

# TOWN OF MORAGA PLANNING COMMISSION MEETING AGENDA

Monday, October 3, 2011 7:00 p.m.

Moraga Library Meeting Room  
1500 Saint Mary's Road, Moraga California 94556

## I. CALL TO ORDER

**ROLL CALL:** Chairperson Driver, Levenfeld, Obsitnik, Richards, Socolich, Whitley, Wykle

## II. 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.*

## III. ADOPTION OF MEETING AGENDA

## IV. 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. Approval of the September 19, 2011 Meeting Minutes

## V. 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 meeting 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.*

**A. Potential Subdivision of Town-Owned Land:** Provide comments and recommendation to Town Council regarding potential subdivision of the 1.91 acre project site located near the southwest corner of St. Mary's Road and Rheem Boulevard. An application and subdivision map have not been prepared or submitted at this time. Therefore, the Commission will not be approving any subdivision at this meeting. Zoning: OS-M (Open Space - MOSO)

## VI. COMMUNICATIONS

## VII. REPORTS

A. Planning Commission

B. Staff

## VIII. ADJOURNMENT

Notices of Planning Commission Meetings are posted at 2100 Donald Drive, The Moraga Commons, 329 Rheem Blvd and the Moraga Library. Copies of the Agenda packets can be viewed prior to the meeting at the Town Offices, 329 Rheem Blvd. **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 Town Council 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 environment determination 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 Town Clerk's office (888-7022). If you need sign assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.



# TOWN OF MORAGA PLANNING COMMISSION SUMMARY OF ACTION

Monday, September 19, 2011 7:30 p.m.  
Moraga Library Meeting Room

## I. CALL TO ORDER AND ROLL CALL

### Planning Commission

A. Driver, Levenfeld, Obsitnik, Richards, Socolich, Whitley, Wykle\*

Absent: Wykle

B. Conflict of Interest

## II. ADOPTION OF MEETING AGENDA

## III. ANNOUNCEMENTS

## IV. PUBLIC COMMENTS

## V. ADOPTION OF THE CONSENT CALENDAR

A. Approval of the July 18, 2011 Meeting Minutes

### COMMISSION ACTION

Adoption of Consent Agenda Item 1

Ayes: 6 (Driver, Levenfeld, Obsitnik, Richards, Socolich, Whitley)

Absent: 0 (Wykle)

## VI. PUBLIC HEARINGS

## VII. PUBLIC MEETING

## VIII. ROUTINE & OTHER MATTERS

A. Approval of a Resolution Establishing the Regular Planning Commission Meeting Time of 7:00 pm.

### COMMISSION ACTION

Adopted Resolution

Ayes: 6 (Driver, Levenfeld, Obsitnik, Richards, Socolich, Whitley)

Absent: 0 (Wykle)

## IX. COMMUNICATIONS – None

## X. REPORTS

A. Planning Commission

B. Staff

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

## XII. ADJOURNMENT





# PLANNING COMMISSION

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## STAFF REPORT

FOR COMMISSION ACTION  
OCTOBER 3, 2011

## **Southwest Corner of Rheem Boulevard and St. Mary's Road**

### **Potential Subdivision of Town-Owned Land; (MOSO, RC/SBR)**

#### **Meeting Purpose**

Discuss and provide comments to the Town Council regarding the concept of subdividing a portion of Town-owned property.

#### **I. Potential Project Basics**

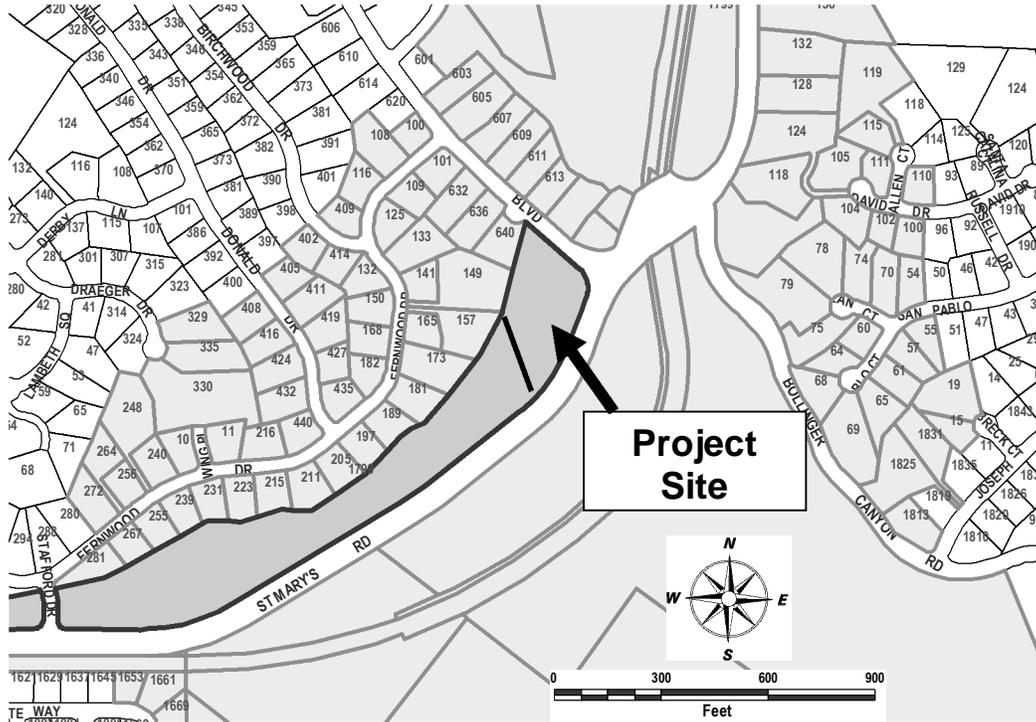
##### **A. Potential Applications Required:**

- i Parcel Map for one, two or three lots, pursuant to the Subdivision Map Act
- i Use Permit(s) to construct single family residential dwelling(s), under MMC Section 8.52.110
- i Increase in density to allow a density greater than one dwelling per 20 acres (for two or three lots), under MOSO guidelines section III.C

**B. Potential CEQA Determination:** Potentially categorically exempt pursuant to Section 15303 of the CEQA Guidelines ("Class 3, New Construction or Conversion of Small Structures") for one single family residence. Initial study for a two- or three-lot subdivision.

**C. Property Owner/Potential Applicant:** Town of Moraga

**Figure 1: Vicinity Map**



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant/Open space, EBRPD bike/ped trail, Moraga Commons park	OS-M, Open Space - MOSO	MOSO Open Space
Surrounding Properties	North	Undeveloped; single family residences to northwest	OS-M, Open Space - MOSO	MOSO Open Space
	South	EBRPD parking lot; St. Mary's College athletic fields	Institutional	Community Facilities
	East	Undeveloped; St. Mary's College athletic fields	Institutional	Community Facilities
	West	Single family residences	Zone 2, Two Dwelling Units per Acre	Residential 2 du/ac

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
MOSO	Yes	Findings required to increase density beyond one unit per 20 acres if more than one lot.
Slope/Geotechnical	Yes	Average slope of 1.91 acres: 14%. Geotechnical report required.
Creeks	Yes	Creek runs near eastern property line. Department of Fish & Game review required.
Oak Trees	Yes	Numerous oak trees on site. Arborist report required.
Trails/Open Space	Yes	EBRPD Lafayette-Moraga pedestrian/bike trail runs through project site.
Scenic Corridor	Yes	Rheem Boulevard and St. Mary's Road are both scenic corridors.

**Table 3: Potential Project Chronology**

Date	Action
September 22, 2010	Town council discussed potential subdivision
February 7 and June 6, 2011	Planning Commission Study Sessions
September 20, 2011	Parks and Recreation discussion and recommendation
September 23, 2011	Public meeting notices mailed/posted
October 3, 2011	PC discussion and recommendation
October 12, 2011	Town Council
N/A	CEQA deadline <sup>1</sup> /PSA deadline <sup>2</sup>

## II. Potential Project Setting

### A. Background

The Town Council directed staff to pursue subdividing the subject property when the Council discussed financing options for 331 Rheem Boulevard. (Town's Corporation Yard.) The purchase of 331 Rheem allowed the Town to relocate its public works operations away from the Hacienda, another town-owned park and recreation facility.

The Town consulted a local real estate professional who specializes in vacant lots (Ron Carter); he indicated the value of a single estate-sized lot would be about the same as two smaller lots, approximately \$700,000 (Attachment B). An area developer and builder (Robert W. Pickett) also prepared an analysis (Attachment C) and recommended development of two or more lots on the property.

The Planning Commission has conducted two noticed public meetings to consider a potential subdivision of the property. At both meetings, the Planning Commission

was instructed to consider whether the Commission would recommend the Town Council pursue a one-, two-, or three-lot subdivision of the project site.

The Park and Recreation Commission conducted one public meeting September 20, 2011 to discuss and provide comments on the concept of potentially subdividing the project site. See Section IV.C.1 for a summary of their comments.

The parcel (including the 1.91-acre project site, the remaining 19.49 acres and the portion of Town-owned property developed as the Moraga Commons Park and Mulberry Preschool) were all acquired from the State of California in 1977 when the State sold portions of a right-of-way known as the proposed Gateway Freeway.

**B. Neighborhood/Area Description:**

The Rheem Boulevard – St. Mary's Road intersection is a three-way intersection located north of the St. Mary's College entrance and south of an S-curve and St. Mary's intersection with Bollinger Valley Road. Single family residences are located to the east and northeast. The Lafayette-Moraga pedestrian/bike trail crosses Rheem Boulevard at this location, and an East Bay Regional Park District parking lot is located to the south. The developed and undeveloped portions of Moraga Commons park are located to the south and southwest. Undeveloped property is located across both St. Mary's Road (undeveloped portion of St. Mary's College) and Rheem Boulevard, and St. Mary's athletic fields are located to the southeast.

**C. Site Conditions:**

The project site is comprised of 1.91 acres of a 21.4 acre Town owned parcel located at the southwest corner of St. Mary's Road and Rheem Boulevard. An East Bay Regional Park District (EBRPD) bicycle and pedestrian trail is located near the project site's southeastern boundary (Lafayette-Moraga Trail.) If the parcel was subdivided, the remainder 19.49-acre parcel would be retained as open space. The project site is designated MOSO Open Space in the General Plan and zoned OS-M, Open Space-MOSO. The project site has an average slope of 14.72%, has a creek with heavy brush, and contains numerous trees. The elevation of the property varies between 584-feet to 631-feet and it is not on a minor ridgeline.

**III. Potential Project Description**

At their February and June meetings, the Planning Commission considered three different potential tentative parcel map alternatives (Attachment A), as follows:

1. Single- or one-lot alternative with a lot area of 83,196 square feet and a 16-foot wide access driveway from Rheem Boulevard;
2. Two-lot alternative with a 41,389 square foot lot on the north side of the 1.91-acre project site and a 41,807 square foot lot on the south side of the 1.91-acre project site, with one 24-foot wide access driveway from Rheem Boulevard; and
3. Three-lot alternative with a 41,389 square foot lot at the north side of the 1.91-acre project site and two 20,903 square foot lots at the south side of the 1.91-acre project site, with one 24-foot access driveway off Rheem Boulevard.

## **IV. Community Discussion**

### **A. Neighbor/Community Concerns:**

Members of the public spoke at the Planning Commission's February and June meetings (Attachment D, Planning Commission's February 7<sup>th</sup> and June 6<sup>th</sup> minutes) and the Park and Recreation Commission's September 20 meeting (Attachment E). The Planning and Park and Recreation Commissions also received written correspondence (Attachment F, Correspondence.) The written and oral testimony to both bodies addressed a variety of issues. One speaker, who also submitted a letter, suggested the Planning Commission consider and recommend a 4 or 5-lot subdivision or a larger residential project. Another speaker who submitted two letters opposed the subdivision, but suggested that if a subdivision occurred, one lot would be preferable with a deed restriction to prevent an excessively large home on a single estate lot. Speakers at the Park and Recreation Commission addressed the visual impact of a subdivision along a scenic corridor, impacts to the EBRPD Lafayette-Moraga trail, the natural attributes and scenic qualities of the project site, the impacts on views and relationship to the Rancho Laguna II project, the project site's MOSO designation, the need to preserve existing town-owned open space, the policy ramifications of selling Town-owned open space, drainage, potential environmental impacts, and the fact that the Planning Commission was asked to comment on the number of lots that would be appropriate, rather than if a subdivision at this location would be appropriate. One individual suggested that if selling one lot would generate enough revenue, it may be appropriate to locate a residence near existing residences.

### **B. Agency Comments:**

The East Bay Regional Parks District (EBRPD) and Moraga-Orinda Fire District (MOFD) both submitted letters (Attachment G), and an EBRPD representative spoke at the Planning Commission's June 6, 2011. The EBRPD is opposed to any residential subdivision of the open space land, is concerned about impacts to the Lafayette-Moraga Trail, and requests the Town keep its remaining open space intact. The MOFD Fire Marshal outlined MOFD's standards for minimum driveway widths (20 feet for a 3-lot subdivision, 16 feet unobstructed for a one- or two-lot subdivision) except in the area of the turnaround. MOFD also indicated it would likely require a fire hydrant for a two- or three-lot subdivision.

### **C. Commission Review:**

1. During their June 6, 2011 discussion, the Planning Commission collectively and individually expressed reservations about the potential subdivision. Commissioners stated it would be difficult to make the necessary MOSO findings to allow a density increase above the permitted density of one (1) dwelling unit per twenty (20) acres on open space properties in order to accommodate a two- or three-lot subdivision. The Commission noted that the site is visible from two scenic corridors and the EBRPD Moraga-Lafayette trail. The Commission was instructed to recommend which subdivision alternative was preferable, one-lot, two-lot, or three-lot. The Commission was not offered a fourth alternative, nor

asked an open-ended question regarding whether a subdivision is appropriate for the project site.

Based on that direction, the four Planning Commissioners present concluded and passed a motion that a two-lot subdivision would be preferable to a one-lot subdivision. The Commissioners stated that the necessary findings would be difficult, but that two smaller houses may result in a lesser visual impact than one larger estate-type house.

2. The Park and Recreation Commission considered the potential subdivision at its September 20, 2011 meeting. The staff report requested the Park and Recreation Commission discuss the potential subdivision in general, rather than specific proposed alternatives. Individually, Park and Recreation Commissioners expressed several issues and concerns with the potential subdivision, including the following:

- i Any erosion of the MOSO district would not be in the town's best interest;
- i Difficult to support subdivision;
- i Project site is one of the most special places in town;
- i Opposed to development of open space;
- i Need to preserve spirit of MOSO;
- i Examples of nearby cities with houses near trails that take away from the park amenity;
- i Project site is comparable to some of the finest open space in the Bay Area;  
and
- i Inability to get back open space.

The Park and Recreation Commission voted 4-0 (one member was absent) to recommend the Town Council not subdivide or sell the project site.

## **V. Issues and Analysis**

### **A. Key Issues:**

1. Environmental Review/CEQA: A one-lot subdivision may be found categorically exempt under Section 15303 (Class 3, New Construction or Conversion of Small Structures) because it would involve one single family residence in an urbanized area.

A two- or three-lot subdivision would require an initial study because neither the project site nor the project description would meet the requirements for a categorical exemption. For example, Section 15315 (Class 15, Minor Land Divisions) would not apply because the project site is zoned for open space, not for residential (or commercial or industrial) use. Section 15302 (Class 5, Minor Alterations to Land Use Limitations) also would not apply because the subdivision would result in a change to land use and density for a site zoned for open space

with density restrictions. Finally, an initial study for a two- or three-lot subdivision would address geotechnical issues including slope and MOSO requirements.

2. MOSO: The project site is zoned OS-M (Open Space-MOSO) and must comply with the standards for development under MOSO (Moraga Open Space Ordinance). The OS-M zoning district requires a conditional use permit for all non-agricultural uses. Therefore, any residential subdivision of any size would require a use permit. OS-M and the MOSO Guidelines also set a density limit of one dwelling unit per 20 acres unless special findings are made. A one-lot subdivision would comply with this density requirement because the entire existing parcel is currently approximately 20 acres. A two- or three-lot subdivision would increase the overall density of the ± 20-acre parcel. Therefore, pursuant to Section III.C of the MOSO Guidelines, a two- or three-lot subdivision would require findings to allow an increase in density not exceeding one unit per 5 acres, as follows:

- a. The site is physically suitable for the type of development and requested density;
- b. The development is not likely to cause environmental damage;
- c. The development is not likely to cause public health problems;
- d. The distance and relationship to high risk areas is sufficient so that development will not cause undue risk to the subject and surrounding properties and will not increase risk to the public health, safety and welfare;
- e. The dwelling units in the proposed development can be substantially concealed from scenic corridors by vegetation or the terrain;
- f. Public benefit will result from the dedication of open space lands, trails or park and recreational facilities beyond those otherwise required for development;
- g. The distance of development from ridgelines is such that the view of ridgelines from a scenic corridor is protected;
- h. The project is in compliance with Goal 5 (Policy OS1.5) and related policies of the Open Space and Conservation Element of the General Plan;
- i. The proposed development is consistent with the information provided regarding development capability under Section II.D (Standards for determining whether open space land is within a high risk area.)

Finding (e) presents an issue because the project site is located along two scenic corridors. The following findings (Section II.D.2) are required to determine whether open space land is within a high risk area:

- a. Whether the area has the potential to be adversely impacted by a landslide, unstable soil, soil with a history of slippage or a slope subject to severe surface erosion or deterioration;

- b. Whether it serves as a natural drainage way or swale, with a drainage basin of 50 acres or more or crossed by a perennial or ephemeral (intermittent) drainage channel;
- c. Within 50 feet of a known active or dormant fault trace;
- d. Containing a regular or intermittent spring or adverse ground water conditions;
- e. Within 100 yards upstream or 500 yards downstream of a reservoir, detention basin or pond of one acre or more in surface area;
- f. Within an area subject to enhanced seismically induced ground shaking or a seismically induced ground failure such as a landslide, lateral spread, rockfall, ground lurching, liquefaction, soil settlement, differential compaction and compression;
- g. Within an area subject to the effect of seismically induced flooding and/or dam or stock pond failure.

A geotechnical evaluation would be necessary as part of an initial study in order to assess the site's slope stability and to determine if the site meets the "high risk" criteria related to the findings for an increase in density.

In addition, the MOSO guidelines require each proposed lot of the potential subdivision to meet the following three requirements:

1. Each lot must have a minimum 10,000 square foot building cell with an average slope less than 20%.
2. A slope stability analysis shall be prepared to confirm that the lots have no geotechnical hazards or landslide problems.
3. The lots cannot be on a minor ridge over 800-feet in elevation.

The three different potential subdivision proposals would meet requirement (1.) because each lot includes a minimum 10,000-square foot building cell on each lot with less than 20% slope. In addition, the alternatives include the access roads within cell boundaries because all "development", including the grading for the access road, must be located within MOSO building cells. Criteria (2.) would be addressed with an initial study for a two-or three-lot subdivision. Criteria (3.) would be met since the highest elevation on the project site is 631 feet and is not on a minor ridgeline.

3. Access Road And Moraga-Orinda Fire District Requirements: Section 98-4.002 of the Town's Subdivision Ordinance requires private roads to be a minimum width of 36-feet. This dimension may be reduced when the Planning Commission finds there is adequate off-street parking and the proposed road width will permit proper access of fire and life safety apparatus. A 16-foot wide proposed access road for a single lot would meet the MOFD requirements. A 24-foot wide access road for a two lot alternative would meet the MOFD requirements but would require the Planning Commission finding. A fire hydrant would be necessary for a two- or three-lot subdivision and may be required for a single lot.

4. Guest Parking Requirements: Moraga Municipal Code (MMC) Section 8.76.100-D requires at least two guest parking spaces on each lot when there is no available on-street parking, not counting parking spaces in front of a garage. On-street parking is only allowed if it does not obstruct fire equipment access or any hammerhead turn around area. Two extra guest parking spaces would reduce the available level yard area of a potential three-lot alternative and may require split-level or two-story homes on these lots. On a potential two-lot alternative, a 24-foot wide access driveway would be wide enough to allow parking along the side of the driveway, but additional guest parking would be necessary. A potential single lot alternative would not have any parking along the 16-foot wide driveway, but additional guest parking could be accommodated on the lot.
5. Scenic Corridor: The existing trees along St. Mary's Road screen much of the project site, but there are areas where the project site is visible, and any future homes would be visible. The trees along Rheem Boulevard substantially screen the view of the proposed building sites from Rheem Boulevard. Photographs (Attachment H) show views of the property from Saint Mary's Road and Rheem Boulevard. Any development in this location would require findings and conditions to address scenic corridor requirements and policies.
6. Trees: The three potential subdivision alternatives indicate two oak trees would be removed along the northwest of the driveway intersection with Rheem Boulevard. A 24-foot wide driveway for two or three lots would encroach into the drip line of the oak trees. Additional oaks may be impacted, as well. As a result, an arborist report would be necessary to assess the condition of existing trees, make recommendations regarding tree health and preservation, and provide information for the initial study.
7. Lafayette-Moraga Pedestrian/Bike Trail: The Lafayette-Moraga Pedestrian/Bike Trail turns up the hill and away from St. Mary's Road at the southwest side of the potential proposed subdivision site. Any subdivision and subsequent development on the project site would be visible from the trail. However, none of the potential subdivision alternatives propose changes to the trail's alignment.
8. Traffic: A traffic analysis would be necessary to assess the potential impacts of adding two or more residences near the Rheem Boulevard/St. Mary's Road intersection. The analysis would be used for the initial study and would also address the location of the driveway for traffic safety. Finally, a traffic analysis would ensure the Town retains adequate land for future transportation improvements, including a potential traffic circle at the intersection. Preliminary plans for two traffic circle options were prepared in 2006 (Attachment I.)
9. Creek: The large depression at the southwest side of Rheem Boulevard is identified on the potential Tentative Parcel Map as "Creek Area – Heavy Brush Unable to Survey". Any grading or improvements in this area of the project site would require approval of the State Department of Fish and Game. This would also be addressed through an initial study for two or more lots. The potential

tentative parcel maps show this area as part of the Town's remainder open space parcel. A large dead oak tree is also located in this area.

## **B. General and Area Plan Consistency:**

General Plan Policy Analysis: The 2002 General Plan contains numerous policies applicable to the potential subdivision of the project site, as follows:

1. Policy LU1.2–Residential Densities: Restrict residential densities to the maximum allowable indicated on the General Plan Diagram (for MOSO:, density range of 0.05, 0.1 or 0.2 maximum.)

### Policy LU1.5 and OS1.3–Development Densities in Open Space Lands:

Notwithstanding any other provision of the General Plan, any development on lands depicted on the General Plan Diagram or by the Moraga Open Space Ordinance as “Public Open Space-Study” or “Private Open Space” (now designated as MOSO Open Space in the General Plan Diagram) shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as “high risk” areas, as defined by the Moraga Open Space Ordinance, shall be limited to a maximum density of one (1) dwelling per twenty (20) acres.<sup>1</sup>

Policy OS2.2–Preservation of Riparian Environments: Preserve creeks, streams and other waterways in their natural state whenever possible.

Policy OS2.8–Tree Preservation: Preserve and protect trees wherever they are located in the community as they contribute to the beauty and environmental quality of the Town.

Policy PS4.2–Development Review for Geologic Hazards: Require development proposals to address geologic hazards, including but not limited to landslide, surface instability, erosion, shrink-swell (expansiveness) and seismically active faults. Technical reports addressing the geologic hazards of the site shall be prepared by an independent licensed soil engineer, geologist and/or structural engineer, approved by the Town and at the expense of the developer. All technical reports shall be reviewed by the Town and found to be complete prior to approval of a development plan.

Policy CD1.1–Location of New Development: To the extent possible, concentrate new development in areas that are least sensitive in terms of environmental and visual resources, including:

- a) Areas of flat or gently sloping topography outside of flood plain or natural drainage areas.
- b) The Moraga Center area and Rheem Park area.

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<sup>1</sup> Wording from Section 3.c of the Moraga Open Space Ordinance. MOSO Open Space is identified as Open Space Lands in the Moraga Open Space Ordinance.

- c) Infill parcels in areas of existing development.

Policy CD1.2–Site Planning, Building Design and Landscaping: Retain natural topographic features and scenic qualities through sensitive site planning, architectural design and landscaping. Design buildings and other improvements to retain a low visual profile and provide dense landscaping to blend structures with the natural setting

Policy CD4.4–New Residential Developments and Policy OS1.1–Open Space Preservation: Design new single family developments to create high quality pedestrian environments with pathways to adjacent neighborhoods and, where feasible, commercial areas. Ensure that the layout of new residential lots respect the site topography and natural features. Where feasible, avoid standard repetitive lot sizes and shapes in hillside areas

**Staff Analysis:** A single-lot subdivision could comply with some of the above policies, with a one- or two-acre lot size, a density of one dwelling unit per twenty acres, low profiles, and landscaping. However, that density would rely on a portion of open space that is already in the public trust and preserved as open space, and the potential subdivision would not provide a new opportunity to permanently preserve open space nor introduce new recreational opportunities for the public. The location near a trail would provide pedestrian access for new residences. While the site's slope is relatively gentle (14%), a geotechnical report would be necessary to determine if the project site meets the definition of "high risk." An arborist report would also be necessary to preserve and protect existing trees.

2. Policy CD1.3–View Protection: Protect important elements of the natural setting to maintain the Town's semi-rural character. Give particular attention to viewsheds along the Town's scenic corridors, protecting ridgelines, hillside areas, mature native tree groupings, and other significant natural features. Consideration should be given to views both from within the Town and from adjacent jurisdictions. Likewise, the Town should work with adjacent jurisdictions to protect views from Moraga to adjacent areas.

Policy CD3.1–Designation of Scenic Corridors: Designate the following routes as the Town's 'Scenic Corridors':

- a) St. Mary's Road
- b) Canyon Road
- c) Moraga Way
- d) Moraga Road
- e) Rheem Boulevard
- f) Camino Pablo
- g) Bollinger Canyon Road

Policy CD3.2–Visual Character: Improve the visual character along Scenic Corridors with lighting, landscaping and signage.

**Staff Analysis:** A potential subdivision could be designed to comply with this set of policies. Distant views would be preserved; however, near views of open space, particularly as viewed from St. Mary's Road and the Lafayette-Moraga trail, would be altered.

3. **Policy LU1.6–Minimum Lot Sizes and Percentage Mix for Single Family Developments:** Use the following table to establish minimum lot sizes for single family developments. (MOSO Open Space: 40,000 square feet minimum lot size.)
  - **Lot Size and Slope.** Generally, locate smaller lots on the more level sites and larger lots on the steeper slopes. Require larger lot sizes if necessary to mitigate negative visual impacts and/or geologic hazards.
  - **Lot Sizes in Open Space Areas.** Lot sizes in areas designated “Non-MOSO Open Space or MOSO Open Space” on the General Plan Diagram may be less than 40,000 sq. ft., but not less than 15,000 sq. ft., when part of the overall project will provide outdoor recreational facilities with guaranteed permanent access to the general public. This policy may not be used to alter the density on lands designated MOSO Open Space.
4. **Policy LU1.9–Cluster Housing to Protect Open Space:** Provide for the permanent preservation of open space by allowing clustered housing designs in areas designated MOSO Open Space or Non-MOSO Open Space or Residential on the General Plan Diagram. However, do not place cluster housing in locations that are visually prominent from the scenic corridor or where it would adversely impact existing residential areas.

**Policy CD2.1–Public Places as Focal Points:** Provide and maintain public parks and facilities that serve as community focal points, gathering places, and activity centers, with pedestrian and bicycle path connections to residential neighborhoods and commercial centers. Provide public views and inviting pedestrian entries into public places from adjacent streets and neighborhoods

**Policy OS1.8–Open Space Access and Recreational Use:** Where appropriate and consistent with other General Plan goals and policies, areas with a MOSO Open Space or Non-MOSO Open Space designation on the General Plan Diagram should be made available to the public for recreational use.

**Policy OS1.9–Open Space Management:** Maintain and manage public-use open space areas in keeping with community priorities, relevant deed restrictions, budget constraints, hazard and risk considerations, and best management practices. Develop management plans for open space areas as necessary, including the Mulholland Ridge open space area.

**Policy FS3.10–Land Management:** Manage parks, open space lands and trails in accordance with recognized land management principles.

**Policy FS3.22–Regional Trail System:** Encourage and cooperate with other jurisdictions and agencies to develop and maintain a unified regional trail system,

including hiking, biking and equestrian trails. Support development of regional trail projects such as the Bay Ridge Trail.

**Staff Analysis:** The potential subdivision would not be consistent with the immediately preceding policies. The potential subdivision would cluster housing in a visually prominent location and would be seen from both St. Mary's Road, a scenic corridor, and a regional trail, the Lafayette-Moraga trail. The potential subdivision would also result in residential development of existing publicly-owned open space, rather than preserving new open space. No new trails, parks, or community-centered facilities would be included. Finally, subdivision and development would remove open space from public ownership.

## **VI. Recommendation**

The Planning Commission is asked to provide the Town Council with its comments and recommendations regarding the potential subdivision of this town-owned parcel. At its previous meetings, the Commission was asked to comment on whether a one-, two-, or three-lot subdivision would be most appropriate for this project site. At this meeting, the Planning Commission may comment on the overall merits of potentially subdividing, and selling, the 1.91 acres. The Commission may provide comments as individuals, collectively as a Commission, and/or in the form of a motion.

### **Attachments:**

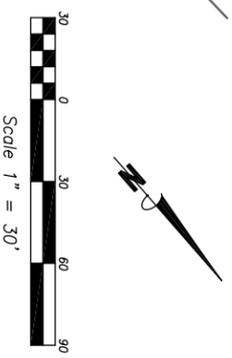
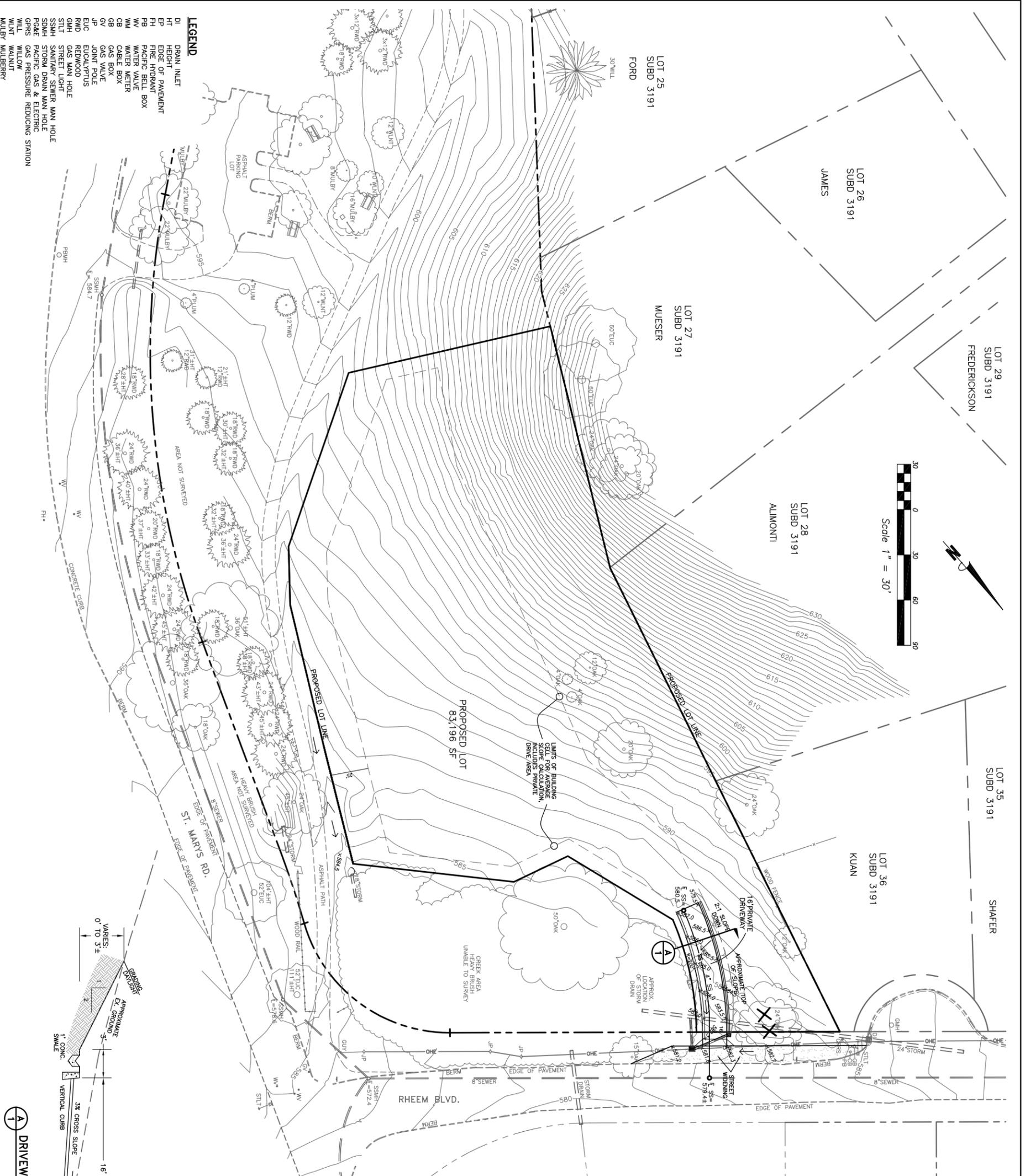
- A. Potential Parcel Maps for one, two or three residential lots
- B. Ron Carter Letters RE: marketability and potential pricing
- C. Robert W. Pickett analysis of proposed subdivision and email comments dated June 3, 2011
- D. Planning Commission meeting minutes (excerpt), February 7 and June 6, 2011
- E. Park and Recreation Commission meeting draft minutes (excerpt), September 20, 2011
- F. Written Correspondence
  - 1. Roger L. Poynts' recommendation and maps for a 4 or 5 lot subdivision
  - 2. Suzanne Jones (Preserve Lamorinda Open Space Assoc.) letter dated June 6, 2011
  - 3. Email from Preserve Lamorinda Open Space, dated September 19, 2011
  - 4. Correspondence received at September 20, 2011 Park and Recreation Commission Meeting
- G. Agency Correspondence
  - 5. MOFD, Fire Marshal, Michael Mentink, letter dated May 16, 2011
  - 6. EBRPD, Sean Dougan, letter dated May 18, 2011
- H. Photos
- I. Preliminary plans for two traffic circle options were prepared in 2006
- J. Area of notice map and mailing list

**Staff Planners:** Richard Chamberlain and Shawna Brekke-Read, [planning@moraga.ca.us](mailto:planning@moraga.ca.us), (925) 888-7040

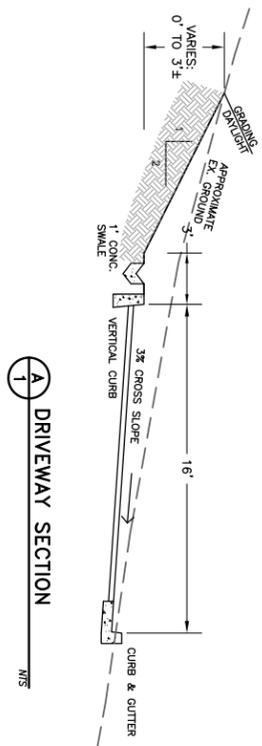
# ATTACHMENT A

**POTENTIAL PARCEL MAPS  
FOR ONE, TWO OR THREE  
RESIDENTIAL LOTS**

THESE DRAWINGS ARE BEING RELEASED TO THE PUBLIC UNDER THE PUBLIC INFORMATION ACT. CULLEN-SHERRY & ASSOCIATES, INC. ASSUMES NO RESPONSIBILITY FOR ANY REPRODUCTION OF THESE DRAWINGS BY OTHERS. THESE PLANS AND SPECIFICATIONS HEREIN AND RELATED SERVICES ARE FOR THE SOLE USE OF THE PROPERTY OWNER OR CONTRACTOR FOR SAID SERVICES. NO OTHER PERSON OR ENTITY SHALL BE ENTITLED TO RELY ON THESE SERVICES, OPINIONS, RECOMMENDATIONS, PLANS, OR SPECIFICATIONS, WITHOUT THE EXPRESS WRITTEN CONSENT OF C.S.A.



- LEGEND**
- DI DRAIN INLET
  - HT HEIGHT
  - EP EDGE OF PAVEMENT
  - EP FIRE HYDRANT
  - FB PACIFIC BELL BOX
  - WM WATER METER
  - CB CABLE BOX
  - GV GAS VALVE
  - JP JOINT POLE
  - EUC EUCALYPTUS
  - RWD REDWOOD
  - GMH GAS MAN HOLE
  - STLT STREET LIGHT
  - SSMH SANITARY SEWER MAN HOLE
  - SSMH STORM DRAIN MAN HOLE
  - PG&E PACIFIC GAS & ELECTRIC
  - GP&S GAS PRESSURE REDUCING STATION
  - WILL WILLOW
  - WALNT WALNUT
  - MULBT MULBERRY



ONLY PRINT PROGRESS FOR OPTION 3  
 OPTION 3  
 RENISED  
 5-31-11

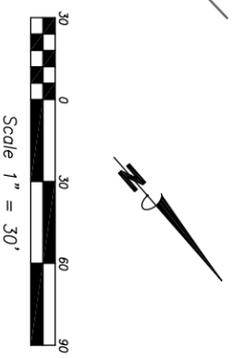
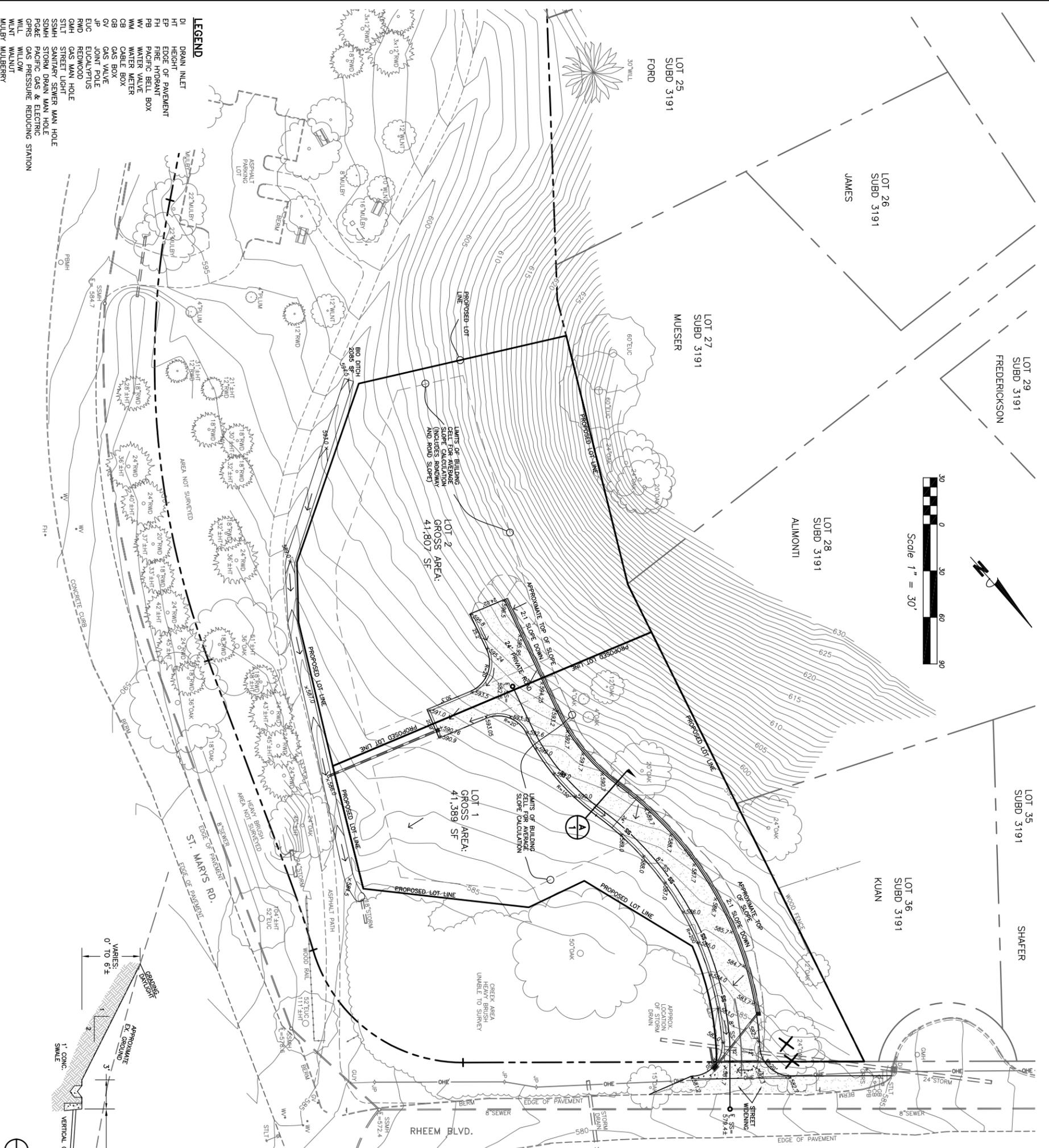
- SURVEY NOTES:**
- BENCH MARK: ELEVATION OF DISK AT MONUMENT "SM 18" IN ST. MARYS RD. ELEVATION= 602.29, 1929 DATUM FOR 1988 NAVD DATUM, AND 2.80' TO ALL ELEVATIONS AND CONTOURS SHOWN. ELEVATION FROM CONTRA COSTA COUNTY RECORDS FOR MONUMENT SM-18, SET 1957
  - NO TITLE REPORT WAS SUPPLIED TO THIS ENGINEER. PROPERTY LINES HEREON ARE A COMPILATION OF RECORD PROPERTY LINES FROM SUBDIVISION 3191, FILED AUGUST 19, 1965, IN BOOK 108 OF MAPS, PAGE 38, CONTRA COSTA COUNTY RECORDS AND PARCEL 3 PER BEED 8322-94. BEED 8322-94 WAS FILED AND COMPARED WITH THE RECORDS OF TRANSFORMATION TO TOWN OF MORAGA FOR THE DATES SHOWN, DATED 1977.
  - THE PROPERTY LINES HEREON ARE NOT INTENDED TO BE THE FINAL RESOLVED PROPERTY LINES. NOR IS THIS DRAWING A RECORD OF SURVEY FOR THIS PROPERTY.
- THE BASIS OF BEARING IS THE MONUMENT LINES IN SUBDIVISION 3191, CONTRA COSTA COUNTY.
- 3. LOT SUMMARY**
- |                              |                      |
|------------------------------|----------------------|
| GROSS AREA LOT               | 83,196 SF            |
| AVERAGE SLOPE ENTIRE LOT:    | 14.30%               |
| AREA BUILDING "CELL":        | 40,330 SF (AS SHOWN) |
| AVERAGE SLOPE WITHIN "CELL": | 9.81%                |
- IMPROVEMENT NOTES:**
- X INDICATES TREE TO BE REMOVED

SCALE: 1"=30'  
 DATE: 5-31-11  
 DESIGN BY: DC  
 DRAWN BY: DC  
 CHECKED BY: DC  
 FIELD BOOK:  
 SHEET NUMBER:  
 OF 1 SHEETS  
 PROJECT # 09177

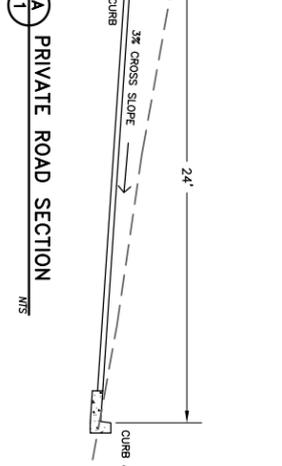
**TENTATIVE PARCEL MAP: 1 LOT**  
**LANDS ALONG ST. MARYS RD.**  
 MORAGA, CALIFORNIA  
 PREPARED FOR: TOWN OF MORAGA

	<b>Cullen-Sherry &amp; Associates, Inc.</b> Civil Engineering - Surveying		
	1090 Adams Street, Suite A - P.O. Box 591, Benicia, California 94510 (707) 745-3219 Fax (707) 745-9436 csa-engineers.com Dan Cullen RCE 26162 Rod Sherry RCE 61537		
REV	DATE	DESCRIPTION	BY

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- LEGEND**
- DI DRAIN INLET
  - HT HEIGHT
  - EP EDGE OF PAVEMENT
  - FP FIRE HYDRANT
  - FB PACIFIC BELL BOX
  - WM WATER METER
  - CB CABLE BOX
  - GV GAS VALVE
  - JP JOINT POLE
  - EUC EUCALYPTUS
  - RWD REDWOOD
  - GAS GAS MAN HOLE
  - STLT STREET LIGHT
  - SSMH SANITARY SEWER MAN HOLE
  - SDMH STORM DRAIN MAN HOLE
  - PGKE PACIFIC GAS & ELECTRIC
  - GPRES GAS PRESSURE REDUCING STATION
  - WILL WILLOW
  - WALNT WALNUT
  - MULBR MULBERRY



**PRIVATE ROAD SECTION**  
M/S

ONLY PRINT PROGRESS FOR REVIEW ONLY  
 OPTION 2  
 RENISED  
 5-31-11

- SURVEY NOTES:**
- BENCH MARK: ELEVATION OF DISK AT MONUMENT "SM 18" IN ST. MARYS RD. ELEVATION= 602.29, 1929 DATUM FOR 1988 NAVD DATUM, AND 2.80' TO ALL ELEVATIONS AND CONTOURS SHOWN. ELEVATION FROM CONTRA COSTA COUNTY RECORDS FOR MONUMENT SM-18, SET 1957
  - NO TITLE REPORT WAS SUPPLIED TO THIS ENGINEER. PROPERTY LINES HEREON ARE A COMPILATION OF RECORD PROPERTY LINES FROM SUBDIVISION 3191, FILED AUGUST 19, 1965, IN BOOK 108 OF MAPS, PAGE 38, CONTRA COSTA COUNTY RECORDS AND PARCEL 3 PER BEED 8322-94. THE BEED 8322-94 WAS FILED FROM COMPARTMENT 027 OF TRANSPORTATION TO TOWN OF MORAGA FOR THE DAVIS SHOW, DATED 1977.
  - THE PROPERTY LINES HEREON ARE NOT INTENDED TO BE THE FINAL RESOLVED PROPERTY LINES, NOR IS THIS DRAWING A RECORD OF SURVEY FOR THIS PROPERTY.
- THE BASIS OF BEARING IS THE MONUMENT LINES IN SUBDIVISION 3191, CONTRA COSTA COUNTY.
- 3. LOT SUMMARY CALCULATIONS:**
- |                                |                      |
|--------------------------------|----------------------|
| ENTIRE AREA OF SUBDIVISION:    | 83,196               |
| AVERAGE SLOPE WITHIN BOUNDARY: | 14.50%               |
| LOT 1:                         |                      |
| AREA:                          | 41,389 SF            |
| AVERAGE SLOPE WITHIN CELL:     | 7.93% (AS SHOWN)     |
| LOT 2:                         |                      |
| AREA:                          | 41,807 SF            |
| AREA BUILDING CELL:            | 20,086 SF (AS SHOWN) |
| AVERAGE SLOPE WITHIN CELL:     | 12.97%               |
- IMPROVEMENT NOTES:**
- X INDICATES TREE TO BE REMOVED

**TENTATIVE PARCEL MAP: 2 LOTS**  
**LANDS ALONG ST. MARYS RD.**

MORAGA, CALIFORNIA  
PREPARED FOR: TOWN OF MORAGA



Cullen-Sherry & Associates, Inc.  
Civil Engineering - Surveying  
1090 Adams Street, Suite A - P.O. Box 591, Benicia, California 94510  
(707) 745-3219 Fax (707) 745-9436 csa-engineers.com  
Dan Cullen RCE 26162 Rod Sherry RCE 61537

SCALE:	1"=30'
DATE:	5-31-11
DESIGN BY:	DC
DRAWN BY:	DC
CHECKED BY:	DC
FIELD BOOK:	
SHEET NUMBER:	

REV	DATE	DESCRIPTION	BY

OF 1 SHEETS  
PROJECT # 091177



# ATTACHMENT B

**LETTERS FROM RON CARTER  
DATED JULY 28, 2010 AND  
SEPTEMBER 16, 2010**



**DIRTBROKERS, INC.**  
LOTS AND LAND

September 16, 2010

Mike Secrest  
Town Manager  
329 Rheem Blvd.  
Moraga, CA 94556

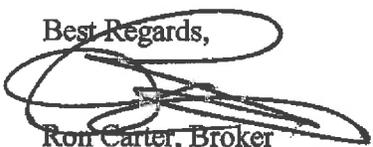
Re: Proposed subdivision of Town Parcel at Rheem Blvd, and St. Mary's Road for one single family residential lot

Dear Mike,

Please accept this update letter and comments after reviewing the proposed subdivision of the town parcel at Rheem and St. Mary's Road for one single residential lot.

My opinion of value remains the same, understanding the buildable footprint for structures to be approximately 23,000 square feet, and the lot size of approximately 1.4 acres.

Best Regards,

  
Ron Carter, Broker  
DirtBrokers, Inc.



**DIRTBROKERS, INC.**  
LOTS AND LAND

July 28, 2010

Mike Secret  
Town Manager  
329 Rheem Blvd  
Moraga, CA 94556

RE: APN 256-110-055

Dear Mike,

After reviewing my notes from September 2009 and our site visit in June 2010 I have drawn the following conclusions:

Last September I believed it necessary, due to market conditions, to divide the parcel into two buildable lots so the city could maximize the net proceeds. This was suggested at the time to keep the sale price of each lot at a lower value and to spread the cost to improve the lots and provide affordable lots at \$350,000 - \$400,000. At that time the higher priced lots were not selling. In the spring of 2010 we started seeing the higher valued lots once again sell. As a result of this change we recommend the City divide off a single parcel of 3+ acres. This will allow a buyer to purchase a parcel with substantial usable area for a horse setup, orchard and or additional out building. I believe the single lot vs. two lot scenario will provide net proceeds to the City of close to the same dollars, somewhere in the \$700,000 - \$800,000 range.

Sincerely,

Ron Carter  
Dirt Brokers, Inc.

# ATTACHMENT C

**ANALYSIS PREPARED BY  
ROBERT W. PICKETT DATED  
JANUARY 4, 2011**

January 4, 2011

Moraga Town Council  
329 Rheem Boulevard  
Moraga, CA. 94556

Dear Mayor Mendonca & Honorable Councilmembers:

At the request of Council Member Trotter, I have prepared the following analysis of the Town's property at St. Mary's Road and Rheem Boulevard. The property offers an outstanding opportunity for a two lot, single family residential development. There are several aspects of this particular property and the process that should be considered in order to maximize the greatest benefit to the Town through the sale of the property.

I believe the following issues should be considered:

**Processing:**

The property will be far more valuable if the Town processes a two lot subdivision for approval before offering the property for sale. This would eliminate most of the risk to the purchaser, a factor that will be highly coveted. I would therefore recommend that the Town serve as the applicant in the design and approval process. Careful planning by and coordination with personnel experienced in the particular Moraga real estate market would maximize the return to the Town.

**Access:**

Ideally, the two lots would be accessed from Rheem Boulevard by means of a private driveway. The driveway should be designed such that it traverses the first lot and terminates at the property line of the second, interior lot. Such a design reduces infrastructure costs and therefore increases the value of the new lots to a home builder.

The Moraga-Orinda Fire District may require that the driveway include a turn-around per the District's standards. Since a turn-around requires some of the usable space of the lots, it would be most beneficial if the driveway design could be agreed to with the Fire District so that the turn-around requirement is avoided. Draft layouts and a direct discussion with the Fire District would determine this.

**Lot Configuration:**

One important element of the lot layout relates to the water service requirements. If the lots each have "principal" frontage on Rheem Boulevard, a main water line extension to service the lots may be avoided. A main line extension would cost approximately \$60,000 over and above the cost of two single water meters. This additional development cost would reduce the value of the vacant land by a corresponding amount. Therefore, it is very important that the lot configuration include this feature. There are several ways to accomplish this and thus avoid the significant cost of the main line extension.

**Creek:**

The creek area (along Rheem Boulevard) can be handled in several ways. The creek could be incorporated into the first lot with its property line going to the street. With this configuration, appropriate easements, restrictions and requirements would protect the creek, but make it the responsibility of the property owner.

Alternatively, the Town could retain the ownership of the creek area and bear the incumbent responsibilities. This would probably afford the best protection to the creek, but might result in some additional maintenance costs to the Town.

The subdivision design should be such that the creek is not altered in any way. This will avoid any complications with the State Department of Fish & Game.

**Privacy:**

Privacy from the East Bay Regional Parks Trail is important in the value of the property. The lot layout, fencing standards and landscaping requirements along the trail all play a role in improving the privacy factor and thus the return to the Town through increased value.

**Architecture/Design Standards:**

During the approval process, it would be very helpful to include home design standards so the purchaser would have a strong comfort level of what could be built and its market value. Elements of these standards should include items such as, one versus two story homes, building heights, set-backs from Rheem Boulevard and the Trail, landscaping and fencing. Other items may also arise during the design and approval process.

**Utilities:**

I have not conducted an in depth study, but it appears that all utilities are available in Rheem Boulevard for connections to the new lots.

I hope this summary review is helpful to the Town as it considers the disposition of this property.

I have attached a statement of qualifications in order to support confidence in the opinions expressed above.

Sincerely,



Robert W. Pickett

cc: Jill Keimach, Town Manager

**Robert W. Pickett  
R.W. Pickett & Associates  
2893 Ygnacio Valley Road  
Walnut Creek, CA. 94598**

## STATEMENT OF QUALIFICATIONS

- I. Civil Engineering Degree - University of California at Davis
- II. Masters of Business Administration - University of California at Berkeley
- III. Planning Commission – Eight years of service on the City of Walnut Creek Planning Commission (1999 to 2007)
- IV. General Plan – Served as Chairman of the Walnut Creek General Plan Steering Committee which developed the new, 25 year General Plan. (2003 to 2004)
- V. Thirty-seven years of experience in residential development in Central Contra Costa County. The last fifteen of those years were operating my own company, Pickett Development Company, Inc. During this period, I spent a considerable amount of time involved with numerous projects in the Town of Moraga. My career experience in Moraga began in 1973 in association with the development of the Moraga County Club. Since that time, I have been involved in the development and construction of approximately 600 homes in Moraga. Much of that construction has been single family residences in small to medium size, infill subdivisions.  
  
During the last fifteen years, I have focused on small, two to ten lot subdivisions throughout Contra Costa County's more prestigious communities and neighborhoods. The homes I have constructed are of the high caliber that is consistent with the Moraga real estate market.
- VI. Some of the properties in Moraga that I have been involved in subdividing are:
  - Moraga Place (52 lots, on the hill across Moraga Road from the Rheem shopping center)
  - Willow Spring (15 lots on Willow Springs Lane off of Fernwood Drive)
  - Windeler Court (8 lots off of Larch Avenue)
  - Corte Maria (8 lots off of Camino Pablo, adjacent to St. Monica's Church)

For additional, more detailed information on my background, please visit my web site at [www.rwpickett.com](http://www.rwpickett.com).



## Rich Chamberlain

---

**From:** Jill Keimach  
**Sent:** Friday, June 03, 2011 3:59 PM  
**To:** Kelly Clancy  
**Cc:** Lori Salamack; Rich Chamberlain  
**Subject:** FW: Rheem / St. Mary's property  
**Attachments:** Moraga2Lota.PDF

A Council member requested the Planning Commission receive the following comments from Bob Pickett.

Jill Keimach  
Town Manager  
Town of Moraga  
329 Rheem Boulevard  
Moraga, CA 94556  
Direct: (925) 888-7020  
Fax: (925) 376-5203  
Email: [jkeimach@moraga.ca.us](mailto:jkeimach@moraga.ca.us)

Comments on the staff report:

The staff report seems to cover things satisfactorily, but I do have a few comments.

### Ron Carter's letters:

I don't think that his assessment of one lot being the same value as two is correct. In order to arrive at that conclusion, one would have to have completed a cost analysis of the two alternatives, which he has not done. My experience would lead me to believe that it is most likely that the two lot scenario is most profitable. The only significant additional cost would be the water main that might be required with the two lot scenario. I'm pretty sure that if the lots were configured with parallel access strips that butted to Rheem Boulevard, you would meet the EBMUD criteria for street frontage, and the homes could be served by individual meters without the main line extension. (see further comments below) Even with the main line extension, you would add \$60,000 to \$75,000 in cost and get one additional lot worth considerably more than that. There would be an incrementally small increase in costs for the paved access.

Also, I don't agree with his assessment that a single, "estate" lot would be saleable. That location, near the busy intersection of Rheem Boulevard and St. Mary's Road is not a desirable "estate" location. I think that the more modest price that would be achievable with two lots has a much higher chance of success. I don't think the larger lot would command a significantly higher price than either of the two smaller lots. The retail value of two lots would be almost double one large lot. People don't pay much to be able to plant an orchard or accommodate an out-building.

Although he doesn't address the subject, I think that three lots is pushing it politically. This is because it would increase the visibility of the homes from the Scenic Corridor and from the trail. Two homes can be separated by a greater distance and simply "feel" better.

It might be worth having Frank Kennedy analyze the development costs for each scenario. It shouldn't cost too much for him to do that. I could do that also, but at this point he's already on the job and no need to add another party.

**Open Space Density Requirements (Two Lot Approval):**

It seems as though the findings can be made to allow the Town to move forward with the two lot configuration.

**EBMUD service issue:**

In the two lot scenario, if both lots had principal frontage on Rheem, then I believe that EBMUD will allow service with meters on Rheem, thus eliminating the costly installation of a water main. This can be accomplished by making lot #2 a flag lot. If the lot line between lot #1 and the flag portion of lot #2 were drawn down the center line of the new private drive, I think this would be satisfactory. Enough room would need to be allowed for meter placement at Rheem that would satisfy EBMUD. Any money saved here should end up in the Town's pocket.

I've attached a sketch of the lot configuration.

**Other considerations:**

I commented in my January 4, 2011 letter on the value to the Town in establishing some clearly defined architectural criteria that would give a builder-buyer assurance of what can be built there. This is not mentioned in the staff report. I realize that there is some cost in staff time and possibly outside architectural assistance, but uncertainty in this economic environment is a real impediment to a sale.

I hope this helps.

Bob

# ATTACHMENT D

**EXCERPT FROM FEB. 7, 2011 AND  
JUNE 6, 2011 PLANNING  
COMMISSION MEETING MINUTES**

**EXCERPT FROM PLANNING COMMISSION  
MEETING MINUTES  
Monday, February 7, 2011**

**CALL TO ORDER AND ROLL CALL**

The meeting was called to order at 7:30 pm by Vice Chair Socolich.

The following Planning Commissioners were present: Levenfeld, Obsitnik, Socolich, Wykle  
The following Planning Commissioners were excused: Driver, Richards, Whitley  
No Commissioner had a conflict of interest.

**PUBLIC MEETING**

**Study Session – Subdivision of Town-Owned Land at Rheem Blvd. and St. Mary’s Road.** The Planning Commission considered alternatives for a minor subdivision for one or two single family residential lots at the northwest corner of Rheem Boulevard and St. Mary’s Road. The proposed subdivision would involve approximately 2 acres near the northeast end of a 21.4 acre parcel that fronts on St. Mary’s Road between Moraga Road and Rheem Boulevard. The property was acquired by the Town in 1977 when the State sold portions of the proposed right-of-way for the Gateway Freeway. The southwest end of the property is developed as part of Moraga Commons Park and the East Bay Regional Park District maintains a pedestrian and bike trail across the property.

Senior Planner Richard Chamberlain presented the staff report and noted that the East Bay Regional Park District had not received notification of the Planning Commission study session and thus he asked the Planning Commission to not make a recommendation at the meeting. Mr. Chamberlain explained the history of the project and the Town’s acquisition of the property. He further explained the development standards for the creation of one or two lots in MOSO including requirements for environmental review and review by the fire district. Mr. Chamberlain also noted the future potential development of a traffic circle at the intersection of Rheem and Saint Mary’s Road and its possible implications for the potential subdivision.

Director Salamack explained the maximum development potential of the site with respect to density and lot area. She further commented that the goal for the Town was to approve a good project and then maximize the profit to the Town from the project.

A neighbor spoke about the need for the Town to maintain the drainage ditch on the property. He indicated that he would not be affected by the subdivision because he expected a freeway to be constructed in this location when he moved in many years ago.

A representative of the East Bay Regional Park District noted that she was happy that a decision would not be made at this meeting and that the Park District would provide substantive comments in the future.

The Planning Commission discussed the options and determined that they needed more information to make a recommendation to the Town Council. The Commission further requested that the Town look into removing the dead oak tree on the property.

**EXCERPT FROM DRAFT TOWN OF MORAGA  
PLANNING COMMISSION MEETING MINUTES**

Moraga Library Meeting Room  
1500 St. Mary's Road  
Moraga, CA 94556

June 6, 2011  
7:30 P.M.

**I. CALL TO ORDER**

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

**ROLL CALL**

Present: Commissioners Levenfeld, Whitley, Wykle, Vice Chairman Socolich  
Absent: Commissioners Obsitnik, Richards, Chairman Driver  
Staff: Lori Salamack, Planning Director  
Richard Chamberlain, Senior Planner  
Jill Mercurio, Public Works Director/Town Engineer

B. Conflict of Interest – There was no reported conflict of interest.

**II. ADOPTION OF MEETING AGENDA**

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

**III. ANNOUNCEMENTS**

Planning Director Lori Salamack reported that she had informed the Town Manager that her last day with the Town of Moraga would be August 12, 2011. The Town was currently recruiting for her position and applications for Planning Director were due to the Town by June 24, 2011.

**IV. PUBLIC COMMENTS**

There were no comments from the public.

**V. ADOPTION OF THE CONSENT CALENDAR**

**A. Approval of the minutes from the April 18, 2011 meeting**

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

**VII. PUBLIC MEETING**

**A. Study Session - Subdivision of Town-owned land at Rheem Boulevard and St. Mary's Road, consideration of three alternatives that would result in the creation of 1, 2, or 3 MOSO Open Space lots on Town-owned property.**

Senior Planner Richard Chamberlain advised that this was a study session for consideration of three alternatives for the subdivision of Town-owned land at Rheem Boulevard and St. Mary's Road for single-family residential development of approximately 1.91 acres at the northeast end of 21.4 acres of Town-owned land. He noted that this was the second time the Planning Commission had discussed the alternative proposals with a recommendation to be made to the Town Council. A public notice to all affected property owners within 300 feet had been mailed on May 26, 2011.

The East Bay Regional Park District (EBRPD) and Moraga-Orinda Fire District (MOFD) had also been notified and sent copies of the proposed alternative subdivision plans.

Mr. Chamberlain reported that in addition to the comments received from the MOFD and the EBRPD, staff had received comments on the staff report and the proposals from Robert Pickett, R. W. Pickett & Associates, which had been forwarded by e-mail to the Planning Commission.

Mr. Chamberlain explained that the property had been acquired by the Town of Moraga in 1977 when the State had sold portions of the proposed right-of-way for the Gateway Freeway. The Town Council had directed staff to prepare plans for the subdivision of the property in order to defray costs for the acquisition of the building at 331 Rheem Boulevard for use as the Public Works Corporation Yard. On September 22, 2010, the Town Council discussed the density and subdivision of the property and at the request of Councilmember Trotter, Mr. Pickett had prepared an analysis of the property supporting development of two or more lots. The Planning Commission conducted a public meeting on February 7, 2011 to discuss the sketch alternatives for a one- or two-lot subdivision of the property, with no action taken since the EBRPD had not been on the notice list and had not had adequate time to review the item.

Following the February 7 Planning Commission meeting, Mr. Chamberlain reported that staff had consulted with the Town Surveyor and had requested the preparation of a tentative parcel map for the one- and two-lot alternatives. The maps were also to show the MOSO building cells for each lot and the required access road width. The tentative maps for the one- and two-lot alternatives were received on May 11. After review by staff and the Town Manager, it was observed that the two-lot subdivision had a MOSO cell that was over 20,000 square feet, where two 10,000 square-foot cells could be considered under MOSO. At the request of the Town Manager, the Town Surveyor was requested to prepare a three lot alternative.

Mr. Chamberlain explained that the 19.49-acre remainder parcel would be retained by the Town as undeveloped open space. He noted that pursuant to Mr. Pickett's most recent correspondence, sketch marks had been made on the plan. Staff and the Town Council were looking at the total value to the Town of the subdivision and the staff report had referenced a report which had been commissioned by a Realtor specializing in raw land to offer an opinion on the value of a one- or two-lot subdivision. The Realtor had suggested that one estate-sized lot may have the same value as two smaller lots; however Mr. Pickett had disagreed with that assessment and had provided additional information on the Realtor's opinion. He commented that if there was less than 45 feet of street frontage for the lots, the fees paid to the Central Contra Costa Sanitary District for hookups could impact the cost of the sale of the lots and the configuration from the tentative map would have to be changed to include the 45-foot frontage.

Mr. Chamberlain identified issues that may occur for a single as opposed to a two-lot subdivision. One of the issues was that a single-lot subdivision project would be categorically exempt under Section 15303(a) of the California Environmental Quality Act (CEQA) Guidelines provided that grading was not required on any slopes greater than ten percent.

Mr. Chamberlain advised that a minor subdivision for the development of two or three residential lots could be found to be categorically exempt under Section 15315 of CEQA because it is located in an urbanized area where the slope of the property is less than 20 percent. An Initial Study for determination of the environmental impacts might be necessary for the two- and three-lot alternatives if the visual impact of the new homes from the St. Mary's Road scenic corridor was considered to be significant.

The property is zoned Open Space and must comply with the standards of development under the Moraga Open Space Ordinance (MOSO). A use permit would be required for residential development of the property regardless of whether or not the project was for one, two, or three lots. The allowed density of development is one dwelling unit on 20 acres. The single lot alternative would conform to the density. The two- and three-lot alternatives would require approval of findings to allow an increase in density not to exceed one unit per five acres. The findings had been identified in the staff report under Section III.C of the MOSO Guidelines for a density increase.

Mr. Chamberlain stated with respect to Finding H, that staff believed that the reference to Goal OS5 of the Open Space and Conservation Element actually refers to Goal OS1.5 which directly applies to MOSO land. OS1.5 requires that each lot have a minimum 10,000 square foot building cell with an average slope less than 20 percent, confirmation that the lots had no geotechnical hazards or landslide problems, and the lot cannot be on a minor ridge over 800-foot elevation. He stated that all three alternatives showed the minimum 10,000 square foot building cells on the lots. The Town Surveyor had been asked to revise the cells to include the grading for the access roads within the cells, but this was not expected to be a problem.

As to Finding I, which includes the factors that determined classification as a high-risk area, Mr. Chamberlain stated that staff was not aware of any slope stability issues on the property. Prior to the approval of the tentative map for a one-, two-, or three-lot subdivision, the Town would have to obtain a geotechnical evaluation of the proposed building sites. In staff's opinion, the subject property would not be classified as high risk.

Mr. Chamberlain explained that the Fire Marshal with the MOFD had reviewed the tentative parcel maps and stated it was likely that a new hydrant would be required for both the two- and three-lot alternatives. The access road for the two-lot alternative had been shown at 24 feet wide and would allow enough width for an 8-foot wide parking area along one side of the road, which would satisfy the Town's requirement for additional guest parking on the lots since no parking would be allowed along Rheem Boulevard. The proposed lots would have less than 45 feet of frontage to Rheem Boulevard unless the frontage was expanded to avoid an additional side sewer fee from the Sanitary District.

Mr. Chamberlain added that any extra guest parking spaces required on the lots could reduce the usable area for development of the lots and make split level or two-story homes more likely.

In terms of tree removal, Mr. Chamberlain stated that the tentative maps for both the single- and two-lot alternatives show the removal of two oak trees northwest of the driveway intersection with Rheem Boulevard. The 24-foot wide driveway for the two-lot

alternative encroaches within the dripline of the oak trees, but the 16-foot driveway for the single-lot alternative did not appear to impact the trees. Staff had asked the Town Surveyor to confirm whether or not the trees would have to be removed for the single-lot project. The existing trees along Rheem Boulevard would substantially screen the view of new homes from Rheem Boulevard as depicted on the photographs included in the staff report. There was a gap in the trees along St. Mary's Road where the development may be visible.

Mr. Chamberlain noted that there is a large depression at the southwest side of Rheem Boulevard which was part of a creek drainage area. The heavy brush and trees in that area would screen the view of any new homes from the Rheem Boulevard scenic corridor, although any grading or improvements in this area would require approval from the State Department of Fish and Game and the tentative maps had shown this area as part of the Town's remainder parcel. An adjacent property owner expressed concern at the February 7 meeting that the drainage area should be maintained by the Town and should not be designated as a drainage easement with maintenance by a private property owner. Also, the addition of one, two, or three new homes would not trigger a requirement for a traffic signal at the intersection of Rheem Boulevard and St. Mary's Road although traffic control improvements at this intersection will eventually be necessary. He stated that enough land should be retained by the Town to allow all options including a traffic circle at the intersection.

Mr. Chamberlain reported that the Town had not proposed to change the alignment of the Lafayette-Moraga Pedestrian/Bike Trail. The existing location of the trail effectively cuts off the potential for any further development to the southwest side of the subdivision. Relocation of the trail had not been considered as a viable option to increase the area of development. He advised that the tentative parcel maps for the one- and two-lot alternatives had been mailed to the EBRPD for comment. The EBRPD had requested that the Town retain its open space intact.

Mr. Chamberlain asked the Planning Commission to consider the testimony from interested parties. If the Commission were inclined to recommend more than one-lot, findings would be necessary for an increase in density above the one unit per 20 acres density. The Commission is only making a recommendation to the Town Council as to which alternative project to pursue, but the findings for an increase in density above the single-lot alternative should be considered in making the recommendation.

In response to the Vice Chair, Mr. Chamberlain affirmed that Saint Mary's College had been informed of the proposal and had not commented. As to the value of a one-, two-, or three-lot alternative, he suggested that Mr. Pickett was aware of the value of lots in Moraga and his opinion was that two lots were more reasonable and would give the Town almost double the value of a single estate sized lot. Mr. Pickett had also opined that the area was not appropriate for an estate lot as the Realtor had suggested given the location of the parcel with two major road intersections.

Ms. Salamack explained that a four to five-lot subdivision as proposed by Moraga resident Roger Poynts, as evidenced by his correspondence dated June 4, 2011, would require the combination of the 19-acre parcel and the 21-acre Moraga Commons parcel for adequate density to create a five-lot subdivision.

## PUBLIC COMMENTS OPENED

Roger Poynts, 147 Donald Drive, Moraga, explained that he had presented the Commission with information for a five-lot subdivision. He sought consideration of more than three lots for the parcel. He proposed a plan for a five-lot subdivision based on 60 x 80 square foot pads with a potentially higher value. He suggested that a smaller subdivision would be less enticing. His plan would include a 28-foot wide street, 10 feet in each direction of travel with 8 feet of parking, adequate for the MOFD and public services. Such a plan would allow a 38-foot wide public service easement or a 40-foot public right-of-way, and which would connect St. Mary's Road to Rheem Boulevard. His plan would relocate a small portion of the trail and provide access to the parking staging area as part of the EBRPD. Such a scenario would also allow for the improvement of the staging area and the potential use by citizens. He otherwise had not analyzed the traffic situation, although he was a proponent of traffic circles. He cautioned the Town Engineer and consultants to ensure that the traffic circle was not too steep given the slope involved.

Based on the density calculation, Mr. Poynts sought consideration of a smaller impact development. He questioned whether the property would be utilized to its full value with a small lot subdivision given the Town's need for funds. He asked the Planning Commission to ask staff to include correspondence in future staff reports from the Town Attorney that the staff recommendation for a smaller lot subdivision was defensible.

Mr. Poynts clarified, when asked by staff, his request for an opinion from the Town Attorney on the MOSO consideration, specifically Pages 6 and 7 of the staff report which spoke to the rule of no grading or access created through a MOSO area with a slope greater than 20 percent; and that there was a hidden requirement that had not been called out in the staff report, that the determination of the MOSO cell was such that the definition of development of the subdivision was that the property could not be subdivided with new lot lines in areas steeper than 20 percent, which was not what the MOSO law stated. He asked that those two issues be clarified and defended in a document by the Town Attorney.

Kathy Macchi, Carroll Drive, Moraga, expressed concern with the visual and aesthetic impacts to the scenic corridor and the potential precedent that may result with potential development.

Jim Townsend, Trail Development Manager, EBRPD, commented on the importance for the community to recognize that the parcel was not real estate to be bought and sold, but open space. Given the limited open space in the area, he noted that once the Town lost its open space it would be gone forever. He wanted to see Town officials be charged with the management of the Town's affairs and also be stewards of the future and consider that all decisions would have impacts on the future. He commented on past efforts to protect open space and scenic corridors and expressed concern with the potential precedence that could be created if the Town developed the parcel to meet current funding needs.

Given that any development on the parcel would require a use permit and discretionary approval and the fact that any of the alternatives would require discretionary findings as the Town moved through the process, Mr. Townsend asked the Town to consider the precedent that may occur with future developers seeking similar approvals if the Town granted itself an exception to the rules. He suggested it would be difficult to make the findings that any development would not cause environmental damage because of the existing drainage, potential removal of trees, and the proximity of the creek. He also questioned that development of the parcel could be substantially screened from view from the scenic corridors or the Lafayette-Moraga Pedestrian/Bike Trail. He noted that the EBRPD supported the preservation of open space and he asked the Town to consider that recommendation.

Ahmad Carmody, 173 Fernwood Drive, Moraga, explained that he had purchased his property in April. He suggested that the proposed development of the parcel was a bad idea and made no sense. He recognized the economic hardships facing the Town and all citizens but suggested that expansion projects had caused nothing but problems. He expressed concern with the potential impacts to the scenic view, wildlife, and the culture of Moraga. He wanted to see the parcel remain as is, open space.

Dave Trotter, Moraga, a member of the Moraga Town Council, explained that since the Town was the applicant and he was a representative of the Town, he found it appropriate to appear before the Planning Commission to explain why the recommendation was being made. He noted that the Town Council had directed staff to find a way to realize a modest amount of value from Town assets to assist in paying for infrastructure and to defray the cost of purchasing 331 Rheem Boulevard for the Corporation Yard, and for the improvements to 329 Rheem Boulevard, which would allow all Town staff to move from the Hacienda in the next couple of years to 329 Rheem and allow the Hacienda to be used strictly for recreational purposes as opposed to Town offices. The initiative had been proposed and endorsed by the Town Council in concept in 2009. The Planning Commission was being asked to make a recommendation as to the number of lots that could be developed.

While he had a strong record to preserve open space, Mr. Trotter noted that the site had a number of attributes and he suggested that one versus two lots was the decision under consideration; not more than two or up to five lots. He asked the Planning Commission to consider Mr. Pickett's observations based on his experience with development in the area and as reflected in his correspondence that a two-lot approach made the most sense. He agreed with Mr. Pickett's opinion that the site was not appropriate for a large estate home. He suggested that two smaller homes on the parcel would have fewer visual impacts on the Lafayette-Moraga Trail than would one large home.

Familiar with the parcel, Mr. Trotter suggested that the existing tree screen between the road and trail was dense, would not be affected by development, and would screen modestly-sized homes from St. Mary's Road and Rheem Boulevard. He also suggested that there was precedent to development in the scenic corridor, citing development along Moraga Road and across from the Rheem Valley Shopping Center where landscaping had done a good job of maintaining an attractive scenic corridor.

In terms of the traffic circle having reviewed the plans prepared by staff, Mr. Trotter suggested that the trail would still come back to its original configuration past the riparian corridor and a traffic circle would not have significant impacts on the recommendation being asked of the Planning Commission. With sufficient setback and landscape requirements, he suggested that the impacts from the trail could be mitigated for a short distance along the trail. Also based on the size of the total parcel, with two homes on the proposed parcel there would be an appropriate balance and the findings could be made to support a two-lot parcel. He urged the Planning Commission to make such a recommendation. He added that it may not have been reflected in the staff report but the Town Council had significant dialogue on the issue in a public forum.

Teresa Onoda, Moraga, suggested that the question was how the Town could find it acceptable and democratic to sell Town-owned land that Moraga voters had voted as open space.

Megan Carmody, 173 Fernwood Drive, Moraga, understood that the question was whether or not the open space should be developed as two lots, although based on the materials provided she now understood the question to be whether there should be one or up to five lots. She asked whether or not it was final that the parcel would be developed at all. Based on her experience with real estate financing, specifically real estate owned (REO) properties, she suggested that the Town would find it difficult to sell the lots as is, commented that lot financing was now non-existent, suggested that the Town would likely see the predicted numbers be much different than what an actual homeowner would pay, and sought consideration of other options. She asked whether or not the subdivision of the parcel and the selling of the land would really assist the Town's finances. She did not find a five-lot proposal to be realistic in the current market. She reported that two homes on Fernwood Drive had been on the market for over a year and backed onto open space. She questioned how a raw lot would be sold and suggested that a five-lot subdivision would not conform to the existing neighborhood.

Suzanne Jones, Moraga, Preserve Lamorinda Open Space, a local organization representing 700 members, 300 of whom resided in the Town of Moraga, suggested that the public notification was excellent to those that resided close to the project site but not the constituency that used the trail. She asked the Town to publish and post information on the proposal at the trail as soon as possible, at least ten days prior to the next hearing on the matter. She questioned the practice of selling publicly-owned land located in open space for development and pointed out that the parcel was located in MOSO space, protected by MOSO, the highest protection for open space in Moraga, and any decision for development should not be made lightly. She was concerned that this was the Town's first proposal to sell publicly-owned land for development. She asked the Town to consider all options.

Ms. Jones asked whether or not there was an alternative Town-owned property that could be considered. In terms of the environmental review, she understood that staff had advised that the project may be exempt from CEQA although she suggested that finding may be premature based on the potential biological and visual resources that were under CEQA regulation that could impact the project. Having walked the site, she noted the number of plant species that were only located in wetlands and she asked the Town to retain a wetlands specialist to map the site. In addition, there appeared to be a

significant stand of native grasses on the site that should be protected and a botanist should evaluate the site and map the area.

Ms. Jones objected to the removal of the two oak trees along Rheem Boulevard and asked that the two oak trees be retained. She emphasized that the site had the distinction of lying in the intersection of two designated scenic corridors as protected in the General Plan and located on a heavily used regional trail in Lamorinda with the potential for visual resources.

Ms. Jones was particularly concerned with the two- and three-lot proposals which would require split level or two-story homes given the completion of the year-long appeal process on the Rancho Laguna project where the community worked hard to preserve the northeasterly view of the precise location along the trail of the ridgeline of Rancho Laguna. As a result of that process, the Rancho Laguna project had been significantly redesigned to protect the area of view along the area of the site from this spot on the trail, and in light of that history she suggested it would be poor planning for the Town to undertake a two-story project with structures that could detract from that view. She asked the Town to take a closer look at that issue. She suggested it could also violate the General Plan which contained an abundance of policies that strongly discouraged, if not outright prohibited, development that included views of ridgelines in scenic corridors from open spaces and public spaces.

Ms. Jones further commented that the one-story alternative as currently drawn contained no buffer between the trail and the development itself. Given the potential significant impacts of the project, she asked Town staff to review Section 15300.2(a) of the CEQA Guidelines, which states that a Class 3 project may not necessarily be categorically exempt if the location of the home, even if a single residence, had the potential for significant impact on sensitive resources. She also suggested that the MOSO findings could not be made as outlined on Page 4 of the staff report, particularly for a two- or three-lot subdivision given the wetlands, scenic corridor, and trails. She offered a copy of her comments in writing.

#### PUBLIC COMMENTS CLOSED

Commissioner Wykle commented that when the Commission had first discussed the proposal in February 2011, he had commented that the Town should be treated like any other applicant. He recognized the funding constraints of the Town but commented that they were secondary and should not drive the decision of the development of a parcel located in MOSO open space. He noted that the panoramic view of the trail was visible from St. Mary's Road for quite a distance and was a visual asset for the Town. In terms of the findings that needed to be made to support the development of the parcel, he had issue with Findings E and H. He was not convinced that the parcels could be substantially screened from view through the use of terrain or landscaping given the time needed for landscaping to mature to screen a single- or two-story home in the area.

Commissioner Wykle stated that Finding H was particularly troubling as compared to the General Plan policies regarding open space, citing Section 7 of the Open Space and Conservation Element of the General Plan. Based on that information, he suggested that the proposal would be in direct contrast to the policies of the General Plan and he could not support development of the parcel based on Finding H.

In response to Commissioner Levenfeld, Mr. Chamberlain explained that Stafford Drive crosses the parcel, but that the parcel was one large parcel with three different sections making up the total acreage. The existing parcel had been split into three sections by Stafford Drive and a Central Contra Costa Sanitary District easement. The proposed residential development would only involve the northeast end of the section between Stafford Drive and Rheem Boulevard

In further response to Commissioner Levenfeld as to the average lot size in the surrounding areas as compared to the proposed lot size for the subject parcel, Mr. Chamberlain commented that the lots in the Rheem Valley Manor subdivision had been developed under the Contra Costa County R-15 zoning designation and were supposed to be 15,000 square feet minimum lot size. However, the subdivision was also a "Planned Development" where there are some variations in lot sizes and some lots were smaller than 15,000 square feet. On average, the lots were approximately 15,000 square feet for the Rheem Valley Manor neighborhood

Vice Chair Socolich stated that adjacent to the site were homes on both sides of Rheem Boulevard where one could consider the subject parcel as a continuation of the homes along Rheem Boulevard and around the corner. While the Town must be respectful of open space, he understood the desire of the Town to sell off some of the Town-owned land to pay for some Town improvements. With the existing trees and additional planting that would be required, he was confident the parcel would be screened from view and would not become an unsightly development. He otherwise opposed three or possibly five lots. He was leaning towards a two-lot development.

Commissioner Whitley suggested that the development in MOSO was a concern and although the Commission was not being asked to approve a specific development, if there was a future proposal he had grave reservations that the Commission could ultimately approve anything given the concerns with development in the Town's open space areas. He wanted to see the Commission assist staff and the Town Council to proceed to the extent where a proposal could be submitted to the Commission as directed by the Town Council.

Commissioner Whitley commented that he had reviewed the materials and was of the opinion that a two-lot proposal was the most appropriate. He opposed a higher density development and did not like the idea of one large estate plan. At this time, if there was something to move forward he would recommend a two-lot proposal.

Commissioner Levenfeld agreed that if there was something to move forward, two lots would have a lesser overall impact than one lot.

Ms. Salamack explained that the Town Council had an interest in defining a project that would come through the Town review process. The Planning Commission was being asked to assist the Council in defining what the project would be; a one, two, three, or larger subdivision as recommended by a member of the public.

Given those choices, Ms. Salamack asked the Planning Commission to define what the Town Council should pursue as the application. She recognized that the majority of the Planning Commissioners present would recommend a preference for a two-lot subdivision based on the question asked by the Council as to the best application for the

Town to pursue, not based on the greatest return to the Town in terms of dollars but in consideration of the site as to what the site may accommodate. The recommendation from the Planning Commission would be forwarded to the Town Council which would then make a judgment as to whether or not to direct staff to pursue an application through the Planning Commission process, with full public notice, and with an expanded public notification as a member of the public had requested.

Vice Chair Socolich noted the consensus for a two-lot approach. At this time, at a request from a member of the public, he allowed further public comment.

#### PUBLIC COMMENTS REOPENED

Ms. Jones noted that a one-lot project did not have to be a large “McMansion” type of home but a one-lot project on a 15,000 square foot lot that would be set back from the trail and be in keeping with the surrounding neighborhood.

#### PUBLIC COMMENTS CLOSED

Commissioner Wykle reiterated his preference for no development on the parcel. He expressed his disappointment that staff resources had been utilized to pursue the issue when it was, in his opinion, in direct contrast to the Open Space and Conservation Element of the General Plan.

Commissioner Levenfeld reiterated her preference for a two-lot approach based on what was being asked of the Commission at this time.

Commissioner Whitley shared the concerns and reiterated that he was uncertain they could get past a true review of the open space requirements; however, he believed that staff had been asked by the Town Council to prepare a proposal for Planning Commission review and a two-lot approach was the most appropriate based on the information presented.

Commissioner Whitley added that he could not currently approve such a proposal but that did not mean that additional information would not allow a different decision to be made. At this time, he suggested there was insufficient information to make a complete decision.

Vice Chair Socolich agreed that there was not enough information for any decision to be made. He otherwise would move forward with a two-lot approach.

Ms. Salamack recognized consensus for a two-lot approach and noted that if the Council was in concurrence with the recommendation from the Planning Commission for a two-lot approach, the Planning Commission would be asked to make findings about an increase in density which would make the difference of whether a one- or two-lot proposal would be pursued. She reiterated, when asked, that if the Commission recommended one lot and the Council agreed, and the matter returned to the Planning Commission, the Commission would have to make the findings for the approval of a conditional use permit. If a two-lot subdivision, the Planning Commission would have to make findings for an increase in density under MOSO and a conditional use permit.

Staff was not asking for a no project option at this time; but a one-, two-, or three-lot alternative.

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

### **A. Approval of a Resolution establishing the regular Planning Commission meeting location at the Moraga Library, 1500 St. Mary's Road, Moraga**

On motion by Commissioner Wykle, seconded by Commissioner Whitley to approve a resolution establishing the regular Planning Commission meeting at the Moraga Library, 1500 St. Mary's Road, Moraga, California.

## **IX. COMMUNICATIONS**

A. None

## **X. REPORTS**

### **A. Planning Commission**

Commissioner Levenfeld reported that the Design Review Board (DRB) meeting she planned to attend had been canceled.

Vice Chairman Socolich reported that he would not be attendance for the June 20 Planning Commission meeting.

### **B. Staff**

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

Ms. Salamack reported that the Town Council would be considering adoption of the California Building Code (CBC) on June 8. During the June 22 Town Council meeting, the Council would be presented the draft changes in the Growth Management Element and possibly the subdivision of Town-owned land at Rheem Boulevard and St. Mary's Road, particularly given that the project was related to the budget and the Town Council would be adopting the budget on that date. Formal meeting minutes from this meeting would likely be prepared for the Town Council to review for that item.

Ms. Salamack added, when asked, that the Hetfield Estates project would return to the Planning Commission once vacation schedules had been coordinated and review of documentation had been completed. In addition, a Planning Commission meeting had been scheduled for July 5.

## **XII. ADJOURNMENT**

On motion by Commissioner Levenfeld, seconded by Commissioner Whitley to adjourn the Planning Commission meeting at approximately 9:11 P.M. to a regular meeting of the Planning Commission on Monday, June 20, 2011, at 7:30 P.M. at the Moraga Library Meeting Room, 1500 St. Mary's Road, Moraga, California.

# ATTACHMENT E

**PARK AND RECREATION  
COMMISSION MEETING  
MINUTES (EXCERPT),  
SEPTEMBER 20, 2011**

**A. Proposed Alternatives for Subdivision of Town-Owned Land at Rheem Blvd. and St. Mary's Road** – (discussion/action)

Shawna Brekke-Read presented the staff report and the Commission was provided minutes of the Planning Commission, letters and submittals from East Bay Regional Park District, Regional Parks Association, Preserve Lamorinda Open Space and Roger Poynts.

Commissioner Lucacher, why is the land up for sale? Is there a financial objective for this? Is MOSA land sacred? There is no prohibition to not sell the land?

Commissioner Mallela, What were the Planning Commission comments?

Commissioner Haffner, This seems like a bad idea

Commissioner Crouch, I don't think we should sell off our MOSO land.

*Public Comment*

Suzanne Jones (Moraga), neighborhood was noticed well, but no note posted on the trail. Commission should consider other ways to pay off the debt.

Rob Blitz (Lafayette), presented handout to Commission, please don't subdivide the land and sell.

Diane Renton (Moraga), Bad idea politically to sell parcels of open space.

Jeanne Moreau (Moraga), Planning Commission was told to say how many lots to subdivide

Michelle Dunleavy (Moraga), bad idea to sell the land.

Jeanette Fritsky (Moraga), Opposed to selling the land

Bill Carman (Moraga), Opposed to selling the land

Claire Roth (Moraga) philosophically opposed to selling the land, but one small lot might be okay if placed along Rheem.

*Public Comment Closed*

Commissioner Lucacher, any erosion of MOSO isn't a good idea, opposed, maybe one small house if that would help.

Commissioner Haffner, Violently opposed to any development on that open space.

Commissioner Crouch, Opposed to it

Commissioner Mallela, Opposed to development, sets a bad precedent

Commission choose to take a motion:

Motion by Commissioner Lucacher, **“No, the Parks and Recreation Commission opposes the sale of any property as currently contemplated.”** Motion was seconded by Commissioner Haffner and the motion carried 4-0 with Chair Faoro, Vice-Chair Reed and Commissioner Khanna absent.

ATTACHMENT F  
**WRITTEN CORRESPONDENCE**

**BEFORE THE PLANNING  
COMMISSION OF THE  
TOWN OF MORAGA**

**RECEIVED**

**JUN 6 - 2011**

**MORAGA PLANNING DEPT.**

**Study Session – Item VII. A.  
Subdivision of Town-Owned Land at  
Rheem Blvd. and St. Mary's Road**

**Public Hearing Agenda  
June 6, 2011**

**REQUEST THAT THE PLANNING COMMISSION  
INCLUDE A 4-LOT & 5-LOT OR LARGER RESIDENTIAL PROJECT  
IN ITS RECOMMENDATION TO THE TOWN COUNCIL**

**June 4, 2011**

**Prepared By:**

**Roger L. Poynts  
147 Donald Dr.  
Moraga, CA 94553  
(925) 323-4381**

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1  
2 **I. INTRODUCTION.**

3 The Staff Report does not include two alternatives that should be considered.....a 4-Lot plan  
4 and a 5-Lot or larger plan. Current zoning will allow 5 ac. minimum parcel sizes in open space with a  
5 density transfer that provides for a minimum 15,000 sf. lot size with the remainder of the parcel set  
6 aside as open space.  
7

8 There are actually two Town owned parcels along St. Mary's Rd. between Rheem Blvd and  
9 Moraga Rd. APN 256-110-055 which is 21.4 ac. and APN 256-110-057 that is 19.4 ac. The first  
10 parcel parallels St. Mary's Rd and the second is the park.<sup>1</sup>

11 Subdividing the 21.4 ac parcel alone would allow for a 4-Lot project. Creating a 40.8 ac.  
12 project by including both parcels on the same map could produce as many as 8 lots. At 0.34 ac. per  
13 lot, a 4-Lot project would consume only 1.4 ac. (or 6%) of the 21.4 ac. parcel. A 5-Lot project would  
14 only affect 1.7 ac. (or 4%) of the total 40.8 ac.  
15

16 Other than having a different parcel number on a subdivision map, the open space and life as  
17 we know it in Moraga will be largely unaffected. This project will hardly impact us at all.<sup>2</sup>  
18

19 **II. ECONOMIC BENEFIT TO THE TOWN.**

20 The economic benefit to the Town is self-evident. Five lots at \$400,000 each equals  
21 \$2,000,000.<sup>3</sup> Should the Town decide to use the maximum density and produce \$3,200,000 in  
22 revenue for its general fund,<sup>4</sup> there are several other locations in the open space along St. Mary's Rd.  
23 where 3 or 4 more lots could be easily created.  
24

25 <sup>1</sup> See Exhibit "A"- Assessor's Parcel Map.

26 <sup>2</sup> When the General Plan was last updated and in every EIR prepared since, all open space parcels in Town zoned either OS  
or MOSO have been included as impacts at their maximum allowable density. Consequently, environmental impacts from  
traffic, utilities, etc. have already been considered.

27 <sup>3</sup> See Ron Carter letter dated July 28, 2010 which is included in the Staff Report.

28 <sup>4</sup> It should be noted that the estimated revenue does not include any of the future development and construction fees that  
would be received by the Town when the homes are built.

**Moraga Planning Commission**  
**June 6, 2011**

1 According to a recent newspaper article, the Town needs to "enhance" its revenue. In simpler  
2 terms, we need money.....a lot of money..... to repair and maintain our roads and storm drains. The  
3 article stated the street repair alone would cost \$25 million and no one knows how much the storm  
4 drain repair will be.<sup>5</sup> The proffered "enhancement" method is a parcel tax levy. In our current lack-  
5 luster economy, increasing taxes no matter how noble the purpose will be difficult if not impossible to  
6 accomplish.

7  
8 Also, there are many young families in Moraga who are now financially on the edge. The  
9 house they bought a few years ago is currently worth less than what they paid for it, and an additional  
10 expense, even a small tax increase, might be enough to push them over the edge. I believe we need  
11 to cultivate and support the 30 to 50 year old residents....not make it fiscally harder on them....for  
12 they are our future

13 I feel that for all our sakes, the Town should take advantage of this unique opportunity to  
14 maximize its revenues without increasing taxes.

15  
16  
**III. CONCEPTUAL PLAN FOR A 4-LOT OR 5-LOT PROJECT.**

17  
18 If the Town wants to derive the maximum economic benefit from the property, it should consider  
19 a larger development than that proposed in the Staff Report.

20 Exhibit "B" is a Conceptual Grading Plan depicting 5 flat building pads that are 60'x80' in size  
21 served by a 28' wide porous concrete street which will connect from Rheem Blvd to St. Mary's Rd. This  
22 design provides 2-10' wide travel lanes with an 8' parking lane along one side of the street. The street  
23 can be placed in a 40 ft. wide public Right of Way or a 38 ft. wide private Public Services Easement  
24 depending on which method of ownership the Town feels better suits its needs. There is no need for a  
25 turnaround with this design.

26  
27  
28 <sup>5</sup> See June 2, 2011 Contra Costa Times Article, Support for Moraga Road Bond Short of Needed two-thirds, so far.

1 To keep the semi-rural theme of the area, no sidewalks have been proposed. However, a side  
2 walk on one or both sides of the street could be added if the Town so desired. All utilities are nearby  
3 and can be easily extended to serve the new homes. A 5-Lot or larger project takes advantage of the  
4 economies of scale for site improvements. A 4-Lot project would produce wider pads, but be 20 to 50%  
5 less cost effective to develop on a per unit basis.

6 The lots would be a minimum of 15,000 sf. in area and the lot lines could take any geometric  
7 shape. Typically, the side lot lines would be located 1 ft. from the top of bank on the higher pad and run  
8 in an east/west direction.

9 The proposed design would require the relocation of a small portion of the trail. However, this  
10 project would also provide for an opportunity to upgrade the gravel parking/staging area and create a  
11 safer entrance onto St. Mary's Rd. for those using the trail and open space area.

12 In order to create a 5-Lot project both open space parcels must be included in the proposed  
13 subdivision. This is also the case if the Town wants to utilize the maximum density available and create  
14 8 lots. Alternatively, if the Town would rather have a 4-Lot project, only the 21.4 ac. parcel need be  
15 subdivided.

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18  
19 **IV. MOSO CONSIDERATIONS.**

20 Ever since the voters approved the MOSO Initiative in 1986, there has been a faction of  
21 residents and nonresidents who have tried to interpret this Initiative to suit their own ideals. However,  
22 to do so constitutes an illegal change in the will of the voters. Only a vote of the people can change this  
23 initiative.<sup>6</sup>

24 In 2008, there was an attempt to revise the 1986 law. There were two ballot measures put forth  
25 to the voters in Moraga that year. One sought to restrict all development on specific properties and the  
26

27  
28 <sup>6</sup> See 1986 MOSO Initiative Section 5.a.

**Moraga Planning Commission**  
**June 6, 2011**

1 other was tailored to allow development in areas which benefited its proponents. Both ballot measures  
2 failed and the original 1986 Initiative is still the law of the land.<sup>7</sup>

3 Exhibit "C" contains an analysis of the Town Council's resolutions passed between 1986 and  
4 1999. It's a 31 page treatise that traces revisions of the guidelines through 5 separate Town Council  
5 resolutions over 11 years. The purported reason for the Town to spend so much staff and counsel time  
6 was to "Interpret and Implement" the MOSO ordinance. We may never know how much money was  
7 spent on this folly, but we do know that it would have been better spent maintaining our infrastructure.  
8

9 All these revised resolutions accomplished was to obfuscate the original law and overcomplicate  
10 the planning process. If someone tries to apply the current guidelines without taking the time to read  
11 and understand the legislative history of the resolutions, one could easily reach the false conclusion  
12 that a parcel or a portion of a parcel was undevelopable because it was necessary to cross areas  
13 where the slope was greater than 20% with a road, utilities and/or grading.

14 In 1987, the Town Council realized there was a potential for abuse by those who wished to  
15 prevent development of land which would otherwise be developable under MOSO. Under certain  
16 circumstances, the definition of "development" could be interpreted to prevent access to developable  
17 land. The Town Council said that the definition of development should not include a road together with  
18 underground utilities if the Planning Commission finds that the crossing is necessary for the orderly  
19 development of the Town.  
20

21 The Town staff failed to consider the legislative history here. On page 4 of the Staff Report near  
22 the bottom of the page, it states that.....all development including grading for the access road must be  
23 located within the MOSO building cell. Also, the Town staff has determined that.....there can be no  
24 new lot lines created outside of the MOSO building cell on slopes greater than 20%. Both are incorrect  
25 interpretations and neither is part of the original MOSO Initiative.  
26  
27

28 <sup>7</sup> Exhibit "D" contains the full text of the 1986 MOSO Initiative.

1           The original MOSO initiative did not state that an owner was barred from extending roads and  
2 utilities through property with slopes over 20%, or that it could not create new lot lines in areas where  
3 the slope is greater than 20%. The original MOSO initiative was a health and safety action. And based  
4 on health and safety concerns, it established that (in MOSO designated areas) lots could be created  
5 which are 20, 10 and 5 ac. in size.

6           To forbid access to an area, or deprive an owner of its right to subdivide its property is clearly an  
7 illegal change in the will of the voters. These restrictions are not specifically stated in the 1986  
8 Initiative, and there is no Court Decision or Town Attorney's opinion letter attached or referenced in  
9 support of these restrictions.  
10

11           If the Town chooses to limit development of this property based on the Staff Report, it is highly  
12 recommended that it direct its legal counsel to write an opinion letter in support of the exclusionary  
13 zoning practices contained therein. Also, it seems prudent to confirm with the Town Clerk that there is  
14 a current certificate of professional liability insurance for that counsel on file at the Town offices.  
15

16  
17 **V. CONCLUSION.**

18           Recently, the Town commissioned various studies which concluded our roads, storm drains and  
19 other infrastructure require considerable maintenance. It also found that the cost of this necessary  
20 maintenance has not been properly funded or set aside for this purpose. Now, it is contemplating some  
21 type of fixed lien assessment on real property owned by its Citizens to pay for these repairs.

22           While I am an avid supporter of properly maintained infrastructure, I do not support additional  
23 taxes or fees unless it is an option of last resort. Here we have a choice.

24           Before you is a methodology that can raise \$2,000,000 to \$3,200,000 in additional revenue  
25 without imposing additional levies on the Town's Citizens. This amount will not cover the entire cost of  
26 the needed repairs, but it would be an excellent beginning for a properly funded maintenance reserve.  
27  
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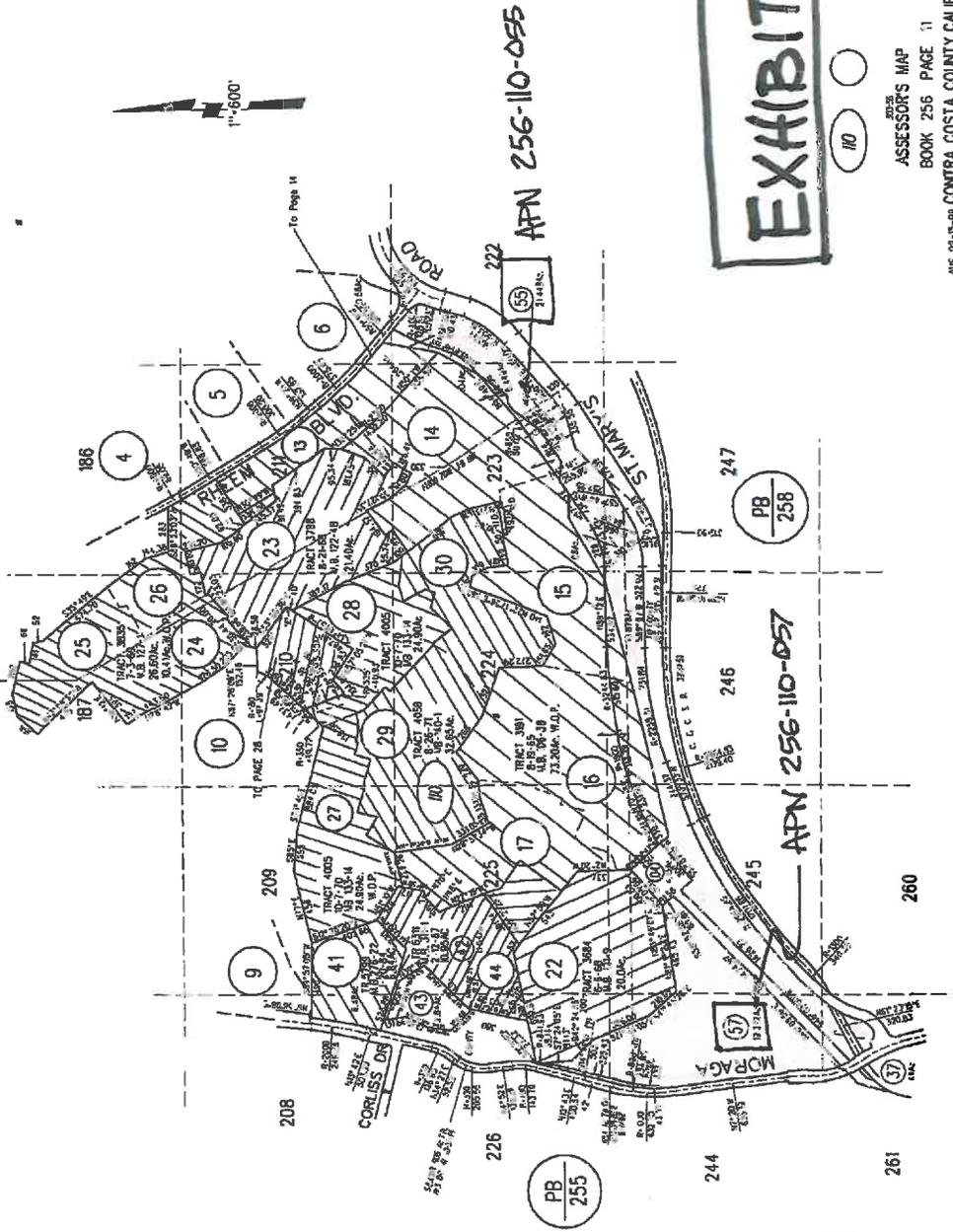


**Moraga Planning Commission  
June 6, 2011**

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**EXHIBIT "A" – ASSESSOR'S PARCEL MAP.**

RANCHO LAGUNA DE LOS PALOS COLORADOS



**EXHIBIT A**

110 ○

ASSESSOR'S MAP  
BOOK 256 PAGE 11  
ANS 01-15-99 CONTRA COSTA COUNTY, CALIF.

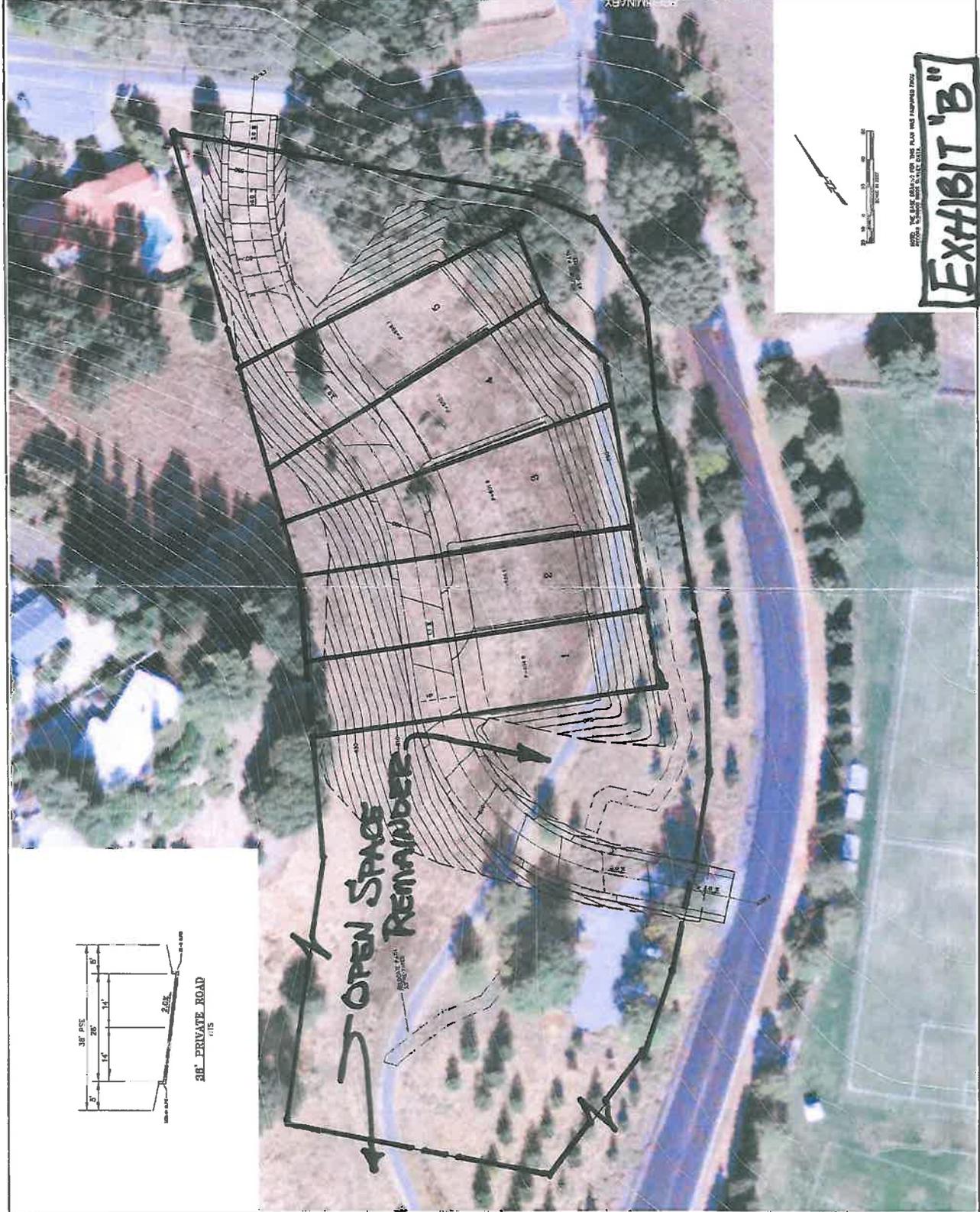
NOTE: THIS MAP WAS PREPARED FOR THE ASSASSOR'S OFFICE BY THE COUNTY OF CONTRA COSTA. THE ASSASSOR'S OFFICE IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE ASSASSOR'S OFFICE MAY BE CONTACTED BY TELEPHONE AT 925-791-1000.

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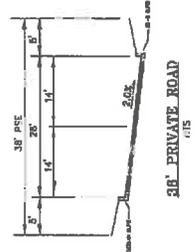
**EXHIBIT "B" – CONCEPTUAL SITE PLAN FOR A 4-LOT OR 5-LOT PROJECT.**

**CONCEPTUAL SITE PLAN**  
 REEVEN BLVD & ST MARYS  
 STUDY 1  
 TOWN OF HENNINGBY

DATE	05-28-2011
SCALE	AS SHOWN
PROJECT	REEVEN BLVD & ST MARYS
CLIENT	TOWN OF HENNINGBY
DESIGNER	DRINKER C. VOORHEES
APPROVED	
CHECKED	
DATE	
BY	



**EXHIBIT "B"**

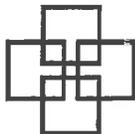


**Moraga Planning Commission  
June 6, 2011**

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**EXHIBIT "C" -- HISTORY OF THE MOSO RESOLUTIONS.**

# EXHIBIT "C"



**POYNNTS & ASSOCIATES**  
*Civil Engineers & Land Surveyors*  
*Civil Engineers Shaping Tomorrow*

Roger L. Poynnt, PE, LS

180 North Wiget Lane  
Suite 101  
Walnut Creek, CA 94598  
Voice (925) 210-1641  
Fax (925) 210-1642

[www.udl-tetrad.com](http://www.udl-tetrad.com)

## HISTORY OF THE MOSO GUIDELINES

### EXECUTIVE SUMMARY

On April 6, 1986, the Moraga voters passed Measure A which became the Moraga Open Space Ordinance ("MOSO"). Since that date the Town Council has passed the following resolutions "interpreting and implementing" this ordinance:

1. Resolution No. 20-86 (June 4, 1986) – This resolution set forth guidelines for the implementation of MOSO and in I.A.5 stated...."These Guidelines are not intended to amend or modify any requirement of the Ordinance."
2. Resolution No. 40-87 (September 2, 1987) – After implementing the Ordinance, the same Town Council realized the definition of development could, under certain circumstances, be used to prevent the development of land which would otherwise be developable under MOSO because it would prevent access to developable land.  
  
Consequently, it added Section II.A.6.3...."Development does not include.....or (3) a road or driveway, together with attendant underground utilities, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code."
3. Resolution No. 14-92 (February 12, 1992) – This resolution replaces the title "Director of Community Development" with "Planning Director" and modified the following sections:
  - II.A.3.....revised the definition of a "cell",
  - II.A.13.....added the definition of a "parcel",
  - II.C.....revised the slope analysis map scale from 1"=200' to 1"=100',
  - II.D.2.....revised the criteria for determining high risk areas,
  - III.C.1.h&i...revised the criteria for increasing density to 1 unit per 5 acres,
  - IV.B.2.b.2...revised the slope analysis map contour interval from 10 to 5 ft.
4. Resolution No. 42-98 (October 28, 1998) – This resolution purportedly updated the General Plan to conform to MOSO. However, in doing so, the definition of "development" was changed and its 1987 meaning was obfuscated. With this change, the ordinance could be used to prevent access to developable land, and in effect, modify the 1986 Ordinance.
5. Resolution No. 6-99 (February 24, 1999) – This resolution revised the Guidelines removing the word "driveway" and adding the words "may cross a ridge" to the definition of development. If someone reads this definition without looking at the legislative history, they could easily reach the false conclusion that a parcel was undevelopable because there would be no way to physically access it or extend utility service to the property.

October 30, 2009

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Adopting Amending Resolution No. 20-86, )  
Establishing Guidelines for Interpreting and )  
Implementing the Moraga Open Space )  
Initiative – Measure A )

RESOLUTION NO. 20-86  
RESOLUTION NO. 40-87

Comment [A1]: Revised by Reso 40-87.

WHEREAS, at the Consolidated General Municipal Election held on Tuesday, April 8, 1986, there was submitted to the voters of the Town of Moraga as Measure A the question of whether or not to adopt the Moraga Open Space Ordinance proposed by initiative petition; on June 4, 1986, the Town Council of the Town of Moraga adopted Resolution No. 20-86, adopting guidelines for interpreting and implementing the Moraga Open Space Initiative (MOSO); and

Comment [A2]: Revised by Reso 40-87.

WHEREAS, Measure A was approved by the voters of the Town and thereafter took effect on April 26, 1986; and

WHEREAS, among the provisions of the guidelines is a prohibition of development within certain defined areas of open space land and on minor ridgelines adjacent to open space land; and

WHEREAS, the definition of development (Guidelines, II A.6) together with this prohibition could, under certain circumstances, prevent the development of land which would otherwise be developable under MOSO because it would prevent access to developable land; and

WHEREAS, the Town Council has determined that it is necessary and desirable to adopt guidelines for the interpretation, implementation and application of the Open Space Ordinance amend the guidelines to permit access to land which is otherwise developable even though to do so would require access on or across open space land and ridgelines and that to do so is not inconsistent with MOSO;

Comment [A3]: Added by Reso 40-87.

NOW, THEREFORE, the Town Council of the Town of Moraga DOES HEREBY RESOLVE as follows:

The guidelines set forth in Appendix 'A' attached are adopted and take effect June 4, 1986 amend the guidelines to permit access to land which is otherwise developable even though to do so would require access on or across open space land and ridgelines and that to do so is not inconsistent with MOSO;

NOW, THEREFORE, the Town Council of the Town of Moraga RESOLVES as follows:

The guidelines for interpreting and implementing the Moraga Open Space Initiative adopted by Resolution No. 20-86 on June 4, 1986, are amended so that II, A.6, provides as follows (amended material is shown by underlining):

**"II. INTERPRETATION**

**A. Definitions**

6. development means the placement, discharge or disposal of any material, the change in the density or intensity of use of land, the subdivision of land, or the construction or erection of a structure. Development does not include (1) work necessary to eliminate or prevent a condition which is determined by the Town to be a menace to life, limb or property or adversely affects the safety, use or stability of a public way or drainage way or channel, or (2) establishment of a fire trail approved by the Moraga Fire Protection District, or (3) a road or driveway, together with attendant underground utilities, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code (Ordinance Sections 3a-e).

Comment [A4]: Added by Reso 40-87.

The Town Clerk shall publish this Resolution once within 15 days after adoption in a newspaper of general circulation.

ADOPTED by the Town Council of the Town of Moraga on ~~June 4, 1986~~ September 2, 1987, by the following vote:

Comment [A5]: Revised by Reso 40-87.

AYES: Mayor DePriester; Vice Mayor Crossley; Councilmembers  
Dessayer, Kendall and Connors

NOES: None

ABSTAIN: None

ABSENT: None

Mayor

ATTEST:

Town Clerk

PAGE 2

History of MOSO Interpretation Resolutions  
Prepared by Roger L. Poynts

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October 30, 2009

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BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Amending Guidelines for Interpreting )  
and Implementing the Moraga Open Space )  
Initiative - Measure A (MOSO) Guidelines )

RESOLUTION NO. 14-92

WHEREAS, at the Consolidated General Municipal Election held on Tuesday, April 8, 1986, there was submitted to the voters of the Town of Moraga as Measure A the question of whether or not to adopt the Moraga Open Space Ordinance proposed by initiative petition; and

WHEREAS, Measure A was approved by the voters of the Town and thereafter took effect on April 26, 1986; and

WHEREAS, the Town Council has determined that it is necessary and desirable to adopt guidelines for the interpretation, implementation and application of the Open Space Ordinance; and

WHEREAS, on June 4, 1986, the Town Council adopted the Guidelines for Interpreting and Implementing the Moraga Open Space Ordinance - Measure A (Resolution No. 20-86); and

WHEREAS, on September 2, 1987, the Town Council adopted Resolution No. 40-87 which amended the MOSO Guidelines by modifying the definition of "development"; and

WHEREAS, on January 22, 1992, a public hearing was held by the Town Council to consider amendment to the MOSO Guidelines and testimony was received from the members of the public; and

WHEREAS, the Town has found that adoption of the amendment to the MOSO Guidelines are exempt from environmental review pursuant to Cal. Code Regs., Tit. 14, Section 15378(b)(3); and

WHEREAS, the Town Council directed staff to revise the MOSO Guidelines by incorporating appropriate changes for review by the Council at the February 12, 1992 meeting; and

WHEREAS, on February 12, 1992, the Town Council reviewed and approved the amendments to the MOSO Guidelines.

NOW, THEREFORE, the Town Council of the Town of Moraga DOES HEREBY RESOLVE as follows:

1. The amended MOSO Guidelines set forth in Appendix "A" attached are adopted and take effect on February 12, 1992;

Comment [A6]: Reso 14-92 did not change the definition of "Development". It is the same as Reso 40-87.

2. The Town Clerk shall publish this Resolution once within 15 days after adoption in a newspaper of general circulation.

ADOPTED by the Town Council of the Town of Moraga on February 12, 1992 by the following vote:

AYES: Mayor Graig Crossley, Vice Mayor Sue Noe, Councilmember James Sweeny, Councilmember Al Dessayer and Councilmember Richard Avanzino

NOES: None

ABSTAIN: None

ABSENT: None

Mayor

ATTEST: Ross G. Hubbard, Town Clerk

PAGE 2

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

An Approval of a Negative Declaration )  
and the Town of Moraga initiated )  
Amendments to the General Plan Text, )  
General Plan Diagram and Zoning Map. )  
\_\_\_\_\_ )

RESOLUTION NO. 42-98

File No. GPA-02-97  
ZA-04-97

WHEREAS, over a period of approximately six months, (January to June 1 997), the Town Council conducted a series of study sessions to discuss the clarity and consistency of the goals, policies and implementation measures delineated in the Town's General Plan, Zoning Ordinance, MOSO and MOSO Guidelines; and

WHEREAS, the Town Council's study sessions confirmed that there did in fact exist inconsistencies between the General Plan, Zoning Ordinance and MOSO Guidelines as they relate to MOSO; and

WHEREAS, on July 14, 1997 the Town Council conducted a joint study session with the Planning Commission to discuss the objectives of the Town Council in clarifying and making consistent the stated goals, policies and implementations of the General Plan and the Zoning Ordinance with MOSO and MOSO Guidelines; and

WHEREAS, on October 8, 1997 the Town Council initiated the amendments to the General Plan and Zoning Ordinance by directing the Planning Commission and staff to review and analyze the General Plan and Zoning Ordinance by utilizing those concerns and issues identified by the Town Council during the above mentioned study period; and

WHEREAS, the Planning Commission conducted three study sessions on November 12, 24 and December 8, 1997 with a goal to clarify and eliminate the inconsistencies of the goals, policies and implementation of the General Plan, Zoning Ordinance and MOSO Guidelines as they relate to MOSO; and

WHEREAS, an Initial Study was prepared for the proposed Amendments to the General Plan and Zoning Ordinance (the project) by Parsons Engineering Science, Inc., in accordance with the California Environmental Quality Act (CEQA), with a determination for a Negative Declaration. The Initial Study has been circulated for public comment as required by CEQA and CEQA Guidelines; and

WHEREAS, on December 20, 1997 a notice of public hearing was published in the Contra Costa Times and mailed to interested parties; and

WHEREAS, on January 20, 1998 the Planning Commission conducted a noticed public hearing and received testimony from interested parties and recommended to the Town Council approval of the Negative Declaration and amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map by adoption Resolution No. 04-98; and

WHEREAS, on February 11, 1998 the Town Council conducted a public hearing to consider the recommendation of the Planning Commission for the approval of the Negative Declaration and amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map; and

WHEREAS, the Town Council determined that due to the extent of the recommended amendments, the public hearing be continued to a special Council meeting to thoroughly discuss the proposed amendments; and

WHEREAS, the Town Council conducted four special meetings to discuss the recommended amendments by the Planning Commission; and

WHEREAS, on June 24, 1998 the Town Council reached a consensus/majority on the amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map; and

WHEREAS, prior to taking an official action on the amendments, the Town Council referred to the Planning Commission those modifications to the Zoning Ordinance and Zoning Map which were previously not considered by the Commission, as required by Section 55857 of the State Government Code; and

WHEREAS, on July 20, 1998 the Planning Commission reviewed and considered those modifications to the Zoning Ordinance Text and Zoning Map which were referred to the Commission by the Town Council, and recommended approval to the Council; and

WHEREAS, on September 9, 1998 the Town Council conducted a public hearing to consider a Negative Declaration and the Town of Moraga initiated amendments to the General Plan Text, Zoning Ordinance Text, General Plan Diagram and Zoning Map and after receiving testimony from interested parties, the Council continued the public hearing to the October 28, 1998 meeting; and,

WHEREAS, on October 28, 1998 the Town Council conducted a continued public hearing and received testimony from interested parties.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Moraga makes the following findings:

I. NEGATIVE DECLARATION

The project has been studied under a Negative Declaration. Based on the evidence received, the project will have no significant effect on the environment.

II. SPECIFIC FINDINGS NECESSARY FOR GENERAL PLAN AMENDMENTS UNDER SECTION 8 OF THE GENERAL PLAN.

1. The General Plan will maintain a balanced and logical land use pattern;

PAGE 2

History of MOSO Interpretation Resolutions  
Prepared by Roger L. Poynts

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The proposed amendment to the General Plan would clarify and eliminate inconsistencies between the General Plan and the voter-approved Moraga Open Space Ordinance (MOSO) Initiative adopted in 1986. Since the proposed changes in the General Plan Text and Diagram are solely clarifications and/or corrections, no effect on the Town's land use pattern would occur.

2. The General Plan Amendment will generally improve the quality of the environment socially, economically and physically, and is consistent with the life style of the community;

The General Plan Amendment will clarify and eliminate existing inconsistencies between the General Plan and the voter approved MOSO Initiative adopted in 1986. The amendment reflects the expressed needs, concerns and desires of the voters who approved the MOSO Initiative in 1986. Therefore, the amendment will generally improve the life style of the community.

3. The Town and other affected governmental agencies will be able to maintain levels of service consistent with the ability of the governmental agencies to provide a reasonable level of service;

Since the General Plan Amendment described herein does not propose physical construction, no impact on the service delivery capabilities of local governmental agencies is expected.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Town Council of the Town of Moraga hereby approves the following:

- I. A Negative Declaration for the proposed amendments to the General Plan Text, General Plan Diagram, Zoning Ordinance Text and Zoning Map;
- II. Amendments to the following sections and policies of the General Plan Text:  
Administration and Interpretation of the General Plan
- A. Section 11 (d) of the General Plan text is hereby amended to read as follows:

Transfer of Development Rights (referred to as "Density Transfer" as in Moraga Open Space Ordinance) is the process whereby development rights may be transferred from lands on the General Plan Diagram with an open space designation or 1, 2, or 3 dwelling units per acre, but only when the Town Council finds that such a transfer will result in the dedication, protection and preservation of open space and when appropriate guarantees are provided by the developer that the land shall be permanently preserved as open space.

Development rights may be transferred to lands designated 1, 2, 3 & 6 dwelling units per acre, but such transfer may not increase the Theoretical

PAGE 3

Residential Holding Capacity determined by the initial calculation described above in Paragraph (a) by more than 30%. Development rights may not be transferred to geologically hazardous areas or to any area with an open space designation on the General Plan Diagram.

- B. Section 11(g) is hereby amended to read as follows:

History of MOSO Interpretation Resolutions  
Prepared by Roger L. Poynts

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Ridgelines. A major ridgeline means the center line or crest of the ridges known as Indian Ridge, Sanders Ridge, Mulholland Ridge and Campolindo Ridge, where the crest is above 800 feet above mean sea level and within an area with a MOSO Open Space designation on the General Plan Diagram.

A minor ridgeline means the center line or crest of any ridge other than those identified as "major ridgelines," where the crest is above 800 feet above mean sea level and within an area with a MOSO Open Space designation on the General Plan Diagram.

Development shall be prohibited on minor ridgelines immediately adjacent to and extending into MOSO Open Space if slopes exceed twenty percent (20%) and elevation of said ridges is greater than 800 feet above mean sea level.

C. Section 11(f) is hereby amended to read as follows:

High Risk Areas are areas with a MOSO Open Space designation on the General Plan Diagram and determined to be High Risk in accordance with Part II D. of the "Guidelines for the Interpretation and Implementation of the Moraga Open Space Ordinance - Measure A", adopted as Resolution 14-92 by the Town Council on February 12, 1992 in accordance with the Moraga Open Space Ordinance (MOSO).

D. Section 11(k) is hereby amended to read as follows:

Development means the placement, discharge or disposal of any material, the grading or removal of any material, the change in density or intensity of use of the land, the subdivision of land, or the construction or erection of a structure. Development does not include (1) work necessary to eliminate or prevent a condition which is determined by the Town to be a menace to life, limb or property or adversely affects the safety, use or stability of a public way or drainage way or channel, or (2) establishment of a fire trail approved by the Moraga-Orinda Fire Protection District; or (3) a road ~~or driveway~~, together with attendant underground utilities, may cross a ridge, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code.

Comment [A7]: Deleted in Reso 42-98.

Comment [A8]: Added by Reso 42-98.

F. Section 11(p) is hereby incorporated to read as follows:

Moraga Open Space Ordinance (MOSO) refers to Measure A, a voter approved Initiative adopted at the General Municipal Election held on April 8,

PAGE 4

1986. The Initiative regulates the uses and development of lands designated by the Initiative measure, and provides that the Town Council shall not amend or modify any requirement of this Ordinance without approval by the electorate at a general election. The ballot text is attached as Exhibit A and made a mandatory requirement of this General Plan.

History of MOSO Interpretation Resolutions  
Prepared by Roger L. Poynts

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**F. Section 11(a) is hereby incorporated to read as follows:**

Recreational facility is any development, structure, appurtenance or other man made amenity created for the express purpose of providing for leisure-time recreational opportunities.

**Land Use Element - Residential**

**A. Goal 1 Policy 9 is hereby amended to read as follows:**

Notwithstanding any other provision of the General Plan, any development on lands depicted on the General Plan Diagram or by the Moraga Open Space Ordinance as "Public Open Space-Study" or "Private Open Space" (now designated as MOSO Open Space in the General Plan Diagram) shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10) or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as "high risk" areas, as defined by the Moraga Open Space Ordinance, shall be limited to a maximum density of one (1) dwelling unit per (20) acres.\*

\* Wording from Section 3.c. of the Moraga Open Space Ordinance. MOSO Open Space is identified as Open Space Lands in the Moraga Open Space Ordinance.

**B. Goal 1, Policy 10 is hereby amended to read as follows:**

The densities depicted on the General Plan Diagram for other than multifamily residential (6 DU/Acre) shall be construed to mean conventional detached single family residential development.

Minimum lot sizes shall be as indicated in the following table. The permitted mix of lot sizes may differ from the percentages indicated, provided the aggregate number of lots proposed does not exceed 100% of Theoretical Residential Holding Capacity, as initially calculated.

**PAGE 5**

General Plan Diagram Designation	Minimum Lot Size and Lot Size Percentage Mix
MOSO Open Space*	40,000 sq. ft.
Non-MOSO Open Space	40,000 sq. ft. 30,000 sq. ft. 45% minimum 20,000 sq. ft. 45% maximum 10,000 sq. ft. 10% maximum

History of MOSO Interpretation Resolutions  
Prepared by Roger L. Poynts

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2 DU/Acre	20,000 sq. ft. 45% minimum 15,000 sq. ft. 45% maximum 10,000 sq. ft. 10% maximum
3 DU/Acre	10,000 sq. ft.
6 DU/Acre	10,000 sq. ft.

\*Designated as Open Space Lands in the Moraga Open Space Ordinance.

In implementing the preceding table, the following qualifications shall apply, if supported by environmental analysis:

**C. Goal 1, Policy 10(f) is hereby amended to read as follows:**

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% or steeper, but may be permitted if supported by site-specific analysis. No residential structures shall be placed on slopes of 25% or steeper.

Under the terms of the Moraga Open Space Ordinance, development is prohibited on slopes greater than 20% in areas designated MOSO Open Space. The Zoning Ordinance, Chapter 8-38 (Open Space District) of the Moraga Municipal Code, defines the methodology for the calculation of slope for MOSO Open Space designation.

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. Except for lands designated MOSO Open Space, special consideration may be given to

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grading for projects that will provide outdoor recreational facilities with guaranteed permanent access to the general public.

**D. Goal 1, Policy 10(g) is hereby amended to read as follows:**

Lot sizes in areas designated "Non-MOSO Open Space or MOSO Open Space" on the General Plan Diagram may be less than 40,000 sq. ft. but not less than 15,000 sq. ft. when part of an overall project that will provide outdoor recreational facilities with guaranteed permanent access to the general public. This policy may not be used to alter the density on lands designated MOSO Open Space.

**E. Goal 2, Policy us hereby amended to read as follows:**

Cluster housing may be permitted in areas designated MOSO Open Space or Non-MOSO Open

Space or Residential on the General Plan Diagram, in order to provide permanent open space.

**F. Goal 4. Policy 2 is hereby amended to read as follows:**

Except in MOSO Open Space, residual parcels characterized by such constraints as geologic hazards, restricted access, an established riparian habitat, an historically significant feature or visibility from a scenic corridor shall be designated Non- MOSO Open Space.

Residual parcels within designated MOSO Open Space shall remain designated MOSO Open Space as required by the Moraga Open Space Ordinance.

**Open Space and Conservation Element**

**A. Goal 1. Policy 1 is hereby amended to read as follows:**

Areas designated on the General Plan Diagram as MOSO Open Space or Non-MOSO Open Space may be retained in private ownership, may be used for such purposes as are found to be compatible with the corresponding open space designation and may or may not be accessible to the general public.

**B. Goal 1. Policy 2. is hereby amended to read as follows:**

Any use of or development on lands designated on the General Plan Diagram or by the Moraga Open Space Ordinance as "Public Open Space-Study" or "Private Open Space" (now designated as MOSO Open Space in the General Plan Diagram) shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10) or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as "High Risk" areas, as defined by the Moraga Open Space Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. Transfers of Development Rights (referred to as "Density

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Transfer" as in MOSO) from any open space designation to other lands shall be encouraged; provided that in no event shall dwelling units be transferred to another open space designation or to "High Risk" areas. The Town Council shall identify "High Risk" areas after taking into account soil stability, history of soil slippage, slope grade, accessibility, and drainage conditions.\*

\* Wording taken from Section 3.a. of the Moraga Open Space Ordinance.

**C. Goal 2. Policy us hereby amended to read as follows:**

Moraga's major ridgelines are highly visible throughout the Town and are included within areas designated as MOSO Open Space on the General Plan Diagram.

**D. Goal 3. Policy 1 is hereby amended to read as follows:**

Where appropriate and when consistent with other General Plan goals and policies, areas with a MOSO Open Space or Non-MOSO Open Space designation on the General Plan Diagram

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should be made available to the public for recreational use.

E. Goal 3, Policy 2 is hereby amended to read as follows:

Areas with a MOSO Open Space or Non-MOSO Open Space designation on the General Plan Diagram should have minimal trail development and require minimal maintenance.

F. Goal 4, Policy 1 is hereby amended to read as follows:

In MOSO Open Space, development shall be prohibited on slopes with grades of twenty percent (20%) or greater and on the crest of minor ridgelines. The Town Council shall reduce the allowable densities on slopes of less than twenty percent (20%) through appropriate means such as requiring proportionately larger lot sizes or other appropriate siting limitations. For the purpose of this paragraph the term "minor ridgeline" means any ridgeline, including lateral ridges, with an elevation greater than 800 feet above mean sea level, other than a major ridgeline.\*

\* Wording taken from Section 3.b. of the Moraga Open Space Ordinance. MOSO Open Space is identified as Open Space Lands in the Ordinance.

BE IT FURTHER RESOLVED that the Town Council of the Town of Moraga does hereby approve the following:

Amendments to the General Plan Diagram consisting of modifications which reflect the voter approved Moraga Open Space Ordinance (MOSO) Initiative in 1986. The modifications include the following areas (Exhibit I):

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- A. An area located in the northeast portion of the Town;
- B. An area located south of Rheem Boulevard between Moraga Road/St. Mary's Road;
- C. An area located south of Laird Drive/Donald Drive; and
- D. Four small areas located in the Country Club.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Town Council of the Town of Moraga makes the following specific findings required under Section 8-402 of the Zoning Ordinance before a change in the Zoning District can be made.

1. The change proposed is consistent with the objectives, policies, general land uses and programs specified in the General Plan and applicable specific plan;

The addition of an MOSO Open Space Zoning District in the Town's Municipal Code is necessary in order to clearly differentiate MOSO open space lands from non-MOSO lands and to be consistent with the voter approved MOSO Initiative adopted in 1986. Amending the existing open space chapter of the Town's Municipal Code in such a way is consistent with the policies, general land uses and programs specified in the General Plan.

2. In the case of a general land use regulation, the change proposed is compatible with the uses authorized in, and the regulations prescribed for, the land use district for which it is proposed;

The proposed amendment which creates a MOSO Open Space and Non-MOSO Open Space Districts will be consistent and compatible with the General Plan.

3. A community need is demonstrated for the change proposed;

The proposed amendment which creates a MOSO Open Space and Non MOSO Open Space Districts will be consistent with the General Plan. Also, the proposed amendment clarifies and implements the voter approved MOSO Initiative adopted in 1986.

4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice.

Neither public convenience nor general welfare will be affected with the adoption of the proposed amendments. Furthermore, the adoption of the amendments to the Town's Zoning Ordinance (Chapter 8-38 of the Municipal Code) represents good zoning practice as the amendments correct ambiguities and eliminate confusion in the existing Zoning text and mapping and will be consistent with the voter approved MOSO Initiative adopted in 1986.

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BE IT FURTHER RESOLVED that the Town Council of the Town of Moraga does hereby approve the following:

Amendment to the Zoning Map, consist of modifications which reflect the voter, approved MOSO Initiative in 1986. The modifications include the addition of MOSO Open Space designations in the following areas (Exhibit 2):

- A. An area located in the northeast portion of the Town;
- B. An area located west of Rheem Boulevard between Moraga Road/St. Mary's Road;
- C. An area located north of the intersection of Rheem Boulevard /St. Mary's Road; and
- D. Several areas located within Sanders Ranch.

The modifications also include deletion of the MOSO Open Space designation in the following areas:

- A. The three Town Park sites (Hacienda, Moraga Commons and Rancho Laguna);
- B. A large parcel of land located in the Bollinger Canyon area; and
- C. Five residual parcels located throughout the Town.

PASSED and ADOPTED by the Town Council of the Town of Moraga on October 28, 1998 by the following vote:

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**AYES:** Vice Mayor John Connors, Councilmember Ron Enzweiler, and Councilmember Dennis Cunnane  
**NOES:** Mayor Frank Sperling III and Councilmember Michael Majchrzak  
**ABSTAIN:** None  
**ABSENT:** None

Frank Sperling III, Mayor

**ATTEST:**  
Ross G. Hubbard  
Town Clerk

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BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Amending the Guidelines for Interpreting  
And Implementing the Moraga Open  
Space Initiative — Measure A  
(MOSO Guidelines)

RESOLUTION NO. 6-99

WHEREAS, at the Consolidated General Municipal Election held on Tuesday, April 8, 1986, there was submitted to the voters of the Town of Moraga as Measure A the question of whether or not to adopt the Moraga Open Space Ordinance proposed by initiative petition; and WHEREAS, Measure A was approved by the voters of the Town and thereafter took effect on April 26, 1986; and

WHEREAS, the Town Council determined that it was necessary and desirable to adopt guidelines for the interpretation, implementation and application of the Moraga Open Space Ordinance; and

WHEREAS, on June 4, 1986 the Town Council adopted the Guidelines for Interpreting and Implementing the Moraga Open Space Ordinance — Measure A (Resolution No. 20-86); and WHEREAS, on September 2, 1987 the Town Council adopted Resolution No 40-87 which amended the MOSO Guidelines by modifying the definition of "development"; and

WHEREAS, on February 12, 1992 the Town Council adopted Resolution No. 14-92 which amended the MOSO Guidelines;

WHEREAS, on October 28, 1998 the Town Council adopted Resolution No. 42-98 which included an amendment to the definition of "development" in Section 11(k) under Administration and Interpretation of the General Plan to be consistent with MOSO; and

WHEREAS, the Town Council directed staff to revise the definition of "development" in the MOSO Guidelines to be consistent with the General Plan and MOSO; and

WHEREAS, on January 4, 1999 the Planning Commission recommended an amendment to the definition of "development" in the MOSO Guidelines to be consistent with the General Plan; and

WHEREAS, on February 24, 1999 the Town Council conducted a public hearing to consider the recommendation of the Planning Commission to amend the definition of "development" in the MOSO Guidelines and received public testimony from interested parties.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Moraga hereby approves the revision to Section II.A.6. of the Guidelines for Interpreting and Implementing the Moraga Open Space Initiative to be consistent with the General Plan and to read as follows:

- 6. development means the placement, discharge or disposal of any material, the grading or removal of any material, the change in density or intensity of use of the land, the

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subdivision of land, or the construction or erection of a structure. Development does not include (1) work necessary to eliminate or prevent a condition which is determined by the Town to be a menace to life, limb or property or adversely affects the safety, use or stability of a public way or drainage way or channel, or (2) establishment of a fire trail approved by the Moraga-Orinda Fire Protection District; or (3) a road road ~~or driveway~~ together with attendant underground utilities, may cross a ridge if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code.

Comment [A9]: Deleted in Reso 42-98 and Reso 6-99.

Comment [A10]: Added by Reso 42-98 and Reso 6-99.

PASSED and ADOPTED by the Town Council of the Town of Moraga on February 24, 1999 by the following vote:

AYES: Mayor John F. Connors, Vice Mayor Dennis Cunnane, Councilmember Ron Enzweiler, Councilmember Michael Majchrzak, and Councilmember William Vaughn

NOES: None

ABSTAIN: None

ABSENT: None

John F. Connors, Mayor

Ross G. Hubbard, Town Clerk

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**Guidelines for Interpreting and Implementing the Moraga Open Space Initiative**

Appendix "A" To Town Council Resolution (s) No. 20-86, ~~40-87~~, 14-92, 42-98 & ~~6-99~~

Comment [A11]: Revised by Reso 40-87, 14-92, 42-98 & 6-99.

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**I. INTRODUCTION.**

**A. Findings.**

The Town Council of the Town of Moraga finds that:

1. The Moraga Open Space Initiative Measure A (the Open Space Ordinance) was adopted by the voters of the Town of Moraga at the General Municipal Election held on April 8, 1986. The Ordinance took effect on April 26, 1986.

2. By adopting the Ordinance, the people of Moraga have declared their intent "to protect the remaining open space resources within the Town in the interest of: (1) preserving the feel and character of the community; (2) ensuring the adequacy of recreational opportunities which are contingent on such open spaces; (3) ensuring the protection of local and regional wildlife resources which are dependent on the habitat provided by such open space; (4) ensuring that development does not occur in sensitive viewshed areas; (5) protecting the health and safety of the residents of the Town by restricting development on steep or unstable slopes; and (6) ensuring that development within the Town is consistent with the capacity of local and regional streets and other public facilities and does not contribute to the degradation of local or regional air quality." (Ordinance Section 2c<sup>1</sup>)

3. The Open Space Ordinance directs the Town Council to implement the Ordinance promptly after its enactment. (Ordinance section 5a)

4. These Guidelines are in partial fulfillment of this mandate and represent the first stage of implementation. Additional measures to implement the Open Space Ordinance will be presented for adoption as mandated by section 5 of the Ordinance. As these Guidelines are applied, it may become necessary to amend and supplement them.

5. These Guidelines are not intended to amend or modify a requirement of the Ordinance. (Ordinance section 5a)

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6. These Guidelines are intended to balance fairly the restrictions on development in open space lands under the Open Space Ordinance consistent with the Town's police power with the rights of owners of open space lands.

**B. Purpose.**

---

<sup>1</sup> Unless stated otherwise all parenthetical references are to sections of the Open Space Ordinance, attached to these Guidelines as Exhibit D.

These Guidelines are adopted in order to provide for the interpretation, implementation and application of the Open Space Ordinance.

## II. INTERPRETATION.

### A. Definitions.

In these Guidelines unless the context otherwise requires:

1. building permit means an entitlement issued under the Uniform Building Code to erect, construct, alter, repair or demolish a building or structure regulated by the Uniform Building Code;

2. building permit for a development project refers to the permission given to a development project which on or before April 8, 1986:

- a. had a final subdivision map approved by the Town; and
- b. had a fully executed subdivision agreement for completion of tract improvements; (Ordinance section 4)

3. cell refers to a polygonal shaped area comprised of a minimum of 10,000 square feet. Its function is to describe a specific area for the purpose of ascertaining the average slope grade of the cell. The resulting slope grade calculation determines whether development within the cell may be permitted or is prohibited (Ordinance sections 3b, 3d). In the absence of a submittal by an applicant showing one or more cells as defined, cell refers to an area 200' by 200' as designated on Exhibit "C";

Comment [A12]: Added by Reso 14-92.

4. centerline of a ridge or crest of a ridge is the line running along the highest portion of a ridge; (Ordinance section 3e).

5. design review control is the function of design review prescribed in sections 8-1301 through 8-1341 of the Municipal Code; (Ordinance section 3e)

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6. development means the placement, discharge or disposal of any material, the grading or removing of any material, the change in the density or intensity of use of land, the subdivision of land, or the construction or erection of a structure. Development does not include (1) work necessary to eliminate or prevent a condition which is determined by the Town to be a menace to life, limb or property or adversely affects the safety, use or stability of a public way or drainage way or channel, or (2) establishment of a fire trail approved by the Moraga Fire Protection District; or (3) a road or driveway, together with attendant underground utilities, may cross a ridge if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code (Ordinance Sections 3a-e).

Comment [A13]: Deleted in Reso 42-88 and Reso 6-99.

Comment [A14]: Added by Reso 42-88 and Reso 6-99.

7. hearing body means the Town Council in the case of an application for vested rights exemption and the Planning Commission in the case of an application for status determination;

8. high risk area is an area located in Open Space Land determined to be high risk in accordance with Part II D. of these Guidelines; (Ordinance sections 3a, 3c, 3d)

9. major ridgeline means the centerline or crest of the ridges known as Indian Ridge, Sanders Ridge, Mulholland Hill, and Campolindo Ridge, where the centerline is located in lands designated as "public open space—study" as shown on the General Plan as it existed on October 16, 1985; (See Exhibit B)

10. minor ridgeline means the centerline or crest of a ridge other than a major ridgeline, which rises above 800 feet from mean sea level; (see Exhibit B); (Ordinance sections 3b, 3d)

11. open space land is an area designated as either "private open space" or "public open space—study" in the General Plan as the General Plan ~~existed on October 16, 1985~~ adopted on August 15, 1990. Open space land includes an area designated as "Open Space" by the Open Space Ordinance; the lands described in GPA 6--Resolution No. 28-83 adopted June 10, 1983, GPA 8--Resolution No. 39--83 adopted September 7, 1983, are included within the term Open Space Land (see Exhibit A) ; (Ordinance sections 3a, 3c, 3d, 3e, 3f, 5b)

Comment [A15]: Revised by Reso 14-92.

12. Open Space Ordinance means Measure A adopted at the Consolidated General Municipal Election held April 8,

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1986, a copy of which is attached as Exhibit E:

13. parcel means all land which is contiguous and under one ownership.

Comment [A16]: Added by Reso 14-92.

~~13-14~~ project means a Town approved plan prepared in sufficient detail to permit the completion of physical efforts necessary to accomplish the plan's ultimate objective;

Comment [A17]: Revised by Reso 14-92.

~~14-15~~ ridge is the upper portion of a hill which rises to a crest or ridgeline;

Comment [A18]: Revised by Reso 14-92.

~~15-16~~ ridgeline is the centerline or crest of a ridge;

Comment [A19]: Revised by Reso 14-92.

~~16-17~~ slope with grade of 20% or greater refers to land located within open space land which contains an average slope of 20% or greater using the slope calculation method set forth in section II.C of these Guidelines; (Ordinance sections 3b, 3d, 5b)

Comment [A20]: Revised by Reso 14-92.

4-7-18. substantial construction expense means performing work in good faith reliance on a building permit for the development project. The term refers to expense incurred in actual construction as opposed to expense incurred in planning, engineering or architectural drawings. The existence of substantial construction expense requires a factual determination in each case, taking into account the nature of the project, Town approvals, and time factors. Among the elements to consider are the physical size and substantiality of work performed, the dollar cost of the work performed and liabilities incurred and the percentage of the total project represented by the work and expenditures already undertaken. (Ordinance section 4)

Comment [A21]: Revised by Reso 14-92.

**B. Reference To Exhibits.**

The maps described as

- Exhibit "A" - Moraga Open Space Ordinance, Preliminary Interpretation (May 12, 1986) Open Space Land Use Designations
- Exhibit "B" - Moraga Open Space Ordinance, Preliminary Interpretation (May 12, 1986) Ridges Above 800-foot Elevation
- Exhibit "C" - Slope Map, General Plan Program, Town of Moraga (December 1975) (COMARC Design Systems)
- Exhibit "D" - Development Capability Map, General Plan

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Program, Town of Moraga (December, 1975) (COMARC Design Systems)

- Exhibit "E" - Sample Ballot and Voter Information Pamphlet, Consolidated General Municipal Election, Tuesday, April 8, 1986,

the originals of which are on file in the office of the Planning Director of Community Development are made a part of these Guidelines. A copy of each is attached for reference purposes.

Exhibits "C" and "D" depict only preliminary determination as to slopes and development capability, respectively. An applicant may submit current information which is more refined and more accurately characterizes the site, in which case that information if accepted by the Town supersedes Exhibit "C" and "D".

Comment [A22]: Revised by Reso 14-92.

**C. Slope Calculations.**

A preliminary determination of slopes with grades of 20% or greater is shown on the Slope Map, attached as Exhibit "C". On that map the cells (200'x200') designated 5, 6 and 7

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represent areas with slopes of greater than 20%. A submittal under these Guidelines shall include a slope analysis map of at least a scale of 1 inch equals 200 100 feet showing (1) the boundaries of each parcel, (2) elevations every ten five feet and (3) the average slope for each 200'x200' area (a cell) throughout the parcel.

Comment [A23]: Revised by Reso 14-92.

D. Standards for Determining Whether Open Space Land is Within a High Risk Area.

1. Preliminary Identification of High Risk Areas. The areas located within a cell designated 1, 2, 3 or 4 on the Development Capability Map (Exhibit D) are determined, on a preliminary basis, to be high risk areas.

[This is a preliminary determination and governs until more accurate data are submitted to and approved by the Town.]

Comment [A24]: Added by Reso 14-92.

2. Final Determination of High Risk Areas. The final determination of a high risk area shall be made under the procedure provided for a status determination and in accordance with the following criteria and standards:

An area shall be classified as a high risk area depending upon both (1) its own site characteristics and (2) its location in relation to other geologic geological and topographic topographical conditions.

The standards for classification of a high risk area as they relate to a site's characteristics include evidence or history or both of soil instability, steepness of slopes, difficulty of access, and adverse drainage conditions. Other standards to be included are whether the site is or not adversely affected by an off site landslide and whether or not these characteristics can be adequately mitigated consistent with the California Environmental Quality Act (CEQA), and the Town's Environmental Guidelines, and the Goals and Policies of the General Plan.

Comment [A25]: Revised by Reso 14-92.

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The standards of an area's location in relation to other geologic and topographic conditions which Conditions that determine its classification as a high risk area include but are not limited to its location:

- a) ~~within 100 yards of whether the area has the potential to be adversely impacted by a landslide or unstable soil, of one acre or more soil with a history of slippage or a slope subject to severe surface erosion or deterioration;~~
- b) ~~within 100 yards of an area of 1/2 acre or more with a history of soil slippage or slope subject to erosion or deterioration whether it serves as a natural drainage way or swale, with a drainage basin~~

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of 50 acres or more or crossed by a perennial or ephemeral (intermittent) drainage channel;

- c) within ~~400~~ 50 feet of a known active or dormant fault trace;
- d) containing a regular or intermittent spring or adverse ground water conditions;
- e) ~~within 100 feet of a creek channel identified as such as of April 8, 1986 by the State Fish and Game Commission~~ within 100 yards upstream or 500 yards downstream of a reservoir, detention basin or pond of one acre or more in surface area;
- f) within an area subject to enhanced seismically induced ground shaking or a seismically induced ground failure such as a landslide, lateral spread, rockfall, ground lurching, liquefaction, soil settlement, differential compaction and compression;
- g) within an area subject to the effect of seismically induced flooding and/or dam or stock pond failure.

An area which is classified as a high risk area through the application of the foregoing criteria may be changed from that classification, upon submittal by the applicant, it is found and determined to the Towns' satisfaction that the characteristics making it high risk may be abated by appropriate remedial efforts which are consistent with CEQA, the Town's environmental guidelines, and the Goals and Policies of the General Plan.

Within a single parcel one area could be determined to be "high risk area" and another may not. If a high risk area exists on a parcel, each ~~area cell~~ within the parcel which is not designated high risk must be at least ~~one-acre~~ 10,000 square feet in area to be excluded from the high risk area classification.

Comment [A26]: Revised by Reso 14-92.

### III. RESTRICTIONS ON DEVELOPMENT IN OPEN SPACE LAND

#### A. Prohibition of Development.

Development is prohibited in the following areas:

1. Property situated within open space land (Exhibit "A") as follows:
  - a) on a slope within open space land where the

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slope has a grade of 20% or greater (See definition of cell and Exhibit "C")

Comment [A27]: Added by Reso 14-92.

- b) within 500 feet of a major ridge (Exhibit "B");
- c) on a minor ridgeline (Exhibit "B"). and

2. Property situated on a minor ridgeline immediately adjacent to open space land which meets the slope and elevation criteria of section 3.d.(b) of the Open Space Ordinance.

**B. Density in Open Space Land.**

1. In a high risk area, the density is one dwelling unit per 20 acres and may not be increased.

2. In open space land other than a high risk area density is one dwelling unit per 20 acres unless density is increased as provided in III.C and IV.B of these Guidelines.

3. Density may be transferred from open space land to another residential area located in a land use district other than an open space land use district. Density may not be transferred to a high risk area. (Ordinance section 3d(a))

**C. Increase in Density in Open Space Land.**

1. The Planning Commission may approve an increase in density from one unit per 20 acres to not more than one unit per 5 acres based upon findings that a proposed development is consistent with the following criteria:

- a. the site is physically suitable for the type of development and requested density;
- b. the development is not likely to cause environmental damage;
- c. the development is not likely to cause public health problems;
- d. the distance and relationship to high risk areas is sufficient so that development will not cause undue risk to the subject and

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surrounding properties and will not increase risk to the public health, safety and welfare;

- e. the dwelling units in the proposed development can be substantially concealed from scenic corridors by vegetation or the terrain;

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- f. public benefit will result from the dedication of open space lands, trails or park and recreational facilities beyond those otherwise required for development;
- g. the distance of development from ridgelines is such that the view of ridgelines from a scenic corridor is protected;
- h. ~~the project can be built without substantial (1) grading (2) retaining walls or (3) on or off hauling of earth material;~~ the project is in compliance with Goal 5 and related policies of the Open Space and Conservation Element of the General Plan;
- i. ~~the proposed development is consistent with the information shown on the Development Capability Map attached as Exhibit "D";~~ provided regarding development capability (See II.D.)

Comment [A28]: Revised by Reso 14-92.

Comment [A29]: Revised by Reso 14-92.

2. The procedure for determining density in open space land which is not classified as high risk is prescribed in IV.B.

**D. Design Review.**

Development on land located on a major or minor ridge is subject to design review control. A road may cross a ridge only if the Planning Commission finds that the crossing is necessary for orderly development and does not otherwise conflict with the Municipal Code. (Ordinance section 3e)

**IV. DETERMINING APPLICABILITY OF THE OPEN SPACE ORDINANCE.**

**A. Application for Vested Rights Exemption (Section 4)**

- 1. Restrictions on development unless vested rights exemption applies.

The restrictions on development set forth in III apply to "...A person who, as of [April 8, 1986] has not (a)

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obtained a building permit for the development project and (b) incurred substantial construction expenses in good faith reliance on such building permit..." (Ordinance section 4)

- 2. Certificate of vested rights exemption.

A person seeking an exemption under section 4 of the Open Space Ordinance may apply to the Town for a vested rights exemption.

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3. Application for vested rights exemption.

A person seeking a vested rights exemption shall apply to the Planning Director of Community Development setting forth:

Comment [A30]: Revised by Reso 14-92.

- (1) the status of the project and amount of construction work completed as of April 8, 1986;
- (2) a statement of the construction expenses incurred for grading, subdivision improvements and structures as of April 8, 1986;
- (3) the percentage of the total project represented by the work and expenditures in (1) and (2) above;
- (4) other information required by the Director which in his opinion is necessary to determine entitlement to a vested rights exemption.

4. Scope of Vested Rights Exemptions.

A vested rights exemption does not exempt the person receiving the exemption from a permit approval, or requirement other than that imposed by the Open Space Ordinance. Further development on land within a development project for which a person has obtained a vested rights exemption is not subject to the requirements of the Open Space Ordinance.

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B. Determining Applicability of Open Space Ordinance to Open Space Land.

1. Status ~~determination~~ Determination.

Comment [A31]: Revised by Reso 14-92.

A person whose property is or may be affected by the Open Space Ordinance may apply to the Town for a status determination.

The property owner may apply for a status determination at any time and need not await determination until a development plan is submitted. The application may request a determination as to whether the property is subject to the Open Space Ordinance and if so may request a finding of:

- a) the slope calculation of the property;
- b) whether or not located in a high risk area;
- c) the maximum permitted density, applying the criteria set forth in III.C.1 of these Guidelines.

2. Application for status determination.

History of MOSO Interpretation Resolutions  
Prepared by Roger L. Poynts

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October 30, 2009

The application for status determination shall be on a form provided by the Town. The application shall be accompanied by:

- a. a map showing:
  - (1) the size and location of the property
  - (2) the present general plan and zoning designations
  - (3) the location of major and minor ridgelines
  - (4) the area within 500 feet of each major ridgeline;
- b. a slope analysis map with a scale of no smaller than 1 inch equals ~~200~~ 100 feet showing:
  - (1) the boundaries of each parcel
  - (2) elevations at intervals of no more than ~~ten~~ five feet
  - (3) the average slope for each cell throughout the parcel, SEE II C (Slope calculation)
  - (4) the actual slope for each portion of the parcel when the slope is 20% or greater

Comment [A32]: Revised by Reso 14-92.

Comment [A33]: Revised by Reso 14-92.

Comment [A34]: Added by Reso 14-92.

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This slope analysis map must be accompanied by supplemental information explaining differences, if any, between the map submitted and the Town's Development Capability Map. (Exhibit "D");

- c. a map identifying all applicable geologic and topographic conditions set forth in section II.D. (characteristics of a high risk area) of these Guidelines;
- d. sketches showing generally the areas which because of terrain or existing vegetation are concealed from view from scenic corridors;
- e. soils, geologic or other study which the developer believes would aid the Planning Commission in its determination.

C. Hearing, Determination and Appeal.

1. Fixing hearing and giving notice.

- a. Procedure in the case of vested rights exemption.
  - (1) Preliminary exemption determination. Upon the filing of an application for a vested rights exemption, the Planning Director of Community Development shall determine from the application and the Town's records whether the applicant, in the Director's opinion, is entitled to an exemption.

Comment [A35]: Revised by Reso 14-92.

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Prepared by Roger L. Poynts

- (2) Director's recommendation.  
If the Director concludes that the applicant is entitled to an exemption, he shall so advise the applicant and have the recommendation placed on the agenda of the first available meeting of the Town Council. No other notice need be given.
- (3) Town Council action on recommendation. The Town Council shall act on the Director's recommendation at the earliest practicable time and in no case later than 30 days following the date of the

PAGE 11

meeting at which the Town Council receives the Director's recommendation unless the time period is waived by the applicant.

- (4) Failure of Director to recommend. If the Director concludes that there is reasonable doubt as to whether the applicant is entitled to an exemption the Director shall set the application for hearing before the Town Council. Notice and conduct of the hearing and decision on the application shall be as provided for in the case of an application for status determination.

b. Procedure in the case of status determination.

Upon the filing of an application for status determination, the Planning Director of Community Development shall set the application for public hearing before the Planning Commission to be held within 30 days after the submittal is complete. Notice of the hearing shall be sent to all owners of property within 300 feet of the property which is the subject of the application and to any other person who has requested in writing to be notified for that specific application.

Comment [A36]: Revised by Reso 14-92.

2. Reference of application.

In the case of an application for status determination, the Planning Director of Community Development may refer the application to the Town Engineer, subcommittee of any Town reviewing body or other technical or professional person.

Comment [A37]: Revised by Reso 14-92.

The cost incurred in referring the application shall be borne by the applicant.

3. Hearing.

At the public hearing, the hearing body shall consider the application, the testimony, evidence and all pertinent information presented.

History of MOSO Interpretation Resolutions  
Prepared by Roger L. Poynts

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4. Burden of proof.

The applicant has the burden to present evidence which supports the findings necessary to the decision which it seeks.

5. Form of and time for decision.

The hearing body shall make its decision in writing together with appropriate findings

- a) In the case of an application for vested rights determination, not later than 15 days from the close of the public hearing; and
- b) in the case of an application for status determination, not later than 60 days from the close of the public hearing unless the applicant consents to an extension, The Planning Director of Community Development shall mail a copy of the decision to the applicant and to each person who has requested in writing to be notified of that decision.

Comment [A38]: Revised by Reso 14-92.

6. Findings and decision.

a) Vested rights determination

The Town Council may not grant an exemption unless it finds that the applicant has:

- (1) obtained a building permit for the development project; and
- (2) incurred substantial construction expenses in good faith reliance on the permit.

b) Status determination

In its decision on a status determination, the Planning Commission shall make findings to support its decision with specific reference to the criteria applicable to the request:

- (1) as to slope calculation, see II C (Slope Calculation)
- (2) as to high risk areas, see II D (Standards for Determining Whether Open Space Land is within a high risk area)
- (3) as to density see III C (Increase in Density in Open Space Land)

Comment [A39]: Added by Reso 14-92.

Comment [A40]: Added by Reso 14-92.

Comment [A41]: Added by Reso 14-92.

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The Planning Commission decision shall, to the extent practicable, advise the applicant (1) which areas of the property may and may not be developed and (2) the maximum density permitted on the site.

The density determination may be modified based upon new information developed for a specific project and environmental studies conducted for that project.

7. Appeal of Status Determination.

A person desiring to appeal the status determination decision of the Planning Commission to the Town Council shall file a written notice of appeal with the ~~Planning Director of Community Development~~ within 15 days of the date of the Planning Commission decision. The Town Council shall make its decision on the appeal within 60 days of the date of the notice of appeal.

Comment [A42]: Revised by Reso 14-92.

8. Supplemental rules and procedures.

The Planning Commission may adopt additional rules and procedures governing proceedings under these Guidelines which are not inconsistent with these Guidelines.

D. Miscellaneous Provisions.

1. Fees.

The fee for filing an application for a vested rights exemption or a status determination is the same as the fee fixed for filing an application for a conditional use permit prescribed by Council Resolution No. 39-85 --91.

Comment [A43]: Revised by Reso 14-92.

The fee for appealing a status determination of the Planning Commission is the fee fixed for an appeal of a Planning Commission decision prescribed by Council Resolution ~~39-85~~.

Comment [A44]: Revised by Reso 14-92.

~~2. Development Moratorium Within Meaning of Subdivision Act. The Town Council determines that for the period from April 26, 1986 to January 1, 1987 or until full implementation of the Open Space Ordinance including the adoption of such revisions to the General Plan and the Zoning Ordinance as required by section 5 of the Open Space Ordinance, whichever occurs first, a development moratorium within the meaning of Government Code section 66462.6 exists.~~

Comment [A45]: Deleted by Reso 14-92.

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**EXHIBIT "D" -- FULL TEXT OF THE 1986 MOSO INITIATIVE.**

MORAGA OPEN SPACE INITIATIVE MEASURE A  
(Full Text of Ordinance)

**EXHIBIT "D"**

The people of the Town of Moraga DO ORDAIN as follows:

SECTION 1. Short Title.

This ordinance shall be known as the "Moraga Open Space Ordinance".

SECTION 2. Findings.

The people of the Town of Moraga find and declare the following:

- a. The character and feel of the Town of Moraga is contingent upon the preservation of a substantial amount of open space, the protection of the scenic views of major and minor ridgelines, and the regulation of development in sensitive open space areas.
- b. The Town has experienced significant development pressures in recent years which threaten the amount and quality of open space resources of the Town and which adversely affect the capacity of the Town's public facilities, such as drainage and traffic facilities, and are otherwise altering the character of the community.
- c. It is the intent of the people of the Town to protect the remaining open space resources within the Town in the interest of: (1) preserving the feel and character of the community; (2) ensuring the adequacy of recreational opportunities which are contingent on such open spaces; (3) ensuring the protection of local and regional wildlife resources which are dependent on the habitat provided by such open space; (4) ensuring that development does not occur in sensitive viewshed areas; (5) protecting the health and safety of the residents of the Town by restricting development on steep or unstable slopes; and (6) ensuring that development within the Town is consistent with the capacity of local and regional streets and other public facilities and does not contribute to the degradation of local or regional air quality.
- d. It is the purpose of this Ordinance to revise and augment the policies of the Town recorded in the General Plan and the ordinances of the Town relating to the preservation of open space and protection of ridgelines. This ordinance is consistent with and implements the policy in General Plan Amendment 3, enacted November 18, 1981, which established a policy of minimum lot size designations of twenty (20), ten (10), and (5) acres in some open space areas.
- e. In addition to the reasons described above, this Ordinance is necessary to promote the general health, safety and welfare of the residents of Moraga.

SECTION 3. Protection of Open Space.

a. The following policy is added to Goal 1 of the Open Space Element of the General Plan:

"3) Any use of or development on lands designated in the General Plan or by this Ordinance as 'Open Space Private' or 'Public Open Space-Study' (hereinafter 'Open Space Lands') shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as 'high risk' areas, as defined in this Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. Density transfers from Open Space Lands to other lands shall be encouraged; provided that in no event shall dwelling units be transferred to Open Space Lands or to 'high risk' areas. The Town Council shall identify 'high risk' areas after taking into account soil stability, history of soil slippage, slope grade, accessibility, and drainage conditions."

b. Policy Number 1 of Goal 4 of the Open Space Element of the General Plan is revised to read as follows:

"1) Development shall be prohibited on slopes with grades of twenty percent (20%) or greater and on the crests of minor ridgelines. The Town Council shall reduce the allowable densities on slopes of less than twenty percent (20%) through appropriate means such as requiring proportionally larger lot sizes or other appropriate siting limitations. For the purposes of this paragraph, the term 'minor ridgeline' means any ridgeline, including lateral ridges, with an elevation greater than 800 feet above mean sea level, other than a major ridgeline."

c. The following policy is added to Goal 1 of the Land Use Element of the General Plan:

"8) Notwithstanding any other provision of the General Plan, any development on lands depicted in the General Plan or by this Ordinance as 'Public Open Space-Study' or 'Private Open Space' shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as 'high risk' areas, as defined in this Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres."

d. Section 8-3805 is added to Chapter 38 of the Zoning Ordinance of the Town of Moraga as follows:

"Section 8-3805 Open Space Density.

"(a) Notwithstanding any other provision of the ordinances of the Town of Moraga: (1) all land within the Town of Moraga

designated 'Public Open Space-Study' or 'Private Open Space' (hereinafter referred to as 'Open Space Lands') in the Moraga General Plan as such Plan existed on October 16, 1985, or which is designated such by this Ordinance is hereby zoned 'Open Space' ('OS'); and (2) any development on such Open Space Lands shall be limited to a maximum density of one (1) dwelling unit per twenty (20), ten (10), or five (5) acres, but in no case shall density on such lands exceed one (1) dwelling unit per five (5) acres. Areas identified as 'high risk' areas, as defined in this Ordinance, shall be limited to a maximum density of one (1) dwelling unit per twenty (20) acres. The Town Council may authorize density transfers from Open Space Lands to other lands pursuant to the procedures set forth in Chapter 47 herein; provided that in no event shall dwelling units be transferred to Open Space Lands or to high risk areas. In determining the appropriate density transfer credit applicable to any such Open Space Lands, the Town Council may authorize the transfer of a net density of no greater than one (1) dwelling unit per ten (10) acres.

"Development shall be prohibited on slopes with grades of twenty percent (20%) or greater and on the crests of minor ridgelines. The Town Council shall reduce the allowable densities on slopes of less than twenty percent (20%) through appropriate means such as requiring proportionally larger lot sizes or other appropriate siting limitations. For the purposes of the Ordinance, the term 'minor ridgelines' means any ridgeline, including lateral ridges, with an elevation greater than 800 feet above mean sea level, other than a major ridgeline.

"(b) Development shall be prohibited on minor ridgelines immediately adjacent to and extending into Open Space Lands if slopes exceed twenty percent (20%) and elevation of said ridges is greater than 800 feet above mean sea level."

- e. Section 8-5702 of Chapter 57 of the Zoning Ordinance of the Town of Moraga is amended as follows:

"(a) Development shall be prohibited within 500 feet of the centerline of a major ridge (as defined in subsection (b)) located in an area designated on the General Plan as 'Private Open Space' or 'Public Open Space-Study' and development shall be subject to strict design review control in all other ridge areas. A road, together with attendant underground utilities, may cross a ridge, if the Planning Commission finds that the crossing is necessary for the orderly development of the Town and does not otherwise conflict with the Municipal Code.

"(b) For the purpose of this section, the centerline of a major ridge is the line running along the highest portion of the ridge located within those areas designated on the General Plan as 'Private Open Space' or 'Public Open Space-Study'."

- f. Without limiting the generality of the Moraga Open Space Ordinance, General Plan Amendments No. 6 adopted in Resolution No. 28-83 on June 15, 1983, and No. 8 adopted in Resolution No. 39-83 on September 7, 1983, are hereby repealed and are of no further force or effect. Such lands as were affected

by those amendments are hereby given a General Plan designation of "Public Open Space-Study" and are zoned "Open Space" as provided in Section 3d above.

**SECTION 4. Applicability.**

The provisions of this Ordinance shall apply to any person who, as of the date of the election, has not (a) obtained a building permit for the development project, and (b) incurred substantial construction expenses in good faith reliance on such building permit.

**SECTION 5. Implementation: Interim Development Controls: Interpretation**

- a. Promptly after the enactment of this Ordinance, the Town Council shall adopt such revisions to the General Plan and the Zoning Ordinance as may be necessary to fully implement the Moraga Open Space Ordinance or to ensure the internal consistency of the General Plan or the consistency of the Moraga Open Space Ordinance with the General Plan; providing that the Town Council shall not amend or modify any requirement of this Ordinance without approval by the electorate at the general election.
- b. Until the full implementation of the Moraga Open Space Ordinance as contemplated by subsection (a) or until January 1, 1987, whichever occurs first, the Town Council, or any other reviewing authority, shall not issue any permit or otherwise authorize or approve any use or development, including but not limited to divisions of land, with a density greater than one (1) dwelling unit per twenty (20) acres on: (1) any lands designated in the General Plan or by this Ordinance as "Open Space", "Public Open Space-Study" or "Private Open Space", or (2) major or minor ridgelines, or on slopes greater than twenty percent (20%), or on slopes which are unstable or subject to erosion or deterioration. Nothing in this subsection is intended to authorize issuance of any permit or approval of any development except in compliance with Section 3d above.
- c. In the event of any conflict between the Moraga Open Space Ordinance and the Zoning Ordinance, the provisions of the Moraga Open Space Ordinance shall prevail.

**SECTION 6. Severability.**

In any section, subsection, paragraph, subparagraph, clause or phrase of this Ordinance, or any amendment or revision of this Ordinance is, for any reason, held to be invalid or unconstitutional, the remaining sections, subsections, paragraphs, subparagraphs, clauses and phrases shall not be affected, but shall remain in full force and effect.

F:\TC-RES\RES20-86.E

Preserve Lamorinda Open Space  
P.O. Box 6632  
Moraga, CA 94556

June 6, 2011

**RECEIVED**

**JUN 6 - 2011**

**MORAGA PLANNING DEPT.**

Moraga Planning Commission  
Town of Moraga  
329 Rheem Blvd.  
Moraga, CA 94556

**RE:                    Comments on the Proposed Subdivision of Town-Owned  
Land at Rheem Blvd. and St. Mary's Rd**

Dear Members of the Planning Commission:

Preserve Lamorinda Open Space is a local association of over 700 Lamorinda residents, including over 300 residents of Moraga, with a shared interest in open space and development issues in Lamorinda. We hereby submit the following comments with respect to the proposed subdivision of Town-owned MOSO land at Rheem Blvd and St. Mary's Rd.

### **Public Notice**

We appreciate the very thorough notification that was mailed to nearby property owners regarding this proposal. However, the largest constituency affected—the people who walk this section of the Lafayette-Moraga Regional Trail regularly—has apparently not been informed of this proposal, as there is currently is no notice of the June 6, 2011 meeting, nor any other project information posted at the proposed development site.

To ensure that this constituency is aware of this proposal, we would ask that the Town immediately post a project description on the Lafayette-Moraga Regional Trail adjacent to the proposed development site, and that 10 days prior to the next public hearing on this matter, a hearing noticed be posted there as well.

### **General Comments**

We have several concerns about this proposal. We would begin by pointing out that this is not “just any” land. It is land that was designated MOSO open space by Moraga voters in 1986, and it is publicly owned, meaning that it belongs to the people of Moraga. We are concerned by what is to our knowledge the Town's first-ever proposal to sell

publicly owned open space—particularly MOSO land which is afforded the highest level of protection in the Town’s General Plan—for development.

The Open Space Element of the General Plan repeatedly stresses “preserving open space to the maximum extent possible” suggesting the Town pursue among other things acquisition of public open space (OS1.1). Its implementing programs even suggest that open space be acquired using “Town funds” (IP-J1). Yet with this proposal the Town is seeking to *sell* publicly owned open space for development in order to pay for the recently acquired corporation yard.

We ask that the Town instead explore every potential alternative to selling publicly-owned MOSO open space to pay off the costs of its new building acquisition. Are there other properties the Town own that could fulfill a similar purpose, without impacts to public open space? The Town reportedly owns at least one residentially zoned lot elsewhere in town. Could the Town sell that instead? Selling off a portion of what little open space the citizens of Moraga actually own to pay for new buildings is a controversial and potentially short-sighted road for the Town to head down.

### **Environmental Review**

The staff report indicates that this project may qualify for a categorical exemption from CEQA review. That finding would be premature as there appear to be biological and visual resources subject to regulation under CEQA that may suffer significant impacts as a result of this project.

#### *Biological Resources*

Historically, Moraga’s valley floor included a large complex of meadows, wetlands, and streams. That habitat type has been nearly eliminated by development in Moraga, but proposed development area is a remaining example of that now-rare ecosystem.

Based on information contained in the staff report, there has been no attention given to potential wetlands on the site. There are several lush stands of *juncus* species within the proposed development cells which appear to be seasonal wetlands. The Town needs to conduct a wetland survey and delineation to determine the location and extent of potential wetlands, and to comply with any regulatory requirements triggered by their presence.

There also appears to be at least one significant stand of native grasses (possibly *leymus triticoides*) within the proposed development cells. California’s remaining native grasses are a rare and valuable environmental resource, which the Department of Fish and Game has referred to as “among the most scarce and heavily impacted resources in the State.”<sup>1</sup>

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<sup>1</sup> Brian Hunter, Regional Manager, Central Coast Region, CA Department of Fish and Game, Letter to the City of Richmond, November 30, 1999.

We also believe it will be difficult for the Town to make the MOSO findings necessary to permit the 2-lot or 3-lot proposals. Criteria b), e), and g) on page 4 of the staff report are particularly problematic, given the likely presence of wetlands and native grasslands, the site's proximity to the Regional Trail, visibility from two scenic corridors, and its ridgeline views of the Rancho Laguna site from the Regional Trail.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Jones". The signature is written in black ink and is positioned above the printed name.

Suzanne Jones  
On Behalf of Preserve Lamorinda Open Space

Preserve Lamorinda Open Space  
P.O. Box 6632  
Moraga, CA 94556

September 19, 2011

Moraga Parks and Recreation Commission  
Town of Moraga  
329 Rheem Blvd.  
Moraga, CA 94556

RE: **Comments on the Proposed Subdivision of Town-Owned  
Land at Rheem Blvd. and St. Mary's Rd**

Dear Chairperson Faoro and Members of the Parks and Recreation Commission:

Preserve Lamorinda Open Space is a local association of over 750 Lamorinda residents, including over 350 residents of Moraga, with a shared interest in open space and development issues in Lamorinda. We hereby submit the following comments with respect to the proposed subdivision of Town-owned MOSO land at Rheem Blvd and St. Mary's Rd.

### **Public Notice**

At the June 6, 2011 Planning Commission meeting on this matter, we thanked the Town for the very thorough notification that was mailed to nearby property owners regarding this proposal. We also pointed out, however, that the largest constituency affected—recreational users of the Lafayette-Moraga Regional Trail—had apparently not been informed of this proposal, as there was no notice of the June 6, 2011 meeting, nor any other project information, posted at the proposed development site.

To ensure that this constituency is made aware of this proposal, we asked that the Town immediately post a project description on the Lafayette-Moraga Regional Trail adjacent to the proposed development site, and that 10 days prior to the next public hearing on this matter, a hearing noticed be posted there as well. At that time the Town staff indicated that such notice would be posted. However, as recently as today there was no such information available at the proposed development site. We would again ask that such notice be provided to trail users immediately.

## General Comments

We have several concerns about this proposal. We would begin by pointing out that this open space merits extra consideration because it is land that belongs to the people of Moraga. We are concerned by what is to our knowledge the Town's first-ever proposal to sell publicly owned open space—particularly MOSO land which is afforded the highest level of protection in the Town's General Plan—for development.

The Open Space Element of the General Plan repeatedly stresses “preserving open space to the maximum extent possible” suggesting the Town pursue among other things acquisition of public open space (OS1.1). Its implementing programs even suggest that open space be acquired using “Town funds” (IP-J1). Yet with this proposal the Town is seeking to *sell* publicly owned open space for development in order to pay for the recently acquired corporation yard.

We ask that the Town instead explore every potential alternative to selling publicly-owned MOSO open space. Selling off a portion of what little open space belongs to the citizens of Moraga is a controversial and short-sighted means of paying for a new building. Furthermore, we question the Town's decision to take on the financial burden of the new corporation yard on the hope that selling off public open space can pay for it later. In the current housing market—open space impacts aside—relying on real estate sales to generate Town revenue after-the-fact is speculative at best.

## Environmental Review

The June 6, 2011 planning staff report indicated that this project may qualify for a categorical exemption from CEQA review. That finding would be premature as there appear to be visual and biological resources subject to regulation under CEQA that may suffer significant impacts as a result of this project.

### *Visual Resources*

As the proposed development area lies at the intersection of two protected scenic corridors and abuts perhaps the most heavily used recreational trail in Lamorinda, it has the potential to have a significant impact on visual and recreational resources. This is of particular concern for the 2- and 3-lot proposals, which the staff report suggests would require two-story homes (Planning Department Staff Report, June 6, 2011, pp. 5-6).

It's a grim irony that the Town is now considering developing this particular site on the heels of the year-long appeal process of the Rancho Laguna 2 residential development project. Throughout that process, the Moraga community worked very hard to eliminate Rancho Laguna 2's visual impacts on the northeasterly view from *precisely* this location along the Regional Trail. The Rancho Laguna 2 siteplan was in fact significantly redesigned to eliminate the visual impacts of that project on the ridgeline view from this vantage point.

It would be extremely poor planning for the Town to then undertake a project that tainted that very view with two-story homes and fences in its foreground. It would also potentially violate the General Plan which, as we know from the painstaking Rancho Laguna 2 process, includes an abundance of policies in that strongly discourage if not outright prohibit development that occludes views of ridgelines, particularly from public places, scenic corridors, and open space areas. Again, this is of particular concern with respect to the 2- and 3-lot proposals, but all three proposed concepts as depicted in the staff report fail to preserve an open space buffer between the proposed development cells and the Regional Trail.

### *Biological Resources*

Historically, Moraga's valley floor included a large complex of meadows, wetlands, and streams. That habitat type has been nearly eliminated by development in Moraga, but proposed development area is a remaining example of that now-rare ecosystem.

Based on information contained in the staff report, there has been no attention given to potential wetlands on the site. There are at least two lush stands of *juncus* species within the proposed development cells which appear to be seasonal wetlands. The Town needs to conduct a wetland survey and delineation to determine the location and extent of potential wetlands, and to comply with any regulatory requirements triggered by their presence.

There also appears to be at least one significant stand of native grasses (possibly *leymus triticoides*) within the proposed development cells. California's remaining native grasses are a rare and valuable environmental resource, which the Department of Fish and Game has referred to as "among the most scarce and heavily impacted resources in the State."<sup>1</sup> As such, the Town also needs to retain a botanist map this grassland and any others potentially occurring on the site before developing a site plan for this land.

With respect to tree impacts, we request clarification regarding the two oak trees to be removed along Rheem Blvd. The 1-, 2-, and 3-lot site plans all show the proposed driveway lying next to, but not on top of, the two trees slated for removal. While the driveway does appear to encroach slightly within the drip line of the trees, it is not clear why the trees are to be removed, as opposed to "limbed up". We object to the elimination of these trees, and ask for clarification on the reasons for their proposed removal.

### **Conclusion**

Given the potentially significant impacts of this project on visual and biological resources, we would ask the Town to refer to Section 15300.2 (a) of the CEQA Guidelines, which states that a Class 3 project is not necessarily exempt from CEQA

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<sup>1</sup> Brian Hunter, Regional Manager, Central Coast Region, CA Department of Fish and Game, Letter to the City of Richmond, November 30, 1999.

review if the proposed location of that project is such that a significant environmental impact may result. In this case, the potentially significant environmental impacts cited above would appear to preclude a categorical exemption.

We also believe it will be very difficult for the Town to make the MOSO findings necessary to permit the 2-lot or 3-lot proposals. Criteria b), e), and g) on page 4 of the June 6, 2011 staff report are particularly problematic, given the likely presence of wetlands and native grasslands, the site's proximity to the Regional Trail, visibility from two scenic corridors, and its ridgeline views of the Rancho Laguna site from the Regional Trail.

We would ask the Parks and Recreation Commission to consider the following recommendations to the Town Council:

1. That in lieu of this proposal, alternative funding mechanisms other than the sale of recreationally important public open space be pursued to pay off the new corporation yard;
2. That any development proposal that is put forward on this property include *at most* one single-story residence, at the northern boundary of the property so as to cluster it with existing residential development on Rheem Blvd and to allow for a wide buffer between it and the EBRPD trail; and
3. That any proposed development on this site be subject to a rigorous CEQA review to analyze its recreational and environmental impacts.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Jones". The signature is written in black ink and is positioned above the typed name.

Suzanne Jones  
On Behalf of Preserve Lamorinda Open Space

## Kelly Clancy

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**From:** Cindy [cmshafer@yahoo.com]  
**Sent:** Monday, July 18, 2011 5:38 PM  
**To:** Kelly Clancy  
**Cc:** Marty McInturf  
**Subject:** Opposition to the development of open space in Moraga

To Whom It May Concern,

I am writing to express my opposition to the development of open space near the intersection of Rheem and St. Mary's Roads. The addition of homes directly adjacent to the Lafayette-Moraga Trail would irreversibly change the experience of hundreds of hikers, walkers, bikers etc who use the trail each day.

The residents of Moraga have repeatedly expressed their desire to conserve the remaining open space in Moraga, and we rely on the town council and commissioners on the planning commission to carry out this mandate. While I am

cognizant of the fiscal constraints that the town of Moraga is facing, the sale of open space to build houses is short sighted and ill conceived as, once developed, the open space can never be reclaimed. The Town should consider delaying or scaling back capital improvements instead.

Sincerely,  
Cynthia Shafer

Dear Directory Jay Ingram and Moraga Park and Recreation Commissioners

Please do not sell open space and wildlife habitat

The Moraga Town Council is currently considering a proposal to sell off some of the town's own open space for a subdivision along the Lafayette Moraga Trail, one of the oldest, most scenic, and most used trails in the East Bay Parks Regional District.

If the sale of the subdivision is approved, it would devastate both part of the beauty of this regional trail and eliminate some of the wildlife open space that exists where the subdivision is being considered.



I am a frequent hiker on this trail and a I've taken photos at the location of this proposed subdivision of the hawk, of the heron, and the



humming bird pictured on this page.



It saddens me a greatly that I will no longer be able to see these creatures or the open fields and trees at this particular location because of a decision that favors a short term windfall of money for a permanent reduction in open space and wildlife habitat that, once lost to private development, cannot be reclaimed.

Instead of having a wide open space for the trail with a beautiful open and scenic space on its north side, the proposed subdivision will narrow the trail's corridor to a few yards on its northwest side as shown in the

modified extract of the proposal below..

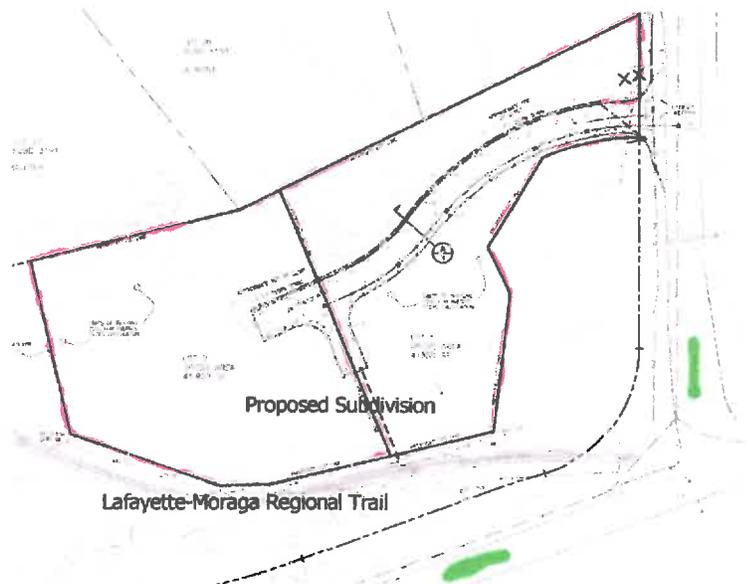
**Proposed Subdivision with highlights**

It's ironic that Lafayette is celebrating the public opening and purchase of open space with the purchase of Acalanes Ridge while Moraga is proposing to sell open space it already owns for development

I urge you not to sell this beautiful and scenic open space that not only adds a great deal of visual beauty to the Lafayette-Moraga Regional Trail but adds to the preservation of existing wildlife as well.

Thank You,

Rob Blits - Lafayette Resident





# Regional Parks Association

P.O. Box 5536  
Berkeley CA 94705  
Phone 925-376-6925

## *RPA Board Members*

*President: Amelia Wilson, Vice-president: Joe Engbeck, Treasurer: Pete Wilson, Secretary Martha Martin  
Judi Bank, Martha Breed, Tim Gordon, Hulet Hombeck, Kathleen Nimr, Carroll Williams*

September 16, 2011

Dear members of the Parks and Recreation Commission:

Regional Parks Association is a 65 year old organization dedicated to promoting and preserving East Bay Regional Park District lands and open space in Alameda and Contra Costa County.

While we understand the financial problems faced by the Town of Moraga, we are appalled that there is consideration of selling MOSO protected lands to a developer in order to pay for a building. The land is owned by the Town for the open space benefits to its citizens; to break that trust is a dismaying action.

Additionally the acreage is adjacent to the EBRPD's heavily used Lafayette-Moraga trail, and while portions of that trail have homes bordering the trail, those homes were there before the trail was built. The open areas along the trail have remained just that –open areas that provide for a green experience.

We therefore object on several counts:

- MOSO land was designated to be protected, not as a financial asset
- To sell MOSO land sets a terrible precedent
- One let alone two or three houses impacts the trail experience for hikers/bikers/walkers
- The land is one of a few remaining undisturbed meadows/wetland areas in the Town; no wetland study has been done; large oaks are slated for removal; native grasses are present and yet the Town is suggesting a categorical CEQA exemption
- Visually, the proposals for development obscure views of ridgelines and have no buffers between development and homes
- Development impacts another agency's land; EBRPD's trail is of inestimable value to the Town of Moraga's quality of life.

We urge the Parks and Recreation Commission to protect the asset of this MOSO land - in essence owned by the citizens of Moraga - and do whatever possible to discourage its sale.

Amelia Wilson, President  
Regional Parks Association

ATTACHMENT G  
**AGENCY CORRESPONDENCE**



May 18, 2011

Richard Chamberlain  
Moraga Planning Department  
329 Rheem Boulevard  
Moraga, California 94556

RECEIVED

MAY 19 2011

MORAGA PLANNING DEPT.

**RE: Lafayette Moraga Regional Trail**  
Proposed Town of Moraga Subdivision at Rheem Blvd. and St. Mary's Rd.

Dear Mr. Chamberlain,

Thank you for the opportunity to review and comment on the proposed subdivision of existing open space located adjacent to the Lafayette Moraga Regional Trail at the southwest corner of Rheem Boulevard and St. Mary's Road. The East Bay Regional Park District ("District") has operated and maintained a segment of the Lafayette Moraga Regional Trail across this property (APN: 256 110 055) since 1977. One of the District's oldest trails, the Lafayette Moraga Regional Trail extends 7.7 miles from the Reliez Valley Staging Area on Olympic Boulevard in Lafayette to East Bay Municipal Utility District's Valle Vista Staging Area. The trail also forms a segment of the Lamorinda Loop Trail and is well-used by residents and visitors alike.

The District does not support the conversion of open space for residential development. While such conversions may provide a short-term economic windfall for the Town, the reduction in open space and wildlife habitat and the increase in density last forever. The addition of new residences immediately adjacent to the trail may also result in additional operational impacts on the District.

Recently approved projects in Moraga including Palos Colorados and the Moraga Town Center Specific Plan will provide a multitude of housing opportunities for existing and new residents alike. The District respectfully recommends that the Town keep its remaining open space intact.

Thank you for the opportunity to provide these comments.

Sincerely,  
  
Sean Dougan  
Regional Trails Development

Cc: Jim Townsend

Board of Directors

Beverly Lane President Ward 6	Carol Severin Vice-President Ward 3	John Sutter Treasurer Ward 2	Ayn Wieskamp Secretary Ward 5	Whitney Dotsort Ward 1	Doug Siden Ward 4	Ted Radke Ward 7	Robert E. Doyle General Manager
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Michael Mentink  
Fire Marshal

Moraga-Orinda Fire District  
33 Orinda Way  
Orinda, CA 94563

Phone: (925) 258-4520  
Fax: (925) 258-4527

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May 16, 2011

Mr. Richard Chamberlain  
Town of Moraga  
329 Rheem Blvd.  
Moraga, CA 94556

RECEIVED

MAY 19 2011

MORAGA PLANNING DEPT.

Dear Richard,

I have received your letter dated May 11, 2011, regarding proposed development for the property at the corner of Rheem Blvd and St. Mary's Road and would like to offer the following response and comments.

The Fire Code requires an unobstructed minimum access roadway width of 20 feet for three or more dwelling units. If there are two or less dwelling units the road may be reduced to an unobstructed clear width of 16 feet except in the area of the turnaround. An additional 8 feet of road width must be added for parking for each side of the road where parking is permitted.

The requirement for turnarounds is based upon the length of the access roadway. If the roadway is longer than 150 feet in length a turnaround is required. The location shown on the provided map for a two-lot subdivision would likely also serve a three lot plan depending on the layout.

A copy of the District's Fire Apparatus Access Roads Standard is available on our website at <http://www.mofd.org/content/ordinances/>. This is a useful tool for developers or other applicants to use when they are trying to identify their options. All dimensions and turnaround requirement and associated diagrams are contained in that document and it would be the District's expectation that any development meet those standards.

Finally, based upon the location of the existing hydrants it is likely a new hydrant will be required for both the two-lot and three lot options. Depending on the location of the building pad for the single lot option, a new hydrant may or may not be required.

If you have further questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Mentink", with a long horizontal flourish extending to the right.

Michael Mentink, Fire Marshal  
Moraga-Orinda Fire District

# ATTACHMENT H

## **PHOTOS**



**Saint Mary's Road Scenic Corridor View near Rheem Boulevard Intersection**



**Saint Mary's Road Scenic Corridor View at center of project site**



**Rheem Boulevard Scenic Corridor View  
Driveway access would be at extreme right of picture**



**Panorama of Project Site looking north from Lafayette-Moraga Trail**

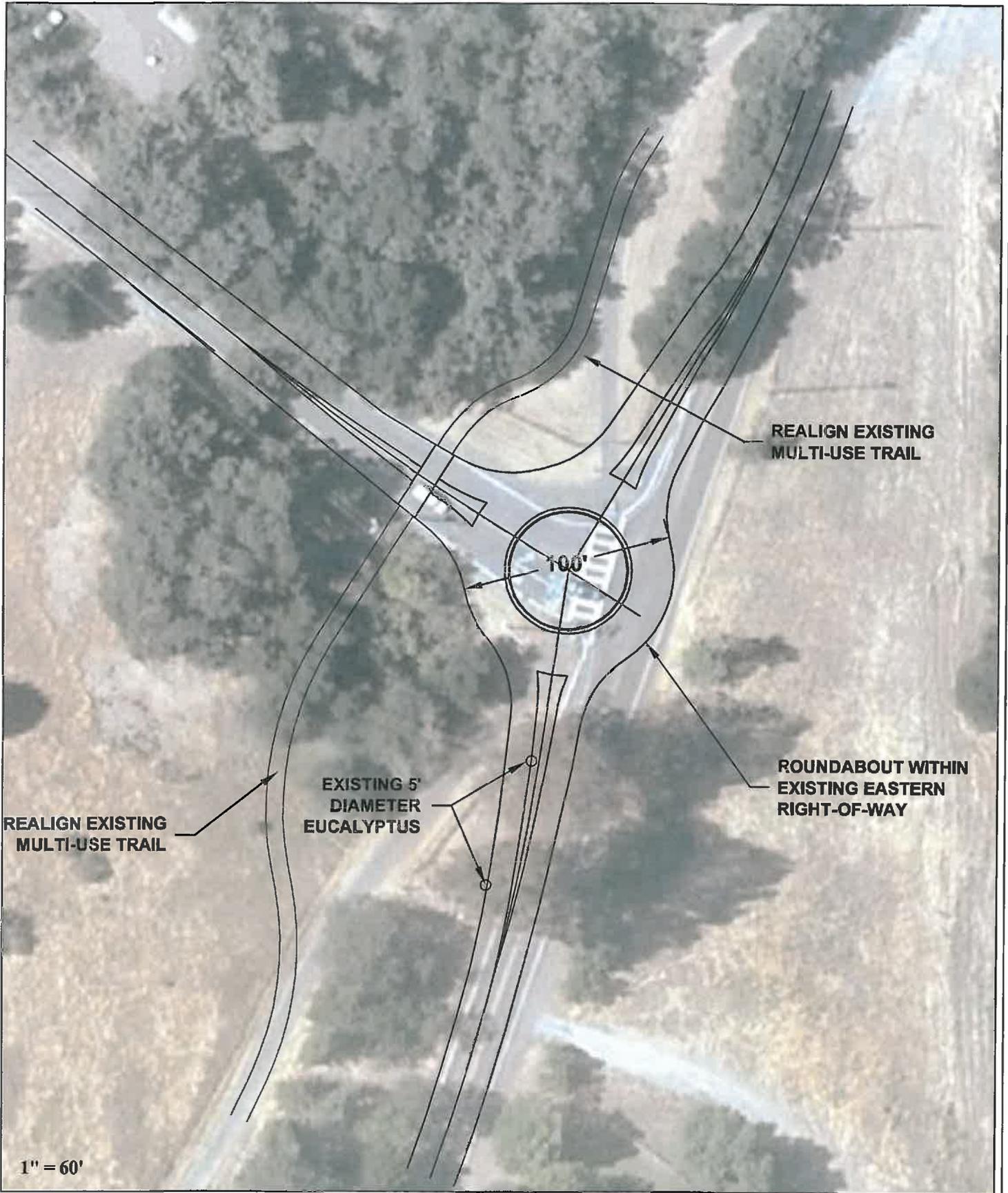


**Trees in Creek Area adjacent to  
Rheem Boulevard**

# ATTACHMENT I

## **PRELIMINARY PLANS FOR TWO TRAFFIC CIRCLE OPTIONS PREPARED IN 2006**





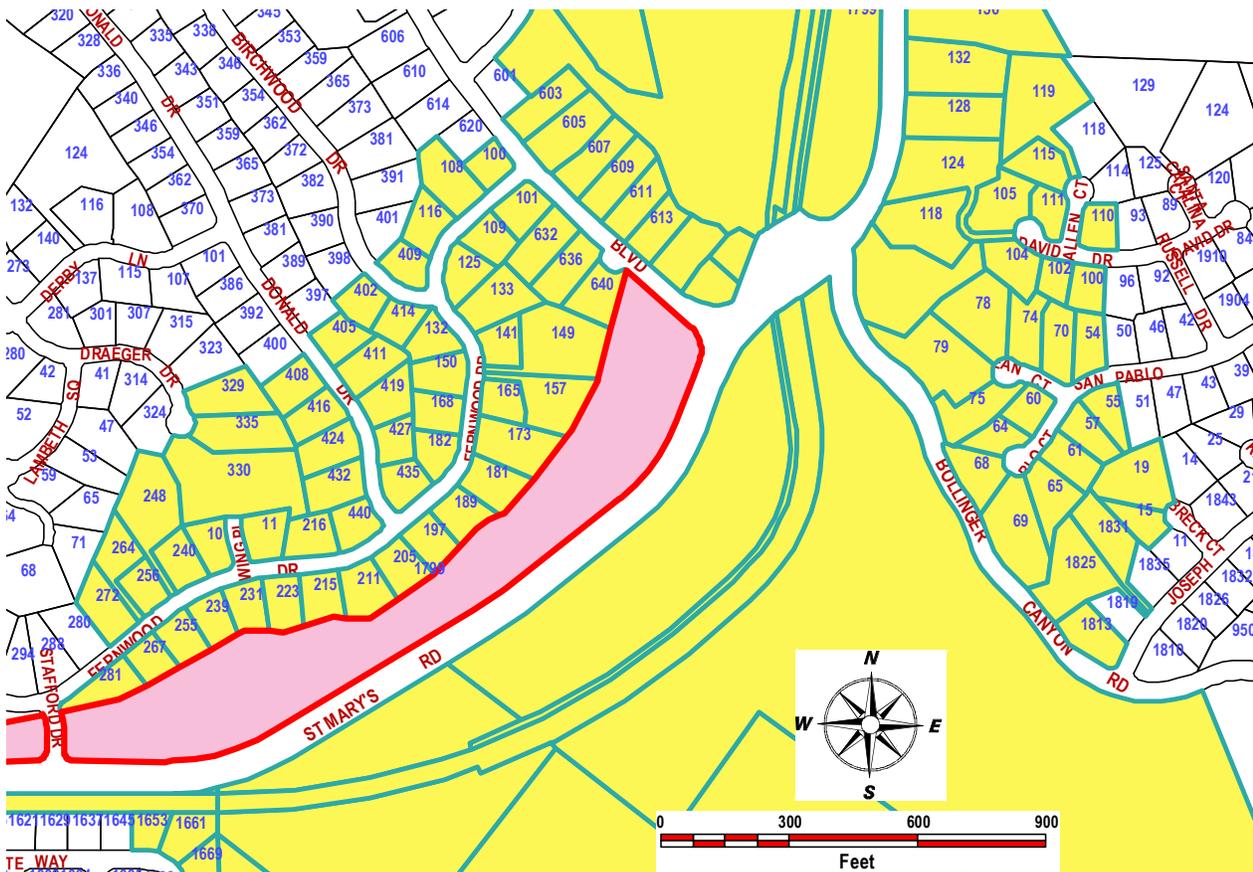
# ATTACHMENT J

## **AREA OF NOTICE MAP AND MAILING LIST**

# VICINITY MAP AND AREA OF NOTICE

## Town Subdivision at Rheem Boulevard and St. Mary's Road

Town Council consideration of options for 1, 2 or 3 Lots



# PUBLIC MEETING

## Town of Moraga

**YOU ARE HEREBY NOTIFIED THAT** on Wednesday, September 14, 2011, at 7:00 p.m., in the auditorium at Joaquin Moraga Intermediate School, 1010 Camino Pablo, Moraga, California 94556, the Town Council of the Town of Moraga will hold a public meeting to consider options for a proposed minor subdivision of Town property described below.

**Subdivision of Town-Owned Land at Rheem Blvd. and St. Mary's Road.** The Town Council shall consider alternative subdivision proposals for one, two or three single family residential lots on approximately 1.91 acres located near the southwest corner of Rheem Boulevard and St. Mary's Road. The objective of the meeting is for the Council to determine which subdivision alternative to pursue. The Council will not be approving any subdivision at this meeting. The proposed single lot alternative would have a lot area of 83,196 square feet and a 16-foot wide access driveway from Rheem Boulevard. The 2-lot alternative would have a 41,389 square foot on the north side and a 41,807 square feet lot on the south side, with a 24-foot wide access driveway from Rheem Boulevard. The three-lot alternative would have a 41,389 square foot lot at the north side and two 20,903 square foot lots at the south side, with a 24-foot access driveway. The 1.91 acre area under consideration is a portion of a 21.4 acre parcel that fronts on St. Mary's Road between Rheem Boulevard and Moraga Road. The remainder 19.49-acre open space parcel would remain as open space and is currently developed as Moraga Commons Park at the southwest end of the property. The East Bay Regional Park District maintains a pedestrian and bike trail across the property. The alignment of the trail would not be changed or blocked by any of the proposed subdivision alternatives. The subject property was acquired by the Town in 1977 when the State sold portions of the proposed right-of-way for the Gateway Freeway. The property is zoned OS-M (Open Space-MOSO). APN 256-110-055.

### **Applicant and Property Owner**

Town of Moraga  
329 Rheem Boulevard  
Moraga, CA 94556

Preliminary plans for the alternative subdivision proposals are available for public review at the Moraga Planning Department Office, 329 Rheem Boulevard, during normal business hours (Monday through Friday from 8 am to noon and 1 to 5 pm). Comments regarding the proposed project can be submitted in writing or orally at the public meeting. Written comments submitted to the Planning Department will be given to the Planning Commission on the night of the meeting. For additional information, contact the Town Planning Department Office at (925) 888-7042.

Richard Chamberlain, Senior Planner

Mailing List for  
Public Meeting

Rheem/St. Mary's  
Subdivision Options  
APN 256-110-055

Town Council  
September 14, 2011  
Meeting

APN	NAME	ADDRESS	CITY & ZIP
258371010	Grace Huei-chuan Lee	1677 DEL MONTE WAY	MORAGA, CA 94556 2043
258140002	Saint Marys College of California	PO BOX 4200	MORAGA , CA 94575 4200
258371009	James T Parsons	1669 DEL MONTE WAY	MORAGA, CA 94556 2043
258371007	Thomas M & Sally Roberts Trust	1653 DEL MONTE WAY	MORAGA, CA 94556 2043
258371008	Joseph R & Karen M Sienkiewicz	1661 DEL MONTE WAY	MORAGA, CA 94556 2043
258371026	Central CC Sanitary District	5019 IMHOFF PL	MARTINEZ , CA 94553 4316
258371027	Real Estate Services	PO BOX 24055	OAKLAND , CA 94623 1055
256151009	Frank Shun Yu & Deborah L Chao	281 FERNWOOD DR	MORAGA, CA 94556 2115
256151006	Raymond C & Irene Shabel Trust	267 FERNWOOD DR	MORAGA, CA 94556 2115
256151005	David N & Julene G Stevenson	255 FERNWOOD DR	MORAGA, CA 94556 2115
258421001	Paul Sorich	1813 JOSEPH DR	MORAGA, CA 94556 2710
256151004	David C & Barbara L Gow Trust	239 FERNWOOD DR	MORAGA, CA 94556 2115
256151003	Charles C & Sherry K Henderson	231 FERNWOOD DR	MORAGA, CA 94556 2115
256151002	Alan & Marjorie Mccauley Trust	223 FERNWOOD DR	MORAGA, CA 94556 2115
256151001	James C Wilson	215 FERNWOOD DR	MORAGA, CA 94556 2115
256152005	Peter & Regina E Ouborg	272 FERNWOOD DR	MORAGA, CA 94556 2142
256141017	John D & Cindy M Oconnor	211 FERNWOOD DR	MORAGA, CA 94556 2115
256152007	Gary S & Nancy M Deweese	256 FERNWOOD DR	MORAGA, CA 94556 2142
256141016	Ryan J & Kimberly F Thompson	205 FERNWOOD DR	MORAGA, CA 94556 2115
256152009	Gary E & Cheryl R Gratz	240 FERNWOOD DR	MORAGA, CA 94556 2142
256152010	Farshid N & Guita Bahramipour	10 REDWING PL	MORAGA, CA 94556 2130
258421003	Petr Horava	1825 JOSEPH DR	MORAGA, CA 94556 2710
256153002	Lawrence N & Alyson K Tomomura	216 FERNWOOD DR	MORAGA, CA 94556 2116
256141015	H Edward & Kathryn A Zuber Trust	197 FERNWOOD DR	MORAGA, CA 94556 2315
256153003	Raymond J & Joan Tres Muer	11 REDWING PL	MORAGA, CA 94556 2129
256152006	Carol A Borjeson	264 FERNWOOD DR	MORAGA, CA 94556 2142
258421007	Clifford A & Marianne Lehman	15 BRECK CT	MORAGA, CA 94556 2704
256142001	Frank D & Diane M Angelo Trust	440 DONALD DR	MORAGA, CA 94556 2314
258421016	Darrell & Michele Kong	1831 JOSEPH DR	MORAGA, CA 94556 2710
256141014	Brian W & Janet Davis Trust	189 FERNWOOD DR	MORAGA, CA 94556 2315
258461010	Andrew & Andrea Firth	69 SAN PABLO CT	MORAGA, CA 94556 2717
256143007	Kin Lincoln & Carolyn Hung Trust	435 DONALD DR	MORAGA, CA 94556 2313
256142002	Vincent Caro	432 DONALD DR	MORAGA, CA 94556 2314
258461009	Stephen H & Kappy L Dye	65 SAN PABLO CT	MORAGA, CA 94556 2717
256141013	Hardip S & Manjot K Pannu Trust	181 FERNWOOD DR	MORAGA, CA 94556 2315
256152008	Ben T & Marjorie J Ho Trust	248 FERNWOOD DR	MORAGA, CA 94556 2142
258461011	Maximo R & Mary Tom Ruiz	68 SAN PABLO CT	MORAGA, CA 94556 2729
258421008	Stephen M & Mary A Doherty Trust	19 BRECK CT	MORAGA, CA 94556 2704
256300014	Timothy & Darby K Bricker	330 DRAEGER DR	MORAGA, CA 94556 2114
258461008	Thomas E & Linda A Vonnovak	61 SAN PABLO CT	MORAGA, CA 94556 2717
256143008	Robert & Nelleke Stevenson Trust	182 FERNWOOD DR	MORAGA, CA 94556 2344
256142003	Craig R & Ann A Thomas	424 DONALD DR	MORAGA, CA 94556 2314

256141012	Ahmad Kermani Trust	1111 BLANC CT	PLEASANTON, CA 94566 7206
258461012	Michael & Christen Lenahan Trust	64 SAN PABLO CT	MORAGA, CA 94556 2729
256300015	Edward J Kovac Trust	335 DRAEGER DR	MORAGA, CA 94556 2113
256143006	Dennis Y & Elinor F Tom Trust	427 DONALD DR	MORAGA, CA 94556 2313
258461007	Mark Ginestro	57 SAN PABLO CT	MORAGA, CA 94556 2717
256143009	Norman J & Claire S Roth Trust	168 FERNWOOD DR	MORAGA, CA 94556 2344
256142004	David S Gould	416 DONALD DR	MORAGA, CA 94556 2314
258461013	Gary A & Linda M Borrelli Trust	60 SAN PABLO CT	MORAGA, CA 94556 2729
258461006	Cheryl L Ahern	55 SAN PABLO CT	MORAGA, CA 94556 2717
258461024	Francis R & Sandra A Dugan	75 JEAN CT	MORAGA, CA 94556 2709
256141019	Kay Y James Trust	165 FERNWOOD DR	MORAGA, CA 94556 2315
256141020	William & Constance Mueser Trust	157 FERNWOOD DR	MORAGA, CA 94556 2315
256300016	Richard & Mary Laufenberg Trust	329 DRAEGER DR	MORAGA, CA 94556 2113
256143005	Richard & Kathleen Nusser Trust	419 DONALD DR	MORAGA, CA 94556 2313
256142005	Peter M Bennett Trust	408 DONALD DR	MORAGA, CA 94556 2314
256143010	John T Moranville	150 FERNWOOD DR	MORAGA, CA 94556 2344
256143004	Steven & Laurence Pride Trust	411 DONALD DR	MORAGA, CA 94556 2313
256141008	Betty M Frederickson	141 FERNWOOD DR	MORAGA, CA 94556 2315
258150007	Real Estate Services	PO BOX 24055	OAKLAND , CA 94623 1055
256143003	Gary F & Wynne J Bacon Trust	405 DONALD DR	MORAGA, CA 94556 2313
258461025	Hendrik & Eleanor Lesterhuis	79 JEAN CT	MORAGA, CA 94556 2709
258461019	William C Jr & Cheryl L Grubbs	54 SAN PABLO CT	MORAGA, CA 94556 2728
256143011	Robert J & Stacy S Ashby Trust	132 FERNWOOD DR	MORAGA, CA 94556 2344
256141009	Catherine V Alimonti	149 FERNWOOD DR	MORAGA, CA 94556 2315
258461018	James T & Anne R Obsitnik Trust	70 JEAN CT	MORAGA, CA 94556 2709
256143012	John H & Jennifer Sugiyama	414 BIRCHWOOD DR	MORAGA, CA 94556 2307
258461017	David & Ligia Taylor	74 JEAN CT	MORAGA, CA 94556 2709
256232012	Richard M Harland	402 BIRCHWOOD DR	MORAGA, CA 94556 2307
258461016	William D Wright Trust	78 JEAN CT	MORAGA, CA 94556 2709
258470003	Miles & Elaine Frazel Trust	100 DAVID DR	MORAGA, CA 94556 2708
256141007	Lawrence S & Carol A Haag	133 FERNWOOD DR	MORAGA, CA 94556 2315
256141018	Edward Y & Amy W Kuan Trust	640 RHEEM BLVD	MORAGA, CA 94556 2346
258470004	William R Rees Trust	102 DAVID DR	MORAGA, CA 94556 2708
256141006	Steven J Weinzimmer Trust	125 FERNWOOD DR	MORAGA, CA 94556 2315
258470030	Robert D & Lori J Chan	104 DAVID DR	MORAGA, CA 94556 2708
256130011	Frank N Jr & June Gould Trust	409 BIRCHWOOD DR	MORAGA, CA 94556 2306
256141002	Jeffrey & Claudia Shafer	636 RHEEM BLVD	MORAGA, CA 94556 2346
258470040	Glenmoore Construction Co	395 TAYLOR BLVD, Apt.#120	PLEASANT HILL , CA 94523 2276
256141005	Alex & Felicitas Teller Trust	109 FERNWOOD DR	MORAGA, CA 94556 2315
256141003	Marvin & Kathleen Schrater Trust	632 RHEEM BLVD	MORAGA, CA 94556 2346
258470014	Krishnan Parameswaran Trust	110 ALLEN CT	MORAGA, CA 94556 2701
256061011	John B Lerner	240 REDWOOD HWY, Apt.#6	MILL VALLEY , CA 94941 6605
258470046	David G & Terry Sylvester Trust	118 DAVID DR	MORAGA, CA 94556 2708
256130010	Family Trust Alexandre Trust	116 FERNWOOD DR	MORAGA, CA 94556 2316
258470009	Finn & M Chris Jorgensen Trust	111 ALLEN CT	MORAGA, CA 94556 2701
256141004	Tamara L Judson Trust	101 FERNWOOD DR	MORAGA, CA 94556 2315
258470026	George S & Gail E Bjornsen Trust	105 DAVID DR	MORAGA, CA 94556 2707
256061010	Clyde B & Dona M Taylor	611 RHEEM BLVD	MORAGA, CA 94556 2324

258470010	Carl J & D Anne Johnson Trust	115 ALLEN CT	MORAGA, CA 94556 2701
256130008	Christopher A Conkling Trust	100 FERNWOOD DR	MORAGA, CA 94556 2316
256130009	Samuel Choi Trust	108 FERNWOOD DR	MORAGA, CA 94556 2316
256061009	Delbert Y & Ling Lu Yamaki	609 RHEEM BLVD	MORAGA, CA 94556 2324
256061008	John T & Lillian Brogan Trust	607 RHEEM BLVD	MORAGA, CA 94556 2324
258470043	Franklin A Jr & Paula Dill Trust	128 DAVID DR	MORAGA, CA 94556 2708
256061007	Dennis P & Diana K Felso	605 RHEEM BLVD	MORAGA, CA 94556 2324
256061006	Aida M Peterson Trust	603 RHEEM BLVD	MORAGA, CA 94556 2324
258470011	David Warren Trotter	119 ALLEN CT	MORAGA, CA 94556 2701
258470045	Mark L & Karen M Hellender Trust	136 DAVID DR	MORAGA, CA 94556 2708
258011002	Mary E Orland Trust	86 BUCKINGHAM DR	MORAGA , CA 94556 2407
256040021	Drake H & Marilyn Grega Trust	1040 DOLORES DR	LAFAYETTE , CA 94549 2908
256040024	Laguna Llc Rancho	1625 CREEKSIDE DR, Apt.#201	FOLSOM , CA 95630 3819
	Michael Mentink, Fire Marshall	33 Orinda Way	Orinda, CA 94563
	Sean Dougan, EBRPD	2950 Peralta Oaks Court	Oakland , CA 94605-0381
	Anne Rivoire, EBRPD	PO BOX 5381	Oakland, CA 94605-0381
	<b>Duplicate Addresses / No Address</b>		
258150004	Marys College St	PO BOX 4200	MORAGA , CA 94575 4200
258150005	Marys College St	PO BOX 4200	MORAGA , CA 94575 4200
258150002	Marys College St	PO BOX 4200	MORAGA , CA 94575 4200
258150001	Marys College St	PO BOX 4200	MORAGA , CA 94575 4200
258150006	Marys College St	PO BOX 4200	MORAGA , CA 94575 4200
256110055	Moraga City Of	1799 SAINT MARYS RD	MORAGA , CA 94556 2745
256061012	Moraga City Of	PO BOX 185	MORAGA , CA 94556 0185
256061013	Moraga City Of	PO BOX 185	MORAGA , CA 94556 0185
256061014	Moraga City Of	PO BOX 185	MORAGA , CA 94556 0185
258470042	Glenmoore Construction Co	395 TAYLOR BLVD, Apt.#120	PLEASANT HILL , CA 94523 2276
258470044	Glenmoore Construction Co	395 TAYLOR BLVD, Apt.#120	PLEASANT HILL , CA 94523 2276
258011006	Central Cc Sanitary District	5019 IMHOFF PL	MARTINEZ , CA 94553 4316
258150008	Central Cc Sanitary District	5019 IMHOFF PL	MARTINEZ , CA 94553 4316
258011005	Real Estate Services	PO BOX 24055	OAKLAND , CA 94623 1055
258011004			