

PLANNING COMMISSION STAFF REPORT

MEETING DATE: December 5, 2011 **REPORT REVISED:** November 27, 2011
ITEM NUMBER: V.A. – PUBLIC HEARING
FILE NUMBER: **DRB-07-11 / Branagh Development, Inc. (Applicant), Kimberly LLC (Owners) 8 Kimberly Drive:** Consideration of a design review application for a new 2,995 square foot single story home with an attached 837 square foot 3-car garage on a 74,762 square foot lot at 8 Kimberly Drive. (APN 255-120-010).
ZONING: Zone OS-M (Open Space-MOSO)
CEQA STATUS: On June 7, 1999, the Planning Commission issued a Mitigated Negative Declaration of Environmental Impact under CEQA Guidelines Section 15074. The mitigation measures contained in this Mitigated Negative Declaration are still applicable to the project.

PUBLIC NOTICE:

Since there was not a quorum of the Planning Commission for the previously noticed hearing on October 17, 2011, this project was re-noticed to all property owners and residents within three hundred (300) feet of the subject property on November 22, 2011. A copy of the notice area map, mailing list and public hearing notice is attached as **EXHIBIT A**.

CORRESPONDENCE:

Public correspondence is attached as **EXHIBIT B**, which includes a total of five letters. Four of the letters were received at or soon after the Design Review Board's hearing on July 25, 2011. The letters, dated July 25, August 5 and August 18, are from Beverly and Frank Sowa, who reside at 6 Kimberly Drive. The Sowa's raised the following issues: (1) questioned the location of the concrete drainage channels shown on the plans, (2) expressed concern for the proximity of the swimming pool to the drainage channel and the large pine tree at the northwest rear corner of their property, (3) objected to the removal of a lateral "V-ditch" at the bottom of the slope at the north and west sides of the building pad at 8 Kimberly Drive, (4) questioned the difference in pad elevations between the original grading plans (705-feet) and the current plans for 708-feet for 8 Kimberly Drive, (5) expressed concern for the location of the proposed wood fence along the property line between their property and the new home and (6) expressed concern for the landscaping and appearance of the drainage basin at the southeast front corner of 8 Kimberly Drive. The Town's engineering staff reviewed and addressed these issues, as discussed later in this report. A letter dated July 30, 2011 from Charles Cooper, who resides at 4 Kimberly Drive, requested that story poles be erected for the two new homes. In 2007, the Design Review Board and Planning Commission approved homes at 8 and 10 Kimberly Drive that were approximately 1,000 square feet larger than the currently proposed homes. The proposed homes also conform to the height limits in the Town's Design Guidelines. On August 5th, Mr. Cooper's letter was emailed to the Planning Commission with a request that any Commissioner could advise staff if they wanted the applicant to erect story poles for the smaller homes. None of the Planning Commissioners requested story poles in response to the email. On October 11, 2011 the Town received a fourth letter from Frank and Beverly Sowa, in which the Sowa's request that the project

geotechnical engineers provide an updated geotechnical evaluation of the revised home design and swimming pool and that the report have geotechnical peer review. The applicant submitted the requested supplemental geotechnical study to the Town on October 24th and the peer review was completed on November 16th. The project geotechnical engineer also submitted a response to the peer review, with specific recommendations for the swimming pool on November 21, 2011. The recommendations in these geotechnical reports are discussed later in this report. Any additional correspondence that is received prior to the meeting will either be sent to the Commission in a separate packet or brought to the meeting.

DESIGN DESCRIPTION:

The applicant proposes constructing a new, one-story 2,995 square foot single-family residence with attached 837 square foot garage home at 8 Kimberly Drive. The home would be built with a concrete post tensioned slab foundation with a finished floor elevation of 708 feet. The proposed grading is limited to two stacked stone retaining walls that vary between one and three feet maximum and one 3-foot high concrete retaining wall faced with stone veneer at the rear of the swimming pool and at the west side of the home. The proposed home has four bedrooms, including the master bedroom and a guest bedroom, three bathrooms and a laundry room. There is a large family room at the rear adjacent to the kitchen, but no formal living room. The ridgeline of the roof is 18-feet 11.5-inches at the highest point.

BACKGROUND:

The Planning Commission adopted Resolution No. 13-99 on June 7, 1999, which approved a Mitigated Negative Declaration, Use Permit and Hillside Development Permit to allow the grading and improvements for the future construction of five custom homes at the south end of Kimberly Drive. A copy of Resolution No. 13-99 is attached as **EXHIBIT C**. The property at 8 Kimberly Drive is identified as “Lot Number 1” in the Resolution. Condition 22 in Resolution 13-99 requires review by both the Design Review Board and the Planning Commission. The location of the property is shown on the GIS aerial photograph above.



Homes have been completed on three of the five lots; only 8 and 10 Kimberly Drive remain vacant. The Design Review Board and Planning Commission approved a 3,844 square foot home with a 1,089 square foot garage at 8 Kimberly Drive (DRB-08-07) in 2007. On March

24, 2008, the Design Review Board recommended approval to the Planning Commission for some modifications to the approved design, where the overall floor area was reduced to 3,784 square feet. The previously approved plans also required a hillside development permit for grading and installation of a 4.5-foot high retaining wall along the west side of the home where it was built into the hillside. Condition 17-h from Planning Commission Resolution 33-07 required modifications to the drainage, "V-ditch" and catch basin along the northeast side property line adjacent to 6 Kimberly Drive to comply with the Kimberly Oaks Maintenance Association (KOMA) settlement agreement. The modifications were necessary to prevent surface drainage onto the adjacent property at 6 Kimberly Drive. A building permit was obtained for the installation of the drainage modifications in 2008 and the work has been completed.

On July 25, 2011, the Design Review Board reviewed the current plans and received testimony from adjacent residents at the meeting. A copy of the July 25, 2011 DRB meeting minutes is attached as **EXHIBIT D**. The Design Review Board's recommendation for conditional approval of the project is attached as **EXHIBIT E**, with staff notations added in red print to identify recommendations that the applicant has addressed with revisions to the plans. Recommendation number 17 on page 5 required the engineering and drainage issues raised by Beverly and Frank Sowa to be reviewed by the Town's engineering department prior to scheduling the project on the Planning Commission agenda. On August 25, 2011, the engineering staff met with the Branagh design team to discuss the drainage and pad elevation issues raised by the Sowa's.

DESIGN ASPECTS TO BE CONSIDERED:

The design aspects listed under MMC Section 8.72.080-A that pertain to projects in zoning districts other than single-family residential districts, are discussed in **EXHIBIT F**. The applicant has modified the plans as necessary to address some of the issues previously identified in the Design Review Board staff report and **EXHIBIT F** has been updated accordingly. The site plan, landscape plan and engineering and drainage plans were changed to show the correct location of the "V-ditch" and catch basin as it was modified in 2008. Conditions 3 e and 3 f of Planning Commission Resolution 13-99 (**EXHIBIT C**) require review of the landscaping plans to mitigate views of the new homes.

APPLICABLE TOWN DESIGN GUIDELINES:

A complete discussion of the applicable design guidelines is attached as **EXHIBIT G**. The following design guidelines were the basis for some of the recommended conditions of approval by the Design Review Board:

- RH8 In hillside areas, solid board privacy fences should only be used when located close to the residence. Site perimeter and other distant fencing should remain visually open (i.e., split rail or deer fencing) in order to minimize the visual effect of fencing on the hillsides.
Comment: A detail of the "WWM" (wire mesh) fencing is shown on sheet L-2 of the plan set for the scenic easement areas on the property.

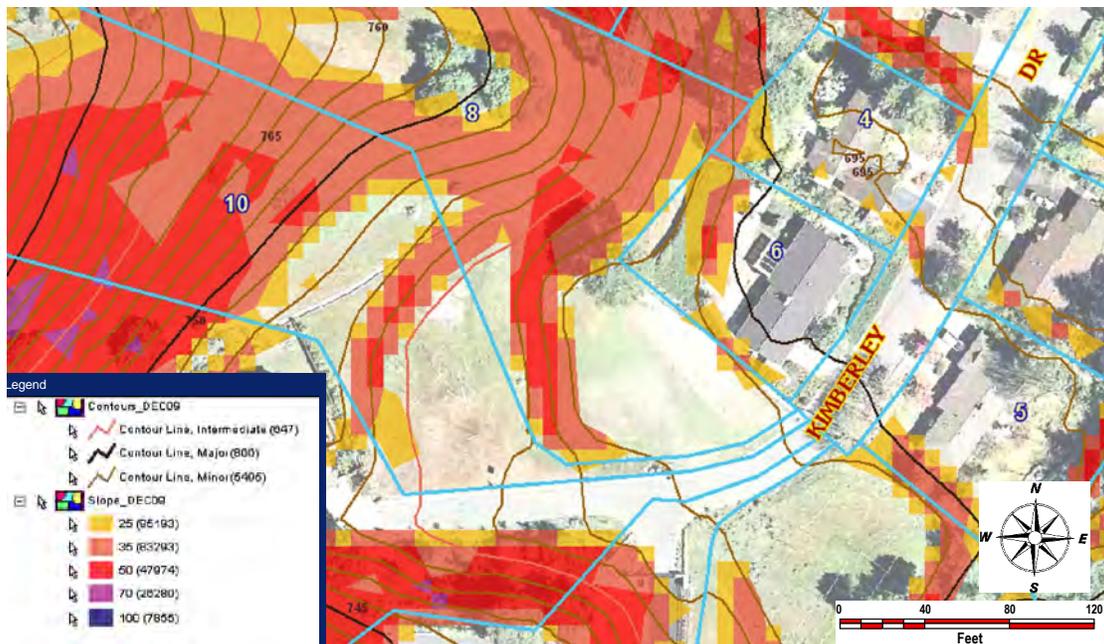
- L2.2 New irrigation systems shall include automatic rain shut-off controller devices.
Comment: The irrigation legend on sheet L-4 calls for a "Hunter" wall-mount controller with "Solar Sync" technology. The applicant has confirmed that this controller also includes an automatic rain shut-off feature.

- L2.4 Drought tolerant plant species are encouraged as they use less water.
Comment: *The only area that is not drought tolerant is the small lawn area at the front. This area represents a relatively small percentage of the total lot area.*
- ID6 The level of lighting should not exceed the needs for security and safety or detract from the aesthetics of the development.
a. Outdoor lighting should be related to the design of the structure.
b. Outdoor light fixtures should be designed and mounted so that the source of light has minimal impact off site.
c. Outdoor lighting should be directed inward toward the property and may require additional screening to avoid spillage onto adjacent residential properties.
Comment: *The design of the light fixtures has been submitted with the revised plans and is shown on sheet A3 of the plan set. The light fixtures are shielded “down” lights that would prevent the source of the light from being seen directly from any adjacent property.*
- ID7 Design shall be consistent with the Moraga Municipal Code section 13.04.090.
Comment: *MMC Section 13.04.090 lists the “Best Management Practices” (BMPs) dealing with storm water management and discharge control. The drainage plans will be reviewed by the Town Engineer for compliance with the BMPs. A detention basin was installed to reduce peak storm water discharges from the five Kimberly lots at the time the mass grading and street and drainage improvements were installed. The combined building of both 8 and 10 Kimberly Drive would involve a total impervious surface greater than 10,000 square feet; therefore, the projects would be subject to the C.3 stormwater treatment requirements. The Town’s engineering staff has discussed the stormwater requirements with the applicant so that the new roof leaders and other site drainage will be routed through vegetated areas for bio-filtration prior to discharge into any storm drain to reduce storm water pollutant discharges.*
- ID8.1 The draining of all swimming pools shall be directed to the sanitary sewer system whenever feasible and be conducted in compliance with the permitting and standards established by Central Contra Costa Sanitary District. Overflow drains from swimming pools shall be directed to a landscape area or manufactured treatment system prior to connecting to the storm drain system. Best Management Practices (BMPs) shall be used to manage overflows.
Comment: *The overflow drain for the proposed swimming pool is not shown on the plans. If the pool has a cover to prevent rain water from over-filling the pool, then a “manufactured treatment system” may not be required. Otherwise, the overflow drainage for pool shall be added to the drainage plans and reviewed by the Town Engineer.*
- ID13.13 New subdivision development should meet Build-It-Green requirements for new residences or equivalent.
Comment: *The five new lots at the end of Kimberly Drive were created as a result of a lot line adjustment and are not part of a new subdivision. Nevertheless, the developer should be encouraged to meet Build-It-Green requirements.*
- SFR1.10 On padded lots there should be a minimum of 10’ near level clearance area from any top or toe of a slope to any structure for access. On padded lots there should be a minimum of 6’ near level clearance area on any 3 sides of any building or structure.
Comment: *Although the footprint of the home has been reduced from the original approved plans in 2007 and the home is no longer cut into the slope of the hill, the proposed home does not have 10-feet of near level clearance for access to the rear yard along either side of the home. An exception to this guideline will need to be considered.*

HILLSIDE DEVELOPMENT PERMIT:

A hillside development permit (HDP) under Moraga Municipal Code Section 8.136.070 was previously approved with the adoption of Resolution No. 13-99 on June 7, 1999, when the

mass grading for the five lots on Kimberly Drive was approved. The house plan approved in 2007 also required an HDP because the home was cut into the slope above the pad with 4.5-foot high retaining walls. The staff analysis for the HDP in 2007 is attached as **EXHIBIT H**. The current plans for 8 Kimberly Drive would not require any excavation at the edges of the pad in order to construct the home. In other words, the home could be built without the proposed low garden walls. Frank and Beverly Sowa believe that a third HDP should be required for the proposed low retaining walls and the swimming pool (see Item 6 in the Sowa's October 11, 2011 letter). The Sowa's are correct that the Town's Slope Density Ordinance requires an HDP for "any grading, clearing, construction upon or alteration of land" with a slope of 20% or more. However, several years ago the Town Attorney determined an HDP was not required for a fence along a property line on a hillside because a building permit was not required for the fence. If the fence had been over 6-feet in height, which requires a building permit, an HDP would also be required. Since low (less than 3 feet in height) retaining walls at the edges of the pad would not trigger a building permit, an HDP is not required for those walls provided that they remain 3-feet or less in height. A grading permit is not required unless the total earth movement exceeds 50 cubic yards or the cut into the slope exceeds 3-feet in depth. There will be some soil and gravel added under the post tensioned foundation slab to reduce the effects of the expansive soils, but this will be on the existing level pad area which has a slope less than 20% as shown on the slope map below.



Areas with no color shading are less than average 20% slope

ISSUES RAISED BY BEVERLY AND FRANK SOWA:

One of the issues raised by the Sowa's at the July 25, 2011 DRB meeting was their concern that the proposed colors for the new home were too similar to the colors of their own home. In accordance with DRB recommendation number 9 (**EXHIBIT E**) staff prepared an exhibit to compare the colors of the Sowa's home with the color pallets for the approved home in 2007 and the current application. This color comparison is attached as **EXHIBIT I**. On July 28, staff showed this exhibit to the Sowa's and they agreed that the proposed colors would not duplicate or be too similar to the color scheme on their home. Staff believes this issue has been resolved.

Another concern was whether the proposed swimming pool and retaining walls in the rear yard area were confined to the approved MOSO “building cell” on the property. The DRB recommended that staff resolve this question prior to review of the plans by the Planning Commission. While it is not clear on the site plan (sheet A2) where the boundary of the MOSO cell is located, sheets L-1 and C-1 show clearly the boundary of the “scenic easement”. The scenic easement was recorded on the property to mark the boundary of the MOSO cell. It has been confirmed that the proposed swimming pool and retaining walls are within the approved MOSO building cell on the lot.

As noted previously many of the issues raised in the three original letters from Beverly and Frank Sowa were referred to John Sherbert in the Town’s engineering department for a response. John Sherbert’s analysis of the issues is attached as **EXHIBIT J**. Some of the issues were brought up in more than one letter and John has cited the date and item number or page number for each issue in his response. With regard to the location of the concrete drainage channel along the northeast property line, it was determined that the applicant had used the 2007 plans prior to relocation of the channel in 2008 in compliance with the Kimberly Oaks Maintenance Association (KOMA) settlement agreement. The applicant has resubmitted the site plans and landscape plans with the revised location of the drainage improvements as built in 2008. The applicant also moved the swimming pool six feet further west so that it is now 20-feet from the property line and 24-feet from the trunk of the pine tree. Nevertheless, there is the possibility that the excavation for the pool could damage some roots of the tree. Since Monterey pine trees are not a protected species under the Town’s Tree Preservation Ordinance, the 24-foot setback from the trunk of the tree seems to be a reasonable compromise to protect the tree. The landscape plan also shows two Strawberry trees to be planted between the swimming pool and the pine tree on the Sowa’s property.

With regard to the removal of a lateral “V-ditch” at the bottom of the slope at the north and west sides of the building pad, the Sowa’s believe that PC Resolution 13-99 (**EXHIBIT C**) established the lateral “V-ditch” as a permanent drainage feature. However, the approved 2007 house plans also called for replacement of this lateral “V-ditch” and PC Resolution 13-99 only calls for drainage to be provided to protect the building foundation and does not specifically require the “V-ditch”. The site photograph on the next page shows the lateral concrete “V-ditch” that will be removed and the large Monterey pine tree that would be 24-feet from the proposed swimming pool.



The existing “V-ditch” along the property line between 6 and 8 Kimberly Drive and the lateral “V-ditch” northwest of the Sowa’s rear property line will not be removed or modified. These “V-ditches” protect the Sowa’s property from stormwater runoff from the adjacent upslope open space areas. The Town’s engineering staff has reviewed and approved the proposed

drainage plans for the new home, including the removal of the lateral “V-ditch” at the toe of the slope above the building pad. The project plans call for drainage of the patio areas below the low retaining walls at the edge of the pad. Comment number 11 in the geotechnical peer review report dated November 16, 2011 (**EXHIBIT M**) recommends that consideration should be given to construction of a new concrete drainage ditch above the new retaining walls. This would also be consistent with the C.3 drainage guidelines because it would intercept “clean” water from the hillside and direct it to a storm drain prior to potential contamination of the water flowing across an impervious surface.

The pad elevation is noted as 705.30 feet on the 2007 approved plans and the finished floor elevation was 708-feet. The current plans show a pad elevation of 707.0 feet and a finished floor elevation of 708-feet. The Sowa’s questioned the difference in pad elevations between the original grading plans and the current plans. A new survey was completed on September 2, 2011 and is attached as **EXHIBIT K**. The new survey shows an existing pad elevation that varies from 705.42 near the middle of the pad to 706.34 at the edge of the pad closest to the Sowa’s property. As noted previously in this report, there will be a minor amount of soil and gravel added under the post tensioned foundation slab to reduce the effects of the expansive soils and the proposed finished floor will be 708-feet or the same elevation approved in 2007.

The Sowa’s were concerned that the proposed location for a wood fence along the northeast property line, which is shown on sheets L-1 and L-3 of the plan set, would not allow sufficient space for them to maintain their existing fence. Based on the revised plans that show the correct alignment of the drainage channel, there will be about 3-feet of space between the two fences for maintenance of the fences. Item 8 in the Sowa’s October 11th letter also states that the proposed fence adjacent to the drainage channel would “severely restrict access” for maintenance and cleaning out the ditch. In staff’s opinion, the fence would not obstruct access from the west side and maintenance would not be severely restricted.

The Sowa’s general concern for the landscaping and appearance of the drainage basin at the southeast front corner in their original letters was addressed on the revised landscaping plans. In item 9 of the Sowa’s October 11, 2011 letter, they express concern that plants are shown in the dirt swale with rip-rap. The Sowa’s believe that no plants can be located in the rip-rap drainage feature. The clean water guidelines often require plants in drainage swales for “bio-filtration”. In any case, this detail can be left to the engineering department for review and approval.

The primary issue in the Sowa’s October 11, 2011 letter, covered in items 1, 2, 3, 4, and 5, is the request to have the project geotechnical engineer provide an updated report of the current project and then have that report reviewed by the Town’s Geotechnical peer review consultant. A supplemental Geotechnical Study was prepared by Jensen-Van Lienden Associates, Inc. (JVLA) on September 20, 2011, but was not received by the Town until October 24, 2011. The updated JVLA report is attached as **EXHIBIT L**. On November 16, 2011 the Town received the peer review letter from Cal Engineering and Geology (CE&G), which is included as **EXHIBIT M**. CE&G also reviewed their previous recommendations from the 2007 plans and rescinded, altered or repeated the recommendations as appropriate for the new plans. CE&G had previously requested the design parameters for the swimming pool on the 2007 plans and this recommendation was reiterated. JVLA submitted the recommendations for the swimming pool on November 21, 2011, which are attached as

EXHIBIT N. Staff also expects to receive comments from JVLA on the other recommendations in the CE&G peer review letter prior to the meeting.

Under item 7 in the October 11, 2011 letter, the Sowa's believe that a grading permit is required by condition 3.m in Resolution 13-99. In 2006, the Town adopted a new Grading Ordinance, which clearly states when a grading permit is required and the exemptions for grading permits. Engineering staff will determine if a grading permit is required when they review the plans for the project in accordance with the Grading Ordinance.

REQUIRED FINDINGS FOR DESIGN REVIEW APPROVAL:

MMC Section 8.72.080-B lists the standards to be used for design review of projects in zoning districts other than single-family residential districts. These standards are used as the basis for findings to support any decision to approve a project. The findings listed below have been included in the draft resolution for this project.

1. **The proposed structure conforms with good taste, good design and in general contributes to the character and image of the Town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality** *because the proposed one-story 3,832 square foot single-family residence complies with all of the Town's design guidelines except for the near level clearance at the sides of the home. The floor area of the proposed home is in scale with the other new homes on Kimberly Drive. The proposed landscaping and the earth-toned palette of colors/materials will help the new home to fit into the natural environment.*
2. **The structure be protected against exterior and interior noise, vibrations and other factors, which may tend to make the environment less desirable** *because the proposed home will be constructed in accordance with the California Building Code and exterior mechanical equipment, such as the two proposed air conditioning or heat pump units at the west side of the garage, will be designed to attenuate the noise levels below 55 dba measured 10-feet from the equipment as specified in the recommended conditions of approval for the project.*
3. **The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value** *because the proposed home is a high quality custom designed residence that is expected to increase the value of homes in the neighborhood.*
4. **The structure is in harmony with proposed developments on land in the general area** *because the proposed development conforms to the allowable density for the property and is within the developable MOSO cell boundaries on the lot. The size of the home is not excessive for a 74,052 square foot lot. The proposed craftsman style home is a style found to blend with the ranch style homes throughout the community.*

PERMIT STREAMLING ACT:

The Permit Streamlining Act (Government Code Section 65950) requires a decision on a project within **60 calendar days** after a project has been found to be exempt from CEQA or a negative declaration is adopted for the project. The current project was determined to be exempt from further CEQA review when the DRB staff report was written on July 15, 2011. In accordance with Government Code Section 65957, an agreement was signed between the applicant and the Town on August 23, 2011 for a 90-day extension of the deadline to

December 17, 2007 (**EXHIBIT O**). Action must be taken at the December 5, 2011 meeting because not further extension is allowed.

RECOMMENDATION:

The Design Review Board recommended approval of the plans for the new home at 8 Kimberly Drive on July 25, 2011. A Draft Resolution has been enclosed as **EXHIBIT P**, which includes the findings required under Moraga Municipal Code Section 8.72.080-B and the exception to design guideline SFR1.10 for the near level clearance at the sides of the home. Some of the conditions of approval recommended by the Design Review Board were modified or deleted to reflect the changes to the plans that have already been made by the applicant. The Draft Resolution has also been modified from the October 17th recommendation to include the recommendations in the updated geotechnical reports.

Report prepared by: Richard Chamberlain, Senior Planner

Reviewed by: Shawna Brekke-Read, Planning Director

EXHIBITS:

- A – Area of Notice Map, Mailing List and Public Hearing Notice
- B – Correspondence (Letters from Beverly and Frank Sowa and Charles Cooper)
- C – Planning Commission Resolution No. 13-99
- D – Design Review Board meeting minutes from July 25, 2011
- E – Design Review Board Recommendations
- F – Design Aspects to be considered under MMC Section 8.72.080-A
- G – Applicable Design Guidelines for 8 Kimberly Drive
- H – Hillside Development Permit Analysis for previous home approved in 2007
- I – Comparison of proposed color pallets with colors of Sowa's home
- J – Town Engineering staff analysis and response to Sowa's issues and concerns
- K – New survey of 8 and 10 Kimberly Drive completed August 26, 2011
- L – Supplemental Geotechnical Study dated Sept. 20, 2011 by JVLA
- M – Geotechnical Peer Review letter dated Nov. 16, 2011 by CE&G
- N – Swimming Pool Recommendations dated Nov. 21, 2011 by JVLA
- O – Agreement to extend time limits required by the Permit Streamlining Act
- P – Draft Resolution for approval of DRB 07-11 with findings, exceptions and conditions
- Q – Project Plan Set

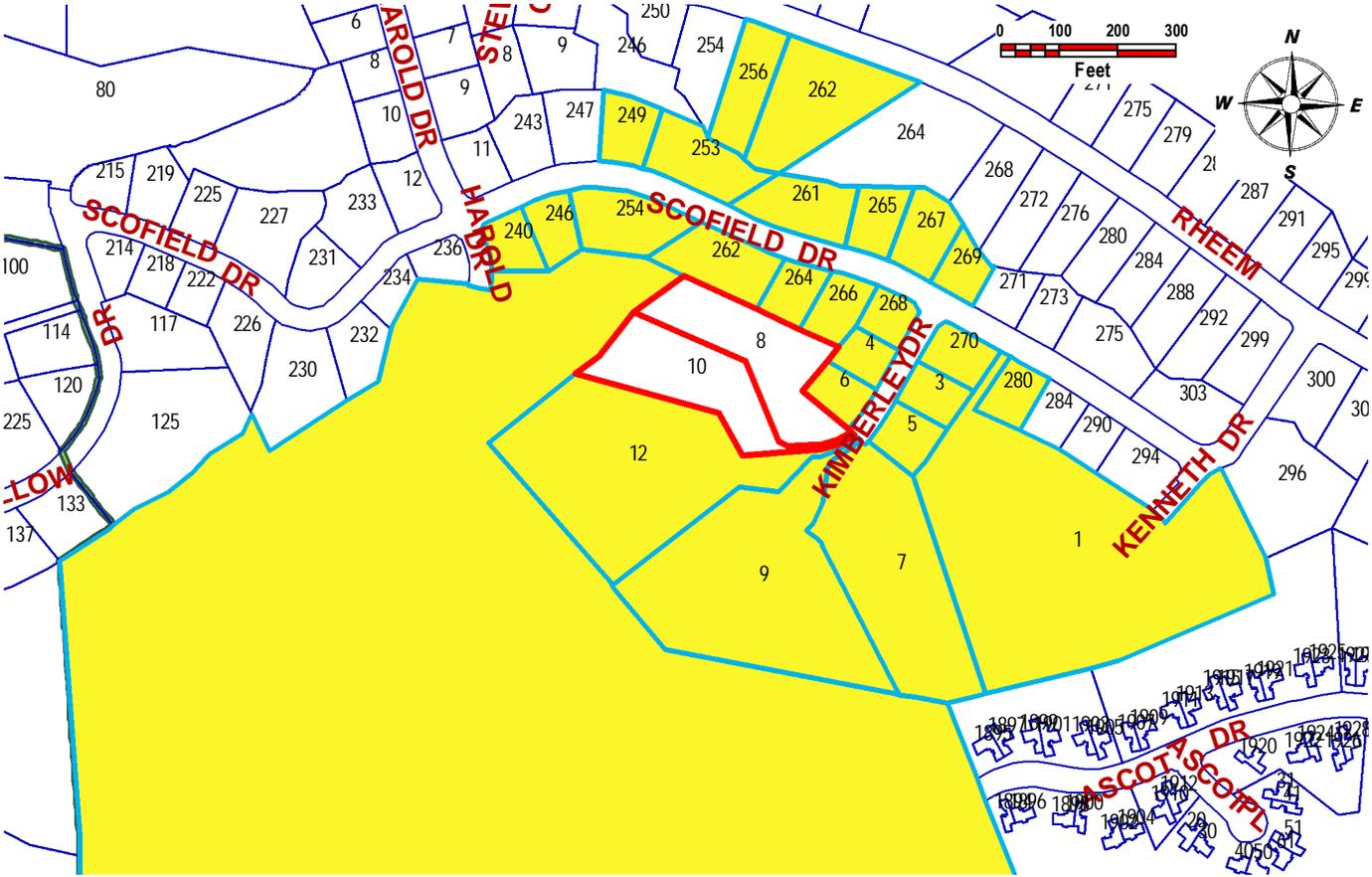
EXHIBIT A

**AREA OF NOTICE MAP,
MAILING LIST AND
PUBLIC HEARING NOTICE**

VICINITY MAP AND AREA OF NOTICE

Branagh Development, Inc. / Kimberly LLC
New Homes at 8 and 10 Kimberly Drive

File Numbers: DRB 07-11 and DRB 08-11



**DRB 07-11 and
DRB 08-11
Mailing List**

**8 and 10
Kimberly Drive
Public Hearing**

**Planning
Commission
Oct. 17, 2011**

APN	Name	Address	City & Zip
255120014	Sabine Antonios	7 Kimberly Drive	Moraga , CA 94556 1507
255120013	Resident	9 KIMBERLY DR	MORAGA, CA 94556 1507
255103001	Lu Chen	5 KIMBERLEY DR	MORAGA, CA 94556 1507
255120012	Resident	12 KIMBERLY DR	MORAGA, CA 94556 1508
255103002	Daniel H & Pamela Dahlen Trust	3 KIMBERLEY DR	MORAGA, CA 94556 1507
255102005	Frank L & Beverly K Sowa	6 KIMBERLEY DR	MORAGA, CA 94556 1508
255103004	Riley D & Dorothy Morse Trust	280 SCOFIELD DR	MORAGA, CA 94556 1563
255120021	Mohammadali Jaber Ansari	1 KENNETH DR	MORAGA, CA 94556 1600
255102004	Charles A & Dianne Cooper Trust	4 KIMBERLEY DR	MORAGA, CA 94556 1508
255103003	Joseph Budge Trust	270 SCOFIELD DR	MORAGA, CA 94556 1563
255120011	Branagh Development Inc	100 SCHOOL ST	DANVILLE , CA 94526 3824
255102003	Timothy J & Sara C Cecchin	268 SCOFIELD DR	MORAGA, CA 94556 1543
255120010	Kimberly Drive Associates Llc	100 SCHOOL ST	DANVILLE, CA 94526 3824
255102002	Kenneth C & Rebecca A Wiseman	266 SCOFIELD DR	MORAGA, CA 94556 1543
255102001	David J & Nancy J Bergesen Trust	264 SCOFIELD DR	MORAGA, CA 94556 1543
255120023	Moraga Town Of	2100 DONALD DR	MORAGA, CA 94556 1404
255101003	Kenichi Amaki	269 SCOFIELD DR	MORAGA, CA 94556 1544
255092004	Marvin W H & Camille Young Trust	262 SCOFIELD DR	MORAGA, CA 94556 1543
255092001	Mark S & Lisa K Hillhouse	240 SCOFIELD DR	MORAGA, CA 94556 1543
255092002	Peter & Joy Dewey	246 SCOFIELD DR	MORAGA, CA 94556 1543
255101002	Ted G & Elizabeth K Streeter	267 SCOFIELD DR	MORAGA, CA 94556 1544
255092005	Bruce A & May E Parsons	254 SCOFIELD DR	MORAGA, CA 94556 1543
255101001	Mark Richard Pastore Trust	265 SCOFIELD DR	MORAGA, CA 94556 1544
255091011	Anne W Droese Trust	261 SCOFIELD DR	MORAGA, CA 94556 1544
255091010	Lambrini & Michael S Kouvaris	253 SCOFIELD DR	MORAGA, CA 94556 1544
255091009	Joseph A & Josephine Mele Trust	249 SCOFIELD DR	MORAGA, CA 94556 1544
255062004	Jonah P Jiminez	262 RHEEM BLVD	MORAGA, CA 94556 1539
255062003	Joseph F & Cavan S Mccarthy	256 RHEEM BLVD	MORAGA, CA 94556 1539
	Branagh Development Inc	100 School Street	DANVILLE, CA 94526 3824
	Jensen - Van Lienden Associ., Inc.	1840C Alcatraz Ave	Berkeley, CA 94703
	Alan Page, Talon Architects	222 Railroad Ave.	Danville, CA 94526
	Baak & Associates, LLP	1620 North Main St.	Walnut Creek, CA 94596
	Alexander & Associates	147 Old Bernal Ave.	Pleasanton, CA 94566



PLANNING COMMISSION

Notice of Public Hearing

8 Kimberly Drive

Design Review for File Number DRB 07-11 to consider a Design Review Board recommendation for conditional approval of plans for a new home and attached garage. Grading is limited to two 3-foot high dry stack retaining walls and one 3-foot high concrete retaining wall faced with stone veneer at the rear of the home and northwest of a proposed swimming pool. (APN 255-120-010)

The Planning Commission of the Town of Moraga will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 8.08.020, on **Monday, December 5, 2011** at the Moraga Library Community Meeting Room, 1500 St. Mary's Road (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DATA:

- 1 dwelling unit
- 3,832 square feet of residential floor area including 3-car garage
- 1 story home, with a maximum height of 19 feet
- 74,762 square feet of lot area

PERMITS REQUIRED:

- Design Review required by condition of use permit

APPLICANT: Branagh Development, Inc., 100 School Street, Danville, CA 94526

PROPERTY OWNER: Kimberly LLC, 100 School Street, Danville, CA 94563

ZONING DISTRICT: OS-M (Open Space - MOSO)

ENVIRONMENTAL REVIEW STATUS: On June 7, 1999, the Planning Commission issued a Mitigated Negative Declaration of Environmental Impact under CEQA Guidelines Section 15074. The mitigation measures contained in this Mitigated Negative Declaration are still applicable to the project. A 3,844 square foot home with a 1,089 square foot garage was previously approved on this lot in 2007. The proposed new home would be 849 square feet smaller in floor area and the garage would be reduced by 252 square feet.

ATTACHMENTS: Vicinity map, project plans (some drawings not included to facilitate mailing; all drawings are available for public review; see "Further Information" below).

PUBLIC COMMENT

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card by 7:15 p.m. The Commission may limit the number of speakers and the time granted to each speaker. Written comments to the Commission are encouraged and should be directed to:

Planning Department
329 Rheem Boulevard
Moraga, CA 94556

Fax: (925) 376-5203
E-mail: planning@moraga.ca.us

EXHIBIT B

**CORRESPONDENCE
LETTERS FROM
BEVERLY AND FRANK SOWA AND
CHARLES COOPER**

RECEIVED

JUL 25 2011

From: Frank and Beverly Sowa
6 Kimberley Drive
Moraga, CA 94556
July 25, 2011

MORAGA PLANNING DEPT.

Town of Moraga Design Review Board
329 Rheem Blvd.
Moraga, California 94556

Re: DRB 07-11 Branagh Development (Applicant)
Kimberly LLC (Owners) 8 Kimberley Drive

Dear Members of the Design Review Board:

In reviewing the plans for 8 Kimberley Dr. last week, we determined that the cement v-ditches, catch basins and a dirt swale with rip-rap were not shown on the proposed new house plans for this lot which caused some parts of the plans for this lot to be drawn incorrectly. As of the writing of this letter, we have not yet seen the corrections that Branagh will be making for today's DRB meeting. Because we don't yet know how those issues will be corrected, in this letter we will be addressing those items and we will also be addressing some other issues, some of which we believe to be very important.

First, we'd like to give you a little bit of background. In December, 2002, our property at 6 Kimberley was flooded from the KOMA property uphill from us and we sustained substantial property damage as a result. Briefly, one of the causes of our property being flooded was the incorrect placement of a catch basin on Lot 1 (8 Kimberley) which had been placed midway up the 3-1 slope on Lot 1 next to our property instead of that catch basin being placed at the lowest part of Lot 1. Also, since December, 2002, our property was flooded several times. Since that time we had tried, through various agencies and persons, to get needed drainage corrections made on Lot 1, however, we were unsuccessful and found it necessary to bring legal action against several parties including the members of KOMA. On November 22, 2006, a settlement agreement was reached in court between ourselves and KOMA and as part of that settlement agreement it was agreed that certain drainage corrections would be made on the east side of Lot 1 next to our property. The drainage corrections included the relocations of: a catch basin, a cement v-ditch (with an added detention wall), the dirt swale with rip-rap, and a new cement v-ditch on Lot 1 at the back northwest side of our property (see Exhibit A). The drainage corrections were completed in October, 2007.

The issues we are addressing in this letter are as follows:

ITEM 1:

Branagh's proposed swimming pool is quite a few feet outside of the approved building pad allowances (see Exhibit B) and there are several very important drainage issues regarding this proposed swimming pool as follows:

- a. There is a cement v-ditch in that north-northeast area of the property that protects the building pad on 8 Kimberley (Lot 1), however, that cement v-ditch (along with some other drainage facilities in other areas on the property) is not shown the plans that Branagh Development submitted for this new application DRB-07-11 DRB 07-11 (see Exhibits C and D which are copies of photos from the 8-20-07 Planning Commission (PC) Staff Report showing the cement v-ditches on the property as of 8-07). [We expect to see corrected copies of the plans at today's DRB meeting that will include all the existing drainage facilities on 8 Kimberley.]

- b. That original, existing cement v-ditch is directly in the area of the planned pool (see Exhibit E).
- c. In a 7-22-11 e-mail to Mr. Richard Chamberlain, Mr. Alan Page/Talon Design Group said they will be removing the cement v-ditch in question because it "...was approved to be removed in our last submittal, it just hasn't been removed because it is there to protect the pad until the house is constructed." (See Exhibit F).
- d. Apparently they plan on removing the ditch and installing the pool as indicated in their plans, however, in addition to the cement v-ditch location problem, there is an additional problem. On Branagh's plans on Sheet A-2 the pool is shown to be located further north than our fence is located, and the pool is also located outside the building pad allowance (see Exhibit B). As a result, according to Branagh's own plans on Sheet A-2, it appears that the northeast corner of the proposed pool would be approximately 2-feet from the cement v-ditch that channels water flow away from the two uphill lots: 12 Kimberley (Lot 3), and 10 Kimberley (Lot 2). Also, when visually looking at the proposed pool site, presuming the pool would be installed at the same elevation as the building pad, it appears that the northeast corner of the pool would be a few feet lower than the cement v-ditch and it looks like it would require quite a bit of dirt being removed from the 20% to 25% slope in that area. See Exhibit C for a color-coded aerial photo regarding the slope percentages. We don't know, but would digging out that dirt on a 20% to 25% slope require a hillside development permit? Regarding this situation, we believe that would certainly compromise the integrity of that cement v-ditch and the surrounding soil and we also believe there would be calamitous results.
- e. We suggest that the members of the DRB come and see the property firsthand for yourselves and see what the situation really looks like. A good place to view the area is from under our pine tree at the northwest corner of our property where the property line stakes are located and we herewith invite all the members of the DRB to come onto our property, if you like.
- f. In addition, the proposed pool is located in very close proximity to our large pine tree on the northwest corner of our property, and it appears that part of the pool would even extend inside the drip line of our tree. Mr. Matt Branagh is well aware of our tree's location and we don't understand why he would want to install a swimming pool in that area. If the pool is permitted to be installed according to the current plans in its location as shown on Sheet A-2 of Branagh's plans for DBR 07-11, we are hereby giving public notice to the Town of Moraga; Branagh Development, Inc.; Kimberly LLC; Talon Design Group, Inc.; and any and all future owners of 8 Kimberley Drive, Moraga, CA 94556, that we, Frank L. Sowa and Beverly K. Sowa, will bear absolutely no responsibility whatsoever regarding any and/or all types of debris that may be dropped, cast, falls, and/or is blown down from our pine tree into the swimming pool, and/or on and around the swimming pool and the surrounding area. Refer to Exhibit D for a photo which includes our large pine tree. That photo should give you some idea about the size and spread of the tree.
- g. Per item c. above, in a discussion with Mr. Richard Chamberlain today, he said that Branagh/ Mr. Page has a valid building permit for the previous application in 2007 and that valid building permit locks in the conditions in PC Resolution 33-2007, however, as soon as the current application DBR 07-11 is finally approved by the Planning Commission, it is my understanding that the building permit and PC Resolution 33-2007 will both be null and void. As a result, Branagh will not be allowed to remove that cement v-ditch under that "last submittal." In addition, in reviewing the 7-25-11 DBR Staff Recommendations to PC, we did not find any conditions which would permit Branagh to remove that cement v-ditch on 8 Kimberley.

- h. The reason the 2007 DRB and the 2007 PC approved removal of some of the cement v-ditches was because "Some of the existing concrete 'V' drainage ditches will be removed and replaced with drainage ditches at the tops of the new retaining walls," per the last paragraph on page 2 in the 7-09-07 DRB Staff Report (see the enclosed Exhibits H and I which are copies of pages 2 and 3 from the 7-09-07 DRB Staff Report). (Also see Exhibit D, a copy of page 3 from the 8-20-07 PC Staff Report.)
- i. Even tho the DRB and the PC approved removal of some of the cement v-ditches to be replaced with retaining walls with drainage on the tops, both agencies still had concerns regarding the drainage for 8 Kimberley (Lot 1) and they expressed those concerns in Condition 13 in the 7-09-07 DRB Recommendations and in Condition 13 in PC Resolution 33-2007, both with the same wording as follows: "Retaining walls shall be accepted as presented by the civil engineering plans up to a maximum of 4-feet 6-inches in height. Prior to issuance of building or grading permits, the project plans shall also call for the collection and channeling of surface and subsurface water flow from the behind the retaining walls." (Refer to Condition 13 in the enclosed final, signed copy of PC 33-2007, Exhibit G.)
- j. In item 3 on page 2 of the 7-25-11 DRB Design Aspects for 8 Kimberley Drive - DRB 07-11 (which you received as part of your packet from the Planning Department) it states, "The project includes three new retaining walls, which are only 2-feet high. Two of the walls will be dry stack garden walls along the northwest side of the home and in the front yard at the southeast side. The retaining wall at the rear side of the home will be a 2-foot high concrete wall with stone veneer. the rear retaining wall will extend behind a proposed swimming pool. The low retaining walls do not require a building permit and are therefore exempt from a hillside development permit." There is no mention that there will be any drainage ditches at the tops of any of those three short retaining walls.
- k. On page 2 in the 7-25-11 Design Guideline Analysis for 8 Kimberley, in the section Minimize the impacts of development (ID) section, in item 1.), the last sentence under Comment reads, "Sheet C-1 of the plan set shows new drainage lines that convey water to the 'V' ditch at the northeast side of the property." Per Mr. Chamberlain today, he said that sentence is incorrect because the plans need to be corrected for today's DRB meeting regarding the drainage issues.

In reviewing Sheet C-1 there are some new drain lines shown in the plans and it is my understanding that they are to be underground drain lines and some changes will be made to them because of the drainage issues being corrected for today's DRB meeting.

- l. Since Branagh's plans have just very recently been corrected regarding the drainage issues for today's DBR meeting, we presume any drainage additions and corrections have not been reviewed and approved by the Town Engineer. As a result, before the DBR gives it's final approval and it's recommendations to the PC, we are requesting that the corrected plans be submitted to the Town Engineer for review and approval. Since it appears that once the new DBR 07-11 application is approved by the PC, Branagh will no longer be able to remove the subject cement v-ditch from 8 Kimberley and the drain lines proposed on Sheet C-1 in the new plans would be additional drainage coverage in addition to the existing cement v-ditch.
- m. If the DBR determines that Branagh should be approved to remove the subject cement v-ditch on 8 Kimberley under this new application DBR 07-11, we are strongly urging the DBR to first submit Branagh's drainage plans to the Town Engineer for review and approval in order to make completely sure that without that subject cement v-ditch on 8 Kimberley that the new drain lines shown on Sheet C-1 will fully protect the building pad and proposed home regarding any drainage problems on 8 Kimberley.

- n. The Town of Moraga was negligent when it approved the grading and drainage plans for this development of 5 lots (known as KOMA) which included the installation of a catch basin midway up the 3-1 slope on Lot 1 (8 Kimberley) next to our property instead of installing it at the low point of Lot 1, which was one of the causes of our property being flooded in December, 2002, and it was the main cause of our property being flooded several times thereafter. As a result of those floodings and the resulting legal action, we suffered both financially and emotionally and for years each time it rained, we feared that our property would be flooded again. Since the relocations of the catch basin, cement v-ditch and dirt swale with rip-rap were completed in October, 2007, we have not had any flooding problems and we have regained our peace of mind. We mention all this because we do not want to see 8 Kimberley have any changes in the drainage facilities that would negatively affect that property, and in turn ours. I am 78 and my husband is 82 and we are both disabled and we have suffered mightily for years as a result of those drainage and flooding problems and we don't want to be placed in that same position again when it could all be easily avoided by everybody just following the rules.
- o. Accordingly, based on the documentation we have provided to you in and with this letter, we are strongly urging the DRB:
- (1) To not approve Branagh's application until the corrected drainage plans have been reviewed and approved by the Town Engineer;
 - (2) To not allow Branagh/Talon to remove the subject cement v-ditch on 8 Kimberley until the Town Engineer reviews the corrected drainage plans to make sure the drainage facilities in the corrected plans will fully protect the building pad and proposed house on 8 Kimberley and approves the plans; and
 - (3) To either eliminate the plans for the proposed swimming pool or move it to another area of the backyard, as long as it can be accommodated within the approved building pad allowances (see Exhibit B).

ITEM 2:

Regarding the cement v-ditches, catch basins and the dirt swale with rip-rap which were not shown in Branagh's plans, we look forward to reviewing the corrected plans at today's DRB meeting.

- a. We had noted that because of the missing drainage facilities that there were some plants and trees planted in the areas that are occupied by drainage facilities. Because of that we expect to see some changes in the landscaping.
- b. Also, per the 7-25-11 DRB Staff Report, the fencing also needs to be relocated to conform to the existing drainage improvements. We should note that our neighbors across the street at 7 Kimberley (Lot 5) had almost the same situation with a cement v-ditch with a detention wall and their solid wood fence was built along the inside edge of the cement v-ditch and towards their property, however, their fence looks like it is shorter than 6-feet high.

ITEM 3:

Needed corrections in the 7-25-11 Staff Recommendations for 8 Kimberley:

- a. In Part II: Approval of Design Guideline Exception on page 2 in the Staff Recommendations, Mr. Chamberlain said Condition 1.a. is incorrect because the plans need to be corrected for today's DRB meeting.

- b. Condition 14.c. on page 4 of the Staff Recommendations is regarding the fence along the northeast property line and this condition is incorrect because the plans for that area need to be corrected for today's DRB meeting regarding the drainage issues.
- c. Regarding Condition 14.d. on page 4 of the Staff Recommendations in reference to the proposed relocation of a v-ditch, Mr. Chamberlain said this item was incorrectly copied from the previous PC Resolution 33-2007 and it should be disregarded.

ITEM 4:

Since our pine tree located at the northwest corner of our property is in such close proximity to the construction that will be done on 8 Kimberley, we are very concerned about possible damage to it and in order to protect our tree we are requesting that the DRB add a condition to the DRB Recommendations to the Planning Commission per the following information:

The previous PC Resolution 33-2007 for 8 Kimberley included a condition to protect our pine tree during the construction of the then-proposed house and we are requesting to have that same condition added to the new PC Resolution for this new proposed house under DBR 07-11. That condition was also in the 7-09-07 DRB Recommendations to the Planning Commission.

Condition number 17 read:

"The Applicant shall submit final grading, drainage, site and erosion control plans for review and approval to the Town Engineer prior to the issuance of grading or building permits as appropriate. The final plans shall include the following changes:"

Condition number 17.i. read:

"To ensure preservation of the existing pine tree located near the west rear corner on the Sowa property at 6 Kimberley Drive, show the methods to be employed to preserve this pine tree, including the use of fencing to designate the tree's drip line and preclude the use of this designated area for storage of construction materials and grading."

In reviewing the 7-25-11 DRB's Recommendations to the PC, we didn't find any conditions similar to number 17 to list this proposed condition under and we are requesting that you show it as a separate condition and we are requesting that you revise the wording so the item can stand alone and still provide the needed protection for our pine tree during the construction.

Since this condition was in the previous PC 33-2007, we believe it is appropriate that it be included in the current PC Resolution for Branagh's new proposed house. Thank you.

ITEM 5:

In Part II: Approval of Design Guideline Exception on page 2 of the 7-25-11 DRB Recommendations for 8 Kimberley, in Condition 1., the DRB has recommended to allow the proposed home to encroach into the 6-foot near level clearance on both the northeast and southwest sides of the home and to have less than the 10-foot near level clearance for access to the rear yard. As nearby, longtime homeowners we object to that recommendation and believe no exception should be permitted to allow the proposed house to encroach into approved clearance areas. The houses should be designed to fit into the approved building pad areas. These lots were not designed to have very large houses erected on them and Branagh Development knew the lot constraints when they purchased the property and they should design a house that will fit on the lot. (Also, as noted in Item 3 above, Condition 1.a. is incorrect.)

When this 5-lot development was approved, in the spirit of being good neighbors, we agreed to a 5-foot reduction in the area between our house and a future house to be built on Lot 1 (8 Kimberley). We're sorry we did that because that area is being squeezed even smaller. The same thing has happened on other KOMA lots. It seems that the builders/developers are always being allowed to encroach into easement or clearance areas for one reason or another, and we object to that practice.

We are requesting that no exception be allowed regarding the encroachment of the proposed house into the areas as noted above.

ITEM 6:

We have noticed that there are several cracks (including one large crack near the catch basin) in the detention wall on the cement v-ditch on the east side of 8 Kimberley next to our property. There is also at least one crack in the cement v-ditch in that area and some other cracks a little higher up, just past where the cement v-ditch takes a fork on 8 Kimberley.. With this letter, we are bringing these cracks to the attention of the property owners, Branagh Development/Kimberly LLC, so they will have the opportunity to inspect the cement v-ditches and detention wall themselves and have any necessary repairs made in order to keep these drainage facilities in good condition.

ITEM 7:

- a. On page 3 of the 7-25-11 DRB Design Aspect for 8 Kimberley Drive - DRB 07-11 , item 5 says the proposed roof of the house will be charcoal, the siding will be gray and the trim, etc. and the windows will be white.
- b. On page 12 of the 7-25-11 DRB Design Guideline Analysis, item ID13.2 states, "The color schemes of homes on adjacent lots within 200 feet of one another should be compatible with and not duplicate one another. Comment: The siding, doors and windows will match the proposed home at 10 Kimberley Drive, but the proposed colors for the siding and trim are different."
- c. On page 15 of the 7-25-11 DRB Design Guideline Analysis, item SFR2.2 states, "The color schemes of homes on adjacent lots should be compatible and not duplicate one another. Comment: The applicant has been asked to bring a color palette to the meeting. The proposed colors are gray painted siding with white trim."

NOTE: We live directly next door to the lot where the proposed house is to be built and it is apparent to us that nobody considered the fact that our roof is charcoal, our house is gray, and our trim is white! And as long as we are the owners of our property those will continue to be the colors of our house.

Our house should have been considered along with the proposed house on 10 Kimberley. Whoever was responsible for choosing the same colors as we have on our house is in direct violation of both of the items noted in b. and c. above.

We object to having the house directly next door to us painted and roofed with the same colors as we have on our house and we are requesting the DRB to direct Branagh Development to choose other colors for their roof, house and trim for their proposed house on 8 Kimberley. Thank you.

ITEM 8:

Regarding the outside lighting, when plans are developed for the outside lighting we are requesting Branagh Development make sure that no lighting shines down or glares onto our property. We had spoken to Mr. Matt Branagh about this situation regarding the last application and he was very helpful in making sure we were protected from light glare from the then-proposed house. We would appreciate the same consideration regarding this new house application. Thank you.

IN CLOSING:

We are respectfully requesting the following from the members of the Design Review Board:

- a. To not approve Branagh's application DBR 07-11 until the corrected drainage plans for 8 Kimberley have been reviewed and approved by the Town Engineer, per Item 1;
- b. To not allow Branagh/Talon to remove the subject cement v-ditch on 8 Kimberley until the Town Engineer reviews the corrected drainage plans to make sure the drainage facilities in the correct plans will fully protect the building pad and proposed house on 8 Kimberley and approves the plans, per Item 1;
- c. To either eliminate the plans for the proposed swimming pool or move it to another area of the backyard, as long it it can be accommodated within the approved building pad allowances, per Item 1;
- d. Adopt and recommend a Condition to the Planning Commission in order to protect our large pine tree during construction of the proposed house, per Item 4;
- e. To not allow encroachment of the proposed house into areas as described in Item 5;
- f. Direct Branagh Development/Talon Design to choose other colors for their proposed house and roof, per Item 7; and
- g. Ensure that our property will be protected from lighting glare from the outside lighting for the proposed house at 8 Kimberley, per Item 8.

Thank you very much for your time and attention regarding this lengthy letter and thank you also for granting our above requests.

Very truly yours,



Beverly K. Sowa



Frank L. Sowa

Enclosed: Exhibits A thru I

cc: Branagh Development, Inc./Kimberly LLC

EXHIBIT A

(The notes in parentheses are the Sowa's notes.)

Lot 1 Drainage Swale Retaining Wall And Deflection Wall Plan

Scale: 1"=20'-0"

NOTE:

PROPERTY LINES SHOWN ON THIS DRAWING ARE NOT BASED ON A FIELD SURVEY

(NOTE: The Detention Wall was extended to the fork where the ditch divides.)

(N) Concrete Drainage Swale (80 ft)

(N) Detention Wall (NOTE: 12" high) (100 ft)

Remove and Replace Concrete Drainage Swale (80 ft)

LOT 1

(E) HOUSE
6 Kimberly Drive

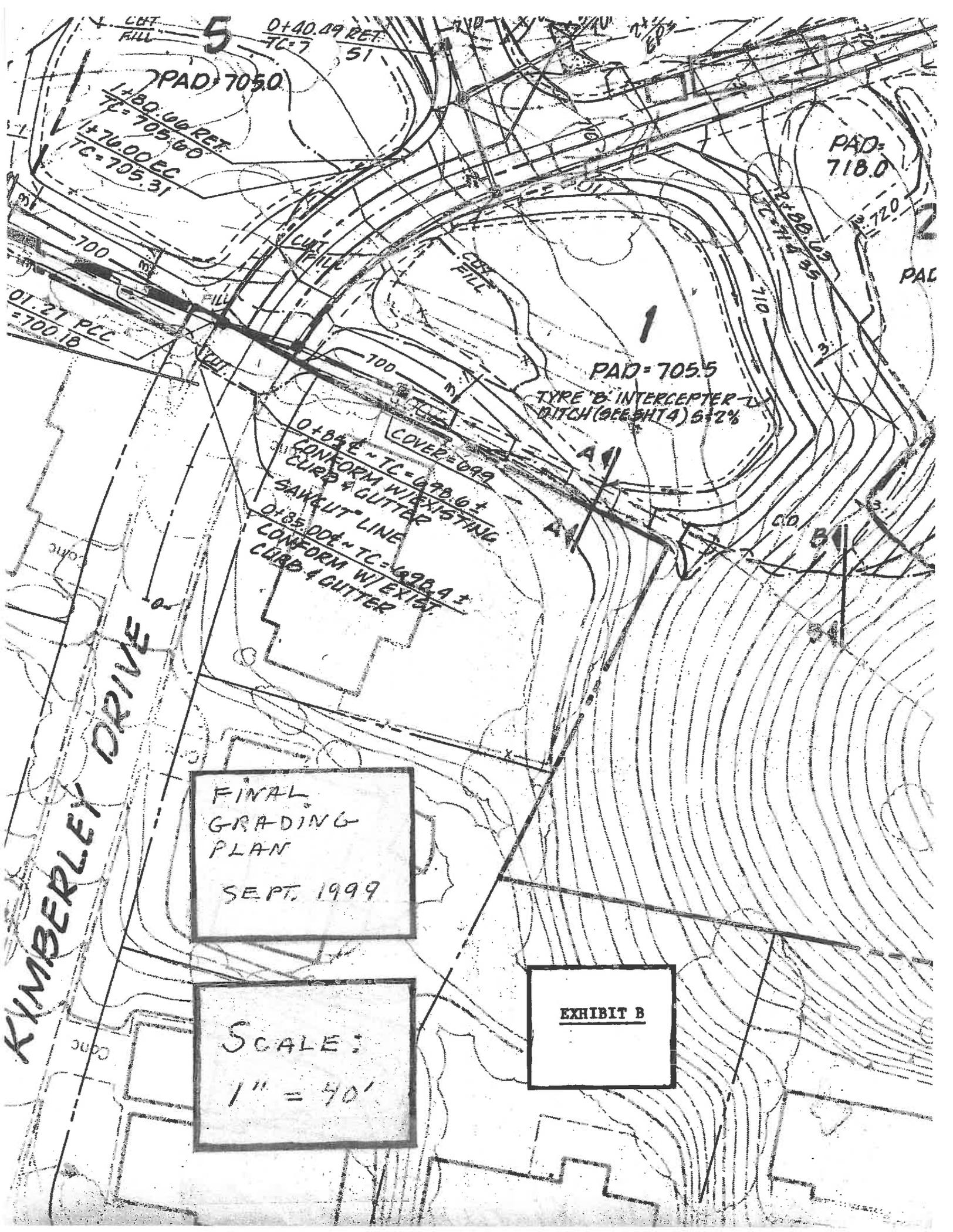
(NOTE: The catch basin was relocated to here.)

Relocate (E) Rock Swale

80'-0" Keystone Retaining Wall

DRAWING & WORK DONE BY:
ENGINEERED SOIL REPAIRS, INC.
1267 Springbrook Road
Walnut Creek, CA 94597-3916

K I M B E R L Y D R I



CUT FILL
5
0+40.09 RET.
TC=7
51
PAD 705.0
1+80.00 RET.
TC=705.60
1+76.00 EC
TC=705.31

PAD=718.0
1+720
PAL

PAD=705.5
TYRE B INTERCEPTER
DITCH (SEE SHT 4) 5+2%

COVER = 0.99
0+85.0 TC = 698.0 ±
CONFORM W/ EXISTING
CURB & GUTTER
SAWKUT LINE
0+85.00 TC = 698.4 ±
CONFORM W/ EXIST.
CURB & GUTTER

KIMBERLEY DRIVE

FINAL
GRADING
PLAN
SEPT. 1999

SCALE:
1" = 40'

EXHIBIT B

EXHIBIT C

APPLICABLE TOWN DESIGN GUIDELINES:

The design guidelines that are applicable to the project have been listed in **Exhibit E**, with staff comments on each guideline. Since the project was deemed complete and reviewed by the Design Review Board prior to the adoption of the new design guidelines by the Town Council on July 11, 2007, it is being reviewed in accordance with the old design guidelines. Nevertheless, staff believes that the proposed home conforms to both the new and old design guidelines. No design guideline exceptions are requested or required.

HILLSIDE DEVELOPMENT PERMIT ISSUES:

The factors for a Hillside Development Permit in accordance with Moraga Municipal Code Section 8.136.070 were considered by the Planning Commission with the adoption of Resolution No. 13-99 on June 7, 1999; however, the alterations to the topography of the lot and relocation of the concrete "V" ditches will involve some further grading on slopes greater than 20%. The factors to be considered for a hillside development permit are listed in **Exhibit F**. The slope map below shows that all of the proposed development on the site will be on average slopes of less than 20%.



Green – Less than 20% Slope

Yellow Tint – 20% to 25% Slope

Red Tint – Over 25% Slope

Additional grading has been required by a court settlement agreement between the Kimberley Oaks Maintenance Association (KOMA) and the owners of the property northeast of Lot 1 at 6 Kimberley Drive, Frank and Beverly Sowa, in order to relocate the existing "V" ditch and catch basin along the north property line. Some of this grading would occur on slopes exceeding 25%, but the "average predevelopment slope in the area of disturbance", including the other areas of the lot that will be re-graded, will be less than 20%.

Rich Chamberlain

From: Alan Page [APage@talonarch.com]
Sent: Friday, July 22, 2011 9:39 AM
To: Rich Chamberlain; peterb@branagh.net
Cc: surveyor@trivalley.com; aswanson@tbaak.com; John Sherbert
Subject: RE: 8 Kimberley Drive "V" Ditches

Good Morning Richard,

The ditch that is being referred that conflicts with the pool and landscaping was approved to be removed in our last submittal, it just hasn't been removed because it is there to protect the pad until the house is constructed. The design of the grading and drainage plan along with the house will take into account the removal of this ditch. The same issues have been addressed by Alexander and Associates. We will show this portion of the ditch on the plans as to be removed per the previous approval.

Alan Page
Talon Design Group, Inc.
222 Railroad Ave., Suite A
Danville, CA 94526
925.855.1575, ext. 302
apage@talonarch.com

From: Rich Chamberlain [<mailto:chamberlain@moraga.ca.us>]
Sent: Thursday, July 21, 2011 4:01 PM
To: peterb@branagh.net
Cc: Alan Page; surveyor@trivalley.com; aswanson@tbaak.com; jsherbert@moraga.ca.us
Subject: 8 Kimberley Drive "V" Ditches
Importance: High

Peter,

The Sowa's returned to our office this afternoon and expressed one additional concern. Apparently there are two lateral "V"-ditches that intersect the primary "V"-ditch near the rear property line of the Sowa's property at 6 Kimberley Drive. The lateral "V"-ditch that extends behind the rear of the building pad at 8 Kimberley Drive may encroach into the area proposed for the swimming pool behind the home. Your engineer should plot these lateral "V"-ditches on the plans, so that it can be determined for certain whether the pool would have to be relocated.

Richard H. Chamberlain

Senior Planner

Moraga Planning Department

329 Rheem Boulevard

Moraga, CA 94556

Tel. (925) 888-7042

BEFORE THE TOWN OF MORAGA PLANNING COMMISSION

Sat 1
Final

In the Matter of:

Approval of plans and Hillside Development)
Permit for a new, one-story 3,844 square foot)
single-family residence and attached 1,089)
square foot garage at 8 Kimberley Drive. (APN)
255-120-010)

Resolution No. 33-2007 PC

File No. DRB 08-07

Planning Commission Adoption

Date: August 20, 2007

Effective Date:

August 30, 2007 (if not appealed)

WHEREAS, an application for design review and a hillside development permit was submitted on June 1, 2007 by Branagh Development (Applicant) for approval of a new, one-story 3,844 square foot single-family residence with attached 1,089 square foot garage and associated grading for retaining walls and relocation of existing surface drainage ditches at 8 Kimberley Drive; and

WHEREAS, a Mitigated Negative Declaration of Environmental Impact was issued by the Planning Commission for development of the Kimberley Drive lots on June 7, 1999;

WHEREAS, the development standards for 8 Kimberley Drive were established by the Planning Commission on June 7, 1999 with the approval of Resolution 13-99, thereby authorizing the development of a single-family residence at 8 Kimberley Drive; and

WHEREAS, a letter was received from Frank and Beverly Sowa on July 9, 2007 listing various discrepancies in the plans and expressing concern for the relocation of the "V" ditch and catch basin at the northeast property line at 8 Kimberley Drive in accordance with the settlement agreement between the Sowa's and the Kimberly Oaks Maintenance Association (KOMA) and concern for the preservation of an existing pine tree located at the rear of the Sowa property at 6 Kimberley Drive; and

WHEREAS, on July 9, 2007 the Design Review Board conducted a public meeting and recommended approval of the new home, including the associated retaining walls and relocation of the concrete "V" ditches, with the findings and conditions listed in the DRB action memorandum dated July 9, 2007; and

WHEREAS, condition 22 from Resolution 13-99 requires approval by both the Planning Commission and Design Review Board prior to granting final design review approval; and

WHEREAS, a Public Hearing Notice for the Planning Commission hearing on the project was mailed to the property owners within 300 feet of the project site on August 9, 2007; and

WHEREAS, the applicant submitted revisions to the plans on August 9, 2007 to address the concerns expressed in the July 9, 2007 letter from the Sowa's and to include the relocation of the "V" ditch and catch basin on the plans; and,

WHEREAS, the Planning Commission held a public hearing on August 20, 2007 to consider the plans for the new home at 8 Kimberley Drive.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the Town of Moraga hereby approves the plans for the new 3,844 square foot home, with 1,089 square foot attached garage, including the proposed relocation of existing surface "V" ditches and construction of retaining walls to comply with the Sowa vs. KOMA settlement agreement at 8 Kimberley Drive, subject to the findings and conditions listed herein:

PART 1: DESIGN REVIEW FINDINGS REQUIRED BY MMC SECTION 8.72.080-B:

1. **The proposed structure conforms with good taste, good design and in general contributes to the character and image of the Town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality** *because the proposed one-story 4,933 square foot single-family residence complies with the Town's design guidelines in all respects and the proposed home is in scale with the other new homes on Kimberley Drive. The proposed landscaping and the earth-toned palette of colors/materials will help the new home to fit into the natural environment.*
2. **The structure be protected against exterior and interior noise, vibrations and other factors, which may tend to make the environment less desirable** *because the proposed home will be constructed in accordance with the California Building Code and exterior mechanical equipment, such as the two proposed air conditioners at the northeast and southwest sides of the home, will be enclosed behind walls designed to attenuate the noise levels below 55 dba measured 10-feet from the equipment as specified in the conditions of approval in Part 2 of this resolution.*
3. **The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value** *because the proposed home is a high quality custom designed residence that is expected to increase the value of homes in the neighborhood.*
4. **The structure is in harmony with proposed developments on land in the general area** *because the proposed development conforms to the allowable density for the property and is within the developable MOSO cell boundaries on the lot. The size of the home is not excessive for a 74,052 square foot lot. The proposed craftsman style home is a style found to blend with the ranch style homes throughout the community.*

PART 2: CONDITIONS OF APPROVAL:

1. All applicable conditions and mitigation included in Planning Commission Resolution 13-99 (attached hereto as **Exhibit 1**) are adopted by reference as conditions of approval for this project, DRB 08-07, and shall be addressed to the satisfaction of the Town of Moraga, including payment of the fees listed below.
 - a. Prior to the issuance of a building permit, the applicant shall pay a park dedication in-lieu fee in accordance with Section 8.140.060 of the Zoning Ordinance. The fee shall be the fair market value of 0.017 acres plus 20% toward costs of off-site improvements in accordance with Section 8.140.090. The determination of the fair market value shall be based upon the price paid for the lot or a written appraisal report prepared for the property within one year of the date that the fee is paid.
 - b. Prior to the issuance of a building permit, the applicant shall pay the Transportation Impact Fee set by the Lamorinda Fee and Financing Authority (LFFA) for the year in which the fee is paid.
 - c. The applicant shall submit a design review fee to the Fire District prior to receipt of building permits in the amount of \$137.00.
 - d. The applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
2. Resolution 13-99 addresses hours of construction operation, development mitigation measures, construction standards, and maintenance of the property during pre and post development conditions, among other relevant topics. All Conditions of Approval from Resolution 13-99 that pertain to specifications for construction work, such as hours permitted for construction work, shall be included in the "Notes" section of the Building Plans so that contractors bidding on the project will be informed of these conditions.
3. Any significant changes to the site development plans shall be subject to further review and approval by the Design Review Board and Planning Commission; however, the location of the home and size of the rooms may be modified as necessary to make sure that there is no encroachment into either the scenic easement or the required building setbacks by the building or eaves.
4. This approval and each condition contained herein shall be binding upon the applicant and any transferor, or successor in interest.
5. Any work within a dedicated road right of way requires an encroachment permit from the Town of Moraga prior to start of work. The encroachment permit shall be applied and paid for separately from this entitlement. Any work within the private access easement will require review by the Town Engineer prior to the start of work.

6. In accordance with condition 43 in Resolution 13-99, parking of grading equipment, tractor tread vehicles, and all construction vehicles and equipment on Kimberley Drive and Scofield Drive is prohibited. These vehicles shall be delivered to the property by trailer and kept on site during grading and construction operations. The Applicant shall adopt a reasonable parking plan to be used by construction employees, including the use of an off-site staging area, subject to review and approval by the Planning Director prior to the issuance of grading or building permits.
7. Temporary drainage control measures shall be in place on the construction site during the months of October through April.
8. When the plans for the building permit are stamped by the Planning Department, the applicant shall complete the first part of the recycling plan form and obtain a copy of the Contra Costa Builder's Guide, which lists all the recycling services. The recycling plan form and recycling receipts for demolition and construction materials generated from the project shall be submitted to the Planning Department prior to final inspection by the building department. The applicant shall strive to recycle 50% of demolition and waste materials.
9. Finishing materials, such as siding, stone, trim, and paint color shall be consistent with the colors and materials palette approved by the Design Review Board and Planning Commission. Exterior wood siding shingles shall be stained with Sherman Williams 'Mountain Ash-SW3540'. Garage door, trim, gutters, front door and windows shall be 'Eagle Colony White'. The stone wainscot shall be 'Gallegos Telluride Gold'. The roof shall be a composite shingle 'Elk Prestique Sablewood'.
10. The mailbox shall match the materials used on the residence.
11. The address number for the residence shall be visible from the main roadway as required by the Moraga-Orinda Fire District.
12. Roofing materials and assembly shall be a minimum of Class B as required by the Fire District. (Note: Proposed roof is Class A, which the Fire District approves)
13. Retaining walls shall be accepted as presented by the civil engineering plans up to a maximum of 4-feet 6-inches in height. Prior to the issuance of building or grading permits, the project plans shall also call for the collection and channeling of surface and subsurface water flow from the behind the retaining walls.
14. All proposed fencing is approved at a height of no more than 6 feet with no diagonal bracing. The fencing material and any proposed staining or painting shall be subject to Planning Department review prior to approval of the building permit.

15. Prior to the issuance of a building permit, the applicant shall submit a the landscape, irrigation and fencing plan to the Planning Department for review and approval. Prior to the issuance of certificate of occupancy, the new landscaping and fence shall be installed.
16. The landscaping, irrigation and fencing plans shall include:
 - a. Landscaping along the north side of the home to provide an additional visual buffer to the existing home and rear yard at 6 Kimberley Drive.
 - b. An automatic rain sensor shall be installed on the irrigation system.
 - c. A 6-foot fence along the north property line between 6 and 8 Kimberley Drive.
 - d. The location of major drainage features, such as concrete V-ditches and vegetated drainage swales leading to catch basins. The landscaping plan must be consistent with the approved drainage plans and the proposed relocation of the V-ditch along the north property line.
 - e. Aesthetically pleasing, drought tolerant low trees, shrubs, and groundcovers in the northwest scenic easement areas and the planting pattern should not allow for the establishment of a "fire ladder" effect.
17. The Applicant shall submit final grading, drainage, site and erosion control plans for review and approval to the Town Engineer prior to the issuance of grading or building permits as appropriate. The final plans shall include the following changes:
 - a. Show the methods to be employed to ensure preservation of any existing trees on the property, including the use of fencing to designate the tree's drip line and preclude the use of this designated area for storage of construction materials, et cetera.
 - b. Show that roof leaders and surface run-off will be discharged by means of overland flow. Storm water from new roof drains shall be routed through a biofilter, sand filter or planter box for ten feet prior to discharge into the site drainage system.
 - c. Show that the use of onsite drainage collection systems is prohibited unless the applicant can demonstrate that all other alternatives are impracticable. If needed, all drainage inlets shall be constructed with 1 ft sumps.
 - d. Show that the depth of any drainage ditches and swales will be a minimum depth of 6 inches as measured from lowest side of ditch or swale.
 - e. Show a "trench drain" to be constructed across the full width of the driveway and connected into the adjacent existing drainage inlet.

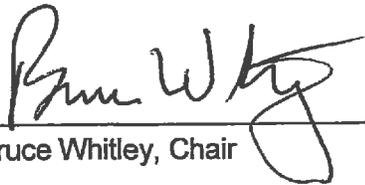
- f. Straw wattles shall be placed at intervals not to exceed five (5) feet in horizontal distance on all disturbed or created slopes until vegetation is established to control erosion on the slopes.
 - g. Show the locations of all existing and proposed keyways, subdrains, drain rock, and subdrain cleanouts on the plans. The foundation piers shall be located so they will not impact the existing subdrains. The foundation plans indicating the location of the existing subdrains and proposed pier locations shall be submitted to the Planning Department for review and approval prior to the issuance of the building permit.
 - h. The Town Engineer shall review the final grading plan and verify that the slopes, drainage and relocated V-ditch on the north side of the property adjacent to 6 Kimberley have been addressed in accordance with the approved Kimberley Oaks Maintenance Association (KOMA) settlement agreement and that no surface drainage is permitted to drain onto the adjacent property at 6 Kimberley Drive.
 - i. To ensure preservation of the existing pine tree located near the west rear corner on the Sowa property at 6 Kimberley Drive, show the methods to be employed to preserve this pine tree, including the use of fencing to designate the tree's drip line and preclude the use of this designated area for storage of construction materials or grading.
 - j. With regard to Note 4 on Sheet 3 of the Engineered Soil Repair (ESR) plans for relocation of the "V" ditch along the northeast property line, the direction of drainage needs to be clarified with profiles or elevations of the drainage ditch. The note describes the sub-drain as draining into the storm drain inlet at the street. It appears that the existing swale and rip-rap drain toward the storm drain inlet on the property. The plan needs to show how the retaining wall will change the grades and direction of flow in the "V" ditch.
18. Prior to the issuance of grading or building permits, the applicant shall submit to the Town verification that a Notice of Intent (NOI) has been filed with the Regional Water quality Control Board for the Project prior to the issuance of a grading or building permit.
19. Prior to the issuance of grading or building permits, the applicant shall submit a Storm Water Pollution Prevention Plan for review and approval by the Town Engineer.
20. Prior to the issuance of grading or building permits, the applicant shall submit calculations demonstrating that post-development stormwater runoff velocities and peak discharges are equal to or less than pre-development rates for review and approval by the Town Engineer.
21. Prior to the issuance of grading or building permits, the applicant shall furnish the Town with security for completion of grading and erosion control work as follows:

- a. The performance of the work described and delineated on the approved Grading Plan and SWPPP in an amount approved by the Town Engineer but not less than 100% of the approved estimated cost of performing said work. The form of the security may be corporate security bond, letter of credit or cash.
 - b. The performance of the work described and delineated in the Erosion Control Plan, in an amount to be determined by the Town Engineer but not less than 100% of the approved estimated cost of performing said work. The form of the security may be a combination of corporate surety bond, letter of credit or cash except that cash deposits will be required for all amounts up to \$10,000.
 - c. The security whether corporate surety bond or an instrument or instruments of credit, at applicant's option, shall be in a form approved by the Town Attorney.
22. A sufficient number of drains shall be provided in the crawl space under the foundation to provide an outlet for water that may accumulate beneath the house and to drain any areas that may be divided by internal grade beams. Such drainage facilities shall be drained to a vegetated swale for bio-filtration for at least 10-feet prior to discharge to a catch basin or natural drainage swale.
23. The two new exterior air conditioning units or heat pumps shall be located behind low walls designed to attenuate the sound below 55 dba measured 10-feet from the equipment.
24. The project geotechnical engineer shall be retained to watch the pier shaft drilling during construction of the foundation to confirm that no subdrains are damaged during the drilling. At the project geotechnical engineer's discretion the excavation of piers or foundations shall be done by hand wherever the piers are closer than 5-feet to the subdrains as mapped on the project plans in accordance with condition 17.g. above.
25. The subdrains shall be tested at the end of construction, with a report sent by the project geotechnical engineer confirming that the subdrains under lot 1 (8 Kimberley Drive) are functional.
26. No dumping or stockpiling of soil or debris is permitted within the Open Space / Scenic Easement. Contractors on the project shall be advised of this condition. Any dumping of soil or debris into the Open Space / Scenic Easement may be cause for a stop work order until the easement area is fully restored and any damage done to native vegetation mitigated with replacement native vegetation.
27. The drainage corrections required by the court settlement agreement between Frank and Beverly Sowa, property owners at 6 Kimberley Drive, and the Kimberley Oaks Maintenance Association (KOMA) shall be completed prior to the issuance of the grading permit and the building permit.

28. If there is no appeal, Planning Commission approval will be valid for one year from the effective date of this resolution of approval. You must obtain a building permit for construction of your project within one year or you may request an extension of the approval for one additional year. The request must be in writing to the Planning Director and should show good cause as to why the design approval should be extended.

PASSED AND ADOPTED by the Planning Commission of the Town of Moraga on August 20, 2007, the following vote:

AYES: Commissioners Kirkpatrick, Hays, Goglia, Levenfeld, Sayles and Whitley
NOES: None
ABSTAIN: None
ABSENT: Commissioner Hiatt



Bruce Whitley, Chair

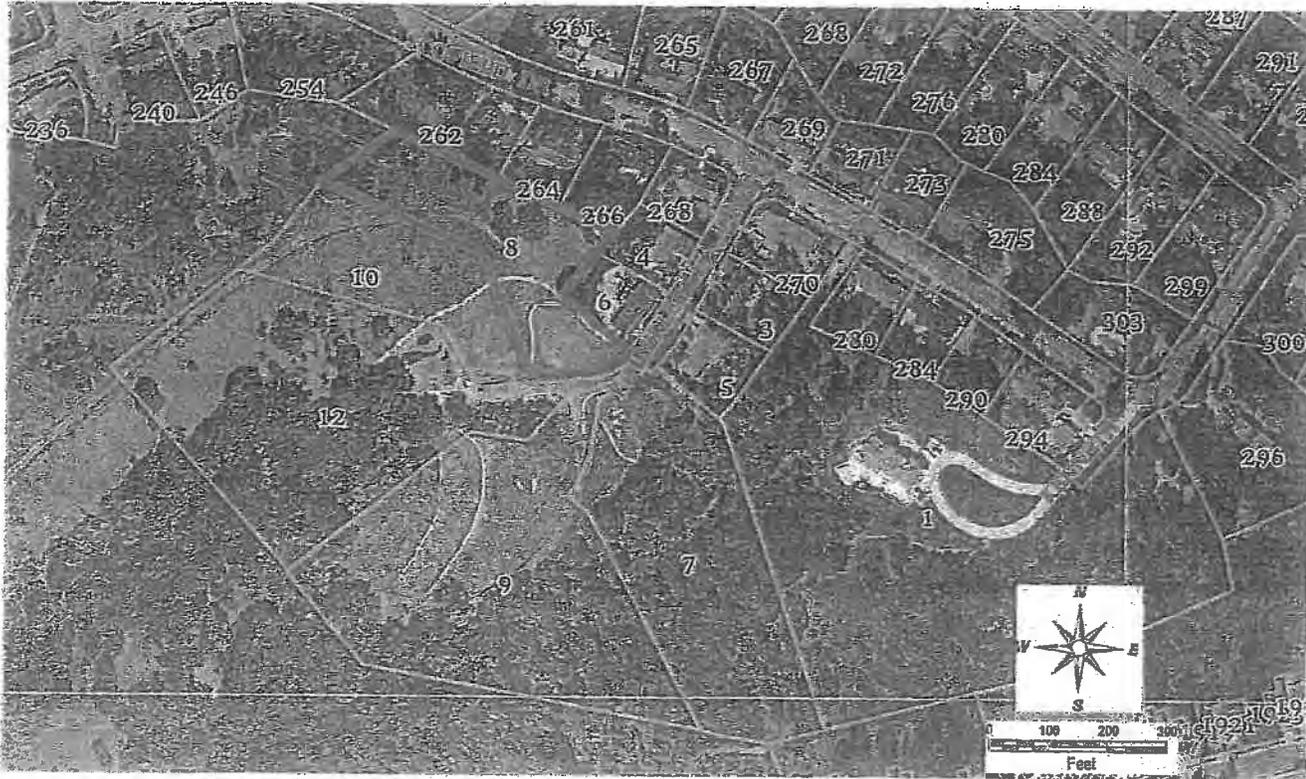
Attest: 

Lori Salamack, Planning Director

EXHIBIT H

- a. **LOT 1.**
 - Front Yard Setback:** 25 feet (minimum)
 - Side Yard Setback:** 20 feet north side (minimum)
25 feet south side (minimum)
 - Rear Yard Setback:** Building Envelope Limit
 - Building Height:** 19 feet, Single-Story (maximum)

The location of the property is shown on the GIS aerial photograph below.



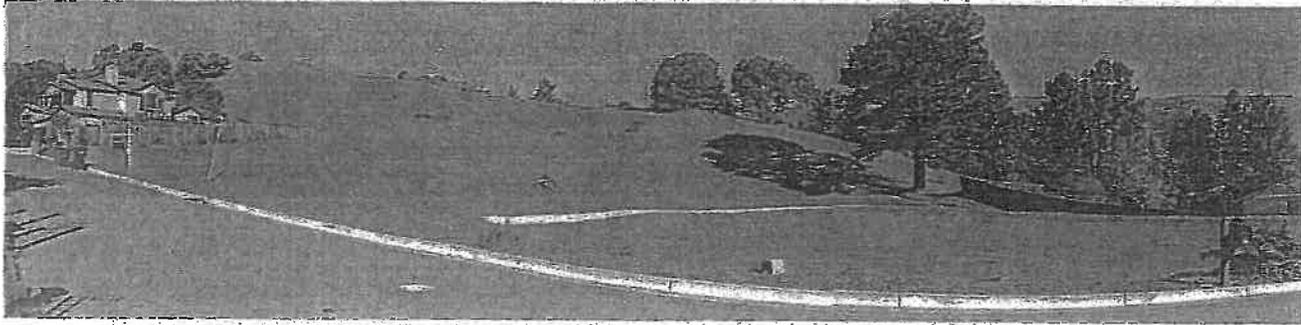
DESIGN DESCRIPTION:

The proposed home has four bedrooms, including the master bedroom and a guest bedroom. The home features a 478 square foot living/dining room, a 289 square foot kitchen (with a 49 square foot pantry), a 438 square foot family room, and a 153 square foot den. There are a total of three bathrooms, plus a powder room adjacent to the foyer. The home has a 670 square foot two-car garage on the left side of the front elevation and a 419 square foot single car garage on the right side of the front elevation adjacent to the guest bedroom. The front entry is set 16 feet 6 inches back from a 4 foot high shingled entry wall.

Some grading of the lot is proposed with two retaining walls along the west and north side of the home where it will be built into the hillside. The retaining wall on the west side would be 4-feet 5-inches at the highest point. The retaining wall at the rear north side would only be about 1-foot 3-inches high. Most of the home will be built on the existing pad with a finished floor elevation of 708 feet. The northwest rear portion of the home, including the master bedroom and bathroom will be at a higher elevation, with a finished floor at 710 feet. Some of the existing concrete "V" drainage ditches will be removed and replaced with drainage ditches at the tops of the new retaining walls. The site photograph on the next page shows some of the concrete "V" ditch that will be replaced.

NOTE

EXHIBIT I



The architects have designed a low-profile craftsman home using: Elk Prestique Sablewood roofing, Sherwin Williams stain Mountain Ash shingling, Gallegos Telluride Gold Stone wainscoting, and Eagle Colony White trimming. The ridgeline of the roof is 18-feet at the highest point. The total building area, including the garage, is 4,933 square feet and the lot area is 74,762 square feet. Since the lot area is over 20,000 square feet, the Floor Area Ratio (FAR) guidelines do not apply. (Plans for this project can be found in Exhibit H.)

DESIGN ASPECTS TO BE CONSIDERED:

The design aspects listed under MMC Section 8.72.080-A that pertain to projects in zoning districts other than single-family residential districts, are discussed in Exhibit D. The design aspects that must be considered for the project are listed below:

1. Maximum height, lot coverage and setbacks (if not covered in the zoning ordinance);
2. Overall mass and bulk of structures;
3. Special features of the development, such as walls, screens, towers and signs;
4. Effective concealment and sound attenuation of exposed mechanical and electrical equipment;
5. Colors and materials on the exterior face of building or structure, striving for a limited number of colors and materials for each project;
6. Avoidance of repetition of identical entities whenever possible;
7. Harmonious relationship with existing and proposed adjoining developments, avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted;
8. Pleasing landscaping which incorporates existing landscaping and terrain as a complement to the structure, using plants which thrive in the Moraga climate, and which are large enough in size to be effective;
9. Compliance with Chapter 8.132 (Scenic Corridors).

As noted on page 1 of Exhibit D, the extension of the eaves into the minimum setbacks would require a variance under the Town Council's November 14, 2001 interpretation of MMC Sections 8.04.020 and 8.68.070. On similar previous applications, the Design Review Board questioned whether a variance was really required under MMC Section 8.68.070 because the proposed roof extensions would not "obstruct the light and ventilation on any adjoining parcel".

APPLICABLE TOWN DESIGN GUIDELINES:

The design guidelines that are applicable to the project have been listed in Exhibit E, with staff comments on each guideline. Staff believes that the proposed home conforms to the design guidelines and no exceptions are needed or requested.

HILLSIDE DEVELOPMENT PERMIT ISSUES:

The factors for a Hillside Development Permit in accordance with Moraga Municipal Code Section 8.136.070 were considered by the Planning Commission with the adoption of Resolution No. 13-99 on June 7, 1999; however, the alterations to the topography of the lot

From: Frank and Beverly Sowa
6 Kimberley Drive
Moraga, CA 94556
August 4, 2011

Ms. Jill Mercurio, P.E., Public Works
Director/Town Engineer
Mr. John Sherbert, Staff Engineer
Town of Moraga Public Works/
Engineering
2100 Donald Drive
Moraga, California

Copy To: Planning Dept.

Re: Serious errors regarding the building pad elevation and soil elevations for 8 Kimberley (Lot 1), DBR 07-11, Applicant/Owner Branagh Development/Kimberly LLC; and an apparent building pad elevation error regarding 10 Kimberly LLC (Lot 2), DRB 08-11, Applicant/Owner Branagh Development/Kimberly LLC

Dear Ms. Mercurio and Mr. Sherbert:

Regarding 8 Kimberley (Lot 1), DBR 07-11:

Branagh Development's plans for a proposed house on 8 Kimberley (Lot 1) show:

- a. An incorrect building pad elevation of 708 feet.

The correct building pad elevation is 705.5 feet as approved by the Planning Commission (PC) on June 7, 1999 as shown in: the approved Grading Plans done by RMR Design Group dated September, 1999; an As-Built Grading Plan done by RMR Design Group dated February 6, 2003; and a Topographic Survey done by Moran Engineering dated February 9, 2006. Also, see items 1. thru 8. below for documentation regarding the 705.5 foot building pad elevation.

- b. The soil elevation lines in Branagh's proposed plans have incorrect soil elevation figures shown in their plans as compared to the same soil elevation lines and corresponding soil elevation figures in the PC approved Grading Plans and in the above noted topographic survey.

In Branagh's plans they have incorrectly changed the soil elevation figures. For example, they show the soil elevation line that goes through the northwest corner of our property as being at 710 feet elevation, however, that is incorrect. The 710 feet soil elevation level is actually and correctly located further north of our property, and the soil elevation line that goes through that corner of our property is correctly the 708 feet soil elevation line per the correct, approved Grading Plans dated September, 1999; and the Grading Plans with some site improvements; and the Topographic Survey dated February 9, 2003 (see Documentation items 1.; 2.; and 4. below).

DOCUMENTATION:

Per a. and b. above, we have documentation to prove there are serious errors regarding both the building pad elevation and the soil elevation line's figures as they are incorrectly shown in Branagh's plans for their proposed house plans for 8 Kimberley (Lot 1) and enclosed for your information is the following documentation:

1. Exhibit A: A copy of the Grading Plans dated September, 1999 which were done by RMR Design Group, Robert M. Rourke, Engineer, which were approved by the Planning Commission (PC). These approved plans show the building pad elevation for Lot 1 as 705.5 feet. This plan also has soil elevation lines with the correct corresponding soil elevation lines' figures.

RECEIVED

AUG 5 2011

MORAGA PLANNING DEPT.

2. Exhibit B: A copy of the same Grading Plans per item 1. above which includes some site improvements and on which there is a statement from Mr. Rourke dated April 1, 2003, and Mr. Rourke states, in part, "I hereby state that all site improvements have been substantially constructed as represented in these plans. These record drawings have been prepared based on approved design revisions and field change orders by the RMR Design Group (if any) and others." It appears there were no site improvements on Lot 1 and the building pad remained at 705.5 feet elevation. This plan also has soil elevation lines with the correct corresponding soil elevation lines' figures.
3. Exhibit C: A copy of an As-Built Grading Plan dated February 6, 2003 done by RMR Design Group and it shows that several areas of the building pad of Lot 1 (8 Kimberley) were surveyed at soil elevations of 705.50 feet; 705.53 feet; 705.55 feet; 705.55 feet and 705.57 feet.
4. Exhibit D: A copy of a Topographic Survey dated February 9, 2006 done by Moran Engineering, Inc. and it shows that several areas of the building pad of Lot 1 (8 Kimberley) were surveyed at soil elevations of 705.70 feet; 705.72 feet; 705.77 feet; 705.78 feet; and 705.82 feet. This plan also has soil elevation lines with the correct corresponding soil elevation's figures. (We have a copy of the survey signed in blue by Mr. Jeffrey Black, Licensed Land Surveyor, dated March 15, 2006.)
5. Exhibit E: A copy of a letter dated December 3, 2002 from Mr. Joe Colonna/Primecore (Primecore was the then-owner of Lots 1-5) to Ms. Lori Salamack, Planning Director, which documents that the grading and installation of the street improvements were completed prior to December 3, 2002. In that letter Mr. Colonna states, in part, "Our contractor has completed installation of all required improvements and RMR Design Group, the project Civil Engineer, is currently preparing a certification letter for site grading."
6. Exhibit F: A copy of a letter dated April 25, 2003 from Mr. Robert Rourke, RMR Design Group to Mr. Ron Hart, Contra Costa County Lamorinda Building Inspection Office, regarding "Pad Grade Verification, Lots 1 and 5." In that letter Mr. Rourke states that on April 21, 2003 a field survey of the elevations of the graded pads for Lots 1 and 5 was preformed; he stated the criteria used to evaluate the conformance of the pad elevations with the approved grading plans; he stated that on April 25, 2003 he preformed a field review of the completed rough grading; and Mr. Rourke stated, in part, "Based on the results of the survey work described above, and my field observation, I have determined that the overall grading for the referenced lots has been completed in conformance with the approved Grading Plans." Also, the Town of Moraga received a copy of this letter on April 29, 2003, as noted on the copy of the letter.
7. Exhibit G: A copy of a letter dated May 13, 2003 from Mr. Paul Sai-Wing Lai/Berlogar Geotechnical Consultants to Mr. Joe Colonna/Primecore with supplemental information and recommendations regarding Lots 1 through 5. Mr. Lai states, in part, "To achieve long-term stability of the hillside areas, no future grading, retaining wall or swimming pool should be performed or constructed in the hillside areas without consulting a geotechnical engineer and engineering geologist licensed in California." It appears that because of the proposed grading, proposed retaining wall(s) and proposed swimming pool in the hillside area of 8 Kimberley (Lot 1), that this recommendation should be followed in order to have it determined by a geotechnical engineer and engineering geologist licensed in California to determine if the grading, retaining wall(s) and swimming pool should or should not be allowed in that hillside area.
8. In addition, prior to the June 7, 1999 PC meeting a change in the building pad elevation for Lot 1 (8 Kimberley) was proposed. The original plans called for a 704 feet/708 feet split-level pad, however, in viewing the story poles from our back yard it had quite a detrimental impact on us regarding how high the house would be with that 708 feet pad elevation and we suggested that instead of that 704/708 feet split-level pad elevation that a flat 705.5 feet building pad elevation be used. Then at the June 7, 1999 PC meeting:

- o Mr. Rourke said that pad elevation change could be worked out regarding the grading, but because of some grading issues there would need to be a 5 feet decrease in the setback between Lot 1 and our property, making the north side yard setback 20 feet (minimum).
- o The Planning Commissioners discussed this issue extensively as recorded in the official minutes of that meeting and they agreed the change was for the better. (Mr. Michael Metcalf, the current Vice Mayor was one of the Planning Commissioners at that meeting.)
- o Mr. Peter Golze/Oakbay (the then-owners of Lots 1 through 5) said he preferred the 705.5 feet building pad elevation and we agreed to the 5 feet decrease in the north side yard setback (the side towards our property).
- o The Planning Commissioners reached consensus that the building pad elevation for Lot 1 would be 705.5 feet.

We have not included any written documentation regarding this item, but you can find the above information in the official June 7, 1999 Planning Commission Minutes.

Also, at that 6-7-99 PC meeting, the Planning Commissioners set site development standards for Lots 1 and 5 and those standards were subsequently incorporated in Resolution 13-99 in Condition 22. Regarding future applicants with proposed homes for Lots 1 and 5, Mr. Jay Tashiro, the then-Planning Director, said they would have to have a public hearing before the Planning Commission and "At that point in time, the applicant would have to comply with the site development standards that are incorporated into the Conditions of Approval...." Information regarding what Mr. Tashiro said is from pages 477-478 in the official 6-7-99 PC Minutes. Please refer to Condition 22 in Resolution 13-99 for the site development standards that the current applicant/owner, Branagh Development/Kimberly LLC, has to comply with per Mr. Tashiro.

- 9. In visually looking at Lot 1 (8 Kimberley) from the street where the curb area meets the 705.5 feet building pad elevation, per the approved Grading Plans, the property appears to be at the surveyed 705.5 (+/-) feet building pad elevation. The building pad elevation does not appear to be 708 feet. We suggest that you make a visual inspection to confirm this for yourself.

* * * * *

Before we discuss the errors, and some ramifications of the errors, we believe we should explain why these errors were not brought before the Design Review Board (DRB) at the July 25, 2011 meeting, per the following:

When Beverly first reviewed the plans for 8 Kimberley prior to the 7-25-11 DRB meeting, she noted right away that in Branagh's plans, they had failed to include drawings of the relocated cement v-ditch, catch basin and dirt swale with rip-rap that is on the 8 Kimberley property along their east property line next to our property, and also the new cement v-ditch in the northeast area on 8 Kimberley at the back of our property (all per part of the settlement of our legal action, and the corrections were completed in October, 2007). Mr. Richard Chamberlain said that Branagh would have to make corrections in the plans regarding some of the plan sheets. As a result, Beverly did not review the plans in detail at that time because we believed we would be able to review the original and/or the corrected plans on 7-25-11 before the DRB meeting started as we had been able to do at previous DRB meetings regarding the plans for the various Kimberly Oaks Maintenance Association (KOMA) lots.

At all prior DRB meetings we had attended for the various proposed houses for the five KOMA lots 1-5, the plans for the proposed houses had been posted on the walls in the meeting rooms and they were available for review by both the board members and the public prior to the start of, and during, the meetings. This time, however, on 7-25-11, there were not any original plans posted, nor were there

any corrected plans posted, nor were any plans made available for the public to review; and no plans, corrected or otherwise, were made available to us—Frank and Beverly Sowa—during the course of the meeting. As a result, we were not able to review the plans until 7-26-11 (just Beverly), the day after the DRB meeting, and then again on 7-28-11 (both myself and Beverly), at which times we determined the serious plan errors we are bringing to your attention in this letter.

Also, no story poles had been erected prior to the 7-25-11 DRB meeting as they had been erected previously for all five KOMA lots (including Branagh's prior application DRB 08-2007) that had DRB and PC public hearings regarding proposed house plans for each of those lots. In the past, story poles had been a great help, not only to us, but the DRB members, the Planning Commissioners and concerned neighbors.

These five KOMA lots were created as a group by a lot line adjustment, and as such, they should all be treated equally regarding regular procedures such as having story poles erected for all DRB and PC public hearings regarding proposed houses. Accordingly, we are requesting that before this application DRB 07-11 goes before the DRB and/or the PC for public hearings, that story poles be erected in accordance with the past story pole procedures regarding all five KOMA lots.

SOME INFORMATION AND RAMIFICATIONS REGARDING ERRORS IN BRANAGH'S PLANS:

First, we would like to let you know that Branagh's previous plans in 2007 also contained documented survey errors which needed to be corrected. In their plans submitted to the July 9, 2007 DRB, they showed that our large pine tree was on their property. At that time we told Mr. Matt Branagh that the tree was our pine tree and it was located on our property. Mr. Branagh said they had had that area surveyed and he insisted that the pine tree was on his property. We told Mr. Branagh we had had a survey done which would prove that the pine tree is on our property and we offered to notify our surveyor, Mr. Jeffrey Black/Moran Engineering, and authorize him to give Mr. Branagh a copy of the survey as long as it would be at no expense to us and Mr. Branagh agreed. Subsequently Mr. Branagh accepted Mr. Black's survey as being correct over his own incorrect surveyed plans and Mr. Branagh agreed that the pine tree is located on our property, and this fact is documented in various Planning Department records.

Also, we were so involved regarding proving the pine tree is located on our property that we didn't review Branagh's 2007 plans thoroughly enough to find out what the building pad elevation was. Mr. Chamberlain recently told us those prior plans also showed a building pad elevation of 708 feet. Even those those prior plans had the incorrect building pad elevation, this letter regarding this DRB 07-11 application is our first notification to the Planning Department, DRB and PC regarding the building pad elevation error in Branagh's plans and the current plans need to be corrected.

We are not engineers and we don't know all the ramifications of Branagh's errors, but the following are just some of our observations:

1. Because Branagh's plans show the building pad elevation incorrectly at 708 feet, the result is that they omitted the 706 feet soil elevation line that is shown in the approved Grading Plans, and they also omitted the .5 foot area which delineates the approved building pad elevation of 705.5 feet, which is also shown in the approved Grading Plans. As a result of their placing their building pad two and one-half feet higher than the approved building pad elevation, they have gained about seven and one-half feet of space around approximately 2/3 of the way around the perimeter of the building pad (per the area shown in the approved Grading Plans) which makes their building pad that much larger.

Regarding Branagh's application DBR 07-11 it appears they will be given approval to encroach into clearance areas in both side yards. In the 7-25-11 DRB Recommendations to the PC, the DRB has recommended an exception to allow the encroachment. Enclosed as Exhibit H is a copy of the 7-25-11 DRB Recommendations to the PC and Mr. Richard Chamberlain said the DRB members have already approved these recommendations.

When Branagh's plans are corrected to reflect the correct 705.5 feet building pad elevation, that will reduce their buildable area about seven and one-half feet approximately 2/3 of the way around the building pad area. That will cause their proposed house to encroach even further into those clearance areas and that should not be allowed or permitted.

As we stated in our above Documentation item 8., site development standards have been set for Lot 1 as documented in Condition 22 in Resolution 13-99, and per Mr. Tashiro, the then-Planning Director, any future applications have to comply with those site development standards. If you will refer to Condition 22 you will find that Side Yard Setbacks for Lot 1 are: "20 feet north side (minimum)," that's the side towards our property; "25 feet south side (minimum)"; and the Rear Yard Setback is "Building Envelope limit." Since these setbacks are documented in the Conditions of Approval we believe that they are essentially written in cement and cannot be changed. As Mr. Tashiro said, applicants have to comply with the site development standards that are incorporated into the Conditions of Approval. Accordingly, no exceptions should be allowed or permitted and the applicant/owner, Branagh Development/Kimberly LLC should be required to comply with the site development standards for Lot 1 as they are set forth in Condition 22 in Resolution 13-99.

It appears to us that in order for Branagh to comply with the those site development standards as they are set forth, they will have to redesign the house to fit inside those parameters.

In addition, in 1999 the Planning Commissioners used the "Building Envelope limit" to set the Rear Yard Setback for Lot 1, and we believe that Building Envelope limits are different than the "cell boundaries" that are currently being used to determine the buildable areas of 8 Kimberley (Lot 1). If they are different, since in 1999 the Planning Commissioners used Building Envelope limits to determine areas for the site development standards for Lot 1 in the Conditions of Approval, we believe that same criteria should be used regarding the current proposed house plans for Lot 1.

2. Regarding the location of the proposed swimming pool, we believe if it was located at the 705.5 feet building pad elevation that the correct 708 feet soil elevation line would run thru the northeast corner of the pool. In that case it appears that if the dirt was dug out of the 20% to 25% slope in that northeast corner by the pool, that the top of the slope would be about four and one half feet higher than the 705.5 feet building pad elevation and a retaining wall would be needed. Because of the height of that retaining wall, it certainly appears that building and/or hillside development permits would be required. Plus, that northeast corner of the proposed swimming pool is only about two feet from the cement v-ditch that carries water flow away from Lots 2 and 3 (10 and 12 Kimberley, respectively).

In addition, per our above Documentation item 7., Exhibit G, in order to achieve long-term stability of hillside areas, Berlogar Geotechnical Consultants recommends that no future grading, retaining wall or swimming pool should be performed or constructed in the hillside areas without consulting a geotechnical engineer and engineering geologist licensed in California.

3. Branagh was directed to correct some of their plans for DRB 07-11 because they omitted showing the relocated cement v-ditch with added detention wall, the catch basin, the dirt swale with rip-rap and the new cement v-ditch, all on Lot 1 (8 Kimberley) which were corrected as part of our legal action settlement with KOMA. Mr. Matt Branagh was well aware of these drainage corrections which were completed in October, 2007, yet Branagh omitted them from the proposed plans. And then, when they did make the corrections, they did them incorrectly per the following:
 - o Their corrected plans incorrectly show that the cement v-ditch that runs along their east property line is straight along the property line, when in fact, part way along that cement v-ditch it turns in towards their property. See Exhibit I for pictures of the cement v-ditch as it is actually formed.
 - o Their plans incorrectly show the new cement v-ditch on the northeast area of their property to be five feet from the property line, when it is actually one and one-half feet from the property line.

- o In Sheet C-1, the grading and drainage plans, Branagh does not show the dirt swale with rip-rap that runs along their property next to the east property line and up to the catch basin on their property.
- o In Sheet L-1, the planting plan, there are plants located in the dirt swale with rip-rap area. This a drainage area and should not have any plantings in it.

Also:

- o Enclosed as Exhibit J is a copy of the Scope of Work, Drainage, Retaining Wall and Deflection Wall Plan done by Engineered Soil Repairs (ESR) dated February 22, 2007. (ESR also refers to the deflection wall as a detention wall.) (We have a copy signed in blue by Mr. Steven O'Connor, Registered Professional Engineer, dated March 27, 2007.)
 - o Important:
Before any construction, grading, digging out of soil or anything of that nature is done in any of the areas around any of the relocated drainage facilities along 8 Kimberley's east property line, Branagh Development/Kimberly LLC should get copies of the the plans from KOMA regarding the drainage facilities corrections done by Engineered Soil Repairs in October, 2007, because there is a full depth subdrain installed behind the wall. Any construction, grading, etc. could cause damage to that drain and as a result, could cause substantial damage to our property at 6 Kimberley from flood waters, mud, debris, soil and/or silt coming onto our property from the KOMA properties. In addition, for any damage done to our property resulting from flood waters, mud, debris, soil and/or silt coming onto our property from the KOMA property, the owners of all five KOMA lots would be responsible to pay for the damage.
4. We don't know if the following is an error or not, but in Branagh's corrected plans, their fence is still shown on Sheet L-1 as bridging the cement v-ditch, with detention wall, on their property that runs along the east property line. Mr. Chamberlain said the fence had to be relocated to conform with the relocated cement v-ditch along their east property line. It is our understanding that the fence is supposed to be relocated and constructed on the inside edge of the cement v-ditch towards their property. That would also be more aesthetically pleasing.
- o If that fence is allowed to be constructed along the property line it will effectively eliminate any possibility our gaining access to and maintaining the outside of our fence in the area where their fence is located. It will also effectively eliminate any possibility of the owners of 8 Kimberley to have access to and maintain the outside of their fence. And most importantly, it will severely restrict access to the cement v-ditch for any necessary maintenance, repairs and/or cleaning out.
 - o The KOMA property at 7 Kimberley (Lot 5) also has a cement v-ditch with a detention wall and their solid wood fence is constructed on the inside edge of their cement v-ditch towards their property, however, their fence appears to be lower than 6 feet. Since we believe the five KOMA lots should be treated equally regarding regular procedures, we believe that the fence for 8 Kimberley should also be located and constructed on the inside edge of the cement v-ditch towards their property.
 - o In addition, in the 7-25-11 DRB Recommendations to PC, the DRB has incorporated a new Condition 15. which states, "Measures shall be taken to avoid disturbance of soil within the drip line of the large existing tree located at the northwest rear corner of the Sowa's property at 6 Kimberley Drive." Since a portion of the proposed 6 feet high fence runs underneath the drip line of our pine tree, Condition 15. would preclude the installation of a fence in that area. Refer to Exhibit H for a copy of the DRB Recommendations to PC.

Also, as we noted in our 7-25-11 letter to the DBR with a cc to Branagh Development/Kimberly LLC, there are some cracks, including a large one, in the detention wall on the cement v-ditch along 8 Kimberley's east property line. Enclosed in Exhibit I is a picture of the large crack and it looks like it should be repaired.

5. Even tho the approved Grading Plans clearly show the correct building pad elevation of 705.5, feet, Branagh shows the building pad elevation as 708 feet. The approved Grading Plans also clearly show the correct soil elevation lines with the correct soil elevation figures.

We also have copies of the Grading Plans that are for Bidding Purposes Only, and they also show the correct building pad elevation of 705.5 feet and the correct soil elevation lines with the correct soil elevation figures.

How could Branagh Development make, what we consider to be, such gross errors?

ADDITIONAL RAMIFICATIONS REGARDING THE PROPOSED SWIMMING POOL:

1. The proposed swimming pool on 8 Kimberley is sited in such a way as to require grading and removing dirt from under the drip line of the large pine tree on our property. We are concerned that this may well damage the root system of the tree compromising its stability and health resulting in the death of the tree and/or it falling onto the property at 8 Kimberley. The possibility of serious injury or death to persons and damage to property is a matter for the DRB and PC to consider with due diligence so we are bringing this matter to your attention.
2. As we noted in our July 25, 2011 letter to the DRB, in our Item 1.f., we gave public notice that we are absolving ourselves of all responsibility for any and all types of debris that may drop, fall, etc. from our pine tree into or onto the swimming pool and the surrounding area at 8 Kimberley. Please refer to that item for our exact wording.
3. Because of Branagh's error regarding the building pad elevation for the house and the errors regarding the incorrect soil elevation's figures in their proposed plans, it is difficult to determine exactly where the proposed pool might be located. However, it is in very close proximity to the Wildlife Easement area for Lot 1 (8 Kimberley) and great care must be taken to avoid having any part the proposed swimming pool, or the walkway around the pool, encroach into that Wildlife Easement Area. Enclosed as Exhibit L is a copy of the Wildlife Easement requirements for Lot 1 (8 Kimberley).
4. Condition 22 in Resolution 13-99 sets site development standards for Lot 1 (8 Kimberley) and the Rear Yard Setback is "Building Envelope limit." When the needed corrections are made regarding the building pad elevation and the soil elevation's figures, it would be up to the DRB and the PC to determine if the proposed pool could be located in that area, or another area, or that there wasn't enough room per the site development standards to construct a swimming pool.
5. The proposed swimming pool is in very close proximity to our large pine tree and part of the proposed swimming pool extends under the drip line. Our Sunset Western Garden Book defines drip line as follows: "The line you would draw on the soil around the tree directly under its outermost branch tips. Rainwater tends to drip from the tree at this point. The term is used in connection with feeding, watering, and grading around existing trees and shrubs."

In the 7-25-11 DRB Recommendations to PC, in Condition 15. it states, "Measures shall be taken to avoid disturbance of soil within the drip line of the large existing pine tree located at the northwest corner of the Sowa's property at 6 Kimberley Drive." Since part of the proposed swimming pool extends under the drip line of our pine tree, Condition 15. precludes construction of at least the part of the proposed swimming pool that extends underneath the drip line of our pine tree.

Regarding Branagh's prior application DRB 08-2007, the DRB and the PC approved protection of our pine tree during the construction on 8 Kimberley (Lot 1) and our pine tree was subsequently given protection in Condition 17.i in PC Resolution 33-2007. Since Branagh Development/Kimberly LLC were the owners of 8 Kimberley (Lot 1) under DRB 08-2007 and PC Resolution 33-2007, and they are still the owners of 8 Kimberley (Lot 1) under the current application DRB 7-11, it is only fair and just that the PC incorporate the DRB's 7-25-11 recommended Condition 15. in the final, approved PC Resolution/Conditions of Approval in order to provide protection for our pine tree during construction on 8 Kimberley (Lot 1).

* * * * *

Regarding 10 Kimberley (Lot 2), DRB 08-11:

We believe there is an error regarding the building pad elevation for the proposed house on 10 Kimberley (Lot 2). On July 28, 2011, in briefly reviewing the proposed houses plans for 10 Kimberley we noted that the building pad elevation was shown as 722 feet, however, according to the PC approved Grading Plans (Exhibit A), that Lot 2 has a split-level building elevation of 718 feet/721 feet. If Branagh Development's proposed plans for 10 Kimberley (Lot 2) do have a building pad elevation of 722 feet that is incorrect and the plans will have to be corrected.

We have documentation to prove that the building pad for 10 Kimberley (Lot 2) is correctly 718 feet/721 feet per the following:

1. Exhibit A: A copy of the Grading Plans dated September, 1999 correctly shows the building pad elevation for 10 Kimberley Lot 2) to be 718 feet/721 feet.
2. Exhibit B: A copy of the same Grading Plans per item 1. above which includes some site improvements. It appears there were no site improvements on Lot 2 and the building pad elevation remained at 718 feet/721 feet.
3. Exhibit C: A copy of an As-Built Grading Plan dated February 6, 2003 and it shows that several areas of Lot 2 (10 Kimberley) were surveyed at soil elevations of 717.92 feet; 717.98 feet; 718.01 feet; 718.06 feet; and 720.91 feet; 720.92 feet; 720.94 feet; 721.01 feet; and 721.01 feet.

The above three exhibits are the same exhibits we have used for the documentation for 8 Kimberley (Lot 1).

4. Exhibit K: A copy of a letter dated January 21, 2003 from Mr. Robert Rourke, RMR Design Group to Mr. Ron Hart, Contra Costa County Lamorinda Building Inspection Office, regarding "Pad Grade Verification, Lots 2 - 4." In that letter Mr. Rourke states that on November 26, 2002 a field survey of the elevations of the graded pads for Lots 2 through 4 was performed; he stated the criteria used to evaluate the conformance of the pad elevations with the approved grading plans; he stated that on December 3, 2002 he performed a field review of the completed rough grading; and Mr. Rourke stated, in part, "Based on the results of the survey work described above, and my field observation, I have determined that the overall grading for the referenced lots has been completed in conformance with the approved Grading Plans." Also, the Town of Moraga received a copy of this letter on January 23, 2003 as noted on the copy of the letter.

When and if it is determined that Branagh Development has the incorrect building pad elevation for 10 Kimberley (Lot 2), Branagh Development will have to make the needed corrections in their plans. When the needed corrections are made, because the building pad elevation would be lower, resulting in a smaller building pad area, it appears that Branagh's proposed house may have to be redesigned to fit into that smaller area.

REGARDING THE SOIL ELEVATION LINES AND THE CORRESPONDING SOIL ELEVATION LINES' FIGURES

We did not review the plans for 10 Kimberley ((Lot 2) for errors in the soil elevation lines and the corresponding soil elevation figures, however, because the soil elevation lines and corresponding figures for 8 Kimberley (Lot 1) are incorrect, and because 10 Kimberley directly abuts 8 Kimberley, we believe it is quite likely that the soil elevation lines and the corresponding soil elevation lines' figures for 10 Kimberley may be incorrect as well. Accordingly, we are requesting that these issues be checked out for the property at 10 Kimberley (Lot 2) in order to determine if the soil elevation lines and corresponding figures are incorrect or correct. If they are incorrect Branagh Development will have to make the needed corrections in their plans.

IN CLOSING

Thank you very much for your time and attention to the issues we have brought forth in this lengthy letter and we are looking forward to getting all the noted issues resolved.

Very truly yours,



Frank L. Sowa



Beverly K. Sowa

Enclosures: Exhibits A thru L

cc: Ms. Jill Keimach, Moraga Town Manager
Town of Moraga Planning Commission
Town of Moraga Design Review Board
Town of Moraga Planning Department

NOTE:

**EXHIBITS A, B, C, D, and J are large plan sheets
and have been provided to only:**

**Ms. Jill Mercurio, P.E.,
Public Works Director/Town Engineer**

and

Mr. John Sherbert, Staff Engineer

PRIMECORE

**EXHIBIT E (2 pages)**

December 3, 2002

Lori Salamack
Planning Director
Town of Moraga
350 Rheem Boulevard, Suite 2
Moraga, CA 94556

Via Fax and US Mail

Re: Subdivision Improvement Final Inspection Meeting

Dear Ms. Salamack:

The purpose of this letter is to request a final inspection review meeting with all Town and County representatives who have authority to inspect and approve the Kimberly Drive Subdivision improvements. Our contractor has completed installation of all required improvements and RMR Design Group, the project Civil Engineer, is currently preparing a certification letter for site grading. At this point, it would be appropriate to convene an on-site meeting to review and approve the improvements, or to generate a punch list of items to be completed.

For purposes of the meeting, the development team will consist of representatives from RMR (Civil Engineer), Berlogar (Soils Engineer), North Bay Construction (General Contractor), and Primecore (owner). While I will leave it up to you to decide who should represent the Town, I request that you include Bob Dunn (Town Engineer) and Ron Hart (County Grading Inspector). Both of them are familiar with the site and the history of the interim inspections. Others may include representatives from Planning, Public Works, and the Town Geologist.

It is important to the owners to have the subdivision improvements approved as quickly as possible. I request that the meeting take place no later than next week so any punch list items can be corrected before we get into the winter season. If you would like, I will take responsibility for setting up the meeting. Just let me know who should attend from the various agencies, and I will take responsibility for coordination.

If you have any questions regarding this information, please feel free to call me at (650) 328-3060.

Thank you for your attention to this matter.

Sincerely,
PRIMECORE FUNDING GROUP, INC., MANAGER
FOR PRIMECORE MORTGAGE TRUST, INC.


Joe Colonna
Director of Underwriting

cc: Fax Only

- Karen Stein, Town Manager
- Bob Dunn, Town Engineer
- Ron Hart, County Grading Inspector
- Bob Rourke, RMR
- Paul Lai, Berlogar
- Chris Giacobbe, North Bay
- Sarah Shum

RMR Design Group

Planners, Engineers, Landscape Architects

Robert M. Rourke, P.E., AICP

April 25, 2003

RECEIVED

APR 29 2003

MORAGA PLANNING DEPT

Mr. Ron Hart
Contra Costa County
Lamorinda Building Inspection Office
3685 Mt. Diablo Blvd., Ste. 120
Lafayette, CA 94549

Re: "MULHOLLAND HILL, Kimberley Drive Site"
Permit #GS 305084 - Pad Grade Verification, Lots 1 and 5

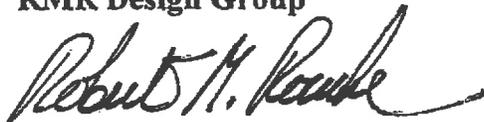
Dear Ron,

This letter is to state that on Monday, April 21, 2003, a survey crew representing RMR Design Group performed a field survey of the elevations of the graded pads for Lots 1 and 5 of the Mulholland Hill, Kimberley Drive project in the Town of Moraga.

The criteria used to evaluate the conformance of the pad elevations with the approved grading plans was that all pad shots should be within 0.1 feet of the approved plan grade. A minimum of five (5) shots were taken within the building portion of each pad. On each lot, all of the shots taken were within the required range. No single shot varied from any other shot by more than 0.2 feet.

On Friday April 25, 2003 I also performed a field review of the completed rough grading. This field review indicated that the tops and toes of the graded slopes are generally located in conformance with the approved Grading Plans. Based on the results of the survey work described above, and my field observation, I have determined that the overall grading for the referenced lots has been completed in conformance with the approved Grading Plans. Should you have any questions or desire further clarification or information regarding this matter, please don't hesitate to call.

Sincerely,
RMR Design Group



Robert M. Rourke, P.E., AICP
President



cc: Bob Dunn, Town of Moraga; Rich Chamberlain, Town of Moraga; Joe Colonna, Primecore Funding; Chris Giacobbe, North Bay Construction

94015LTR.080.wpd

Via Facsimile and Mail

May 13, 2003
Job No. 1768.301A

EXHIBIT G



Mr. Joe Colonna
Primecore
99 El Camino Real
Menlo Park, California 94025

Subject: Supplemental Information
and Recommendations
Lots 1 through 5
Kimberley Drive
Moraga, California



Dear Mr. Colonna:

To achieve long-term stability of the hillside areas, no future grading, retaining wall or swimming pool should be performed or constructed in the hillside areas without consulting a geotechnical engineer and engineering geologist licensed in California. At a minimum, the concrete-lined V-ditches, drain inlets, and subdrain outlets should be inspected in September and February for debris and over-grown vegetation. Additional inspection of these drainage facilities may be required after significant rain storms. If encountered, the debris and over-grown vegetation should be removed from ditches, drain outlets, and subdrain outlet as soon as possible. Drought-resistant plants should be considered on the slopes. Irrigation on the slopes should be kept to minimum. Over-watering the slopes could significantly reduce their stability and should be avoided.

In addition to the landslide setback as depicted on the grading plans, the setback dimensions as outlined in Sections 1806.5.2, 1806.5.3 and 1806.5.4, 1806.5.5 and 1806.5.6 of the 2001 California Building Code should generally be followed. Alternative setback and clearance may be established based on the results of lot-specific geotechnical study.

We trust this letter provides the information you require at this time. If you have any questions, please do not hesitate to call us.

Respectfully submitted,

BERLOGAR GEOTECHNICAL CONSULTANTS

Paul Sai-Wing Lai
Paul Sai-Wing Lai
Principal Engineer
GE 2326, Exp. 12/31/03



PSL:psl/pv

Copies: Addressee (3)

wp9/letter/13213



Town of Moraga

PLANNING DEPARTMENT
329 RHEEM BOULEVARD
MORAGA, CA 94556
(925) 888-7040

DESIGN REVIEW BOARD RECOMMENDATION

On July 25, 2011, the Town of Moraga Design Review Board considered the application described below:

DRB 07-11 / Branagh Development, Inc. (Applicant), Kimberly LLC (Owners)
8 Kimberly Drive: Design review application for a new 2,995 square foot single story home with an attached 837 square foot 3-car garage on a 74,762 square foot lot at 8 Kimberly Drive. Grading is limited to a couple of 2-foot high dry stack retaining walls and one 2-foot high concrete retaining wall faced with stone veneer at the rear of the home and northwest of a proposed swimming pool. (APN 255-120-010).

DESIGN REVIEW BOARD ACTION:

In compliance with condition 22 in Planning Commission Resolution 13-99, the Design Review Board recommends approval of the new home at 8 Kimberley Drive in accordance with the following findings, design guideline exceptions and conditions of approval:

PART I: DESIGN REVIEW FINDINGS REQUIRED BY MMC SECTION 8.72.080-B:

In accordance with Moraga Municipal Code Section 8.72.080-B, the following findings must be made in order to approve an application for design review in land use districts other than single-family residential:

- 1. The proposed structure conforms with good taste, good design and in general contributes to the character and image of the Town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality** because the proposed one-story 3,832 square foot single-family residence with attached 3-car garage complies with most of the Town's design guidelines, with a couple of exceptions with regard to level clearance around the home. The proposed home is in scale with the other new homes on Kimberley Drive. The proposed landscaping and masonry stone wainscot below the horizontal siding will help the new home to fit into the natural environment.

2. **The structure be protected against exterior and interior noise, vibrations and other factors, which may tend to make the environment less desirable** because the proposed home will be constructed in accordance with the California Building Code. The air conditioner / heat pump and pool equipment are all located on the southwest side of the new home, which will minimize any adverse impacts to the existing neighbors at 6 Kimberley Drive.
3. **The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value** because the proposed home is a high quality custom designed residence that is expected to increase the value of homes in the neighborhood.
4. **The structure is in harmony with proposed developments on land in the general area** because the proposed development conforms to the allowable density for the property and is within the developable MOSO cell boundaries on the lot. The size of the home is not excessive for a 74,052 square foot lot. The proposed craftsman style home would be in harmony with the ranch style homes in the vicinity. The proposed new home would be 1,101 square feet smaller in total floor area, including the garage, than the 4,933 square foot home previously approved on this lot in 2007.

PART II: APPROVAL OF DESIGN GUIDELINE EXCEPTION:

1. An exception to design guideline SFR1.10 is recommended to allow the proposed home to encroach into the 6-foot near level clearance on the both the northeast and southwest sides of the home and to have less than the 10-foot near level clearance for access to the rear yard. The findings to allow this exception include the following:
 - a. The home has a 21-foot side yard on the northeast side with a 2.5:1 slope to a 10-foot wide and nearly level drainage easement with a "V"-ditch that could be used for access to the rear yard and to the wildlife easement/scenic easement located north of the building area on the property.
 - b. The home has more than 10-feet of level clearance at both the front and back of the lot.
 - c. The revised design of the home now has limited access between the 2-foot high garden wall and the home along the southwest side, with at least 3-feet of clearance. (Note: The previously approved home was built into the slope with no access at the southwest side)

PART III: RECOMMENDED CONDITIONS OF APPROVAL:

1. All applicable conditions and mitigation included in Planning Commission Resolution 13-99 are adopted by reference as conditions of approval for this project, DRB 07-11, and shall be addressed to the satisfaction of the Town of Moraga, including payment of the fees listed below.
 - a. Prior to the issuance of a building permit, the applicant shall pay the park dedication in-lieu fee.
 - b. Prior to the issuance of a building permit, the applicant shall pay the Transportation Impact Fee set by the Lamorinda Fee and Financing Authority (LFFA) for the year in which the fee is paid.

- c. The applicant shall submit a design review fee to the Fire District prior to receipt of building permits.
 - d. The applicant shall pay the Town of Moraga Development Impact Fees.
 - e. The applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
2. Resolution 13-99 addresses hours of construction operation, development mitigation measures, construction standards, and maintenance of the property during pre and post development conditions, among other relevant topics. All Conditions of Approval from Resolution 13-99 that pertain to specifications for construction work, such as hours permitted for construction work, shall be included in the "Notes" section of the Building Plans so that contractors bidding on the project will know these conditions.
 3. Any significant changes to the site or development plans labeled "Official Exhibit Design Review Board July 25, 2011" shall be subject to further review and approval by the Design Review Board.
 4. This approval and each condition contained herein shall be binding upon the applicant and any transferor, or successor in interest.
 5. Any work within a dedicated road right of way requires an encroachment permit from the Town of Moraga prior to start of work. The encroachment permit shall be applied and paid for separately from this entitlement. Any work within the private access easement will require review by the Town Engineer prior to the start of work.
 6. In accordance with condition 43 in Resolution 13-99, parking of grading equipment, tractor tread vehicles, and all construction vehicles and equipment on Kimberly Drive and Scofield Drive is prohibited. These vehicles shall be delivered to the property by trailer and kept on site during grading and construction operations. The Applicant shall adopt a reasonable parking plan to be used by construction employees, including the use of an off-site staging area, subject to review and approval by the Planning Director prior to the issuance of grading or building permits. It is further recommended that the builder of the home complete the driveway at the time the house foundation is poured in order to allow parking on-site for a couple of vehicles for the construction workers.
 7. Temporary drainage control measures shall be in place on the construction site during the months of October through April.
 8. When the plans for the building permit are stamped by the Planning Department, the applicant shall complete the first part of the recycling plan form and obtain a copy of the Contra Costa Builder's Guide, which lists all the recycling services. The recycling plan form and recycling receipts for demolition and construction materials generated from the project shall be submitted to the Planning Department prior to final inspection by the building department. The applicant shall strive to recycle 50% of the demolition materials.
 9. Finishing materials, such as the "Hardie" horizontal siding, masonry wainscot, roofing material and paint colors shown on the colors and materials palette presented at the

meeting shall be compared by the planning staff with the existing colors of the home at 6 Kimberley Drive for determination of harmony of the color schemes and to make sure that the roofing and wall colors are not too similar on the adjacent homes.

10. The mailbox shall match the materials used on the residence.
11. The address number for the residence shall be visible from the main roadway as required by the Moraga-Orinda Fire District.
12. Roofing materials and assembly shall be a minimum of Class B as required by the Fire District.
13. All proposed fencing is approved at a height of no more than 6 feet with no diagonal bracing. The fencing material and any proposed staining or painting shall be subject to Planning Department review and approval prior to receipt of building permits. Solid fencing on the hillside slopes within the scenic easement area behind the home would be contrary to Design Guideline RH8 and prohibited in a disclosure to buyers of the property.
14. The landscaping, irrigation and fencing plans shall include:
 - a. Landscaping along the northeast side of the home to provide a visual buffer to the existing home and rear yard at 6 Kimberley Drive. This may include cleaning out and restoration of the rock lined drainage basin between the street and the catch basin on the northeast property line.
 - b. An automatic rain sensor on the irrigation system controller.
 - c. A 6-foot fence along the northeast property line between 6 and 8 Kimberley Drive.
 - d. The location of major drainage features, such as concrete V-ditches and vegetated drainage swales leading to catch basins. The landscaping plan must be consistent with the approved drainage plans.
 - e. Aesthetically pleasing, drought tolerant low trees, shrubs, and groundcovers in the northwest scenic easement areas and the planting pattern should not allow for the establishment of a "fire ladder" effect.
15. Measures shall be taken to avoid disturbance of soil within the drip line of the large existing pine tree located at the northwest rear corner of the Sowa's property at 6 Kimberley Drive.
16. Prior to review of the plans by the Planning Commission, the planning staff shall confirm that the 2-foot high retaining wall and proposed swimming pool are within the approved MOSO building cell.
17. The Applicant shall submit final drainage plans for review and approval to the Town Engineer prior to final review of the plans by the Planning Commission. The Town Engineer shall review the following items:

- a. The Town Engineer shall read and review the letter submitted by Frank and Beverly Sowa on July 25, 2011 at the DRB meeting and address all drainage issues.
 - b. The Town Engineer shall review the proposed removal of the lateral "V"-ditch that extends southwest from the primary "V"-ditch around the rear yard at 8 Kimberley Drive and advise whether the replacement drainage pipes and catch basins are an adequate replacement for the "V"-ditch.
 - c. The Town Engineer shall determine whether the proposed construction of the 2-foot high retaining wall at the northwest rear end of the pool will have any adverse impact upon the primary "V"-ditch between 6 and 8 Kimberley Drive.
 - d. In accordance with design guideline ID7, the site drainage and erosion control measures shall be consistent with Moraga Municipal Code Section 13.04.090, which lists the "Best Management Practices" (BMPs) dealing with storm water management and discharge control. The Town Engineer shall review the drainage plans for compliance with the BMPs.
18. Prior to the issuance of the building permit, the applicant shall submit a Storm Water Pollution Prevention Plan for review and approval by the Town Engineer.
19. Prior to the issuance of the building permit, the applicant shall furnish the Town with security for completion of the erosion control work as follows:
- a. The performance of the work described and delineated on the approved Grading Plan and SWPPP in an amount approved by the Town Engineer but not less than 100% of the approved estimated cost of performing said work. The form of the security may be corporate security bond, letter of credit or cash.
 - b. The performance of the work described and delineated in the Erosion Control Plan, in an amount to be determined by the Town Engineer but not less than 100% of the approved estimated cost of performing said work. The form of the security may be a combination of corporate surety bond, letter of credit or cash except that cash deposits will be required for all amounts up to \$10,000.
 - c. The security whether corporate surety bond or an instrument or instruments of credit, at applicant's option, shall be in a form approved by the Town Attorney.
20. Prior to the issuance of the building permit, a final drainage plan shall be submitted for review and approval by the Town Engineer. The applicant's geotechnical engineer wants the roof drains to be piped in a tight line to the storm drain system. The policies of the Regional Water Control Board require new roof drains to be routed through a biofilter, sand filter or plant box for ten feet prior to discharge into the site drainage system. These opposing requirements need to be resolved.
21. The subdrains shall be tested at the end of construction, with a report sent by the project geotechnical engineer confirming that any subdrains under Lot 1 (8 Kimberley Drive) are functional.
22. No dumping or stockpiling of soil or debris is permitted within the Open Space / Scenic Easement. Contractors on the project shall be advised of this condition. Any dumping

of soil or debris into the Open Space / Scenic Easement may be cause for a stop work order until the easement area is fully restored and any damage done to native vegetation mitigated with replacement native vegetation.

23. The two new exterior air conditioning units or heat pumps and the pool equipment shall not exceed a sound level of 55 dba measured 10-feet from the property line. If the sound level exceeds this level then low sound walls shall be installed to attenuate the sound below the 55 dba limit.
24. In accordance with design guideline ID6, any exterior lighting shall comply with the following requirements:
 - a. Outdoor lighting shall be related to the design of the home.
 - b. Outdoor light fixtures shall be designed and mounted so that the source of light has minimal impact off site.
 - c. Outdoor lighting shall be directed inward toward the property and may require additional screening to avoid spillage onto adjacent residential properties.
25. In accordance with design guideline ID8.1, the draining of all swimming pools shall be directed to the sanitary sewer system whenever feasible and be conducted in compliance with the permitting and standards established by Central Contra Costa Sanitary District. Overflow drains from swimming pools shall be directed to a landscape area or manufactured treatment system prior to connecting to the storm drain system, unless an automatic pool cover is installed to prevent overflow of the pool during rain storms. Best Management Practices (BMPs) shall be used to manage overflows.
26. It is recommended that the builder of the new home consider meeting the Build-It-Green requirements.

EXHIBIT I (2 pages)

The picture below was taken on 7-31-11.

This view is from north to south and shows that the cement v-ditch turns inward towards the 8 Kimberley property. It is not straight as incorrectly shown in Branagh's corrected plans.

The view at the left also shows that the cement v-ditch turns inward towards the 8 Kimberley property.



The above picture was taken on 7-31-11.

This is a view of the relocated cement v-ditch with added detention wall, the catch basin and the dirt swale with rip-rap. The dirt swale is in the foreground but you can't see the rip-rap because it is covered with weeds and dried grass.

This picture is looking south to north and the property line between our property and 8 Kimberley is approximately in the middle of the area between our thuyas/fence and the foundation of the cement v-ditch.

You can see how far our pine tree has spread over the 8 Kimberley property.





The above picture was taken on 7-31-11. The view is looking from our property towards 8 Kimberley (Lot 1). The new cement v-ditch on the right is on Lot 1 property. In the background you can just make out the cement v-ditch that protects the building pad. As you can see, our large pine tree extends over Lot 1, not only to the north of the tree as shown, but it also extends over the cement v-ditch where it forks on Lot 1, per the picture on the previous page.



The above picture was taken on 7-31-11 and shows the large crack, and some debris, in the detention wall near the catch basin on 8 Kimberley.

Received

EXHIBIT K

RMR Design Group

MAR 14 2003

Planners, Engineers, Landscape Architects

Santina & Thompson, Inc.

Robert M. Rourke, P.E., AICP

January 21, 2003

RECEIVED

JAN 23 2003

MORAGA PLANNING DEPT

Mr. Ron Hart
Contra Costa County
Lamorinda Building Inspection Office
3685 Mt. Diablo Blvd., Ste. 120
Lafayette, CA 94549

Re: "MULHOLLAND HILL, Kimberley Drive Site"
Permit #GS 305084 - Pad Grade Verification, Lots 2 - 4

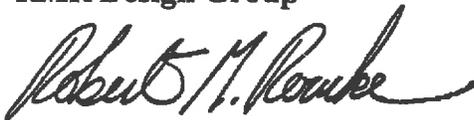
Dear Ron,

This letter is to state that on Tuesday, November 26, 2002, a survey crew representing RMR Design Group performed a field survey of the elevations of the graded pads for Lots 2 through 4 of the Mulholland Hill, Kimberley Drive project in the Town of Moraga.

The criteria used to evaluate the conformance of the pad elevations with the approved grading plans was that all pad shots should be within 0.1 feet of the approved plan grade. A minimum of five (5) shots were taken within the building portion of each pad. For the split level lots five (5) shots each were taken on each of the pads. On each lot, all of the shots taken were within the required range. No single shot varied from any other shot by more than 0.2 feet.

On Tuesday December 3, 2002 I also performed a field review of the completed rough grading. This field review indicated that the tops and toes of the graded slopes are generally located in conformance with the approved Grading Plans. Based on the results of the survey work described above, and my field observation, I have determined that the overall grading for the referenced lots has been completed in conformance with the approved Grading Plans. Should you have any questions or desire further clarification or information regarding this matter, please don't hesitate to call.

Sincerely,
RMR Design Group



Robert M. Rourke, P.E., AICP
President

cc: Bob Dunn, Town of Moraga; Rich Chamberlain, Town of Moraga; Joe Colonna, Primecore Funding; Chris Giacobbe, North Bay Construction

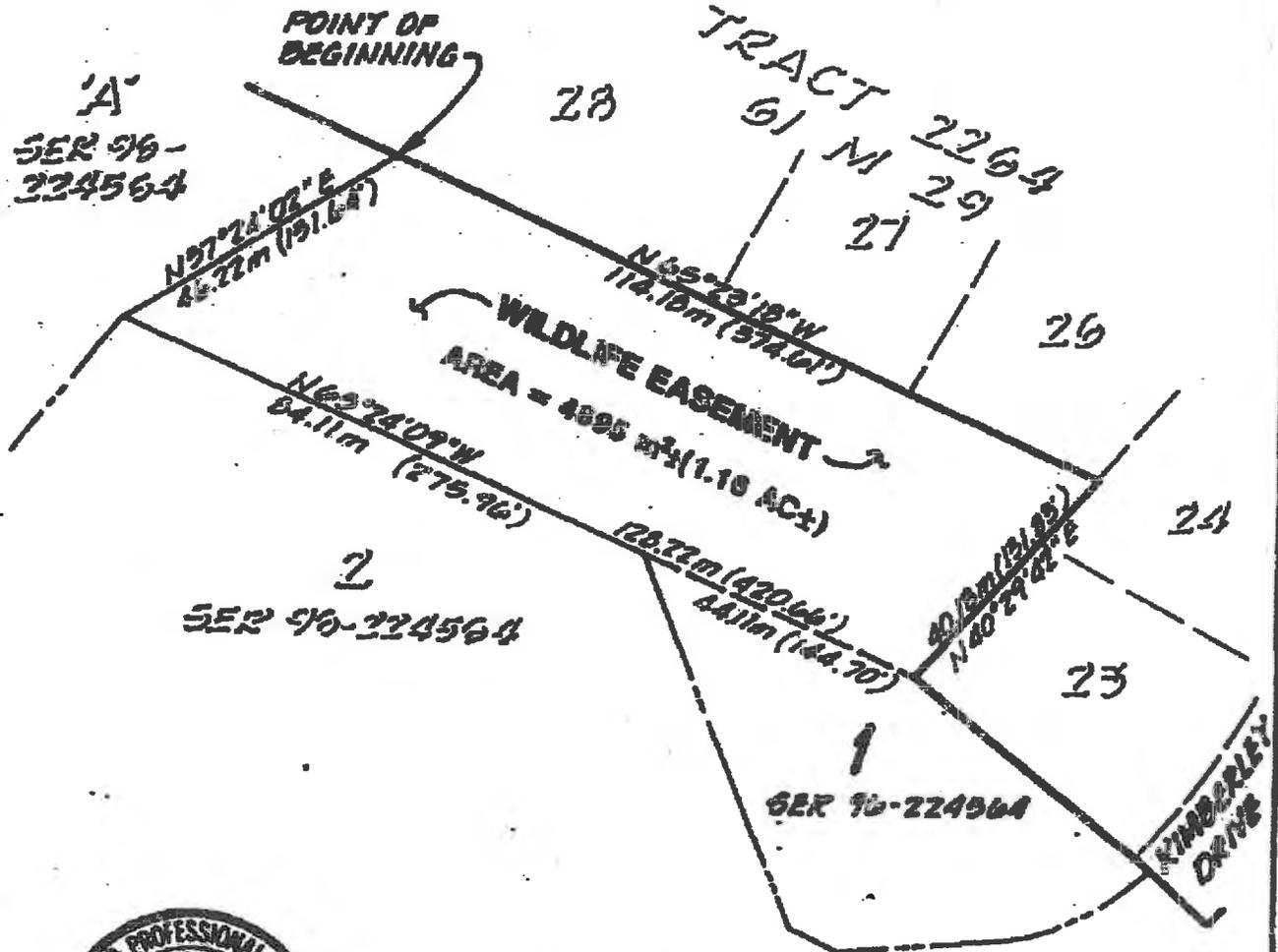
94015LTR.073.wpd

Form 1000-10/02, 10/02

0002 7 0 2003

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WILDLIFE EASEMENT KIMBERLEY DRIVE - LOT 1 TOWN OF MORAGA, CALIFORNIA			 AMR Design Group Planners, Engineers, Landscape Architects 1120 Sunset Avenue, Suite A Concord, CA 94520-2110 (925) 253-2110 Fax: (925) 253-2110
JULY 1999	SCALE 1:100	94015-20-0319	

263857

**"WILDLIFE EASEMENT"
KIMBERLEY DRIVE - LOT 1**

All that certain real property situated in the Town of Moraga, County of Contra Costa, State of California, described as follows:

A portion of Lot 1, as said lot is described in the grant deed filed December 2, 1996 in Recorder's Series No. 96-224564, Contra Costa County Records, more particularly described as follows:

Beginning at the most northerly corner of said Lot 1 (Ser. No. 96-224564), said point of beginning also being on the south boundary line of Lot 28, as said lot is shown on the map of Tract 2264, filed August 20, 1955, in Book 61 of Maps at Page 29, Contra Costa County Records; thence along the northeasterly boundary line of said Lot 1 (Ser. No. 96-224564), said boundary line common with Lots 26, 27 and 28 of said Tract 2264 (61 M 29), South $65^{\circ}23'18''$ East, 114.18 meters (374.61 feet) to the most easterly corner of said Lot 1; thence along the southeasterly boundary line of said Lot 1 (Ser. No. 96-224564), said boundary line common with Lots 23 and 24 of said Tract 2264 (61 M 29), South $40^{\circ}29'42''$ West, 40.18 meters (131.83 feet); thence leaving said southeasterly boundary line North $65^{\circ}24'09''$ West, 44.11 meters (144.70 feet) to an angle point on the southwesterly boundary line of said Lot 1 (Ser. No. 96-224564), said point also being on the northeasterly boundary line of Lot 2 of previously said grant deed (Ser. No. 96-224564); thence along the boundary line common to said Lot 1 and said Lot 2 North $65^{\circ}24'09''$ West, 84.11 meters (275.96 feet) to the most westerly corner of said Lot 1 (Ser. No. 96-224564), said point also being on the boundary line of Lot A of said grant deed (Ser. No. 96-224564); thence along the boundary line common to said Lot A and said Lot 1 (Ser. No. 96-224564) North $57^{\circ}24'02''$ East, 46.22 meters (151.64 feet) to the Point of Beginning.

Containing an area of 4 695 square meters (1.16 acres), more or less.

Bearings are based on the California Coordinate System Zone 3. Distances are grid. To obtain ground distances, multiply by 1.0001121.



94015LGT.066

July 19, 1999

*Copy To:
Planning Dept.*

From: Frank and Beverly Sowa
6 Kimberley Drive
Moraga, CA 94556
August 18, 2011

RECEIVED

AUG 18 2011

MORAGA PLANNING DEPT.

Ms. Jill Mercurio, P.E., Public Works
Director/Town Engineer
Mr. John Sherbert, Staff Engineer
Town of Moraga Public Works/
Engineering
2100 Donald Drive
Moraga, California 94556

- Re: (1) Enclosed are requested copies of two court documents.
(2) Important new information regarding the lateral cement v-ditch on 8 Kimberley (Lot 1), DRB 07-11, Owner: Branagh Development/Kimberly LLC.

Dear Ms. Mercurio and Mr. Sherbert:

ITEM 1:

Mr. Sherbert, in our previous conversation with you, you requested a copy of our court settlement agreement with Kimberly Oaks Maintenance Association (KOMA) because you said you thought it might be of help to you regarding some of the drainage issues related to the plans by Branagh Development for their proposed house on 8 Kimberley (Lot 1), DRB 07-11. Accordingly, enclosed are copies of our November 22, 2006 Settlement Agreement with KOMA and Judge David Flinn's August 17, 2009 Decision and Order Upon Motion to Enforce Settlement.

- (a) In our 11-22-06 Settlement Agreement, on page 5, lines 7-13, it defines the surface flow of some water that may still flow onto our property between the retaining wall on the south and the v-ditch on the west to the Sowa property line, etc., to the extent is acceptable to us and presumptively reasonable. This is the "surface flow of water" that Judge Flinn refers to in his 8-17-09 Decision and Order, etc., on page 2, lines 23-25.
- (b) On page 8, lines 2-14 in our 11-22-06 Settlement Agreement, Judge Flinn states that we, the plaintiffs, are retaining the rights that we have as property owners, that any property owner has that's below other property to claim torts such as negligence or nuisance or what have you for wrongdoing of the people up above but that would be based on the law and not upon the two paragraphs of the CC&Rs that were settled on 11-22-06; and trespass and anything else that any ordinary landowner would have.

If you or Ms. Mercurio have any questions regarding these two court documents, please don't hesitate to contact us.

ITEM 2:

IMPORTANT NEW INFORMATION REGARDING THE LATERAL CEMENT V-DITCH ON
8 KIMBERLEY (LOT 1).

In accordance with Condition 63 in Planning Commission (PC) Resolution 13-99, the lateral cement v-ditch on 8 Kimberley (Lot 1) was constructed to protect the "building foundation," and as such, we believe it should not be removed, per the following:

Condition 63 states, "A drainage system shall be installed to collect water from the slopes above the proposed home sites to ensure that surface drainage does not collect at the bottom of the slopes and adjacent to the building foundations. The drainage system shall also provide catch basins for roof downspouts and drains in the crawl space under the foundation to provide an outlet for water that may accumulate beneath the homes. The proposed drainage system is subject to review and approval by the Town Engineer."

Note the mandatory word "shall" in reference to installing a drainage system to ensure that surface drainage does not collect at the bottom of the slopes and adjacent to the "building foundations." It certainly appears that the lateral cement v-ditch installed part way around the perimeter of the building pad on 8 Kimberley (Lot 1) was intended to be a permanent installation to protect the "building foundation."

At the 7-25-11 Design Review Board (DRB) meeting, Mr. Alan Page/Branagh Development, said that lateral cement v-ditch on 8 Kimberley (Lot 1) "...had been put in for the development of the lots in order to protect the pads before they were built on." (See Mr. Page's statement on page 5, paragraph 2, in the 7-25-11 DRB minutes.) We believe that if the 6-7-99 Planning Commissioners had intended that any or all of the drainage system (cement v-ditches) was to be only temporary and was to be removed when the building pads were built on, the Planning Commissioners would have worded Condition 63 much differently.

Mr. Michael Metcalf, the current Vice Mayor, was one of the Planning Commissioners at the 6-7-99 PC meeting who approved the Conditions of Approval in PC Resolution 13-99. We suggest that you might contact him in order to determine the intent of the 6-7-99 Planning Commissioners regarding Condition 63 as to whether:

- (a) The lateral cement v-ditch installed on 8 Kimberley (Lot 1), and all the other cement v-ditches installed on other KOMA lots, is/are intended to be permanent installations to protect the present and future "building foundations" from surface drainage from the slopes above them, per Condition 63; or
- (b) The lateral cement v-ditch installed on 8 Kimberley (Lot 1), and all the other cement v-ditches installed on other KOMA lots, is/are intended to be temporary, and ultimately removable, installations and only had been put in for the development of the lots in order to protect the pads before they were built on, per Mr. Page.

Even tho in the prior PC Resolution 33-2007 Branagh Development was approved to remove that lateral cement v-ditch on 8 Kimberley (but it was not done under that PC Resolution), and even tho the current proposed house on 8 Kimberley will be built on a cement slab rather than on a traditional building foundation, in light of the mandatory wording in Condition 63 in PC Resolution 13-99, we believe that the lateral cement v-ditch on 8 Kimberley (Lot 1) is intended to be a permanent drainage protection for the building foundation of the proposed future house and that lateral cement v-ditch should not be removed.

If somehow it is decided that Branagh Development should be allowed/approved to remove that protective lateral cement v-ditch on 8 Kimberley (Lot 1) under their current application DRB 07-11, before that decision is made final we are hereby requesting that this important issue regarding the wording and intent of Condition 63 in PC Resolution 13-99 be referred to the Town Attorney, Ms. Michelle Kenyon, for Ms. Kenyon's legal decision whether the lateral cement v-ditch on 8 Kimberley (Lot 1) is intended to be a permanent installation and should not be removed, or if it is intended to be a temporary, removable installation. Thank you.

If this issue is referred to Ms. Kenyon, we are requesting that a copy of this 8-18-11 letter with our information regarding our understanding of the wording and intent of Condition 63 be sent to Ms. Kenyon for her information.

Ms. Mercurio and Mr. Sherbert, we would appreciate being notified regarding the outcome of this important issue regarding Condition 63 and the lateral cement v-ditch on 8 Kimberley. Thank you again.

Very truly yours,

Frank L. Sowa

Frank L. Sowa

Beverly K. Sowa

Beverly K. Sowa

Enclosures: (2)

cc: Mr. Michael Metcalf, Vice Mayor
(No enclosures)

Town of Moraga Planning Department ✓
(No enclosures)

July 30, 2011

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

Richard Chamberlin
Town of Moraga
329 Rheem Blvd, Suite 2
Moraga, CA 94556

Re: Lots at 6 and 8 Kimberly Drive

Ladies and Gentlemen:

With regard to the two proposed homes, I note that there are no story poles on either lot. If this is not a requirement it certainly should be. From drawings alone it is impossible for neighbors like us who are laymen to judge whether the proposed homes will unreasonably interfere with views or the overall character of the neighborhood.

I realize that there are already three quite large homes at the end of Kimberly. But I also remember that each of them, before being built, had installed story poles which was a great help to us in being able to visualize the buildings as finally constructed.

I urge you to require the builder/developer to install story poles before final approval is given to the proposed construction on these two lots.

Thank you,



Charles Cooper
4 Kimberly Drive
Moraga CA 94556
ccooper@rockcliff.com
(925) 899-9119

CC: Neighbors

From: Frank and Beverly Sowa
6 Kimberley Drive
Moraga, CA 94556
October 11, 2011

Town of Moraga Planning Commission
Planning Department
329 Rheem Blvd.
Moraga, California 94556

RECEIVED

OCT 11 2011

MORAGA PLANNING DEPT.

Re: 8 Kimberley Dr/DRB 07-11
Applicant/Owner: Branagh Development/
Kimberly LLC
10 Kimberley Dr/DRB 08-11
Applicant/Owner: Branagh Development/
Kimberly LLC

Dear Members of the Planning Commission:

Regarding the DRB 07-11 application for 8 Kimberley Drive (Lot 1), we have recently discovered that Conditions 55.; 3.b.; and 62. in Resolution 13-99 have been violated and each of these issues (Items 1., 4., and 5), and others, are addressed in the Items below.

As a result of these violations of the Conditions of Approval in Resolution 13-99, and evidence of gross negligence regarding these violations, we are urgently requesting that this application DRB 07-11 for 8 Kimberley (Lot 1) be withdrawn from the October 17, 2011 Planning Commission (PC) public hearing, and not be allowed to proceed with the PC approval process until all the issues are correctly resolved.

We would like it understood that we are not trying to stop this project, we are only trying to make sure everything is done correctly in order to avoid any future problems such as another disastrous flooding of our property from the Kimberly Oaks Maintenance Association (KOMA) property like the one we suffered in December, 2002 that had water coming onto our property from the KOMA property and which ultimately resulted in a protracted legal action against KOMA to resolve the issues.

ITEM 1: CONDITION 55. IN RESOLUTION 13-99 WAS VIOLATED, AS FOLLOWS:

On October 6, 2011 we spoke to Mr. John Sherbert, Staff Engineer, about our concerns regarding the new drainage system to be constructed and installed on 8 Kimberley (Lot 1). Because of the flooding of our property in December, 2002, and subsequent floodings of our property, we want to make certain that the drainage on 8 Kimberley will be more than adequate to protect our property in the event of heavy rains and rainstorms.

Mr. Sherbert said he could not give any guarantees, but he thought the plans were good regarding the drainage. We asked if he had a copy of the Geotechnical Report and he said he didn't have one but he said Rich (Mr. Chamberlain) probably has one. We don't know if Mr. Sherbert read or didn't read that report, but even if he did read it, as we found out from Mr. Chamberlain later that same day, that Geotechnical Report is actually an old Geotechnical Engineering Study done by Jensen-Van Lienden Associates (JVLA) in July-August, 2004 for the previous property owners (the Ongs and Center Wing Company), and when we reviewed it we found that it does not contain certain vital geotechnical design parameters as required in Condition 55. (and are mandatory in Condition 3.b.) in Resolution 13-99 for the property now under consideration at 8 Kimberley (Lot 1), DRB 07-11.

Condition 55. in Resolution 13-99 states, in part, "Following the completion of the grading operation and prior to the issuance of a building permit for each of the lots, the property owner shall submit a lot specific geotechnical report prepared by a licensed geotechnical engineer. The geotechnical reports for each lot will contain geotechnical design parameters for the foundation system, retaining walls, slabs on grade, control of on-site drainage, mitigation of adverse soil conditions, and any other relevant geotechnical issues."

The following includes what we found in the 2004 JVLA Geotechnical Engineering Study together with our observations and pertinent information on the issues:

- a. In the JVLA report they state, in part, "We have not reviewed plans for the residence...." (see page 1 in the report) and, as a result, in addition to the soil studies and some design parameters, they have provided some design parameters based on their anticipations of what might be needed. Since this is the only report from JVLA, we conclude that they also have not reviewed the plans for the current DRB 07-11 application for a proposed house, proposed drainage system, and proposed swimming pool for 8 Kimberley (Lot 1.)
- b. Since this DRB 07-11 application includes a newly designed drainage system (and the plans call for the removal of the currently existing protective lateral cement v-ditch which runs partway around the perimeter of the approved building pad at the west/north/northeast area of the building pad), and since JVLA has not reviewed the plans for this proposed new house and the new drainage system, we have no way of knowing if JVLA's design criteria regarding drainage have been correctly applied to the proposed new drainage system.

In addition, when JVLA walked the property on 8 Kimberley (Lot 1) in July-August, 2004, the major drainage protection for the building pad and future building foundation was (and still is) that protective lateral cement v-ditch that Branagh plans on removing. This is a very important issue and since the new drainage plan has not yet been reviewed and fully evaluated by a licensed geotechnical engineer that should be done in order to determine whether that lateral cement v-ditch should be removed or not. If it is to be removed, it certainly seems that changes would be needed in the geotechnical design parameters regarding the on-site drainage in order to compensate for the loss of that cement v-ditch.

That lateral cement v-ditch was installed in accordance with Condition 63. in Resolution 13-99 to protect the building pad and the future building foundation and we believe it was not the intent of the 6-7-99 PC members that it be removed (Mr. Michael Metcalf, Vice Mayor, was one of the 6-7-99 PC members). In our 8-18-11 letter to Ms. Jill Mercurio, P.E., Public Works Director/Mr. John Sherbert, Staff Engineer (no copies sent to PC members), we requested that this issue be referred to Ms. Michelle Kenyon, Town Attorney, for her legal decision, however, Mr. Sherbert informed us that was not done because Condition 63. just referred to a "drainage system" which they have in the new plans. With this letter, we are again requesting that this matter be referred to Ms. Kenyon for her legal decision as to whether it was the intent of the 6-7-99 PC members that the lateral cement v-ditch on 8 Kimberley (Lot 1) was meant to be a permanent installation, or if it was meant to be only temporary and to be removed at a later date. Thank you.

Also, since July-August, 2004 the cement v-ditch and dirt swale that runs along the east property line on 8 Kimberley(Lot 1) have had corrections made in October, 2007 in accordance with our legal action settlement with KOMA.

- c. The JVLA report does not include any design parameters for the foundation system for this newly designed proposed house on 8 Kimberley under this DRB 07-11 application.
- d. The JVLA report does not include any design parameters for a concrete slab-on-grade upon which a house could be built.
- e. Based on JVLA's anticipations of what the house would be like, the report only contains recommendations for a traditional house foundation with concrete piers and a slab-on-grade for a garage floor only (see pages 9-11 in the report).
- f. There are some design parameters for retaining walls (see page 11 in the report), however, we have no way of knowing if JVLA's design criteria have been correctly applied to the proposed retaining walls for this new DRB 07-11 application.
- g. There are no design parameters for any proposed swimming pool contained in the JVLA report.

The proposed swimming pool for 8 Kimberley (Lot 1) is partially on a hillside area that has a 20% to 25% slope, and because of that hillside location, we believe it is imperative that a licensed geotechnical engineer fully evaluate the plans for the swimming pool and the retaining wall in order to provide proper geotechnical design parameters for the construction/installation of the swimming pool and retaining wall. And per the next paragraph, an engineering geologist licensed in California should also be consulted.

In our Exhibit G with our 8-4-11 letter to Ms. Jill Mercurio, P.E./Mr. John Sherbert, copies of which were sent to the members of the PC, the letter from Berlogar Geotechnical Consultants states, in part, "In order to achieve long-term stability of the hillside areas, no future grading, retaining wall or swimming pool should be performed or constructed in the hillside areas without consulting a geotechnical engineer and engineering geologist licensed in California." See that exhibit letter for more information.

- h. Regarding excavation for a swimming pool on a hillside area, there is no information contained in the JVLA report from a licensed geotechnical engineer regarding the impact on loading of the slopes and potential seepage problems as is mandatory in accordance with Condition 62. in Resolution 13-99.

These are also a very important issues that need to be fully evaluated by a licensed geotechnical engineer and that information should be included in a current Geotechnical Report.

The northeast corner of the retaining wall for the swimming pool is about five feet from the cement v-ditch that carries water flow away from 10 and 12 Kimberley (Lots 2 and 3 respectively).

In addition, part of the area to be excavated is adjacent to the wildlife easement area on 8 Kimberley (Lot 1). See our Exhibit L with our 8-4-11 letter.

See pages 7-8 in our 8-4-11 letter for additional information regarding the swimming pool.

- i. In their report, JVLA states, "We recommend that our firm be retained to review building plans for the project in order to assess whether the design criteria presented in this report have been correctly incorporated into the project plans."

It is of the utmost importance that the building plans for 8 Kimberley (Lot 1), DRB 07-11, be reviewed and evaluated by a licensed geotechnical engineer and to have a current Geotechnical Report prepared by a licensed geotechnical engineer which will include all the mandatory geotechnical design parameters and needed information for the current proposed building plans for 8 Kimberley, DRB 07-11, as they are required in accordance with Conditions 55.; 3.b.; and 62. in Resolution 13-99. Until that is done, and until any needed corrections are made in the building plans, this DRB 07-11 application should not be allowed to proceed further in the PC approval process.

We believe that the Town of Moraga and the Planning Department were negligent in accepting that 2004 JVLA Geotechnical Engineering Study for the current DRB 07-11 application for 8 Kimberley Drive (Lot 1) because it does not contain all the geotechnical design parameters required in accordance with Condition 55. in Resolution 13-99, and as a result, Condition 55. was violated.

If there are any questions regarding this issue, or any other issues in this letter, we strongly request that these matters be referred to Ms. Michelle Kenyon, the Town Attorney, for her legal decisions.

ITEM 2: THERE IS EVIDENCE OF GROSS NEGLIGENCE BECAUSE OF FAILURE TO NOTIFY THE RETAINED LICENSED GEOTECHNICAL ENGINEERS. JVLA. OF MANDATORY GEOTECHNICAL DESIGN PARAMETER REQUIREMENTS.

Regarding the Conditions of Approval in Resolution 13-99, when the Town of Moraga (TM), the Planning Department (PD), and the PC included information in that Resolution 13-99 regarding required,

mandatory Geotechnical Reports to be prepared by licensed geotechnical engineers and those reports are to include certain required, mandatory geotechnical design parameters and geotechnical information, per the three Conditions below, why didn't some of those required, mandatory geotechnical design parameters and the geotechnical swimming pool information get incorporated into the 8-25-04 JVLA Geotechnical Engineering Study?

1. Condition 55. states, in part: "Following the completion of the grading operation and prior to the issuance of a building permit for each of the lots, the property owner shall submit a lot specific geotechnical report prepared by a licensed geotechnical engineer. The geotechnical reports for each lot will contain geotechnical design parameters for the foundation system, retaining walls, slabs on grade, control of on-site drainage, mitigation of adverse soil conditions, and any other relevant geotechnical issues."
2. Condition 3.b. states, in part: "Each lot owner shall be required to retain a licensed geotechnical engineer to prepare a detailed Geotechnical Report, which shall include but not limited to the following: geotechnical design parameters for the foundation system, retaining walls, slabs on grade, control of on-site drainage, mitigation of adverse soil conditions....The Geotechnical Report for each lot is subject to Peer Review by the Town's Consultant Geotechnical Engineer and shall be submitted in conjunction with the design review application."
3. Condition 62. states, in part: "Due to the hillside topography and MOSO Open Space zoning, grading for swimming pools and other accessory structures shall be reviewed and approved by the Design Review Board. Any excavation for a swimming pool on a hillside area shall be evaluated by a licensed geotechnical engineer for the impact on loading of the slopes and potential seepage problems."

A major part of the answer to the above question is that we believe that no person, department or entity notified JVLA regarding the fact there were certain required, mandatory geotechnical design parameter and geotechnical information issues, and, as a result, those geotechnical design parameters and information were not incorporated into JVLA's 2004 Geotechnical Engineering Study:

- o We have reviewed our records and we cannot find any written information that JVLA was notified in writing that certain geotechnical design parameters are mandatory.
- o We have reviewed the 8-25-04 Geotechnical Engineering Study done by JVLA and cannot find any reference to any mandatory geotechnical design parameters.
- o Because JVLA had not reviewed the plans for the residence, their report was written in a general manner with their recommendations covering issues such as Site Preparation and Grading, Retaining Walls, and even the geotechnical design parameters provided for the Foundation (traditional) were based on their anticipation of what the house would consist of.
- o Because JVLA had not reviewed the plans for the residence, we believe JVLA would have included information in their report that they were unable to provide information for, or include certain geotechnical design parameters about which they had been advised were mandatory. For example, there was no information in the 2004 JVLA report about a swimming pool, and since mandatory geotechnical information is required in Condition 62, if JVLA had been advised that information was mandatory and they couldn't provide it, we believe they would have made note of it in their report.
- o In JVLA's 6-21-07 update letter for the previous project at 8 Kimberley, DRB 08-07, they say, in part, "Based upon our review, it is our opinion that geotechnical related details shown on the reviewed drawings generally comply with the geotechnical engineering recommendations of our report for the project," (their 8-25-04 report), and again, there is no mention of any mandatory geotechnical design parameters, or their inability to provide them.

Based on the above information, we believe that JVLA was not notified that certain geotechnical design parameters and geotechnical information were mandatory for the project at 8 Kimberley (Lot 1).

The Conditions in Resolution 13-99 also apply to the projects at 10 Kimberley (Lot 2), and, as a result, we reviewed a report dated 8-31-07 from Cal Engineering & Geology (CE&G), (apparently the Town's geologic and geotechnical peer review consultant) to Mr. Chamberlain regarding the previous

Branagh project at 10 Kimberley, DRB 09-07. As a result of reviewing that report, we believe that no person, department or entity notified CE&G either that there are mandatory geotechnical design parameters and geotechnical information required for the project at 10 Kimberley (Lot 2).

- o CE&G reviewed JVLA's August, 2004 geotechnical report and in CE&G's 8-31-07 report there was no mention of any mandatory geotechnical design parameters or geotechnical information.
- o On page 3 in the CE&G report, they said the plans indicate a swimming pool, however, design parameters for the pool were not contained in the geotechnical report. CE&G went on to recommend "Because the pool excavation will be located near the base of the butress fill, we recommended that the project geotechnical engineer review the soil conditions in the vicinity of the proposed pool and provide site specific design parameters." If CE&G had been advised of the mandatory geotechnical information required for the swimming pool, per Condition 62, we believe they would have made note of that in their report.
- o In addition, because CE&G did not note any information about any mandatory geotechnical design parameters and geotechnical information mentioned in JVLA's report, we believe that JVLA was not advised either about any mandatory geotechnical design parameters and geotechnical information required for that DRB 09-07 project for 10 Kimberley (Lot 2).

Based on the above information, we believe that CE&G, was not advised about any mandatory geotechnical design parameters and geotechnical information for that project at 10 Kimberley, DRB 09-07.

Another part of the answer to the above question is that neither the TM, the PD, the PC, nor the TM Engineering Department followed thru to make sure that the required, mandatory design criteria were correctly incorporated into the project plans.

After we spoke to Mr. Sherbert on 10-6-11, we reviewed the 2004 JVLA Geotechnical Engineering Study and found out that the report does not contain certain mandatory geotechnical design parameters and geotechnical information as noted above in Item 1. that are required for the project at 8 Kimberley (Lot 1), DRB 07-11. Because those mandatory issues were missing from the report, we are wondering how the plans got approved by Mr. Sherbert.

As we said in Item 1., Mr. Sherbert had told us he did not have a copy of the Geotechnical Report and both of us thought that was unusual and we thought it would be a requirement that he should have a copy of JVLA's Geotechnical Report in order to verify that JVLA's design criteria were correctly incorporated into the project plans. Also, since Mr. Sherbert apparently did not notice that certain required, mandatory geotechnical design parameters and geotechnical information were missing, it appears that Mr. Sherbert either does not know about Resolution 13-99 or he has not familiarized himself with the Conditions contained in Resolution 13-99. In order for Mr. Sherbert to do his job as Staff Engineer responsibly and to the best of his ability, we believe it is of the utmost importance that Mr. Sherbert be fully conversant with any and all Resolutions that apply to any of the projects he is working on.

Does Mr. Sherbert work on his own with no one checking on his work, or does Ms. Mercurio look over his work and give her approval? We can't understand how this situation has developed into the situation it is unless no one was checking to make sure everything was being done properly and correctly.

It is our opinion that something has gone drastically wrong with the application process regarding applications for the proposed houses that are under Resolution 13-99. We urgently request that this entire situation be investigated to find out how changes can be made so these types of situations do not occur in the future to any future applicants. In order to make sure that these types of situations don't happen in the future, when there are any special circumstances and/or required, mandatory geotechnical design parameters and/or mandatory geotechnical information, or anything of that nature, a system must be put in place to make sure that all persons connected with the project are notified of any issues that are mandatory or of a special nature, and that includes, but is not limited to, TM engineers in the TM Engineering Department, property owner-retained geotechnical engineers, geologic engineers, the Town's peer review geologic and geotechnical engineers and any other persons, agencies or entities that have a connection to a particular application or project.

We do not believe that the very serious problems we have discovered as outlined in this letter are a case of the application for 8 Kimberley (Lot 1), DRB 07-11, falling through the cracks, but rather, we believe, are just the tip of the iceberg. We further believe that this situation regarding the property owner-retained licensed geotechnical engineers, and the Town's peer review geologic and geotechnical engineers, and possibly the TM Engineering Department not being notified regarding the required, mandatory geotechnical design parameters, etc., has occurred with all the applications that have gone through the approval process for all five of the KOMA lots in this five-lot development.

ITEM 3: THIS NEW APPLICATION DRB 07-11 HAS ALREADY BEEN APPROVED BY THE DRB ON 7-25-11, AND IS SCHEDULED FOR PC FINAL APPROVAL ON 10-17-11. HOWEVER, EVEN THO IT IS A NEW APPLICATION, THE BUILDING PLANS HAVE NOT YET BEEN REVIEWED AND EVALUATED BY A LICENSED GEOTECHNICAL ENGINEER. HOW COULD THAT HAPPEN?

DRB 07-11 is a new application for a newly designed house, a newly designed drainage system and a proposed swimming pool. This application has already been reviewed and approved by the 7-25-11 DRB and is scheduled for a PC public hearing for final approval on 10-17-11, however, even though it is a new application, it has not yet been reviewed and evaluated by a licensed geotechnical engineer in accordance with Condition 55 in Resolution 13-99. Nor has a lot specific Geotechnical Report been submitted for this application that reflects the current new proposed house, new proposed drainage system and the proposed swimming pool. No Peer Review could be done by the Town's Consultant Geotechnical Engineer because there is no current Geotechnical Report.

The only Geotechnical Report for this 8 Kimberley, DRB 07-11, project is JVLA's 8-25-04 Geotechnical Engineering Study which does not contain certain required, mandatory geotechnical design parameters and geotechnical information per Item 1. above. Also, as we have documented in Item 1., the JVLA report is not relevant to the current application which is completely new as far as the new proposed house, new proposed drainage system and the proposed swimming pool.

How in the world did this application get this far along in the approval process without having a current lot specific Geotechnical Report done which is applicable to, and reflects, the current new building plans for 8 Kimberley, DRB 07-11, and which should have been submitted to the DRB in conjunction with the design review application for the 7-25-11 DRB meeting?

On October 6, 2011 we asked Mr. Richard Chamberlain if a Geotechnical Report had been sent to the DRB for the 7-25-11 meeting and he said no report had been sent. Mr. Chamberlain said, "It wasn't necessary to send the Geotechnical Report to this DRB because a report had been sent to the prior DRB." He also tried to tell us something to the effect that it wouldn't make any difference anyway. We don't know what he meant by that. The DRB Mr. Chamberlain referred to was the prior 7-9-07 DRB meeting for a completely different application and since that time three new members have joined the DRB, per Ms. Kelly Suronen. Also, in 8-04 when JVLA prepared their report, JVLA hadn't even reviewed the plans for the residence.

We asked Mr. Chamberlain if that report was the 2004 Geotechnical Report done by Jensen (Jensen-Van Lienden Associates) and Mr. Chamberlain said "Yes". We asked Mr. Chamberlain if he would be sending a copy of the report to the PC and Mr. Chamberlain said "No." Because Mr. Chamberlain said they were using the 2004 JVLA report, we conclude that no current applicable Geotechnical Report has been done.

It appears that either the Talon Design Group or the Planning Department did not even send the current project plans for 8 Kimberley, DRB 07-11, and the 2004 JVLA Geotechnical Engineering Study to JVLA for review for a current update/approval letter for this new project at 8 Kimberley (Lot 1), DRB 07-11. If that had been done, it seems likely that Mr. Chamberlain would have submitted the JVLA plan approval information to the 7-25-11 DRB.

- a. There was limited discussion at the 7-25-11 DRB meeting regarding the proposed swimming pool for 8 Kimberley (Lot 1), and there is only one paragraph in the 7-25-11 DRB minutes that says, "Chair Sayles wanted to make sure that the retaining wall behind the pool was within the building cell. He emphasized the fact that design review was the first step toward the final review so the issues, which were mostly land use issues, would be addressed by the PC. They needed to look at the project as a whole and determine if it conformed to design review."
- b. The members of the DRB were not provided with any information regarding "Any excavation for a swimming pool on a hillside area shall be evaluated by a licensed geotechnical engineer for the impact on loading of the slopes and potential seepage problems."
- c. The DRB members did not review the proposed swimming pool in accordance with Condition 62.
- d. Cutting into the 20% to 25% hillside slope and constructing/installing a swimming pool with an approximately 3 feet high retaining wall will most certainly destroy the natural appearance of the hillside.

We believe it was negligent of the Planning Department to not provide the DRB members with the required information to enable them to review the proposed swimming pool, and, as a result, Condition 62. was violated.

ITEM 6: BECAUSE PART OF THE PROPOSED SWIMMING POOL IS TO BE CONSTRUCTED ON A 20% TO 25% SLOPE, A HILLSIDE DEVELOPMENT PERMIT WILL BE REQUIRED PER THE TOWN OF MORAGA MUNICIPAL CODE.

On pages 2-3 of the DRB 07-11 Design Aspects for 8 Kimberley Drive, it states, "The low retaining walls do not require a building permit and are therefore exempt from a hillside development permit." However, the Town of Moraga Municipal Code sections 8.136.020 and 8.136.040 state:

- a. " 'Hillside land' is land which has a slope of twenty (20) percent or greater."
- b. "Development Prohibited Without Permit. No person may grade, clear, construct upon or alter hillside land without approval granted under this chapter."
- c. In the Moraga Municipal Code we found no exemptions regarding situations when only part of a swimming pool is to be constructed on hillside land, therefore, since part of the proposed swimming pool will be constructed on a 20% to 25% hillside slope, it appears that a hillside development permit will be required.

Question: We could not find any exemption listed in the Moraga Municipal Code that states anything like "The low retaining walls do not require a building permit and are therefore exempt from a hillside development permit" per the information in our first paragraph in this Item 4. We would appreciate someone from either the Planning Commission or the Planning Department notifying us where we can find this exemption listed in the Moraga Municipal Code. Thank you.

ITEM 7: A GRADING PERMIT WILL BE REQUIRED IN ACCORDANCE WITH CONDITION 3.m. IN RESOLUTION 13-99.

Condition 3.m. in Resolution 13-99 states, "The grading necessary for construction of any proposed swimming pool, tennis or sports courts on the lots or for any additional grading exceeding 50 cubic yards shall require a grading permit from the Town, with peer review of the applicant's geotechnical report by the Town's Consultant Geotechnical Engineer." (Note the mandatory word "shall.")

- a. In reviewing the 7-25-11 DRB Recommendations for 8 Kimberley Drive we found that references to "grading" and "grading permits" have been omitted from several of the Conditions throughout the DRB Recommendations.

For one example:

1. In PC Resolution 33-2007 for the previous Branagh application, in Condition 21. it states, "Prior to the issuance of grading or building permits, the applicant shall furnish the Town with security for completion of grading and erosion control work as follows:"
 2. The wording regarding that same issue, which is now Condition 19 in the 7-25-11 DRB Recommendations, has now been changed to read, "Prior to the issuance of the building permit, the applicant shall furnish the Town with security for completion of the erosion control work as follows:"
- b. Since there will be grading necessary for the construction of the proposed swimming pool, a grading permit will be required per Condition 3.m. in Resolution 13-99.
- c. As a result, the wordings in several of the Conditions in the 7-25-11 DRB Recommendations for 8 Kimberley Drive will have to be revised to correctly reflect that new information regarding grading and grading permits.

ITEM 8: THE FENCING NEEDS TO BE RELOCATED IN ACCORDANCE WITH THE DESIGN REVIEW ASPECTS.

1. In the first paragraph on page 3 in the Design Aspects for 8 Kimberley Drive-DRB 07-11 it states, in part, "The revised catch basin and 'V'-ditch follows the property line, therefore the fencing and landscaping shown on the plans will need to be changed to conform to the actual on-site drainage improvements. The fencing cannot be located on the property line because the 'V' ditch is on the property line."
2. Mr. Chamberlain told us that the fencing has to be relocated to conform to the drainage improvements.
3. The underground portion of the foundation of the cement v-ditch with retaining wall extends closer to the property line than the part you visually see above the ground and installing a fence on the property line could cause damage to the cement v-ditch foundation and the subdrain.
4. A fence on the property line would severely restrict access to the cement v-ditch with retaining wall for any necessary maintenance, repairs and/or cleaning out.
5. A fence on the property line would effectively eliminate any possibility of ourselves or the owners of 8 Kimberley to have access to and maintain the outside of the fences.
6. The north end of the property line is underneath the drip line of our large pine tree which is protected under Condition 15. Installing a fence in that area would damage the tree roots.
7. The property at 7 Kimberley (Lot 5) has their solid wood fence on the inside (toward their house) of their cement v-ditch with retaining wall.

ITEM 9: PLANTS ARE INCORRECTLY LOCATED IN THE DIRT SWALE WITH RIP-RAP.

On the Planting Plan Sheet L-1, Branagh has again placed plants in the dirt swale with rip-rap drainage that drains into the catch basin on 8 Kimberley. That needs to be corrected because there cannot be any plants in that dirt swale with rip-rap drainage feature.

ITEM 10: NEEDED CORRECTIONS IN THE 7-25-11 DRB RECOMMENDATIONS FOR 8 KIMBERLEY DRIVE.

- 1. Condition 14.c.: Because the fence between 6 and 8 Kimberley Drive is to be relocated in accordance with the Design Aspects for 8 Kimberley Drive, this Condition should be corrected to reflect that change.
- 2. Condition 14.d.: The "dirt swale with rip-rap" is one of the major drainage features on 8 Kimberley (Lot 1) and this Condition should be corrected to add this drainage feature.

* * * * *

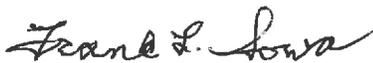
REGARDING 10 KIMBERLEY DRIVE. DRB 08-11.

Conditions 3.b. and 55. in Resolution 13-99 affect the project at 10 Kimberley (DRB 08-11) as well as the project at 8 Kimberley (DRB 07-11), and per the informaton contained in this letter regarding the violations of Conditions 3.b. and 55 for the 8 Kimberley project, we believe the same circumstances as described in Items 1 and 4 have occured with this project and we are requesting that the PC investigate the matter, and if it is found that the same violation circumstances apply to this 10 Kimberley (DRB 08-11) project, we are urgently requesting that this application be withdrawn from the October 17, 2011 PC public hearing and not be allowed to proceed with the PC approval process until all the issues can be correctly resolved. Thank you.

IN CLOSING:

Thank you very much for your time and attention to the serious issues we have brought to your attention in this letter and we are looking forward to getting everything correctly resolved.

Very truly yours,



Frank L. Sowa



Beverly K. Sowa

- cc: Ms. Karen Mendonca, Mayor
 Ms. Jill Keimach, Town Manager
 Ms. Shawna Brekke-Read, Planning Director
 Ms. Jill Mercurio, P.E., Public Works Director/Town Engineer
 Members of the Design Review Board

EXHIBIT C

**PLANNING COMMISSION
RESOLUTION NO. 13-99**

BEFORE THE TOWN OF MORAGA PLANNING COMMISSION

In the Matter of:)
An approval of a Mitigated Negative)
Declaration, Use Permit and Hillside)
Development Permit for the grading and)
improvement of five existing lots for the)
future construction of five custom homes)

Resolution No. 13 - 99
File No. UP 10-98
Adoption Date: June 7, 1999
Appeal Period Ends: June 17, 1999

WHEREAS, an application was filed by Oakbay, Inc., (Applicant/Owner) for approval of a Use Permit and Hillside Development Permit to allow grading and improvements to five existing lots (1.7, 1.5, 4.0, 4.0 and 3.0 acres) for the future construction of five custom homes located on the Mulholland Hill property with access from the end of Kimberley Drive; and

WHEREAS, an Initial Environmental Study was prepared for the project by Parsons Engineering Science, Inc. (Consultant), in accordance with the California Environmental Quality Act (CEQA), with a determination for a Mitigated Negative Declaration. The Initial Study was circulated for public comment as required by CEQA and CEQA Guidelines. The Town received four comments which the Consultant has provided response; and

WHEREAS, public hearing notices were mailed to all property owners within 300 feet of the property on March 23, 1999, and the notice was published in the March 22, 1999 edition of the Contra Costa Times; and

WHEREAS, on May 3, 1999 the Planning Commission held a public hearing and received testimony from the applicant, applicant's consultants and interested parties. After discussion, the Commission continued the item to the June 7, 1999 meeting in order for the applicant to submit additional information/material and staff to draft a resolution with findings and conditions of approval; and

WHEREAS, on June 7, 1999 the Planning Commission conducted a continued public hearing and received testimony from the applicant and interested parties and considered the draft resolution approving the Mitigated Negative Declaration, Use Permit and Hillside Development Permit for the grading and improvement of the five existing lots located at the end of Kimberley Drive; and

WHEREAS, the Planning Commission approved the Mitigated Negative Declaration for the subject project with a six yes vote and one abstention.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the Town of Moraga hereby approves the Mitigated Negative Declaration, Use Permit and Hillside Development Permit for the grading and improvement of the five existing lots, in order for the future construction of five custom homes, located at the end of Kimberley Drive, with the findings listed below in accordance with Sections 8-404 of the Municipal Code, and subject to the conditions listed herein:

PART I – MITIGATED NEGATIVE DECLARATION

The project has been studied under a Mitigated Negative Declaration. With the recommended mitigation measures imposed, and based on the evidence received, all potentially significant effects on the environment will be reduced to a point where clearly no significant effect would occur.

PART II – USE PERMIT (INCLUDING HILLSIDE DEVELOPMENT PERMIT)

FINDINGS: SPECIFIC FINDINGS NECESSARY FOR ALL CONDITIONAL USE PERMITS UNDER SECTION 8-404 OF THE MUNICIPAL CODE:

- (1) The proposed use is appropriate to the specific location;**
The existing five lots are located adjacent to a large 280+ acre undeveloped property at the end of a residential street. The proposed project is compatible with the existing residential development in the surrounding area. The soil instability and drainage impacting the existing lots will be mitigated as a result of the improvement of the existing lots.
- (2) The proposed use is not detrimental to the health, safety, and general welfare of the Town;**
Five additional homes within the existing residential neighborhood at the end of Kimberley Drive will not be detrimental to the health, safety, and general welfare of the Town provided that the mitigation measures, recommendations of the Town Engineer and Town's Geotechnical Consultant and conditions of approval are implemented.
- (3) The proposed use will not adversely affect the orderly development of property within the Town;**
The proposed project is located at the fringe of an existing residentially developed area of the Town. The large 280+ acre undeveloped property located adjacent to the five lots will be maintained as open space; therefore the project will have a negligible effect on development of this adjacent property.
- (4) The proposed use will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenue sources within the Town;**
The proposed grading and improvements for the future construction of five new homes are not expected to have any significant effect on property values or revenue sources within the Town.
- (5) The proposed use is consistent with the objectives, policies, general land uses and programs specified in the general plan and applicable specific plan;**
A Status Determination was made by the Planning Commission for the property and the proposed building sites are consistent with the requirements of the Moraga Open Space Ordinance (MOSO). The five existing lots are below the 800 foot elevation and are not on a minor ridgeline. The Status Determination has shown that each of the five lots has a minimum 10,000 sq.ft. building area with an average slope of less than 20% as required by the MOSO Guidelines adopted by the Town Council. Although the properties are potentially subject to landslide activity, the proposed grading is intended to remove or mitigate the threat of geotechnical hazards to the five lots. There is no specific plan for the Mulholland Hill area.
- (6) The proposed use will not create a nuisance or enforcement problem within the neighborhood;**

The proposed grading and improvements for the future construction of five new homes on five existing lots are located within an established residential neighborhood is not expected to create a nuisance or enforcement problem within the neighborhood. The proposed improvement of the five lots will improve the current drainage impacts to downstream property owners.

- (7) **The proposed use will not encourage marginal development within the neighborhood;**
The proposed grading and improvement for the future construction of five new homes will not encourage marginal development and should have no effect on the quality of future improvements to the Kimberley Drive and Scofield Drive residential neighborhood.
- (8) **The proposed use will not create a demand for public services within the Town beyond that of the ability of the Town to meet in the light of taxation and spending restraints imposed by law;**
The proposed grading and improvements for the future construction of five additional homes are not likely to create a significant demand for additional public services. The location of the project from the Moraga Police Department and the Moraga-Orinda Fire District stations is within a reasonable distance for emergency response time.
- (9) **The proposed use is consistent with the Town's approved funding priorities.**
The project has no impact on the Town's funding priorities.

CONDITIONS OF APPROVAL:

1. Prior to the issuance of a building permit for each of the five lots, the applicant shall pay a park dedication fee in accordance with Chapter 8-62 of the Town's Municipal Code.
2. Prior to the issuance of a building permit for each of the five lots, the applicant shall pay the Transportation and Traffic Impact Fees as set forth in Town Council Resolution No. 18-98
3. Prior to the sale of any lot or within one year of the effective date of the subject Use Permit, the applicant shall submit a Declaration of Deed Restrictions for the five lots in a form satisfactory to the Town Attorney. The Declaration shall be reviewed by the Planning Director and recorded with the title to each of the lots. A copy of the recorded Declaration of Deed Restrictions shall be filed with the Town of Moraga. The Declaration of Deed Restrictions shall include the following requirements and exhibits:
 - a. Recommendations and exhibits from the project Geotechnical Engineer's Grading Completion Report shall be included in the Deed Restrictions, as follows:
 - (1) Recommended structural setbacks from the bottom and top of slopes, which may exceed the minimum setback requirements stipulated in the Geotechnical Report.
 - (2) The maintenance responsibilities required of each lot owner should comply with the Stormwater Collection System Maintenance Plan, including periodic inspections and cleaning of both surface and subsurface drainage facilities to minimize future landslides and to assure that detention basins do not become overgrown with vegetation and/or clogged with sediment and debris. **(Mitigation Measure III.f. Page 3-8 Initial Study)**

- (3) An Exhibit showing the "as-built" location of any subdrains installed below the lots and all drainage inlets and outlets.
 - (4) Precautionary measures that shall be undertaken by lot owners when making any excavation on the lots to avoid accidental damage to any subdrains installed below the lots.
 - (5) An Exhibit showing the location of the landslide repairs made on the lots and on adjacent property above or below the lots.
- b. Each lot owner shall be required to retain a licensed geotechnical engineer to prepare a detailed Geotechnical Report, which shall include but not limited to the following: geotechnical design parameters for the foundation system, retaining walls, slabs on grade, control of on-site drainage, mitigation of adverse soil conditions. The recommendations of the lot specific geotechnical reports shall also comply with the setback requirements contained in the Geotechnical Report for the grading operation. The Geotechnical Report for each lot is subject to Peer Review by the Town's Consultant Geotechnical Engineer and shall be submitted in conjunction with the design review application. **(Mitigation Measure XIII.f. Pages 3-34 & 3-35 Initial Study)**
 - c. The 40 foot geotechnical setback requirements for Lots 4 and 5 recommended by the project Geotechnical Engineer in the Grading Completion Report shall apply to all buildings on the lots, including accessory buildings, such as pool cabanas and detached garages.
 - d. Each lot owner shall submit specific house plans for review and approval by the Planning Commission and Design Review Board of the Town of Moraga. The specific house plans shall be in compliance with the submittal requirements of the Town of Moraga. **(Mitigation Measure XIII.b. Pages 3-34 & 3-35 Initial Study)**
 - e. Landscape plans shall be submitted for review and approval by the Design Review Board of the Town of Moraga for each of the five lots, with an emphasis on mitigation of the visual impact to the surrounding neighborhood. **(Mitigation Measure XIII.b. Pages 3-35 Initial Study)**
 - f. Landscaping approved by the Town's Design Review Board to mitigate the view of a home, shall be maintained and replaced and continue the intent of the DRB approval, if necessary, by the respective lot owner.
 - g. Each lot owner shall maintain his/her lot in a non-hazardous condition with regard to weed overgrowth. Prior to occupancy, each residence shall be landscaped in accordance with the Moraga-Orinda Fire District Weed Abatement Program standards. **(Mitigation Measure IX.e. Pages 3-22 Initial Study)**
 - h. Existing trees on the lots shall be preserved. If a lot owner wants to remove any native tree over 6 inches in trunk diameter measured 3 feet above grade, then an arborist's report shall be submitted to the Town to justify the removal in accordance with the criteria listed in the Moraga Tree Ordinance.

- i. Each lot owner shall maintain his/her lot in a non-hazardous condition with regard to drainage. Collected storm drainage originating on each lot from roof downspouts and paved areas shall not be discharged across sidewalks or out of driveways. The discharge of chlorinated water from swimming pools and spas into storm drains or creek channels is prohibited.
- j. Materials such as gasoline, oil, sand, paint, pesticide residues, or other toxic substances are prohibited from being introduced into the storm drain system or the CCCSD sewer system. The water from swimming pools and spas shall be filtered in accordance with CCCSD requirements prior to discharge in the sewer system.
- k. The use of sanitary sewer easement surfaces shall be limited to paving, shrubbery, gardens and other landscaping, excluding trees. Parallel surface drainage ways and permanent structures including, but not limited to, buildings, swimming pools, decks, and retaining walls are not permitted within the easement area.
- l. Each lot owner shall be responsible for operation and maintenance of any side-sewers, as defined by CCCSD, if such were installed in-lieu of a sewer main within a sanitary sewer easement.
- m. The grading necessary for construction of any proposed swimming pool, tennis or sports courts on the lots or for any additional grading exceeding 50 cubic yards shall require a grading permit from the Town, with peer review of the applicant's geotechnical report by the Town's Consultant Geotechnical Engineer.
- n. Exterior lighting proposed for any future tennis or sports courts on the lots shall require a review and approval by the Design Review Board.
- o. Lighting in general shall be compatible in type, style, and intensity to the surrounding elements and not cause undue or aggravating disruption, glare, or brightness. Only directional lighting shall be used for street lighting and outdoor security lighting, subject to approval by the Town of Moraga Design Review Board. **(Mitigation Measure XIII.c. Page 3-35 Initial Study)**
- p. Radio antennas, television antennas, satellite receivers, solar panels and windmills shall not be located where they would be visually prominent from off site. Any such equipment shall be installed in compliance with the Town's ordinances or regulations.
- q. Owners of lots 1 through 5 shall be responsible for the common maintenance of the drainage facilities and shall maintain the facilities according to the following maintenance schedule:
 - 1) The private drive must be swept a minimum of two times per year and whenever dirt and debris is on the private drive or determined by the Town's Public Works Department. One private drive sweeping shall be done in late September.
 - 2) All catch basins and storm drain pipes shall be cleaned two times per year including once in September.

- 3) The surface siltation basin and riser and the underground detention basin shall be cleaned in late September of each year, and whenever 18 inches of silt has built up. This condition will be apparent whenever less than two feet of the riser is exposed in the surface siltation basin.
- 4) All V-ditches shall be cleaned in late September of each year.
- 5) For the first five years after construction, cleaning shall occur whenever debris is present on the private drive or in catch basin sumps. Kimberley Drive must also be cleaned whenever debris resulting from this project is deposited onto it.
- 6) All erosion control facilities as shown on the approved plan shall be in place each year by October 15 until all improvements are completed and a heavy growth of grass is established on all slopes. Erosion control facilities shall be maintained after every storm and as needed in between storms and replaced whenever necessary. A minimum of 4,000 pounds per acre of straw mulch must be placed on all slopes where grass is not firmly established each year before October 1.

The owners of the property located along Kimberley Drive and Scofield Drive to Rheem Boulevard which are (or can be) impacted by any drainage facilities installed on the project site are third party beneficiaries of this covenant and are entitled to enforce this restriction.

The Town of Moraga is also a third party beneficiary to the covenant. The Town of Moraga shall have the right but not the obligation to inspect the property to assure compliance with those conditions. If in the opinion of the Town Engineer, failure to perform on this covenant results in an adverse impact to public health, welfare, and safety, the Town may but is not obligated to perform such remedial measures necessary to mitigate said impacts. Costs for such mitigation shall be borne by the property owners. If after the request for reimbursement, the owners of lots 1 through 5 fail to reimburse the Town, any such costs shall be imposed as a lien or special assessment on the delinquent property owners.

4. Prior to the sale of any of lots 1 through 5 or prior to the issuance of a building permit, whichever comes first, inclusive:
 - a. The Owner shall file for recordation, in the office of the Contra Costa County Recorder, a Declaration of Restrictions, that will accomplish the following:
 - 1) The Declaration shall be binding upon each of the owners of lots 1 through 5 and their successors in interest.
 - 2) The Declaration shall establish a mechanism for placing assessments against the owners of lots 1 through 5 for the purpose of financing the stabilization, maintenance, repair, and replacement of various common facilities serving those lots including: drainage facilities; utilities; access road. The assessments will be apportioned in an equitable manner, based on the Owner's reasonable estimate of the respective usages of the various facilities by the lot owners.

- 3) The assessments will be made, work will be contracted for, and funds will be disbursed by such person ("Agent") as may be designated, from time to time, by a majority in interest of the lot owners. The Owner will act as the Agent so long as it owns at least two of the lots.
 - 4) Any assessment not paid when due shall become a lien against the lot of the nonpaying owner, which may be foreclosed by the Agent in the same manner as provided by law for judicial foreclosure of a mortgage lien.
 - 5) The Declaration shall provide that, in the event that any drainage facility serving the lots is not being maintained in a reasonable condition, as determined by the Town Engineer of the Town of Moraga, then, after not less than 30 days written notice to the lot owners (or, in the case of an emergency, without notice) the property owners of lots 1, 2, 3, 4 and 5 and adjacent impacted parcels on Kimberley Drive may cause such maintenance to be performed and may impose a lien on lots 1 through 5 to enforce repayment to the property owners of the maintenance costs.
 - 6) The Declaration may be amended at any time by the unanimous written consent of all of the lot owners provided that such amendments shall not take effect without the written consent of the Town of Moraga.
 - 7) The terms of the Declaration shall be subject to the approval of the Town Attorney and California Real Estate Commissioner.
 - 8) The Applicant shall attempt to obtain an easement from the owner of Lot 6 to the owners of lots 1 through 5, or to so many of the lots as need to be benefited thereby, over that portion of lot 6 on which any drainage facilities will be constructed for the benefit of any of lots 1 through 5. Such easement shall be for the purpose of access for maintenance, repair, and replacement of said drainage facilities and any geotechnical hazards..
5. Storm water detention and drainage facilities contained in the detention study and plans prepared by the RMR Design Group (July, 1997) are approved in concept only. Final plans are subject to more detailed review and approval by the Town Engineer prior to the issuance of a grading permit. **(Mitigation Measures IV a. , b. & d. Pages 3-11 & 3-12 Initial Study)**
 6. Prior to the issuance of a grading permit, the following shall be reviewed and approved by the Town Engineer:
 - a. The Applicant shall submit a design for a detention basin system, which would ensure that there will be no increase in the historic peak flows or peak velocities in down stream channels or pipes during the 2, 5, 10 and 100 year storms. The design shall include storm hydrographs for the historic and developed flows for each storm frequency along with detention basin routing calculations. Downstream runoff shall be decreased from historic peak flows wherever possible.
 - b. The Applicant shall submit mitigation of the effects of increased duration of peak flows on downstream facilities. For example, if water from the detention basin is routed through an existing pipe to the Scofield Drive tributary of Laguna Creek, then the capacity and condition of the pipe shall be evaluated and the outfall structure at the end of the pipe inspected and upgraded if necessary.

- c. The Applicant shall submit a Storm Water Pollution Prevention Plan (SWPPP) incorporating selected Best Management Practices (BMPs) as outlined in Moraga's Storm Water Management Plan (SWMP). An Erosion Control Plan shall be required as one of the selected BMPS. The erosion control facilities shall conform with those outlined in the California Storm Water Best Management Practice Handbook and the ABAG Manual of Standards for Erosion and Sediment Control Measures. **(Mitigation Measure IVc. Page 3-11 Initial Study)**
 - d. The applicant shall submit plans for catch basins which include a one foot sump as shown on the Modified Catch Basin Details.
 - e. The applicant shall submit plans for the creek bank stabilization behind the residence at 5 Kimberley Drive.
 - f. The applicant shall submit plans for trenching for utilities. All new utility distribution facilities including electric, telephone and cable television systems shall be installed underground from point of connection at the end of Kimberley Drive to and through the new project.
7. The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board according to NPDES requirements. **(Mitigation Measure IVc. Page 3-11 Initial Study)**
 8. Since construction vehicles will be using Kimberley Drive for access, the existing paving which is in only fair condition will significantly deteriorate. Kimberley Drive shall be edge ground and overlaid with 2" of AC after all utility and street infrastructure has been completed. The cost of which shall be borne by the applicant and set aside on sale of the first lot.
 9. All work to be undertaken within the right-of-way of Kimberley Drive and Scofield Drive is to be shown on the construction plans (i.e. storm drain, joint utility trench, curb and gutter improvements, etc.). Prior to undertaking any work within the public right-of-way, an encroachment permit shall be obtained from the Town.
 10. All of the storm drain system including pipes, structures and detention structures are to be private, and will remain in the ownership of the developer until such time as the obligation is transferred to the new property owners.
 11. Prior to the issuance of a building permit, the Moraga-Orinda Fire Protection District shall review and approve the plans. The following requirements shall be met:
 - a. A new fire hydrant shall be located at the intersection of the driveway for lot 4 and the private drive. The hydrant shall be installed prior to combustible construction.
 - b. All five new houses shall be required to have minimum fire retardant roof coverings of Class "B" roofing assemble rating.
 - c. Prior to construction, a map with street address numbers shall be provided to the Fire District.
 - d. In compliance with the Weed Abatement Program, each parcel shall be cleared of deadwood, debris and brush to the satisfaction of the Fire Marshall. **(Mitigation XI.a. Page 3-27 Initial Study)**
 12. Prior to the sale of the first lot or issuance of a building permit, whichever occurs first, the following easements shall be recorded on the lots after review by the Town Engineer and Planning Director:

- a. Non-exclusive access easements as necessary where the private road serving one lot crosses over the property line of one or more of the other lots.
 - b. Non-exclusive public access easement from the end of the Kimberley Drive public right-of-way to approximately the intersection of the driveway for Lot 4, in order to serve as a public turn around area.
 - c. Drainage easements to include the detention basin and any drain pipes or ditches that convey water from one lot across any other lot.
 - d. A 10 foot minimum width exclusive public sewer easement shall be established over the alignment of any sanitary sewer main not located within a public road to provide access for future maintenance. In-lieu of an easement, the applicant may make connections to some lots with a "side sewer", as defined by CCCSD, in which case the applicant is responsible for the installation and the future property owners shall be responsible for operation and maintenance of the side-sewer.
 - e. Public Utility easements as necessary to meet the requirements of EBMUD, PG. & E., Pacific Bell, and Cablevision.
13. Prior to the sale of the first lot or an issuance of a building permit, whichever occurs first, an open space/scenic easement shall be recorded on each lot to cover all areas of the lot except for the approved building envelope (ATTACHMENT 1) and the private road/drive. The Applicant shall execute an instrument satisfactory to the Town Attorney granting the open space/scenic easement to the Town in conformance with state law. The open space/scenic easement shall prohibit construction of structures or improvements except for landscaping and fencing. The open space/scenic easement document, including the map showing the location and description of boundaries, shall be subject to approval by the Town Council. Proof of recordation shall be submitted to the Town.
14. The Applicant shall comply with the requirements of the Central Contra Costa County Sanitary District (CCCSD) for sanitary sewer connections. These requirements include but are not limited to the following:
- a. Prior to the issuance of a grading permit or working on the existing public sewer the applicant must contact the District.
 - b. The District requires gravity sewers in preference to pumped systems and locations in the public right-of-way.
 - c. The proposed sewers shall be designed to operate under gravity flow.
 - d. The applicant must extend a minimum 8 inch public sewer to serve each lot.
 - e. An exclusive public sewer easement must be established over the alignment of each public sewer in an off-street or private street location to provide access for future maintenance.
 - f. Toxic substances such as gasoline, oil, paint, and pesticide residue are prohibited from being introduced into the District sewer system.
 - g. The Applicant shall submit construction plans involving work on the public sewer for review and approval by the District, prior to applying for a building permit.
 - h. The Applicant shall pay Facilities Capacity Fees to the District at the time of connection to the sewer system.
 - i. The requirements listed in the District "Hillside and Creek Area Sewer Policy" shall be followed when construction plans are prepared.
 - j. The Applicant shall be responsible for the installation and operation and maintenance of the side sewers.

15. To reduce hazards from underground utility line breakage, flexible conduits and piping shall be utilized in fill areas where settlement or earthquake movements could cause a break in service lines, subject to approval by the Town Engineer.
16. To reduce earthquake hazards, manual shut-off valves for gas and water lines shall be installed for each lot.
17. If any relocation of Pacific Gas and Electric facilities becomes necessary, such relocation shall be done at the Applicant's expense.
18. The Applicant shall comply with requirements of Pacific Bell for underground installation of telephone service as follows:
 - a. The Applicant shall be responsible for furnishing and installing conduit if Pacific Bell requires it for the service connection wire or cable.
 - b. The Applicant shall provide and pay the cost of the underground supporting structure (usually a trench) for the buried wire or cable to be used for the service connections.
19. Prior to the issuance of a grading permit, the Applicant shall obtain a Streambed Alteration Agreement with the California Department of Fish and Game for alteration of drainage onsite. **(Mitigation VII. d. Page 3-21 Initial Study)**
20. To address the potential for the "special status" plant species *Blepharizonia plumosa ssp. plumosa* and *Madia radiata* to be present on the project site, a botanical survey(s) of the site shall be conducted prior to the issuance of a grading permit. If the plants are found on the site, the California Department of Fish and Game requires protection of intact habitat and restoration of degraded habitat. Those portions of the project with extant populations of the species shall be identified and protected in perpetuity. If it is not feasible to avoid impacts to special status species, an alternative site where the species is known to occur will have to be protected in perpetuity by placement of a conservation easement or by fee title. Prior to the issuance of a grading permit, the mitigation plans shall be approved by the California Department of Fish and Game and U.S. Fish and Wildlife Service. **(Mitigation Measure VII.a. Page 3-16 Initial Study)**
21. Prior to the issuance of a grading permit, a site survey for the Alameda Whipsnake shall be conducted following California Department of Fish and Game (CDFG) protocols, or the Applicant may pursue an alternative mitigation program, which shall include habitat preservation and/or enhancement approved by CDFG and the U.S. Fish and Wildlife Service. If the Alameda Whipsnake is found onsite, mitigation will be implemented. Standard mitigation requirements for Alameda Whipsnake impacts include setting aside in perpetuity five acres of habitat for every acre of coastal scrub or chaparral habitat impacted. A 1:1 mitigation requirement is applied to all grassland and oak woodland between 100 and 500 feet from coastal scrub or chaparral. A combination of on-site and off-site mitigation may be possible subject to approval by CDFG. **(Mitigation Measure VII.a. Page 3-17 Initial Study)**
22. Prior to the issuance of a building permit, each lot owner (lots 1 through 5) shall submit specific house plans (including fencing plan) for review and approval by the Planning Commission and Design Review Board. In considering the home designs on Lots 1 through 5, the Planning Commission and Design Review Board shall attempt to minimize the visual impact of the homes on the existing adjacent residences, including the incorporation of architectural features and the configuration of the footprint to reduce massiveness, as well as appropriate landscape screening. The Planning Commission and Design Review Board may increase minimum and

decrease maximum site development standards in order to address massiveness and provide an appropriate transition from existing residences to the project homes. Since lots 1 and 5 are immediately contiguous to existing residences, the following are the minimum and maximum site development standards for lots 1 and 5:

a. LOT 1.

Front Yard Setback: 25 feet (minimum)
Side Yard Setback: 20 feet north side (minimum)
25 feet south side (minimum)
Rear Yard Setback: Building Envelope limit
Building Height: 19 feet, Single-Story (maximum)

b. LOT 5

Front Yard Setback: 25 feet (minimum)
Side Yard Setback: 30 feet north side (minimum)
25 feet south side (minimum)
Rear Yard Setback: Building Envelope limit
Building Height: 19 feet, Single-Story (maximum)

23. The location of mailboxes for all five lots shall meet the standards of the United States Postal Service.

24. Retaining walls shall blend with the natural terrain, avoid an artificial appearance and not be a significant visual feature on the lots. Retaining walls shall be screened by landscaping and shall not exceed human scale. **(Mitigation Measure XIII.b. Pages 3-34 & 3-35 Initial Study)** Retaining walls shall be limited to a maximum height of five (5) feet. Stacked retaining walls, with a total height over 8 feet, shall not be used to develop the building sites unless they are under a home or part of the foundation and concealed from view off-site. Retaining walls in excess of three feet and visible from off-site and retaining walls in excess of five feet are subject to review and approval by the Design Review Board.

25. The geologic and geotechnical hazards (ATTACHMENT II) identified in the geotechnical report for the project shall be repaired in conformance with the recommendations of the project geotechnical engineer and the approved grading plan. Repair of geotechnical hazard areas shall not adversely affect properties adjacent to the project site. The landslide mitigation measures shall be subject to Peer Review by the Town's Consultant Geotechnical Engineer. The following landslide mitigation measures shall be implemented:

a. Landslide 1 is centered on Lot 2 and extends laterally into adjacent portions of Lots 1 and 3. The lower portion (toe) of the landslide will be completely removed and replaced with engineered and subdrained fill. This engineered fill will form a 30 to 40-foot wide bench (catchment area) uphill of the three building sites and will buttress the landside against further downhill movement. The upper portion of the landslide will not be regraded but will be provided with subdrains to inhibit landsliding by collecting excess water. However, the upper portion of Landslide 1 will remain susceptible to future movement and erosion and some maintenance of the bench will be required. Such maintenance would consist of clearing of earth debris that accumulates in the catchment area interceptor ditches.

b. Landslide 2 is located on Lot 4 and encompasses the southern half of the planned building area. The entire landslide will be removed and replaced with engineered and subdrained fill. The planned home site is located on this engineered fill and cut. The landslide area

would be regraded and an interceptor ditch will be constructed halfway up the slope to collect runoff.

- c. Landslides 3 and 4 lie on the hillside across the drainage course from Lots 4 and 5. Complete removal and buttressing with engineered fill is the preferred approach from a geotechnical standpoint. However, this earthwork would entail unacceptable environmental impacts due to the disruption caused by removal of vegetation, earthmoving and construction. Landslides 3 and 4 will be left in place and separated from the building areas by a 40-foot wide setback zone that includes the creek bed. In addition, the building pads will be 10 to 30 feet higher than the toes of the landslides in the creek bed. Based on elevation difference and distance from the planned improvements, this separation has been sized by the project geotechnical engineer to prevent impacts to the building areas by providing sufficient catchment area for future slide movement and to provide access for remedial measures that may be needed in the future. Landslides 3 and 4 will remain susceptible to future movement and some maintenance is likely to be required within the setback zone. Such maintenance would consist of clearing of earth debris that accumulates in the creek bed.
 - d. The undesignated landslide located east of the end of the driveway to Lot 3, on the south side of the drainage course shall be mitigated by removal of most of the landslide, placement of subdrains and reconstructed with select engineered fill derived from a sandstone cut area. **(Mitigation Measure III.c. & e. Page 3-5 Initial Study)**
26. Prior to the issuance of a grading permit, erosion control measures shall be implemented for all areas impacted by the installation of the subdrain system. These measures shall be designated to minimize the amount of sediment reaching the detention basin. The erosion control measures are subject to review and approval by the Town Engineer and the Town's Consultant Geotechnical Engineer. **(Mitigation Measure III.f. Page 3-8 Initial Study)**
 27. Grading shall be limited to the potentially developable areas (cells) as determined by status determination and shown on the preliminary project plans. However, grading shall be permitted on slopes steeper than 20% for the repair of the geotechnical hazards identified in the geotechnical report; for grading the access road to the lots; underground utilities; drainage improvements and any emergency access road required by the Moraga-Orinda Fire Protection District.
 28. During project construction and grading operations, the hours of operation shall be limited to the hours from 8 a.m. to 5 p.m. Monday through Friday to minimize potential disturbance of adjacent residents. **(Mitigation X.a. Pages 3-24 and 3-26 Initial Study)** No construction shall occur on weekends or holidays unless an emergency situation develops, such as the potential collapse of a cut slope within a landslide. In an emergency situation, the Planning Director may authorize extended work hours on weekdays or on weekends until the situation is no longer deemed an emergency.
 29. All construction and grading equipment shall be equipped with manufacturer's standard noise control devices (i.e., mufflers, lagging, and/or engine enclosures). Equipment and trucks used for project construction shall utilize the best available noise control techniques (improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds to maintain the construction equipment noise limits used on General Services Administration projects. Newer equipment shall be used whenever possible. All construction equipment should be inspected at periodic intervals to ensure proper

maintenance and hence, lower noise levels. **(Mitigation Measure X.a. Page 3-24 & 3-26 Initial Study)**

30. Equipment used for project construction shall have hydraulically or electrically powered impact tools (e.g., jack hammers, pavement breakers, and rock drills) whenever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatically powered tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used. This muffler can lower noise levels from the exhaust up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, thereby achieving a further reduction of 5 dBA. Quieter procedures shall be used such as drilling rather than impact equipment, whenever feasible. **(Mitigation Measure X.b. Page 3-26 & 3-27 Initial Study)**
31. Stationary noise sources shall be located as far from any existing on and off site sensitive receptors as possible. If they must be located near existing receptors, they shall be adequately muffled, and enclosed within temporary sheds. **(Mitigation Measure X.b. Page 3-26 & 3-27 Initial Study)**
32. Temporary noise barriers shall be used to provide shielding when construction activities are within 100 feet of residential land uses, and are expected to continue for more than seven days in a specific area. Barriers would also be necessary in areas where the background noise is relatively low and construction activities are expected to continue for more than three days in a specific area. Noise barriers can be made of ¾ inch plywood, natural or temporary earthberms, or stockpiles of construction material. Such noise barriers shall be safely secured on site. **(Mitigation Measure X.b. Page 3-26 & 3-27 Initial Study)**
33. Weather permitting, grading operations shall occur between April 15 and October 15, in order to avoid seasonal rainfall. An erosion control plan shall be submitted to the Town Engineer for review and approval prior to September 1. All erosion control measures shall be installed and deemed operational by the project engineer, the Contra Costa County Grading Inspector and Town Engineer prior to October 1. Erosion control measures shall be designed for long term maintenance in order to provide protection during the build out of the project.
34. If grading continues beyond October 1, a cash bond or Certificate of Deposit for \$10,000 shall be provided to the Town guaranteeing maintenance of the erosion control measures and to provide assurance to the Town for payment of any fines imposed by the Regional Water Quality Control Board due to the applicant's failure to control erosion on the site. Grading operations that occur after October 1 shall not disturb the erosion control measures.
35. The Town of Moraga shall be authorized to draw against the cash bond or Certificate of Deposit for erosion control and to take appropriate action as may be required to protect off-site properties or water quality under the following circumstances:
 - a. The applicant has failed to install or maintain the erosion control measures in accordance with the approved plan.
 - b. The installation or correction of erosion control measures is not proceeding in accordance with the approved time schedule.
 - c. The Town Engineer finds that an emergency situation exists or is threatened whereby damage to off-site properties or water quality may result due to the discharge of soils, earthen material or debris.
36. The Applicant and its contractors shall be responsible to prevent erosion of soil on their property. If inspection by the Town shows evidence that sediments have been carried off-site, then the

Applicant and its contractor shall be held responsible for the immediate cleanup of the deposits attributed to its project and correction of the cause of the off-site sediment deposition.

37. The Applicant shall provide phone numbers for its grading contractor and other responsible individuals so that the Town can contact these people at any time during the day or night in the event that emergency repairs to the erosion control measures are needed.
38. Erosion is expected to continue from the natural drainage channel on Lot 3, but this erosion shall be mitigated by a siltation basin to be constructed on Lot 3. A stormwater collection system maintenance plan shall be developed to assure that this siltation basin does not become overgrown with vegetation and/or clogged with sediment and debris. Maintenance of the siltation basin shall be the responsibility of the owner of Lot 3, unless a homeowners association or private assessment district is formed to share the cost of maintenance for the siltation basin.
39. Exposed slopes shall be landscaped or hydroseeded with a mixture of annual grasses, wild flowers and clover, no later than October 1, in anticipation of Fall rains. This applies to rough graded slopes as well as areas where grading has been completed. The landscaped or hydroseeded areas shall be maintained to ensure adequate plant growth and rooting. If an area is disturbed after hydroseeding, then the area shall be revegetated, or protected from erosion by other approved methods.
40. Grading and construction efforts shall be conducted in such a manner as to minimize the generation of dust. During the grading operation, the contractor shall wet down the grading areas and any haul routes used by construction equipment at least twice daily during dry periods or as needed to prevent the generation of excessive dust. The wheels of hauling trucks and graders shall be washed as needed when exiting the site to prevent tracking excessive dirt onto nearby roadways, and roads shall be cleaned as required. All nonactive graded areas shall be protected from erosion and wind exposure by applying a hydromulch with a tackifier. Any dust producing material shall be covered while being hauled, and storage piles of dust producing material on site shall be covered. **(Mitigation V.a. Page 3-13 Initial Study)**
41. The grading contractor and the applicant shall be responsible for preventing spills of soil, rock or other debris on to the Town's streets. If any spills occur, the grading contractor and the applicant will be required to immediately cleanup the spill and repair any damage to the streets to the satisfaction of the Town Engineer. Pavement and/or baserock apron shall be provided at the entrance to the site to minimize dirt carried onto the Town streets. Specifications for the pavement or baserock apron shall be provided to the Town Engineer for review and approval prior to installation. Streets in the vicinity of the site shall be swept clean of soil on a frequent basis to reduce the accumulation of dirt during the grading operations.
42. If archaeological materials are encountered during grading operation, all work within 100 feet of the find shall be stopped, and the Planning Director shall be notified within 24 hours. The Applicant shall retain a qualified archaeologist to evaluate the significance of the find, prepare a report that documents the field investigation, and advise the Town and the Applicant regarding any mitigation measures deemed necessary.
43. Parking of grading equipment, tractor tread vehicles and all construction vehicles and equipment on Kimberley Drive and Schofield Drive is prohibited. These vehicles shall be delivered to the property by trailer and kept on site during grading and construction operations. The Applicant shall establish an offsite "staging area" for vehicles utilized by the construction employees. The

"staging area" and the method of transportation of the employees to the project site are subject to review and approval by the Planning Director.

44. Construction equipment shall be maintained and tuned at the interval recommended by the manufacturers to minimize exhaust emissions. Equipment idling shall be kept to a minimum when equipment is not in use. No piece of equipment shall idle in one place for more than 30 minutes.
45. The Applicant shall retain a civil engineer to periodically perform surveying during the grading operations. An as-graded record drawing shall be prepared by the project civil engineer at the completion of the project grading and submitted to the Town. The record drawing shall include as a minimum: the location of the limits of grading, the invert elevations of surface and subsurface drainage facilities, the locations and depths of keyways, and the finished rough graded pad elevations.
46. The Applicant shall retain a geotechnical engineer and an engineering geologist to periodically observe the grading operation. All cut and fill slopes shall be observed during and at the completion of grading to determine if adverse conditions exist. Should adverse conditions be determined to exist, the appropriate remedial measures shall be implemented. The proposed remedial measures shall be submitted to the Town Engineer and the Town's Consultant Geotechnical Engineer for review and comment. Final approval shall be issued by the Planning Director.
47. Two weeks prior to commencement of the grading operation, notice shall be sent to residents in the vicinity to inform them of the date of the start-up of the grading. The notice shall include the telephone number of the construction supervisor and/or other responsible parties who may be contacted regarding the grading operation.
48. Prior to commencement of the grading operation, a survey of the condition of all local streets to be used by the construction equipment shall be performed by the Applicant and provided to the Town Engineer for review. Any off-site damage to the Town's streets, which is determined by the Town Engineer to be the result of the construction operation shall be corrected by the Applicant at the Applicant's expense.
49. Prior to the start up of the grading, a pre-work meeting shall be held among the grading contractor, a representative of the Applicant, the project geotechnical engineer, the project engineer, the Town Engineer, the Town's Consultant Geotechnical Engineer, the Planning Director, the Contra Costa County Grading Inspector, and the various utility agencies. The purpose of the meeting shall be to review the conditions of approval and to advise the individuals performing the work of the requirements of the Town.
50. A weekly meeting shall be held during the course of the grading operation. When appropriate, the meeting shall be attended by the grading contractor, a representative of the applicant, the project geotechnical engineer, the project engineer, the Town Engineer, the Town's Consultant Geotechnical Engineer, the Planning Director, the County Grading Inspector and representatives of the various utility agencies. The purposes of the meeting shall be to discuss the progress of the grading operations, scheduling of required site observations by the Town's consultants, difficulties and/or unanticipated adverse conditions encountered.
51. The Town Engineer and the Town's Consultant Geotechnical Engineer shall periodically monitor excavations and filling operations, and review any design modifications proposed during

grading, and review all record drawings and the grading completion report. The cost of this peer review shall be borne by the Applicant.

52. All cut and fill excavations shall be balanced on-site. If any material is determined to be unsuitable for use as compacted fill by the project geotechnical engineer, the material shall be removed from the site to an approved dump site, with appropriate documentation from the project geotechnical engineer and approval by the Town Engineer and the Town's Consultant Geotechnical Engineer. An estimate of the amount of unsuitable material to be off-hauled from the site shall be provided to the Town Engineer. If the amount of soil exceeds 500 cubic yards, then the hauling of the soil shall be in accordance with PC Resolution 46-82 as amended by the Town Council on January 19, 1983.
53. Following the completion of the grading operations, the Town Engineer, County Grading Inspector and Town's Consultant Geotechnical Engineer shall verify that all building pads are located in accordance with the approved grading plans and the pad elevations conform to the plans.
54. A grading completion report shall be prepared by the project geotechnical engineer following grading of the site. The grading report shall be submitted to the Planning Director, Town Engineer and the Town's Consultant Geotechnical Engineer for review and approval. The report shall include the following information:
 - a. A summary of construction observations;
 - b. Adverse conditions encountered and the implemented remedial measures;
 - c. Testing performed during grading. Describing the methods of fill replacement and the results of density testing;
 - d. Certification that the grading operations were in accordance with the project geotechnical engineer's recommendations and the approved grading plan;
 - e. Re-evaluation of slope stability and erosion hazards on the site after the completion of grading;
 - f. The geotechnical engineer's specific recommendations for maintenance by the property owners to achieve long-term stability of the hillside areas;
 - g. Recommendations for maintaining drainage facilities and landscaping, including proper watering consistent with soil conditions; and
 - h. The geotechnical constraints on construction on the property, such as recommended setbacks from the top or bottom of graded slopes.
55. Following the completion of the grading operation and prior to the issuance of a building permit for each of the lots, the property owner shall submit a lot specific geotechnical report prepared by a licensed geotechnical engineer. The geotechnical reports for each lot will contain geotechnical design parameters for the foundation system, retaining walls, slabs on grade, control of on-site drainage, mitigation of adverse soil conditions, and any other relevant geotechnical issues. The recommendations of the lot specific geotechnical reports shall also comply with the setback requirements contained in the Geotechnical Report for the grading operation. These reports shall be reviewed by the Town's Consultant Geotechnical Engineer and the cost of review shall be borne by the owner of the lot.
56. Seismic design of all structures shall be consistent with the Uniform Building Code, Seismic Zone 4, and the recommendations of the geotechnical report. **(Mitigation Measure III.b. Page 3-3, Initial Study)**
57. Prior to the final grading inspection, the project civil engineer shall prepare a record drawing showing the locations of all drainage facilities including inlets, outlets, cleanouts, and access

ports. The project engineer shall also prepare a maintenance plan and schedule for all drainage facilities. The record drawing and maintenance plan shall be submitted to the Town and is subject to review and approval by the Town Engineer. The applicant shall provide to the individual property owners a copy of the record drawing and the maintenance plan, and maintenance schedule.

58. Prior to the issuance of a grading permit, a tree preservation plan shall be prepared by the applicant to assure that the minimum number of trees are removed and to provide for the re-establishment of native trees for review and approval by the Planning Director. The preservation plan shall be prepared by a certified arborist. Each native tree with a trunk diameter of 6" or more that is removed during repair of the landslide areas, or as a result of the approved grading for the road and building sites, shall be replaced with three 15 gallon trees. No trees shall be unnecessarily removed or damaged. **(Mitigation VII.b. Page 3-21 Initial Study)** Only those trees identified for removal on the Tree Preservation/Removal Plan dated March 10, 1998 and stamped Official Exhibit are approved for removal. Those trees approved for removal shall be transplanted where determined to be feasible by the Tree Preservation Plan. Removal of any other trees shall be in accordance with the requirements of the Moraga Tree Ordinance (Sections 12-1001 through 12-1035 of the Municipal Code). The Planning Director may require a "peer review" of the tree preservation plan by the Town's consultant arborist and the cost of the review shall be borne by the applicant. The plan shall include but not be limited to the following:
 - a. Individual trees near construction sites shall be protected by temporary fencing around the drip line and root zone of each tree, as determined by a certified arborist, to prevent soil compaction, tree damage, or inadvertent removal.
 - b. No grading, storage or stockpiling of earth, compaction of soil, change in ground elevation or paving shall be done within the drip line of trees that are to be saved.
 - c. No trenching within the drip line of trees that is to be saved.
 - d. The feasibility of transplanting those trees approved for removal.
 - e. Proposed location of those trees being transplanted.
59. The applicant's grading contractor shall take precautions to see that topsoil is not inadvertently utilized as fill. This material shall be spread over building pad area following grading to assist in the establishment of a vegetative cover.
60. Grading shall result in slopes that are gently rounded and make a smooth transition between engineered slopes and natural contours as determined by the Town Engineer. The newly created slopes shall not exceed 3:1 with the exception of the 2.8:1 slope proposed on lot 4.
61. The grading operations shall not hinder the safe movement of pedestrians and vehicles along Kimberley Drive.
62. Due to the hillside topography and MOSO Open Space zoning, grading for swimming pools and other accessory structures shall be reviewed and approved by the Design Review Board. Any excavation for a swimming pool on a hillside area shall be evaluated by a licensed geotechnical engineer for the impact on loading of the slopes and potential seepage problems. An application for approval of a swimming pool on a hillside area may be denied if the grading necessary will destroy the natural appearance of the hillside.
63. A drainage system shall be installed to collect water from the slopes above the proposed home sites to ensure that surface drainage does not collect at the bottom of the slopes and adjacent to the building foundations. The drainage system shall also provide catch basins for roof downspouts and drains in the crawl space under the foundation to provide an outlet for water

that may accumulate beneath the homes. The proposed drainage system is subject to review and approval by the Town Engineer.

64. All downspout drains from the five homes shall be piped to street gutters or the storm drain system. If drained to the street, storm drainage shall be discharged into the gutter by means of a 3" diameter non-ferrous pipe under the sidewalk and through the curb. The above is subject to review and approval by the Town Engineer.
65. Prior to the issuance of a grading permit, a certificate of insurance shall be provided to the Town to verify that both the applicant and the grading contractor have public liability insurance. The amount and type of insurance shall be reviewed by the Town and shall be sufficient to cover damages that may result from the grading operation.
66. Traffic striping and pavement messages that become illegible or obliterated due to the movement of construction vehicles on their route to and from the site shall be repainted prior to final acceptance of the grading or improvements. If during the grading and construction of the project, the Town Engineer determines that the legibility of striping or messages are a hazard, the applicant shall restripe or replace the messages during the construction period.
67. If the grading contractor or a home builder proposes a temporary contractor's storage yard or construction trailer, a plan showing the location, security fencing, lighting and landscaping shall be submitted for review and approval by the Design Review Board.
68. Prior to the issuance of a grading permit, the final grading plan shall be submitted for review and approval by the Town Engineer and Town's Consultant Geotechnical Engineer. The final grading plan shall be substantially in conformance with the grading plan stamped Official Exhibit and dated May 3, 1999. All of the graded slopes shall be 3:1 except for the 2.8:1 slope located above the building pad for Lot 4. In the final grading plan, building pad for Lot 1 shall be reduced to 705.5 feet elevation and as a result, building pad elevation for Lot 4 may be increased approximately one to two feet. The final grading plan shall be in conformance with the Tree Removal Plan and described in Condition Number 57.

ADOPTED by the Planning Commission of the Town of Moraga on June 7 1998, by the following vote:

AYES: Carey, Craig, Metcalf, Tomine, VanDeKerchove, Woehleke and Rei.

NOES: None

ABSTAIN: None

ABSENT: None

Jay Tashiro, Secretary
Planning Director

Matt Rei, Chair

ATTACHMENT 1 - Building Envelope Plan
ATTACHMENT 2 - Geologic Map

EXHIBIT D

**DESIGN REVIEW BOARD MEETING
MINUTES FROM JULY 25, 2011**

**TOWN OF MORAGA
DESIGN REVIEW BOARD MEETING
MINUTES**

July 25, 2011

I. CALL TO ORDER AND ROLL CALL

A regular meeting of the Design Review Board (DRB) was called to order by Chair Sayles at approximately 7:04 P.M. in the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

Present: Boardmembers Escano-Thompson, Kuckuk, Sayles, Zhu
Absent: Boardmember Kline
Staff: Senior Planner Richard Chamberlain

Conflict of Interest

There was no conflict of interest.

II. ADOPTION OF MEETING AGENDA

On motion by Boardmember Kuckuk, seconded by Boardmember Zhu and carried unanimously to approve the July 25, 2011 DRB meeting agenda, as presented.

III. PUBLIC COMMENTS

There were no public comments.

IV. PLANNING COMMISSION LIAISON REPORT – Commissioner Driver

Commissioner Driver reported that the Planning Commission (PC) had met twice in the past two months. The first meeting was a discussion on the potential subdivision of the Town-owned lot on the corner of Rheem Boulevard and St. Mary's Road. The second meeting was a study session for the former bowling alley site where the owner was proposing high density single family homes. Market research suggested that it was a better housing product than the previous condominium development they had considered last year.

V. ADOPTION OF THE CONSENT AGENDA

A. DRB 10-11 / Daniel Giolda (Applicant and Owner) 9 Natividad Lane:
Application for approval of an 84 square foot expansion of a master bedroom within an existing covered porch area on the second floor over the garage. The proposed expansion will match other homes in the Carroll Ranch Townhouse development. Zoning: 6-DUA (Six Dwelling Units per Acre) (APN: 255-800-068).

B. APPROVAL OF MINUTES for June 27, 2011

On motion by Boardmember Kuckuk, seconded by Boardmember Zhu to approve DRB 10-11 for the 84-foot expansion of a master bedroom within an existing covered porch area on the second floor over the garage at 9 Natividad Lane, and, to approve the minutes for the June 27, 2011 DRB meeting.

VI. DESIGN REVIEW

- A. DRB 09-2011 / Steven and Lenore Forshay (Applicant & Owner) 132 Derby Lane:** Application for approval of a new 660 square foot trellis in the rear yard at 132 Derby Lane. This project requires DRB approval because the trellis will be located 3-feet from the west rear property line. Moraga Municipal Code (MMC) Section 8.24.040 (b) allows a minimum 3-foot side yard for accessory structures over 6-feet in height upon approval by the DRB. Accessory structures cannot have solid roofs or walls. Zoning: 2 DUA (Two Dwelling Units per Acre) (APN 256-281-007)

Senior Planner Richard Chamberlain reported that a new 660 square foot trellis was proposed in the rear yard at 132 Derby Lane. The 9-foot 4-inch tall trellis would be 3-feet from the rear yard setback. It would be built over a new patio area and constructed with heavy wood timber posts mounted on masonry pedestals. It would be similar to the existing trellis attached to the south side of the home. Most of the rear yard was adjacent to the property at 263 Draeger Drive which was elevated 15-feet above the rear yard at 132 Derby Lane. The higher elevation and an existing 6-foot redwood fence along the rear property line mitigated the view of the trellis from the neighbors at 263 Draeger Drive who submitted written approval of the project.

Mr. Chamberlain concluded that the proposed trellis was in compliance with the Town's Design Guidelines with respect to the architectural design. If exterior lighting was added under the trellis it would need to comply with design guideline ID6. The trellis was not expected to block access around the home as required by design guideline SFR1.10 because it was possible to walk under it. Approval of the requested 3-foot rear yard setback to the trellis was recommended with the findings and conditions in the Draft Action Memorandum.

Lenore Forshay added that she and her husband wanted to utilize as much of their rear yard as they could. The trellis would create a nice shaded area for outside enjoyment and entertainment.

On motion by Boardmember Zhu, seconded by Boardmember Escano-Thompson, to adopt the Draft Action Memorandum approving DRB 09-11 for the new freestanding trellis at 132 Derby Lane, subject to the findings and conditions as presented.

The motion carried by the following vote:

Ayes: Boardmembers Escano-Thompson, Kuckuk, Sayles, Zhu
Noes: None
Abstain: None
Absent: Boardmember Kline

Chair Sayles identified the ten day right of appeal for anyone who wished to appeal the decision of the DRB to the PC by filing a letter stating the grounds for the appeal and paying the appeal fee through the Planning Department.

- A. DRB 07-2011 / Branagh Development, Inc. (Applicant), Kimberly LLC (Owners) 8 Kimberly Drive:** Consideration of a design review application for a new 2,995 square foot single story home with an attached 837 square foot 3-car garage on a 74,762 square foot lot at 8 Kimberly Drive. A 3,844 square foot home with a 1,089 square foot garage was previously approved on this lot in 2007 (DRB-08-07). The new home would be 849 square feet smaller in floor area and the garage would be reduced by 252 square feet. Grading is limited to several 2-foot high dry stack retaining walls and one 2-foot high concrete retaining wall faced with stone veneer at the rear of the home and northwest of a new swimming pool. Zoning: OS-M (Open Space - MOSO) (APN: 255-120-010).

Mr. Chamberlain reported that a new 2,995 square foot single story home with an attached 837 square foot 3-car garage was proposed on a 74,762 square foot lot at 8 Kimberley Drive. The proposed home was 849 square feet smaller in floor area and the garage was reduced by 252 square feet from the original home that was approved in 2007. The proposed grading was limited to two 2-foot high retaining walls and one 2-foot high retaining wall at the rear of the home. The home would be built on the existing pad with a finished floor elevation of 709 feet.

Mr. Chamberlain explained that the neighbor at 6 Kimberly Drive, Beverly Sowa, had identified errors in the drainage plans. The applicant was going to correct the plans to show the "V"-ditch and catch basin at the location revised in 2007 as required by the Kimberley Oaks Maintenance Association settlement agreement. Ms. Sowa had pointed out two lateral "V"-ditches intersecting at the primary "V" ditch near the rear property line at 6 Kimberley Drive. She thought that the lateral "V"-ditch that wrapped around the back of the lot required the location of the new pool to be changed. The applicant said the lateral "V"-ditch around the back of the lot would be removed prior to construction. The Town Engineer would review the drainage plans for compliance prior to the PC hearing.

An exception to design guideline SFR1.10 was required, Mr. Chamberlain continued, because the new home did not have 10-feet of near level clearance for access to the rear yard. Conditions 3-e and 3-f of PC Resolution 13-99 required review of the landscaping plan to mitigate views of the home. The

landscaping plan needed to show bio-filtration drainage swales for the roof leader drains and treatment of storm water from paved areas. Any exterior lighting needed to conform to the requirements listed under design guideline ID6 and the developer had to comply with the Cal-Green building code. Condition 22 from PC Resolution No. 13-99 required approval by the DRB and the PC prior to granting final design review approval for the new home at 8 Kimberley Drive.

Mr. Chamberlain concluded that a draft recommendation was prepared for approval to be presented to the PC. The draft conditions were based upon the previously approved conditions from 2007, which included reference to the mitigation measures from the June 7, 1999 Mitigated Negative Declaration for the Kimberley lots. The draft recommendation included the findings for approval required under MMC Section 8.72.080-B and the exceptions to the design guidelines required for the new home.

Alan Page, Talon Design Group, apologized for the error in the drainage plans with respect to the location of the v-ditch. The civil engineer was aware of the issue and would be making corrections to the plans. The fence line, however, was not any different from the previously approved plan. The primary reason for the re-submittal was to reduce the size of the home and put a different product on the market. He showed color samples of the proposed home and went on to address various design guidelines that were noted in the staff report.

Beverly Sowa, 6 Kimberly Drive, stated that she lived next door to the proposed home at 8 Kimberly Drive. She had reviewed the plans and found issues with the drainage. She summarized the letter she had written concerning a number of items. Item 1 involved the new pool which was outside the approved pad building allowance. The pool was 2-feet from a cement v-ditch that carried water away from 12 and 10 Kimberly Drive. If the pool was installed at the building pad level it would cut into a 20 to 25% slope. Item 2 addressed the corrected drainage plans and item 3 referred to several items that needed to be corrected in the staff recommendation. Item 4 requested protection for the large pine tree during construction and item 5 called for the home not to encroach into the clearance area. Item 6 concerned the cracks in the detention wall and the cement v-ditches and item 7 requested a change in colors for the new home since they closely matched the colors of her home. Item 8 called for no glare on her property from exterior lighting. She believed the northeast corner of the pool was under the drip line of their pine tree and that the new pool should be moved or eliminated. No approval should be given until the Town Engineer had approved the drainage plans. She wanted to make sure everything was done correctly so there would not be future problems.

Frank Sowa, 6 Kimberly Drive, asked what the applicant intended to do about the dirt swale with rocks in it that ran from the curb to the catch basin and was completely filled with dried grass and weeds. He wanted to be protected from any future flooding.

Diane Cooper, 4 Kimberly Drive, observed the results of the flooding in the Sowas' yard. She lived down slope from them and never had any run off from their property. She advised the DRB to take their concerns seriously.

Mr. Page said that the new pool could not be built without damaging the v-ditch. He was aware that all drainage had to be approved by the Town Engineer and had no problem with some items being conditional. He thought the points that the Sowas had made on drainage were valid. The drainage was designed to compensate for the removal of the mid v-ditch which had been put in for the development of the lots in order to protect the pads before they were built on.

Boardmember Kuckuk advocated the importance of protecting the neighboring homes. She recognized the drainage issues that required review by the Town Engineer. A condition regarding the protection of the pine tree at 6 Kimberly Drive should be included in the recommendation. She was fine with the redesign of the home but was concerned about it being outside of the pad.

Chair Sayles wanted to make sure that the retaining wall behind the pool was within the building cell. He emphasized the fact that design review was the first step toward the final review so the issues, which were mostly land use issues, would be addressed by the PC. They needed to look at the project as a whole and determine if it conformed to design review.

Boardmember Zhu believed there was enough time to resolve the various issues before the project was reviewed by the PC. The Town Engineer would be able to review the plans and put together a comprehensive report.

Boardmember Escano-Thompson wanted confirmation that the project would not be coming back to the DRB and that the PC had the final say.

Chair Sayles commented on the Sowas' comprehensive letter which covered a lot of land use issues on the development of the property. It was appropriate that the Town Engineer comment on it so that the issues were addressed before review by the PC.

Mr. Page questioned Ms. Sowa's comment on the color scheme. The new house at 8 Kimberly was going to be beige and brown; not gray as she had mentioned.

Chair Sayles suggested a condition for staff to determine if the new home's color scheme harmonized with the neighborhood.

On motion by Boardmember Kuckuk, seconded by Boardmember Escano-Thompson, to recommend approval of DRB 07-11 for the new home at 8 Kimberly Drive in accordance with the findings and conditions as presented, and the modification of conditions 9, 14, 15, 16, 17, 20, 23 and 26 as follows:

9. Finishing materials, such as the “Hardie” horizontal siding, masonry wainscot, roofing material and paint colors shown on the colors and materials palette presented at the meeting shall be compared by the planning staff with the existing colors of the home at 6 Kimberley Drive for determination of harmony of the color schemes and to make sure that the roofing and wall colors are not too similar on the adjacent homes.
14. The landscaping, irrigation and fencing plans shall include:
 - a. Landscaping along the northeast side of the home to provide a visual buffer to the existing home and rear yard at 6 Kimberley Drive. This may include cleaning out and restoration of the rock lined drainage basin between the street and the catch basin on the northeast property line.
 - b. An automatic rain sensor on the irrigation system controller.
 - c. A 6-foot fence along the northeast property line between 6 and 8 Kimberley Drive.
 - d. The location of major drainage features, such as concrete V-ditches and vegetated drainage swales leading to catch basins. The landscaping plan must be consistent with the approved drainage plans.
 - e. Aesthetically pleasing, drought tolerant low trees, shrubs, and groundcovers in the northwest scenic easement areas and the planting pattern should not allow for the establishment of a “fire ladder” effect.
15. Measures shall be taken to avoid disturbance of soil within the drip line of the large existing pine tree located at the northwest rear corner of the Sowa’s property at 6 Kimberley Drive.
16. Prior to review of the plans by the Planning Commission, the planning staff shall confirm that the 2-foot high retaining wall and proposed swimming pool are within the approved MOSO building cell.
17. The Applicant shall submit final drainage plans for review and approval to the Town Engineer prior to final review of the plans by the Planning Commission. The Town Engineer shall review the following items:
 - a. The Town Engineer shall read and review the letter submitted by Frank and Beverly Sowa on July 25, 2011 at the DRB meeting and address all drainage issues.
 - b. The Town Engineer shall review the proposed removal of the lateral “V”-ditch that extends southwest from the primary “V”-ditch around the rear yard at 8 Kimberley Drive and advise whether the replacement drainage pipes and catch basins are an adequate replacement for the “V”-ditch.
 - c. The Town Engineer shall determine whether the proposed construction of the 2-foot high retaining wall at the northwest rear end of the pool will have any adverse impact upon the primary “V”-ditch between 6 and 8 Kimberley Drive.
 - d. In accordance with design guideline ID7, the site drainage and erosion control measures shall be consistent with Moraga Municipal Code Section 13.04.090, which lists the “Best Management Practices” (BMPs) dealing with storm water management and discharge control. The Town Engineer shall review the drainage plans for compliance with the BMPs.

20. Prior to the issuance of the building permit, a final drainage plan shall be submitted for review and approval by the Town Engineer. The applicant's geotechnical engineer wants the roof drains to be piped in a tight line to the storm drain system. The policies of the Regional Water Control Board require new roof drains to be routed through a biofilter, sand filter or plant box for ten feet prior to discharge into the site drainage system. These opposing requirements need to be resolved.
23. The two new exterior air conditioning units or heat pumps and the pool equipment shall not exceed a sound level of 55 dba measured 10-feet from the property line. If the sound level exceeds this level then low sound walls shall be installed to attenuate the sound below the 55 dba limit.
26. It is recommended that the builder of the new home consider meeting the Build-It-Green requirements.

The motion carried by the following vote:

Ayes: Boardmembers Escano-Thompson, Kuckuk, Sayles, Zhu
Noes: None
Abstain: None
Absent: Boardmember Kline

Chair Sayles identified the ten day right of appeal for anyone who wished to appeal the decision of the DRB to the PC by filing a letter stating the grounds for the appeal and paying the appeal fee through the Planning Department.

B. DRB 08-2011 / Branagh Development, Inc. (Applicant), Kimberly LLC (Owners) 11 Kimberly Drive: Consideration of a design review application for a new two-story 2,880 square foot home with an attached 766 square foot 3-car garage on 65,340 square foot lot at 10 Kimberly Drive. A 3,920 square foot two-story home with a 1,038 square foot garage was previously approved this lot in 2007 (DRB-09-07). The new home would be 1,040 square feet smaller in floor area and the garage would be reduced by 272 square feet. The 2007 approved plans required a Hillside Development Permit for grading of three retaining walls over 3-feet high. The proposed home has only two 2-foot high garden walls, which do not require a building permit. (APN: 255-120-011). Zoning: OS-M (Open Space - MOSO) (APN 255-120-011).

Mr. Chamberlain reported that a new two-story 2,880 square foot home with an attached 766 square foot 3-car garage was proposed on a 65,340 square foot lot at 10 Kimberly Drive. The new home was 1,040 square feet smaller in floor area and the garage was 272 square foot smaller than the original design approved in 2007. The new home included 1,700 square feet on the first floor and 1,180 square feet on the second floor. It featured board and batten siding on the lower floor and "Hardie" horizontal siding on the second floor with Craftsman style

doors and windows. The home was to be built on the existing pad with the first floor at an elevation of 722-feet 8-inches. The setbacks, which had to be measured to the eave line, were in conformance except for the front setback which was 1-foot 3-inches smaller than required by PC Resolution 05-2005.

The plans showed two low garden walls under 3-feet in height Mr. Chamberlain continued. The plans stated that the retaining wall in the rear yard would be 2-feet in height but another note indicated that it would be 4-feet from the top of wall to the bottom of the wall. A Hillside Development Permit (HDP) was required if the wall was higher than 3-feet. A draft condition was included to move the wall so that it did not exceed 3-feet in height. The Town Engineer would review the drainage plans for compliance. Conditions 3-e and 3-f of PC Resolution 13-99 required review of the landscaping plan to mitigate views of the new home. The landscaping plan needed to provide bio-filtration drainage swales for the roof leader drains and treatment of storm water from paved areas.

Mr. Chamberlain said that the use of decorative pavers should be a condition of approval in order to mitigate the appearance of the extra wide driveway in accordance with design guideline SRC2. Any exterior lighting needed to conform to the requirements listed under design guideline ID6 and the developer needed to comply with the Cal-Green building code. Condition 22 from PC Resolution No. 13-99 required approval by both the DRB and the PC prior to granting final approval for the home. A draft recommendation for approval was prepared to be presented to the PC. The draft conditions were based upon the previously approved conditions of approval and the draft recommendation included the findings for approval required under MMC Section 8.72.080-B.

Chair Sayles clarified the two issues with the proposed home. The patio needed a HDP and the southeast corner of the garage needed a variance from the PC since it was encroaching 1-foot 3-inches into the front setback.

Mr. Page stated that he did not want a variance and would move the garage so it was not in the front setback. He was fine with moving the rear landscaping wall and keeping it less than 3 feet in height. He was agreeable with the comments and conditions in the staff report. Branagh planned to build a quality home with good energy and performance standards. He suggested a meeting with his civil engineer and the Town Engineer to discuss all the drainage issues.

Ms. Sowa commented on exterior lighting and glare. She wanted any outside lighting to be casted down and contained to the property.

Mr. Page confirmed that the exterior lighting would conform to the condition presented in the recommendation.

Commissioner Driver encouraged the applicant to come forward with the Town Engineer and the Sowas in agreement over the drainage issues. There had

been past slide and water management problems on Kimberly Drive and the neighbors feared those problems would resurface as a result of the new homes. It was their job to make sure that did not happen.

On motion by Boardmember Kuckuk, seconded by Boardmember Zhu, to recommend approval of DRB 08-11 for the new home at 10 Kimberly Drive, subject to the findings and conditions as presented, except for the elimination of conditions 19 and 21.

The motion carried by the following vote:

Ayes:	Boardmembers Escano-Thompson, Kuckuk, Sayles, Zhu
Noes:	None
Abstain:	None
Absent:	Boardmember Kline

Chair Sayles identified the ten day right of appeal for anyone who wished to appeal the decision of the DRB to the PC by filing a letter stating the grounds for the appeal and paying the appeal fee through the Planning Department.

VII. OTHER MATTERS

There were no other matters.

VIII. STAFF REPORT

Mr. Chamberlain reported that the next DRB meeting included a project for an addition at 9 Sanders Ranch Road. The addition was 300 square feet over the maximum floor area ratio (FAR). A future agenda item included modifications to the previously approved scoreboard for the new baseball field at St. Mary's College. The addition of a new video display would extend the scoreboard by 30-feet.

IX. BOARDMEMBER REPORTS

Chair Sayles reported that he had attended the Mayor's breakfast.

X. ADJOURNMENT

On motion by Boardmember Kuckuk, seconded by Boardmember Zhu to adjourn the meeting at approximately 8:57 P.M. to a regular meeting of the DRB on Monday, August 8, 2011 at 7:00 P.M. in the Moraga Library Meeting Room located at 1500 Saint Mary's Road, Moraga, CA 94556.

Town of Moraga Design Review Board
July 25, 2011
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Secretary of the Planning Commission

EXHIBIT E

DESIGN REVIEW BOARD RECOMMENDATIONS



Town of Moraga

PLANNING DEPARTMENT
329 RHEEM BOULEVARD
MORAGA, CA 94556
(925) 888-7040

DESIGN REVIEW BOARD RECOMMENDATION

On July 25, 2011, the Town of Moraga Design Review Board considered the application described below:

DRB 07-11 / Branagh Development, Inc. (Applicant), Kimberly LLC (Owners)
8 Kimberly Drive: Design review application for a new 2,995 square foot single story home with an attached 837 square foot 3-car garage on a 74,762 square foot lot at 8 Kimberly Drive. Grading is limited to a couple of 2-foot high dry stack retaining walls and one 2-foot high concrete retaining wall faced with stone veneer at the rear of the home and northwest of a proposed swimming pool. (APN 255-120-010).

DESIGN REVIEW BOARD ACTION:

In compliance with condition 22 in Planning Commission Resolution 13-99, the Design Review Board recommends approval of the new home at 8 Kimberly Drive in accordance with the following findings, design guideline exceptions and conditions of approval:

PART I: DESIGN REVIEW FINDINGS REQUIRED BY MMC SECTION 8.72.080-B:

In accordance with Moraga Municipal Code Section 8.72.080-B, the following findings must be made in order to approve an application for design review in land use districts other than single-family residential:

- 1. The proposed structure conforms with good taste, good design and in general contributes to the character and image of the Town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality** because the proposed one-story 3,832 square foot single-family residence with attached 3-car garage complies with most of the Town's design guidelines, with a couple of exceptions with regard to level clearance around the home. The proposed home is in scale with the other new homes on Kimberly Drive. The proposed landscaping and masonry stone wainscot below the horizontal siding will help the new home to fit into the natural environment.

2. **The structure be protected against exterior and interior noise, vibrations and other factors, which may tend to make the environment less desirable** because the proposed home will be constructed in accordance with the California Building Code. The air conditioner / heat pump and pool equipment are all located on the southwest side of the new home, which will minimize any adverse impacts to the existing neighbors at 6 Kimberly Drive.
3. **The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value** because the proposed home is a high quality custom designed residence that is expected to increase the value of homes in the neighborhood.
4. **The structure is in harmony with proposed developments on land in the general area** because the proposed development conforms to the allowable density for the property and is within the developable MOSO cell boundaries on the lot. The size of the home is not excessive for a 74,052 square foot lot. The proposed craftsman style home would be in harmony with the ranch style homes in the vicinity. The proposed new home would be 1,101 square feet smaller in total floor area, including the garage, than the 4,933 square foot home previously approved on this lot in 2007.

PART II: APPROVAL OF DESIGN GUIDELINE EXCEPTION:

1. An exception to design guideline SFR1.10 is recommended to allow the proposed home to encroach into the 6-foot near level clearance on the both the northeast and southwest sides of the home and to have less than the 10-foot near level clearance for access to the rear yard. The findings to allow this exception include the following:
 - a. The home has a 21-foot side yard on the northeast side with a 2.5:1 slope to a 10-foot wide and nearly level drainage easement with a "V"-ditch that could be used for access to the rear yard and to the wildlife easement/scenic easement located north of the building area on the property.
 - b. The home has more than 10-feet of level clearance at both the front and back of the lot.
 - c. The revised design of the home now has limited access between the 2-foot high garden wall and the home along the southwest side, with at least 3-feet of clearance. (Note: The previously approved home was built into the slope with no access at the southwest side)

PART III: RECOMMENDED CONDITIONS OF APPROVAL:

1. All applicable conditions and mitigation included in Planning Commission Resolution 13-99 are adopted by reference as conditions of approval for this project, DRB 07-11, and shall be addressed to the satisfaction of the Town of Moraga, including payment of the fees listed below.
 - a. Prior to the issuance of a building permit, the applicant shall pay the park dedication in-lieu fee.
 - b. Prior to the issuance of a building permit, the applicant shall pay the Transportation Impact Fee set by the Lamorinda Fee and Financing Authority (LFFA) for the year in which the fee is paid.

- c. The applicant shall submit a design review fee to the Fire District prior to receipt of building permits. (NOTE: A set of the revised plans was given to the MOFD Fire Marshal, Michael Mentink, on September 5, 2011 for review)
 - d. The applicant shall pay the Town of Moraga Development Impact Fees.
 - e. The applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
2. Resolution 13-99 addresses hours of construction operation, development mitigation measures, construction standards, and maintenance of the property during pre and post development conditions, among other relevant topics. All Conditions of Approval from Resolution 13-99 that pertain to specifications for construction work, such as hours permitted for construction work, shall be included in the "Notes" section of the Building Plans so that contractors bidding on the project will know these conditions.
3. Any significant changes to the site or development plans labeled "Official Exhibit Design Review Board July 25, 2011" shall be subject to further review and approval by the Design Review Board.
4. This approval and each condition contained herein shall be binding upon the applicant and any transferor, or successor in interest.
5. Any work within a dedicated road right of way requires an encroachment permit from the Town of Moraga prior to start of work. The encroachment permit shall be applied and paid for separately from this entitlement. Any work within the private access easement will require review by the Town Engineer prior to the start of work.
6. In accordance with condition 43 in Resolution 13-99, parking of grading equipment, tractor tread vehicles, and all construction vehicles and equipment on Kimberly Drive and Scofield Drive is prohibited. These vehicles shall be delivered to the property by trailer and kept on site during grading and construction operations. The Applicant shall adopt a reasonable parking plan to be used by construction employees, including the use of an off-site staging area, subject to review and approval by the Planning Director prior to the issuance of grading or building permits. It is further recommended that the builder of the home complete the driveway at the time the house foundation is poured in order to allow parking on-site for a couple of vehicles for the construction workers.
7. Temporary drainage control measures shall be in place on the construction site during the months of October through April.
8. When the plans for the building permit are stamped by the Planning Department, the applicant shall complete the first part of the recycling plan form and obtain a copy of the Contra Costa Builder's Guide, which lists all the recycling services. The recycling plan form and recycling receipts for demolition and construction materials generated from the project shall be submitted to the Planning Department prior to final inspection by the building department. The applicant shall strive to recycle 50% of the demolition materials.

9. Finishing materials, such as the “Hardie” horizontal siding, masonry wainscot, roofing material and paint colors shown on the colors and materials palette presented at the meeting shall be compared by the planning staff with the existing colors of the home at 6 Kimberly Drive for determination of harmony of the color schemes and to make sure that the roofing and wall colors are not too similar on the adjacent homes. (NOTE: Staff compared the color schemes and showed the comparison to Beverly and Frank Sowa. This issue has been resolved)
10. The mailbox shall match the materials used on the residence.
11. The address number for the residence shall be visible from the main roadway as required by the Moraga-Orinda Fire District.
12. Roofing materials and assembly shall be a minimum of Class B as required by the Fire District.
13. All proposed fencing is approved at a height of no more than 6 feet with no diagonal bracing. The fencing material and any proposed staining or painting shall be subject to Planning Department review and approval prior to receipt of building permits. Solid fencing on the hillside slopes within the scenic easement area behind the home would be contrary to Design Guideline RH8 and prohibited in a disclosure to buyers of the property.
14. The landscaping, irrigation and fencing plans shall include:
 - a. Landscaping along the northeast side of the home to provide a visual buffer to the existing home and rear yard at 6 Kimberly Drive. This may include cleaning out and restoration of the rock lined drainage basin between the street and the catch basin on the northeast property line. (NOTE: Revised landscaping plans addressing northeast side of the home and the catch basin area have been submitted)
 - b. An automatic rain sensor on the irrigation system controller. (NOTE: The proposed controller includes an automatic rain sensor, which is also a new building code requirement under CalGreen)
 - c. A 6-foot fence along the northeast property line between 6 and 8 Kimberly Drive. (NOTE: The fence plans are shown on sheets L-1 and L-2)
 - d. The location of major drainage features, such as concrete V-ditches and vegetated drainage swales leading to catch basins. The landscaping plan must be consistent with the approved drainage plans. (NOTE: The landscape plans have been revised consistent with the relocated drainage channel along the northeast property line)
 - e. Aesthetically pleasing, drought tolerant low trees, shrubs, and groundcovers in the northwest scenic easement areas and the planting pattern should not allow for the establishment of a “fire ladder” effect.
15. Measures shall be taken to avoid disturbance of soil within the drip line of the large existing pine tree located at the northwest rear corner of the Sowa’s property at 6

Kimberly Drive. (NOTE: The swimming pool was moved a little to the west, but a portion of the pool and the 3-foot retaining wall behind the pool would require an excavation within the drip line of the pine tree)

16. Prior to review of the plans by the Planning Commission, the planning staff shall confirm that the 2-foot high retaining wall and proposed swimming pool are within the approved MOSO building cell. (NOTE: Staff has confirmed that the pool and retaining wall do not encroach into the scenic easement outside the MOSO cell.)
17. The Applicant shall submit final drainage plans for review and approval to the Town Engineer prior to final review of the plans by the Planning Commission. The Town Engineer shall review the following items: (NOTE: The Sowa's subsequently submitted 2 additional letters to the engineering department and all 3 letters have been reviewed and issues addressed by the engineering department.)
 - a. The Town Engineer shall read and review the letter submitted by Frank and Beverly Sowa on July 25, 2011 at the DRB meeting and address all drainage issues.
 - b. The Town Engineer shall review the proposed removal of the lateral "V"-ditch that extends southwest from the primary "V"-ditch around the rear yard at 8 Kimberly Drive and advise whether the replacement drainage pipes and catch basins are an adequate replacement for the "V"-ditch.
 - c. The Town Engineer shall determine whether the proposed construction of the 2-foot high retaining wall at the northwest rear end of the pool will have any adverse impact upon the primary "V"-ditch between 6 and 8 Kimberly Drive.
 - d. In accordance with design guideline ID7, the site drainage and erosion control measures shall be consistent with Moraga Municipal Code Section 13.04.090, which lists the "Best Management Practices" (BMPs) dealing with storm water management and discharge control. The Town Engineer shall review the drainage plans for compliance with the BMPs.
18. Prior to the issuance of the building permit, the applicant shall submit a Storm Water Pollution Prevention Plan for review and approval by the Town Engineer.
19. Prior to the issuance of the building permit, the applicant shall furnish the Town with security for completion of the erosion control work as follows:
 - a. The performance of the work described and delineated on the approved Grading Plan and SWPPP in an amount approved by the Town Engineer but not less than 100% of the approved estimated cost of performing said work. The form of the security may be corporate security bond, letter of credit or cash.
 - b. The performance of the work described and delineated in the Erosion Control Plan, in an amount to be determined by the Town Engineer but not less than 100% of the approved estimated cost of performing said work. The form of the security may be a combination of corporate surety bond, letter of credit or cash except that cash deposits will be required for all amounts up to \$10,000.
 - c. The security whether corporate surety bond or an instrument or instruments of credit, at applicant's option, shall be in a form approved by the Town Attorney.

(NOTE: Deleted condition requiring drains in crawl space because house will have a slab foundation.)

20. Prior to the issuance of the building permit, a final drainage plan shall be submitted for review and approval by the Town Engineer. The applicant's geotechnical engineer wants the roof drains to be piped in a tight line to the storm drain system. The policies of the Regional Water Control Board require new roof drains to be routed through a biofilter, sand filter or plant box for ten feet prior to discharge into the site drainage system. These opposing requirements need to be resolved.

(NOTE: Deleted requirement for project geotechnical engineer to review pier shaft drilling because the home will have a slab foundation.)

21. The subdrains shall be tested at the end of construction, with a report sent by the project geotechnical engineer confirming that any subdrains under Lot 1 (8 Kimberly Drive) are functional.

22. No dumping or stockpiling of soil or debris is permitted within the Open Space / Scenic Easement. Contractors on the project shall be advised of this condition. Any dumping of soil or debris into the Open Space / Scenic Easement may be cause for a stop work order until the easement area is fully restored and any damage done to native vegetation mitigated with replacement native vegetation.

23. The two new exterior air conditioning units or heat pumps and the pool equipment shall not exceed a sound level of 55 dba measured 10-feet from the property line. If the sound level exceeds this level then low sound walls shall be installed to attenuate the sound below the 55 dba limit.

24. In accordance with design guideline ID6, any exterior lighting shall comply with the following requirements:

- a. Outdoor lighting shall be related to the design of the home.
- b. Outdoor light fixtures shall be designed and mounted so that the source of light has minimal impact off site.
- c. Outdoor lighting shall be directed inward toward the property and may require additional screening to avoid spillage onto adjacent residential properties.

25. In accordance with design guideline ID8.1, the draining of all swimming pools shall be directed to the sanitary sewer system whenever feasible and be conducted in compliance with the permitting and standards established by Central Contra Costa Sanitary District. Overflow drains from swimming pools shall be directed to a landscape area or manufactured treatment system prior to connecting to the storm drain system, unless an automatic pool cover is installed to prevent overflow of the pool during rain storms. Best Management Practices (BMPs) shall be used to manage overflows.

26. It is recommended that the builder of the new home consider meeting the Build-It-Green requirements.

EXHIBIT F

**DESIGN ASPECTS TO BE
CONSIDERED UNDER
MMC SECTION 8.72.080-A**

EXHIBIT F

DESIGN ASPECTS TO BE CONSIDERED IN ACCORDANCE WITH MMC SECTION 8.72.080-A FOR 8 KIMBERLY DRIVE

(Updated September 29, 2011 to address modifications to plans)

1. Maximum height, lot coverage and setbacks:

The lot area and frontage (width of the lot) were established at the time the lot line adjustment was approved by the Town Council. The maximum height and building setbacks were established by condition number 22-a in Resolution 13-99 as follows:

	Approved Development Standards	Proposed	Conforms ?
Lot Area	74,762 sq.ft)	74,762 sq.ft)	Yes
Frontage	159.66 feet	159.66 feet	Yes
Front Yard Setback	25 feet	27 feet to front corner of the garage 25 feet to roof eave	Yes
Minimum Side Yard Setbacks	20 feet (NE side minimum), 25 feet (SW side minimum)	21.5 feet (NE side), 27 feet (SW side)	Yes
Minimum Rear Yard Setback	Building MOSO Cell limit (Scenic Easement Line)	23 feet from the rear scenic easement line	Yes
Maximum Main Bldg. Height	19 feet Single Story limit	18 feet 11.5 inches to highest roof ridge	Yes

The lot coverage is limited by the MOSO building cell on the property and the required building setbacks. The area outside the MOSO cell boundary is a recorded scenic easement. The scenic easement area prohibits construction of structures or improvements except for landscaping and fencing as required by condition number 13 in Resolution 13-99. Unless noted otherwise, the setbacks in the table above were measured to the eave line of the new home in accordance with the Town Council's November 14, 2001 interpretation of MMC Sections 8.04.020 and 8.68.070. The proposed single family home conforms to the setback requirements required in Planning Commission Resolution 13-99.

2. Overall mass and bulk of structures:

Condition 22 of Resolution No. 13-99 states in part, "In considering the home designs on Lots 1 through 5, the Planning Commission and Design Review Board shall attempt to minimize the visual impact of the homes on the existing adjacent residences, including the incorporation of architectural features and the configuration of the footprint to reduce massiveness, as well as appropriate landscape screening. The Planning Commission and Design Review Board may increase minimum and decrease maximum site development standards in order to address massiveness and provide an appropriate transition from existing residences to the project homes."

The Town's Floor Area Ratio (FAR) guidelines do not apply to parcels that are over 20,000 square feet in area and the Planning Commission did not stipulate a maximum floor area for this lot when the Use Permit was approved. The following table shows a comparison of the proposed floor area with the existing older homes in the Kimberly Drive and Scofield Drive neighborhood.

ADDRESS	Floor Area of existing Home and Garage	Maximum Floor Area Allowed	Lot Area
3 Kimberly Drive	2,261 sq.ft.	4,146 sq.ft.	14,706 sq.ft.
4 Kimberly Drive	2,041 sq.ft.	3,720 sq.ft.	12,000 sq.ft.
5 Kimberly Drive	2,034 sq.ft.	4,274 sq.ft.	16,165 sq.ft.
6 Kimberly Drive	2,264 sq.ft.	4,060 sq.ft.	13,861 sq.ft.
262 Scofield Drive	2,355 sq.ft.	N/A	31,378 sq.ft.
264 Scofield Drive	2,386 sq.ft.	4,320 sq.ft.	15,098 sq.ft.
265 Scofield Drive	3,196 sq.ft.	4,420 sq.ft.	17,906 sq.ft.
266 Scofield Drive	2,033 sq.ft.	4,470 sq.ft.	17,327 sq.ft.
267 Scofield Drive	2,384 sq.ft.	N/A	21,542 sq.ft.
268 Scofield Drive	2,440 sq.ft.	3,720 sq.ft.	12,064 sq.ft.
269 Scofield Drive	1,965 sq.ft.	3,933 sq.ft.	13,398 sq.ft.
270 Scofield Drive	3,593 sq.ft.	4,362 sq.ft.	16,607 sq.ft.
271 Scofield Drive	3,381 sq.ft.	3,933 sq.ft.	13,200 sq.ft.
Averages for existing homes in the Vicinity	2,487 sq.ft.	4,123 sq.ft.	16,557 sq.ft.
8 Kimberly Drive <i>(Proposed New Home)</i>	3,832 sq.ft. <i>Proposed</i>	Not Applicable Lot over 20,000 sq.ft.	74,762 sq.ft.

The existing residences on Kimberly Drive and Scofield Drive are mostly single-story ranch style homes with floor areas that average 2,487 sq.ft. on lots that average 16,557 sq.ft. The proposed home has a floor area that is 1,345 sq.ft. larger than the average floor area of the older homes in the neighborhood but is 291 sq.ft. less than the average maximum floor area allowed if the owners of the existing homes built additions. The height of the front elevation of the proposed home at 8 Kimberly Drive is not out of scale with the front elevations of other houses in the neighborhood. Since the proposed home is single story and does not exceed the 19-foot height limit, the overall mass and bulk of the home is comparable to many of the new homes and home additions that have recently been approved in Moraga.

3. Special features of the development, such as walls, screens, towers and signs:

The project includes three new retaining walls, which vary in height from 1-foot to 3-feet maximum. Two of the walls will be stacked stone garden walls, along the southwest side of the garage and a one foot high curved wall at the southeast front corner of the building pad. The retaining wall at the rear of the swimming pool and along the west side of the home was previously noted as a 3-foot high concrete wall with stone veneer, but that

note seems to have been lost with the adjustments to the plan. However, the top and bottom elevations on the wall are shown on sheet C-1 and the wall is not higher than 3-feet at any point. The low retaining walls do not require a building permit and are therefore exempt from a hillside development permit. The grading for the walls will not exceed 50 cubic yards of cut and fill. Sheet C-1 shows 30 cubic yards of cut. The plan calls for 320 cubic yards of fill on the pad. The applicant prepared a new survey of the property on August 26, 2011 and confirmed that the existing pad varies from 705.42 near the middle of the pad to 706.34 at the edge of the pad closest to the Sowa's property. There will be a layer of gravel under the post tensioned slab foundation which will raise the finished floor elevation to 708-feet, which is the same as the main floor elevation on the previously approved plans in 2007.

There was a settlement agreement between the Kimberly Oaks Maintenance Association (KOMA) and the adjacent neighbor at 6 Kimberly Drive that required revisions to the catch basin and "V-ditch" along the northeast property line to prevent surface water from going into the yard at 6 Kimberly Drive. Following approval of the first home design at 8 Kimberly Drive in 2007, a permit was issued to complete the drainage revisions required by the settlement agreement. On July 19th, the adjacent neighbor at 6 Kimberly Drive, Beverly Sowa, came to the Planning Department office to review the proposed plans and quickly determined that the engineer's drawings showing the "V-ditch" and catch basin on sheet C-1 of the plans were based on the old plans prior to the revision. The revised catch basin and "V-ditch" is closer to the property line. The applicant has revised the site plan, landscape plan and drainage plans to conform to the actual on-site drainage improvements. The proposed location of the new fencing at 8 Kimberly Drive will allow a 3-foot wide access corridor for the adjacent neighbor to maintain their existing fence. The two lateral "V"-ditches, which were not shown on the plans submitted to the DRB have been added to the current plans.

4. Effective concealment and sound attenuation of exposed mechanical and electrical equipment:

The air conditioning units or heat pumps are shown at the west side of the home adjacent to the master bathroom. The pool equipment area is also located at the west side of the home. This is a good location for this mechanical equipment to minimize the sound to adjacent property at 6 Kimberly Drive.

5. Colors and materials on the exterior face of the building or structures, striving for a limited number of colors and materials for each project:

Sheet A5 lists the colors and materials for the new home. The applicant brought a color palette to the DRB meeting. The proposed roof is noted as "GAF" charcoal. The "Hardie" horizontal siding is specified as "Sherwin Williams" #7044 Amazing Gray. The trim, fascia, soffits, garage door and porch posts and exposed beams will be "Sherwin Williams" # 7042 Shoji White. The windows will be "Milgard" White. The front door will be "Sherwin Williams" #7048 Urbane Bronze. The stone on the wainscot below the horizontal siding will be "Eldorado" Andante Fieldledge. The Sowa's at 6 Kimberly Drive expressed concern at the DRB meeting that the proposed colors would be too similar to the colors on their home. Staff prepared an exhibit to compare the colors on the Sowa's home with the previously approved color palette and proposed color palette for 8 Kimberly Drive. Staff determined that the colors would not be too similar and showed the

Sowa's our color comparison exhibit. They agreed that the proposed colors would be satisfactory.

6. Avoidance of repetition of identical entities whenever possible:

The design of the home does not repeat the style of any existing home in the neighborhood but it is similar in some of the door and window details to the proposed new home at 10 Kimberly Drive.

7. Harmonious relationship with existing adjoining developments avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted:

The craftsman style architectural design of the home is different from the typical ranch style homes on Kimberly and Scofield Drives. Nevertheless, the craftsman style has become a popular design motif in recent years and there are homes in the vicinity that have had additions where the "style" of the home was changed to a craftsman style.

8. Pleasing landscaping which incorporates existing landscaping and terrain as a complement to the structure, using plants which thrive in the Moraga climate and which are large enough in size to be effective:

Conditions 3 e and 3 f from Planning Commission Resolution 13-99 require submittal of landscape plans for the Kimberly lots to mitigate views of the new homes as follows:

- e. Landscape plans shall be submitted for review and approval by the Design Review Board of the Town of Moraga for each of the five lots, with an emphasis on mitigation of the visual impact to the surrounding neighborhood. **(Mitigation Measure XIII.b. Pages 3-35 Initial Study)**
- f. Landscaping approved by the Town's Design Review Board to mitigate the view of a home, shall be maintained and replaced and continue the intent of the DRB approval, if necessary, by the respective lot owner.

The applicant has submitted a landscaping plan for the front yard and tree planting plan for the side yards, which is shown on Sheet L-1 of the applicant's plan set. The proposed landscaping uses plants from the "Oak Palette" from Appendix B of the design guidelines. The proposed trees will be 15-gallon size. The shrubs will be 5 and 1 gallon size as noted on the plans. As noted under design aspect number 3, above, the landscape plans were revised along the northeast side property line to conform to the actual location of the "V-ditch" as it was modified in 2008.

9. Compliance with Chapter 8.132 (scenic corridors):

The project site is not located within 500 feet from a designated scenic corridor.

EXHIBIT G

APPLICABLE DESIGN GUIDELINES FOR 8 KIMBERLY DRIVE

EXHIBIT G

DESIGN GUIDELINES APPLICABLE TO 8 KIMBERLY DRIVE (Updated September 30, 2011 to address modifications to plans)

1 DESIGN PHILOSOPHY

Maintain the Town's semi-rural character (SRC)

- 1.) 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. (GP CD1.3) See Guidelines SRC1, SRC5, and RH4.

Comment: *The subject property is cannot be seen from a designated scenic corridor and is not on a major or minor ridgeline above 800-feet. There are no mature native trees or other significant natural features in the area of the site that will be developed with the new home. Most of the grading was completed with the street and storm drain improvements for the five Kimberly Drive Lots. Most of the lot is restricted from development with a wildlife easement and scenic easement. The proposed residence and garage cover only 5.12% of the lot area.*

- 2.) Protect the scenic and environmental qualities of canyon and valley areas to retain the Town's semi-rural character. Preserve both close-up and distant views of the natural hillside landscape from valley areas, and preserve significant linear open spaces in major canyons and grassland valleys with floodplain zones as the visual focus. (GP CD1.4) See Guideline SRC8.

Comment: *The project building site is in the bottom of a valley or canyon area, where the view of the natural hillside above the home will be preserved. The project site is not within a designated floodplain zone.*

Protect ridgelines and hillside areas (RH)

- 1.) Ridgelines and Hillside Areas. Protect ridgelines from development. In hillside areas, require new developments to conform to the site's natural setting, retaining the character of existing landforms preserving significant native vegetation and with respect to ridgelines, encourage location of building sites so that visual impacts are minimized. When grading land with an average slope 20% or more, require "natural contour" grading to minimize soil displacement and use of retaining walls. Design buildings and other improvements in accordance with the natural setting, maintaining a low profile and providing dense native landscaping to blend hillside structures with the natural setting.(GP CD1.5) See Guideline RH1 through RH10 and ID10.3, ID10.4, ID10.6, ID11.1, ID13.3, SFR2.12, SFR2.13, SFR2.14, SRC7, L1, L2, and L3.

Comment: *The project site is not on a ridgeline. The site was previously graded so that the area proposed for the new home is not the original "natural setting". The additional grading proposed at the edges of the building pad on the lot will not significantly alter the character of the "existing landforms" or eliminate any "native vegetation". A small 1-foot high landscape wall is proposed in a sweeping curve at the southeast front corner of the site. Two additional low 3-foot high retaining walls are proposed at the west and northwest sides of the home and behind the swimming pool. These walls will be hidden behind the new home.*

Complement existing landscaping (L)

- 1.) Emphasize and complement existing mature tree groupings by planting additional trees of similar species at Town entries, along major street corridors, in and around commercial centers, in areas of new development, and along drainageways. (GP CD1.6) See Guidelines SC9, L3.8, and CC1.7e.

Comment: *There are no mature trees or any native plants other than grass in the area proposed for the new home. The proposed landscaping plans for the project include eight coast live oaks in the*

front yard and west side yard areas. 8 Strawberry trees are proposed along the northeast side property line adjacent to 6 Kimberly Drive.

- 2.) Encourage the use of native, fire-resistive, and drought-tolerant species. (GP CD1.6) See Guidelines L1, L2.2, and L2.4.

Comment: *The proposed plants on the landscape plans appear to be drought tolerant species for the most part. Some of the plants are also on the fire resistant list on pages 12 and 13 of the new guidelines under item L2.5. The large Oak trees will be located at least 15-feet from the home.*

Minimize the impacts of development (ID)

- 1.) Concentrate new development in areas that are least sensitive in terms of environmental and visual resources, including areas of flat or gently sloping topography outside of flood plain or natural drainage areas. (GP CD1.1) See Guidelines ID1 and ID11.1.

Comment: *The reduced floor area of the new home fits on the existing pad on the lot. The project site is not in a flood plain. Existing drainage on the hillside above the building site is collected in a concrete "V-ditch" that conveys the water across the back of the lot and down the northeast side property line to a catch basin near Kimberly Drive. Sheet C-1 of the plan set shows new drainage lines that convey water to the "V-ditch" at the northeast side of the property, which will replace an existing lateral "V-ditch" at the bottom of the slope.*

- 2.) 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. (GP CD1.2) See Guidelines ID7, L2, and L3.

Comment: *The natural topography was changed when the mass grading was completed for the road and storm drainage improvements for the 5 new lots at the end of Kimberly Drive. The small retaining walls and minor grading at the west and northwest sides of the existing building pad will not alter the scenic qualities of the project site significantly. The proposed home is a single-story home with substantial building setbacks. The overall height of the home is just under 19-feet. The project includes a landscape plan for the front and sides of the home.*

- 3.) Whenever and wherever possible, convert overhead utility lines to underground and require underground utilities in areas of new development. (GP CD1.8) See Guidelines SC11 and ID13.8.

Comment: *The utilities are underground for the five lots at the end of Kimberly Drive.*

Thoughtfully design single-family residential neighborhoods (SFR)

- 1.) Review by staff or Design Review Board to ensure that new residential development in existing neighborhoods reflect the size, scale, height, setbacks, and character of existing development. While new homes, home additions, and remodels should be allowed, they should not create adverse impacts on adjacent properties or detract from overall neighborhood character. All projects should be subject to discretionary review by staff. (GP CD4.3) See Guidelines SFR1.1-1.6 and SFR2.1-2.6.

Comment: *The Town's Floor Area Ratio (FAR) guidelines do not apply to parcels that are over 20,000 square feet in area and the Planning Commission did not specify a maximum floor area for this lot when the Use Permit was approved. The proposed home has a floor area that is 1,345 sq.ft. larger than the average floor area of the older homes in the neighborhood but is 291 sq.ft. less than the average floor areas if the owners of the existing homes were to expand their homes to the maximum allowed floor area under the Town's FAR guidelines. The proposed home at 8 Kimberly Drive is 1,568 sq.ft. larger than the existing adjacent home at 6 Kimberly Drive, but it is comparable in size to the other new homes that have been built on Lots 3, 4 and 5.*

3 MAINTAIN THE TOWN'S SEMI-RURAL CHARACTER (SRC)

- SRC1 Retain, protect, and utilize existing natural features, such as trees and other vegetation, interesting ground forms, rocks, water, and significant views in the design.

Comment: *There are no natural features in the area proposed for the new home.*

- SRC2 The impact and presence of vehicles resulting from the development should be minimized through proper siting and screening in order to buffer parking areas from locations both interior and exterior to the site.
Comment: *The driveway to the 3-car garage narrows to only 16-feet wide at the curb and is paved with pavers for a more attractive appearance.*
- SRC4 Accessory structures should not encroach upon front yard and exterior side yard setbacks.
Comment: *There are no accessory structures shown on the plans. The plans do include a swimming pool in the rear yard, which has been moved 6-feet further west from the plans reviewed by the DRB in order to locate the pool further from the existing large pine tree at the northwest rear corner of the Sowa's property at 6 Kimberly Drive.*
- SRC5 Preserve natural site amenities.
- a. Development should be planned in relation to natural features.
 - b. Natural features must be protected both during and after construction of the project.
 - c. Retain trees and other native vegetation, consistent with tree preservation ordinance, to maintain current stability of steep hillsides, retain moisture, prevent erosion, and enhance the natural scenic beauty. Grading under tree driplines should be avoided to protect the root system during development.
 - d. Treat significant natural features, such as creeks, rock out-croppings, and prominent knolls, as assets.
- Comment:** *There are no natural features that will be disturbed on the site and there are no trees or other native vegetation within the area of development on the lot.*
- SRC7 New trees should be planted to compliment the natural pattern of tree placement.
Comment: *The landscape plan for the front yard and the side yards includes 8 new coast live oak trees and 8 new Strawberry trees.*
- SRC8 Mature native tree groupings should be protected.
Comment: *No mature native tree groupings will be disturbed by the proposed development.*
- SRC9 Improvements should be sited away from creeks to enhance safety and to protect existing drainage patterns, riparian habitat, and wildlife.
Comment: *The project site is not adjacent to a creek or riparian habitat area.*

4 PROTECT RIDGELINES AND HILLSIDE AREAS (RH)

- RH1 Protect ridgelines from development.
Comment: *The project is not located on a ridgeline or above the 800-foot elevation.*
- RH2 New development should be sited in areas that are least sensitive in terms of environmental and visual resources, including areas of flat or gently sloping topography.
Comment: *The area for the new home is primarily a level pad that was graded at the time the street and drainage improvements were installed. Some very minor 3-foot high garden retaining walls will be used at edges of the existing building pad, but they will not significantly alter the gently sloping topography of the lot.*
- RH3 In hillside and ridgeline areas, building sites should be sited so that visual impacts are minimized.
Comment: *The location of the home on the lot is near the lowest elevation of the lot, where the visual impacts are minimized.*
- RH4 The roofline of all hillside buildings should blend with or follow the ridgeline's natural contour.
Comment: *The main ridgeline of the roof is parallel with the street and the slope of this roof follows the slope of the hill behind the home.*

- RH5 Hillside buildings and other improvements should have a low visual profile. Dense native landscaping should be provided to blend structures with the natural setting.
Comment: *The proposed single story home has a relatively low profile with a maximum height of 18-feet 11.5-inches. 8 coast live oak trees will be planted around the front and west side of the home to help blend the home with the natural setting.*
- RH6 Hillside grading shall blend with natural slopes and be contoured to achieve a natural appearance. The use of retaining walls and other man-made grading features to mitigate geologic hazards should be avoided.
Comment: *The low landscape garden wall at the front is only 12-inches high. The retaining walls at the bottom of the slope along the west side of the home and northwest side of the swimming pool in the rear yard are 3-feet high. The existing topography of the lot will not be changed significantly.*
- RH7 On hillside lots fire safe landscaping should be used. Landscaping should be distributed around structures to provide screening from off-site views. Adequate water supplies and fire-fighting access shall be provided.
Comment: *This is a padded lot with a hillside at the back of the home. Fire safe landscaping would apply to planting on the hillside behind the home.*
- RH8 In hillside areas, solid board privacy fences should only be used when located close to the residence. Site perimeter and other distant fencing should remain visually open (i.e., split rail or deer fencing) in order to minimize the visual “ribbon-like” effect of fencing on the hillsides.
Comment: *There is no solid board fencing proposed on the hillside area behind the home. Sheet L-1 of the landscape plans note that an existing fence will remain along the northeast property line with 6 Kimberly Drive and a solid wood fence will be added along the northeast property line up to an existing Pine tree that is located about 12-feet northwest of the existing rear yard fence at 6 Kimberly Drive. “WWM” (Wire Mesh) fences are shown on the west side property line and on the southeast property line that extends behind the lot at 6 Kimberly Drive. The detail for these fences is shown on sheet L-2.*
- RH9 Larger lots should be created on steeper slopes. Density should be minimized in areas prone to seismic and other geologic hazards.
Comment: *The lot size was determined by the Town Council when the lot line adjustment was approved in 1998. The lot is 1.71 acres in size.*
- RH10 Preserve both close-up and distant views of the natural hillside and ridgeline landscape as seen from valley areas.
Comment: *The project building site is in the bottom of a side canyon or swale area, where the view of the natural hillside above the home will be preserved. The home will not be seen from the bottom of the primary valley area along Rheem Boulevard between Ascot or Mulholland Ridge and Campolindo Ridge.*
- RH11 All new structures located in hazardous fire areas (such as hillsides) should be constructed with fire resistant exterior materials consistent with applicable building codes and standards.
Comment: *The proposed home will have a masonry wainscot on some of the walls and “Hardie” horizontal siding on all the remaining walls. These materials are more fire resistant than the previously approved shingle walls on the home approved in 2007. A copy of the plans for the home were given to the MOFD Fire Marshal, Michael Mentink, on September 26, 2011.*

5 COMPLEMENT EXISTING LANDSCAPING (L)

L1 FIRE SAFE LANDSCAPING

- L1.1 On residential lots located adjacent to open space or heavily wooded areas, trees should be planted no closer than 15 feet from the exterior wall of a residence.
Comment: *Although this lot is adjacent to the Mulholland Open Space Preserve, the hillside behind the home is not heavily wooded. There are no existing trees located closer than 15-feet to the home. The trunks of all the proposed trees on sheet L-1 of the landscape plans are located at least 15-feet from the wall of the proposed home.*
- L1.2 Consideration should be given to avoiding flammable trees and shrubs where possible. Consult the Moraga Fire Protection District for highly flammable plant species to be avoided such as certain pine, juniper, and eucalyptus species.
Comment: *The largest proposed trees on the landscape plan are the eight coast live oak trees, which are listed on the Fire District's fire-safe tree list.*
- L1.3 Landscaping should be properly irrigated to assure that plants retain their fire retardant capability, but shall not be over watered so as to create runoff from the site.
Comment: *The landscape irrigation plan is included as sheet L-3 of the plan set.*
- L1.4 On residential lots located adjacent to open space or heavily wooded areas, landscaped areas should be maintained with a "wet band" (spray irrigation) that is a minimum of 30-100 feet in width, where setbacks allow. For fire safety consideration contact the Fire District for distance guidelines.
Comment: *The hillside above the home is not heavily wooded.*
- L1.5 The use of shredded bark should be avoided; bark chips are recommended. Suggested minimum depth of chips is 3 inches.
Comment: *The plan does not call for shredded bark.*
- L1.6 The Town will weigh the merits of water conserving landscapes in conjunction with fire safety and stormwater management.
Comment: *Most of the plants on the landscape plans for the front and left side yard areas are drought tolerant species.*

L2 SINGLE-FAMILY RESIDENTIAL LANDSCAPING AND IRRIGATION

- L2.1 Residential properties should be landscaped and irrigated in accordance with the natural environment.
Comment: *The proposed landscaping is shown on sheet L-1 of the plan set. Eight Coast Live Oak trees and eight Strawberry trees are proposed at the front and sides of the home, which would be consistent with the natural environment.*
- L2.2 New irrigation systems shall include automatic rain shut-off controller devices.
Comment: *The irrigation legend on sheet L-4 calls for a "Hunter" wall-mount controller with "Solar Sync" technology. The applicant has confirmed that this controller also includes an automatic rain shut-off feature.*
- L2.3 Irrigation runoff shall not be discharged into the storm drain system. Therefore, over watering of the landscape shall be avoided. Opportunities shall be provided for biofiltration that routes stormwater through landscaping and then to an appropriate drainage facility.
Comment: *Sheet L-3 includes a "Water Efficient Landscape Worksheet" and a note that the irrigation system will have a water audit every five years in accordance with the California Landscape Water Management program. Presumably, the water conservation measures would include avoidance of excessive runoff into the storm drain system.*

- L2.4 Drought tolerant plant species are encouraged as they use less water and are often fire safe.
Comment: *Most of the species shown on the landscaping plan are drought tolerant species. The major area that is not drought tolerant is the lawn area at the front. This area represents a relatively small percentage of the total lot area. The lawn area could be changed to a ground cover that is drought tolerant.*
- L2.5 Plant selections from the list of drought tolerant, fire resistant, native tree and shrub species in the design guidelines are encouraged:
Comment: *The plant selections are primarily from the Oak Palette in Appendix B of the design guidelines.*

7 MINIMIZE THE IMPACTS OF DEVELOPMENTS (ID)

To the extent possible, development should be concentrated 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 and Rheem park area; c) Infill parcels in areas of existing developments.

Comment: *The lot was padded with the mass grading of the five lots. The new home is situated on the existing pad. The amount of proposed grading is very minor with two small retaining walls that are a maximum of 3-feet in height. Most of the drainage alterations were completed under a separate permit after the 2007 home design was approved. The lower lateral "V-ditch" at the bottom of the slope at the rear of the existing pad will be replaced by the new retaining walls and drainage behind the walls. The five lots at the end of Kimberly Drive were created in 1997 by a lot line adjustment on a 300+ acre parcel, known as Mulholland Hill. Homes have been built on 3 of the 5 lots. 8 and 10 Kimberly Drive are the last of the five lots and as such could be considered "in-fill" development.*

ID1-7 APPLICABLE TO ALL DEVELOPMENT

- ID1 Downhill or uphill portions of any project shall provide landscaped treatment to address potential erosion, to be in harmony with adjacent developments, and to provide a complimenting view from distant horizons. Dense native landscaping should be used to blend hillside structures with the natural setting.
Comment: *The downhill slope between 6 and 8 Kimberly Drive is shown with landscaping on sheet L-1 of the plans. The uphill slope between 8 and 10 Kimberly Drive does not include any groundcover on the slope under the proposed coast live oak trees. The large slope behind the home has pasture grass. There are no native trees or shrubs on the lot anywhere near the proposed new structure.*
- ID2 Roofing materials shall be benign and non-corrosive, such as slate, steel, stone, terra cotta tiles, fiberglass composition shingles, etc. Copper materials shall not be used for any component of the roofing system (roofing material, gutters, downspouts, splash pads, screens, etc.). Solar systems on roofs are encouraged and not subject to Design Review.
Comment: *The roofing material is identified as "GAF" Charcoal. Staff assumes that this is a brand of composite shingle roofing. The applicant brought a color palette to the DRB meeting on July 25, 2011. The plans do not include a solar system.*
- ID3 Wind barriers, shade, sound absorption, dust abatement, glare reduction, and proper drainage should be provided on site.
Comment: *Standard conditions pertaining to dust abatement during construction of the home and site grading have been included in the draft conditions of approval for the project. The Craftsman style home has multi-pane windows that are relatively small in comparison to the total wall area. Glare from the windows is not anticipated to be a problem with the design of this home. Drainage is shown on Sheet C-1 of the plan set.*

- ID4 Buildings should be placed on the site so as to permit passive solar design, ample room for usable yard areas, adequate landscaping, and proper drainage between and around buildings.
Comment: *The proposed home site is located on a pad at the base of a southeast facing slope. The orientation of the lot is about 45-degrees from a true north and south alignment. The front and west side of the home would have the best opportunity for passive solar design. The front of the home with the three car garage doors and only two south facing windows would not be very effective for solar heat gain during the winter months. Ample room has been provided for a useable yard area with a pool at the back of the home.*
- ID5 Geologic hazards shall be addressed:
- Construction should not take place in geologic hazard areas identified as landslides, springs, or earthquake fault zones.
 - Risk of off-site geologic property damage should be minimized by locating development away from areas which are vulnerable to slope failure.
 - Professional evaluation of soil conditions and potential geologic hazards should be completed for all new homes.
- Comment:** *The geologic hazard areas for this lot were repaired and stabilized with the mass grading of the five Kimberly lots. A supplemental Geotechnical Engineering Study prepared by Jensen-Van Lienden Associates, Inc. was submitted on June 26, 2007 for the additional grading on the lot that was proposed at that time. The revised plans with a smaller home on the lot do not require the home to be cut into the slope of the hill with 4.5-foot high retaining walls. An update of the 2007 geotechnical study was not deemed necessary. The risk of off-site damage is minimal, since the proposed grading is relatively minor.*
- ID6 The level of lighting should not exceed the needs for security and safety or detract from the aesthetics of the development.
- Outdoor lighting should be related to the design of the structure.
 - Outdoor light fixtures should be designed and mounted so that the source of light has minimal impact off site.
 - Outdoor lighting should be directed inward toward the property and may require additional screening to avoid spillage onto adjacent residential properties.
- Comment:** *The design of the exterior lighting is shown on sheet A3 of the plan set. The light fixtures are shielded "down" lights that would prevent the source of the light from being seen directly from any adjacent property.*
- ID7 Design shall be consistent with the Moraga Municipal Code section 13.04.090.
Comment: *MMC Section 13.04.090 lists the "Best Management Practices and Standards" (BMPs) dealing with STORM WATER MANAGEMENT AND DISCHARGE CONTROL. There are 10 BMPs listed under this section. The drainage plans will be reviewed by the Town Engineer for compliance with the BMPs. A detention basin was installed to reduce peak storm water discharges from the five Kimberly lots at the time the mass grading and street and drainage improvements were installed. The combined building of both 8 and 10 Kimberly Drive would involve a total impervious surface greater than 10,000 square feet; therefore, the projects would be subject to the C.3 stormwater treatment requirements. The Town's engineering staff has discussed the stormwater requirements with the applicant so that the new roof leaders and other site drainage will be routed through vegetated areas for bio-filtration prior to discharge into any storm drain to reduce storm water pollutant discharges.*
- ID8 SWIMMING POOLS**
- ID8.1 The draining of all swimming pools shall be directed to the sanitary sewer system whenever feasible and be conducted in compliance with the permitting and standards established by Central Contra Costa Sanitary District. Overflow drains from swimming pools shall be directed to a landscape area or manufactured treatment system prior to connecting to the storm drain system. Best Management Practices (BMPs) shall be used to manage overflows.

Comment: The overflow drain for the proposed swimming pool is not shown on the plans. If the pool has a cover to prevent rain water from over-filling the pool, then a “manufactured treatment system” may not be required. Otherwise, the overflow drainage for pool shall be added to the drainage plans and reviewed by the Town Engineer.

ID8.2 Design shall be consistent with the Moraga Municipal Code section 13.04.060d.

Comment: MMC Section 13.04.060d lists discharges that are exempt from the prohibition against the release of non-storm water discharges to the town’s storm water system if the Regional Water Quality Control Board (RWCCB) approves the exempted category under Section C.11. of the town’s NPDES permit. These exempt discharges include: uncontaminated pumped groundwater, foundation drains, water from crawl space pumps, footing drains, air conditioning condensate, irrigation water, landscape irrigation, lawn or garden watering, planned and unplanned discharges from potable water sources, water line and hydrant flushing, individual residential car washing, discharges or flows from emergency firefighting activities, and dechlorinated swimming pool discharges. **Comment:** The drainage plans will be reviewed by the Town Engineer for compliance with this requirement. The RWCCB has not exempted the discharges listed above at this time.

ID9 PAVING

ID9.1 Impervious surfaces shall be minimized through site design and building methods. Directly connected impervious surfaces shall be minimized to avoid excessive concentrated stormwater runoff. Any runoff from impervious surfaces shall be directed to pervious areas or landscaped depressions.

Comment: It appears that most of the driveway is sloped towards the lawn area at the front, which will be designed as a shallow basin to allow infiltration to a drainage catchment area with perforated pipe below the lawn. The drainage plan on sheet C-1 shows drains with grates in the patio area around the pool at the rear of the home. The plans were revised after the DRB meeting on July 25, 2011 to rout the drainage pipes to the depressed lawn area at the front of the home for filtration. The drainage plans will be reviewed by the Town Engineer to minimize excessive concentrated storm runoff.

ID9.2 Impervious paving may be reduced by using permeable materials for pedestrian walkways, parking facilities, and areas with light traffic. Examples include:

- a. Unit pavers-on-sand: turf block, brick, natural stone, or concrete unit pavers
- b. Poured pervious surfaces: pervious concrete or pervious asphalt
- c. Granular materials: crushed shells, gravel, aggregate base, cobbles, or wood mulch.

Comment: The paving material around the swimming pool is not identified and is assumed to be impervious. The paving material for the driveway is shown as “decorative pavers” on the site plan sheet A-2. The permeability of pavers is being studied by the C.3 Implementation Committee to determine whether pervious materials can be used to significantly reduce run-off. One problem is that the underlying clay-like soil is not very absorbent itself, thereby cancelling the effectiveness of permeable paving to a large extent. The effectiveness of poured pervious surfaces is also being tested. A particular problem with pervious concrete and asphalt is that over time the pores in the paving can become clogged to the extent that they are no longer pervious. The underlying clay-like soil is also a problem for the permeable concrete and asphalt paving. The use of gravel or other granular materials for the proposed driveway or for the deck area around the pool is not considered appropriate. The gravel would be tracked onto the paving of the street from the driveway and would be a constant problem to clean-up the loose gravel.

ID10 GRADING

ID10.1 Grading for any purpose may be permitted only in accordance with an approved development plan that is found to be geologically safe and aesthetically pleasing.

Comment: The revised home design requires minimal adjustments to the existing pad. The proposed “grading” has been planned to avoid any cuts deeper than 3-feet or the removal of more than 50 cubic yards of soil. Sheet C-1 of the project plans shows a total cut of 30 cubic yards. There will be 320 cubic yards of fill, but most of this will be the gravel under the post tensioned slab foundation for the home and is on a slope that is less than 20%.

- ID10.2 Where the pre-development slope is less than 20% a grading permit may be required. See the Moraga Municipal Code 14.08.010 for details.
Comment: A grading permit and a hillside development permit will not be necessary as long as the soil movement is less than 50 cubic yards and no retaining walls exceed 3-feet in height where a building permit would be required.
- ID10.3 When the pre-development slope is greater than or equal to 20%, development shall be avoided, but may be permitted if supported by site-specific analysis. When grading land with a slope of 20% or more, soil displacement and retaining wall use shall be minimized by using contour grading techniques. In MOSO areas, development shall be prohibited on slopes with an average gradient of 20% or greater. Design shall be consistent with Moraga Municipal Code Title 14.
Comment: Section 14.12.010 of the Grading Ordinance requires DRB approval of grading operations on slopes greater than 20% where the pre-development average slopes is less than 25%. “Pre-development average slope” is defined as the average slope within the proposed area of disturbance and where illegal grading has not occurred. The “area of disturbance” at 8 Kimberly Drive is confined to the MOSO building cell on the lot and has an average pre-development slope of less than 20%.
- ID10.4 Land with a pre-development average slope of 25% or greater within the development area shall not be graded except as authorized by the Town Council and only where it can be shown that a minimum amount of grading is proposed in the spirit of, and not incompatible with, the intention and purpose of the Moraga General Plan. No new residential structures may be placed on after-graded average slopes of 25% or steeper within the development area except that this provision shall not apply to new residential structures on existing lots that were either legally created after March 1, 1951 or specifically approved by the Town Council after April 15, 2002.
Comment: The pre-development average slope of the area of disturbance is not greater than 25%.
- ID10.5 Cut slopes should be placed behind buildings or other structures where they will be screened.
Comment: The project has two small cut slopes supported by 3-foot high retaining walls along the west side and northwest rear of the pool and patio. These small cuts will be screened by the new home. There is also a 1-foot high stacked stone garden wall that will be visible at the front of the home. This wall has a sweeping curve at the edge of the turf area and is part of the landscape design. If there is a strong preference for “natural contour grading” then perhaps the low landscaping wall should be removed with a sloped front yard down to the street curb.
- ID10.6 Preserve the natural topography of the land, especially at the horizon:
a. Round off graded slopes, in a manner that conforms to the natural contours of the land and to the surrounding terrain. Sharp angles produced by earth moving, specifically at the top and toe of graded slopes shall be avoided.
b. Slopes shall be contour graded to achieve a natural appearance.
c. Slopes shall be blended with the contours of contiguous properties for a smooth transition.
d. Grading shall minimize scars due to cuts, fills, and drainage benches on natural slopes.
Neither cuts nor fills shall result in slopes steeper than 3:1 (horizontal to vertical), except where natural slopes are steeper. Where steeper slopes are unavoidable, special mitigation measures shall be incorporated into the design construction and maintenance of the slopes.

Comment: The existing topography of the previously graded pad on the lot is not being changed significantly except for the three new low retaining walls.

ID11 RETAINING WALLS

- ID11.1 Retaining walls (excluding foundation retaining walls) and other man-made grading features may only be used to mitigate geologic hazards when:
- required to decrease the possibility of personal injury or property damage
 - designed to blend with the natural terrain and avoid an artificial or structural appearance
 - appropriately screened by landscaping
 - designed to avoid creating a tunnel effect along roadways and to ensure unrestricted views for vehicular and pedestrian safety
 - designed to ensure minimal public and/or private maintenance costs

Comment: The three small retaining walls are not needed to decrease the possibility of personal injury or property damage. The proposed retaining walls at the west and northwest sides of the home are effectively screened by the home. The low curved one-foot high garden wall at the front will be partially screened by "Dwarf Rosemary". None of the proposed retaining walls would create a tunnel effect along Kimberly Drive or restrict views that would jeopardize vehicular or pedestrian safety.

- ID11.2 Exterior retaining walls shall be limited to five feet in height, unless it is visible from off site, in which case it shall be no higher than three feet. The total height of a retaining wall and fencing on top of the wall shall not exceed eight feet without Design Review Board approval. A guardrail or handrail (provided a solid fence does not support it) may be located on top of the retaining wall.

Comment: None of the proposed retaining walls exceeds 3-feet in height and the one-foot high retaining wall at the front, which is visible from the street, will be partially obscured by the landscaping. No fencing is proposed on top of the retaining walls.

- ID11.3 A retaining wall exceeding 3 feet requires professional engineering, a building permit, and may require a grading permit. Design Review Board approval is required if the retaining wall is visible from off-site.

Comment: Since the proposed retaining walls at the west side of the home and northwest side of the pool and patio are 3-feet or less in height, they do not require structural engineering or a building permit. It has been the Town's policy that a hillside development permit (HDP) is not required for projects on slopes steeper than 20% when no building or grading permit is required.

- ID11.4 The horizontal depth of the terraces between stacked retaining walls should be a minimum of twice the height of the larger adjacent wall.

Comment: The project does not include any stacked retaining walls.

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

Comment: The project is in compliance with this guideline.

ID12 STORMWATER GUIDELINES

- ID12.1 All residential buildings, in aggregate, may cover no more than 33% of the lot area. Exceptions may be considered for cluster and multi-family residential projects. For project designs that cluster the new structures on only a small portion of a large site, the percentage may be calculated using the entire site, rather than the lot size.

Comment: The footprint of the proposed home, including the garage, will be 3,832 square feet. The total lot coverage for the property is only 5.12%.

- ID12.2 Regulations set forth by the San Francisco Bay Regional Water Quality Control Board (RWQCB) shall apply to all new or redeveloped residential and commercial projects. Please see RWQCB Order No. 99-058 and Order No. R2-2003-0022.
- a. If the project creates or replaces more than 10,000 square feet of impervious surface; Exemptions include: Single-family homes that are not part of a larger development and routine maintenance work such as replacement or resurfacing of roofs and pavements. All new projects must retain pre-project hydrology. All applicable developments must comply with Provision C.3 of the Town's Stormwater Permit. These requirements are separate from—and in addition to—any requirements for erosion and sediment control and for pollution prevention measures during construction (see also the Moraga Municipal Code section 13.04 and Town Council Resolution 9-96).
- Comment:** *The total impervious surface area for 8 Kimberly Drive is 6,325 square feet; however, the combined impervious surface area for development of 8 and 10 Kimberly Drive will exceed the 10,000 square foot threshold for compliance with the C.3 requirements. The five lots at the end of Kimberly Drive were created by a lot line adjustment in 1997 prior to the new C.3 provisions of the Town's Stormwater Permit. Nevertheless, a detention basin was installed at the time the mass grading and street and drainage improvements were installed for the five Kimberly lots in order to reduce peak storm water discharges from the project. The location of the detention basin is at the west front side of 12 Kimberly Drive. The new roof leaders and other site drainage must be routed through vegetated areas for bio-filtration prior to discharge into any storm drain to reduce storm water pollutant discharges. The landscape plans need to be coordinated with the drainage plans to show the discharge of the drainage pipes into landscaped swales. The Town Engineer will review the drainage plans to ensure compliance with the Town's Stormwater Permit.*
- ID12.3 For developments whose site constraints prohibit the use of landscape infiltration, manufactured treatment systems can be inserted into the conventional storm drain system. A detailed Operation and Maintenance Plan must be submitted with the design application (see www.cccleanwater.org/construction for the C.3 Stormwater Guidebook). Options include:
- a. Catch basin or inlet inserts
b. Separators (oil-grit or oil-water)
c. Media filters (sand, gravel, peat, compost, activated carbon, fabric, or resin)
d. Various filtration treatment devices
- Comment:** *During review of the drainage for the project, the applicant and the Town Engineer may consider the treatment systems listed above if landscape infiltration is deemed insufficient for treatment of the storm water discharges.*
- ID12.4 Drainage should follow natural flow patterns and, where appropriate, plans should develop wide area flow patterns, rather than concentrating flow at one point.
- Comment:** *The collection of the water from the rear pool deck area has been revised on the new plans and will be piped to the depressed lawn area at the front of the home for bio-filtration or "treatment" of the storm water.*
- ID12.5 In new development only BMP-treated stormwater shall be discharged into the Town's storm drain system.
- Comment:** *The Town Engineer shall review the drainage plans to ensure compliance with this guideline.*
- ID12.6 A sufficient number of drains should be provided for retaining wall backdrains and in the crawl space under the foundation to provide an outlet for water that may accumulate behind retaining walls and beneath the house and to drain any areas that may be divided by internal grade beams. Such drainage facilities shall be directed to a landscape area or manufactured treatment system prior to connecting to the storm drain system. Design shall be consistent with the Moraga Municipal Code section 13.04.060d.

Comment: The low 3-foot high retaining walls do not require building permits. Nevertheless, it is always a good idea to install drainage behind any retaining wall. There will be no crawl space under the home because the foundation will be a post tensioned slab.

ID13 NEW DEVELOPMENTS AND SUBDIVISIONS

ID13.1 Subdivision layout should retain natural topographic features and maintain the Town's semi-rural character.

Comment: The project was not approved as a "Subdivision". The lots on an old 1927 subdivision map were re-configured with a lot line adjustment. In general, the five lots at the end of Kimberly Drive were graded in accordance with the natural topography of the property, but some changes were required to install the detention basin at 12 Kimberly Drive and the concrete drainage ditches. The overall density of the project is consistent with the Town's semi-rural character. Only 15 new building sites were established and most of the 300+ acres on Mulholland Hill were dedicated to the Town of Moraga as permanent open space.

ID13.2 The color schemes of homes on adjacent lots within 200 feet of one another should be compatible with and not duplicate one another.

Comment: The siding, doors and windows will match the proposed home at 10 Kimberly Drive, but the proposed colors for the siding and trim are different. At the July 25, 2011 DRB meeting the adjacent neighbors, Beverly and Frank Sowa, expressed concern that the proposed colors for 8 Kimberly Drive were too similar to the colors on their home. Staff was directed to evaluate the colors and make a determination. An exhibit was prepared to show the colors of the Sowa's home and the color palette for 8 Kimberly Drive. This exhibit was shown to the Sowa's and they agreed that the colors proposed would be fine.

ID13.3 New road construction should adapt to topography and natural features.

Comment: There is no new road construction for this project.

ID13.4 The impact of increased impervious surface of new roads should be mitigated by paving only the minimum width (20 feet), as required by the local Fire Department for roads that will not accommodate on-street parking. For streets with parking available on both sides the width shall be 36 feet.

Comment: The original part of Kimberly Drive was constructed prior to the Town of Moraga's incorporation and does not comply with the access requirements of the Moraga-Orinda Fire District. Kimberly Drive should be 36-feet wide from curb to curb to allow 8-foot wide parking on both sides and two 10-foot wide travel lanes. When residents or guests park cars along the curb on both sides of Kimberly Drive, then there is not sufficient width to provide 20-feet of unobstructed access for emergency vehicles. The only economically practical solution would be painting the curb red and prohibiting parking along one side of the street. Ultimately, it may come down to a vote by the residents on Kimberly Drive to choose which side of the road they want to restrict the parking.

Condition 43 of Planning Commission Resolution 13-99 prohibits contractors from parking their vehicles on Kimberly or Scofield Drive during the construction of the project. In order to accommodate the parking of some of the construction workers on the site, the builder may want to consider paving the driveway at the same time the foundation is poured for the home.

ID13.5 Stormwater should be treated before it enters the stormdrain drain system.

Comment: Stormwater from the driveway, patio/pool deck area and new roof leaders must be routed through vegetated areas for bio-filtration prior to discharge into any storm drain to reduce storm water pollutant discharges. The landscape plans need to be coordinated with the drainage plans to show the discharge of the drainage pipes into landscaped swales. The Town Engineer will review the drainage plans to ensure compliance with the Town's Stormwater Permit.

- ID13.6 When appropriate, shared driveways should be used for neighboring clusters of houses and pervious parking areas shall be used.
Comment: *This is a single home and due to the slopes between the lots it would not be practical to share driveways between the homes. However, the applicant has chosen to use pavers for the driveway, which may be slightly more permeable than a standard driveway.*
- ID13.7 Sidewalks, crosswalks, and landscaped multi-use trails shall be incorporated into new developments to encourage alternatives to automobile use. Connections shall be made to adjacent neighborhoods and, where feasible, commercial areas.
Comment: *When the five new building sites were established by the lot line adjustment in 1997, a subdivision map was not required and the Town could not require the recordation of trail easements for access to the open space areas.*
- ID13.8 Utility lines for new subdivisions shall be installed underground to maintain natural vistas.
Comment: *All utility lines for the new building sites on Kimberly Drive are underground.*
- ID13.9 Whenever possible, roads and driveways should be constructed parallel to existing topographic contours, and, if necessary, split in order to reduce the area of cut on hillsides or to preserve trees or other significant features.
Comment: *This guideline is not applicable to the project.*
- ID13.10 Street lighting in hillside and ridgeline areas should be unobtrusive and designed to reflect the natural surroundings.
Comment: *Since a subdivision was not required when the lots were re-configured, the Town could not require the installation of street lights or the formation of a street light assessment district for this project. In any case, the new lots are generally at the bottom of a small valley or side canyon and not on a hillside or ridgeline area.*
- ID13.11 Hillside lots should be larger than lots on naturally level terrain.
Comment: *All five of the new building sites on Kimberly Drive are on lots that exceed 1 acre in size and are much larger than the existing lots in the Scofield Drive area.*
- ID13.12 The same or similar elevations should not be placed within 300 feet of each other along the street without altering the direction of the roof.
Comment: *The proposed Craftsman style single story home at 8 Kimberly Drive will share many similar design features with the proposed two-story home for 10 Kimberly Drive. Although the "Hardie" horizontal siding, doors and windows will be the same as the adjacent home, the single story home will have different massing and the colors of the walls and trim will also be different.*
- ID13.13 New subdivision development should meet Build It Green requirements for new residences or equivalent.
Comment: *The developer should be encouraged to meet Build It Green requirements; however, we cannot compel the builder to meet specific requirements since this lot was not created by a new subdivision.*

8 THOUGHTFULLY DESIGN SINGLE-FAMILY RESIDENTIAL NEIGHBORHOODS (SFR)

SFR1 SINGLE-FAMILY RESIDENTIAL SITE PLANNING

- SFR1.1 Not more than two (2) two-story units should be placed side-by-side unless topographic and/or architectural considerations justify exceptions or unless the two-story portion of the house is not visible from off site. (Architectural considerations may include partial second stories and setback of second stories.)
Comment: *The home at 6 Kimberly Drive and proposed home at 8 Kimberly Drive are both single story. No exception to this guideline is necessary.*

- SFR1.2 Front setbacks should be varied, with no more than two adjacent units having the same setback. Setback variation shall be a minimum of three feet.
Comment: *The front setback for this home is varied and the home is at an angle to the street, where the west front corner of the garage is at 27-feet from the front property line and the southeast corner of the home is at 46-feet from the front property line.*
- SFR1.3 Accessory structures should complement the main structure unless the accessory structure cannot be seen from neighboring properties. Landscaping may be required to screen the accessory structures from view from off site.
Comment: *No accessory structures are proposed.*
- SFR1.4 On padded lots total building heights greater than 28 feet for two-story homes and 19 feet for single-story homes shall require special siting or design treatment to mitigate height.
Comment: *The height of this single story home is 18-feet 11.5-inches to the highest ridge of the roof and complies with this guideline.*
- SFR1.5 The architectural design motif should continue on all sides of a building. This motif should be compatible with but distinct from adjacent homes.
Comment: *The Craftsman style architecture details and masonry wainscot below some of the horizontal siding are used on all four sides of the proposed home. The style is compatible with the other new homes on Kimberly Drive.*
- SFR1.6 Development of residential lots should take advantage of natural features and unique topography of the site through split level pads or natural contour grading.
Comment: *The topography of the site is primarily a level padded lot and there are no natural features, such as rock outcroppings or large existing oak trees on the building site.*
- SFR1.7 Pervious surfacing is encouraged for all driveways. Driveways longer than 50' or wider than 16' should be constructed of pervious materials. See Guideline ID9.2. Multiple-car garages are encouraged to use flared driveways to minimize impervious surface coverage.
Comment: *The site plan plans show "pavers" for the driveway. It is unknown whether the pavers are permeable. The driveway is not longer than 50-feet. The width of the driveway varies from 16-feet at the street to 31-feet wide at the front of the three car garage.*
- SFR1.8 Where topography allows, driveways should slope toward a depressed lawn or other vegetated landscape feature to allow for biofiltration.
Comment: *It appears from the drainage arrows on sheet C-1 of the plan set that the driveway is sloped toward the lawn area at the right (east) side of the driveway. The slope and drainage of the driveway will be reviewed by the Town Engineer when the drainage plans for the project are reviewed.*
- SFR1.9 Circular or hammerhead driveways may be considered for homes that front on busy streets.
Comment: *This guideline is not applicable to the project.*
- SFR1.10 On padded lots there should be a minimum of 10' near level clearance area from any top or toe of a slope to any structure for access. Clearance is measured from the exterior of the structure or any protruding portion (i.e., chimney, bay window, etc.) to the nearest point on the property line or change in slope, whichever is closer. On padded lots there should be a minimum of 6' near level clearance area on any 3 sides of any building or structure.
Comment: *Despite the fact that the footprint of the home has been reduced from the original approved plans in 2007 and the home is no longer cut into the slope of the hill, the proposed home does not have the 10-feet of near level clearance along either side of the home for access to the rear yard and does not have a minimum of 6-feet of near level clearance on either side. An exception to this guideline will be required.*

- SFR1.11 There should be a near level area of at least 25' x 40', other than the front yard, for usable yard area.
Comment: *If the swimming pool is included, then the pool deck and pool area comply with this requirement.*
- SFR1.12 On non-padded lots the house shall be designed to reflect the natural contours of the site, keeping grading to a minimum.
Comment: *This home will be on a padded lot and the revised design is no longer cut into the slope of the hill.*
- SFR1.13 On padded lots walkways should be set back a minimum of one foot from the top of slope.
Comment: *There are no walkways near the tops of slopes.*

SFR2 SINGLE-FAMILY RESIDENTIAL BUILDING DESIGN

- SFR2.1 A harmonious relationship with the surrounding neighborhood should be created through the use of compatible design schemes and scale.
Comment: *The Craftsman design style is compatible in the neighborhood. The single story home is compatible with the predominantly single story homes in the neighborhood.*
- SFR2.2 The color schemes of homes on adjacent lots should be compatible and not duplicate one another.
Comment: *See comments for design guideline ID13.2.*
- SFR2.3 Exterior building design on all elevations should be coordinated with regard to color, texture, materials, finishes and architectural form and detailing to achieve design harmony and continuity.
Comment: *The exterior design of all four elevations achieves design harmony and continuity.*
- SFR2.4 The number of different materials on the exterior face of the building should be limited. Generally, a variety of masonry materials should be avoided. All chimneys on the same home should be similar in architectural style and materials.
Comment: *A masonry stone wainscot is used on portions of all four sides of the home. The fireplace in the family room will not have a chimney and will be vented to the side.*
- SFR2.5 Roof shape, color, and texture should harmonize with the color and architectural treatment of exterior walls.
Comment: *The roof has 5 gables at the front, 1 gable on the east side, 2 gables on the west side and 2 gables on the rear. The design does not use a combination of gable and hip roofs.*
- SFR2.6 The side yard setback shall be no less than the minimum permitted by the Zoning Ordinance and shall be increased by one additional foot for each foot of end wall height greater than 20 feet. End wall height is the maximum vertical height from finished grade to outer roof surface at the side yard. Chimneys, dormers, and other architectural elements are excepted from this limitation. The skirt wall is counted as part of the height measurement. In any individual case, the Planning Commission or the Design Review Board may require a larger side yard, provided they can make appropriate findings relating to the following types of conditions:
- a. Major ridgeline (as defined by the General Plan);
 - b. Scenic corridor;
 - c. General Plan land use or zoning designation;
 - d. Proposed use of structure, in relation to surrounding uses;
 - e. Visibility of structure(s) from off site, due to placement (or absence) of permanent screening;
 - f. Elevation of the lot, compared with the elevation(s) of abutting street(s) and/or other properties;
 - g. In fill lot or a lot adjacent to an established subdivision;
 - h. Slope or grade of lot, in relation to abutting streets.
- Comment:** *This single story home does not have any end walls that exceed 20-feet.*

- SFR2.7 Although the maximum height for any structure is set by the Zoning Ordinance at thirty-five feet, a lower height may be required, based on the special circumstances of an individual lot.
Comment: *The overall height is 18-feet 11.5-inches and complies with the height limitations for one-story homes.*
- SFR2.8 Conscious efforts should be made to recognize building security as a design element in new construction.
Comment: *The design and location of the exterior security lights is shown on the sheet A-3 of the plan set.*
- SFR2.9 Any blank wall that is without windows and is more than 15 feet long or 180 square feet in area, whichever is less, should have special design treatment.
Comment: *The fenestration, masonry wainscot and other architectural embellishments on the exterior of the home comply with this guideline. There are no blank wall areas exceeding 15 feet or 180 square feet.*
- SFR2.10 The overall height of the deck skirt should not exceed six feet, except for cantilevered decks from the second story. Skirt height is defined as the distance between the finished floor and the ground. The maximum height for exposed posts supporting a ground level deck should be four feet where visible from off site.
Comment: *There are no deck skirts on the proposed home.*
- SFR2.11 The following requirements specifically address skirt height treatment, when any portion of the skirt is visible off-site:
- a. Skirt heights of four feet or less need no special treatments;
 - b. Skirt heights between four and six feet shall receive special treatment, such as water table trim, other patterns or different surface treatment which could include other building materials, all consistent with the overall architectural concept;
 - c. The visible portion of a concrete footing or grade beam shall not exceed twelve inches above the lowest adjacent ground surface;
 - d. No skirt height that is greater than six feet shall be visible off-site.
- Comment:** *This guideline is not applicable because there are no skirt walls exceeding four feet in height.*
- SFR2.12 Decks that require special consideration due to the topography and hillside design of the home, which includes decks from the first and second floor of the residences. Such decks should comply with the following standards:
- a. Decks that exceed 6 feet in height shall be substantially screened by landscaping. The Design Review Board may require the property owner to enter into a landscape installation and maintenance agreement with the Town.
 - b. Landscaping shall mitigate the visual impact of a deck as viewed from adjacent neighbors.
 - c. Support posts should be setback from the face of the deck to minimize the height of posts and provide visual relief.
 - d. Diagonal or cross bracing of support posts shall not be permitted.
 - e. Decks shall be consistent with the scale and design of the home.
- Comment:** *There are no decks above grade for this project.*
- SFR2.13 The design of the mailbox should complement the style and materials of the principal building on the site.
Comment: *The design of the mailbox was not submitted.*
- SFR2.14 Roof leader drains shall be routed through a biofilter, sand filter, or plant box.
Comment: *The landscape plan should show how the water from the roof leader drains are directed to the landscaped areas for bio-filtration.*

EXHIBIT H

**HILLSIDE DEVELOPMENT PERMIT
ANALYSIS FOR PREVIOUS HOME
APPROVED IN 2007**

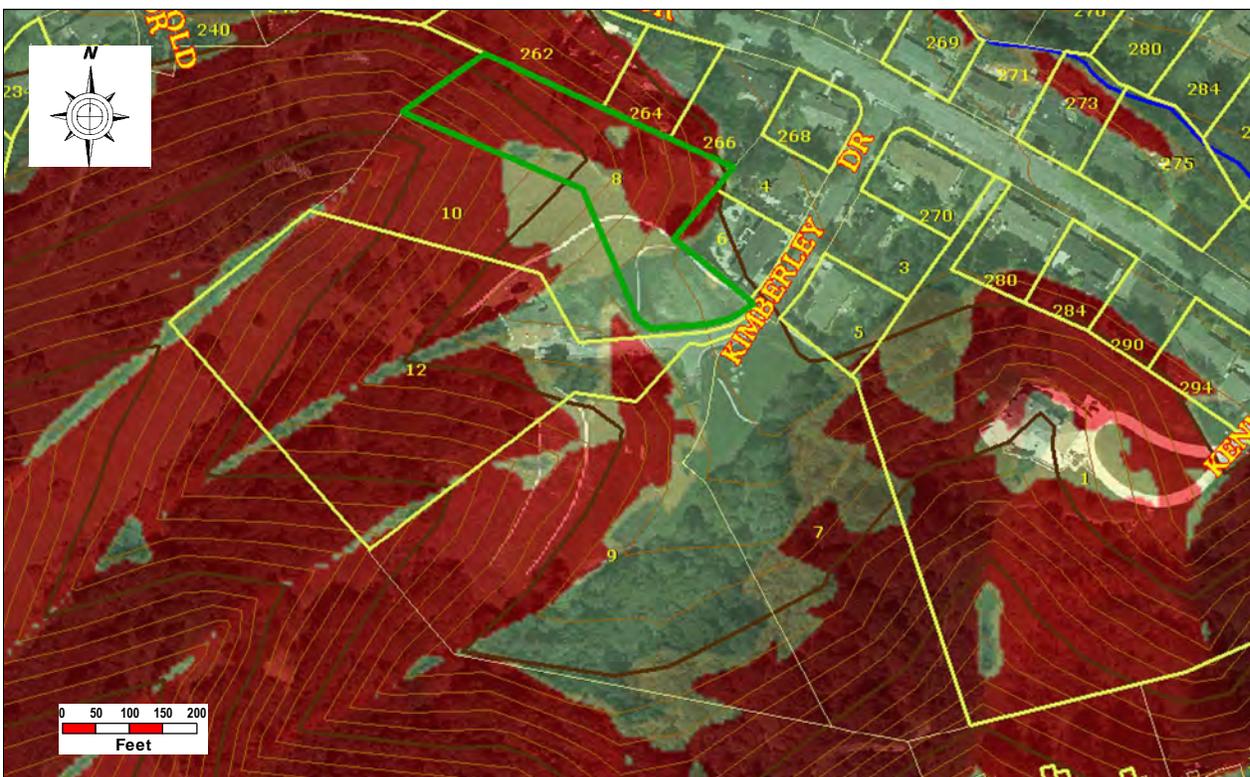
EXHIBIT H

HILLSIDE DEVELOPMENT PERMIT FACTORS TO BE CONSIDERED FOR 8 Kimberly Drive – July 9, 2007

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

1. Slope

Chapter 8.136 of the Moraga Municipal Code (MMC) applies to any project with a slope of 20% or greater. Although the average slope within the “building cell” is less than 20%, a hillside development permit would still be required because there would be grading and alteration of a slope greater than 20%. The GIS slope map below shows the average slopes on the lot.



Green Tint – Less than 20% slope **Yellow Tint** – 20 - 25% slope **Red Tint** – 25% or steeper

2. Soil Instability

The soil characteristics and potential landslide conditions on the subject property were addressed in a Geotechnical Engineering Study prepared by Jensen-Van Lienden Associates, Inc. and received by the Town on June 26, 2007. This report is included as Attachment 1 for this HDP analysis. The report was sent to the Town’s Geotechnical Peer Review consultant, Cal Engineering and Geology (CE&G) on June 26, 2007. Since the amount of additional grading on the lot is relatively minor, we have proceeded with Design

Review on the assumption that there will be no significant changes to the plans as a result of the geotechnical peer review report.

3. **Drainage**

The footprint of the proposed home, including the garage, will be 4,933 square feet. The total lot coverage for the property is 6.7%. Please note that any drainage plans will be reviewed by the Town Engineer for best management practices.

4. **Soil Characteristics**

The earth materials on the site are described on page 5 of the geotechnical report. Ground water was found 17.5 feet below the ground surface at boring hole 3. On page 9 of the report, it is recommended that the home should have a foundation system comprised of drilled cast-in-place concrete piers connected with reinforced concrete grade beams. The piers should have a diameter of 16 inches or more. See **Attachment 1** for more details on the soil characteristics.

5. **Seismic Factors**

The project site is not within an Alquist-Priolo Earthquake Fault Zone delineated by the State Geologist, and therefore the risk of fault offset across the site is remote. However, the active fault closest to this site is the Hayward Fault which is located about 8 kilometers to the southwest. The site is about 5 miles from the Calaveras fault, 8.4 miles from the Concord-Green Valley fault and 23 miles from the San Andreas Fault. The maximum moment magnitude of M7.9 would be from a seismic event on the San Andreas Fault. The seismic design parameters are listed in **Attachment 1**.

6. **Existing and Future Residential Development**

Existing single-family residential development is located on all the surrounding properties. Future residential development would be limited to the new home at 10 Kimberly Drive. The potential maximum floor area permitted on lots in the vicinity of the project site was shown in a table on page 2 of **Exhibit D**.

7. **View Shed**

The proposed location of the new home on the lot is higher up the slope than the adjacent residence at 6 Kimberly Drive. The height of the home may impact the view shed between these two homes. The fact that the new home would be set back at least 20 feet from the north property line should reduce the visual impact to the adjacent home.

8. **Noise**

The noise generated by the grading equipment for the site grading will probably be the most significant disturbance to the neighbors. This work will probably have a duration of one month. The noise generated by construction of the new home will be relatively short-term in nature. Construction activities are not expected to result in noise levels exceeding the Town's standards. The Town's Noise Ordinance limits construction and grading activities to between the hours of 8:00 a.m. and 5:00 p.m. In addition, there are some standards for the noise levels of construction equipment that can be made conditions of approval for the project.

9. **Potential traffic congestion**

This project will not adversely impact traffic in the area. Parking of grading equipment, tractor tread vehicles and all construction vehicles and equipment on Kimberly Drive and Schofield Drive is prohibited. These vehicles shall be delivered to the property by trailer and kept on site during grading and construction operations. The Applicant shall establish an offsite “staging area” for vehicles utilized by the construction employees. The proposed frontage improvements will require review by the Town Engineer and possibly the Town’s Traffic Engineering consultant prior to approval of the change to the improvement plans.

10. Fire risk

Weed abatement and selection of landscape plants that are more resistant to fire between the new home and the native grass and shrubs on the open space “scenic easement” area of the lot will help reduce the risk of a wild land fire spreading to the home. The materials of the home including shingled walls and Elk Prestique Sablewood roofing might help reduce the danger of fire spreading to the home. The project will be reviewed by the Fire Marshall for the Moraga-Orinda Fire District prior to release of the building permit.

11. Wildlife

The construction of the new home will not require the removal of any existing trees. The applicant’s landscape plan includes the planting of 15 gallon-size trees and 5 gallon-size shrubs in addition to the existing pine tree. The area of the site that will be disturbed for the construction of the new home does not include any riparian habitat or dense scrub growth, which typically provides important cover for wildlife. The area of the property within the scenic easement will not be developed.

12. Dust

During construction of the project and the drilling of the foundation pier holes, some dust would be generated. Dust emissions will depend on the level of activity, the type of construction activity and weather conditions. Wetting down the surface of the area where the pier holes will be drilled should help to reduce dust. The closest sensitive receptors for air pollutants are the residences directly adjacent to the project site. Construction dust impacts can be mitigated through appropriate dust control practices and through compliance with the Town’s standard construction conditions.

13. Glare

The project site is on the west side of a hillside. There could be some glare from windows early in the morning as the sun rises in the east. There should be no glare from window reflections between 10:00 am and sunset, because the sun angle will be behind the ridge at the back of the home.

14. Impact on Existing Vegetation

This project will not have a significant impact on existing vegetation. As stated previously, no trees will be removed. In addition 15 trees will be planted on the property as part of the landscaping for the project. The scenic easement areas will not be developed.

15. Additional factors to be considered in reviewing a Hillside Development Permit:

a. Minimum Lot Area

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

Comment: *This 1.7 acre lot was subdivided in 1996. The lot area is 73,760 square feet and is one of the smallest of the five lots on Kimberly Drive. There will be no development outside of the MOSO cell area.*

b. Appropriate Living Space

MMC Section 8.136.070 B requires an appropriate living space consistent with the site's constraints to be shown on the site plan.

Comment: *The proposed design includes some level of outdoor living space with a patio and outdoor fireplace.*

c. Location of Building Sites Adjacent to Steep Slopes

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

Comment: *A small portion of the proposed home is located 2 feet higher up the slope than the existing pad, but it is within the developable building cell.*

d. Additional Restrictions or Requirements

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

Comment: *In making the recommendations for the building setbacks and height limits for the lot, the DRB should consider any adverse impacts to privacy for the adjacent homes.*

EXHIBIT I

COMPARISON OF PROPOSED COLOR PALLETS WITH COLORS OF SOWA'S HOME



Existing colors of garage at 6 Kimberley Dr.



Existing colors of home at 6 Kimberley Dr.

Color Palette for previously approved home at 8 Kimberley Drive in 2007 (DRB 08-07)

EXHIBIT J

TOWN ENGINEERING STAFF ANALYSIS AND RESPONSE TO SOWA'S ISSUES AND CONCERNS

Analysis and Comments on the proposed development of 8 Kimberly Dr.

Prepared by: John Sherbert, staff engineer

Date: October 4, 2011

Introduction: Residents Frank and Beverly Sowa (6 Kimberly Dr.) have raised several questions about the proposed development of the vacant lots at 8 and 10 Kimberly Dr. Responding to their concerns, the Town staff has reviewed the proposed plans, met with the developer's design staff and reviewed revised plans submitted as a result of the meetings. The comments herein respond to the Sows' concerns.

CONCERN:

(1) Location of swimming pool outside the designated building pad and conflicting with existing concrete drainage ditch (7/25/11 letter item 1a, 8/4/11 letter, p. 3):

Discussion with the Sows on August 4, clarified the use of the phrases "limit of the building pad", "Building Envelope Limit" and "scenic easement limit" (corresponding with the approved building envelope limits). The initial set of plans presented by Branagh was apparently based on an earlier version of the lot topography prior to the rebuilding and relocation of the concrete ditch in 2007. The conflict was pointed out to Branagh and new plans were provided on September 2, reflecting the corrected location of the drainage ditch and reflected moving the pool slightly west to provide approximately 5 foot clearance from the drainage ditch

(2) The proposed pool's location relative to the pine tree (7/25/2011 item 4, 8/4/2011 letter p. 7):

As discussed previously, the initial set of plans referred to in the letters reflected incorrect information relative to the existing drainage ditch. In the 9/2/2011 plans, the pool has been moved slightly west to This places the pool edge approximately 20 feet inside the property line. The pine tree's canopy may still extend beyond the proposed location of the pool, however, and appropriate measures should be taken to protect the tree.

(3) Removal of the existing v-ditch cross the lot at 8 Kimberly (7/25/11 letter item 1c-d, 9/18/11 letter item 2):

The Sows believe that PC Resolution 13-99 specifically required the installation of the v-ditch running across the lot at 8 Kimberly and that this should be a permanent fixture. On review of the document, the text requires drainage to be provided to protect the building foundation at 8 Kimberly. The Commission did not specify the means by which the drainage should be provided. The Branagh design proposes a drainage system of sub-drains behind the retaining walls and along the house foundation, surface drains behind the house (around the pool) and on the sides and front of the house, and roof leaders and a slot drain across the driveway to divert stormwater away from the foundation of the house. The proposed design has been reviewed and approved by the Town's engineering staff and is designed to protect the house foundation from stormwater and also serve to collect stormwater on 8 Kimberly and direct it to stormdrains thus protecting the adjacent (downhill) property owned by the Sows.

(4) The building pad elevation on the proposed plans differs from the "as-built" plans from the original grading and the building and the elevation topographical lines are incorrect (8/4/2011 letter):

The original grading plans for the lots, the "as-built" grading plan provided by RMR, and more recent survey by Moran Engineering indicated the building pad height for 8 Kimberly was approximately 705 elevation. However, the first set of plans submitted by Branagh gave a different 708 elevation. After meeting with the Branagh design team to discuss the discrepancies on 8/25/2011, the Branagh team agreed to re-survey the property and adjust the building pad accordingly. On 9/2/2011 the engineering staff received a revised topographical map of the building site at 8 Kimberly confirming the 705 elevation of the rough grade. There may be confusion however, with the building pad elevation on the proposed house drawings that reflect a building pad elevation of 707 and a finished floor elevation of 708. The difference reflects the addition of the foundation, minor amounts of compacted soil and drain rock and flooring. However, the rough building pad as reflected on the new survey agrees with the previous data. Based on the confirming survey provided on 9/2, staff is satisfied that the proposed building plans reflect accurate elevations and do not indicate a plan to re-grade the building pad to raise the foundation. Comparison of the previous building plans and the current plans reflect slight changes in the location and elevations of finished grades to accommodate the revised topographical data and reflects a slight change (averaging about 1 foot) in the finished building pad overall. The main change indicated in the new plans is an increase in the height of the low retaining wall at the back of the property from approximately 2 foot to a maximum of 3 foot. The new topographical data does not indicate either an increase in the building envelope area nor the import of large amounts of fill to raise the building pad.

(5) The location of the proposed solid wood fence between the existing drainage ditch and the Sowa's existing fence (7/25/2011 letter item 2, 8/4/2011 letter item 4):

The initial set of plans was based on outdated information on the location of the existing drainage ditch, using the location of the ditch as it existed prior to the 2007 rebuilding project. The revised plans submitted for review in early September correctly reflect the location of the existing ditch and propose erecting the fence along the property line east of the ditch allowing approximately 3 feet between the proposed fence and the Sowa's existing fence. This should address the Sowa's previous concern that the narrow space between would make maintenance difficult.

(6) The landscaping plan reflects plants in the area between the existing drainage ditch inlet and the curb along Kimberly (7/25/2011 letter item 2, 8/4/2011 letter item 3):

As noted above, the initial set of plans was based on an outdated location for the existing drainage ditch along the property line between 6 and 8 Kimberly. The revised plans of 9/2/2011 reflect revised landscaping to accommodate stormwater treatment facilities required by the Town and revised plantings along the existing drainage ditch and the dirt and cobblestone extension to the curb at Kimberly.

EXHIBIT K

**NEW SURVEY OF 8 AND 10
KIMBERLY DRIVE COMPLETED
AUGUST 26, 2011**

EXHIBIT L

**SUPPLEMENTAL GEOTECHNICAL
STUDY DATED SEPT. 20, 2011
BY JENSEN-VAN LIENDEN
ASSOCIATES, INC.**

P170CC
September 20, 2011

Branagh Development
100 School Street
Danville, CA 94526

Attention: Peter Branagh

Re: Supplemental Geotechnical Study.
PT Slab Design Criteria
8 Kimberly Drive (Lot 1)
Moraga, California

RECEIVED
SEP 23 2011
BRANAGH

Curtis N. Jensen
Geoffrey Van Lienden

RECEIVED

OCT 24 2011

MORAGA PLANNING DEPT.

As requested we have conducted a supplemental geotechnical study to develop design criteria for the proposed post-tensioned slab for the new residence planned for Lot 1 in the Kimberly Drive subdivision. Geotechnical recommendations for this project were originally issued in our report dated August 25, 2004. We have reviewed the recommendations contained in that report. In our opinion, our original recommendations are still valid. The recommendations contained in this letter supplement the recommendations in our August 25, 2004 report.

The building area has already been graded. We drilled 3 shallow test borings on the pad in the area of the proposed new house. Our project engineer in the field classified the soil conditions encountered in the borings. The locations of the new borings (borings 4 through 6) are shown on the attached site plan, Figure 1. Logs of all of the borings are presented on Figures 2 through 7.

We retrieved reasonably undisturbed samples of the underlying soil and the samples were brought to the laboratory for testing. Tests included grain size distribution analyses, plasticity index testing, and strength/moisture/density evaluations. All of these tests are used to develop the geotechnical design parameters for PT slabs-on-grade. The test results are presented on the boring logs and on the plasticity chart, Figure 8.

1. Post-tensioned Slab Foundations

The building could be supported on post-tensioned slab foundations. The post-tensioned slab should be designed to account for the highly expansive nature of the soil in the subgrade. Using the design methodology recommended in the California Building Code, we have developed parameters that can be used by the structural engineer for post-tensioned slab design. The parameters given below are based on the assumption that the Thornthwaite Index is equal to -20. We have assumed a soil plasticity index of 34% and a liquid limit of 57%. We have assumed that 78% of the soil will pass through the #200 sieve and that 33% of the soil has a diameter of less than 2 microns. These design values are based on the test

on the test data obtained from our study of Lot 1 and the test results from our concurrent study of Lot 2. Based on our analyses, the following parameters should be used.

e_m (center lift) = 6.5 feet
 e_m (edge lift) = 3.7 feet
 y_m (center lift) = 3.2 inches
 y_m (edge lift) = 2.1 inches

The post-tensioned slabs can be designed using a bearing pressure of 1000 psf. This value can be increased by 33% for all loads including wind or seismic. While the final design of the slab thickness is the responsibility of the structural engineer, we recommend that a minimum slab thickness of 10 inches be used to limit the potential for deflection. Slabs thicker than this would produce even less risk of deformation.

2. Moisture Migration Beneath Slabs

Moisture migration through slabs is a common problem. If slabs are to be constructed in areas where moisture migration and the resulting dampness in the slab would be an issue, it is suggested that a moisture vapor retarder system be used beneath the bottom of the slab. A variety of systems are available on the market today varying considerably in effectiveness and expense. A commonly used treatment consists of a few inches of open graded gravel (capillary rock), a vapor proof membrane, and 1 or 2 inches of sand placed over the surface of the membrane. The use of the sand is a matter of debate among structural engineers. The final decision regarding the treatment to use should be made by the owner or architect.

3. CBC Geotechnical Seismic Design Parameters – Mapped Values

The site longitude and latitude are 37.8623 degrees west and -122.1370 degrees north, respectively.

The site class is D.

The estimated site short period spectral acceleration S_s is 1.50.

The estimated site 1-second spectral acceleration S_1 is 0.60.

$F_a = 1.0$

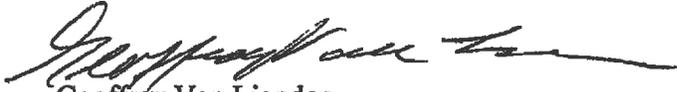
$F_v = 1.5$

Branagh Development
September 20, 2011
Page 3

Please advise us if we can be of further assistance.

Very truly yours,

JENSEN-VAN LIENDEN ASSOCIATES, INC.



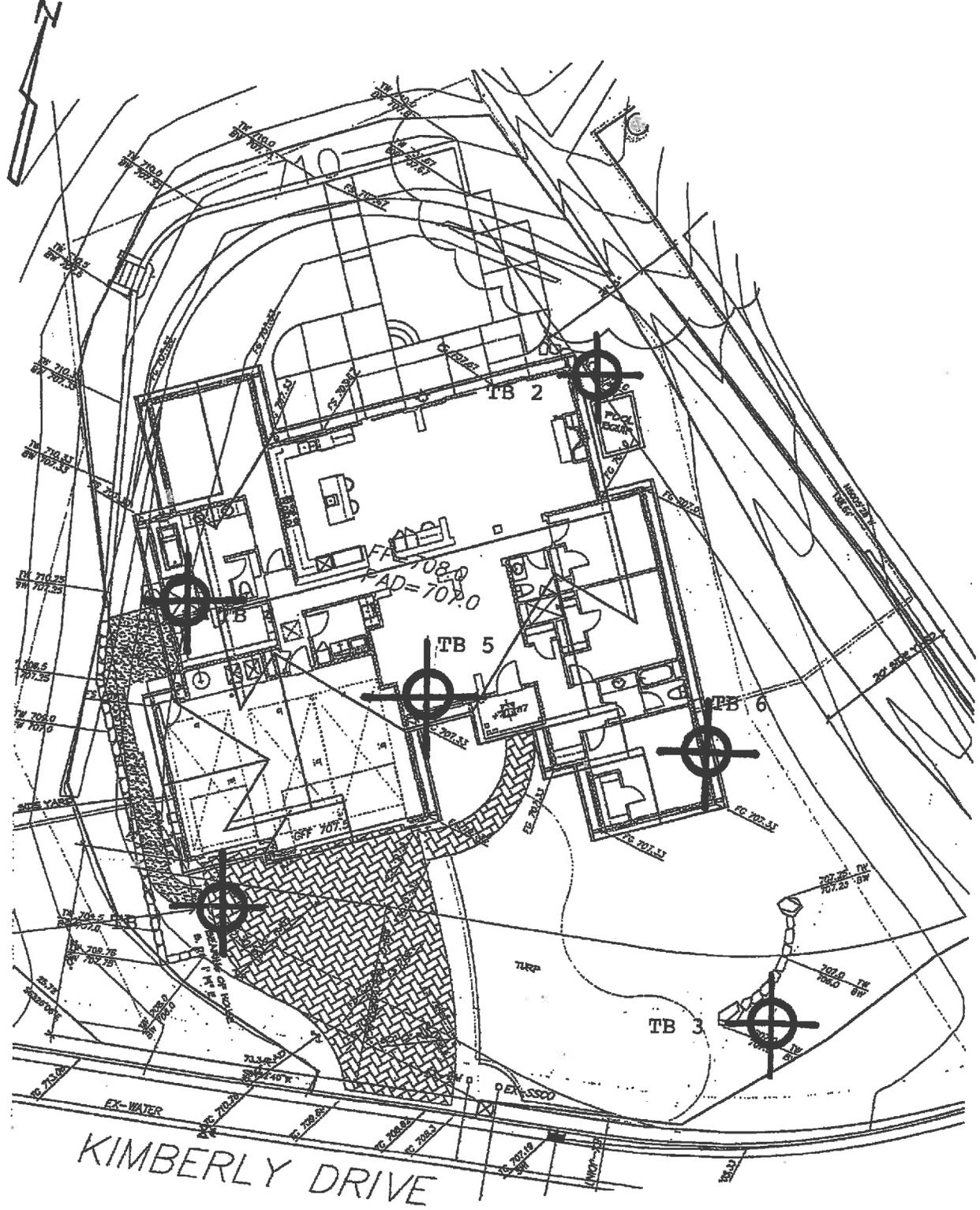
Geoffrey Van Lienden
G. E. # 853

cc: Talon Design Group



Jensen - Van Lienden Associates, Inc.
GEOTECHNICAL ENGINEERING CONSULTANTS

Reference



KIMBERLY DRIVE

Base map by Talon Design Group
Approximate Scale 1" = 20'

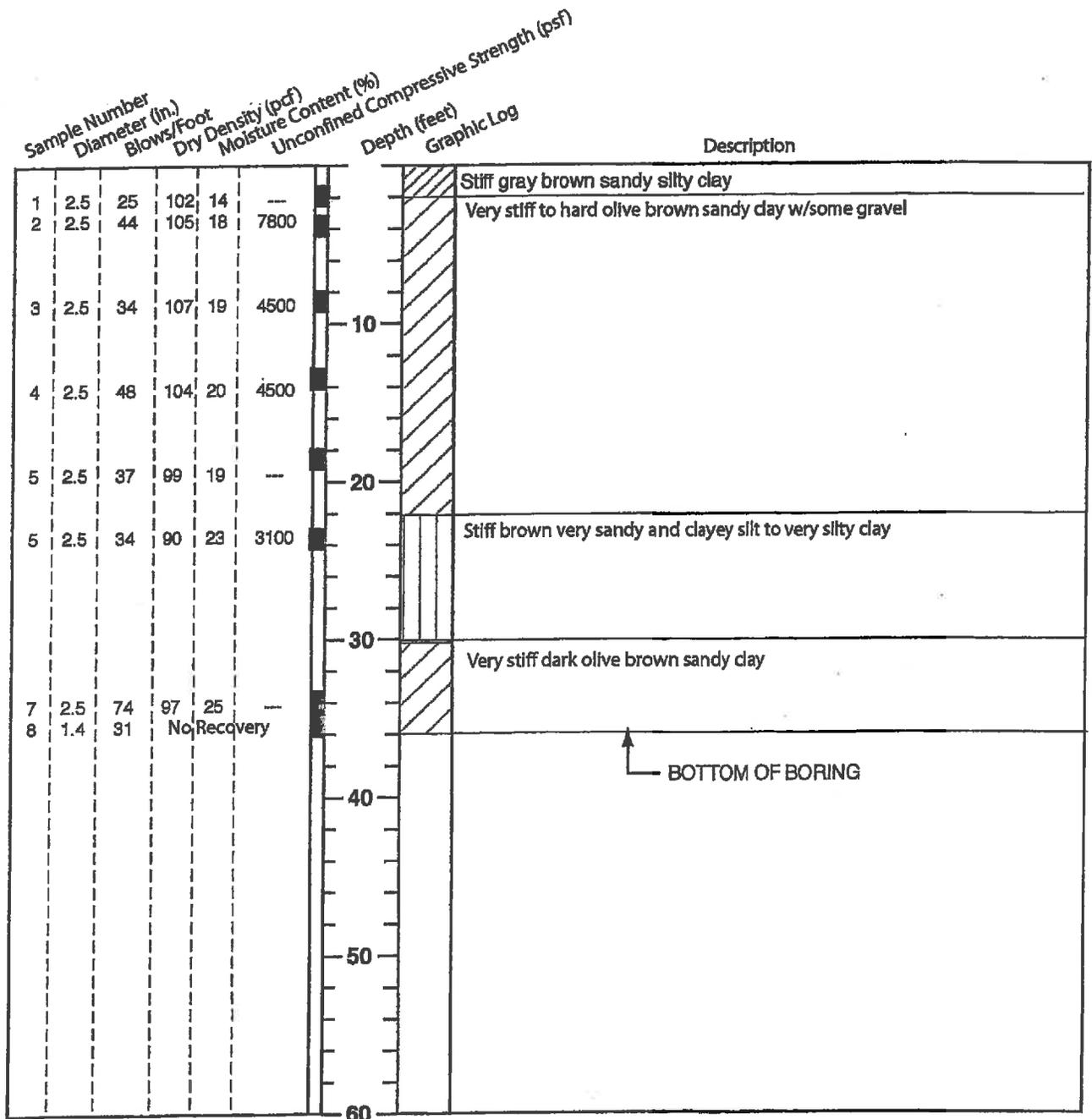
Jensen - Van Lienden Associates, Inc.		
Test Boring Locations 8 Kimberly Drive (Lot 1)		
Date 9/11	Figure 1	Job No. P170CC

**Jensen - Van Lienden
Associates, Inc.**
GEOTECHNICAL CONSULTANTS

Log of Boring Number 1

**Lot 1 - Kimberley Drive
Moraga, CA**

SUPERVISOR: _____	SKM	SAMPLING METHOD: _____	Drive w/140# hammer
DATE DRILLED: _____	7-8-04	SURFACE ELEVATION: _____	NM
DRILLING METHOD: _____	4" Auger	GROUNDWATER DEPTH: _____	16' on 7-8-04



Job Number P170AA

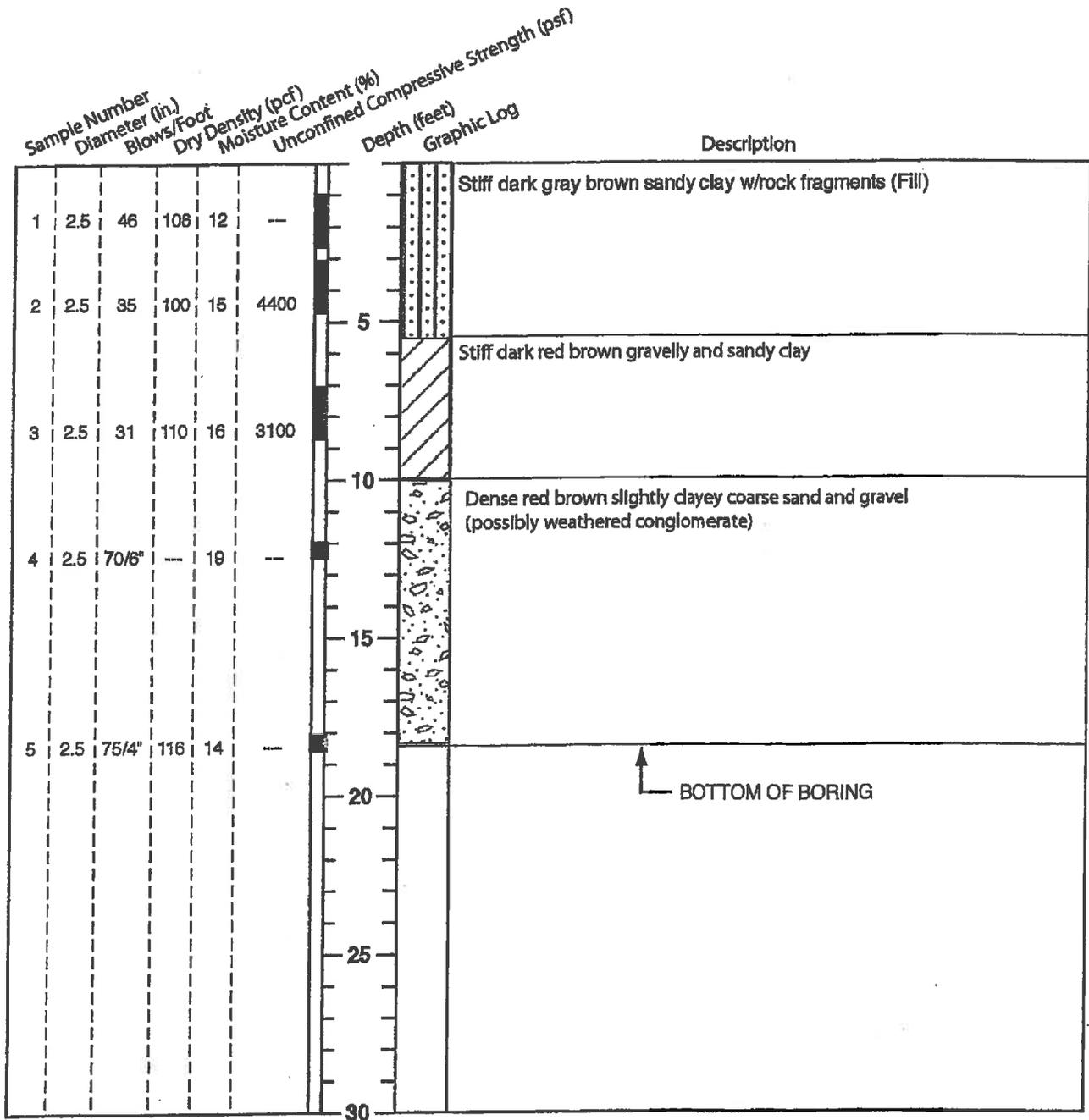
Figure 2

**Jensen – Van Lienden
Associates, Inc.**
GEOTECHNICAL CONSULTANTS

Log of Boring Number 2

Lot 1 - Kimberley Drive
Moraga, CA

SUPERVISOR: _____	SKM	SAMPLING METHOD: _____	Drive w/140# hammer
DATE DRILLED: _____	7-8-04	SURFACE ELEVATION: _____	NM
DRILLING METHOD: _____	4" Auger	GROUNDWATER DEPTH: _____	17' on 7-8-04



Job Number P170AA

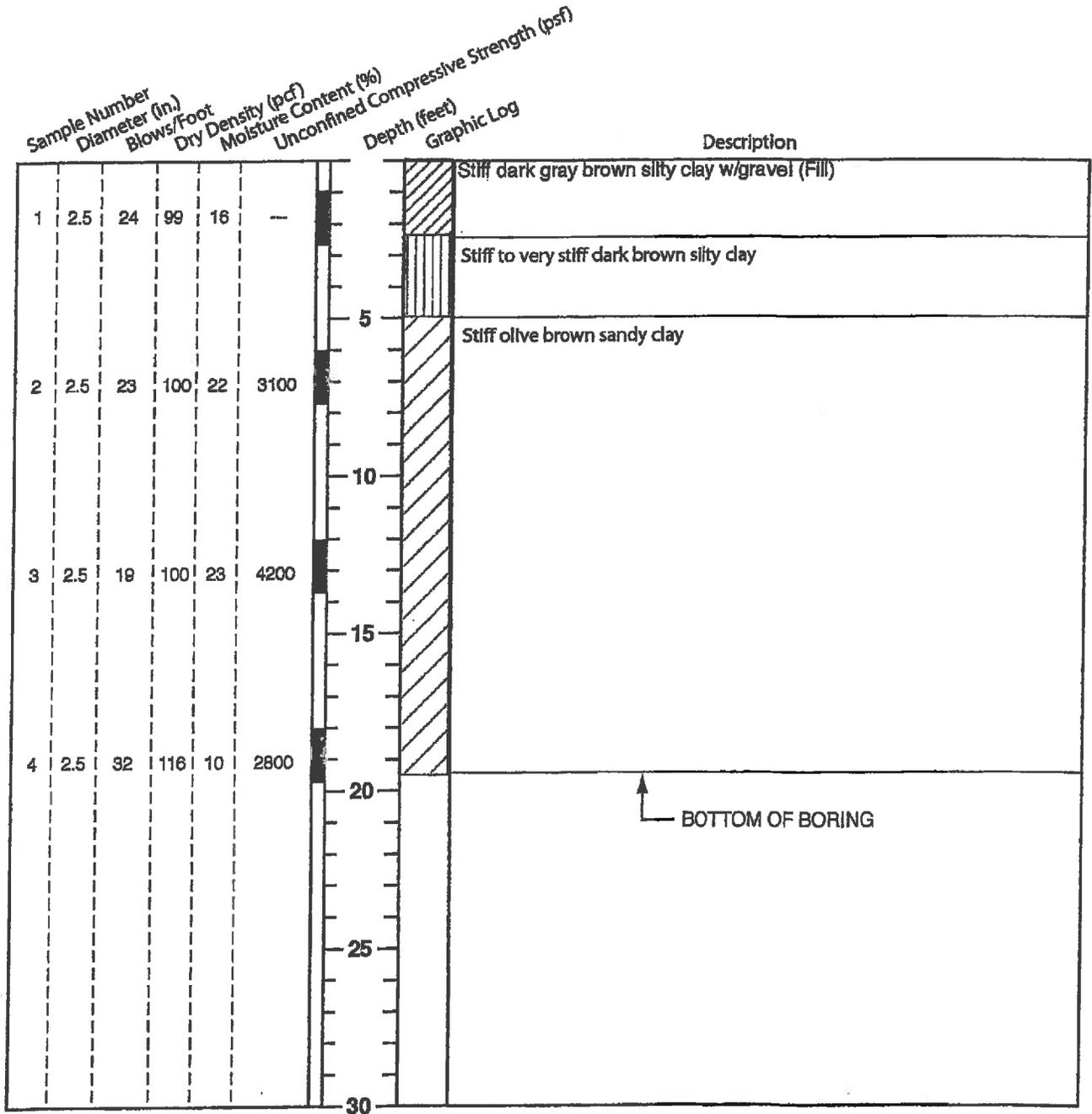
Figure **3**

**Jensen – Van Lienden
Associates, Inc.**
GEOTECHNICAL CONSULTANTS

Log of Boring Number 3

**Lot 1 - Kimberley Drive
Moraga, CA**

SUPERVISOR: _____	SKM	SAMPLING METHOD: _____	Drive w/140# hammer
DATE DRILLED: _____	7-8-04	SURFACE ELEVATION: _____	NM
DRILLING METHOD: _____	4" Auger	GROUNDWATER DEPTH: _____	17' on 7-8-04



Job Number P170AA

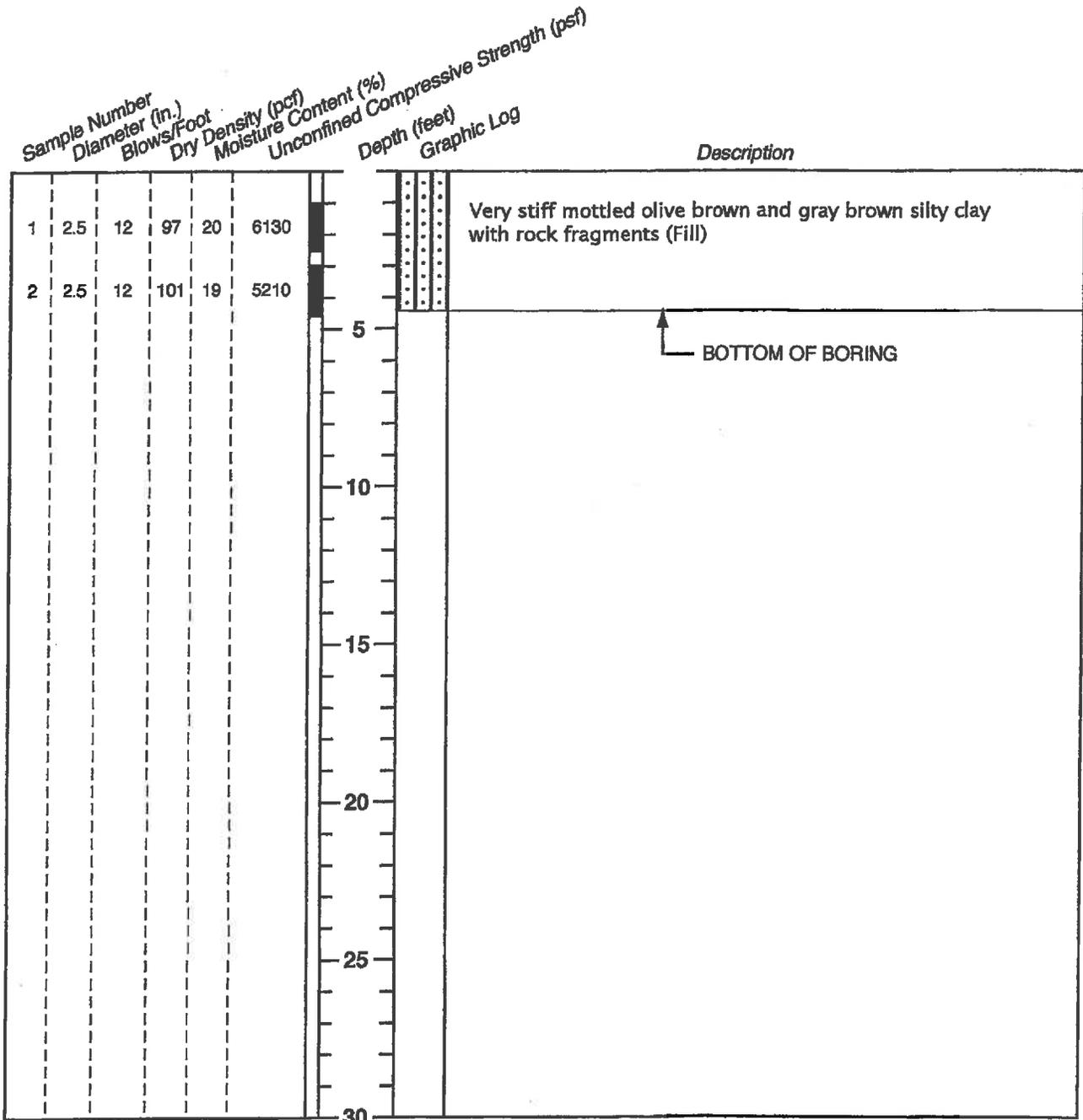
Figure 4

**Jensen – Van Lienden
Associates, Inc.**
GEOTECHNICAL CONSULTANTS

Log of Boring Number 4

**Lot 1, Kimberly Drive
Moraga, CA**

SUPERVISOR: _____	GVL	SAMPLING METHOD: _____	140# hammer/30" drop
DATE DRILLED: _____	9/8/11	SURFACE ELEVATION: _____	Not measured
DRILLING METHOD: _____	4" diameter solid stem augers	GROUNDWATER DEPTH: _____	Dry on 9/8/11



Job Number P170AA

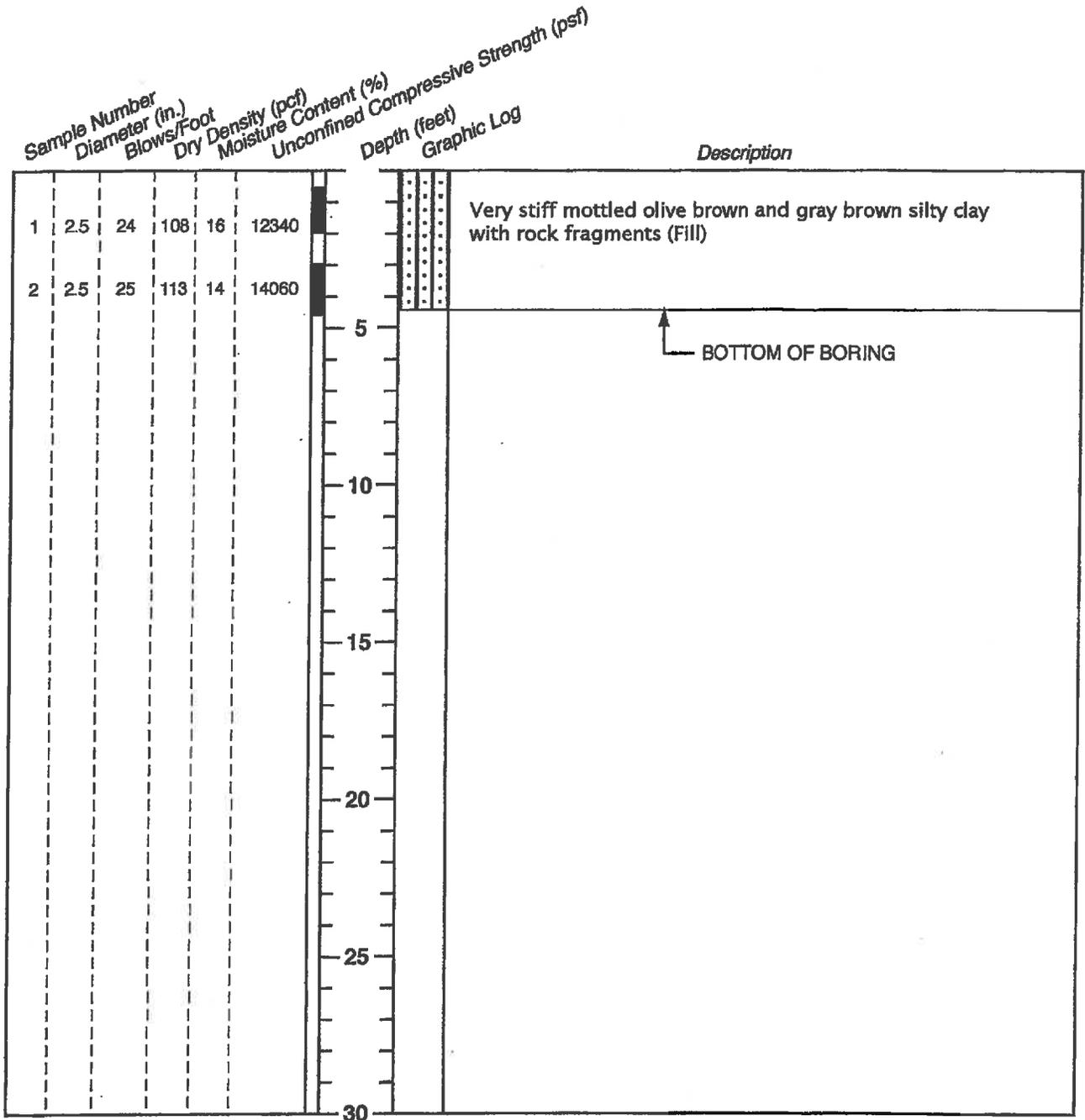
Figure **5**

**Jensen – Van Lienden
Associates, Inc.**
GEOTECHNICAL CONSULTANTS

Log of Boring Number 5

**Lot 1, Kimberly Drive
Moraga, CA**

SUPERVISOR: _____	GVL _____	SAMPLING METHOD: _____
DATE DRILLED: _____	9/8/11 _____	140# hammer/30" drop _____
DRILLING METHOD: _____	4" diameter solid stem augers _____	SURFACE ELEVATION: _____
		Not measured _____
		GROUNDWATER DEPTH: _____
		Dry on 9/8/11 _____



Job Number P170AA

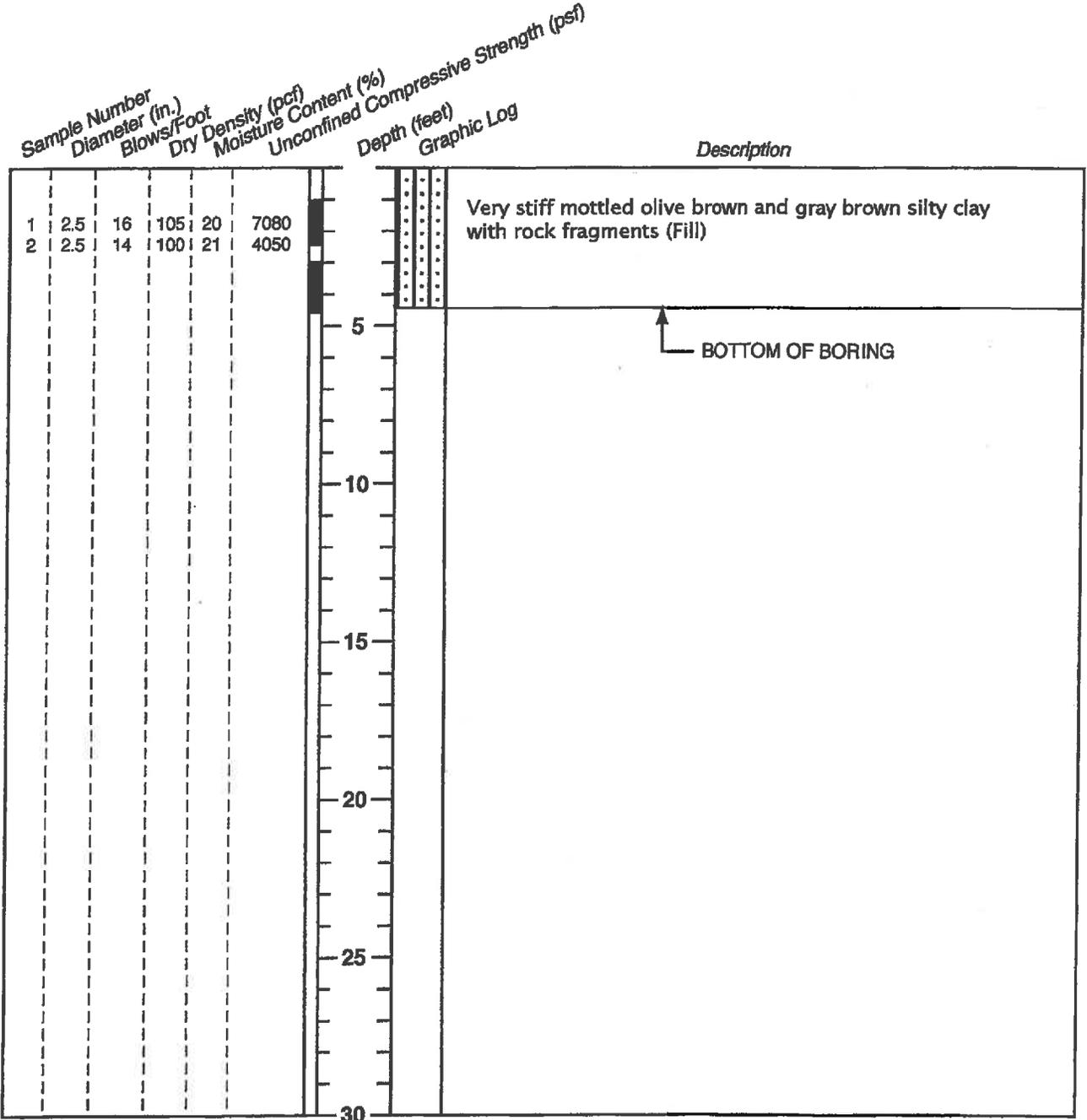
Figure **6**

**Jensen – Van Lienden
Associates, Inc.**
GEOTECHNICAL CONSULTANTS

Log of Boring Number 6

**Lot 1, Kimberly Drive
Moraga, CA**

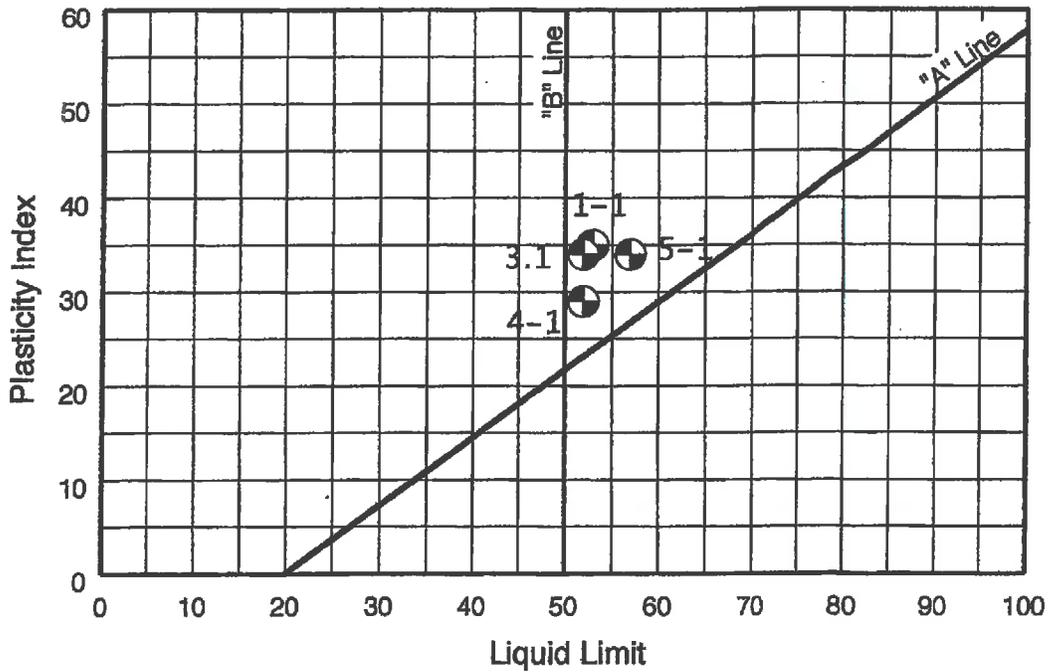
SUPERVISOR: _____	GVL	SAMPLING METHOD: _____	140# hammer/30" drop
DATE DRILLED: _____	9/8/11	SURFACE ELEVATION: _____	Not measured
DRILLING METHOD: _____	4" diameter solid stem augers	GROUNDWATER DEPTH: _____	Dry on 9/8/11



Job Number P170AA

Figure 7

PLASTICITY CHART



INDEX TEST RESULTS

Sample Identification		Atterberg Limits (%)		Grain Sizes (% Dry Weight)		
Sample No.	Description	Liquid Limit	Plasticity Index	Sand	Silt	Clay
1-1	Olive brown sandy clay	53	35	---	---	---
3-1	Dark gray brown silty clay	52	34	---	---	---
4-1	Dark gray brown silty clay	52	29	25	42	33
5-1	Dark gray brown silty clay	57	34	22	44	33

Jensen - Van Lienden
Associates, Inc.

Lot 1 - Kimberley Drive
Moraga, CA

Date
9/11

Figure
8

Job No.
P170CC

EXHIBIT M

**GEOTECHNICAL PEER REVIEW
LETTER DATED NOV. 16, 2011
BY CAL ENGINEERING &
GEOLOGY, INC.**



1870 Olympic Blvd.
Suite 100
Walnut Creek
California 94596

Tel: 925.935.9771
Fax: 925.935.9773
www.caleng.com

16 November 2011

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

RE: Proposed New Residence
8 Kimberly Drive (Lot 1)
Moraga, California

Dear Mr. Chamberlain:

At your request, we have completed our geologic and geotechnical peer review of the supplement geotechnical report Jensen-Van Lienden Associates, Inc. (JVLA) and the provided development plans for the proposed new residence to be constructed at 8 Kimberly Drive in Moraga, California. The supplemental report by JVLA is an update of their 25 August 2004 geotechnical report. The 25 August 2004 report was prepared for previously proposed development at the property.

DOCUMENTS REVIEWED

We previously reviewed the 25 August 2004 geotechnical report and development plans and our review comments are contained in our letter of 31 August 2007. Our 31 August 2007 letter contained seven review comments for which we recommended additional information. A formal response to those comments was never provided, however, some of the comments have been addressed by supplemental report by JVLA and some have not been adequately addressed. The status of these comments will be discussed in subsequent sections of this report.

The following documents were reviewed:

1. Report titled *Geotechnical Engineering Study, Lot 1 Kimberly Drive, Moraga, California* prepared by JVLA, dated 25 August 2004.
2. Report titled *Supplemental Geotechnical Study, PT Slab Design Criteria, 8 Kimberly Drive (Lot 1), Moraga, California* prepared by JVLA, dated 20 September 20, 2011.
3. Letter titled *8 Kimberley Dr/DRB 07-11, Applicant/Owner: Branagh Development/Kimberly LLC, 10 Kimberley Dr/DRB 08-11 Applicant/Owner: Branagh Development/Kimberly LLC*, prepared by Frank and Beverly Sowa, dated 11 October 2011.
4. Architectural plans titled "New Residence for: Kimberly LLC, 8 Kimberly Drive, Moraga, Sheets A1-A6" prepared by Talon Design Group, Inc.
5. Civil engineering plans titled "Grading and Drainage Plan 8 Kimberly Drive, City of Moraga, Contra Costa County, Sheets C1-C3," dated 9-9-11, prepared by Alexander & Associates Inc.

Our geologic and geotechnical review of the reports and plans for the proposed new residential development has included the examination of the above referenced materials for pertinent information regarding the technical feasibility of the project. We have also performed reconnaissance level observations of the site.

PROPOSED PROJECT

The proposed project will consist of constructing a one-story single-family residence with an attached garage on the existing graded building pad. The proposed residence development will also include a new swimming pool and patio area at the rear of the residence. The residence will be accessed by a private driveway off Kimberly Court. A 2 to 3 foot tall retaining wall will be constructed along the west and north sides of the building pad to retain an ascending slope. The grading plans indicate that minor cuts and fills will be required to attain the desired grades for the project.

According to JVLA, portions of the building pad were previously graded in order to construct a buttress fill to stabilize an unstable ascending natural slope above this and the building pads to the west (Lots 2 and 3). The eastern end of the buttress fill terminates on the property upslope from the building pad. Improvements constructed as part of the buttress fill construction are present on Lot 1 and some will continue to be present after development.

There is an existing concrete lined drainage ditch that extends from the southwest corner of the building pad to the concrete-lined drainage ditch that extends along the east side of the property. This drainage ditch will be removed as part of the proposed site development.

The subdrain for the buttress fill cuts across the northern side of the building pad and extends along the east property line. There are two finger subdrains with cleanouts at the northern end of the graded pad. It appears that portions of the proposed rear yard improvements and part of the pool may encroach onto the subdrain system.

REVIEW OF GEOTECHNICAL REPORT AND DEVELOPMENT PLANS

PREVIOUS REVIEW COMMENTS FROM OUR 31 AUGUST 2007 LETTER

Comment 1

JVLA (2004) states that "...tall retaining walls constructed against excavations into the upslopes on the north and west sides should be avoided." However, Sheet C3 indicates a grade change of up to 7 feet will be required at the northwestern corner of the residence. It appears this grade change will be supported by a house foundation retaining wall. The cut required in this portion of the building pad is contrary to the JVLA recommendations. Furthermore, the JVLA report does not provide recommendations to design retaining walls for a restrained condition as would be required for foundation retaining wall systems.

It is recommended that JVLA review and respond to this condition in writing. If deemed acceptable, JVLA should provide retaining wall design recommendations for restrained conditions.

Status

This comment does not apply to the currently proposed project.

Comment 2

In the JVLA geotechnical study, they recommend drainage improvements at the southeast corner of the property to mitigate the potential for runoff water from draining onto the east neighbor's property. This recommendation was not addressed on the RMR plans, specifically Sheet C3. It is recommended that the drainage improvements be designed to prevent surface water runoff from draining onto the east neighbor's property.

Status

It is recommended that JVLA verify that the proposed drainage improvement shown on the Alexander & Associates Inc. plans are in conformance with the intent of their recommendations.

Comment 3

In the JVLA geotechnical study, they recommend that an existing unlined drainage ditch on the portion of the property located above the east neighbor's rear fence be upgraded and improved. This recommendation was not addressed on the RMR plans, specifically Sheet C3. It is recommended that the drainage improvements be designed to prevent surface water runoff from draining onto the east neighbor's property. It is recommended that consideration be given to constructing a concrete-lined J-ditch similar to that shown on Sheet C3 in the unlined drainage ditch.

Status

It appears that a concrete lined drainage ditch has been installed above the adjacent property to the east. It is recommended that JVLA verify that the existing drainage facilities meet the intentions of their recommendations.

Comment 4

Sheet C-2 RMR Plans - The plans depict the location of cleanouts for the buttress subdrain that extends across the north side of the building pad and east property line. However, the cleanout locations are not shown on the drainage improvement plans on Sheet C3. It is recommended that the subdrain cleanout locations be shown on Sheet C3. The plans should also indicate that access to the cleanouts should be maintained at all times and that no other drainage system is to be connected to the existing subdrains. The plans should also indicate who will be responsible for the maintenance of the subdrains.

Status

It remains our recommendation that the approximate locations of the existing drainage facilities be shown on the project plans. The plans should also indicate that access to the cleanouts should be maintained at all times and that no other drainage system is to be connected to the existing subdrains. The plans should also indicate who will be responsible for the maintenance of the subdrains.

Comment 5

The improvement plans indicate a swimming pool will be constructed in the northeastern portion of the building pad; however, design parameters for the pool are not contained in the geotechnical report. We recommended that the project geotechnical engineer review the soil conditions in the vicinity of the proposed pool and provide site specific design parameters.

Status

The current project calls for the construction of a swimming pool which will extend into the slope along the north side of the property. Neither of the JVLA reports contains site specific geotechnical recommendations for the proposed swimming pool. It remains our opinion that this information should be provided by the project geotechnical engineer.

Comment 6

It appears that a portion of the proposed swimming pool may be located above the subdrain installed as part of the mass grading operation for the Kimberley Oaks development. Depending on depth of the pool and subdrain, it is possible that this portion of the pool could extend into the existing subdrain. It is recommended that depth and the location of the subdrain be determined as soon as practical. This information should be provided to the consultant team working on the project to determine if modifications to the project plans are warranted.

Status

This information has not been provided as previously requested. It remains our recommendation that this issue be addressed by the design team.

Comment 7

The 21 June 2007 letter by plan review letter by JVLA indicates they have not reviewed the structural engineering drawings for the project including the foundation plans. It is recommended that the project geotechnical engineer review the structural engineering plans for the project including the foundation plans for conformance with the recommendations of their report. This review should be documented in writing.

Status

It is our opinion that the geotechnical aspects of the development plans be reviewed by the project geotechnical engineer for conformance with the intentions of their reports. This review should be documented in writing.

COMMENTS PERTAINING TO THE UPDATED REPORT AND CURRENT PLANS

Comment 8

The “Post-tensioned Slab Foundations” section of the supplement report indicates that the provided geotechnical design parameters were developed using the design methodology of the California Building Code. It is recommended that JVLA verify that the methodology employed was from the 2010 California Building Code.

Comment 9

The development plans call for making cuts up to 3 feet tall into the existing fill slopes along the west and north sides of the building pad. These cuts will be supported by short retaining walls. It is recommended that JVLA review the proposed treatment of these fill slopes and provide recommendations as needed for the cuts and the design of the retaining walls.

Comment 10

It is recommended that Grading Note 2 on Sheet C1 of the grading and drainage plan be updated to include a reference to the 20 September 2011 JVLA supplemental report.

Comment 11

The concrete lined drainage ditch at the toe of the fill slopes along the west and north sides of the building pad will be removed as part of the site development. A new retaining wall will be constructed just upslope of the existing drainage ditch, however, no drainage ditch is shown above the new retaining wall. It is recommended that consideration be given to construction of new concrete drainage ditch above the new retaining wall.

Comment 12

A perimeter drain is proposed to be constructed around the exterior of the residence. The perimeter drain detail on Sheet C1 of the grading and drainage plan does not contain a perforated collector pipe at the bottom of the subdrain trench. It is recommended that consideration be given to incorporating a perforated drain pipe into the perimeter drain system.

CLOSURE

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

We have employed accepted geotechnical engineering procedures, and our professional opinions and conclusions are made in accordance with generally accepted geotechnical engineering principles and practices. This standard is in lieu of all other warranties, either expressed or implied.

Yours truly,

CAL ENGINEERING & GEOLOGY, INC.


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


Phillip Gregory, P.E., G.E.
Principal Engineer

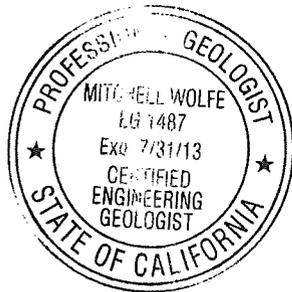


EXHIBIT N

**SWIMMING POOL
RECOMMENDATIONS
DATED NOV. 21, 2011 BY
JENSEN VAN LIENDEN
ASSOCIATES, INC.**

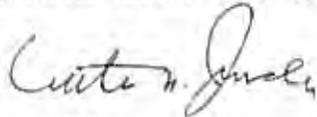
November 21, 2011
Branagh Development

designed to cantilever from the supporting soils can be estimated on the basis that the passive pressure rises linearly to the point where the shear in the pier is zero.

Our records indicate that a subsurface drain traverses through the planned pool area. The drain is important for maintaining the stability of the upslope above Lots 1 and 2. We recommend rerouting the pipe in the drain around the pool. The rerouting probably should be done when the pool and other project features are being constructed and the pipe is exposed, when their locations are evident and a new pipe route can be determined that avoids the other features and the pool.

Very truly yours,

JENSEN-VAN LIENDEN ASSOCIATES, INC.



Curtis N. Jensen
G.E. # 438

Cc: Talon Design



EXHIBIT O

AGREEMENT TO EXTEND TIME LIMITS REQUIRED BY THE PERMIT STREAMLINING ACT



Town of Moraga

PLANNING DEPARTMENT
329 RHEEM BOULEVARD
MORAGA, CA 94556
(925) 888-7040

Agreement to extend the time limits required by the Permit Streamlining Act.

RECITALS

THIS AGREEMENT is based upon the following facts:

- A. On June 16, 2011, an application was filed for approval of a new 2,995 square foot single story home with an attached 837 square foot 3-car garage on a 74,762 square foot lot at 8 Kimberley Drive. (APN 255-120-010).
- B. The Permit Streamlining Act (Section 65950) requires a decision on the project within 60 calendar days after a project has been found to be exempt from CEQA or a negative declaration is adopted for the project.
- C. The application was determined to be exempt from further CEQA review when the Design Review Board staff report was written on July 15, 2011; therefore, the deadline for action on the application is September 13, 2011.
- D. The application was reviewed by the Design Review Board on July 25, 2011, where recommendations were made for consideration of final plan review by the Planning Commission in accordance with condition 22 of Planning Commission Resolution 13-99.
- E. The neighbor adjacent to 8 Kimberley Drive, Beverly Sowa, submitted a 7-page letter with attached exhibits at the Design Review Board meeting on July 25, 2011, which raised many drainage issues. The Design Review Board directed staff that the drainage issues should be resolved prior to the final review of the plans by the Planning Commission.
- F. The applicant also submitted revised drawings at the July 25, 2011 meeting to correct the alignment of a concrete V-ditch along the northeast property line between 6 and 8 Kimberley Drive. On July 26, 2011, Beverly Sowa visited the Moraga Planning Department office to review the revised plans and on July 29, 2011 she returned to the planning office with grading plans for both 8 and 10 Kimberley Drive that showed different pad elevations for the lots than depicted on the current plans. Mrs. Sowa was directed to show the plans to the Town's Engineering Department, since the discrepancies between the plans appeared to be a surveying issue.
- G. On July 30, 2011, the Town received a letter from Charles Cooper, resident at 4 Kimberley Drive requesting that the two new homes at 8 and 10 Kimberley Drive should have story poles erected on the site prior to Planning Commission consideration of the applications.
- H. On August 3, 2011 the assistant Town Engineer completed a draft response to the drainage issues listed in Beverly Sowa's July 25th letter to the Design Review Board.

- I. All the drainage issues and pad elevation discrepancies were not resolved prior to the public hearing mailing deadline on August 5, 2011; therefore, final approval could not be scheduled on the August 15, 2011 Planning Commission meeting agenda.
- J. The earliest available date for a continuance will be September 19, 2011, since the planning staff will be unavailable for the September 6, 2011 meeting of the Planning Commission.
- K. Government Code Section 65957 authorizes a one-time 90-day extension of the time limits required for action on a development project, with mutual written agreement of the project applicant and the public agency.

By signing below, the project applicant and the public agency agree to a 90 day extension until December 17, 2011.



Applicant

8/23/11
Date

On behalf of the Town of Moraga I hereby agree to the 90-day extension requested above.



Richard Chamberlain
Senior Planner
Town of Moraga

August 5, 2011
Date

EXHIBIT P

**DRAFT RESOLUTION FOR
APPROVAL OF DRB 07-11 WITH
FINDINGS, EXCEPTIONS AND
CONDITIONS**

**EXHIBIT P-2
MOFD REQUIREMENTS**

BEFORE THE TOWN OF MORAGA PLANNING COMMISSION

In the Matter of:

Approval of plans for a new, one-story 2,995 square foot single-family residence and attached 837 square foot garage at 8 Kimberly Drive. (APN 255-120-010)

Resolution No. xx-2011 PC

File No. DRB 07-11

Planning Commission Adoption

Date: December 5, 2011

Effective Date:

December 15, 2011 (If not appealed)

WHEREAS, an application for design review was submitted on June 16, 2011 by Branagh Development, Inc. (Applicant) for approval of a new, one-story 2,995 square foot single-family residence with attached 837 square foot garage and associated grading for retaining walls and drainage improvements at 8 Kimberly Drive; and

WHEREAS, a Mitigated Negative Declaration of Environmental Impact was issued by the Planning Commission for development of the Kimberly Drive lots on June 7, 1999; and

WHEREAS, the development standards for 8 Kimberly Drive were established by the Planning Commission on June 7, 1999 with the approval of Resolution 13-99, authorizing the development of a single-family residence at 8 Kimberly Drive; and

WHEREAS, condition 22 from Resolution 13-99 requires approval by both the Planning Commission and Design Review Board prior to granting final design review approval; and

WHEREAS, on July 25, 2011 the Design Review Board conducted a public meeting to review the application and make a recommendation to the Planning Commission; and

WHEREAS, Frank and Beverly Sowa submitted a letter at the July 25, 2011 Design Review Board meeting listing various discrepancies in the project plans, which did not conform to the modified drainage improvements installed in 2008 in compliance with the Kimberly Oaks Maintenance Association (KOMA) settlement agreement and expressing concerns with other drainage and grading issues for the swimming pool and removal and replacement of a lateral "V-ditch" at the bottom of the slope with alternative drainage behind retaining walls; and

WHEREAS, following other testimony at the meeting, the Design Review Board recommended conditional approval of the new home, with the required findings under MMC Section 8.72.080-B and one design guideline exception for level clearance between the home and the edge of the pad; and

WHEREAS, the Design Review Board directed staff to refer the drainage and grading issues to the Town's engineering department for resolution prior to scheduling the Planning Commission hearing for review of the application; and

WHEREAS, two additional letters were received from Frank and Beverly Sowa dated August 5, 2011 and August 18, 2011 expressing some additional grading and drainage concerns and in particular questioning the difference in the pad elevations between the original grading and proposed plans; and

WHEREAS, on August 25, 2011, the engineering staff met with the Branagh design team to discuss the drainage issues and the discrepancies in the pad elevations and the applicant agreed to have the property re-surveyed; and

WHEREAS, the applicant submitted revised plans on September 16, 2011 to address the issues raised at the July 25, 2011 Design Review Board meeting and modify the drainage plans in accordance with the engineering department's recommendations; and

WHEREAS, a Public Hearing Notice for the Planning Commission hearing on the project was mailed to the property owners within 300 feet of the project site on September 30, 2011; and

WHEREAS, another letter was received from Frank and Beverly Sowa on October 11, 2011 requesting updated geotechnical reports and geotechnical peer review for the project; and

WHEREAS, a quorum of the Planning Commission was not available for the noticed public hearing on October 17, 2011, and

WHEREAS, a Supplemental Geotechnical Study was prepared by Jensen-Van Lienden Associates, Inc. for 8 Kimberly Drive on September 20, 2011 and submitted to the Town on October 24, 2011; and

WHEREAS, on November 16, 2011, the Town received the geotechnical peer review letter from Cal Engineering and Geology, Inc.; and

WHEREAS, the peer review letter requested submittal of design recommendations for the swimming pool proposed at 8 Kimberly Drive; and

WHEREAS, Jensen-Van Lienden Associates, Inc. submitted recommendations for the swimming pool on November 21, 2011, and

WHEREAS, another Public Hearing Notice was mailed to the property owners within 300 feet of the project site on November 22, 2011 for the Planning Commission hearing on the project; and

WHEREAS, the Planning Commission held a public hearing on December 5, 2011 to consider the plans for the new home at 8 Kimberly Drive and heard testimony from interested parties and the applicant.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the Town of Moraga hereby approves the plans for the new 3,832 square foot home, including the 3-car garage and replacement of the existing lateral “V- ditch” at the northwest and west sides of the building pad with 3-foot high retaining walls and drainage behind the walls, with the following findings and design guideline exception and subject to the conditions listed herein:

PART 1: DESIGN REVIEW FINDINGS REQUIRED BY MMC SECTION 8.72.080-B:

1. **The proposed structure conforms with good taste, good design and in general contributes to the character and image of the Town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality** *because the proposed one-story 3,832 square foot single-family residence complies with all of the Town’s design guidelines except for the near level clearance at the sides of the home. The floor area of the proposed home is in scale with the other new homes on Kimberly Drive. The proposed landscaping and the earth-toned palette of colors/materials will help the new home to fit into the natural environment.*
2. **The structure be protected against exterior and interior noise, vibrations and other factors, which may tend to make the environment less desirable** *because the proposed home will be constructed in accordance with the California Building Code and exterior mechanical equipment, such as the two proposed air conditioning or heat pump units at the west side of the garage, will be designed to attenuate the noise levels below 55 dba measured 10-feet from the equipment as specified in the recommended conditions of approval for the project.*
3. **The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value** *because the proposed home is a high quality custom designed residence that is expected to increase the value of homes in the neighborhood.*
4. **The structure is in harmony with proposed developments on land in the general area** *because the proposed development conforms to the allowable density for the property and is within the developable MOSO cell boundaries on the lot. The size of the home is not excessive for a 74,052 square foot lot. The proposed craftsman style home is a style found to blend with the ranch style homes throughout the community.*

PART 2: APPROVAL OF DESIGN GUIDELINE EXCEPTION:

1. An exception to design guideline SFR1.10 is recommended to allow the proposed home to encroach into the 6-foot near level clearance on the both the northeast and southwest sides of the home and to have less than the 10-foot near level clearance for access to the rear yard. The findings to allow this exception include the following:
 - a. The home has a 21-foot side yard on the northeast side with a 2.5:1 slope to a 10-foot wide and nearly level drainage easement with a “V”-ditch that could

be used for access to the rear yard and to the wildlife easement/scenic easement located north of the building area on the property.

- b. The home has more than 10-feet of level clearance at both the front and back of the lot.
- c. The revised design of the home now has limited access between the 2-foot high garden wall and the home along the southwest side, with at least 3-feet of clearance. (Note: The home approved in 2007 at 8 Kimberly Drive was built into the slope with no access along the southwest side)

PART 3: CONDITIONS OF APPROVAL:

- 1. All applicable conditions and mitigation included in Planning Commission Resolution 13-99 (attached hereto as **Exhibit 1**) are adopted by reference as conditions of approval for this project, DRB 07-11, and shall be addressed to the satisfaction of the Town of Moraga.
- 2. Prior to issuance of the building permit for the new home, the applicant shall pay the fees listed below.
 - a. In accordance with the Lamorinda Fee and Finance Authority’s (LFFA) Fee Adjustment schedule adopted January 1, 2011, the fee for a single family dwelling unit is **\$5,968.00** (\$4,719 - Regional and \$1,249 - Local). Note: if this fee is not paid prior to January 1, 2012, the amount of the fee may be increased by the LFFA.
 - b. The Town's development impact fees include: General Government Fee, Public Safety Fee, Storm Drainage Fee, Local Traffic Impact Fee and Park Development Impact Fee. These fees were established under Moraga Municipal Code (MMC) Section 17.04.030. The effective date of the fees listed below is July 28, 2010.

Land Use	General Gov't	Public Safety	Storm Drainage	Traffic Mitigation	Park Development	TOTAL
Single Family Detached	\$4,402	\$742	\$7,915	\$518	\$3,282	\$16,859.00

- c. The fee in lieu of parkland dedication in accordance with Moraga Municipal Code (MMC) Section 8.140.090 for each new single family home is **\$10,200.00**. This fee was based on the fair market value of .01 acres times \$850,000.00 per acre parkland value as determined by Town Council Resolution Number 14-2008 (\$8,500.00) plus 20% toward costs of off-site improvements.
 - d. The total cost of geotechnical peer review for the Supplemental Geotechnical Study and any subsequent reviews required by the Town’s consultant, Cal Engineering and Geology, Inc.
- 3. The applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.

4. Resolution 13-99 addresses hours of construction operation, development mitigation measures, construction standards, and maintenance of the property during pre and post development conditions, among other relevant topics. All Conditions of Approval from Resolution 13-99 that pertain to specifications for construction work, such as hours permitted for construction work, shall be included in the "Notes" section of the Building Plans so that contractors bidding on the project will be informed of these conditions.
5. Any significant changes to the site development plans identified as the "Official Exhibit December 5, 2011" shall be subject to further review and approval by the Design Review Board and Planning Commission; however, the location of the home and size of the rooms may be adjusted if necessary to avoid any encroachments into the required setbacks by the building or eaves.
6. This approval and each condition contained herein shall be binding upon the applicant and any transferor, or successor in interest.
7. Any work within a dedicated road right of way requires an encroachment permit from the Town of Moraga prior to start of work. The encroachment permit shall be applied and paid for separately from this entitlement. Any work within the private access easement will require review by the Town Engineer prior to the start of work.
8. In accordance with condition 43 in Resolution 13-99, parking of grading equipment, tractor tread vehicles, and all construction vehicles and equipment on Kimberly Drive and Scofield Drive is prohibited. These vehicles shall be delivered to the property by trailer and kept on site during grading and construction operations. The Applicant shall adopt a reasonable parking plan to be used by construction employees, including the use of an off-site staging area, subject to review and approval by the Planning Director prior to the issuance of grading or building permits.
9. Temporary drainage control measures shall be in place on the construction site during the months of October through April.
10. When the plans for the building permit are stamped by the Planning Department, the applicant shall complete the first part of the recycling plan form and pay the recycling deposit and fee. The recycling plan form and recycling receipts for demolition and construction materials generated from the project shall be submitted to the Planning Department prior to final inspection by the building department. The applicant shall strive to recycle 50% of demolition and waste materials.
11. The proposed finishing materials, such as the "Hardie" horizontal siding, masonry wainscot, roofing material and paint colors, shown on the colors and materials palette presented at the July 25, 2011 Design Review Board meeting were compared with the existing colors of the home at 6 Kimberly Drive and determined to be a harmonious color scheme to the adjacent home.

12. If a mailbox pedestal or pillar is constructed, then the materials shall match the materials used on the residence.
13. Roofing materials and assembly shall be a minimum of Class B as required by the Moraga-Orinda Fire District (MOFD). The MOFD also requires a residential fire sprinkler system complying with NFPA 13D. The requirements from the Fire Marshal, Michael Mentick, are attached as **Exhibit 2**.
14. The address number for the residence shall be visible from the main roadway as required by the Moraga-Orinda Fire District (MOFD).
15. All retaining walls shall not exceed 3-feet in height as shown on the project plans. If for any reason, it becomes necessary to install a retaining wall higher than 3-feet, then the plans for the retaining wall would require approval of a building permit, grading permit and hillside development permit.
16. All proposed fencing is approved at a height of no more than 6 feet with no diagonal bracing. The color of any proposed staining or painting for the fences shall be subject to Planning Department review prior to approval of the building permit.
17. The final landscaping, irrigation and fencing plans shall include:
 - a. Cleaning out and restoration of the rock lined drainage basin between the street and the catch basin on the northeast property line.
 - b. An automatic rain sensor on the irrigation system controller as required by CalGreen.
 - c. The location of the major drainage features, such as the concrete “V-ditches” and vegetated drainage swales or basins shall be shown on the landscaping plans. The landscaping plan must be consistent with the approved drainage plans and the landscaping contractor should be instructed not to stockpile planting materials or use heavy equipment on top of graded drainage swales or basin where compaction of the soil can damage the effectiveness of the filtration.
 - d. Aesthetically pleasing, drought tolerant low trees, shrubs, and groundcovers in the northwest scenic easement areas and the planting pattern should not allow for the establishment of a “fire ladder” effect.
18. Prior to the final inspection of the home and the issuance of the certificate of occupancy, the new landscaping in the front and side yard shall be installed and inspected by the planning staff.
19. Reasonable measures shall be taken to avoid disturbance of the soil within the drip line of the large existing pine tree located at the northwest rear corner of the Sowa’s property at 6 Kimberly Drive. The revised plans show that the swimming

pool has been moved 6-feet further from the tree with a total setback of about 24-feet.

20. The design specifications and recommendations from Jensen-Van Lienden Associates, Inc. dated November 21, 2011 for construction and excavation of the swimming pool shall be followed. The location of the sub-surface drains in the vicinity of the swimming pool shall be shown on the plans for the pool and the sub-drain shall be rerouted if the pipe is exposed during the excavation.
21. The planning staff has confirmed that the 3-foot high retaining wall and proposed swimming pool are within the approved MOSO building cell. Any adjustments to the location of the retaining wall or swimming pool shall require review and approval by the Moraga planning department.
22. Prior to issuance of the building permit, Jensen Van-Lienden Associates, Inc. shall respond to the recommendations in the November 16, 2011 Cal Engineering and Geology letter and the final plans shall be reviewed by Jensen Van-Lienden Associates, Inc. for conformance with the recommendations in their reports.
23. The Applicant shall submit final drainage plans for review and approval to the Town Engineer prior to the issuance of grading or building permits as appropriate. The final plans shall meet the C.3 clean water requirements as determined by the Town Engineer. The drainage plans shall include the following, unless the Town Engineer directs otherwise:
 - a. Show that roof leaders and surface run-off will be discharged by means of overland flow. Storm water from new roof drains shall be routed through a biofilter, sand filter or planter box for ten feet prior to discharge into the site drainage system.
 - b. Show that the depth of any drainage ditches and swales will be a minimum depth of 6 inches as measured from lowest side of ditch or swale.
 - c. Show a "trench drain" to be constructed across the full width of the driveway and connected into the adjacent existing drainage inlet.
 - d. Straw wattles shall be placed at intervals not to exceed five (5) feet in horizontal distance on all disturbed or created slopes until vegetation is established to control erosion on the slopes.
 - e. Show the locations of all existing and proposed keyways, subdrains, drain rock, and subdrain cleanouts on the plans. It is not anticipated that the proposed post tensioned slab foundation would impact the existing subdrains. If the type of foundation is changed to a pier and grade beam, then the foundation plans must be submitted to the Planning Department showing the location of all piers and the existing subdrains.
 - f. The Town Engineer shall review the final grading and drainage plans and verify that the removal of the lateral "V-ditch" on the north and west side of the building pad is replaced with an adequate drainage system and that no additional surface drainage is permitted to drain onto the adjacent property

28. In accordance with design guideline ID6, any exterior lighting shall be designed and mounted so that the source of light has minimal impact off site. Exterior lighting shall be directed inward toward the property and additional screening shall be required if there is any spillage of light onto adjacent residential properties.
29. In accordance with design guideline ID8.1, the draining of all swimming pools shall be conducted in compliance with the permitting and standards established by Central Contra Costa Sanitary District. Overflow drains from swimming pools shall be directed to a landscape area or manufactured treatment system prior to connecting to the storm drain system, unless an automatic pool cover is installed to prevent overflow of the pool during rain storms. Best Management Practices (BMPs) shall be used to manage overflows.
30. It is recommended that the builder of the new home should consider meeting the Build-It-Green requirements.
31. If there is no appeal, Planning Commission approval will be valid for one year from the effective date of this resolution of approval. You must obtain a building permit for construction of your project within one year or you may request an extension of the approval for one additional year. The request must be in writing to the Planning Director and should show good cause as to why the design approval should be extended.
32. These conditions of approval shall be included on and made part of all plan sets submitted for plan check and/or building or other permits.

PASSED AND ADOPTED by the Planning Commission of the Town of Moraga on December 5, 2011, the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Stacia Levenfeld, Chair

Attest: _____
Shawna Brekke-Read, Planning Director



Moraga-Orinda Fire District
33 Orinda Way
Orinda, CA 94563
Telephone: (925) 258-4525
Fax: (925) 258-4527

9/30/2011

Talon Design Group, Inc
ATTN: Alan Page
222 Railroad Ave, Suite A
Danville, CA 94526

Exhibit 2
to Draft Resolution for
8 Kimberly Drive

Permit Number: PMPA20110626
Type of Review: Misc. Planning Applications
Business Name and Address: Kimberly Associates, LLC
8 Kimberly Dr
Moraga
Applicant Name and Address: Kimberly Associates, LLC
Kimberly Associates, LLC
8 Kimberly Dr
Moraga, CA 94556

The Moraga-Orinda Fire District has completed a review of the submitted plans and has determined that construction may begin with the following conditions:

Conditions

- 1 A residential fire sprinkler system complying with NFPA 13D shall be provided throughout.

Submittal Requirements

- 1 Submit (2) full sets of building architectural plans to the Moraga-Orinda Fire District for review and approval.
- 2 Submit plans, specifications, equipment lists and calculations for the required fire sprinkler system to the Moraga-Orinda Fire District for review and approval prior to installation.

Plans stamped as reviewed by this office with a Fire District Construction Permit shall enable the applicant to proceed with work subject to the requirements noted on the plan check comment sheet and other attached documents containing information related to components of the project which accompany plans reviewed by this office and requirements from other agencies having jurisdiction within the scope of the project. Nothing in this review is intended to authorize or approve any aspects of the design or installation that do not strictly comply with all applicable codes and standards. The Moraga-Orinda Fire District is not responsible for inadvertent errors or omissions pertaining to this review and/or subsequent field inspection(s) i.e., additional comments may be added during subsequent drawing review or field inspection. Please call if there are any questions.

Every plan check and construction permit issued by the Fire District by ordinance and the California Fire Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days.

A project is considered abandoned or work suspended, if no inspections have been completed in any 180 day period. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefore shall be one half (1/2) the amount required for a new permit for such work, provided no changes have been made or will be made on the original plans and specifications for such work and provided further that such suspension or

abandonment has not exceeded one (1) year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

This permit also identifies the field inspections required to verify compliance. It is the responsibility of the applicant to call the District to request an inspection when the work is ready. To request an inspection telephone (925) 258-4525.

Please assure the area to be inspected is accessible and visible to our staff, that systems are under pressure (when appropriate), and that approved plans and the permit card is available on site.

If you have any questions regarding this permit or the conditions it identifies, please telephone (925) 258-4520.

Sincerely,

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

Michael Mentink
Fire Marshal

EXHIBIT Q

PROJECT PLAN SET