

**TOWN OF MORAGA PLANNING COMMISSION  
SPECIAL MEETING AGENDA  
Tuesday, September 7, 2010  
7:30 p.m.**

**Joaquin Moraga Intermediate School Auditorium  
1010 Camino Pablo, Moraga California 94556**

*All documents relating to the following agenda items are available for public review in the Planning Department of the Town of Moraga at 329 Rheem Blvd. between the hours of 9 a.m. to noon, Monday, Tuesday and Thursday (other times by appointment). Staff reports will normally be available on the Monday afternoon one week preceding the meeting. It is recommended that you contact the Planning Department at 925-888-7040 for availability.*

**I. CALL TO ORDER AND ROLL CALL**

**Planning Commission**

- A. Driver, Levenfeld, Obsitnik, Richards, Socolich, Whitley, Wykle
- B. Conflict of Interest

**II. ADOPTION OF MEETING AGENDA**

**III. ANNOUNCEMENTS**

**IV. PUBLIC COMMENTS**

*This part of the agenda is to receive public comments on matters that are not on this agenda. Comments received will not be acted upon at this meeting and may be referred to a subcommittee for response. Comments should not exceed three minutes.*

**V. ADOPTION OF THE CONSENT CALENDAR**

*Items on the Consent Calendar are believed by staff to be non-controversial. Staff believes that the proposed action is consistent with the commission's instructions. A single motion may adopt all items on the Consent Calendar. If any commissioner or member of the public questions any item, it should be removed from the Consent Calendar and placed in part IX of the Regular Agenda.*

- A. August 23, 2010 Minutes

**VI. PUBLIC HEARINGS – None**

**VII. PUBLIC MEETING**

*Opening remarks by an applicant shall not exceed ten minutes. Comments by others shall not exceed three minutes. The purpose of a public hearing is to supply the Planning Commission with information that it cannot otherwise obtain. Because of the length of time that the Planning Commission meetings frequently consume, please limit testimony and presentation to the supplying of factual information. In fairness to the Commission and others in attendance, please avoid redundant, superfluous or otherwise inappropriate questions or testimony. Thank you. Moraga Planning Commission.*

- A. **UP 10-10 Dollar Tree (applicant), Kimco (property owner) 542 Center Street, Rheem Valley Shopping Center:** Consideration of a permitted use application by Dollar Tree to operate a retail variety store in the Rheem Valley Shopping Center. The new business is proposed to be located in the existing vacant space that was previously occupied by Blockbuster, Lori's Perfect Tan and The Beauty Source. (Zoning: Community Commercial – CEQA status: Categorical Exempt per CEQA Section 15301, Existing Facilities) (Continued from the August 23, 2010 Planning Commission meeting)
- B. **GRADING PERMIT and HDP 01-10 – Mr. and Mrs. Robert White (Owner/Applicant), 32 Buckingham Drive:** Application for a hillside development permit and grading permit to grade a hillside with a slope greater than 25% including an approximately 50 cubic yard excavation for an in-ground storage building and related improvements. In accordance with Moraga Municipal Code Section 14.16.020, the Planning Commission shall make a recommendation to the Town

Council regarding the proposed application. The work that is the subject of this application including the hillside excavation and partial storage room construction was commenced without the benefit of any Town approvals. The Town will evaluate the proposed application as if the work had not been started. This application will receive no special consideration because it was started without permits. The property is zoned 3 dwelling units per acre. APN: 256-203-012. (Continued from the August 2, 2010 Planning Commission meeting)

**VIII. ROUTINE & OTHER MATTERS - None**

*The following items do not require a public hearing, although the Chair or staff will indicate why each item is on the agenda. Public participation will be limited and the Commission may decide to reschedule the item as a public hearing. Discussion of administrative matters, such as adoption of findings, may be limited to the Planning Commission.*

**IX. COMMUNICATIONS – None**

**X. REPORTS**

**A. Planning Commission**

1. Jim Obsitnik, Chair
2. Russell Driver, Vice Chair
3. Stacia Levenfeld
4. Dick Socolich
5. Bruce Whitley
6. Tom Richards
7. Roger Wykle

**B. Staff**

1. Update on Town Council actions and future agenda items.

**XII. ADJOURNMENT**

To a regular meeting of the Planning Commission on **Monday, September 20, 2010** at 7:30 P.M. at the Moraga Library Meeting Room, 1500 St. Mary's Road, Moraga, California. Notices of Planning Commission meetings are posted at 2100 Donald Drive, the Moraga Commons, and the Moraga Public Library.

**NOTICE: If you challenge a town's zoning, planning or other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at or prior, to the public hearing. Judging review of any town administrative decision may be had only if petition is filed with the court not later than the 90<sup>th</sup> day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period for litigation, in certain cases 30 days following the date of final decision.**

The Town of Moraga will provide special assistance for disabled citizens upon at least 24 hours advance notice to the Planning Department (888-7040). If you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to disabled.

Copies of all staff reports and documents subject to disclosure that relate to each item of business referred to on the agenda are available for public inspection the 10<sup>th</sup> day before each regularly scheduled Planning Commission meeting at the Planning Department, located at 329 Rheem Boulevard, Moraga, CA. Any documents subject to disclosure that are provided to all, or a majority of all, of the members of the Town Council regarding any item on this agenda after the agenda has been distributed will also be made available for inspection at 329 Rheem Boulevard, Moraga, CA during regular business hours.

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

Joaquin Moraga Intermediate School Auditorium  
1010 Camino Pablo  
Moraga, CA 94556

August 23, 2010

7:30 P.M.

**MINUTES**

**I. CALL TO ORDER**

Chairman Obsitnik called the Special Meeting of the Planning Commission to order at 7:30 P.M.

**ROLL CALL**

Present: Commissioners Levenfeld, Richards, Socolich, Whitley, Wykle,  
Chairman Obsitnik  
Absent: Commissioner Driver  
Staff: Richard Chamberlain, Senior Planner

**B. Conflict of Interest**

There was no reported conflict of interest.

**II. ADOPTION OF MEETING AGENDA**

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

**III. ANNOUNCEMENTS**

There were no announcements.

**IV. PUBLIC COMMENTS**

John Fryer, 80 Goodfellow Drive, Moraga, presented written comments to the Planning Commission and read into the record Section 14.04.031, Subsections (a) and (c) of the Town of Moraga's Grading Ordinance as it related to the removal of dirt. He asked that the Planning Commission review the ordinance and make adjustments given that any landscaping in the front or rear yards of private properties would likely be in violation of the stated Grading Ordinance. He also asked that the Planning Commission consider a list of at least three engineers who could provide peer review given that the Town only had one peer review agency.

**V. ADOPTION OF THE CONSENT CALENDAR**

**A. August 2, 2010**

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

Ayes: Commissioners Levenfeld, Richards, Socolich, Whitley, Wykle  
Noes: None  
Abstain: None  
Absent: Commissioner Driver, Chairman Obsitnik  
[Chairman Obsitnik recused himself from the minutes due to his absence at that meeting]

## VI. PUBLIC HEARINGS

A. **UP 10-10 - Dollar Tree (Applicant), Kimco (Property Owner) 542 Center Street, Rheem Valley Shopping Center:** Consideration of a permitted use application by Dollar Tree to operate a retail variety store in the Rheem Valley Shopping Center. The new business is proposed to be located in the existing vacant space that was previously occupied by Blockbuster, Lori's Perfect Tan and The Beauty Source. (Zoning: Community Commercial - CEQA status: Categorically Exempt per California Environmental Quality Act (CEQA) Section 15301, Existing Facilities).

Senior Planner Richard Chamberlain presented the staff report for consideration of a permitted use application by Dollar Tree to operate a retail variety store in the Rheem Valley Shopping Center. The application is for a 9,088 square foot retail variety store in the Community Commercial land use district in the Rheem Valley Shopping Center. He noted that retail businesses were a "permitted" use in the Community Commercial district; however, under Moraga Municipal Code (MMC) Section 8.36.02.A.1, the Planning Commission must consider eight findings for approval of the use.

Identifying those eight findings, Mr. Chamberlain referred to Finding 1, that the use would not generate significant amounts of pedestrian and vehicular traffic that would foster the flow of traffic between the proposed use and uses across abutting streets where the retail use would be located in three existing vacant spaces in the Rheem Center, previously occupied by Blockbuster, Lori's Perfect Tan and The Beauty Source. He reported that the shopping center had a total of 1,065 parking spaces. The number of parking spaces required for the Dollar Tree store would be 37 based on one space for each 250 square feet of floor area. There would be no change in the total number of required parking spaces from the previous uses. There were no uses across abutting streets that would be a significant source of pedestrian or vehicular traffic for the proposed business.

With respect to Finding 2, Mr. Chamberlain stated that the use was compatible in land use and traffic characteristics and design with other uses directly affected by the proposed use. The proposed use was not incompatible in terms of land use characteristics with other uses directly affected by the proposed use. The Dollar Tree store would open and close for business at about the same time as other businesses in the shopping center and the peak traffic generation was not expected to change significantly. The proposed use would only require interior tenant improvements and a new sign so the design of the store would remain compatible with the general appearance of the center.

As to Finding 3, Mr. Chamberlain advised that any adverse characteristics of the use could be mitigated to the extent necessary to make the use compatible with neighboring uses. No adverse characteristics with neighboring uses had been identified by staff. He stated that if testimony during the public hearing revealed an adverse impact with a neighboring use approval of the application could be conditioned with a mitigation measure to eliminate any adverse characteristic.

Mr. Chamberlain stated with respect to Finding 4 that the use would be within a building or space enclosed by approved fencing, landscaping or other buildings. The proposed use would be entirely within the enclosed building. The application did not request any outdoor display of merchandise.

For Finding 5, the use would not generate noise levels in excess of fifty-five (55) dba during the daytime hours, or fifty (50) dba during the nighttime hours. The Dollar Tree store would not have any new mechanical equipment that would generate noise in excess of the established standard.

Referencing Finding 6, Mr. Chamberlain explained that the use would not create an excessive public economic problem. The use would contribute to the local economy by providing a source of full-time employment for one store manager and two assistant store managers as well as 23 part-time employees. The use would contribute to the local tax base through the payment of sales tax. The use would contribute to the economic viability of the shopping center through the rental of three existing vacant spaces.

Finding 7 required that the use not generate glare, electrical interference, odor, vibration, brilliant light, dust, smoke, fumes or other characteristics that were otherwise offensive to the senses to the extent that there was interference with the development or enjoyment of other property in the vicinity. The operation of the Dollar Tree store would not involve cooking, construction or the use of significant mechanical equipment or any other activity that would result in characteristics that were offensive to the senses.

Mr. Chamberlain stated that Finding 8 required that the hours of operation not foster conditions detrimental to the neighborhood or town.

The hours of operation, Monday through Saturday 9:00 A.M. to 9:00 P.M., and Sunday 9:00 A.M. to 8:00 P.M., were similar to the hours of operation for other businesses in the shopping center and would not be detrimental to the neighborhood or town.

Mr. Chamberlain identified the fiscal impact of the project noting that the local sales tax in California was equal to one percent of the taxable sales in a jurisdiction. According to the Moraga Revenue Enhancement Committee final report, sales tax was 18 percent of the General Fund in 2000 and was now only 10 percent. The sales tax revenues in the Town had been declining in the last couple of years because of the slowdown in the economy and the increased retail vacancies. A substantial portion of the merchandise sold at Dollar Tree would be subject to sales tax. He stated it would be reasonable to assume that the Town would see an increase in sales tax revenue over the three vacant stores.

Mr. Chamberlain commented that Moraga residents seeking value and convenience could reasonably be expected to shop at Dollar Tree. Dollar Tree carried items such as gift bags, craft supplies, party supplies, sundries and household items that were all used by typical families. Dollar Tree was a single price point retailer where all merchandise was sold for one dollar, or in some cases such as greeting cards, at two for one dollar. Dollar Tree appealed to consumers who wanted value but did not need the large quantities sold at big box stores.

Mr. Chamberlain stated that in staff's opinion it was unlikely that shoppers from outside the Lamorinda area would make a trip to Moraga just to shop at the Dollar Tree store because many Dollar Tree stores already existed closer to where consumers lived or worked. There were currently 25 Dollar Tree locations within 25 miles of the Town of Moraga including higher income areas such as Sausalito and Belmont. There was, however, no Dollar Tree stores in the Lamorinda area, which was the primary and secondary customer base for the Rheem Valley Shopping Center.

Mr. Chamberlain reported that two e-mails from Moraga residents had been received just prior to the Planning Commission meeting; one in support of the application and the other in opposition to another discount/box retail store. Copies of all e-mails and written communications had been provided to the Planning Commission.

Mr. Chamberlain added that staff had prepared a draft resolution for approval of the Dollar Tree in the Rheem Valley Shopping Center and recommended adoption of the draft resolution with revisions, if necessary.

In response to Commissioner Socolich, Mr. Chamberlain affirmed that the application complied with the permitted use requirements of the Town of Moraga.

Commissioner Wykle inquired of the estimated sales taxes that would be generated by the permitted use, reported by Mr. Chamberlain that for the 2010 year approximately \$600,000 in overall tax revenue from businesses in Moraga had been forecast but he was uncertain of the actual percentage from the permitted use.

Linda Duncan, Real Estate Manager representing Dollar Tree stores for the Northern California and Northwest Nevada Regions, outlined her background with Dollar Tree stores. She explained that Dollar Tree was the largest single price point variety store in the country with over 3,925 stores in 48 states as of the end of July 2010. Dollar Tree stores were company owned, were not franchised, and no one was allowed to use the name. The stores sold a variety of items, all for one dollar or less, were considered a general retail tenant and would not change the character of the past and present uses of the Rheem Valley Shopping Center.

Ms. Duncan explained that Dollar Tree stores conducted surveys before entering retail markets and through those surveys had determined a need in the Lamorinda area. She acknowledged concerns that had been expressed through correspondence about Dollar Tree stores opening in poor neighborhoods. She noted that Dollar Tree stores was a concept accepted by all economic levels with some stores in high-income neighborhoods throughout the Bay Area and the country where they had been welcomed by the communities where located. The typical Dollar Tree customer did not travel more than three miles, typically on the way to or from work, home and shopping. People from outside Moraga would not shop at the Dollar Tree. Customers would likely be those already patronizing the center.

Ms. Duncan understood that Moraga residents would like to see a grocery store in the Rheem Valley Shopping Center which had also been desirous by Dollar Tree in a daily needs center. While the Rheem Valley Shopping Center did not have a grocery store and while that would reduce the overall revenue for Dollar Tree, it had not deterred Dollar Tree from opening in the center. In fact, she noted that Dollar Tree oftentimes partnered with Fresh and Easy Grocery Stores to open in locations and had done so in many of their sites.

Ms. Duncan reiterated that Dollar Tree did not just open in low-income neighborhoods and had opened in higher-income neighborhoods such as Roseville, Sausalito and Belmont. She commented that California had a higher cost of living and incomes and for that reason a \$40,000 average income may not support a Dollar Tree.

In response to concerns that Dollar Tree was a junk store, Ms. Duncan noted that many of their items were manufactured specifically for the Dollar Tree with agreements with many manufactures in order to be able to sell items for one dollar. Close outs were not the focus of the business. She acknowledged that Dollar Tree stores were not high-rent payers and must pay lower rents in order to pass along any savings to their consumers. That was the reason Dollar Tree stores were rarely seen in first generation buildings, but in second through fourth generation buildings. She suggested that a true prototype Dollar Tree store would not be affordable but a neighborhood would be proud to have it. Dollar Tree would bring new interior improvements to the Moraga location and would spend a great deal of money to conduct those improvements while passing the cost savings on to the consumer.

Ms. Duncan also commented on her experience with Dollar Tree stores in other communities in the Bay Area and outside of the Bay Area region where customers were spending money.

Commissioner Levenfeld asked whether or not Dollar Tree stores entered markets with other general retailers, to which Ms. Duncan affirmed that had been done, oftentimes with discounters and other retailers.

Commissioner Whitley asked whether or not the Moraga Dollar Tree would have a refrigeration unit.

Ms. Duncan suggested that there was a good chance the Moraga store would not have a refrigeration unit due to the size of the tenant space.

When asked about the sales taxes that could be generated by the permitted use, Ms. Duncan clarified that every store was different, although based on the size of the proposed Moraga store approximately 10 percent would be edible consumables and the other 90 percent taxable items.

Mr. Chamberlain explained that information had been detailed in the staff report.

Commissioner Wykle recalled that the staff report had mentioned tailoring the provisions in the stores based on the community. He asked of the expectation of the proposed products in the Moraga store.

Ms. Duncan explained that she was not in operations although based on what she had seen, household consumables, housewares and party items would be stressed with little emphasis on food items. The store would open with a prefixed amount of items with sales monitored by a Point of Sale (POS) system to determine what was sold with items ordered accordingly.

Ms. Duncan added that the sales tax revenues had been projected for the store but could not be disclosed publically given Federal Communications Commission (FCC) rules about publicly-run companies.

#### PUBLIC HEARING OPENED

Dale Walwark, Moraga, recognized that economic events could not be controlled and that the Town could not force stores to open in Moraga or guarantee the success of those that did. He referenced a recent survey that had been sent out to the community asking what stores residents would like to see open in Moraga. The preferred stores had not opened in the Town. He commented that several years ago the Mayor and the Town Manager had been unsuccessful in securing a supermarket in the current Home Goods tenant space in the Rheem Valley Shopping Center. While he would like Moraga to appear like a high-end San Francisco, the Town could not tell the property owners of the shopping center to replace one retailer with another, subject to the Town's rules. He understood that the Planning Commission had no choice but to approve the permitted use application.

Mr. Walwark stated he would rather see the Town consider whether or not it could continue as an incorporated municipality where a lot more revenue would be needed. Given that the Town Council was working to engage with the citizens on that issue, he urged the Planning Commission to respond to those outreach efforts.

George Tashkarian, Moraga, commented on his background and experience in retail. He preferred that the Dollar Tree open in the City of Lafayette which was centrally located in the Lamorinda area. He commented on the fact that Moraga had lost supermarkets to its immediate neighbors. He preferred to see more upscale, smaller businesses locate in the Rheem Valley Shopping Center which he suggested could be done based on appropriate rents.

Sal Captain, Joseph Drive, Moraga, expressed concern with the potential increase in vehicular and truck traffic as a result of the Dollar Tree store. He clarified that residents were not arrogant but would like consideration of quality rather than income when locating Dollar Tree stores. He noted that Moraga had a better quality of life than other high-income areas the applicant had referenced.

Holly Lucas Alkali, 128 Devin Drive, Moraga, identified herself as a resident and small business owner in Moraga. She commended the amazing schools in Moraga and the community participation for its local schools. However, she was disappointed with the lack of retail and restaurants in Moraga. She emphasized the success of the local Farmer's Market and while recognizing that Moraga needed more revenue, she questioned why the Town could not support more retail.

While she too liked a good bargain, Ms. Lucas Alkali suggested that a Dollar Tree store in a shopping center that was already dead raised concerns. She commented on the declining real estate values and perception of the type of store that Dollar Tree represented in the Moraga community. She further questioned the sustainability of the proposed store which would sell unrecyclable items that were already available in CVS and Safeway and the potential impacts to existing small businesses that sold similar items. She preferred to see the Town encourage better retail in the Rheem Valley Shopping Center.

Cavin McCarthy, 256 Rheem Boulevard, Moraga, suggested that the application did not meet Finding 6 as identified in the staff report since it could lower property values and impact local schools. She pointed out that the shopping center was already occupied by discounters TJ Maxx and Tuesday Morning. She also noted that the high-end communities that had been referenced where other Dollar Tree stores were located were large communities with industry. Moraga was a cul-de-sac community with no industry.

Cliff Doctorman, 762 Augusta Drive, Moraga, commented that some of the same arguments being raised had occurred when Orchard Supply Hardware (OSH) desired to locate in Moraga. He questioned the elitism attitude in the community and pointed out that CVS Pharmacy sold similar products to those the Dollar Tree would likely sell. He emphasized the number of vacant storefronts in the community which he found to be a greater degradation to the community than the Dollar Tree would ever be. He urged the Planning Commission to follow the Planning staff's recommendation, stand up for the business community, and bring Moraga back into the 21st Century.

Joan Bruzzone, Moraga, identified herself as the owner of the Moraga Center. She too commented on the number of vacant storefronts in both of Moraga's retail centers and the efforts to retain tenants. She spoke to the fact that two of her existing tenants had posted signage advertising sale items which the Town had asked be removed. She questioned whether or not the Town would like to see more vacancies or signage advertising sales. She also commented on the current economic conditions, number of property foreclosures in the Town, and the dire need for sales tax revenues. She pointed out that the Blockbuster tenant space had been vacant for some time and the property owner needed to get a tenant to occupy that space.

Mrs. Bruzzone spoke to the rights of property owners, efforts to retain tenants for vacant spaces in the Town's shopping centers, and the effort over the years to obtain a grocery tenant. Since Moraga was a cul-de-sac community it could not support two supermarkets. There had also been efforts of developers to build homes in Moraga which could patronize local businesses.

Ms. Bruzzone noted that Kimco Realty had difficulty in bringing in tenants that could bring sales tax revenues to the Town. She emphasized that the Town, its people, and businesses were hurting.

George Quintero, owner and manager of the Rheem Valley Pet Shop, an 18-year business owner, expressed his disappointment with Kimco Realty and the proposed Dollar Tree store. While he acknowledged the number of vacancies in the Rheem Valley Shopping Center, he preferred to see a better quality retailer than the Dollar Tree, one which would generate more revenue for the Town, the shopping center, and the neighboring businesses. He suggested that the Dollar Tree store would only sell junk and would not be supported by the local community. He was not confident that the Dollar Tree, if allowed to open, would be viable in the long term. He pointed out that Dollar Tree stores already existed in many local Bay Area communities, were typically patronized by low-income households, and was not something that he would like to see in Moraga. He asked that tradition be preserved in Moraga.

Linda Shulman, 3 Harold Drive, Moraga, described Moraga as a lovely bedroom community with friendly neighbors, wonderful schools, and low crime. She too commented on the economic concerns and suggested it would not make Moraga a better place to allow another discount store in the Rheem Valley Shopping Center.

John Sherbert, Moraga, spoke to the fact that the Rheem Valley Shopping Center had experienced an increase in vacancies over the last five to six years. He recognized that many residents would prefer to see high-end boutique shops in the center, but those uses had not come to the center given the lack of volume to support such businesses. He would like to see the vacancies filled with sales taxes generated to the Town. He recognized that there was no guarantee that the business would succeed in the long term although he would rather see the business open for a year rather than see continued vacancies.

Ceal Murtaugh, 62 Corte Del Caballo, Moraga, suggested that Dollar Tree stores were tacky and not something she would like to see open in Moraga. She suggested it would impact existing businesses and was not the right solution to allow such a business that did not meet the class of the Town of Moraga.

Ken Fisher, Moraga, preferred to see a brew pub in the shopping center which could be patronized by Saint Mary's College students. He suggested that the Rheem Valley Shopping Center was the least attractive of the Town's two shopping centers. He recognized the lack of political support to redevelop the center with housing which would support the retail. He would rather see a better tenant than the Dollar Tree but did not want to continue to see vacant storefronts. Given the lack of alternatives, he urged the Planning Commission to support the application.

Carolyn Whitt, Moraga, advised that she had submitted an e-mail to the Planning Department earlier in the week. She understood that Dollar Tree stores and Dollar stores were different companies and should be clarified. She read into the record the criteria of Dollar Tree stores to enter into a town, much of which she questioned applied to the Rheem Valley Shopping Center and the Town of Moraga. She emphasized the need for another food store in Moraga, and she expressed her hope that the Planning Commission would consider information she had provided on Fresh and Easy as a potential tenant while considering the proposed application.

Alice Frock, a resident of Sanders Ranch, Moraga, stated that she was familiar with the Fair Oaks Dollar Tree store which was located in an upscale neighborhood. She suggested that the store would bring in a lot of foot traffic from the Lamorinda area. She otherwise commented that she knew the architect who had been assigned to design the new store and suggested the store would not be trashy, but wonderful. She also commented on Dollar Tree stores parent company's positive stock suggesting it would be a good store for the community.

Betty Schlagle, 3995 Paseo Grande, Moraga, a 40-year resident, commented on the prior businesses in the shopping centers in Moraga at the time her family had moved to the community, all of which had moved away in the 1970's. Such stores were still needed in the community and she suggested that the Dollar Tree would make an attempt to bring some of those things to Moraga. She commented that the City of Lafayette did not have adequate parking and the Dollar Tree store would be suitable for the Rheem Valley Shopping Center which had the appropriate parking to accommodate customers.

Lynn Davis, 48 Corliss Drive, Moraga, expressed her opposition to the opening of the Dollar Tree store in Moraga in an already struggling center which was anchored by discount retailers. She suggested that a fourth discount retailer in the Rheem Valley Shopping Center would negatively impact existing tenants and residential property values and would be a significant turning point for the future of Moraga.

Bill Snider, 711 Crossbrook Drive, owner of Moraga Hardware and Lumber, commented that he had patronized a Dollar Tree store located in Fort Collins, Colorado, which he found to be impressive. Having researched Dollar Tree stores, a publically traded company, he learned that many of their products were specially packaged in sizes and quantities to allow the retailer to reach its price point. He commented that it was unfortunate that the Town had been oversaturated with retail space. He referenced the background of permitting Orchard Supply Hardware in Moraga and the economic impacts to his business and OSH.

While he did not have an opinion on the Dollar Tree store itself, and while he would rather see another business occupy the space, Mr. Snider suggested that the Dollar Tree store would not generate adequate sales tax revenue for Moraga since it would route traffic from the Lamorinda area and would, in fact, take revenue away from existing businesses. He also suggested that the demographics would not support the store. He otherwise noted that publically-owned businesses did not give back to the community and in this instance everyone would lose.

Phyllis Schultz, Moraga, provided the Planning Commission with brochures for Dollar Tree stores. She commented that Moraga did not have a lot places to purchase school supplies at low prices. She noted that her church purchased school supplies for those in need overseas which could be achieved through the low prices at Dollar Tree stores. She commented on the number of tenants that had been lost in the Rheem Valley Shopping Center over the years. She suggested that the products sold by Dollar Tree stores were not junk, the business would not hurt the community, and it would not be an eyesore. She presented the Planning Commission with written comments from her neighbors.

Shirley DeFrancisci, a resident of Hawthorne Drive, Moraga, suggested that an occupied tenant space would be better than a vacant storefront and blight. However, she expressed her hope that the Rheem Valley Shopping Center would reach a point of attracting higher-quality retailers.

John Welter, identified himself as the Director of Real Estate for Kimco Realty and the Director of Real Estate for the Rheem Valley Shopping Center for the past six months. He commented on the types of tenants that had been rejected for the Rheem Valley Shopping Center over the past month including two cigarette stores, a liquor store, and a comic bookstore. He noted that Kimco Realty was a large publically-traded company with all efforts made to attract appropriate tenants for their centers. He commented that there had been momentum for the Rheem Valley Shopping Center, with a recent lease signed for a yogurt shop, negotiations with a produce market, a signed lease with a Mediterranean Restaurant, and a potential sweet shop.

Mr. Welter explained that the Dollar Tree store would occupy 10,000 square feet and would likely be patronized by Moraga residents. While targeted uses had been apparel, sporting goods and the like, national tenants and franchises had not been interested in occupying tenant spaces in the Rheem Valley Shopping Center given the lack of density. He asked that the Dollar Tree store be approved and that the current momentum be allowed to continue in order to attract more retailers to the center.

Armand Vasquez, Regional Vice President for Leasing, Kimco Realty, characterized the Rheem Valley Shopping Center as treading water with a number of vacancies. While efforts had been made to attract national retailers, Moraga was located in a cul-de-sac community bleeding to the cities of Lafayette, Orinda and Walnut Creek. He identified the most successful tenants in the shopping center as CVS Pharmacy and TJ Maxx. He reported that TJ Maxx drew from outside of Moraga, Lafayette and into the City of Walnut Creek based on information provided by TJ Maxx. TJ Maxx and Home Goods were owned by the same parent company, were gaining momentum, and were pleased with their status in the shopping center.

Mr. Vasquez suggested that more tenants in the center would generate more foot traffic. He also commented that the center was comprised of every retail and service category tenant that any shopping center could have for a community the size of Moraga where cannibalism of each of the tenants was inevitable. He added that even if they were to obtain Fresh and Easy as a potential tenant in the center, that business would also sell products similar to those already offered by the existing tenants.

Mr. Vasquez emphasized that Kimco Realty had a national presence and had been working hard to solicit regional and national tenants to ensure the success of the shopping center. He also commented on the issue of redevelopment of the shopping center, which must have tenants for any redevelopment to be a success. Redevelopment had been considered with Fresh and Easy being the primary catalyst of those efforts, although Fresh and Easy had not been comfortable with the numbers and the market in Moraga. He reported that they were in negotiations with a produce store which had great experience and produce at great prices but which would impact the existing Safeway. He emphasized that Dollar Tree would bring affordability and value and was a retail value alternative that the community did not currently have. He asked that the Planning Commission seriously support Dollar Tree in the community.

Dave Jameson, Asset Management for the Northwest Region, Kimco Realty, emphasized that the Rheem Valley Shopping Center had been a challenge but a high priority of Kimco Realty with efforts made to identify uses that supported the community's needs while enhancing the viability and long-term sustainability of the shopping center. The shopping center had tenants on each end with large vacancies in the middle. Infilling the center with new traffic would cross over to the existing tenants with additional foot traffic generated across the current vacant spaces. He explained that the additional traffic could be used to encourage and entice local and regional operators to infill small vacant spaces in the center. In the long term it was hoped that sustainability, support, and value would be created for the center with the center repositioned from where it was now. He urged the Planning Commission to support the Dollar Tree in the Rheem Valley Shopping Center.

Zoe Clifford, Hetfield Place, Moraga, spoke to the references to Sausalito and Belmont Dollar Tree stores as equivalent to Moraga, which comparison she found to be inaccurate. She urged care in making comparisons. She suggested that TJ Maxx and the other discount stores in the center had taken a bad rap in that they had quality merchandise. In her opinion, a large portion of the sales tax revenue of the Dollar Tree would likely come at the expense of other retailers in the community. As a result, she suggested that Moraga residents deserved better and did not need the store.

A. J. explained that he worked with a real estate company that worked with Dollar Tree stores. He recognized that many had the same opinions being expressed about such stores selling junk. However, having patronized a Dollar Tree store, he had found that the merchandise being sold was of value to those who needed it. In his opinion, the store would offer students and teachers of Saint Mary's College quality goods in quantities at a good price. Also many of the Dollar Tree store employees were college students who were able to work flexible hours. He encouraged those who had not visited a Dollar Tree store to visit one.

#### PUBLIC COMMENTS CLOSED

#### REBUTTAL

The applicant chose not to rebut the comments.

Commissioner Wykle commented that he had researched the revenues and sales tax projections for Dollar Tree stores. In 2009, Dollar Tree had \$5.2 billion in revenue with over 3,800 stores, although the Town of Moraga would realize only one percent of that in sales tax revenue.

Commissioner Levenfeld stated that she had difficulty in making Finding 6 to support the application. She asked for a legal opinion on the definition of "excessive public economic problem," in that the use had the potential to cannibalize existing retail in the center. While it may not be excessive, it raised a real concern for her.

Mr. Chamberlain explained that the term "excessive public economic problem" had not been defined in that the Town code did not make a determination how one business may impact another given that every business was in competition and fared for itself. The use had been reviewed based on its applicability with the MMC.

Commissioner Levenfeld remained concerned with the potential negative impacts that the Dollar Tree store may have on existing retail tenants in the center. She also expressed concern with the type of retail that may or may not come into the center if the business were permitted.

Commissioner Levenfeld otherwise thanked Kimco Realty for addressing the Planning Commission and updating everyone on the status of the center.

Commissioner Socolich acknowledged the concerns with potential impacts on the existing businesses although if the Dollar Tree were to bring in enough foot and automotive traffic, some of the traffic may patronize other businesses in the Rheem Valley Shopping Center increasing the sales tax revenue to the Town. He commented that regardless of the business, it would add to the needed vitality of the center which was currently full of vacant spaces. It would also contribute to the Town's revenue and provide jobs particularly for Saint Mary's College students. He agreed that the business met the Town's criteria. He added that the business would either succeed or fail based on customer support.

Commissioner Whitley commented that the Planning Commission's decision making authority on the business was fairly limited and while the Commission may or may not like the business it was being asked to approve a commercial use and verify that use met the findings as outlined in the staff report. In his opinion, the business met all of the findings with the exception of Findings 3 and 6. He referenced the values and general guiding principles of the General Plan, specifically Guiding Principle 8, and based on that principle the Town should or tend to be friendly to businesses to make a friendly environment in order to make the Town economically viable. He also referenced LU2.2 of the General Plan, New Commercial Uses and the stated goals, and based on that section, the intent was to adopt uses and approve businesses that met the needs of local residents, employed local residents, and strengthened the character and attractiveness of the Town's commercial centers.

Commissioner Whitley understood that the Dollar Tree would make some tenant improvements but would not improve the building given that it was a low cost improvement which did not necessarily comply with the intent of Finding 3. He understood that the application could be conditioned that any adverse characteristic impacts were mitigated and the use approved. In his opinion, there was no way to deny the application since the test the Commission was asked to apply would not allow the outright denial of the application. The business would not create an excessive economic problem given that it was a retail store. He understood that the Commission may impose mitigation that would strengthen the character and attractiveness of the Town's commercial centers.

Commissioner Whitley acknowledged the concerns expressed with the discount nature of the store and suggested that one of the ways to enhance that would be to ensure the look and feel of the store as less of a discount store. He noted that the Town's TJ Maxx was an enhanced store with a higher grade quality of merchandise making the store more attractive than other TJ Maxx stores.

Commissioner Whitley asked staff what tools could be applied in this case to achieve that enhancement.

Mr. Chamberlain reported that no exterior building changes had been proposed by the Dollar Tree, although signage would be required to be reviewed and approved by the Design Review Board (DRB). The Town's Sign Ordinance would also limit any window signage. He added that no outdoor displays had been proposed by the Dollar Tree store.

Commissioner Socolich understood that the DRB focused on the exterior not the interior with the Town having no authority over the interior of the tenant space. He asked the representative of Dollar Tree to comment on what could be done to the interior of the store to ensure that it was tidy.

Ms. Duncan clarified that money would be spent on the interior of the store.

Chairman Obsitnik stated that he also had difficulty making Finding 6. He was uncertain how it was to be interpreted although he disagreed with the staff report that the business would contribute to the local tax base. He suggested that the business would be sales tax neutral given that it would cannibalize local stores and would not attract shoppers to Moraga. He also suggested that the property values in Moraga could be impacted due to the perception of the choice of retail in Moraga in terms of how it reflected on property values, which could be an excessive public economic problem for Moraga homeowners and those who had invested in Moraga over the past ten years. As to the existing guidelines and the remaining findings, there was no reason the business should not be approved. However, based on his interpretation of Finding 6, he could not support the application.

Mr. Chamberlain suggested that the issue of property value was far outweighed by the burst of the housing market as compared to retail which had immeasurable impacts. He disagreed that the type of stores had a factor on property values. Moraga had good schools, a low crime rate, and was a relatively quiet community where retail not a big factor for why people moved to Moraga.

Commissioner Levenfeld recognized the importance of getting a tenant in the center, although she noted that the lease would outlast the real estate market, with the tenants in the center characterizing the retail available in Moraga when there was an upturn in the real estate market.

Commissioner Wykle also was concerned with the interpretation of Finding 6 given the potential impacts on property values and projected sales taxes which could become a public economic problem.

Commissioner Whitley further spoke to Finding 6 and its interpretation which he did not interpret to mean a reduction in property values but as a specific outlay by the public agencies in Moraga with respect to the specific operation of a specific store. The type of business was not necessarily intended to be covered in making that statement and as a result, it was not what was intended. Even if it represented a reduction in property values, in the absence of data the Town could not assume that a store such as the Dollar Tree in and of itself would reduce property values, and if the assumption was made, the question was whether or not it would reduce them excessively which he did not see to be the case.

Commissioner Whitley remained concerned with Finding 3 where the look and feel and character of the store should be addressed to ensure that it was within the character of the center and the semi-rural nature of the Moraga community. He recommended that the DRB review the signage and adopt conditions with the approval of the store, which would ensure that the look and feel of the store was in keeping with the character of the Moraga community.

Chairman Obsitnik clarified the options before the Commission; either putting the request to approve the Dollar Tree store to a vote or to delay the decision to obtain a legal ruling on the interpretation of Finding 6.

Mr. Chamberlain reiterated that the DRB would review the signage for the Dollar Tree store. He recalled that at the time Tuesday Morning had been approved in the same center it had been conditioned that their displays be of showroom quality. A similar condition could be imposed on the Dollar Tree store or the Commission may consider conditions related to the maintenance of the store.

Commissioner Whitley recommended as an alternative that the Commission defer the application and ask the Planning Department to return with conditions that met the requirements allowing the Commission or the DRB to ensure that the look and feel of the store would comply with the look and feel of Moraga, as the community had envisioned.

Mr. Chamberlain advised that the draft resolution of approval may be revised, subject to additional conditions, or the application could be continued, with staff to include language in the resolution to address the look and feel of the store, as discussed.

Chairman Obsitnik pointed out that Dollar Tree stores operated similarly and for the Town to dictate how Dollar Tree operated its business for a permitted use may be a concern, and the Commission may be overstepping its boundaries.

Commissioner Richards expressed concern making Finding 6 absent a legal interpretation, the potential impacts on property values, and the fact that the center was full of vacant storefronts.

Commissioner Levenfeld commented that she had not seen excessive public economic problems impacting property values. Absent further advice from the Town's legal counsel, she was inclined to support the application given that she could not no reason not to approve the use.

Commissioner Whitley sought the continuance of the application in order to obtain an opinion from Planning staff or legal counsel on the interpretation of Finding 6, and allow Planning staff to provide additional language to address mitigation that could be considered where the majority of the Commission may make a decision.

Chairman Obsitnik agreed that a continuance was appropriate. He agreed that an interpretation of Finding 6 was needed.

Mr. Chamberlain commented that staff was of the opinion that the interpretation of Finding 6 was as outlined in the staff report.

Commissioner Whitley pointed out the concerns expressed by the community for potential impacts on property values. Based on those comments, he wanted to ensure that Finding 6 had been interpreted correctly.

On motion by Commissioner Socolich, seconded by Commissioner Richards to continue UP 10-10 for Dollar Tree at 542 Center Street, Rheem Valley Shopping Center, to the Planning Commission meeting scheduled for Tuesday, September 7, 2010, subject to Planning staff and legal counsel providing an opinion on the interpretation of Finding 6, and guidance and proposed language on potential mitigating conditions for the interior and exterior of the Dollar Tree store. The motion carried by the following vote:

Ayes: Commissioners Levenfeld, Richards, Socolich, Whitley, Wykle, Obsitnik  
Noes: None  
Abstain: None  
Absent: Commissioner Driver

## **VIII. ROUTINE & OTHER MATTERS**

A. None

## **IX. COMMUNICATIONS**

A. None

**X. REPORTS**

**A.** Planning Commission

There were no reports.

**B.** Staff

1. Update on Town Council actions and future agenda items.

Mr. Chamberlain reported that the Rancho Laguna Appeal would be heard by the Town Council during its first meeting in September. The Planning Commission meeting of September 7 would also include the continued application for a grading project located on Buckingham Drive.

**XII. ADJOURNMENT**

On motion by Commissioner Whitley, seconded by Commissioner Wykle to adjourn the Planning Commission meeting at approximately 9:50 P.M. to a regular meeting of the Planning Commission on Tuesday, September 7, 2010 at 7:30 P.M. at the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission



Meeting Date: September 7, 2010

**TOWN OF MORAGA**

**STAFF REPORT**

**To: Planning Commission**

**From: Richard Chamberlain, Senior Planner**

**Subject: UP 10-10 Dollar Tree (applicant), Kimco (property owner)  
542 Center Street, Rheem Valley Shopping Center**

Consideration of a permitted use application by Dollar Tree to operate a retail variety store in the Rheem Valley Shopping Center. Zoning: Community Commercial – CEQA status: Categorically Exempt per CEQA Section 15301, Existing Facilities. (Continued from the August 23, 2010 Planning Commission meeting)

**Request**

Adopt the attached amended draft resolution approving the Permitted Use Application.

**Background**

The proposed Dollar Tree store would occupy the existing vacant space previously occupied by Blockbuster, Lori's Perfect Tan and The Beauty Source. Testimony was received from 25 individuals at the August 23, 2010 Planning Commission meeting including the applicant, Linda Duncan, and three representatives from Kimco, the property owner. After hearing public testimony, the Commission closed the public hearing and discussed the required findings for a permitted use listed under Moraga Municipal Code (MMC) Section 8.36.02.A.1. The Commission continued the application to the September 7, 2010 special meeting date with a request for additional information from staff with regard to finding #3 (mitigation for potential adverse characteristics) and finding #6 (the use would not create an excessive public economic problem).

**Discussion**

With regard to finding #3, Commissioner Whitley specifically requested that staff list conditions for mitigation of any potential adverse characteristics in order that

1 the “look and feel” of the store would be in keeping with Moraga and the  
2 character of the Rheem Valley Shopping Center. Staff reviewed conditions of  
3 approval for other “permitted” use tenants at the Rheem Valley Center, including  
4 Tuesday Morning and the Home Goods stores and added eight conditions of  
5 approval to the draft resolution. The Commission may choose to modify these  
6 conditions or consider additional conditions. In particular, condition #2 pertaining  
7 to the blockage of the front store windows by interior merchandise displays may  
8 need to be tweaked for more clarity. Three of the conditions pertain to signage at  
9 the store and are basically summaries of requirements from the Town’s Sign  
10 Ordinance and Town Design Guidelines. Staff believes that these conditions  
11 would mitigate any adverse characteristics of the business.

12  
13 With regard to finding #6, some of the residents that were opposed to the Dollar  
14 Tree store were declaring that another discount type store at the Rheem Valley  
15 Shopping Center would lower their property values. The Planning Commission  
16 broadly interpreted “Public Economic Impact” to include the potential adverse  
17 impact to residential home values in Moraga. Staff has made numerous queries  
18 on the internet in an attempt to find any studies or reports that could substantiate  
19 the claim that discount or bargain stores in a community could lower property  
20 values. No empirical evidence was found to link any specific type of retail  
21 business operation with lower residential home values. Only two types of  
22 businesses were mentioned in any of the studies that had a negative impact on  
23 home values – oil refineries and nuclear power plants. Two articles from the  
24 internet have been attached as **EXHIBIT A** to address factors that influence  
25 property values. These include: “What Factors Determine Property Value” and “3  
26 Factors That Reduce a Home’s Value”. Generally, home buyers are looking for  
27 good schools, low crime rates and quiet neighborhoods when they are seeking a  
28 new home. The type of stores in the vicinity does not appear on any lists as a  
29 determining factor for selecting a new home. However, it can be shown that a  
30 high vacancy rate for stores in a community does have an adverse “Public  
31 Economic Impact”. The reduction in sales tax revenue can eventually lead to  
32 reduced police services and poorer schools, both of which are high on the list of  
33 factors impacting home values. The argument that the Dollar Tree store will  
34 bring down home prices in Moraga or start a downward spiral for the stores in the  
35 Rheem Center is totally unsubstantiated by any factual information. Staff has  
36 amended the language under finding #6 in the draft resolution to confirm that the  
37 Dollar Tree store would not cause any excessive public economic problem.

38  
39 **Fiscal Impact**

40  
41 At the August 23<sup>rd</sup> meeting, Commissioner Wykle estimated the annual potential  
42 sales tax revenue for the Town at about \$13,000 based on 5.2 Billion dollars in  
43 revenue for the 39,025 Dollar Tree stores nationwide. Some of the residents  
44 opposed to the store argued that the Town would not see any sales tax increase  
45 because the sales at Dollar Tree would cannibalize sales at other stores in Town.  
46 The representative for Dollar Tree, Linda Duncan, indicated that the stores have

1 a sophisticated inventory control system, where products may be replaced to  
2 keep the shelves full as many as three times a day and that products that don't  
3 sell can be changed by the store manager to products that the community wants.  
4 Although there could be some "cannibalization" of sales within Moraga, staff  
5 believes that there could potentially be much more cannibalization of sales  
6 outside the community. For example, we would hope that Moragan's might elect  
7 to buy school supplies at Dollar Tree rather than drive to Target in Walnut Creek.  
8 The "bleeding" of sales tax revenue to our adjacent communities is one of the  
9 major fiscal problems for Moraga identified by the Revenue Enhancement  
10 Committee. In any case, the Dollar Tree store will certainly bring in more tax  
11 revenue than the existing vacant stores.

12

13 **Alternatives**

14

15 Revise the attached draft resolution making revisions as necessary.

16

17 **Recommendations**

18

19 Adopt the attached draft resolution with revisions, if necessary.

20

21 **Attachments:**

22

A. Factors impacting property values

23

B. Amended Draft Resolution

24

# EXHIBIT A

## **FACTORS IMPACTING PROPERTY VALUES**

# What Factors Determine Property Value?

By Ann Johnson, eHow Contributor

updated: July 20, 2010



Factors that determine property values extend beyond the actual property.

Consumers turn to appraisers to determine a property's value. A real estate appraisal is an estimate of what a ready and willing buyer may pay for a property in the current market. That amount may be significantly more or less than an appraisal made the prior year. One way in which an appraiser determines value is to find a comparable property that has sold recently in the neighborhood.

## Location

The location of property significantly affects its value. Advice given to novice real estate investors often begins with "location, location, location." If a contractor builds two identical homes, one in a desirable neighborhood and another in an area considered less desirable, the house in the desirable neighborhood has greater value. While a homeowner can renovate a house to increase its value, it is far more challenging to renovate a neighborhood and is often beyond a property owner's control. Locations may decline in value due to negative social and environmental changes, such as increased crime rate, unpleasant noises or odors introduced to the area by nearby industry or a decline in local property maintenance.

## Physical Condition

When assessing the value of real estate, consider the structural characteristics of the property, as well as its condition. For example, a tile roof will have more value than a shingle roof, while a shingle roof will appraise for more than a flat hot-mop or rock roof.

Another consideration is the condition of the property. For example, a house with a swimming pool may be more valuable than a house without a pool. However, if the pool is in need of repairs, it may adversely affect the property's value. Other physical conditions influencing the value of property are the size of the lot and the total number of square feet of improvements.

## Economy

A region's economy affects property values. A significant rise in unemployment can result in a rise of foreclosures. When this happens, and houses sell below former market values, data used by appraisers to determine property values include lower comparable prices. When an area's economy booms and attracts new home buyers, property value's rise. If buyers come into the market with cash, making it easier to purchase property at higher prices without an appraisal, the data for future appraisals will include these purchases. This will help to push property values higher.

## 3 Factors That Reduce a Home's Value

**BEFORE PLUNKING DOWN** your life savings on a home, consider that the current owners and even the home inspector probably can't tell you everything you need to know about the property.

Nearby foreclosures, crime and environmental threats can end up costing a lot more than mold in the basement. Living close to a landfill, for example, can knock up to 15% off a home's value.

While sellers in some states are legally obligated to disclose information that might affect a buyer's decision to purchase a home, they often won't know, say, that a registered sex offender moved in across the street last month.

Ultimately, it's up to buyers to look into factors that go beyond the front yard, says Leslie Sellers, vice president of the Appraisal Institute, a Chicago-based trade organization. "People will spend days and weeks researching a used car and kicking tires, but when it comes to a home, if the decor suits them, they're ready to buy right then," says Sellers.

"Before you make an offer, walk the neighborhood and talk to neighbors," advises Sid Davis, a Farmington, Utah-based real estate broker and author of "A Survival Guide for Buying a Home."

Here are three value-draining factors worth investigating:

### Foreclosures

Just a few years ago, home buyers barely considered the impact of foreclosures on a home's value. But as the rate of foreclosures climbs ever higher — the number of homes facing foreclosure in April rose 65% year over year, according to RealtyTrac — it's now an undeniable part of the equation.

A study co-authored by Geoff Smith, vice president at the Woodstock Institute, a policy group in Chicago, found that each foreclosure within an eighth of a mile of a single-family home results in a 0.9% decline in the home's value. Although the **research** only looked at data in Chicago between 1998 and 1999, the researchers contend that the overall findings still apply today. "If you were to replicate that study now, you'd probably find a bigger impact because there are more foreclosures and they're bringing down the housing market overall," says Smith.

Foreclosed homes often fall victim to neglect and vandalism, explains Stephen Fuller, director of George Mason University's Center for Regional Analysis. A concentration of foreclosed homes only magnifies the effect and undermines nearby property values, he says. Depending on the scale and duration of the problem and the lack of countervailing forces such as good schools or park land, the damage to a home's resale price will likely be significant, says Fuller.

For nationwide listings of homes in foreclosures, visit web sites such as [RealtyTrac.com](#), [Foreclosures.com](#), [Foreclosure.com](#) and [Multiple Listings Service](#).

Also, scan the real estate listings to see if a large number of homes are for sale in the area or if rental properties are on the rise. It could signal a more transient — and therefore troubled — environment, Fuller says. Also, look for short sales — when the asking price is less than the mortgage balance — "that's a sure next step to foreclosure," he says. Buyers can ask their realtors to look up short sales in a particular ZIP code or area. (Realtors have access to the data, which is provided by the Multiple Listings Service that is not made public).

(Page 2 of 2)

## Environmental threats

You've monitored for radon and tested the well water. Everything turns up clean. But do you know how far that landfill or abandoned manufacturing plant is from the front door? If they're too close it could lead to serious health issues — and weakened resale values.

A home located within a mile from a landfill, for example, will likely see a 10% to 15% reduction in value, says Robert A. Simons, a professor of urban planning and real estate at Cleveland State University and author of a 2006 study on the effects of environmental contamination on real estate values. Property within two miles of a Superfund site (a government-designated hazardous waste site) could suffer up to a 25% reduction in value (compared with a home that had no threat of environmental contamination), says Simons, who also wrote "When Bad Things Happen to Good Property."

Nuclear power plants, on the other hand, have a mixed impact on home values, he says. While perceived as scary, they offer some benefits such as a high tax base and high employment. An added bonus: "There's a huge buffer around those plants with lots of park land," he says. However, live too close — say, within half a mile — and the nearby plant starts taking a toll, Simons found. "Then you get into air emissions, pollution, and are you downwind or upwind," he says.

Consumers can search for Superfund sites near their homes on the Environmental Protection Agency's [web site](#). The EPA also has a searchable [database](#) that tracks toxic chemical releases reported by certain industries.

## Crime/Sex offenders

Looking into the crime rate of a prospective neighborhood is a no-brainer for most home buyers. But it won't tell you that a registered sex offender lives two houses down.

"I encourage people to presume that there will be registered sex offenders nearby," says Tara-Nicholle Nelson, a San Francisco-based real estate attorney and broker.

The closer a home is to a registered sex offender's, the greater the impact on its value, according to James Larsen, a professor at Wright State University in Ohio. Larsen's 2003 study of home sale prices in Montgomery County, Ohio, found that, on average, homes within one-tenth of a mile of a serious sex offender's residence saw a 17% drop in value, while houses between one-tenth and two-tenths of a mile sold for 10% less.

In order to search for addresses and pictures of registered sex offenders, go to [Family Watchdog](#). The site also offers email and cellphone alerts if a registered offender moves into your neighborhood. For other crime statistics, [AreaConnect](#) lets users compare crime data for more than 8,000 cities.

# EXHIBIT B

## **AMENDED DRAFT RESOLUTION**

**BEFORE THE TOWN OF MORAGA PLANNING COMMISSION**

**In the Matter of:** )  
Approval of a Permitted Use application from )  
Dollar Tree to allow the operation of a retail )  
variety store at 542 Center Street in the )  
Rheem Valley Shopping Center. )

**Resolution No. XX-2010 PC**  
File No. UP 10-2010  
Planning Commission Adoption Date:  
September 7, 2010  
Effective Date, if not appealed:  
September 17, 2010

**WHEREAS**, an application for a Permitted Use was submitted on July 27, 2010 by Dollar Tree (Applicant) and Kimco (Property Owner) for the operation of a retail variety store at 542 Center Street in the Rheem Valley Shopping Center; and

**WHEREAS**, the project is categorically exempt under CEQA Guidelines Section 15301 existing facilities; and

**WHEREAS**, a Public Hearing Notice for the project was mailed to property owners and businesses within 300 feet of the property on August 13, 2010; and

**WHEREAS**, on August 23, 2010, the Planning Commission held a public meeting where testimony was received from the applicant and interested parties; and

**WHEREAS**, the Planning Commission deliberated on the findings for approval of the use and the Commissioners requested additional input from staff with regard to finding number 3 (mitigation for potential adverse characteristics) and number 6 (that the use would not create an excessive public economic problem); and

**WHEREAS**, Commissioner Whitley in regard to finding number 3, specifically requested conditions of approval from staff that would make sure that the “look and feel” of the store would be in keeping with Moraga; and

**WHEREAS**, the question to be resolved in regard to finding number 6 was whether another discount or bargain type store at the Rheem Shopping Center would have a negative impact on residential home values in Moraga that would constitute an “excessive public economic problem”; and

**WHEREAS**, the planning staff has amended the draft resolution to include appropriate conditions of approval to address various factors that could impact the visual appearance and operation of the Dollar Tree store; and

**WHEREAS**, the planning staff has attempted unsuccessfully to find any quantitative evidence to substantiate the claim that discount stores would have a negative impact on property values.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the Town of Moraga hereby approves the Permitted Use application from Dollar Tree to allow the operation of a retail variety store at 542 Center Street in the Rheem Valley Shopping Center in accordance with the findings and conditions of approval listed below.

**FINDINGS FOR APPROVAL OF A PERMITTED USE PERMIT IN ACCORDANCE WITH MMC SECTION 8.36.020B:**

1. The use will not generate significant amounts of pedestrian and vehicular traffic that will foster the flow of traffic between the proposed use and uses across abutting streets because the retail use would be located in 3 existing vacant spaces in the Rheem Center, previously occupied by Blockbuster, The Beauty Source and Lori's Perfect Tan. The shopping center has a total of 1,065 parking spaces. 37 parking spaces would be allocated to the Dollar Tree store on a non-exclusive basis (1 space for each 250 square feet of floor area). There would be no change in the total number of required parking spaces from the previous businesses. There are no uses across abutting streets that would be a significant source of pedestrian or vehicular traffic for the proposed business.
2. The use is compatible in land use and traffic characteristics and design with other uses directly affected by the proposed use because the proposed retail sales at the Dollar Tree store will not be incompatible in terms of land use characteristics with the other businesses at the Rheem Valley Shopping Center. The Dollar Tree Store will open and close for business at about the same time as other businesses in the shopping center and the peak traffic generation is not expected to change significantly. The proposed use will only require interior tenant improvements and new signage so the design of the store will remain compatible with the general appearance of the Center.
3. The potential adverse characteristics of the use will be mitigated to the extent necessary to make the use compatible with neighboring uses with the conditions of approval that have been included in resolution.
4. The use will be within a building or space enclosed by approved fencing, landscaping or other buildings because the displays of merchandise and retail sales for the Dollar Tree store will be entirely within the enclosed building. The application does not request any outdoor display of merchandise.
5. The use will not generate noise levels in excess of fifty-five (55) dba during the daytime hours, or fifty (50) dba during the nighttime hours because the Dollar Tree store intends to install new HVAC equipment to improve the efficiency and reduce operational costs as stated by the applicant at the August 23<sup>rd</sup> Planning Commission meeting and the new mechanical equipment will not generate noise in excess of the established standard.
6. The use will not create an excessive public economic problem because the Dollar Tree store use will add to the local sales tax revenue and will help contribute to the economic viability of the Rheem Valley Shopping Center through the rental of three

existing vacant spaces. The use will also contribute to the local economy by providing a source of full time employment for 1 store manager and 2 assistant store managers as well as 23 part time employees. No empirical evidence has been found that links discount or bargain stores with lower residential home values. On the contrary, the lack of tax revenue from vacant stores in a community can adversely impact community services and school funding. Good police services and schools both contribute to higher home values.

7. The use will not generate glare, electrical interference, odor, vibration, brilliant light, dust, smoke, fumes or other characteristics that are otherwise offensive to the senses to the extent that there is interference with the development or enjoyment of other property in the vicinity because this business does not involve cooking or construction or the significant operation of mechanical equipment or any other activity that would result in characteristics that are offensive to the senses.
8. The hours of operation will not foster conditions detrimental to the neighborhood or town because the proposed hours of operation, Monday through Saturday 9 am to 9 pm and Sunday 9 am to 8 pm, are similar to the hours of operation for other businesses in the shopping center and would not be detrimental to the neighborhood or town.

#### **CONDITIONS OF APPROVAL:**

1. All merchandise fixtures and interior finishes shall be of showroom and display quality similar to other retail businesses in the shopping center and the store shall not present the appearance of a warehouse operation.
2. Shelving and movable wall partitions within 6-feet of the front windows shall be limited in height to 3-feet and shall not block a significant portion of the front windows. The intent of this condition is only to provide an inviting storefront to the public. Displays beyond the front window shall be at the discretion of the business owner.
3. Any exterior business identification signs that are illuminated or that can be seen from the Moraga Road scenic corridor shall be reviewed by the Design Review Board for compatibility with the other business signs at the Rheem Valley Shopping Center.
4. Window signs, including temporary promotional signs, shall not exceed 20% of the area of the window on which they are placed in accordance with Moraga Municipal Code (MMC) Section 8.88.090.
5. In accordance with Town of Moraga Design Guideline CC3.5, decorative product type signs, such as neon beer signs, shall be located no closer to an exterior window or open doorway than 6 feet. Exposed neon tubing, whether for signing or decoration, is not considered in good taste for exterior display and is discouraged under Design Guideline CC3.7.

6. The following types of signs are prohibited under MMC Sections 8.88.240-A.8 and 8.88.360:
  - a. Signs consisting of moving or rotating parts, flashing lights such as, but not limited to, search or flood lights;
  - b. Signs which are inflatable;
  - c. A sign which is dilapidated, in disrepair or unsightly;
  - d. A sign which is: (1) portable, such as an "A-frame" sign; (2) attached to a fence; (3) painted on or attached to a vehicle which is parked for the purpose of advertising to the passing public; or (4) supported by exposed wires or cables.
  - e. A sign which, because of brilliant lighting, interferes with the comfortable or peaceful enjoyment of adjoining or surrounding property, or because of shape, design, intensity, color or reflected light, conflicts or interferes with traffic or public safety;
7. All deliveries of merchandise for the store shall be made at the rear of the building so as to not impede the flow of traffic within the shopping center. If it is impossible to make a delivery at the rear of the building, the Planning Director may approve an alternate location at a time that does not adversely impact circulation within the center.
8. All trash and recycling shall be accommodated at the rear of the building.

**PASSED AND ADOPTED** by the Planning Commission of the Town of Moraga on September 7, 2010, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

---

Jim Obsitnik, Chair

ATTEST:

---

Lori Salamack, Planning Director



Meeting Date: September 7, 2010

**TOWN OF MORAGA**

**STAFF REPORT**

**To: Town of Moraga Planning Commission**

**From: Rich Chamberlain, Senior Planner**

**Subject: GRADING PERMIT and HDP 01-10 Mr. and Mrs. Robert White (Owner/Applicant), 32 Buckingham Drive:** Application for a hillside development permit and grading permit to grade a hillside with a slope greater than 25% including an approximately 50 cubic yard excavation for an in-ground storage building and related improvements. In accordance with Moraga Municipal Code Section 14.16.020, the Planning Commission shall make a recommendation to the Town Council regarding the proposed application. The work that is the subject of this application including the hillside excavation and partial storage room construction was commenced without the benefit of any Town approvals. The Town will evaluate the proposed application as if the work had not been started. This application will receive no special consideration because it was started without permits. The property is zoned 3 dwelling units per acre. APN: 256-203-012. (Continued from the August 2, 2010 Planning Commission Meeting)

**Request**

Review the proposed project and make a recommendation to the Town Council for approval or disapproval or approval with conditions.

**Public Notice and Correspondence**

A public notice was mailed to the property owners within 300 feet of the proposed project site on July 23, 2010. A copy of the notice, mailing list and area of notice map is attached as **EXHIBIT A**. This agenda item was continued to a date certain at the hearing on August 2<sup>nd</sup>, therefore no additional notice has been mailed. The only person in attendance at the August 2<sup>nd</sup> meeting was John Friar, the applicant's geotechnical engineer.

**Background**

At the August 2<sup>nd</sup> meeting, the Commission continued the hearing in order to receive comments from the property owner prior to making a recommendation to the Town Council. All exhibits remain the same and the staff report which follows is the same as previously written by Lori Salamack for the August 2, 2010 meeting.

1  
2 In May 2009, town staff became aware of grading being done without a permit at 32  
3 Buckingham. Upon investigation, it was determined that a permit was required both for  
4 the grading and for the alteration of the hillside. The current application is the result of  
5 approximately 14 months of working with the applicant to have the necessary  
6 documents submitted for consideration by the Town. Attached in **EXHIBIT B** is the  
7 correspondence between the applicants' soil engineer and the town's peer review  
8 consultant. According to the June 14, 2010 letter from Cal Engineering and Geology all  
9 of the technical issues identified in the May 3, 2010 comment letter have been satisfied.  
10 The revised plans dated May 25, 2010 have also been corrected to be consistent with  
11 the comment letter.

12  
13 **CEQA Compliance**

14 The project is categorically exempt in accordance with CEQA Section 15303 small  
15 structures.

16  
17 **Discussion**

18 The photo below shows the current construction for a storage building that is built into  
19 the hillside behind the home. This construction was issued a stop work order.



20  
21  
22 The existing rear yard retaining walls at the east side of the rear yard were constructed  
23 in 2006 and are shown in the photo below:



24  
25

1 As in this case, the 2006 walls were originally commenced without the necessary town  
2 approvals and subsequently plans were filed for approval from the Design Review  
3 Board. A copy of the 2006 Design Review Board staff report is attached as **EXHIBIT C**.  
4 One difference between the application in 2006 and the current application is that the  
5 Town had not adopted the new Grading Ordinance at the time the project was approved  
6 and the grading permit was issued by the Contra Costa County Building Department.

7  
8 The current application is now subject to the provisions of the Town's Grading  
9 Ordinance, as well as a hillside development permit. Town Council action is required on  
10 the grading permit because it is proposed on a slope in excess of 25%. The fact that  
11 substantial work has already been done on this project without a permit does not  
12 change the required findings for this application. The factors to be considered in the  
13 issuance of a hillside development permit are discussed in **EXHIBIT D**.

14  
15 In addition, the findings required for approval of the grading permit are discussed in  
16 **EXHIBIT E**.

17  
18 **Recommendation**

19 Consider the application and provide direction to staff for the preparation of a resolution  
20 recommending approval or disapproval by the Town Council **EXHIBIT F**.

21  
22 **Exhibits:**

- 23 A. Public Notice Map, Notice List and Public Hearing Notice
- 24 B. Peer review comment letter and response
- 25 C. 2006 Design Review Board staff report
- 26 D. Hillside Development Permit consideration
- 27 E. Grading determinations
- 28 F. Draft resolution
- 29 G. Plans

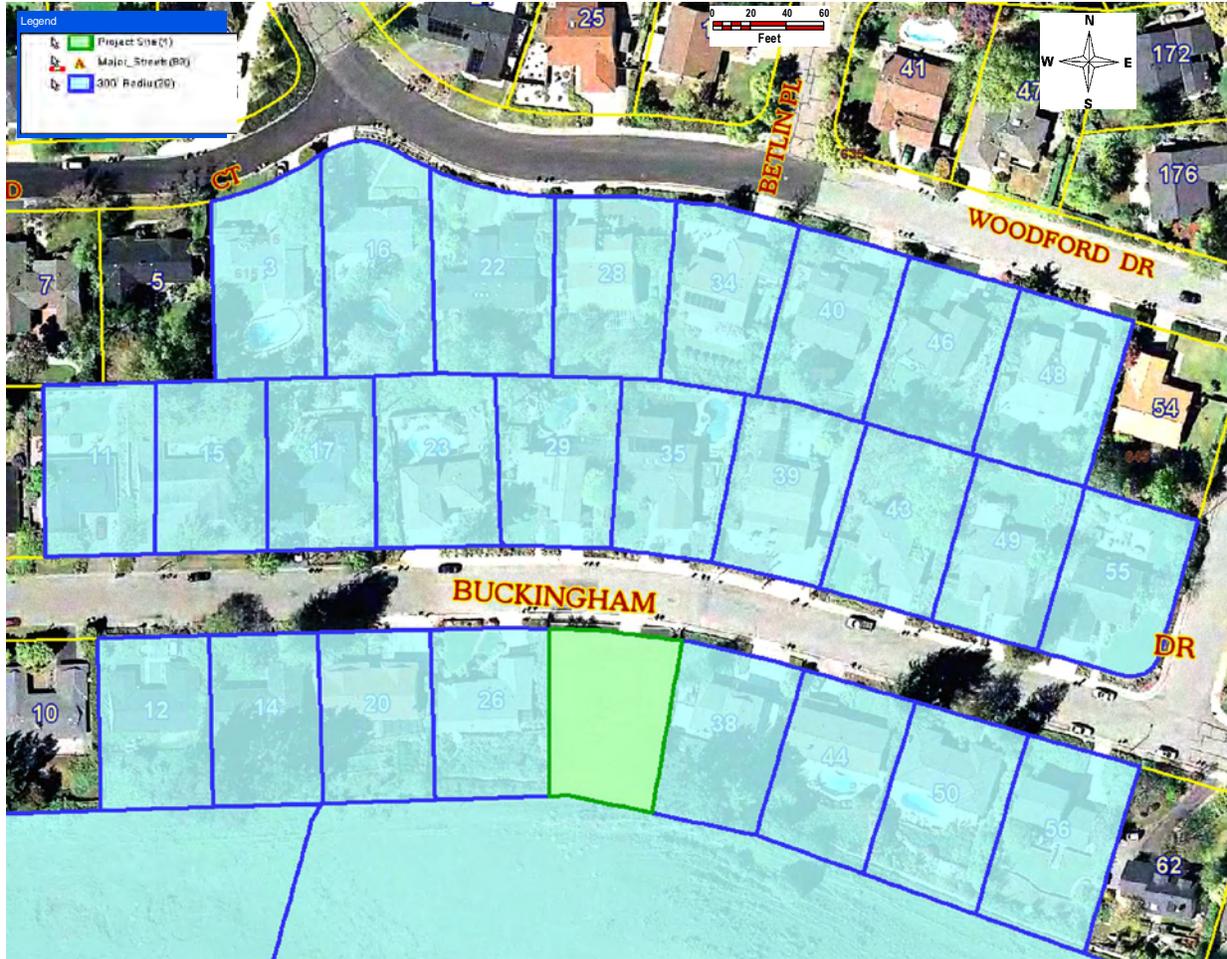
# **Exhibit A**

Public Notice, Notice List and Public Hearing Notice

# VICINITY MAP AND AREA OF NOTICE

## 32 Buckingham Drive - White Residence

File Number: HDP-01-2010



**HDP-01-10**  
Mailed Public Notice

**32 Buckingham Drive**  
**Mailing List**

**Hillside Development**  
**Permit**

APN	NAME	ADDRESS	CITY & ZIP
256203011	Rudolph H & Eldene L Mortensen	PO BOX 6401	MORAGA , CA 94570 6401
256024006	Laura M Diaz	12 BUCKINGHAM DR	MORAGA, CA 94556 2407
256024007	James C Philip	14 BUCKINGHAM DR	MORAGA, CA 94556 2407
256203014	Joel Chiu	88 MOSS BRIDGE LN	ORINDA , CA 94563
256203012	Robert A & Claudia E White	32 BUCKINGHAM DR	MORAGA, CA 94556 2407
256203013	Frank Yun Quan Pan	26 BUCKINGHAM DR	MORAGA, CA 94556 2407
256030002	Rheem Valley Properties Llc	190 N WIDGET LN, Apt.#101	WALNUT CREEK, CA 94598 2440
256203008	Sandra K North	56 BUCKINGHAM DR	MORAGA, CA 94556 2407
256203009	Mohsen Pazooki	50 BUCKINGHAM DR	MORAGA, CA 94556 2407
256203010	Anthony C Carpentieri	44 BUCKINGHAM DR	MORAGA, CA 94556 2407
256204007	Alan B & Carmen G Mould	9756 WESTBURY CIR	HIGHLANDS RANCH , CO 80129 6930
256204006	Elaine E Sellers	49 BUCKINGHAM DR	MORAGA, CA 94556 2406
256204005	James F Woidat	43 BUCKINGHAM DR	MORAGA, CA 94556 2406
256204004	Sarah Weingarten	39 BUCKINGHAM DR	MORAGA, CA 94556 2406
256023021	Olst Eric & Jessica Van	11 BUCKINGHAM DR	MORAGA, CA 94556 2406
256023020	Douglas C & Cynthia A Redinger	15 BUCKINGHAM DR	MORAGA, CA 94556 2406
256204003	Wesley E Jones	35 BUCKINGHAM DR	MORAGA, CA 94556 2406
256023019	Jaroslav & Eva Gryko	17 BUCKINGHAM DR	MORAGA, CA 94556 2406
256204002	William I Levyn	PO BOX 6567	MORAGA , CA 94570
256204001	Wayne L & Susan Q Chan	23 BUCKINGHAM DR	MORAGA, CA 94556 2406
256204009	Michael H Rose	48 WOODFORD DR	MORAGA, CA 94556 2429
256204010	Thomas B & Judith Gosnell	46 WOODFORD DR	MORAGA, CA 94556 2429
256204011	Xinli Yang	40 WOODFORD DR	MORAGA, CA 94556 2429
256204012	Richard E & Paula J Bonitz	34 WOODFORD DR	MORAGA, CA 94556 2429
256204013	Ascencion Jr Portillo	28 WOODFORD DR	MORAGA, CA 94556 2429
256204014	Rodger G & Karen Ng Lum	22 WOODFORD DR	MORAGA, CA 94556 2429
256023017	Brian P Ahearn	3 CAMELFORD CT	MORAGA, CA 94556 2408
256023018	Dean B & Diane Y Thomas	16 WOODFORD DR	MORAGA, CA 94556 2429

## **Exhibit B**

Peer Review Comment Letter and Response

**Friar Associates, Incorporated . Engineers . Consultants**  
**Soils . Foundations . Geology . Geotechnology**

---

2656 Nicholson Street, San Leandro, CA 94577  
Tel: (510) 351-3930 Fax: (510) 351-1020

December 16, 2009  
Project 1678

Mr. Robert White  
32 Buckingham Drive  
Moraga, CA 94556

Dear Mr. White:

Report Update  
Geotechnical Investigation  
New Retaining Wall Structure  
32 Buckingham Drive  
Moraga, California

**Introduction**

As requested, we have reviewed the geotechnical investigation report prepared for the planned retaining wall structure in the backyard area of the subject residence. The residence is located on the south side of Buckingham Drive, a short distance east of the intersection of Buckingham Drive with Moraga Way in Moraga, California.

**Proposed Construction**

You plan to construct a structure that will be used partially for storage and partially as an improvement in the backyard area. Based on the information we obtained from a site reconnaissance visit and meetings we have had with you at the residence, the structure will have mainly reinforced concrete walls, a concrete slab-on-grade floor and a concrete roofing.

**Information Provided**

We were provided with a November 2005, geotechnical investigation report prepared by Peters & Ross.

**Scope Of Work**

Our scope of work was to make a site reconnaissance visit to check the existing conditions and to review the geotechnical investigation report by Peters & Ross to provide geotechnical information for the planned construction in accordance with current California Building Code.

December 16, 2009  
Project 1678

**Site Conditions**

The site for the proposed construction is located in the backyard area of the residence and the southwest of the existing building. There is a ground elevation difference of between eight and ten feet between the north part of the project site and the south end. At the time of our site visit, bedrock had been exposed at a cut face of the slope behind the existing building.

**Seismic Considerations**

This project site is located within the seismically active San Francisco Bay region but outside of any of the Alquist-Priolo Earthquake Fault Zones.

Type A and Type B faults close to the site are listed in the table below.

TABLE 1 - TYPES A AND B FAULTS CLOSE TO THE SITE*				
Fault	Type	Maximum Moment Magnitude	Slip Rate (mm/yr)	Distance (miles/km)
San Andreas (Peninsular)	A	7.9	24	>/31
Hayward (Total Length)	A	7.1	9	4.9/8
Calaveras (North of Calaveras Reservoir)	B	6.8	6	4.9/8
Concord-Green Valley	B	6.9	6	8.2/13.5

\*California Division Of Mines And Geology (California Geologic Survey)

Seismic hazards can be divided into two general categories, hazards due to ground rupture and hazards due to ground shaking. Since no active faults are known to cross this property, the risk of earthquake-induced ground rupture occurring across the project site appears to be remote.

Should a major earthquake occur with an epicentral location close to the site, ground shaking at the site will undoubtedly be severe, as it will for other property in the general area. Even under the influence of severe ground shaking, the soils that underlie the area proposed for development are unlikely to liquefy.

The following general site seismic parameters may be used for design in accordance with the 2007 California Building Code:

Site Class: C

Site Coordinates: Latitude = 37.86, Longitude = -122.12

December 16, 2009  
Project 1678

**Spectral Response Accelerations SMs and SM1**

$$SMs = F_a \times S_s \text{ and } SM1 = F_v \times S1$$

For Site Class C with  $F_a = 1.0$  and  $F_v = 1.3$

Period (sec)	$S_a$ (g)
0.2	1.500 (SMs, Site Class C)
1.0	0.780 (SM1, Site Class C)

**Design Spectral Response Accelerations SDs and SD1**

$$SDs = 2/3 \times SMs \text{ and } SD1 = 2/3 \times SM1$$

For Site Class C with  $F_a = 1.0$  and  $F_v = 1.3$

Period (sec)	$S_a$ (g)
0.2	1.000 (SDs, Site Class C)
1.0	0.520 (SD1, Site Class C)

**Recommendations**

Site grading is expected to involve mainly excavation. The area of the backyard to be built on or paved should be cleared of debris and other unsuitable materials. The site surface should be stripped to remove organic-laden topsoil. Soils containing more than 2% by weight of organic matter should be considered organic. Any subsurface structure including old utility lines and buried pipes such as, electrical lines, landscape pipes and storm drains that may exist at the proposed construction site should be excavated out, removed and hauled off-site or relocated away from the area proposed for construction. The resulting depressions from these operations should be backfilled with structural fill.

**Foundation Design Criteria**

Continuous, reinforced concrete foundations may be designed to impose pressures on foundation soils up to 2500 pounds per square foot from dead plus normal live loading. Continuous foundations should be at least 15 inches wide and should be embedded at least 12 inches below rough pad grade or adjacent finished grade, whichever is lower.

Interior isolated foundations, such as may support column loads, may be designed to impose pressures on foundation soils up to 2500 pounds per square foot from dead plus normal live loading. Interior foundations should be embedded at least 36 inches below rough pad grade and

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Project 1678

should be at least 48 inches in smallest dimension.

The allowable soil pressures given above may be increased by one-third when evaluating the effects of short-term wind or seismic loadings

### **Concrete Slabs-On-Grade**

Concrete floor slabs should be constructed on compacted soil subgrades. To minimize floor dampness, a section of capillary break material at least five inches thick and covered with a membrane vapor barrier should be placed between the floor slab and the compacted soil subgrade. The capillary break should be a free-draining material, such as 3/8" pea gravel or a permeable aggregate complying with CALTRANS Standard Specifications, Section 68, Class 1, Type A or Type B. A protective cushion of sand or capillary break material at least two inches thick should be placed between the membrane vapor barrier and the floor slab.

If floor dampness is not objectionable, concrete slabs may be constructed directly on a minimum six-inch thick compacted aggregate base over the water-conditioned and compacted soil subgrade. The aggregate base material should be compacted to at least 93 percent of the maximum dry density as determined by ASTM Test Method D1557-91.

### **Retaining Walls**

The retaining walls should be designed using at-rest lateral pressures. The following parameters may be used in the design calculations for the reinforced concrete retaining walls.

1. The average bulk density of material placed on the backfill side of the wall will be 120 pcf.
2. The vertical plane extending down from the ground surface to the bottom of the heel of the wall will be subject to pressure that increases linearly with depth as follows.

<u>Condition</u>	<u>Slope Behind Wall (degrees)</u>	<u>Design Pressure</u>
Active, drained	0	45 pcf
At-rest, drained	0	55 pcf
Short-term, active, drained	0	50 pcf

The above values are for non-seismic conditions.

December 16, 2009  
Project 1678

3. The effects of earthquakes may be simulated by applying a horizontal line load surcharge to the stem of the wall at a rate of  $10H^2$  lb/horizontal foot of wall, where H is the height of the surface of the backfill above the base of the wall. This surcharge should be applied at a height of 0.6H above the base of the wall. The seismic surcharge load may not be applied to retaining walls that are outside of the proposed buildings.
4. A coefficient of "friction" of 0.35 may be used to calculate the ultimate resistance to horizontal sliding of the wall base over the ground beneath the base.
5. An equivalent fluid pressure of 300 psf/ft may be used to calculate the ultimate passive resistance to lateral movement of the ground in front of the toe of the wall and in front of any "key" beneath the toe or stem of the wall.
6. 2500 psf may be used as the maximum allowable bearing pressure for the ground beneath the toe of the wall. This value is for non-seismic conditions and may be increased to 3325 psf when considering additional loads on the wall resulting from earthquakes.

A zone of drainage material at least 12 inches wide should be placed on the backfill side of walls designed for drained condition. This zone should extend up the back of the wall to about 18 inches down from the proposed ground surface above. The upper 12 inches or so of material above the drainage material should consist of native, clayey soil.

The drainage material and the clayey soil cap should be placed in layers about six inches thick and moderately compacted by hand-operated equipment to eliminate voids and to minimize post-construction settlement. Heavy compaction should not be applied; otherwise, the design pressure on the wall may be exceeded.

The drainage material should consist of either Class 2 Permeable Material complying with Section 68 of the CALTRANS Standard Specifications, latest edition, or 3/4 to 1 1/2 inch clean, durable coarse aggregate. If the coarse aggregate is chosen as the drainage material, it should be separated from all adjacent soil by a filter fabric approved by the project Engineer.

Any water that may accumulate in the drainage material should be collected and discharged by a 4-inch-diameter, perforated pipe placed "holes down" near the bottom of the drainage material. The perforated pipe should have holes no larger than 1/4-inch diameter.

### **Surface Drainage**

Surface drainage gradients should be planned to prevent ponding and to promote drainage of surface water away from top of slopes, building foundations, slabs, edges of pavements and sidewalks, and toward suitable collection and discharge facilities.

December 16, 2009  
Project 1678

Water seepage or the spread of extensive root systems into the soil subgrades of foundations, slabs, or pavements, could cause differential movements and consequent distress in these structural elements. This potential risk should be given due consideration in the design and construction of landscaping.

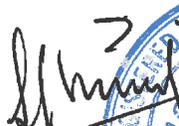
**Limitations**

The recommendations contained in this letter/report are based on certain information and data that have been provided to us. Any change in that information and data will render our recommendations invalid unless we are commissioned to review the change and to make any necessary modifications and/or additions to our recommendations.

Our recommendations have been made in accordance with the principles and practices generally employed by the geotechnical engineering profession. This is in lieu of all other warranties, express or implied.

Sincerely,

**FRIAR ASSOCIATES, INCORPORATED**

  
John H. Friar  
CE 52281  
Copies: Addressee (1)





1870 Olympic Blvd.  
Suite 100  
Walnut Creek  
California 94596

Tel:925.935.9771  
Fax:925.935.9773  
www.caleng.com

3 May 2010

Town of Moraga  
329 Rheem Boulevard  
Moraga, California 94556  
Attention: Richard Chamberlain

RECEIVED

MAY 5 - 2010

MORAGA PLANNING DEPT.

RE: Geologic and Geotechnical Review  
Geotechnical Report and Project Plans  
Proposed Improvements to the White Property  
32 Buckingham Drive  
Moraga, California

Dear Mr. Chamberlain:

At your request, we have completed our review of the geotechnical report and project plans for the proposed improvements to the backyard area of the White property located at 32 Buckingham Drive in Moraga, California. The geotechnical report was prepared by Friar Associate, Inc (FAI) and is titled *Report Update Geotechnical Investigation, New Retaining Wall Structure 32 Buckingham Drive, Moraga, California*. The plans for the project were prepared by ArchGraph Design (AD) and titled "The Whites Backyard Improvement, 32 Buckingham Drive, Moraga, CA 94556."

Our review of the proposed project has included the examination of the above referenced documents for pertinent information regarding the technical feasibility of the project. We have previously reviewed a geotechnical report and project plans by Peters & Ross for the existing retaining walls in the backyard area of the White property. Our review comments pertaining to the geotechnical report and project plans are contained in our letter of 1 December 2005.

### **Proposed Project**

We understand that the proposed project will consist of the construction of a new enclosed storage structure. The new structure will consist of poured in-place concrete retaining walls with a concrete slab roof. The roof will be landscaped with sod and contain a perimeter rail. A segmental block retaining wall will be constructed above the new storage structure. The level building pad for the proposed improvements will be created by excavating into the toe of the steeply inclined slope in the backyard area of the property.

### **Site Observations**

As part of our work we observed the backyard area of the White property. We noted that the storage structure was partially completed. The floor and side walls had been poured and reinforcing steel for the roof was present. We observed outcrops of sandstone bedrock at the toe of the slope adjacent to the side walls of the storage room and in the back and side cuts into the hillside. These sandstone outcrops suggest that it is likely that the entire structure is founded on competent bedrock materials.

## **REVIEW OF THE FAI REPORT AND AD PLANS**

### **FAI Report**

Our review of the FAI report indicates that it is generally complete. In our opinion, it accurately describes the site conditions and contains appropriate recommendations for the known site conditions. However, there are a few items for which we request additional information and/or clarification. These items are as follows.

- Item 1.** Page 4 of the FAI report provides the recommended geotechnical design parameters for the reinforced concrete retaining walls. The provided parameters are for level back slope conditions. As the retaining walls for the storage structure will have sloping conditions above the walls, it is recommended that geotechnical design parameters be provided for the sloping conditions above the walls. Another consideration is if restrained earth pressure may be more appropriate since the walls have been constructed and may brace each other.

The project plans indicate that a masonry retaining wall will be constructed above the rear retaining wall of the storage structure. The FAI report does not provide geotechnical design parameters for retaining walls constructed in a tiered or "stacked" condition. It is recommended that FAI provide geotechnical design parameters for "stacked" retaining walls.

- Item 2.** It is recommended that FAI review the project plans by AD and the structural calculations for the proposed improvements for conformance with the recommendations of their geotechnical report. This review should be documented in writing.

### **AD Plans**

- Item 3.** The AD plans do not specifically reference the geotechnical report by FAI and it is not clear if recommendations contained in the FAI report was used to design the project. General Note "B. FOUNDATIONS" indicates that a geotechnical report was not prepared for this site. However, detail 18 on Sheet Sd1 references a geotechnical report for the project. This apparent conflict should be resolved and the plans revised accordingly.

It is also recommended that the project geotechnical report be referenced on the project plans and that the proposed improvements be designed in conformance with the recommendations of the FAI report.

- Item 4.** Page 5 and 6 contain recommendations for surface and subsurface drainage. Our review of the plans indicates that all of these recommendations are not fully incorporated in the project plans. It is recommended that the plans be revised to be in conformance with the FAI report. The plans should show all surface and subsurface drainage facilities, the slope of the subdrain pipes and surface drainage ditches, and the discharge locations of these facilities.

- Item 5.** Sheet SN. Note 1 in Section C. Concrete refers to cast-in-place concrete piers. Our review of the project plans indicates that piers will not be used at the site and the FAI report does not contain recommendations for concrete piers. It is recommended that the note be revised to omit references to concrete piers.
- Item 6.** Review of the plans indicates that elevations and/or relative elevations are not shown on the plan sheets. It is recommended that the plans be revised to show elevations and/or relative elevations of the proposed improvements.
- Item 7.** The information shown on Section A-A on Sheet S4 conflicts with the information shown on Details 3 and 6 on Sheet SD1. Specifically, the footings and the connection between the masonry wall and the 12 inch thick roof slab are different. It is recommended that the discrepancy between the details be cleared up.
- Item 8.** The under slab measures for Concrete Slabs-on-Grade provided on page 4 of the FAI report do not appear to have been incorporated into the details shown on Sheet SD1. It is recommended that the conflict between the FAI report and the project plans be corrected.
- Item 9.** Sheet S1 shows a 37 percent slope above the location of the proposed storage facility. This conflicts with the slope shown above the masonry retaining wall in Detail 6 of Sheet SD1. It is recommended that this discrepancy be corrected and that the retaining walls be designed for the actual site conditions.

### CLOSURE

This review has been performed by request of the Town of Moraga. Our role has been to provide technical advice to assist the Town in its discretionary permit decisions, and we are afforded the same protection under state law. Our services have been limited to the review of the documents listed above and a visual review of the property. We have no control over the future construction on this property and make no representations regarding its future conditions.

We trust this report provides you with the information you require. We appreciate the opportunity to be of service to you. If you have any questions, please feel free to give us a call. We have employed accepted geotechnical engineering and engineering geologic procedures, and our professional opinions and conclusions are made in accordance with generally accepted geotechnical engineering and engineering geology principles and practices. This standard is in lieu of all warranties, either expressed or implied.

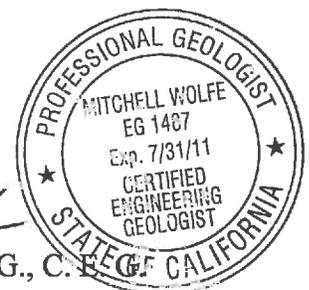
Yours truly,

CAL ENGINEERING & GEOLOGY, INC.

  
Mark Myers, P.E., G.E.  
Senior Engineer



  
Mitchell Wolfe, P.G., C.E.  
Principal Geologist



**Friar Associates, Incorporated . Engineers . Consultants**  
**Soils . Foundations . Geology . Geotechnology**

2656 Nicholson Street, San Leandro, CA 94577  
Tel: (510) 351-3930 Fax: (510) 351-1020

May 25, 2010  
Project 1678

**RECEIVED**

JUN 2 2010

**MORAGA PLANNING DEPT.**

Mr. Robert White  
32 Buckingham Drive  
Moraga, CA 94556

Dear Mr. White:

Response To Comments  
New Retaining Wall Structure  
32 Buckingham Drive  
Moraga, California

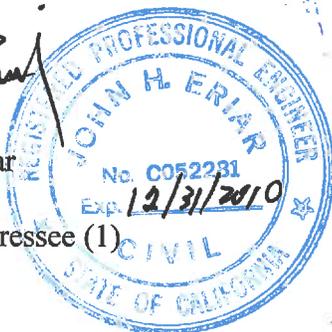
We are submitting this letter in response to the May 3, 2010 letter prepared by Cal Engineering & Geology, the consultants to the Town of Moraga with regards to the backyard retaining wall at the subject residence. The residence is located on the south side of Buckingham Drive, a short distance east of the intersection of Buckingham Drive with Moraga Way in Moraga, California.

To account for sloping background behind any retaining wall an active lateral pressure of 60 pounds per cubic foot equivalent fluid pressure may be assumed for the design of retaining walls (reinforced concrete, masonry and "stack" walls). The parameters provided in our report update letter dated December 116, 2009, may also be used for the design of all retaining walls with level backfill. Other parameters provided in the referenced report update letter may also be used in the design of any retaining wall.

Sincerely,

**FRIAR ASSOCIATES, INCORPORATED**

  
John H. Friar  
CE 52281  
Copies: Addressee (1)



Title :  
Dsgnr:  
Description :

Job #  
Date: 7:52PM, 27 MAY 10

CI

Scope :

Rev: 560100  
User: KW-0604948, Ver 5.6.1, 25-Oct-2002  
(c)1983-2002 ENERCALC Engineering Software

## Restrained Retaining Wall Design

Page 1

e:\free agent (thd)\documents\files\work\j. f

Description Basement Wall 8'-0" Max. Height

Criteria	Soil Data	Footing Strengths & Dimensions
Retained Height = 13.00 ft	Allow Soil Bearing = 2,500.0 psf	f'c = 2,500 psi Fy = 60,000 psi
Wall height above soil = 0.50 ft	Equivalent Fluid Pressure Method	Min. As % = 0.0018
Total Wall Height = 13.50 ft	Heel Active Pressure = 60.0	Toe Width = 3.50 ft
	Toe Active Pressure = 60.0	Heel Width = 0.67
Top Support Height = 8.00 ft	Passive Pressure = 300.0	Total Footing Width = 4.17
	Water height over heel = 0.0 ft	Footing Thickness = 12.00 in
Slope Behind Wall = 1.30 : 1	Footing  Soil Friction = 0.350	Key Width = 0.00 in
Height of Soil over Toe = 0.00 in	Soil height to ignore for passive pressure = 12.00 in	Key Depth = 0.00 in
Soil Density = 110.00 pcf		Key Distance from Toe = 0.00 ft
Wind on Stem = 0.0 psf		Cover @ Top = 3.00 in @ Btm. = 3.00 in

Design Summary	Concrete Stem Construction
Total Bearing Load = 1,909 lbs	Thickness = 8.00 in Fy = 60,000 psi
...resultant ecc. = 9.68 in	Wall Weight = 96.7 pcf f'c = 2,500 psi
Soil Pressure @ Toe = 997 psf OK	Stem is FIXED to top of footing
Soil Pressure @ Heel = 0 psf OK	
Allowable = 2,500 psf	
Soil Pressure Less Than Allowable	
ACI Factored @ Toe = 1,395 psf	
ACI Factored @ Heel = 0 psf	
Footing Shear @ Toe = 18.8 psi OK	
Footing Shear @ Heel = 0.0 psi OK	
Allowable = 85.0 psi	
Reaction at Top = 2,268.4 lbs	
Reaction at Bottom = 3,611.6 lbs	

Sliding Calcs Slab Resists All Sliding !  
Lateral Sliding Force = 3,611.6 lbs

Footing Design Results		
	Toe	Heel
Factored Pressure =	1,395	0 psf
Mu' : Upward =	0	0 ft-#
Mu' : Downward =	0	0 ft-#
Mu: Design =	997	0 ft-#
Actual 1-Way Shear =	18.80	0.00 psi
Allow 1-Way Shear =	85.00	0.00 psi

	@ Top Support	Mmax Between Top & Base	@ Base of Wall
Design height =	8.00 ft	4.31 ft	0.00 ft
Rebar Size =	# 6	# 6	# 6
Rebar Spacing =	12.00 in	12.00 in	12.00 in
Rebar Placed at =	Center	Center	Center
Rebar Depth 'd' =	4.00 in	4.00 in	4.00 in
Design Data			
fb/FB + fa/Fa =	0.308	0.446	0.943
Mu....Actual =	2,125.0 ft-#	3,073.5 ft-#	6,499.2 ft-#
Mn * Phi....Allowable =	6,892.0 ft-#	6,892.0 ft-#	6,892.0 ft-#
Shear Force @ this height =	0.0 lbs		4,762.8 lbs
Shear....Actual =	0.00 psi		99.22 psi
Shear....Allowable =	85.00 psi		85.00 psi
Rebar Lap Required =	28.08 in	28.08 in	
Rebar embedment into footing =			6.00 in

### Other Acceptable Sizes & Spacings:

Toe: # 5 @ 12.00 in -or- Not req'd, Mu < S \* Fr  
Heel: # 5 @ 12.00 in -or- Not req'd, Mu < S \* Fr  
Key: No key defined -or- No key defined

RECEIVED

JUN 2 2010

MORAGA PLANNING DEPT.



Title :  
Dsgnr:  
Description :

Job #  
Date: 7:52PM, 27 MAY 10

CZ

Scope :

Rev: 560100  
User: KVV-0604948, Ver 5.6.1, 25-Oct-2002  
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## Restrained Retaining Wall Design

Page 2  
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Description      Basement Wall 8'-0" Max. Height

### Summary of Forces on Footing : Slab RESISTS sliding, stem is FIXED at footing

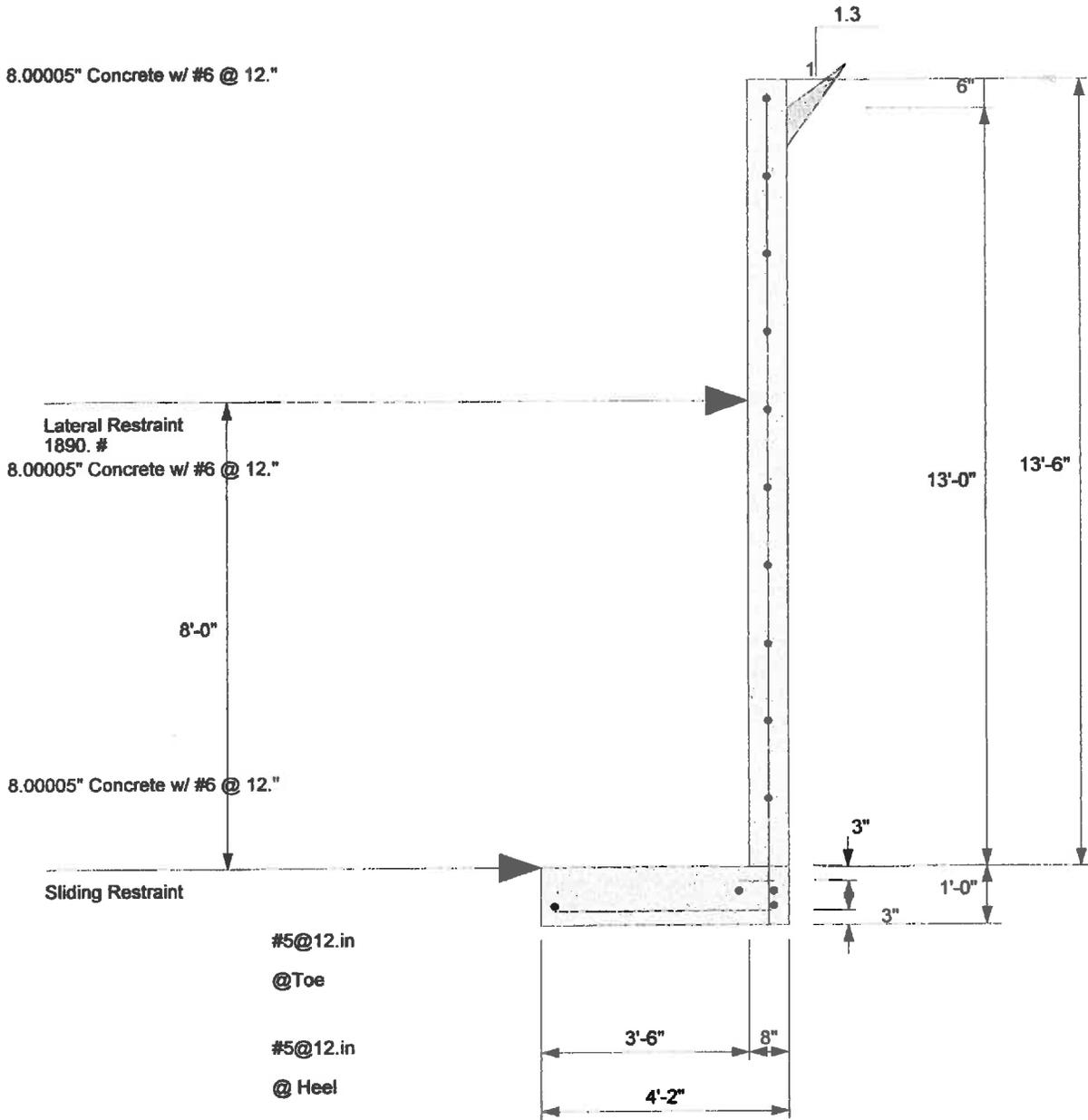
Forces acting on footing for soil pressure

>>> Sliding Forces are restrained by the adjacent slab

#### Load & Moment Summary For Footing : For Soil Pressure Calcs

Moment @ Top of Footing Applied from Stem	=		=	-3,823.1 ft-#
Surcharge Over Heel	=	lbs	ft	ft-#
Axial Dead Load on Stem	=	lbs	ft	ft-#
Soil Over Toe	=	lbs	ft	ft-#
Surcharge Over Toe	=	lbs	ft	ft-#
Stem Weight	=	1,305.0 lbs	3.83 ft	5,002.5 ft-#
Soil Over Heel	=	lbs	4.17 ft	ft-#
Footing Weight	=	604.2 lbs	2.08 ft	1,258.7 ft-#
Total Vertical Force	=	1,909.2 lbs	Base Moment =	2,438.1 ft-#

Soil Pressure Resulting Moment =                      1,539.3ft-#



## Cantilevered Retaining Wall Design

**Description** High Retaining Wall 4'-0" Max. Heigh Sliding resisted by Concrete Slab

### Criteria

Retained Height	=	4.00 ft
Wall height above soil	=	0.50 ft
Slope Behind Wall	=	1.25 : 1
Height of Soil over Toe	=	0.00 in
Soil Density	=	110.00 pcf
Wind on Stem	=	0.0 psf

### Soil Data

Allow Soil Bearing	=	2,500.0 psf
Equivalent Fluid Pressure Method		
Heel Active Pressure	=	60.0
Toe Active Pressure	=	60.0
Passive Pressure	=	300.0
Water height over heel	=	0.0 ft
Footing  Soil Friction	=	0.350
Soil height to ignore for passive pressure	=	0.00 in

### Footing Strengths & Dimensions

f <sub>c</sub>	=	2,500 psi	F <sub>y</sub>	=	60,000 psi
Min. As %	=			=	0.0018
Toe Width	=	2.00 ft			
Heel Width	=	1.00			
Total Footing Width	=	3.00			
Footing Thickness	=	12.00 in			
Key Width	=	0.00 in			
Key Depth	=	0.00 in			
Key Distance from Toe	=	0.00 ft			
Cover @ Top	=	3.00 in	@ Btm.	=	3.00 in

### Design Summary

Total Bearing Load	=	1,645 lbs
...resultant ecc.	=	0.39 in
Soil Pressure @ Toe	=	512 psf OK
Soil Pressure @ Heel	=	584 psf OK
Allowable	=	2,500 psf
Soil Pressure Less Than Allowable		
ACI Factored @ Toe	=	427 psf
ACI Factored @ Heel	=	487 psf
Footing Shear @ Toe	=	4.6 psi OK
Footing Shear @ Heel	=	13.8 psi OK
Allowable	=	85.0 psi
Wall Stability Ratios		
Overturning	=	2.73 OK
Sliding	=	0.87 UNSTABLE!
Sliding Calcs (Vertical Component Used)		
Lateral Sliding Force	=	832.1 lbs
less 100% Passive Force	=	- 150.0 lbs
less 100% Friction Force	=	- 575.6 lbs
Added Force Req'd	=	106.5 lbs NG
...for 1.5 : 1 Stability	=	522.6 lbs NG

### Stem Construction

Design height	ft =	0.00
Wall Material Above "Ht"	=	Masonry
Thickness	=	8.00
Rebar Size	=	# 5
Rebar Spacing	=	8.00
Rebar Placed at	=	Edge

### Top Stem

Stem OK		
Wall Material Above "Ht"	=	Masonry
Thickness	=	8.00
Rebar Size	=	# 5
Rebar Spacing	=	8.00
Rebar Placed at	=	Edge

### Design Data

fb/FB + fa/Fa	=	0.486
Total Force @ Section	lbs =	480.0
Moment....Actual	ft-# =	640.0
Moment....Allowable	=	1,317.2
Shear....Actual	psi =	8.9
Shear....Allowable	psi =	19.4
Bar Develop ABOVE Ht.	in =	30.00
Bar Lap/Hook BELOW Ht.	in =	6.00
Wall Weight	=	84.0
Rebar Depth 'd'	in =	5.25

### Masonry Data

f <sub>m</sub>	psi =	1,500
F <sub>s</sub>	psi =	24,000
Solid Grouting	=	Yes
Special Inspection	=	No
Modular Ratio 'n'	=	25.78
Short Term Factor	=	1.000
Equiv. Solid Thick.	in =	7.60
Masonry Block Type	=	Normal Weight

### Concrete Data

f <sub>c</sub>	psi =	
F <sub>y</sub>	psi =	

### Other Acceptable Sizes & Spacings

Toe: Not req'd, Mu < S \* Fr  
Heel: Not req'd, Mu < S \* Fr  
Key: No key defined

### Footing Design Results

	Toe	Heel
Factored Pressure	= 427	487 psf
Mu' : Upward	= 1,036	0 ft-#
Mu' : Downward	= 493	482 ft-#
Mu: Design	= 544	482 ft-#
Actual 1-Way Shear	= 4.65	13.85 psi
Allow 1-Way Shear	= 85.00	85.00 psi
Toe Reinforcing	= # 5 @ 12.00 in	
Heel Reinforcing	= # 5 @ 12.00 in	
Key Reinforcing	= None Spec'd	

Title :  
 Dsgnr:  
 Description :

Job #  
 Date: 7:59PM, 27 MAY 10

C5

Scope :

Rev: 560100  
 User: KW-0604948, Ver 5.6.1, 25-Oct-2002  
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### Cantilevered Retaining Wall Design

Page 2  
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**Description** High Retaining Wall 4'-0" Max. Heigh Sliding resisted by Concrete Slab

#### Summary of Overturning & Resisting Forces & Moments

Item	.....OVERTURNING.....			.....RESISTING.....			
	Force lbs	Distance ft	Moment ft-#	Force lbs	Distance ft	Moment ft-#	
Heel Active Pressure =	832.1	1.76	1,460.9	Soil Over Heel =	146.7	2.83	415.6
Toe Active Pressure =				Sloped Soil Over Heel =	4.9	2.89	14.1
Surcharge Over Toe =				Surcharge Over Heel =			
Adjacent Footing Load =				Adjacent Footing Load =			
Added Lateral Load =				Axial Dead Load on Stem =		0.00	
Load @ Stem Above Soil =				Soil Over Toe =			
SeismicLoad =				Surcharge Over Toe =			
				Stem Weight(s) =	378.0	2.33	882.0
<b>Total =</b>	<b>832.1</b>	<b>O.T.M. =</b>	<b>1,460.9</b>	Earth @ Stem Transitions =			
<b>Resisting/Overturning Ratio =</b>			<b>2.73</b>	Footing Weight =	450.0	1.50	675.0
Vertical Loads used for Soil Pressure =	1,644.5	lbs		Key Weight =			
Vertical component of active pressure used for soil pressure				Vert. Component =	665.0	3.00	1,994.9
				<b>Total =</b>	<b>1,644.5</b>	<b>lbs R.M. =</b>	<b>3,981.6</b>





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14 June 2010

Town of Moraga  
329 Rheem Boulevard  
Moraga, California 94556  
Attention: Richard Chamberlain

RE: Second Geologic and Geotechnical Review  
Geotechnical Report and Project Plans  
Proposed Improvements to the White Property  
32 Buckingham Drive  
Moraga, California

Dear Mr. Chamberlain:

At your request, we completed a review of the geotechnical report and project plans for the proposed improvements to the backyard area of the White property located at 32 Buckingham Drive in Moraga, California. Our review letter was titled, *Geologic and Geotechnical Review, Geotechnical Report and Project Plans, Proposed Improvements to the White Property, 32 Buckingham Drive, Moraga, California* and dated 3 May 2010.

Following the receipt of our comments, the White's consultant, Friar Associates, Incorporated prepared and submitted the following additional documents which were received by the Town of Moraga Planning Department on 2 June 2010:

- Letter titled, *Response to Comments, New Retaining Wall Structure 32 Buckingham Drive, Moraga, California*, dated May 25, 2010;
- Two retaining wall calculations prepared and stamped by John Friar dated 27 May 2010; and
- Revised plan sheets with a revision date of 25 May 2010. The plans for the project were prepared by ArchGraph Design (AD) and titled "The Whites Backyard Improvement, 32 Buckingham Drive, Moraga, CA 94556."

Our review at this time has been to determine if the responses address the comments contained in our 3 May 2010 letter. Previous work completed by Cal Engineering & Geology on behalf of the Town of Moraga has included review of the last submittal and review of a geotechnical report and project plans by Peters & Ross for the existing retaining walls in the backyard area of the White property. Our review comments pertaining to the geotechnical report and project plans are contained in our letter of 1 December 2005.

**REVIEW OF FAI LETTER, CALCULATIONS, AND REVISED PLANS**

Our 3 May 2010 review of the FAI report indicated that it was generally complete. We did, however, have 9 items for which we requested additional information and/or clarification. On 2 June 2010, the Town received a submittal intended to address the item included in our review letter. The submittals provided do adequately address the comments of our letter. To assist the Town, we have included our original comments and a description of the changes made to address the comments.

***Item 1.***

*Page 4 of the FAI report provides the recommended geotechnical design parameters for the reinforced concrete retaining walls. The provided parameters are for level back slope conditions. As the retaining walls for the storage structure will have sloping conditions above the walls, it is recommended that geotechnical design parameters be provided for the sloping conditions above the walls. Another consideration is if restrained earth pressure may be more appropriate since the walls have been constructed and may brace each other.*

*The project plans indicate that a masonry retaining wall will be constructed above the rear retaining wall of the storage structure. The FAI report does not provide geotechnical design parameters for retaining walls constructed in a tiered or "stacked" condition. It is recommended that FAI provide geotechnical design parameters for "stacked" retaining walls.*

**Item 1 Status:**

**Satisfied.** The May 25, 2010 FAI letter recommends using an active equivalent fluid pressure of 60 pcf and includes calculations signed by the geotechnical consultant.

***Item 2.***

*It is recommended that FAI review the project plans by AD and the structural calculations for the proposed improvements for conformance with the recommendations of their geotechnical report. This review should be documented in writing.*

**Item 2 Status:**

**Satisfied.** The May 25, 2010 FAI letter recommends using an active equivalent fluid pressure of 60 pcf and includes calculations signed by the geotechnical consultant.

**AD Plans**

***Item 3.***

*The AD plans do not specifically reference the geotechnical report by FAI and it is not clear if recommendations contained in the FAI report was used to design the project. General Note "B. FOUNDATIONS" indicates that a geotechnical report was not prepared for this site. However, detail 18 on Sheet Sd1 references a geotechnical report for the project. This apparent conflict should be resolved and the plans revised accordingly.*

*It is also recommended that the project geotechnical report be referenced on the project plans and that the proposed improvements be designed in conformance with the recommendations of the FAI report.*

**Item 3 Status:** **Satisfied.** The May 25, 2010 plans now reference the geotechnical update report prepared by FAI.

**Item 4.** *Page 5 and 6 contain recommendations for surface and subsurface drainage. Our review of the plans indicates that all of these recommendations are not fully incorporated in the project plans. It is recommended that the plans be revised to be in conformance with the FAI report. The plans should show all surface and subsurface drainage facilities, the slope of the subdrain pipes and surface drainage ditches, and the discharge locations of these facilities.*

**Item 4 Status:** **Satisfied.** The May 25, 2010 plans show the retaining wall drains to be tied into the drain system of the existing walls to remain which about the new construction. Surface drainage is shown to flow around the new improvements.

**Item 5.** *Sheet SN. Note 1 in Section C. Concrete refers to cast-in-place concrete piers. Our review of the project plans indicates that piers will not be used at the site and the FAI report does not contain recommendations for concrete piers. It is recommended that the note be revised to omit references to concrete piers.*

**Item 5 Status:** **Satisfied.** The note referring to piers has been removed on the plans dated May 25, 2010.

**Item 6.** *Review of the plans indicates that elevations and/or relative elevations are not shown on the plan sheets. It is recommended that the plans be revised to show elevations and/or relative elevations of the proposed improvements.*

**Item 6 Status:** **Satisfied.** Sheet S3 of the May 25, 2010 plans include relative elevations.

**Item 7.** *The information shown on Section A-A on Sheet S4 conflicts with the information shown on Details 3 and 6 on Sheet SDI. Specifically, the footings and the connection between the masonry wall and the 12 inch thick roof slab are different. It is recommended that the discrepancy between the details be cleared up.*

**Item 7 Status:** **Satisfied.** The May 25, 2010 plans show the masonry wall to be founded on the concrete slab. There is still a small discrepancy in the bottom footing where Section A-A shows a slight heel but the details (1 and 3 on SD1) do not show the heel. The revised calculations do not appear to require the heel. We are considering the comment satisfied since the presence of a heel would not have a negative consequence on the retaining wall.

**Item 8.** *The under slab measures for Concrete Slabs-on-Grade provided on page 4 of the FAI report do not appear to have been incorporated into the details shown on Sheet SD1. It is recommended that the conflict between the FAI report and the project plans be corrected.*

**Item 8 Status:** **Satisfied.** Under slab measures have been added to the plans dated May 25, 2010.

**Item 9.** *Sheet S1 shows a 37 percent slope above the location of the proposed storage facility. This conflicts with the slope shown above the masonry retaining wall in Detail 6 of Sheet SD1. It is recommended that this discrepancy be corrected and that the retaining walls be designed for the actual site conditions.*

**Item 9 Status:** **Satisfied.** Detail 6 has been revised to reflect the 37 degree slope (1.3H:1V).

## CLOSURE

This review has been performed by request of the Town of Moraga. Our role has been to provide technical advice to assist the Town in its discretionary permit decisions, and we are afforded the same protection under state law. Our services have been limited to the review of the documents listed above and a visual review of the property. We have no control over the future construction on this property and make no representations regarding its future conditions.

We trust this report provides you with the information you require. We appreciate the opportunity to be of service to you. If you have any questions, please feel free to give us a call. We have employed accepted geotechnical engineering and engineering geologic procedures, and our professional opinions and conclusions are made in accordance with generally accepted geotechnical engineering and engineering geology principles and practices. This standard is in lieu of all warranties, either expressed or implied.

Yours truly,

CAL ENGINEERING & GEOLOGY, INC.



Mark Myers, P.E., G.E.  
Senior Engineer



Mitchell Wolfe, P.G., C. E. G.  
Principal Geologist

# **Exhibit C**

2006 Design Review Board Staff Report

# DESIGN REVIEW BOARD STAFF REPORT

**MEETING DATE:** December 12, 2005      **REPORT WRITTEN:** December 5, 2005

**ITEM NUMBER:** V.B. -- DESIGN REVIEW

**FILE NUMBER:** **DRB-29-2005 – Robert White (Applicant & Owner), 32 Buckingham Drive** Design review application and Hillside Development Permit for construction of two 5-foot high retaining walls in the rear yard behind the existing home at 32 Buckingham Drive. The lower wall will be about 15-feet behind the house and in approximate alignment with an existing 30-inch high wood retaining wall. The upper wall will be located 10-feet further into the hill behind the lower wall. A 10-foot by 25-foot patio will be located between the two retaining walls. The property is zoned 3 DUA (Three dwelling units per acre). (APN 256-203-012)

**ZONING:** Three-Dwelling Units per Acre

**CEQA STATUS:** Categorically Exempt under Guidelines Section 15303(e): Construction of small facilities or structures, including but not limited to (e): garages, carports, patios, swimming pools and fences. Grading on slopes steeper than 10% is not exempt under Section 15304 (a): however, in this case the grading took place prior to any approvals by the Town and the proposed plan under consideration is intended to mitigate the cut that was made into the hill. The Hillside Development Permit requires consideration of many of the same factors that would be otherwise discussed in an initial study.

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## APPLICATION SUMMARY:

This application requires DRB consideration because the proposed grading and retaining walls are located on an area of the parcel with a slope that is greater than 20% and a hillside development permit is required in accordance with Moraga Municipal Code Section 8.136.050 (c).

## PUBLIC NOTICE AND MAILING LIST:

As required by MMC Section 8.72.130A1, written notice of the application for design review (DRB Agenda) was mailed to all property owners and residents within three hundred (300) feet of the subject property on Thursday, December 1, 2005. A copy of the area of notice map and notice address list is attached as **EXHIBIT A**.

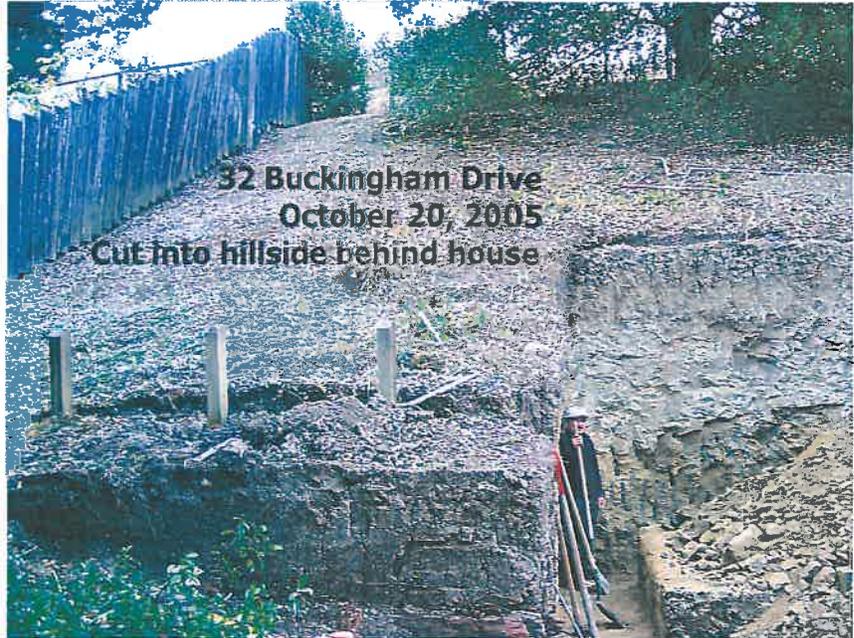
## BACKGROUND:

On October 20, 2005, staff was advised of a grading job that was underway at 32 Buckingham Drive without a permit. Upon investigation, staff found that a deep cut approximately 12-feet high had been excavated into the hill behind the existing home (see picture on page 2). On October 24, 2005 staff, including the Town Engineer, Jill Mercurio,

and Mitch Wolfe from Cal Engineering and Geology (CE&G) met with Robert White, the owner of the property, and his geotechnical consultants, Peter Mundy and Patrick Drumm, to discuss the grading situation and the procedures necessary to obtain a grading permit.

The owner explained that he was replacing a deck that had been on the hillside and had intended to extend his lower deck into the cut area. Staff advised that approval of a 12-foot high retaining wall would be a problem because of the precedent that it would establish.

Mr. White was advised that he should either backfill and restore the previous slope or consider a pair of retaining walls with a terrace in between the walls. He was also advised that he would need Design Review Board approval for walls higher than 5-feet. It was determined at the meeting that the average pre-development slope of the property was less than 25% and would not require Town Council approval. However, the slope of the hill where the cut was made exceeded 20% and required a hillside development permit. Staff was very concerned with possible slope failure and erosion, since it was the beginning of the winter storm season.



Prior to the excavation, there were two wooden retaining walls, which are shown in the photograph to the left. Staff authorized the owner to proceed with construction of a 5-foot high retaining wall at the approximate location of the previous wood wall at the toe of the slope, so that the vertical cut slope could be back-filled to a depth of 5-feet to help buttress the cut. At the meeting, the geotechnical engineers at the meeting confirmed that the hill was predominantly sandstone and the cut was not creating a significant risk of a landslide.

## **HILLSIDE DEVELOPMENT PLAN REVIEW:**

The factors to be considered under Moraga Municipal Code Section 8.136.070 for a Hillside Development Permit are listed in **EXHIBIT B** with staff discussion of each factor. In staff's opinion, the project will have no significant impacts to the factors in Section 8.136.070.

## **DESIGN ASPECTS TO BE CONSIDERED:**

Planning Commission Resolution 16-01 requires the design aspects listed below to be considered for projects in single family residential districts. The applicable design aspects are in bold italic type and are discussed in detail in **EXHIBIT C**.

1. Maximum height, lot coverage and setbacks.
2. Overall mass and bulk of structures.
- 3. *Special features of the project, such as fences, walls, and screens.***
4. Effective concealment and sound attenuation of exposed mechanical and electrical equipment.
5. Colors and materials on the exterior face of the building or structures, striving for a limited number of colors and materials for each project.
6. Avoidance of repetition of identical entities whenever possible.
7. Harmonious relationship with existing and proposed adjoining developments, avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted.
8. Pleasing landscaping which incorporates existing landscaping and terrain as a complement to the structure, using plants which thrive in the Moraga climate and which are large enough in size to be effective.
9. Compliance with Chapter 8.132 (scenic corridors).
- 10. *Impact on neighboring properties.***
- 11. *Impact on public safety.***
- 12. *Harmony with the general plan, design review guidelines and floor area ratio guidelines.***

## **APPLICABLE TOWN DESIGN GUIDELINES:**

The applicable design guidelines have been listed in **EXHIBIT D** with staff discussion of each guideline. In staff's opinion, the project complies with the design guidelines, even though it would have been better to have lower retaining walls if the deep cut had not already been made into the hill.

## **REQUIRED FINDINGS FOR DESIGN REVIEW APPROVAL:**

Planning Commission Resolution 16-01 lists four findings that need to be made in order for the DRB to approve an application in a single family residential zone. Staff has suggested findings for approval in a draft memorandum for Design Review Board action. To disapprove an application for design review, a finding must be made as to why one or more of the standards under PC Res. 16-01 cannot be satisfied.

**PERMIT STREAMLING ACT:**

This application was submitted on November 29, 2005. The Geotechnical Peer Review of this application was not completed until December 1, 2005. This project must be determined or deemed complete or incomplete by December 29, 2005. This application must either be approved or disapproved by the Town by May 29, 2006, unless both the Town and the applicant agree to a one time 90-day extension.

**RECOMMENDATION:**

Staff recommends approval and adoption of the draft action memorandum, which is attached as **EXHIBIT F**

Report prepared by: Richard Chamberlain, Senior Planner

**ATTACHMENTS**

- EXHIBIT A – Area of Notice Map and Notice Address List
- EXHIBIT B – Hillside Development Permit Factors under MMC Section 8.136.070
- EXHIBIT C – Design Aspects under Planning Commission Resolution 16-01
- EXHIBIT D – Applicable Design Guidelines
- EXHIBIT E – Peer Review Letter dated December 1, 2005 from CE&G
- EXHIBIT F – Draft Action Memorandum
- EXHIBIT G – Project Plans

# EXHIBIT B

## FACTORS TO BE CONSIDERED IN ACCORDANCE WITH MORAGA MUNICIPAL CODE SECTION 8.136.070 FOR A HILLSIDE DEVELOPMENT PERMIT FOR 32 BUCKINGHAM DRIVE

Moraga Municipal Code Section 8.136.070 requires the reviewing body to consider the following factors:

1. Slope

Chapter 8.136 of the Moraga Municipal Code (MMC) applies to any project with a slope of 20% or greater. The original slope of the hill (Section A-A on the site plan and section drawing) was approximately 50%. As stated previously, there were two wooden retaining walls near the bottom of the slope prior to the excavation into the hill.

2. Soil Instability

The property owner's geotechnical consultants, Peters and Ross, submitted a report on the project on November 11, 2005. The full report from Peters and Ross will be brought to the meeting. They found the hillside to have 3 to 4 feet of dark clay materials over 1 to 2 feet of weathered bedrock that is underlain by massive competent sandstone bedrock. The conclusion of their report was that the site was suitable for the construction of the segmental retaining wall and their primary concern was for the expansive soils. The Peters and Ross report was sent for peer review to Cal Engineering and Geology (CE&G) on November 15, 2005. A copy of CE&G's peer review letter is attached as **EXHIBIT E**. CE&G recommended two minor additions to the plans as follows:

1. Add the specifications for the footing concrete or for the grout for the masonry blocks for the upper retaining wall.
2. Consider increasing the length of the geogrid reinforcement for the lower wall to a minimum of 4 feet.

3. Drainage

The area of the proposed work is located in the rear yard along and just below the existing cut slope. Runoff from the hillside above the cut slope is collected by a concrete "V-ditch" that is in generally good condition. Pending completion of the work on the two retaining walls, the owner has installed plastic sheeting over the slope between the "V-ditch" and the cut into the hillside to minimize the amount of water on the slope. The additional impervious surface area from the new 10-foot by 25-foot patio to be constructed on the terrace between the two walls will need to be drained to a vegetated area prior to discharge into any storm drainage pipe. The drainage plans will require review by the Town Engineer.

4. Soil Characteristics

The Peters and Ross report states that there are a number of methods available for reducing the adverse effects of expansive soils, including deepening of foundations to develop support below the zone of significant seasonal moisture change and providing drainage and landscaping to minimize seasonal moisture fluctuations in the top soil. They also recommended drilled pier foundations be used to support the proposed wall. It is

presumed that this recommendation applies only to the rear masonry wall and not the segmental wall lower down the slope. They also recommend that the backfilling will be with aggregate base materials compacted to at least 90% relative compaction.

5. Seismic Factors

The site is not located within an Earthquake Fault Zone as established by the State for active faults. However, the site is located about 8 km northeast of the Hayward fault. In addition, the site is also about 8 km west northwest of the Calaveras fault and about 13.5 km southwest of the Concord-Green Valley fault. Each of these faults are capable of producing earthquakes that would cause moderate to strong ground shaking at the subject site. The structural calculations for the retaining walls was included in Appendix A of the Peters and Ross report.

6. Existing and Future Residential Development

The subject parcel is surrounded on the east, west and north sides by single-family residential development and is zoned Three Dwelling Units per Acre (3-DUA). Current site development standards indicate that no more than one residence can be developed on the subject parcel. The property on the south side above the cut into the hill is zoned OS-M (Open Space – MOSO). Future development of the open space parcel would be restricted in areas where the average slope exceeds a 20% slope, therefore development in close proximity to the property at 32 Buckingham Drive is not very likely.

7. View Shed

This project at 32 Buckingham Drive is located at the toe of an existing slope and will not affect any views that are presently available to other residences along Buckingham Drive or from any other residences in the vicinity. The proposed cut is in the center of the lot behind the existing house and cannot be seen from the street at all.

8. Noise

The noise generated by the project will be short-term in nature. Short-term impacts are due to noise generated by equipment during the construction. Construction activities are not expected to result in noise levels exceeding the Town's standards. The Town's Noise Ordinance limits construction activities to between the hours of 8:00 a.m. and 5:00 p.m.

9. Potential traffic congestion

This project will not impact traffic in the area.

10. Fire risk

This project will pose no additional fire risk.

11. Wildlife

The existing excavation into the hill did not require the removal of any mature native trees, dense scrub or well-developed riparian habitat, which typically provide important cover for wildlife. There is a large oak tree further up the hill in the back yard of this parcel, but it is not impacted by the proposed retaining walls.

12. Dust

The excavation was previously done. There could be some additional dust when the backfilling of the lower 5-foot segmental wall is done. Dust emissions would vary depending on the level of activity, the type of construction activity and weather conditions. The closest sensitive receptors for air pollutants are the residences on the east and west

sides, adjacent to the project site. Construction dust impacts can be mitigated through appropriate dust control practices and through compliance with the Town's standard construction conditions.

13. Glare

This project will have no affect on glare, since the retaining walls cannot be seen from off-site and the concrete block construction is not a highly reflective material.

14. Impact on Existing Vegetation

This project will not have a significant impact on existing vegetation.

15. Additional factors to be considered by the Town in reviewing a Hillside Development Permit include the following:

a. Minimum Lot Area

MMC Section 8.136.060 states that the minimum lot area shall not be less than that prescribed by the General Plan. However, the required lot areas may be increased above the minimum when the reviewing body finds that it is necessary to do so because of the slope in order to assure that there will be a suitable building site for the approved type of residential building. In determining whether it is necessary to increase the lot area required above the minimum prescribed by the General Plan, the reviewing body shall apply the standards set forth in Section 8.136.070. As a rule, larger lots should be on steeper slopes and smaller lots should be on flatter land.

*Comment: This is an existing lot and the construction of the two retaining walls will not change the density of development on the property.*

b. Appropriate Living Space

MMC Section 8.136.070 B requires that the site plan shall provide an appropriate living space consistent with the site's constraints.

*Comment: The proposed retaining walls and new 10-foot by 25-foot patio will increase the outdoor living space on the site. The existing interior living space will not be changed.*

c. Location of Building Sites Adjacent to Steep Slopes

MMC Section 8.136.070 C requires a building site, which is on a steep slope, to be located at the lowest possible elevation on the site. MMC Section 8.136.070 D, requires residential development adjacent to a steep downslope to be designed so that the principal and accessory structures blend with the topography.

*Comment: This existing home is located at the lowest possible elevation on the site and will not be changed as a result of the proposed retaining walls. The home is not adjacent to a steep downslope and is developed upon a graded pad at the toe of the hill. The proposed patio is on a terrace above the primary building pad in order to minimize the height of the retaining walls and step the "development" up the hill.*

d. Additional Restrictions or Requirements

MMC Section 8.136.08 states that the Planning Commission may impose additional restrictions on a parcel of hillside land if it finds that the parcel requires protection because of its prominence and location or determines that there may be exceptional hazards to its development. These additional restrictions or requirements must be consistent with the purposes of the Zoning Ordinance. The Design Review Board should consider the concerns of affected neighbors and add any additional restrictions or requirements consistent with the purposes of the Zoning Ordinance.

# Town of Moraga

PLANNING DEPARTMENT  
2100 Donald Drive  
MORAGA, CA 94566

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## DESIGN REVIEW BOARD ACTION MEMORANDUM

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On January 9, 2006 the Town of Moraga Design Review Board considered the application described below:

**DRB-29-2005 – Robert White (Applicant & Owner), 32 Buckingham Drive** Design review application and Hillside Development Permit for construction of two 5-foot high retaining walls in the rear yard behind the existing home at 32 Buckingham Drive. The lower wall will be about 15-feet behind the house and in approximate alignment with an existing 30-inch high wood retaining wall. The upper wall will be located 10-feet further into the hill behind the lower wall. A 10-foot by 25-foot patio will be located between the two retaining walls. The property is zoned 3 DUA (Three dwelling units per acre). (APN 256-203-012)

### DESIGN REVIEW BOARD ACTION:

DESIGN REVIEW BOARD APPROVAL is hereby granted in accordance with the following findings required by Planning Commission Resolution 16-01, and subject to the conditions listed below:

#### **Findings:**

1. The proposed improvement conforms to good design as set forth in the Town of Moraga Design Guidelines, and in general contributes to the character and image of the town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality for the following reasons:
  - a. The new 5-foot high retaining walls will create a terrace on the slope behind the existing home to provide more useable exterior space in the rear yard, but will not substantially decrease the amount of natural hillside behind the home.
  - b. Although the grading and retaining walls are a departure from the natural topography of the slope, the project is well hidden behind the home and will not alter the view or character of the hillside as seen from neighboring properties.
  - c. The retaining wall heights comply with the Moraga Design Guidelines.
2. The proposed improvement will not have a substantial adverse affect on neighboring properties or the community due to poor planning; neglect of proper design standards; or the existence of building and structures unsuitable to and incompatible with the character of the neighborhood and the character of the community because the

proposed retaining walls and patio are behind the home and cannot be seen from neighboring properties.

3. The proposed improvement will not lower property values; discourage the maintenance and improvement of surrounding properties; or preclude the most appropriate development of other properties in the vicinity because the improvement will have no visual or economic impact on the adjacent homes.
4. The proposed retaining walls will not impair the public health, safety or welfare because they have been designed in accordance with the specification in a site specific Geotechnical Report, which has been reviewed by the Town's Geotechnical Peer Review consultant and the structural design of the retaining walls will be reviewed by the County Building Department and will be built in accordance with the California Building Code and should have no adverse health or safety impacts on the community.

**Conditions:**

1. The plans submitted for a building permit for the retaining walls and patio shall be substantially in accordance with the plans approved by the Design Review Board on December 12, 2005 and stamped "Approved by Town of Moraga", except that handrails may be required by the Building Department on top of the retaining walls. The maximum height of the guardrails and retaining walls shall not exceed 8-feet in total height.
2. The construction of the retaining walls shall follow the recommendations in the Peters and Ross geotechnical report dated November 10, 2005 with the additional recommendations from Cal Engineering and Geology dated December 1, 2005 as follows:
  1. Add the specifications for the footing concrete or for the grout for the masonry blocks for the upper retaining wall.
  2. Consider increasing the length of the geogrid reinforcement for the lower wall to a minimum of 4 feet.
3. The additional impervious surface area from the new 10-foot by 25-foot patio to be constructed on the terrace between the two walls shall be drained to a vegetated area prior to discharge into any storm drainage pipe. The drainage plans shall be submitted to the Town Engineer for review and approval prior to release of the building permit.
4. The hours of construction shall be from 8:00 a.m. to 5:00 p.m. in accordance with the Town of Moraga Noise Ordinance. Although work is not prohibited on weekends, it would be appreciated by your neighbors if you schedule loud construction activities, such as jack hammers or other equipment using compressed air, to weekdays.

5. Any additional grading or excavation necessary to construct the retaining walls shall be conducted under the direct supervision of the project Geotechnical Engineer.
6. Since the work will be completed during the winter storm season (October 15 to April 15), an Erosion Control Plan shall be submitted for the project site in accordance with Moraga's Storm Water Management Plan. The Erosion Control Plan is subject to review and approval by the Town Engineer, prior to the issuance of the building permit.
7. Erosion control facilities must be maintained after every storm and as needed in between storms, and replaced whenever necessary. Any sediment reaching detention basins or settlement ponds shall be periodically cleaned out to avoid spilling over into catch basins and storm drains. The erosion control measures shall be inspected periodically throughout the winter by the Town.
8. All disturbed areas shall be replanted with plants and groundcovers and protected from both wind and water erosion upon completion of the grading for the project.
9. The applicant and their contractors shall be responsible for preventing spills of any debris or construction materials on Town streets. If any spills of debris occur, then the applicant 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.
10. If there is no appeal, Design Review Board approval will be valid for one year from the date of approval. You must obtain a building permit for construction of your project within one year or you may request an extension of design review approval for one additional year. The request must be in writing to the Planning Director and should show good cause as to why the design approval should be extended.

Design Review Board Action can be appealed to the Planning Commission within 10 calendar days after the date of the decision. If you have any questions regarding the action of the Board, please contact the Moraga Planning Department at (925) 376-5200.

# **Exhibit D**

## Hillside Development Permit Consideration

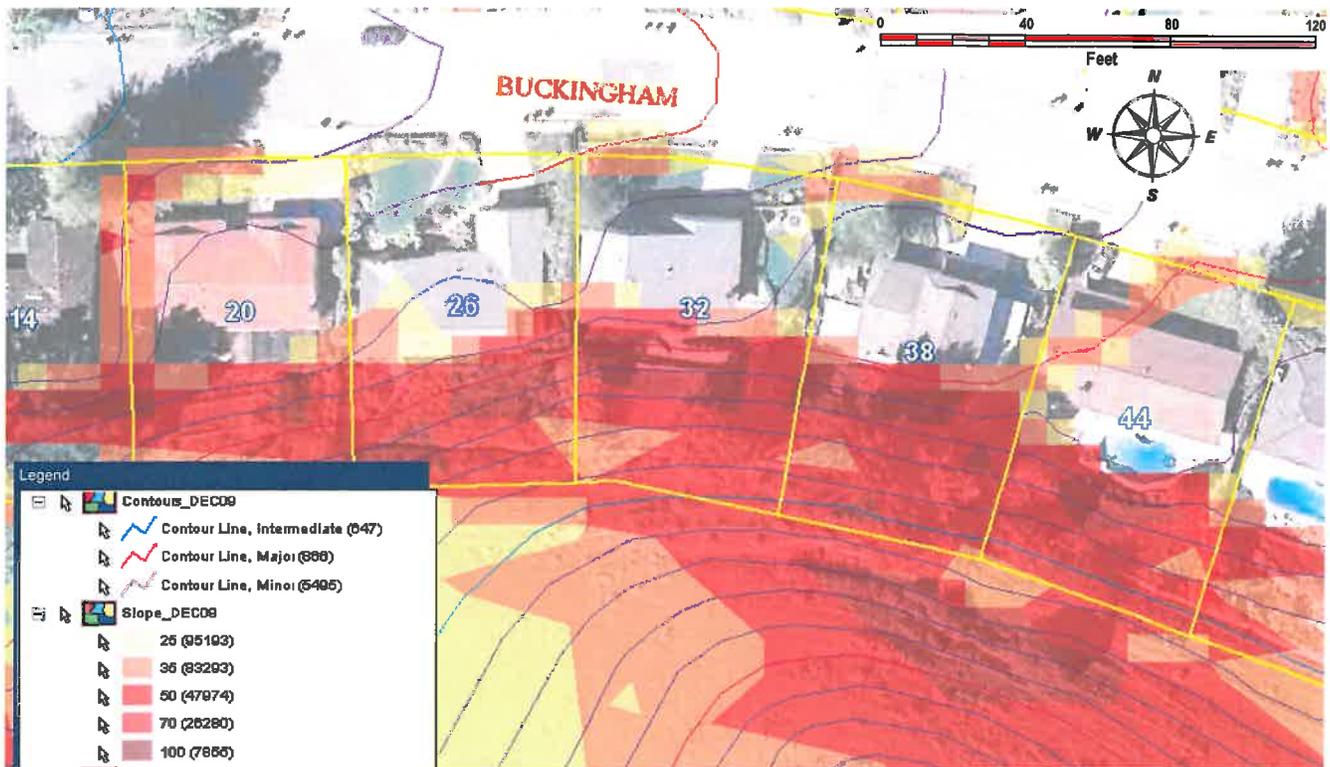
# EXHIBIT D

## FACTORS TO BE CONSIDERED IN ACCORDANCE WITH MORAGA MUNICIPAL CODE SECTION 8.136.070 FOR A HILLSIDE DEVELOPMENT PERMIT FOR 32 BUCKINGHAM DRIVE

### 1. Slope

Chapter 8.136 of the Moraga Municipal Code (MMC) applies to any project with a slope of 20% or greater. The average slope of the hill above the home at 32 Buckingham Drive is between 35% and 50% as shown on the GIS Aerial Photo and topography map below:

Slope Map in vicinity of 32 Buckingham Drive



The average slope in the area for the excavation of the retaining wall and proposed storage building was calculated as 37% by the assistant Town Engineer. A hillside development permit would be required in any case because MMC Section 8.136.020-A-1 does not specify an “average” slope and most of the hillside is over a 20% slope.

### 2. Soil Instability

The applicant submitted a review of a Geotechnical Investigation Report prepared by John Friar dated December 16, 2009, which is attached to the staff report in **EXHIBIT B**. The report was peer reviewed by Cal Engineering and Geology in their letter dated May 5, 2010. In response to the May 5<sup>th</sup> letter, the plans were revised and additional information

provided by Friar in a letter dated June 2, 2010. On June 14, 2010, Cal Engineering and Geology confirmed that all issues in the May 5<sup>th</sup> letter were satisfactorily addressed.

**3. Drainage**

Preliminary drainage plans have been provided in the revised plan set dated May 25, 2010.

**4. Soil Characteristics**

According to the Friar letter, the unpermitted excavation has resulted in the exposure of bedrock at the cut face of the slope behind the existing building.

**5. Seismic Factors**

The Hayward Fault is located about 5 miles west-southwest of the project site. No active faults cross the site and it is not located within an Alquist Priolo Special Studies Zone or known Earthquake Fault Zone. The potential for ground rupture at the site is considered very unlikely. Page 3 of the Friar letter includes the CBC Seismic design parameters recommended for the project.

**6. Existing and Future Residential Development**

The proposed retaining walls and storage building are within 9 feet of an existing residential structure at 32 Buckingham Drive. The steep topography of the hillside above the project site and the open space zoning would make additional residential development highly unlikely on the vacant land south of the property.

**7. View Shed**

The retaining walls and proposed storage building would be effectively screened from view by the existing home at 32 Buckingham Drive and by existing fencing on the property.

**8. Noise**

Although the proposed storage building has been partially built, there could be additional noise generated during completion of the project, if the grading is approved. These construction related noise impacts will be short-term in nature and are not expected to result in noise levels exceeding the Town's standards. The Town's Noise Ordinance limits construction activities to between the hours of 8:00 a.m. and 5:00 p.m.

**9. Potential traffic congestion**

This project will not impact traffic in the area since it is located at the rear of the applicant's property. Most of the excavation work has already been completed, albeit without the required permits.

**10. Fire risk**

The applicant will need approval from the MOFD prior to release of the grading and building permit.

## **11. Wildlife**

No mature native trees, dense scrub or riparian areas, which provide important habitats for wildlife, will be removed for this project. The grading for the storage building is not expected to have any significant impact on wildlife on the project site.

## **12. Dust**

The majority of the grading and excavation work has already been done. Appropriate dust control mitigation measures should be implemented during an additional grading required, either for completion of the project or for restoration of the hillside if the grading is not approved. The completed project would not generate any dust.

## **12. Glare**

This project will have no affect on glare, since the retaining walls and storage building are located behind the existing home and no glass windows or door are proposed on the building.

## **13. Impact on Existing Vegetation**

This project will not have any impact on existing vegetation. The existing grasses on the hillside where the grading for the retaining walls has been done are introduced pasture grasses that are not native to the area. There are no shrubs, bushes or trees in the area where the excavation has been made.

## **15. Additional factors to be considered**

### **a. Minimum Lot Area**

*Comment: The lot area is not being changed and is not a factor for this application.*

### **b. Appropriate Living Space**

*Comment: The proposed patio roof on top of the storage building will add a small amount of outdoor living space in the rear yard. The existing property has very little useable level yard area at the rear of the home.*

### **c. Location of Building Sites Adjacent to Steep Slopes**

*Comment: The proposed storage building has been cut deep into the steep hillside behind the home. If the floor elevation of the building had been raised to the level behind the first retaining wall closest to the home, then the cut into the steep slope could have been reduced. This alternative could have eliminated the necessity for the additional retaining wall at the rear on top of the storage building.*

### **d. Additional Restrictions or Requirements**

*Comment: The Planning Commission should consider any concerns of affected neighbors and include any appropriate recommendations to address any visual or aesthetic concerns.*

# **Exhibit E**

## Grading Determinations

## GRADING DETERMINATIONS

### FINDINGS REQUIRED FOR APPROVAL OF THE GRADING PERMIT

According to Moraga Municipal Code Section 14.16.030, a grading permit may be granted only after a determination that the grading is:

- A. Consistent with the town design guidelines;
- B. Consistent with the regulations and restrictions of this chapter;
- C. Not detrimental to public safety;
- D. Not detrimental to stormwater runoff;
- E. Consistent with the requirements of Chapter 8.136 of the Moraga Municipal Code (hillside development);
- F. Natural contour grading;
- G. Minimizes soil displacement;
- H. Minimizes the use of retaining walls;
- I. The minimum amount of grading possible on the site; and
- J. Not inconsistent with the General Plan.

The following information is provided to assist the Planning Commission in making the above determinations:

1. **Consistency with the Town of Moraga Design Guidelines.** Following (in *italics*) are relevant Town design guidelines.

*RH6 Hillside grading shall blend with natural slopes and be contoured to achieve a natural appearance. The use of retaining walls and other man-made grading features to mitigate geologic hazards should be avoided.*

*ID10.3 When the pre-development slope is greater than or equal to 20%, development shall be avoided, but may be permitted if supported by site-specific analysis. When grading land with a slope of 20% or more, soil displacement and retaining wall use shall be minimized by using contour grading techniques. In MOSO areas, development shall be prohibited on slopes with an average gradient of 20% or greater. Design shall be consistent with Moraga Municipal Code Title 14.*

*ID10.4 Land with a pre-development average slope of 25% or greater within the development area shall not be graded except as authorized by the Town Council and only where it can be shown that a minimum amount of grading is proposed in the spirit of, and not incompatible with, the intention and purpose of the Moraga General Plan. No new residential structures may be placed on after-graded average slopes of 25% or steeper within the development area except that this provision shall not apply to new residential structures on existing lots that were either legally created after March 1, 1951 or specifically approved by the Town Council after April 15, 2002.*

*ID10.5 Cut slopes should be placed behind buildings or other structures where they will be screened.*

*ID10.6 Preserve the natural topography of the land, especially at the horizon:*

- Round off graded slopes, in a manner that conforms to the natural contours of the land and to the surrounding terrain. Sharp angles produced by earth moving, specifically at the top and toe of graded slopes shall be avoided.*
- Slopes shall be contour graded to achieve a natural appearance.*
- Slopes shall be blended with the contours of contiguous properties and create a smooth transition.*
- Grading shall minimize scars due to cuts, fills, and drainage benches on natural slopes.*

*Neither cuts nor fills shall result in slopes steeper than 3:1 (horizontal to vertical), except where natural slopes are steeper. Where steeper slopes are unavoidable, special mitigation measures shall be incorporated into the design construction and maintenance of the slopes.*

*ID11.5 Retaining walls should be built a minimum of three feet from a property line.*

**2. Consistency with the regulations and restrictions of chapter 14.16 and Title 14 (Grading Ordinance).**

The Planning Commission will make a determination with respect to the consistency of the proposed project with the regulations and restrictions of chapter 14.16. The information in *italics* is provided with respect to consistency with Title 14:

- 14.48.011-Excavations: Maximum Gradient: Cut slopes shall not be steeper than 3:1 vertical except in conform areas where natural slopes are greater.

*The pre-existing slope in the area of construction was 37%. The proposed plan does not change the slope of the areas above the retaining walls, but does create an area 2'8" wide adjacent to the western*

*property line where the slope is roughly 34% (beginning with a 51" retaining wall and rising to the 9' height of the cut at the back of the structure. The slopes generally conform in a north-to-south direction, but do not conform with respect to the creation of a retaining wall on the western property line.*

- 14.48.014-Excavations-Setbacks: A. Excavations shall be set back from property lines a minimum distance equal to 1/5<sup>th</sup> the height of the slope, a minimum of 3' and a maximum of 10'. B. Excavations shall be setback from existing structures in accordance with subsection A.

*The proposed plan creates a cut of 9' into the hillside within 2 feet of the presumed property line (as evidenced by the existing fence). The height of the slope in this case may be interpreted as the height of the rear slope at the property boundary which is approximately 670'. The house is located at approximately 640' for a slope height of 30'. The setback requirement of this section would require a minimum of 3 foot clearance to the real property line, and a maximum of 9'. The excavation is a minimum of 7' behind the existing residence. Recognizing the potential that the existing fence is not actually on the property line, the plan does not appear to conform to the excavation setback requirements for the side property line, but does conform with the structure setback.*

- 14.48.023-Fills-Compaction: All fills shall be compacted throughout their full extent to a minimum of ninety (90) percent relative compaction.

*The proposed plan indicates requirement for 90% relative compaction for the fill area between the structure and the western property line. The plan conforms to the compaction requirement.*

- 14.48.026-Fills-Conformance to existing terrain: Fill slopes shall be tapered into the existing terrain at the toe and shall be rounded off at the top.

*The proposed plan creates a small 2'8" wide fill area between the proposed structure and the western property line that begins as a 51" stacked block retaining wall and rises to the 9' cut at approximately the same north-south slope as the pre-construction slope. The fill area is separated from the adjacent property on the western side with a new stacked block retaining wall. The plan is not consistent with the requirement for tapering into the existing north-south slope, and does not*

*conform with existing terrain with respect to the retaining wall at the property line.*

- 14.48.027-Fills-Slope Location and Setback: Fill slopes shall be set back from property lines, watercourses and structures as follows: A. The property line of any proposed or existing site or parcel located within the grading project shall be located a minimum of 1 foot from the top of the slope; B. Fill slopes shall be set back a minimum of 3' plus 1/5<sup>th</sup> the vertical height of the slope from the property line with a maximum of twenty feet; C. Buildings and structures shall be set back from the toe or the top of fill slopes a minimum of 4' plus 1/5<sup>th</sup> of the vertical height of the slope with a maximum of 20'.

*The proposed plan creates a filled area directly adjacent to the western property line and separated from the adjacent property with a stacked block retaining wall. The rear property line for the project property is approximately 48' beyond the grading project site and the top of the filled slope. As noted above, the filled slope is directly adjacent to the property line and does not meet the requirement of 3' plus 1/5<sup>th</sup> the height of the slope. The existing residence is located more than 9' away from the toe of the proposed filled slope. The filled slope plan conforms with all but the proximity to the adjacent property line.*

**C. Not detrimental to public safety;**

With the exceptions noted above, the proposed plan, due to the proximity of the excavation to the neighbor's property, may pose increased risk above those presented by projects consistent with the regulations within section 14.16.030. However, the applicant is working with a licensed civil engineer to design the project which has also been reviewed by the Town's geo-technical consultant.

**D. Not detrimental to stormwater runoff;**

The proposed plan has been updated to ensure that both surface and sub-surface stormwater will be diverted away from structures and not pose an erosion or flooding risk. The plan has been reviewed by the Town's Engineering department and is consistent with the Town's guidelines for safely channeling stormwater.

**E. Consistent with the requirements of Chapter 8.136 of this code;**

See EXHIBIT D for a discussion of the Hillside Development Permit considerations.

**F. Natural contour grading;**

The proposed plan retains the natural contour of the hillside above the excavated portion of the slope, and creates several flat areas above retaining walls at the rear of the residence.

**G. Minimizes soil displacement;**

The proposed plan reflects excavation to create an 11'x15.2' room recessed into the hillside at the same grade of the residence. If the dimensions or elevation of the room were changed, the extent of excavation and soil removal could be reduced. Raising the floor of the storage room to the level of the existing retaining wall could significantly reduce the soil displacement and disturbance along the western property line.

**H. Minimizes the use of retaining walls;**

The proposed plan removes approximately 20 feet of two existing retaining walls, one 42 inches high and the second 30 inches high and replaces them with a 9' (8' plus 1' thick) structure. Along the side of this structure, the plan creates another 51 inch high wall between the structure and the property line and then a retaining wall from that wall along the property line to the back of the structure. If the dimensions and the elevation of the structure were modified, the plan would require less retaining wall length and height.

**I. The minimum amount of grading possible on the site;**

The proposed plan does not minimize grading on the site. The design of the project requires excavating the hillside to provide an entrance for the structure at the same level as the residence. Much of the rest of the rear yard is terraced with retaining walls. If the structure had been positioned with the floor of the structure at the level of one of the retaining walls, it would reduce the amount of grading required.

**J. Not inconsistent with the general plan;**

The following general plan policies relate to the proposed application:

- LU1.8 Slope Restrictions. The soil characteristics in Moraga are prone to landslide conditions which can cause damage to property, injury to persons, public cost and inconvenience; therefore, development shall be avoided on slopes of 20 percent or steeper, but may be permitted if supported by site-specific analysis. No new residential structures may be placed on after-graded average slopes of 25 percent or steeper within the development area, except that this provision shall not apply to new residential structures on existing lots that were either legally created after March 1, 1951 or specifically approved by the Town Council after April 15, 2002. All new non-MOSO lots shall contain an appropriate development area with an average after-graded slope of less than 25%. Grading on any non-MOSO land with an average predevelopment slope of 25% or more within the proposed development area shall be prohibited unless formally approved by the Town Council where it can be supported by site-specific analysis and shown that a minimum amount of grading is proposed in the spirit of and not incompatible with all other policies of the General Plan.
- CD1.5 Ridgelines and Hillside Areas. Protect ridgelines from development. In hillside areas, require new developments to conform to the site's natural setting, retaining the character of existing landforms preserving significant native vegetation and with respect to ridgelines, encourage location of building sites so that visual impacts are minimized. When grading land with an average slope of 20% or more, require 'natural contour' grading to minimize soil displacement and use of retainer walls. Design buildings and other improvements in accordance with the natural setting, maintaining a low profile and providing dense native landscaping to blend hillside structures with the natural setting.
- PS4.10 Grading. Grading for any purpose whatsoever may be permitted only in accordance with an approved development plan that is found to be geologically safe and aesthetically consistent with the Town's Design Guidelines. Land with a predevelopment average slope of 25% or greater within the development area shall not be graded except at the specific direction of the Town Council and only where it can be shown that a minimum amount of grading is proposed in the spirit of, and not incompatible with, the intention and purpose of all other policies of the General Plan. The Town shall develop an average slope limit beyond which grading shall be prohibited unless grading is required for landslide repair or slope stabilization.

# **Exhibit F**

Draft Resolution

## BEFORE THE TOWN OF MORAGA PLANNING COMMISSION

### In the Matter of:

Recommendation to the Town Council for )  
(approval or disapproval) of a hillside )  
development permit and a grading permit for )  
retaining walls and a storage building at 32 )  
Buckingham. (APN 256-203-012) )

**Resolution No. XX-2010**

File No. GP-01-10

Adoption Date: August 2, 2010

Recommendation to Town Council  
(not appealable)

**WHEREAS**, on April 14, 2010, an application for a grading permit and hillside development permit was filed by Robert and Claudia White for the grading and excavation of the hillside at 32 Buckingham; and

**WHEREAS**, on April 21, 2009, the geotechnical investigation and plans reviewed by John Friar were sent to the Town's geotechnical peer review consultant, Cal Engineering and Geology (CE&G) for review; and

**WHEREAS**, on May 5, 2010, the Town received the geotechnical peer review report from CE&G which noted the need for additional information; and

**WHEREAS**, on June 2, 2010, the Town received revised plans and a response to the May 5<sup>th</sup> CE&E comment letter; and

**WHEREAS**, on June 14, 2010, the Town received confirmation from CE&G that all of the issues identified in their May 5<sup>th</sup> letter had been satisfied; and

**WHEREAS**, on July 23, 2010 notices were mailed to residents within 300 feet of the subject property for the Planning Commission Public meeting scheduled on August 2, 2010 to consider a recommendation to the Town Council in accordance with Moraga Municipal Code (MMC) Chapter 14.16; and

**WHEREAS**, on August 2, 2010 the Planning Commission held a public meeting to consider the application.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the Town of Moraga hereby recommends (approval or disapproval) of the hillside development permit and grading permit for the rear yard construction at 32 Buckingham, with the following findings and subject to the conditions of approval listed herein:

### **PART 1 – FINDINGS BASED ON MMC SECTION 14.16.030:**

1. The grading is consistent with the town design guidelines because
2. The grading is consistent with the regulations and restrictions of chapter 14.16 of the Municipal Code in that

3. The grading is not detrimental to public safety because
4. The grading is not detrimental to storm water runoff because
5. The grading is consistent with the requirements of chapter 8.136 of this code because
6. The grading is proposed to be natural contour grading because
7. The grading minimizes soil displacement because
8. The grading minimizes the use of retaining walls because
9. The grading is the minimum amount of grading possible on the site because
10. The grading is not inconsistent with the General Plan because

**PART II – RECOMMENDED CONDITIONS OF APPROVAL:**  
(if recommended for approval, list necessary conditions)

**PASSED AND ADOPTED** by the Planning Commission of the Town of Moraga on August 2, 2010 by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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Jim Obsitnik, Chair

ATTEST:

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Lori Salamack, Planning Director

# Exhibit G

Plans