governed the PDP.

Ms. Guerra presented a plan to show what the project would look like from a lot layout perspective and highlighted the 61 lots greater than 20,000 square feet in area and the 62 lots under 20,000 square feet in area along with the MOSO and non-MOSO lots for which an extension had been approved for the Conditional Use Permits (CUPs) at the last meeting. She also highlighted the lots that had been subject to special approvals such as Lot 106 related to the Lafayette BART viewshed.

Ms. Guerra noted that the PDP was required by the Moraga Municipal Code (MMC) and was the final step in the Town's three-step zoning process. She stated that the PDP included the site plan, plan prototypes, engineering plans and landscaping plans.

Ms. Guerra highlighted Condition A.VTM.11 to explain why the Palos Colorados Design Guidelines had been created. She explained that the PDP applied to a semi-custom and a custom project. It did not apply to production housing. She stated that related to the requirements of the 1999 Settlement Agreement and the Conceptual Development Plan (CDP), the first step in the zoning process. The PDP was the final step in that process.

With the PDP, Ms. Guerra reported that eight plan prototypes had been included for the semi-custom homes. She noted there would likely be more custom lots than semi-custom. To make sure that the homes would be developed in a consistent manner, the Palos Colorados Design Guidelines had been prepared as a tool for the applicant to use with prospective homebuyers. She stated that those guidelines were not intended to replace the Town's Design Guidelines but to be consistent with and implement the Town's Guidelines to maintain consistency in the design of the community.

Scott Rivers, Studio Director, Robert Hardy Architects, showed how the proposed architectural designs demonstrated compliance with the Town's Design Guidelines, particularly with respect to maintaining the Town's semi-rural character, respecting the hillside and ridgelines, and making efforts through building materials, architectural styles and massing to complement the existing landscape to create a thoughtfully designed residential neighborhood.

Mr. Rivers identified a variety of custom and semi-custom plans. With respect to the semi-custom plans, he stated there were eight plans in three categories of one story, partial two-story and two-story plans. All homes would have low-profile roofs and short spans. All used sophisticated massing to appear not as one home but as pieces of smaller homes, which worked well in the multi-level homes in response to the topography. He identified the three proposed architectural styles as Adobe Ranch, Andalusian, and Spanish Colonial offering a diversity of materials, natural earth tone palliative colors, consistent vernacular and diversity. He presented some of the different materials that had been proposed.

Mr. Rivers also presented renderings of each of the one-story, partial two-story and two-story plans and noted that the partial two-story homes would appear as a single-story home, reducing the scale of the building. He reported that each plan included four-sided architecture with loggias, porches, indoor/outdoor courtyard spaces, hallways and in the case of the two-story plans stair elements that would create shadows along the street. There would be no flat fronted homes.

Referring to the Town's Design Guidelines which stated that there could be no more than two, two-story homes in a row, Mr. Rivers suggested that the partial two-story plans would ensure compliance with that guideline. He added that to make a more presentable streetscape, there had been an effort to conceal the garages through either design or through ample landscaping at the street.

Mr. Rivers presented Plans 1, 2 and 3 as compact, one-story courtyard plans. Plans 4, 4 NGS (no guest suite) and Plan 6 were partial two-story plans. Plans 5 and 7 would be two-story plans. There would be three different street elevations for each plan.

Ms. Guerra advised that the reason for the semi-custom plan prototypes was to accommodate a homebuyer who had more immediate needs and did not have the time to pursue a custom designed residence. She clarified the expectation that most homebuyers would select the custom alternative.

Mr. Rivers commented that flexibility and diversity had been built into the eight plans with the three elevation styles per plan.

Also built in were topographical characteristics which would force certain plans to fit better on certain lots in the hillside community where the lots would stack, step and creep up the hill and create different streetscapes and be screened by ample planting.

Speaking to the colors for the homes, Mr. Rivers emphasized the consistency desired. He noted that the Town's Design Guidelines had already identified the palliative colors where "Color schemes of homes on adjacent lots should be compatible and not duplicate on another." "The roof shape color and texture should harmonize with the color and architectural treatment for exterior walls." "Exterior building design and all elevations should be coordinated as to color, texture, materials, finishes and architectural form and detailing to achieve harmony and continuity."

With respect to building materials for the homes, Mr. Rivers stated that the Town's Design Guidelines were also clear in that "Exterior building design and materials on all elevations should be coordinated as to color, texture, materials, finishes and architectural form and detailing to achieve design harmony and continuity." He stated that those guidelines had been included and elaborated in the plan.

Further with respect to building materials for the homes as included in the Town's Design Guidelines, Mr. Rivers quoted the guideline that "The number of different materials on the exterior face of the building should be limited. Generally a variety of masonry materials should be avoided. All chimneys on the same home shall be similar in architectural style and materials." He stated there would not only be a palette of colors for each house but a catalog of details for each house.

George Nicholson, Omni Means, whose firm had reviewed and analyzed the need for a traffic signal at the project access on Moraga Road, reported on the data that had been gathered to identify traffic counts to identify the traffic flow, the speed surveys and sight distance measurements in the field. The firm had also calculated the traffic the project would generate during peak commute hours. He stated that data had not included the golf course. Trips had been added in for the secondary units as if they were freestanding apartments.

Mr. Nicholson reported that what had been found was that vehicular volumes during the peak commute periods; 7:00 to 9:00 A.M. and 4:00 to 6:00 P.M. did not meet the threshold for a traffic signal based on standards established by California Manual on Uniform Traffic Control Devices. He added that had been based on several factors including speeds on Moraga Road, the number of vehicles during the peak hour on Moraga Road and the number of vehicles entering Moraga Road from the side roads.

Mr. Nicholson presented a sketch plan of the intersection as it could be designed with sidewalks and crosswalks.

Mr. Nicholson also reported that as part of the conditions of the original Environmental Impact Report (EIR) a right turn lane in had been identified although he was not aware whether or not that remained in consideration. He stated that a left turn refuge lane had also been shown. He suggested that providing a left turn refuge lane for outbound vehicles would significantly improve the operation, particularly with a stop sign. He commented that would be subject to refinement as part of the ongoing review process.

Bill Raven, the Landscape Architect, spoke to the entry bridge coming off Moraga Road and the comments that the bridge was not the most appropriate solution for that type of entry road. He explained that site was not only the entry to the project but was a wildlife corridor and a drainage channel. The bridge with its vertical walls extending down to the drainage channel would offer the least amount of horizontal impact to the channel. He added that there was also a culvert carrying wildlife habitat through that area.

Mr. Raven commented that because of the fall of the swale moving north to south through the site; it would take approximately 115 feet to make up the difference if there was only a graded slope condition for the road crossing instead of a bridge. He added that the US Army Corps of Engineers required the minimum amount of impact on a drainage swale in the subject configuration. As a result, the bridge was considered to be the least severe solution in terms of making that crossing as minimal as possible as an entry to the site.

Mr. Raven referred to two sketch elevations to show the configuration of the bridge itself and to address the comment related to the entry monuments. He stated that the entry monuments had initially been proposed to be 21 feet high but had been reduced to 16 feet, with the intent to identify an entrance to the project driving through a grove of oak trees. As such, the primary focus was on the landscaping and not on the entry monuments. There were wooden trellis structures adjacent to and attached to each monument that would be covered with vines to soften the entrance. He described the monuments as being 200 to 220 feet back from Moraga Road. The entrance was at least partially softened and embellished by the grove of trees on either side of the bridge.

An unidentified certified Build It Green professional representing the applicant spoke to the Commission's concern for green building. He explained that the text in the Palos Colorados Design Guidelines had identified the same five areas striving for compliance with green building practices. The factors, already included in the plans, related to the creation of a pedestrian community, resourceful use of materials, and other matters included as Best Practices, sustainable practices and energy efficiency.

The speaker explained that those factors were consistent with the Town's requirements. He explained that the Build It Green process did not rate the homes until after they had been constructed. Many recommendations could be made at the time of the building permit.

Ms. Guerra explained that the Palos Colorados Design Guidelines included additional information to address the points that had been highlighted.

In response to Commissioner Hays, Malcolm Sproul, LSA Associates, advised that as designed all the major wildlife corridors had fencing that allowed free movement of the largest species in the area such as deer and coyote. The bridge itself was also a storm water detention structure and there would be an opening to restrict the passage of storm flows. He added that there would be a second passage designed for the smaller wildlife.

Commissioner Hays asked if there had been any plans to extend the sidewalk from the edge of the property to the church, reported by Ms. Guerra that had been discussed as an option to address the traffic signal/stop sign location. If that area was within the public right-of-way, she suggested it would be possible to extend the sidewalk to the church. If that was private property, she suggested there might be concerns securing the right-of-way.

When asked, Ms. Salamack explained that if in the public right-of-way, there could be a condition to require the extension of the sidewalk as requested.

Referring to Sheet 6 of 14, Commissioner Hays asked if the applicant had taken the plan types into consideration of the variation of the elevation on the lots. He was particularly concerned for Lot 65.

Mr. Rivers pointed out a series of lots where the relationship of topography had been considered and where a careful selection of plans had been proposed to address the concern of height differential. He added that was where the partial two-story homes would offer an appropriate alternative.

Speaking to a traffic signal, Commissioner Hays asked if the analysis had included the safety issue. He was concerned for those coming up Moraga Road from Lafayette, particularly during the commute period and the cross traffic without a signal to control that traffic.

Mr. Nicholson explained that the operation of the intersection had been calculated along with the volume of traffic to calculate delays and to identify the experience of vehicles turning in and out of the project. He reported that both were satisfactory. With the refuge lane, the outbound left turn, which would be the most difficult movement, would operate at level of service (LOS) C or better. The left turn in would operate at LOS A and B.

Commissioner Hays asked if pedestrianism had also been included in the calculation, particularly given the nearby high school.

Mr. Nicholson explained that there were a total separate series of warrants for pedestrians. That analysis had not been done. He stated that pedestrian volumes were more tenuous. He added that it would take a significant volume of pedestrians, in the range of 100 pedestrians per hour for four different hours, to warrant an issue. Given the school, other design options had been considered. He expressed a preference to see an internal pathway connection to Campolindo Drive that would allow pedestrians to walk down Campolindo Drive and cross at the existing signal at Moraga Road and Campolindo Drive.

When asked, Ms. Guerra explained that the marketing research had indicated that more than 15 percent of the homes would be semi-custom homes. She noted that expectation that there would be more custom homes. She reiterated the intent that the semi-custom homes would provide an approved package for someone who needed a house sooner than the custom process would allow.

Rick Sabella, Richfield Investment Corporation, affirmed that the market research had indicated that at the proposed price point the project would involve custom lots. The eight plans were intended to allow the process to start for those who needed a house ready to construct without waiting to have custom plans approved. He reiterated that the majority of the development would likely be one-story. While families were expected, he suggested that the size of the homes would mean that empty nesters would likely be the major homebuyers. First time homebuyers were not expected.

Ms. Guerra clarified that the reason for the plotting plan had been prepared to identify which lots had to be custom based on the conditions of approval and which might allow some flexibility in terms of identifying custom versus semi-custom.

In response to Boardmember Kline, Ms. Salamack described the difference between Plotting A and Plotting B in the fit matrix that staff had prepared. She explained that Plotting A had included more choices for the applicant while Plotting B favored the Town in that more could be decided and there would be less flexibility on the part of the applicant. She had presented that information to provide a range.

Ms. Guerra recognized the Town's need for assurances for the lots but emphasized that the applicant was looking for flexibility. From a marketing standpoint, she stated that the greater the flexibility in terms of the range of possibilities the better.

Mr. Sabella also emphasized the need for flexibility but reiterated the expectation that the majority of the residences would be custom homes.

Ms. Guerra explained in response to Commissioner Hays that the applicant sought some indication that the eight plan prototypes were acceptable at the PDP stage and that the three elevations per plan type would also be considered to be acceptable to allow a variety of design. She noted that the Commission could indicate a range of possibilities of the plan prototypes without approving all eight plan prototypes.

Because prospective homebuyers would demand uniqueness in the homes, Mr. Sabella emphasized that the homes would not look like production homes. He reiterated that the buyer would be very demanding in the development of his or her home. The eight plans had been proposed as the baseline to start the project and there would be steps taken to ensure that repetitiveness did not occur. He added that he would be a member of the architectural review board for the project to make sure that repetitiveness did not occur.

Boardmember Glover used Moraga Commons as an example and expressed a concern for the pocket park and potential parking problems associated with that park that may spillover into the residential neighborhood.

Ms. Guerra reported that there was an on-site/off-street parking lot located at the entry to facilitate usage of the pocket park and for the trail to provide visitor parking.

Boardmember Socolich verified that all the lots could be custom even with the approved prototype plans and that if any approved prototype plan was selected by a homebuyer that plan would need no further review by the DRB. The custom homes would require DRB review and approval.

Given the hiking trails, Boardmember Socolich expressed concern that no drinking facilities had been included. He suggested that there should be a drinking fountain at least in the parking lot at the front.

Mr. Sabella suggested that would be doable.

PUBLIC COMMENTS OPENED

Bill Durkin, 10 Fieldbrook Place, Moraga, referred to a recent newspaper article that indicated that the PDP precluded any additional conditions to the project. He noted that at the time of the VTM a number of issues had been raised to the Planning Commission and the City Council related to green building and sustainability practices, along with water storage systems to mitigate runoff on the property.

Further, given the drought conditions home catchment systems would be important to allow the reuse of water for landscaping. Other concerns were noted as the building of permeable outdoor patios and driveways so that there would be less runoff into the drainage system and an identification of the orientation of the homes to accommodate passive or active solar additions to the homes.

With respect to the wording in the conditions related to green building guidelines, Mr. Durkin recommended stronger language to require compliance to current guidelines for the Build It Green Program. He suggested that the current language was too vague. He noted that the recommendation at the time of the VTM was that the PDP was the proper time to address those issues and he suggested that he was being precluded from doing that. He requested that all those issues be brought into the process. He also noted that other issues related to integrated pest management had also not been addressed.

Linda Deschambault, 2066 Donald Drive, Moraga, expressed several concerns, among them the size of the residences and the fact that no square footages had been identified for the eight prototype plans. She recalled that the 1999 Settlement Agreement had indicated that the size of the houses would be from 2,800 to 4,800 square feet although the minutes of the last meeting had indicated that nearly 62 percent of the residences would be in excess of 5,000 square feet in area. She asked if that would be a violation of the Settlement Agreement.

Ms. Deschambault also asked if the square footage for the secondary units had been counted in those units over 5,000 square feet in area. She suggested that the impact of the secondary units would add traffic and aesthetic concerns to the project. She noted that cities such as Lafayette were taking steps to limit the size of homes while the Town of Moraga appeared to let the size of homes inch up. She urged the Commission to comply with the Settlement Agreement.

Referencing the meeting minutes where it had been reported that the Town would not receive revenue from the project unless it allowed homes in excess of 5,000 square feet, Ms. Deschambault was not aware of how that had been allowed. She urged some attention to that situation.

Ms. Deschambault also noted that the applicant did not want the secondary units although the Town had requested them to be able to meet the Town's housing allocation. While 90 secondary units had initially been proposed, only 30 remained in the plan. She understood that the applicant had agreed to help the Town; she now understood that the homes did not meet the goals of the Housing Element. She suggested that other cities mandated compliance with the Housing Element and she requested that be done in this case as well, that the applicant must meet the Town's housing requirements related to affordability.

Ms. Deschambault further emphasized the need that the development comply with state-of-the-art green building technology. She suggested that Build It Green was a flexible, easy goal to reach and she recommended a minimum of 90 points or the equivalent at the time the houses were developed. She spoke to the discussions of the past and the intent of some residents to appeal the VTM when those people had been urged by the Town to defer an appeal since their concerns could be addressed at the PDP stage. Those discussions related to, among other issues, green building and the genesis of Condition A.VTM.16. She urged the applicant to voluntarily adhere to green building practices as he had earlier agreed to provide a water fountain at the parking lot for the trail.

Ms. Deschambault emphasized that residents had been told that the PDP stage would be the time to address those issues. She asked the Town Attorney if the size of the homes, mandating affordable housing, and green building requirements could be addressed at this time.

Susan JunFish, 248 Calle Mesa, Moraga, thanked the joint body for their time to address the issues. Speaking as the Director for Parents for a Safer Environment, she identified her issues of concern as landscaping, energy conservation and air quality. She understood that the development would take four years to complete. She asked how the development would take place with respect to earthmoving equipment, and she requested that the applicant utilize refurbished diesel engines or natural gas. She also asked the applicant to consider moving the vehicles during non-rush hour traffic before 7:00 A.M. and after 7:00 P.M., and consider spraying to eliminate dust.

Speaking to landscaping, Ms. JunFish noted the concern for permeable driveways and landscaping so that water would be absorbed. She suggested that the development be graded in such a way so that the water drained away from the street and not towards the street and that fertilizer and pesticide runoff be mitigated. She also expressed concern for the potential of holding water in catch drains and she asked that the applicant work with the Town's Public Works Department to ensure an appropriate design. Further, that the applicant work with the Contra Costa County Mosquito and Vector Control District to address that area of concern.

Ms. JunFish also asked the applicant to voluntarily utilize native species in the development. She spoke to energy sustainability issues and urged the applicant to consider that type of technology as being important for the development and for the community and beyond to address global warming.

Chairperson Goglia declared a five-minute recess at 9:25 P.M. and reconvened at 9:30 P.M. with all Commissioners and Boardmembers initially shown as being present and absent.

REBUTTAL:

Ms. Guerra spoke to the comments offered during the public comment period and stated that the newspaper had taken her comments out of context. She read the section from the Government Code which related to her comment at a previous meeting to the "one bite at the apple" related to the Build It Green issue. She stated that the concern for the Build It Green issue also applied to the size guidance and the FAR Guidelines that had been discussed at the February 2 and February 17 meetings.

Ms. Guerra read from the Government Code that "When a local agency approves or conditionally approves a vesting tentative map [which the Moraga Planning Commission had done in 2007] that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards that are in effect at the time that the application had been deemed complete."

Ms. Guerra explained that her comment at the meeting on February 2 had indicated that the Build It Green Ordinance in place today had been adopted after the applicant had received approval of the VTM. If in effect at the time of approval, it had not been in effect at the time the VTM had been deemed completed. She stated that was why the Town had included a condition related to the exercise of reasonable efforts related to Build It Green.

Ms. Guerra clarified that her comment about the "one bite at the apple" rule was that under another provision of the Subdivision Map Act if there was an opportunity to impose a condition and the decision making agency decided not to impose it at the time of project approval, that agency could not come back at another time to impose a new condition or to change a condition. Her concern at that time related to discussions to change Condition A.VTM.16 since Build It Green provisions were now known. She stated that could not be done given that the Map Act was very clear and the opportunity for that condition had passed with the approval of the VTM in 2007.

Ms. Guerra explained that was all qualified with the consideration of the PDP at this time. While recognizing that the green building practices went to the buildings themselves and not to the subdivision necessarily, she stated there had been discussions of landscaping, storm drainage and issues related to integrated pest management. She emphasized that all those issues had come up with the discussion of the GDP and the VTM in 2007, and the Planning Commission had decided which things needed to be reflected in the approvals, which had precipitated the comment that the Commission could not keep adding conditions through the VTM. With the PDP, she stated that colors, materials, exterior elevations and the size guidance could be considered.

Ms. Guerra added that the applicant had addressed storm runoff, the detention system and the like which had to be addressed as part of the 401 permit certification through the Regional Water Quality Control Board. The issue related to integrated pest management had been a request when the golf course had been part of the project. The golf course was no longer part of the project and had been eliminated in huge part to eliminate any concerns about integrated pest management. She added that the landscaping would comply with both the Palos Colorados and the Town of Moraga landscaping guidelines She emphasized that more than 400 acres of open space was now being preserved for wildlife habitat and there was no opportunity to apply pesticides to that open space area.

Ms. Guerra reported that the runoff, catchment systems, and permeable roads would have to comply with C-3 Stormwater regulations, a requirement of the conditions of approval. The PDP included green building guidelines. She referred to a memorandum submitted to the Commission which had addressed passive solar heating systems and heating and cooling systems.

Speaking to the comment related to the size of the homes, Ms. Guerra reported that the 1999 Settlement agreement established houses generally in the range of 2,800 square feet to 4,500 square feet. As to homes in excess of 5,000 square feet, she explained that the GDP included conditions that specifically addressed the fact that there could be larger houses on the larger lots of 20,000 square feet or more. She referred to a diagram to identify which of the lots would apply in that case.

Ms. Guerra added in that same condition, A.VTM.12, secondary living units may provide a maximum of 750 square feet of living area. The plans included in the plan prototypes had incorporated the secondary living units into guest suite spaces to avoid the appearance of a separate unit. Thirty units had been proposed to address the Town's request for the incorporation of secondary units in order to satisfy the VTM conditions of approval.

With respect to the additional housing units of 5,000 square feet and whether or not the square footage of secondary units would be in addition to that area, Ms. Guerra stated that would fit within the Settlement Agreement given the language in the agreement that generally house sizes will range from 2,800 to 4,500 square feet and it had identified lots of 20,000 square feet or more when larger homes were allowed if all the setbacks and other regulations would be met. In addition, all of the traffic and visual impacts had been addressed as part of the EIR.

Ms. Guerra further explained that since the Town currently did not limit the size of homes, it would be inconsistent with the VTM and the Subdivision Map Act restrictions on imposing new requirements to the project to do so at this time.

Further with respect to the secondary units, Ms. Guerra explained it was not an issue of the applicant not wanting the secondary units, she stated that the applicant was attempting to accommodate the Town's request. The applicant had made space available for secondary units in the eight prototype plans to accommodate secondary units should the Town decide to approve them as part of the plan prototypes.

Speaking to air quality concerns, Ms. Guerra stated that all the issues related to earth moving equipment, traffic impacts associated with construction vehicles, diesel equipment and the like had been addressed in the Addendum to the EIR and the EIR in terms of mitigation measures for air quality impacts during construction. With respect to landscaping and storm water runoff, those issues had been addressed through the conditions of approval through stormwater management requirements, through the 401 permit certification, and through the C-3 stormwater requirements.

With respect to native planting, Mr. Raven identified a significant palette of native plants incorporated into the project to maintain the character and rural quality of the overall site. Fire retardant and deer resistant plants had also been included in the project consistent with the Town's Design Guidelines and in the landscaping requirements. He added that any noxious plants or plants considered to be weeds would be prohibited consistent with the Design Guidelines.

Ms. Guerra stated with respect to green building and energy sustainability that the Build It Green Program had been used as the template in the design of the homes with the intent to incorporate green building practices and energy sustainability requirements into the design of the homes.

PUBLIC HEARING CLOSED

Commissioner Whitley asked the Commission and the DRB to take careful note of the applicant's comments. He stated there were certain items that had been raised that the applicant pointed out that the Commission was not as diligent in passing some of the requirements and some of the conditions in its prior actions. He emphasized that the Commission had missed an opportunity. He suggested that the Town had lost something in Palos Colorados. He encouraged the DRB and the Planning Commission to give the specific process the highest of due diligence and the highest of scrutiny. Any concerns should be addressed now. He added that the Commission and the DRB should not miss another opportunity to place conditions on the project that might be missed in the future.

Commissioner Hays asked for a clarification of green building practices and whether or not there were other areas where the Commission might still have an opportunity for change.

Ms. Salamack referred to the language of Condition A.VTM.16 "To conserve natural resources, increase energy efficiency, and improve indoor air quality, the Applicant or its successor shall use reasonable efforts as determined by the Town to employ "Green Building" practices in the design and construction of the Project." She stated that the condition had not been changed but had indicated how it would be implemented moving forward.

Mr. Atencio explained that the PDP was a discretionary approval and the Town could deny the PDP or could impose conditions. He stated that the areas in which conditions could be imposed by the Town related to the three-stage Planned Development process, a winnowing process starting with the Precise Development Plan (PDP), the more specific General Development Plan (GDP), and the much more detailed Precise Development Plan (PDP). Without a settlement agreement or any other issues, he explained that at the PDP stage the focus should be on those things that had been submitted including the functional use areas, circulation and their relationship, preliminary building plans, floor plans and the other things that were part of the PDP. He added that the Town could not, for instance, request a reduction in the size of the development.

Mr. Atencio advised that there had been significant litigation involved with the project, a Settlement Agreement and a 1999 Settlement Agreement, which preserved the Town's discretion through the GDP and PDP processes, although the Town could not do something that was inconsistent with the approved project as it existed. He reported that those things that would not be substantially consistent would be a change in the number of allowed units, a change in the approximate size of the homes between 2,800 and 4,500 square feet in area, and the concepts of vesting from the VTM.

Mr. Atencio added that the VTM through the Subdivision Map Act locked into place the standards as they existed at the time the application for the VTM had been deemed complete. At that point, the conditions imposed would also be locked in and the Town could not change those conditions. He added that what had also been locked in was the Town's three-stage development process which had the ability to look at things that had not previously been addressed but which were related to the information submitted at the PDP stage, particularly some of the design questions.

In terms of the specific questions raised with respect to size limit, the affordable housing component and the potential green building requirements, Mr. Atencio explained that having sizes larger than what was allowed in the Settlement Agreement was not a violation of the Settlement Agreement since that section of the Settlement Agreement was a limitation on the Town's discretion to require something different. He therefore did not see that a 5,000 square foot home or larger would violate the Settlement Agreement.

With respect to the imposition of an affordable housing obligation that had not previously been discussed, Mr. Atencio suggested that did not appear to be tied to the PDP stage and would be a difficult thing to justify.

Speaking to the green building requirements, Mr. Atencio stated that there was a VTM condition that addressed green building issues. Referring to A.VTM.16 he stated the standard stipulated was flexible and was the approach the Town had decided to take at the VTM stage. He added to attempt to lock in a Green Building Ordinance particular standard that had been adopted months later appeared to be difficult to justify.

Mr. Atencio commented that if there was something about the homes that had only been discovered at the PDP stage or was only appropriate to address at the PDP stage, he stated it might be justified although in the absence of a specific issue it would be hard to say.

Commissioner Whitley spoke to the range of housing sizes in the 1999 Settlement Agreement and asked Mr. Atencio to verify the language in the Settlement Agreement.

Mr. Atencio quoted from the Settlement Agreement: "Examples of modification for conditions that would not meet substantial compliance with the Palos Colorados maps, the Palos Colorados [approval] resolutions, and that exceed the discretion and authority of the Town of Moraga include but are not limited to the following:" He stated that the second of those items listed was :"Not allowing for house sizes ranging from approximately 2,800 square feet to 4,500 square feet plus three-car garages on flat-padded lots except where such a house size or flat pad on a particular lot is not physically feasible given the topographic constraints of that lot."

Mr. Atencio verified that the square footage for the homes would not include the garage and the garage square footage would be in addition to. He added for the Town to not allow that would be exceeding its discretion. The Town could allow something else.

Commissioner Daniels asked about the 5,000 square foot requirement to avoid the loss of revenue from the development to the Town.

Ms. Salamack referred to Condition A.VTM.2 and explained that the CDP for the project included a golf course. The GDP approved by the Town did not include a golf course. The Town needed to make findings that the non-golf course project was also consistent with the Town's General Plan. In order to maintain consistency with the Town of Moraga General Plan, the applicant needed to pay a sum to the Town. Included in the payments to be made to the Town was a third installment.

Ms. Salamack quoted that condition, in part, where "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."

Ms. Salamack stated that the Town was not obligated to approve residences in excess of 5,000 square feet but if it did not the applicant would not be obligated to pay the $500,000. She clarified that condition had resulted from long-time discussions with the Town of Moraga and the City of Lafayette in working through the issues pertaining to a non-golf course project.

In response to DRB Chair Kuckuk as to whether or not the 5,000 square foot homes would include the garage square footage, Ms. Salamack explained that for those lots in excess of 20,000 square feet the Town did not have an FAR limitation. She did not know if consideration had been given as to whether or not the garages had been included. She stated that the condition was not that specific. With no FAR limitation for the lots of that size, in order to the Town to receive that additional $500,000 the Town would need to allow residences in excess of 5,000 square feet.

As to the Town's current policy, Ms. Salamack stated that the square footage of garages were counted in the FAR calculation, although in the material presented as part of the staff report she had identified a modified FAR since the Settlement Agreement differentiated the square footage of the residence from the size of the garage.

When asked to clarify the modified approach, Ms. Salamack explained that in the table she had created in front of the fit matrix had included a determination of whether the square footage of the residence exceeded the floor area for the lot, which number had been compared with the number for the residence excluding the garage. If the number for the size of the residence was less than what was allowed on that lot, it was determined to fit the lot. If including the square footage of the garage, she suggested it may have exceeded the FAR calculation. That had been done because the Settlement Agreement talked about house sizes of a particular size and separated the square footage of the garage.

Ms. Salamack explained that she called that size guidance as opposed to size requirements since that would allow the Town the ability to look at the size of the residences but not require the application of the FAR because of the Planned Development. She added that the language for the FAR, when applied, allowed the Town to specify the size of the dwelling unit for the lot as part of a subdivision. If that was done, the FAR was not calculated.

Senior Planner Chamberlain explained that had been done with the 68 lots in the Moraga Country Club which all had specified lot sizes and where the FAR had not been used as guidance in that case. He noted the concept of a new subdivision where mansionization was not a concern and for which the FAR had been developed to prevent. In this case, there was a variation of house sizes.

Chairperson Goglia asked if there would be a limit to the size of the custom homes to be built, reported by Ms. Salamack that if there was a custom residence on a lot of more than 20,000 square feet, it would be the same as for any 20,000 square foot or greater lot in the Town. There was no numeric limit. The size would be limited by the DRB's discretion. She added that the DRB had the authority to approve a larger house but was not required to approve a larger house on a lot of that size.

In further response to the Chair, Ms. Salamack referred to the summary and explained that residences ranging from 2,800 to 4,500 square feet on lots less than 20,000 square feet were allowed on 85 percent of the lots. For nine of the lots, staff recommended custom residences. She suggested that all of the residences on lots less than 20,000 square feet could be within the size guidance of 2,800 to 4,500 square feet, exclusive of the garage. When asked, she verified that plans within the 2,800 to 4,500 square foot range could be constructed on any of the lots. She also explained that if the Commission approved all of the prototypes, homes in excess of 5,000 square feet would be approved.

Commissioner Daniels verified that if the Town did not approve the homes in excess of 5,000 square feet, the Town would lose $500,000 from the third installment payment from Palos Colorados. She suggested that approving something in excess of 5,000 square feet could result in a 10,000 or 20,000 square foot home.

Ms. Salamack explained that the applicant was applying for the eight prototypes at this time. The Commission did not have to approve all of the prototypes in excess of 5,000 square feet in order for the Town to receive the funds. She suggested that the Town only needed to approve one prototype in excess of 5,000 square feet but would need to approve it for all of the lots.

Commissioner Daniels clarified that the prototypes were not custom houses. She asked if the applicant were to ask the DRB to build a 15,000 square foot home and the DRB rejected that request whether or not the Town would lose the $500,000.

Ms. Salamack advised that the condition would only apply at the PDP stage. The custom residences were not part of the PDP.

Commissioner Whitley questioned whether or not the Commission could adopt a limitation that residences shall not be more than 5,000 square feet in area.

Since there were certain lots that must be custom and others that could be custom lots, Ms. Salamack explained that the PDP related only to the lots eligible to be semi-custom lots. There were 92 potentially semi-custom lots. Of those, the ones that were more than 20,000 square feet in area, 40 in number, would need to allow at least one prototype that was more than 5,000 square feet in area in order for the Town to satisfy the condition related to the third installment.

Commissioner Daniels verified that Plans 5, 6 and 7 were all greater than 5,000 square feet in size.

Commissioner Whitley suggested that the Commission could find that some of the models were out of character with the Town because they were too large and could request that new plans be drawn up with one closer to 5,000 square feet, or closer than the 2,800 to 4,500 square feet suggested by the Settlement Agreement.

Mr. Atencio advised that the Commission's action needed to be consistent with the spirit of the third installment. To be consistent, he stated there had to be a realistic opportunity for the developer to develop homes in excess of 5,000 square feet in the applicable lots. He added it did not have to be infinite and homes closer to 5,000 square feet could be preferable. He did not recommend putting the developer in a position where homes in excess of 5,000 square feet could not be developed.

DRB Chair Kuckuk asked for verification that the discussion related to habitable living space, to which Ms. Salamack explained that the language referred to primary residences in excess of 5,000 square feet. In the Settlement Agreement the square footage of the residences had been separated from the square footage of the garage. With a 4,500 square foot residence and a three-car garage, the garage would be over 600 square feet, putting that unit over the 5,000 square foot level. She suggested that the thinking at the time the language had been drafted was that the residence itself would be 5,000 square feet.

Commissioner Hays asked about the analysis of the Palos Colorados Design Guidelines and the applicability with the Town's Design Guidelines. He asked how streetlights, streetlight location, design of streetlights, the pocket park, the playground equipment, the plantings on Moraga Road in the scenic corridor, the base of the bridge, the height of the bridge, the detail on the bridge, the plantings or the colors had been addressed He asked if this was the time to address those issues.

In response, Ms. Salamack stated that the Palos Colorados Design Guidelines covered the applicant's process internal to the project separate from the Town's Design Guidelines. She stated that the applicant's guidelines would have to be consistent with the Town's guidelines. The Town was not bound by the applicant's guidelines. She reiterated that Chapter 3 of the Palos Colorados Design Guidelines related to landscaping had been attached to the resolution. The recommendation was that the applicant would return to staff with a landscape plan prior to the building permit consistent with the design guidelines given that the landscape for the lot would depend on the orientation for the lot. As a result, there could not be a prototype landscape design for the site.

Ms. Salamack urged the joint body that if there was something in Section 3 of the Palos Colorados Design Guidelines that were inappropriate from a landscape perspective, they should be refined.

Commissioner Hays spoke more to streetscape, street trees and their size and type, the sidewalks, the park and the material to be used in the park, the water usage calculations and whether or not the public easement areas were being detailed out.

Ms. Salamack reported that the Park and Recreation Commission would look at the pocket park. The DRB had reviewed the pocket park, the fencing and the entry. and had made a recommendation to the Commission based on a plan that had been submitted to them during the summer of 2008.

Commissioner Hays commented that he could not make an informed decision based on the inadequate landscaping plan that had been submitted to the Commission. He asked if there was another set of plans. As a licensed landscape contractor he had been used to providing information related to the trees proposed, the size of the trees, the type of streetlight, the head of the streetlight and where it would be placed, the type of bollard to be used, the mailbox to be used including, type, manufacturer and color. He suggested that the plans submitted were insufficiently detailed.

Boardmember Socolich affirmed that the DRB had reviewed detailed plans for the entry and the park that had been submitted by the applicant.

Ms. Salamack advised that the PDP plans required by the Moraga Municipal Code needed to include the site plan showing buildings, functional use areas, circulation and their relationship, preliminary building plans including floor plans and exterior elevations, landscaping plans, and engineering plans including site grading, street improvement, drainage and public utility extensions. She reported that all those plans had been submitted. It had not been specified that the streetlights, as an example, were to be submitted to the Town for approval.

There was a condition of approval that streetlights were not to shine into the open space areas although there was no requirement that a streetlight plan or a mailbox plan be submitted to the Town as part of the PDP approval.

Mr. Chamberlain described the streetlight detail that had been approved by the Town in the past, stated that there was a streetlight standard that addressed such things as spacing and dimness for public and private projects, as part of the public improvement plans. He added that the mailboxes were generally considered on a house-by-house review.

Commissioner Hays spoke to cities that he had worked with in the past and where detailed plans had to be submitted. He suggested, for instance, that there might need to be a condition to require 24-inch box size planting material along the scenic corridor. He urged attention to the landscaping proposed in the public right-of-way, in the park, along Moraga Road and at the entry..

Ms. Salamack asked the Commission to identify those areas where greater specificity was required. Where there was no established standard, she stated that staff could report back to the Commission.

When asked about details on the trails, Ms. Salamack reported that the trails were required to be constructed to East Bay Regional Park District (EBRPD) standards. She explained that certain things had been included in the GDP, which would remain. She explained that the conditions of approval did not restate everything that was part of the various applications for the project over time. If the Commission had an interest in some area of the project, she could provide that information. If the Commission was not satisfied with that information, it might be possible for the Commission to make a recommendation for an added condition.

Boardmember Socolich verified that the Palos Colorados and Town Design Guidelines were compatible although the Town's Design Guidelines would supersede the applicant's design guidelines. With respect to the eight prototypes, he verified that the plans may or may not be used and that the entire project could be comprised of custom homes. He also verified that the prototypes, if approved at this time, would not require further Town review and approval. He understood that landscaping plans for each of the homes would require Town approval.

DRB Chair Kuckuk verified her understanding that buyers would be required to install their own landscaping on the semi-custom lots and that any landscaping installed would still need to meet the Town's requirements.

Ms. Salamack reported that as currently drafted the landscape designs for semi-custom residences would need to be approved by staff prior to the issuance of a building permit. She clarified that the applicant's design guidelines would be used by the applicant while the Town would make its design decisions based on its guidelines and the findings for design review specified in the MMC. She reiterated that the Town had attached one provision from the Palos Colorados Design Guidelines, Section 3, to the Town's resolution related to landscaping since that could not be determined in advance. She added that much in the Palos Colorados Design Guidelines was more than the Town would review in its design review process, such as requiring homeowners to submit their plans to an architectural review board of the Homeowner's Association (HOA).

Ms. Salamack noted that she had looked at the Palos Colorados Design Guidelines as an indication of the applicant's intended process. She commented that if there were problems with those guidelines and homeowners would come to the Town with a plan that would routinely be disapproved given that they were contrary to the Town's approach, the applicant would be advised that following their guidelines would not result in approvals. Since she had attached Section 3 of those guidelines, she explained that the Commission and the DRB could indicate a concern of inappropriateness in those guidelines and revise the language in that section, such as for plant materials. She stated that the Town was not going to look to the other sections in the guidelines to see that the applicant followed the process prescribed by the HOA.

Commissioner Hays referred to the applicant's guidelines where the Town would be approving that fencing as more bittersweet chocolate, that there be 8-foot high lamps in yards, semi-custom homes and landscaping plans.

Commissioner Whitley asked if the Palos Colorados Design Guidelines were accepted as part of the PDP whether or not the DRB in a later review of a custom home would be forced to accept those guidelines.

Ms. Salamack did not recommend that the entire Palos Colorados Design Guidelines be approved in total. She recommended only that Section 3 of those guidelines be accepted.

Chairperson Goglia noted her understanding that the specifics in the applicant's guidelines related more to the custom homes.

Ms. Salamack reiterated that the guidelines would regulate the applicant's process and not the Town's. The applicant was indicating to its homebuyers what it would like to see in the project. She clarified that the guidelines did not govern the Town's process. To the extent that the guidelines were incorporated into the Town's approval they would be useful and informational but would not limit the Town's future discretion.

In response to Commissioner Hays, Ms. Salamack reiterated that the landscaping plans would have to be approved by staff. If that was not acceptable, she stated that the Commission could direct that the landscape plans be approved by the DRB. She stated that staff typically approved landscape plans for new residences and that would not change.

Mr. Mendelmann advised that if there was a conflict between the guidelines as prepared or the Town's guidelines that should be changed before any approval. If adopted as the standards for the homes, he stated they would be the standards for the homes. He clarified that the Commission was not obligated to adopt the Palos Colorados Design Guidelines in total. Ms. Salamack had recommended the adoption of Section 3 only, which could be modified by the Commission.

DRB Chair Kuckuk commented that after her review of the individual plans she had no issue with the plans with the exception of Plan 7, which had large square footage. She did not see the need for such a massive house on a semi-custom space. She commended Planning staff for its excellent job in plotting the plans and making it understandable. She was not ready to make any recommendation as to where to locate the individual plans on any given lot and conflicts between any given lot.

Boardmember Glover suggested that the detail offered was no less than what would be offered for any single house and that such things as lighting would be covered by boilerplate conditions. He suggested that the bodies could add the boilerplate conditions consistent with what would be done for any single home.

Boardmember Murray recognized the variety in the plans to allow the applicant to present to potential homebuyers. He had no problem with the size of the larger plans and characterized the plans as well done.

DRB Chair Kuckuk acknowledged the applicant's desire to be able to build semi-custom homes without requiring the design review of each individual home. She understood and supported the business pace in that respect, although she emphasized that there was a great deal of information and the DRB had only six days to digest the material for a project that had been in process for 23 years. As such, she suggested that the DRB was not ready to make recommendations at this time.

Boardmember Kline sought clarification of how the landscaping around the individual properties would be approved for those lots that had pre-approved semi-custom lots.

Ms. Salamack advised that she had included a condition of approval that the landscape plans would be approved by staff for each site consistent with Section 3 of the Palos Colorados Design Guidelines. so that everyone would know the