

**TOWN OF MORAGA  
PLANNING COMMISSION MEETING**

Council Chambers & Community Meeting Room  
335 Rheem Boulevard  
Moraga, CA 94556

January 20, 2016

7:00 P.M.

**MINUTES**

**1. CALL TO ORDER**

Chairperson Marnane called the Special Meeting of the Planning Commission to order at 7:00 P.M.

**A. ROLL CALL**

Present: Commissioners D'Arcy, Kovac, Kuckuk, Mallela, Woehleke, Chairperson Marnane

Absent: Commissioner Carr

Staff: Ellen Clark, Planning Director  
Ben Noble, PlaceWorks

**B. Conflict of Interest**

There was no reported conflict of interest.

**C. Contact with Applicant(s)**

There was no contact with applicant(s).

**2. PUBLIC COMMENTS**

There were no comments from the public.

**3. ADOPTION OF CONSENT AGENDA**

**A. January 6, 2016 Minutes**

Commissioner Woehleke requested an amendment to the last sentence of the second to last paragraph on Page 5, to read:

*He [Commissioner Woehleke] referenced the number of resident beds as compared to the number of full-time graduate students, with more students than beds. Putting all students on campus would positively impact the environment and traffic.*

And to the first paragraph of Page 6 to read:

*Commissioner Woehleke requested that the EIR address any hazards the emergency egress could pose given that the proposed route is more of a pedestrian thoroughfare and a new road could pose a hazard.*

Commissioner Kovac requested an amendment to the second to last and last sentences of the second paragraph of Page 7 to read:

*He [Commissioner Kovac] too would like a better understanding on the real reuse of resources, such as water, whether the parking structure would have photovoltaics; and what footprint would the structures have on the earth. He would like to see what would be visible of the parking deck, whether vehicles, greenscapes, or photovoltaics.*

On motion by Commissioner Woehleke, seconded by Commissioner Kuckuk to adopt the Consent Agenda, as modified. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Kovac, Kuckuk, Mallela, Woehleke, Marnane
Noes:	None
Abstain:	None
Absent:	Carr

#### **4. ADOPTION OF MEETING AGENDA**

There was no motion to adopt the meeting agenda.

#### **5. PUBLIC HEARING**

##### **A. Hillside and Ridgelines Project: Preferred Policy Options**

Planning Director Ellen Clark introduced Ben Noble, with Place Works, the Consultant who had been working with the Town on the Hillside and Ridgelines Project, and with the Town's Hillside and Ridgelines Steering Committee. The goal of the meeting was to receive Planning Commission input and public comments on six key project issues: the MOSO (Moraga Open Space Ordinance) Open Space Map; MOSO Ridgeline Map; Definition of Development; Steep Slope Limitations in MOSO Open Space; the High Risk Areas Map; and Remediation of High Risk Areas, as detailed in the staff report dated January 20, 2016.

Ms. Clark added that the Planning Commission would continue its discussion of the Hillside and Ridgelines project at its February 1, 2016 meeting to provide input on the following remaining issues: Viewshed Protection; Ridgeline Definition and Mapping; Protecting Ridgelines; Hillside Development Permits; and Building Size on Large Lots.

Ben Noble, Place Works, presented a PowerPoint presentation to provide the background of the Hillside and Ridgelines project with the purpose of the meeting for the Planning Commission and the public to consider the recommendations made by the Hillside and Ridgelines Steering Committee on key project issues. Comments received would be forwarded on to the Town Council. The purpose of the preferred policy options was to reduce conflict over hillside development caused by disagreements over the meaning of specific development rules and regulations, with targeted amendments intended to increase the clarity, certainty, and effectiveness of the regulations. The regulations would be considered Town-wide and not for a specific development, project, or property.

Mr. Noble identified the existing policies and regulations in the General Plan, along with the details of the MOSO Initiative adopted in 1986. No amendments to hillside development regulations had been proposed since that would require a change to the MOSO Initiative, which would remain in place. He stated that all work was to be consistent with that Initiative and the MOSO Guidelines adopted by the Town Council after the 1986 MOSO Initiative had been passed by the voters, which interpreted the initiative, could be amended, and would require amendment as part of the proposed preferred policy options. The Town's Design Guidelines, Grading Ordinance, and Moraga Municipal Code (MMC) related to hillside development could also require amendment as part of the project.

A map of the MOSO Open Space was displayed to show the boundaries under the MOSO Initiative. Some of the hillside and development regulations applied specifically and only to MOSO Open Space, while others applied more broadly to all areas of the Town.

Mr. Noble explained that the project had commenced two years ago with background analysis and the preparation of *Understanding Moraga's Hillside Regulations Background Report*; work with the community to identify key issues to study and address as part of the project; and consideration of options to address the key issues. The next steps in the process would be identification of the preferred options to address the key issues after direction from the Town Council; draft regulations consistent with that direction and with draft materials to be available mid-2016; with the process of review and public comment on the materials to occur throughout the rest of the year with the Steering Committee, Planning Commission, and the Town Council.

Mr. Noble described the process of preparation and selection of the options working with the Steering Committee, which included public input; meetings with the Steering Committee to address the key issues; and an Options Workbook prepared in August 2015 which had been shared with the public at that time. A public workshop had been held on September 17, 2015 with a summary of the input from that workshop included in the Planning Commission packet. In addition, there had been presentations to groups within the community; a meeting with the Planning Commission on September 8, 2015 to present a status report and receive input on the issues and options being prepared; and a series of focus groups which had occurred after the public workshops where

some of the input received from the workshops had been tested with groups of residents and that input had also been included in the Planning Commission packets.

Mr. Noble walked through the results of the community workshops and focus groups, and identified a survey with all issues and options made available to the public through an Open Town Hall. There had been 133 views and 42 participants who had participated in the survey, and the results from the survey had been similar to the input received during the workshops and focus groups.

Mr. Noble detailed the Steering Committee meetings that had been held in November and December 2015 when staff and the consultants had presented the recommendations on the best options for each issue. The Steering Committee had provided its input. The purpose of this meeting was to receive input from the Planning Commission and the public on the Steering Committee's recommendations, which would then be forwarded to the Town Council at its February 24 meeting, and thereafter receive direction from the Town Council on the best approach to address all issues.

Chairperson Marnane explained for the benefit of the audience that the six key project issues, as identified in the staff report, would be discussed individually with public comment allowed on each item.

- MOSO Open Space Map

Mr. Noble identified the MOSO Open Space Map, the discrepancies in the boundaries of the MOSO Open Space Area on the Town's maps, and the need as part of the process to clarify the boundaries of MOSO Open Space, and make all maps showing that area consistent throughout. The discrepancies had been outlined in the January 20, 2016 staff report. It was recommended that a single map of MOSO Open Space be prepared consistent with the MOSO Initiative that could be incorporated into all of the Town's policy documents. He added that during the open Town Hall, comments from the public had been generally supportive of the Steering Committee's recommendation.

Mr. Noble reported that a MOSO Open Space Map had been prepared consistent with the Steering Committee's direction, which map was the consultant's recommendation for the corrected MOSO boundaries which could be incorporated into the General Plan, MMC, MOSO Guidelines, and any other document showing the boundaries of the MOSO Open Space. The map had been reviewed by the Steering Committee which recommended that it move forward to show the corrected boundaries of the MOSO Open Space. The area by the Bluffs and Bollinger Valley properties had been removed as MOSO Open Space, had been an error in the original Zoning Map, and should have been designated as Special Study and not MOSO Open Space. A number of other small changes had been made having to do with an amendment to the Zoning Map in 1988, where changes to the map adopted by the Town Council had not been reflected in the official mapping. The consultants were confident the MOSO Open Space Area, as shown in the map, was correct and consistent with the MOSO Initiative and actions the Town Council had taken over the years to refine the initiative.

The Steering Committee had also recommended other minor revisions to the mapped MOSO Open Space boundaries, for example, to correspond to established property lines and reflect development patterns as they exist (e.g. established subdivision boundaries), to the extent such changes would remain consistent with the MOSO Initiative and the intent of the voters when the Initiative had been approved.

In response to Commissioner D'Arcy, Mr. Noble clarified the issue of Town-owned land versus MOSO land, and explained a number of properties that had been identified as Town parks had incorrectly been designated in the Zoning Map as MOSO Open Space.

Commissioner Kovac clarified the current Zoning Map with staff, and Ms. Clark advised that the MOSO Open Space Map reflected the current zoning, including the Moraga Center, although that property's zoning had not been updated.

Commissioner Mallela described the changes as serious and emphasized the need to be thoughtful and careful about open space. He clarified with Mr. Noble why the Bluffs area had been out of sync with the General Plan Land Use Map, as a result of a simple error in the Town's mapping when the MOSO Initiative had been adopted and the General Plan Land Use maps had been changed to reflect that the area was not intended to be MOSO Open Space.

Ms. Clark added that until a few years ago, the Town did not have the ability to update the Geographic Information System (GIS) data. The Town had relied on a County data set and the process to actually change the colors on the map had been difficult. An effort had been made in 1998 to recognize the need to correct some of the discrepancies, although the map had never been changed. While the discrepancies had been corrected through a process, the map had not been republished and the discrepancies had remained. It was clear the intent was that the Bluffs area be consistent.

Commissioner Woehleke confirmed with Ms. Clark that the Moraga Country Club (MCC) was still shown as MOSO Open Space; there were some residential areas near Palos Colorados and the Bella Vista Subdivision that were no longer part of MOSO Open Space; and there were areas in the northeast corner where the parcel area had been aligned to the parcel boundary reflecting the intent of the MOSO mapping.

## PUBLIC HEARING OPENED

Lisa Sowle, Moraga, inquired what study had been done to identify the differences in the mapping; and requested clarification of the areas designated as Study Area.

Dave Bruzzone, Moraga, stated he had attended the Steering Committee meetings and understood that many of the people who had attended the workshops had no idea what anyone was talking about. In his opinion, the Town was specifically pinpointing MOSO and Bruzzone properties, and the Study Area of the Bollinger Valley in order to include the higher standards that were part of the MOSO Initiative. The Bollinger Valley property would not have significant visual impacts on the community. He also owned

property in the MCC where some of the MOSO boundaries had been snapped to the boundaries of his MCC properties. He referred to a significant portion of Sanders Ranch that was MOSO Open Space although initial guidelines had been adjusted by the Town Council to ensure that those properties would not be impacted. He sought assurance that the changes that had been proposed would not impact existing lots in MCC.

Mr. Bruzzone expressed concern the Town could be taking additional actions that could make it more difficult, or preclude his ability to build, on his MCC lots. He expressed concern that the Town Council was putting its imprint on what should or should not be done with a previously approved MOSO Initiative. He pointed out that immediately after the MOSO Initiative had been adopted, the Town Council had created guidelines, which was not an ongoing process. He expressed concern with what he characterized as fundamental problems; did not want additional controls placed on his Bollinger Valley Study Area property; did not want to be subject to the whims of today; and wanted the property to be considered in the same light as other properties that had been analyzed and zoned in Moraga. He asked that the rules not be changed for MCC; he planned to build nice homes on his MCC lots; and suggested that Bollinger Valley should have its own rules in the same way the Town's zoning had been determined.

Kelly Griest, Moraga, understood her property had been zoned Special Study. She questioned how the Bluffs area had been introduced into the MOSO Open Space Area, and had later been removed. While she understood an error had occurred, she asked staff to re-explain how that error occurred and how it had been resolved.

Mr. Bruzzone reported that he had previously informed previous Planning Directors that the Bluffs area should not be MOSO Open Space, and had emphasized the need not to encourage that misconception. He added that the Bluffs should never have been included and had already gone through a subdivision process under the guise of the Study designation.

#### PUBLIC HEARING CLOSED

Mr. Noble clarified the discrepancy of the application of MOSO Open Space to the Bluffs and Bollinger Canyon areas. He and planning staff had conducted research and had reviewed the land use maps at the time the MOSO Initiative had been approved, and had affirmed the Bluffs should not have been included. The MOSO Initiative applied to MOSO Open Space, and anything that was not, was not MOSO Open Space. Having done that research, there had been concurrence with Mr. Bruzzone that area should not be MOSO Open Space. In response to why and how that had been shown in the Zoning Map, he could not speak to that other than speculate that at some point it had been an error in the mapping and the data used to generate the map had been somehow mistaken in some way. There were multiple maps to identify the boundaries of the MOSO Open Space, not just the Zoning Map. The existing General Plan Map did not show the area as MOSO Open Space, and General Appendix B of the MOSO Guidelines did not show the area as MOSO Open Space. The issue of the multiple

maps would be addressed by having one MOSO Open Space Map, which was consistent.

Ms. Clark added that the MCC lots were a case where the MOSO Open Space boundaries did not make sense, and one of the changes to be made would better correspond to the boundaries of the approved MCC Subdivision and not cloud any future decisions whether or not single-family homes could be built there.

Commissioner Woehleke described his understanding of the origin of the Special Study designation at the time of the Town's Incorporation, and explained that the issue had come up during the update of the General Plan around 2001, in which he had participated. As a result at least some field studies have been conducted to support setting zoning characteristics. He isn't aware of the current status.

Commissioner D'Arcy suggested the updated MOSO Open Space Map was necessary; Commissioner Kovac concurred; and Commissioner Kuckuk strongly agreed with the Steering Committee's recommendations, was satisfied with the explanation put forth for the mapping, and would forward the recommendation to the Town Council.

While Commissioner Woehleke supported resolving and removing discrepancies, and supported a single map without the discrepancies, he emphasized that the Planning Commission had not been involved in the details of what had been presented. He stated that the details related to the taking of property would have to be resolved.

Chairperson Marnane agreed with the consensus that the MOSO Open Space Map was a good piece of work, subject to detail.

- MOSO Ridgeline Map

Mr. Noble described the MOSO Ridgeline Map as a similar issue to the MOSO Open Space Map with an inconsistency in different Town maps, such that Exhibit B of the MOSO Guidelines showed the furthest northwest extent of Indian Ridge as a Minor Ridgeline while maps prepared by the Town based on the definition of Major Ridgelines in the MOSO Initiative showed the full extent of Indian Ridge within Town limits as a Major Ridgeline.

The following options had been identified to address this issue: Option A, to designate the full extent of Indian Ridge as a Major Ridgeline; and Option B, to designate the northwest portion of Indian Ridge as a Minor Ridgeline. The Town received public input on this issue through the Open Town Hall although the issue had not been discussed in the workshop or focus groups. The Town had received three comments on this issue at the Open Town Hall without clear statements of a preferred option.

The Steering Committee recommended Option A: Designate the full extent of Indian Ridge as a Major Ridgeline; and recommended this option as the full extent of the ridgeline met the definition of a Major Ridgeline as established in the MOSO Initiative.

Commissioner D'Arcy liked the modern techniques and ability to measure and had no issues with the changes to the MOSO Ridgeline Map; Commissioner Kovac concurred.

Commissioner Mallela clarified with Mr. Noble the differences between a Major Ridgeline and a Minor Ridgeline. For a Major Ridgeline, development would be prohibited within 500 feet of the centerline of the ridge while development on a Minor Ridgeline was prohibited on the centerline of the ridgeline, although there were other restrictions and regulations on development including slope and other rules that would also come into play.

Commissioner Kuckuk clarified with Mr. Noble the height of Indian Ridge was all the same elevation, well above 800 feet.

Commissioner Woehleke also clarified with Mr. Noble that while Indian Ridge had been designated as a Minor Ridgeline, staff could not uncover any background explanation to explain why that designation had occurred. He also clarified the evaluation criteria used to select the preferred options. In this particular case, there had been a review of the MOSO Initiative approved by the voters, specific language, and the General Plan in place at that time, leading to the Steering Committee's recommended option that the full extent of Indian Ridge be designated as a Major Ridgeline.

#### PUBLIC HEARING OPENED

Ms. Sowle asked for a better understanding of the centerline of a Minor Ridgeline, to which Ms. Clark defined the centerline as a topographical feature, with variation and with no razor sharp edge. She affirmed that a portion of the Bella Vista Subdivision included a Minor Ridgeline. Major Ridgelines had more protections and regulations while the regulations were not as stringent for the Minor Ridgelines. For the Bella Vista Subdivision, grading had been allowed to occur near a Minor Ridgeline but would not have been allowed if the ridgeline had been designated a Major Ridgeline. None of the homes were on the ridgeline itself.

Mr. Bruzzone described the topography of Indian Ridge in the context of the Town boundary, MCC, and the City of Orinda. Whether a Major or Minor Ridgeline, no homes would be allowed to be built on the ridgeline, with the implication the 500-foot prohibition zone extended into the single-family development of MCC. He suggested a change to the map, as proposed, could potentially raise a great deal of conflict in the future.

#### PUBLIC HEARING CLOSED

Mr. Noble reiterated the intent of the change to the map and the recommended preferred Option A.

Ms. Clark reported that a Final Map had been recorded against Mr. Bruzzone's MCC properties; the lots had been graded; and Mr. Bruzzone's right to develop the lots had been fully vested by the entitlements that had been granted, and could not be altered by a change in regulation at this time.

Commissioner D'Arcy agreed with the Steering Committee's recommendation and did not see a conflict given that Mr. Bruzzone had been granted a Final Map; Commissioner Kovac concurred; Commissioner Kuckuk concurred; Commissioner Mallela had no comment; Chairperson Marnane agreed with the recommendations from the Steering Committee; and Commissioner Woehleke questioned the significance of the change that had been proposed.

Ms. Clark explained that the implication would be to development on the other side of Indian Ridge, which would be within the 500-foot buffer, and which could be more restrictive.

- Definition of Development

Mr. Noble explained that there were minor differences in the definition of "development" in the MOSO Guidelines, General Plan, and Municipal Code. The definition was important because in MOSO and elsewhere in the Town's regulations development had been prohibited or restricted in certain hillside and other areas. A hybrid of the definition of development in the General Plan and MOSO Guidelines illustrating the differences between the two in highlighted underline strikethrough text had been included in the staff report and showed that the two definitions were almost identical, with the minor differences noted that did not affect the meaning of the definition.

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

The Zoning Code did not include a general definition of development; however, MMC Chapter 8.128 (Ridgeline Protection) included an identical exception for roads and underground utilities crossing a ridge as included in the General Plan and MOSO Guidelines definitions. Section 8.128.020 - Development on ridgelines. A. *Development shall be prohibited within five hundred (500) feet of the centerline of a major ridge (as defined in subsection B of this section) located in an area designated on the general plan as "private open space" or "public open space-study" and development shall be subject to strict design review control in all other ridge areas. A road, together with attendant underground utilities may cross a ridge, if the planning commission finds that the crossing is necessary for the orderly development of the town and does not otherwise conflict with the municipal code.* Additional information on the definition of development had also been provided and could be found on Page 32 of the final

*Understanding Moraga's Hillside Regulations* background available on the project website.

Mr. Noble explained that the Town did not prepare options to address this issue; instead, the Steering Committee had previously directed Town staff and consultants to maintain the existing definition of development to resolve any inconsistencies in this definition in the General Plan, MOSO Open Space, and other Town documents. The Town received public input on this issue through the Open Town Hall; the issue had not been discussed in workshop or focus groups. Comments generally supported the creation of a single consistent definition of development similar to the existing definition.

The Steering Committee recommended that the Town adopt the following definition of development that would be the same in the General Plan, MOSO Guidelines, and Zoning Ordinance: *Development means the placement, discharge or disposal of any material; the grading or removing of any material; the change in the density or intensity of use of land; the subdivision of land; or the construction or erection of a structure.* The Steering Committee further recommended removing the second clause of the existing definition that listed the three "exceptions" or instances where development may be allowed. These provisions would be added as a policy or policies in the General Plan, and as standards in the appropriate sections of the MOSO Guidelines and Zoning Ordinance. This approach would then allow the definition to have more general applicability; and clearly associates the specific limitations related only to certain properties (MOSO lands and hillside and ridgeline areas) to the sections of the Town's regulations that controlled development in those areas.

The Steering Committee also recommended more precisely defining the circumstances under which the Town may grant exceptions to allow roads and utilities to cross a ridge, as well as to add new language in the General Plan and MOSO Guidelines to clarify the exceptions and when they would be allowed. The Steering Committee further recommended adding design standards for any development exempted under the example in the staff report, which design standards would clarify exactly what was meant by "crossing a ridge," and would set limitations to minimize visual impacts from development allowed on or near ridgelines.

In response to the Chair, Mr. Noble explained that the types of visual impacts that could result from a ridge crossing or road crossing would require a design standard to minimize the visual impacts whether landscaping, grading techniques, or other means.

Commissioner D'Arcy affirmed with Mr. Noble the definition of a road crossing a ridge would have to be further clarified, and Ms. Clark acknowledged that issue had been raised with respect to the parking lot for the Rancho Laguna II project, and required further clarification.

Commissioner Kovac described the road crossing issue as confusing and open to misinterpretation. He questioned why a utility would cross a ridgeline if underground, and found the entire definition to be a problem. He suggested that the exceptions go

back to the voters, to which Ms. Clark clarified that the exceptions were part of the MOSO Guidelines and could not be amended absent voter approval.

Commissioner Kuckuk liked the method used to provide a general definition, although having read the definition suggested it was not clear. She referenced prior discussions of the Rancho Laguna II development, specifically the parking lot, where the railroad ties were located, and whether the gravel roadway was considered development, and within MOSO itself there had been recreational uses. The definition of a walking trail and whether that was considered development had also been a question. She liked the broad definition although she was uncertain the definition would be helpful as related to prior discussions.

Ms. Clark characterized the definition as generic, with similar versions in other city codes, and noted that specific issues such as hillside development or MOSO focused areas of the code belonged with those other regulations and not with the generic definition.

#### PUBLIC HEARING OPENED

Mr. Bruzzone pointed out the two preferred policy options the Planning Commission had just discussed would overturn the previous Town Council recommendations. He suggested the original Town Council had decided incorrectly on this issue with respect to the definition of development. His position was that development in MOSO pertained to housing or buildings, and to protect remaining ridgelines from homes on those ridgelines, and was not the all-inclusive definition of development under consideration. He commented that the hybrid definition, as shown in the staff report, from the General Plan and MOSO included language that was already in MOSO. He questioned the application of the proposed definition of development since the issue was not development as much as allowing that development.

Mr. Bruzzone asked the Planning Commission to keep in mind that the authors of MOSO did not want houses and new expanded development. He suggested the proposal would create more conflict and controversy. He expressed concern applying the Draconian MOSO regulations to other properties that were not subject to MOSO.

Suzanne Jones, 1285 Bollinger Canyon Road, also questioned the definition and noted the language referenced by Mr. Bruzzone had been included in the MOSO Initiative itself, and while she wished it had not, it was there and could not be changed. She questioned when the current definition of development had come into being.

Ms. Clark understood the definition had been in the General Plan for some time although staff could confirm that understanding.

Ms. Jones suggested if that was the definition in place when the MOSO Initiative had passed, that was the idea of what development meant, and what the voters had in mind when the Initiative had been adopted. If not, it would be beneficial to learn what the MOSO authors actually had in mind. She understood the desire to remove what she characterized as clumsy exceptions from the main definition and while she did not

object, she suggested that could create confusion in the future. As a result, she recommended a short clause for exceptions to avoid confusion with the definition and its implications.

Edy Schwartz, Hetfield Place, Moraga, agreed with the comments and suggested the issue should be simplified. She offered a presentation to the Planning Commission at this time; stated she had worked with Roger Poynts for two years and referenced a map of the Painted Rock property, and homes on Buckingham Drive; identified a hillside that had fallen into one of the neighbors' lots; pointed out the danger of landslides; and spoke to the history of landslides in the area and specifically referenced the area of Rheem Ridge where a portion had fallen onto Rheem Boulevard years ago. She sought assurance that developments take into consideration the consequences of landslides.

Ms. Sowle commented that most of the maps provided had been difficult to understand, particularly with respect to the location of roadways.

#### PUBLIC HEARING CLOSED

Commissioner Woehleke expressed concern that whatever was determined would not result in unintended consequences and other than correcting the definition for grammar, he suggested leaving the definition as is and had heard no compelling reason to change it; Commissioner Mallela did not recommend a change at this time; Commissioner Kuckuk agreed and was uncomfortable with a change and potential unintended consequences; Commissioner Kovac was troubled with a lack of definition and recommended a definition for a road and crossing a ridge, supported minimizing the exceptions, and proposed an addendum to the MOSO Guidelines to address those issues; and Commissioner D'Arcy concurred with the comments.

Chairperson Marnane acknowledged the Commission's consensus to retain the current definition unless, or until the Town reached consensus on the exceptions and all of the issues that had been discussed, most of which would be resolved during the Planning Commission or Town Council stages.

Ms. Clark explained the intent was to avoid unintended consequences and staff and the consultant would work to ensure there were no ripple effects that would result by the change. Based on the Commission's discussion, she understood the current definition was not that successful and if it could be improved without resulting in unintended consequences that would be discovered in the next stages of the project.

- Steep Slope Limitations in MOSO Open Space

Mr. Noble explained that in MOSO Open Space, development was prohibited in areas with an average existing slope of 20 percent or more. There had been concern that some applicants circumvented the intent of this limitation by calculating average slope for a very large or irregularly shaped area; a "cell." The Town also needed to clarify whether development was allowed in particularly high-slope areas within a cell if the average slope of the cell as a whole was less than 20 percent. Additional information

on this issue was provided on Page 22 of the final *Understanding Moraga's Hillside Regulations* background available on the project website.

Mr. Noble identified the following options to address this issue including: Option A, Create general policy statement for cell boundaries; Option B, Create objective standards for cell boundaries; Option C, Prohibit development in areas of a cell with a slope of 20 percent or greater when the cell overall has an average slope of less than 20 percent; and Option D, Eliminate use of a cell to calculate average slope. He noted a majority of workshop participants expressed support to eliminate the use of cells to calculate average slope, and comments received during the Open Town Hall had been generally supportive of prohibiting development in areas of a cell with a slope of 20 percent or more when average slope in the cell was less than 20 percent.

The Steering Committee had recommended the retention of the concept of average slope, applying it only to a more limited area or areas defined by the development envelope of an individual home. With this approach, homes would be permitted only within a location on a property where the average slope of its development envelope was less than 20 percent. This approach would eliminate the cell concept currently in the MOSO Guidelines. Exactly what constituted the development envelope of a home would need to be clearly defined; for example, the development envelope for each home could be defined to include the footprint of the primary structure as well as accessory structures and site improvements in the immediate vicinity of the primary structure. This would include within the development envelope ancillary uses and areas such as useable yard areas and access around the home, driveways, and accessory buildings such as sheds and garages. For subdivisions with two or more homes, average slope would be calculated separately for the development envelope of each home, not for the subdivision as a whole.

During the drafting of regulations, Mr. Noble stated the Town would need to determine rules that applied to improvements located outside of the development envelope of each home, such as streets and utilities to serve the subdivision. It may be necessary to allow these types of improvements in some locations with a slope of 20 percent or greater with conditions to limit their visibility. It may also be necessary to prepare special rules to address estate-style homes with multiple structures and large development envelopes of 20,000 square feet or more.

In those cases, it may be preferred to require two or more separate development envelopes on a single lot, with each development envelope individually having an average slope of less than 20 percent.

In response to Commissioner D'Arcy, Ms. Clark clarified that as long as the average slope was less than 20 percent, an applicant could grade, develop, or modify a portion that would have an over 20 percent slope.

Commissioner D'Arcy requested a better clarification of that issue.

When asked, Mr. Noble affirmed that a building envelope could be no more than 10,000 square feet, and if greater, it may have to be separated into multiple envelopes, an

issue which had been discussed by the Steering Committee and which would require greater analysis.

Commissioner Kovac understood the definition of a building envelope included the contiguous area, primary and auxiliary structures, garages, workshops, garage space, driveways, and the like, but not access roads and roads leading to the structure. He understood the slope did not include the roads.

As an example, Mr. Noble referenced a scenario with a structure set back from the road and a long access drive; the intent of the rule was that the applicant would not be allowed to include the long access drive in the calculation for average slope for the building envelope.

Ms. Clark clarified that an applicant would not be precluded from installing the long access road if they could define the average 20 percent development envelope and it was reasonable and in the most sensible location on the site, but to practically provide access it may have to be provided in an area over 20 percent slope and was something that would have to be addressed.

Commissioner Kovac suggested the roads should be considered somehow in the less than 20 percent envelopes and included in the building footprint.

Commissioner Kuckuk commented that while the recommendation was reasonable, the difference from a cell to a development envelope, and the definition and what was gained changing from a cell to a development envelope was a concern.

Ms. Clark described the intent to draw a very large development cell which included all areas of disturbance as a result of the project, a way to capture all of the flat ground, and allow for a 20 percent average slope. The recommendation constrained the area more than the existing cell concept, which was more narrowly defined because it tied in more closely with the actual footprint of the home.

With that explanation, Commissioner Kuckuk agreed with the recommendation, and emphasized the clarification that would have to be involved in the definition of the terms. In general, she was more comfortable with the Steering Committee's recommendation.

In response to Chairperson Marnane, Mr. Noble noted the 20 percent origin was not known and would not be changed given that it had been stipulated by the MOSO Initiative. Having worked with the Geotechnical Engineer on the project, he had suggested the 20 percent was atypical, was low, and most communities had a higher range of 30 to 55 percent. Twenty percent had been included in the MOSO Initiative and the Town Council had directed no changes to the MOSO Initiative.

Chairperson Marnane commented that the method used to calculate the averages could be 10 to 15 percent wrong in either direction since the Town had not kept up with technology. The Town's land was curvy and rolling, with some exceptions. In his opinion, it made no sense to define an average slope since the calculation was not

correct in the first place. He questioned the entire concept of steep slope limitations in MOSO Open Space.

Commissioner Mallela understood the concerns circumventing definitions in MOSO. He was less inclined to change what was in MOSO, but did not want to change one definition that could be worked around to another definition that could be worked around in some other sense. He understood the building envelope was the home with site improvements, which could also be worked around. He also understood the limitations with the current language, found the options to have been nicely laid out, but suggested they lacked clarity that could improve or reduce the concerns that could arise.

Chairperson Marnane liked Option D and the elimination of the cell concept, although he suggested it was inadequate and would not solve the problem.

Commissioner Woehleke also questioned the definition of a cell versus a development envelope. He understood a developer could propose a cell, the development area would be objective, and the standards used to set the area could be used to calculate the average slope.

Mr. Noble explained that currently a developer could propose a cell with boundaries that were not logically related to the development; the footprint of the building and improvements. The intent was to establish a stronger connection between the improvements and the area being calculated for slope.

#### PUBLIC HEARING OPENED

Ms. Sowle noted the Town had dirt that moved frequently, there were earthquakes, and she questioned the recommendation for 20 percent slope which could result in a potential disaster. She commented that the hill near her home slid into her neighbor's yard and changing the rules to build would not offer adequate protection to build homes. She did not recommend a change in the 20 percent rule unless there was stability built into the home.

Malcolm Sproul, 45 Williams Drive, Moraga, reported that he had been a supporter of MOSO since its adoption in 1986. He noted that MOSO was a citizen's initiative and the Town Council and Planning Commission had been unable to modify it absent a vote of the citizenry. He preferred to see the criteria match the language in the MOSO Initiative, not the MOSO Guidelines.

Mr. Sproul explained that the MOSO Initiative stated that development was prohibited on slopes over 20 percent, which he suggested should be the recommendation forwarded to the Town Council. He could not clarify why the drafters of MOSO had used the 20 percent rule, although the steeper the slope the greater the impacts of development, and the intent was to protect the ridgelines. He suggested the intent of the MOSO Initiative should be the guiding factor as to how the issues were brought forward.

Ms. Jones speaking on behalf of Preserve Lamorinda Open Space (PLOS), suggested the fundamental guiding principle should always be faithfully implementing the intent of the MOSO Initiative, with a very clear prohibition on development on slopes greater than 20 percent. She expressed concern that over the years applicants had been allowed to calculate the average slopes over very large areas, and an upper limit on the size of the overall area was missing. While the Steering Committee's recommendation was a step in the right direction, it was absent an upper limit on the size of the overall development area. PLOS recommended that slope averages be calculated over polygons that could not exceed a fixed numeric upper limit, no larger than 10,000 square feet, and could be smaller and arguably could be better. In that case, a building envelope would not be required and an applicant would be required to define a single or series of polygon development envelopes within which the average slope was below 20 percent, and building would be permitted within the polygon. That method could be applied to roads, common areas, and anything, not just the home area, and an applicant who wanted a large estate-sized home would have to string together a series of contiguous polygons which were below the maximum size within each the average slope had to be less than 20 percent. She suggested that concept was simpler, less subjective, and could be applied to all forms of development.

Lynda Deschambault, Moraga, understood that the topic of steep slope limitations on non-MOSO land had not been identified for discussion for the Planning Commission meeting of February 1, and she asked that that topic be considered given potential conflicts with the language in the Grading Ordinance. She spoke to Option D versus Option C, with Option D including specific language about steep slope areas and referenced, as an example, a project located at 1800 Donald Drive, which had involved a flat area where building could occur, although the area behind the home was 65 or 78 percent slope. She questioned how a steep slope would be addressed. Also, while not on the agenda for discussion, she spoke to the issue of footprint and size, an issue she had raised in the past regarding estate-sized homes. She noted the City of Lafayette had an ordinance on average home size, a topic the Planning Commission and Town Council should also consider.

Ms. Schwartz sought a discussion on the specific plot; disagreed with a recommendation to include roads given the inability to determine the average 20 percent on a road; and urged caution if including roads.

Mr. Bruzzone suggested that following an average 20 percent slope was insanity; was too low; and when taking into geotechnical considerations it was in the 35 to 50 percent range. He noted that his geotechnical consultants had written letters to the Planning Commission in the past to state that was the case. He urged the retention of average cell and stated that MOSO did not want to place size limits on homes that had been approved.

Mr. Bruzzone found that the recommendation from the Steering Committee would diverge from what had been stated in MOSO by placing an upper limit on the size of the cell. He pointed out that development in the area required average sized lots of five acres or more, and getting access to and from the isolated cells that were level would require roads. The Town had existing standards for roads and a road could not be

installed if not approved by the Moraga-Orinda Fire District (MOFD). He suggested there were enough restrictions, urged allowing the average slope, and a large cell with a larger building should be allowed given that the Town would have discretionary control through the DRB process.

## PUBLIC HEARING CLOSED

Commissioner D'Arcy agreed with the Steering Committee's recommendations for Option D, to remove the cell. She suggested it would not take away 20 percent of the slope but restrict the assessment of the 20 percent within the confines of the cell, and the maximum cell size should be 10,000 square feet to allow a decent piece of property that was less than 20 percent slope to build on. If a subdivision, it could be stringed together, as Ms. Jones had recommended, where an estate-sized home at 10,000 square feet cell would be very large and could have multiple cells.

Mr. Noble stated that Commissioner D'Arcy's suggestion was a refinement of the Steering Committee's recommendation

Commissioner Kovac commented on the idea of average and was not clear what the average meant in this case. He was unfamiliar with the differentiation between a polygon and a cell, since they could be contiguous.

Ms. Jones suggested a cell could be a polygon, and with a building envelope there would be an upper limit on the size of the area over which an average could be calculated.

Commissioner Kovac suggested there was a problem with a need for a solution although there was no ideal solution.

Commissioner Kuckuk was not entirely comfortable with the concept of an average slope which was not part of the MOSO Initiative. She was also concerned with the fact the MOSO Initiative would be more difficult to enforce without an average slope. She did not want to implement something that was completely unworkable, agreed an upper limit was needed, and in terms of a development envelope suggested it should somehow be tied to the footprint of the house plus a percentage of overage in a specified limited area. She recognized that would result in another definition, while also raising concerns and the need to avoid adverse consequences.

Commissioner Mallela acknowledged that good recommendations had been made, and he was 100 percent in support of any actions that would leave the language in MOSO intact, although he recognized that would create some challenges for the Planning Commission. He stated there would have to be a definition of building envelope that would give the public a number of options. While he was halfway there with the concept, he needed more time to consider what was appropriate.

Commissioner Woehleke recognized that MOSO could not be changed and the Town Council at that time had created guidelines to implement MOSO and was cognizant of

the need to balance rights. The recommendation was not intended to take land and prevent potential development. Rather than attempt to invent something, he sought more information as to how other cities had handled this issue. He noted that 20 percent average slope had been the calculation that had always been used in Moraga, beyond MOSO and non-MOSO areas. At this time, he could support Option D with further refinement and supported flexibility, such as a 20-acre lot with a 10,000 square foot home which could be supported if everything else worked.

Chairperson Marnane understood the consensus to eliminate the use of the cell but not completely, and use a little bit of Option B. On the question of slope, he understood the concern with a change to MOSO, although he disagreed that it should be done the same way since that was the way it had been done for 20 years. He suggested another initiative to change MOSO might have to be considered.

Commissioner Kovac suggested that Ms. Jones' definition of a cell as contiguous cells of any size up to 10,000 square feet and attached in any way would eliminate the average concerns. The word average was also not in MOSO and should be addressed.

Ms. Clark understood that Commissioners also would like to potentially define an upper size limit or more strictly limit the size to prevent the cells from being overly large, even if a development footprint.

Chairperson Marnane declared a recess at 9:36 P.M. The Planning Commission meeting reconvened at 9:41 P.M. with Commissioners D'Arcy, Kovac, Kuckuk, Mallela, Woehleke, and Chairperson Marnane present.

- High Risk Areas Map for MOSO Open Space

Mr. Noble explained that Exhibit D to the staff report, the Development Capability Map adopted in 1989, established a preliminary determination of high risk areas in MOSO Open Space. The map implemented the MOSO Initiative which required the Town to *identify 'high risk' areas after taking into account soil stability, history of soil slippage, slope grade, accessibility, and drainage conditions.* Figure 4 in the staff report had shown a portion of Exhibit D near Rheem Boulevard and Moraga Road. He identified the areas with a preliminary high risk determination and explained that as required by the MOSO Initiative, development in those high risk areas was limited to a maximum density of one unit per 20 acres. Project applicants may request a final determination of high risk status on a property based on a site-specific geologic study. He stated the findings of the geologic studies frequently differed from the preliminary determination of high risk status in the Development Capability Map. Discrepancies had also been found between the Development Capability Map and landslide hazard mapping prepared for the Hillside and Ridgelines project, which discrepancies called into question the accuracy and usefulness of the Development Capability Map and whether it should be replaced or no longer used.

The following options were identified to address this issue: Option A, Continue to use the existing Development Capability Map and acknowledge its limitations; Option B,

Develop a new and improved Development Capability Map; and Option C, Discontinue use of the Development Capability Map and eliminate the preliminary risk determination.

A majority of workshop participants during the Open Town Hall expressed support for a new Development Capability Map, although the issue had not been discussed at the workshop or with the focus groups. The Steering Committee recommended developing a new and improved Development Capability Map to replace MOSO Guidelines Exhibit D. The map would be prepared using the criteria listed in Table 1 of the staff report with weighting applied to reflect the relative importance of each criteria, which included those required by the MOSO Initiative as well as others important to development suitability in hillside areas, which would be developed in the next phase of the project.

The existing Development Capability Map established a preliminary risk determination of all land within the Town boundary. As was currently the case, this mapping would be preliminary and applicants would be able to submit more detailed, site specific mapping as part of a proposed development project. The new Development Capability Map would be prepared only for areas that were undeveloped, have development potential, and with no existing entitlements, which areas generally corresponded to the extent of landslide hazard mapping previously prepared by Cotton Shires. For areas not included in the new Development Capability Map, the MOSO Guidelines would state that high risk status would be determined on a case-by-case basis using criteria and methodology comparable to that used for the Development Capability Map. As with the current MOSO Guidelines, applicants could, at their discretion, provide more detailed, site-specific mapping of high risk areas for consideration by the Town to support a request for increased project density.

Commissioner Woehleke clarified with Mr. Noble the approach for multiple criteria that were integrated into a single map, and although somewhat unusual on a Town-wide basis, it was typical for hillside communities to have a Landslide Hazard Map to be used for planning purposes.

For this approach, where multiple criteria would be integrated to produce a single map on a Town-wide basis was not something Mr. Noble had encountered before.

Commissioner Woehleke understood the numbers in the section under discussion corresponded to the grade hazard, although Mr. Noble stated he was uncertain of the exact methodology used to produce the numbers although the criteria had been weighted in some way, with the lower the number the higher the risk.

In response to concerns with the Town's liability for using such a map, Mr. Noble stated it would be clear the map was to be used for planning purposes, and site specific studies would be required moving forward. It was not outside the norm for cities to have such a map and it could be used by property owners and applicants to have an expectation or clarity up front the allowed density in a MOSO Open Space Area.

Commissioner Mallela affirmed with Mr. Noble the exhibit under discussion was part of the MOSO Guidelines.

Commissioner Kuckuk also clarified with Mr. Noble the preliminary determination of high risk areas was not required pursuant to State law, although the State did require that General Plan communities identify, for planning purposes, area that presented risks and risks resulting from natural hazards.

Ms. Clark further clarified that the Town was obligated under the MOSO Ordinance to identify high risk areas.

Mr. Noble read into the record the following statement: *The Town Council shall identify high risk areas after taking into account soils stability, history of soils slippage, slope grade, accessibility, and drainage condition*, with the majority of the Steering Committee determining that the Town map those areas.

Commissioner D'Arcy suggested it was time to update the map as long as MOSO was not diminished.

#### PUBLIC HEARING OPENED

In response to Ms. Sowle, who asked about some of the details on the map, Mr. Noble advised that as part of this discussion there was no proposal to develop in any of the areas identified on the map. The recommendation was to revise and update the map so that it was more precise in terms of identifying locations with geological hazards.

Ms. Clark added that MOSO already identified the limitations for development allowed in the high risk areas, had already been prescribed in the MOSO Initiative, and could not be changed. The map would be a piece of information to accompany the policies.

Mr. Bruzzone understood that the consultant had stated the existing Development Capability Map was inaccurate. He questioned why the Town had spent money to create the maps, and where the Town would get the money to evaluate the balance of the Town and come up with a new Development Capability Map. He understood the purpose of the risk determination was that if a property owner in MOSO could show that it was not high risk they could potentially obtain a higher development density. He referenced Page 13 of the staff report which had listed the additional criteria for the Development Capability Map, while MOSO was clear that the risk determination was based on geotechnical concerns and what had been identified as a risky situation. He suggested to expand that scope to consider different criteria to ascertain the risk would be highly inappropriate.

Ms. Deschambault suggested that the idea of having clarity up front was key to avoid confusion with developers. While the criteria up front was good, she questioned the resources and standards that had been used, with no clarity as to how the map would be used. In her own experience as an Environmental Scientist, she and her engineers used a 100-year flood mentality and geophysics for slides, and she questioned how the Town would do that or define the best practices for making decisions.

## PUBLIC HEARING CLOSED

Commissioner D'Arcy suggested updating the map was a good idea, and was something the Town, property owners and developers could use; Commissioner Kovac suggested the Town could afford an update of the map and with more precise data, better decisions could be made; and Commissioner Kuckuk supported the Steering Committee's recommendation and stated it was evident the Town had some obligation under the ordinance to provide such information.

In response to the Chair, Ms. Clark commented that the information as it currently existed had not been helpful.

Chairperson Marnane understood the map would be a good guideline for a contractor, although he would like to see a new and improved Development Capability Map, and expressed his hope that it would be used.

Commissioner Mallela understood as part of the MOSO Initiative that high risk areas were to be evaluated and could potentially be expanded or reduced. He suggested it made sense to update the map since it could be a useful bit of information in the process moving forward.

Commissioner Woehleke characterized the Development Capability Map as more of a preliminary risk identification tool, and suggested it be called as such. Since the map incorporated at least five or more different criteria, or hazards, he suggested those criteria and their risks be better identified.

Ms. Clark noted with the GIS technology there could be a layer of data and a spatial analysis of those criteria on top of each other, or separately.

Commissioner Woehleke pointed out that called for five different maps.

Chairperson Marnane understood the consensus for a new Development Capability Map with a recommendation that it be renamed a preliminary risk identification tool; with more clarity to allow better use of the data.

Mr. Noble affirmed that the new map would be different given the ability to use new technology. The map could be made available on-line with the ability to adjust one's views.

- Remediation of High Risk Areas

Mr. Noble explained that the geologic hazards on a hillside site, such as landslides, could often be remediated through earthmoving, excavation, and the installation of engineering structures. The MOSO Guidelines allowed for remediation to justify reclassification of high risk areas and allow for increased residential density (up to either one unit per 10 acres or one unit per 5 acres). There was disagreement within the

community over whether this practice of allowing increased density in high risk MOSO areas as a result of remediation should continue.

The following options had been identified to address this issue: Option A, Conditionally allow increases to residential density as a result of remediation; Option B, Prohibit remediation for the sole purpose of increasing residential density; and Option C, Prohibit any increase in residential density in high risk areas.

A majority of workshop participants and comments received during the Open Town Hall had expressed support for prohibiting any increase in residential density in high risk areas (Option C). The Steering Committee did not recommend a single option to address this issue, instead it recommended that the Planning Commission and Town Council consider the following three options: Option 1 (most restrictive), Once land is designated as high risk it could not be changed, and once designated as high risk the permitted density would remain at one unit per 20 acres and could not increase for any reason; Option 2 (somewhat restrictive), Land designated as high risk could be reclassified as non-high risk as a result of remediation associated with a development project. The land could then be developed at one unit per 5 or 10 acres; however, only remediation techniques that are not defined as "Mass Grading" would be allowed to correct landslides or other similar hazards; Option 3 (least restrictive), Same as Option 2, except that any remediation technique would be allowed, including Mass Grading. He offered an example of the term Mass Grading, which meant large-scale soil removal and re-compaction involving the installation of deep keyways and subdrains.

Remediation that did not involve Mass Grading would involve relatively non-invasive subsurface engineering solutions such as extending subsurface drilled piers and tie-backs into bedrock to support unstable soils. Figure 6 in the staff report illustrated stitch pier grading, which was a type of non-invasive remediation technique. In this example, vertical holes were drilled across unstable ground and steel reinforced concrete piers were constructed in a line perpendicular to the direction of ground movement. Piers may be placed at 6 to 10 feet on center and be extended to a sufficient depth to resist sliding ground forces.

Commissioner Kuckuk commented on the issue of remediation of landslide areas which had come up in the discussions for the Hetfield Estates development. She asked staff to opine whether the remediation for that project was considered to be mass grading. In her opinion, it had been mass grading.

Ms. Clark affirmed that the Hetfield Estates project had involved the removal of a large amount of landslide debris, installation of new geogrids and other structures, and re-compacting and replacing the soils. The slides on Hetfield Estates were not as deep as some other projects and it may not be as massive as other mass grading.

Commissioner Woehleke commented that the options had not clearly defined the advantages or disadvantages of each.

Mr. Noble explained that in terms of the most restrictive option, an argument had been made during the Steering Committee meetings that a literal reading of the MOSO Initiative would say that if designated high risk, it would always remain high risk. Other Steering Committee members supported allowing remediation to encourage improvements to properties with landslide hazards to incentivize improvements to protect the health, safety, and welfare, which had been the rationale for supporting Options 1, 2, and 3. Option 2 had been proposed partially in response to public input, which placed high value on visual impacts and allowing development with visual impacts to be minimized to the greatest extent possible. If remediation and increased density was allowed in a manner that would minimize visual impacts that could be considered given the public benefit.

Ms. Clark added that mass grading projects had a much larger environmental footprint than some of the other methods since they required the removal of all vegetation, and land movement impacts could be avoided with less invasive techniques allowing for development in a reasonable way.

#### PUBLIC HEARING OPENED

Ms. Schwartz presented a slide presentation of her comments to emphasize the importance of explaining the consequences to the public and decision makers on any important Town issue. She supported Option 3 as her choice for remediation of high risk areas based on safety, financial repercussions, and avoiding damage to public and private property, while preserving MOSO Open Space. She identified herself as a resident of Hetfield Place, and provided a photograph of a home in the neighborhood that had been destroyed by a landslide. In that case, the landowner of the hillside was responsible for repairs. She offered that information as an example of what could happen with mass grading and urged the Planning Commission to consider the costs of what was possible and what could be done.

Mr. Noble clarified that Options 1, 2, and 3 on Page 14 of the staff report were the options the Steering Committee had put forward for Planning Commission and Town Council consideration. The Steering Committee had offered no recommendation on a single option, as outlined in his presentation.

Ms. Sowle referenced a metal and wood retaining wall behind her home, which the Town and the property owner had to build to keep the hillside back. She suggested Option 2 would allow methods, such as retaining walls, to address the high risk and ensure there was no mass grading.

Ms. Jones emphasized the need to faithfully adhere to the MOSO Initiative which included the language: *Areas identified as high risk areas as defined in this ordinance shall be limited to maximum density of one dwelling unit per 20 acres.* The MOSO Initiative did not include a single word about using remediation as a means by which to relax that limitation. One of the goals of the MOSO Initiative had been to restrict development on steep and unstable slopes; it did not mean that mass grading was prohibited but that one could not get density increases on land classified as high risk.

She suggested therefore that Option 1 was the only option that would be consistent with the original language passed by the voters.

Ms. Deschambault commented that she had been shocked and alarmed to see that this issue would be considered. As previously stated, MOSO was not intended to stop but use smart development, and natural resources. She emphasized that landslides could not be fixed, they involved deep geologic issues. Given the extreme weather events expected, which would only exacerbate the issue, she urged the Planning Commission to support what the people had voted for, and to do anything less would require a vote of the people. She added that Option 1 made the most sense, would not stop development, but would limit the density in high risk areas.

Mr. Bruzzone also spoke to the true intent of MOSO, emphasized the fundamental right of a property owner to improve one's property, and noted the density was going up an arbitrary level, one unit per 20 acres possibly down to less than that, and one would still have to undergo environmental review. He agreed with the presentation from Ms. Schwartz and noted that the repair of moving soils was oftentimes effected through mass grading in that oftentimes stich piers and other methods were very expensive and inappropriate. He did not support anything that would preclude property owners from improving their properties.

Mr. Sproul agreed with Ms. Jones' comments that density should not be allowed to increase by remediation if the property was classified as high risk, and if there were known problems, which was way the density had been established. One unit per 20 acres provided odds to allow development in an area that was not high risk. He supported Option B rather than the refinements later identified. He added that existing hazards to existing properties and improvements was a different issue, did not deal with MOSO lands, and should be addressed separately.

Ms. Clark commented in response to inquiries from the audience that the Town had not established a policy on the ability of members of the public to make presentations, as Ms. Schwartz had done. In this case, staff had consulted with the Chair who had allowed the presentation.

Commissioner Kovac suggested that staff review any presentation prior to its presentation to the Planning Commission to ensure its appropriateness.

#### PUBLIC HEARING CLOSED

Commissioner Woehleke supported Option 3, the least restrictive option. He supported remediation, where possible, through the use of current techniques, where slides could be remediated and stabilized in the long term. He suggested that Option 3 would not violate the MOSO Initiative, and would reclassify the risk designation if the slide was mitigated. He suggested that mass grading in many cases was the right way to conduct remediation and the results could be visually mitigated and not present any long-term visual impact.

Commissioner Mallela suggested the issue had two parts; density based on density guidelines and remediation activities which should have little or no restrictions for the reasons discussed, which would be better for the community. From a density perspective, the guidelines had been written in such a way to be a separate issue and the options had not separated the issues out. He would rather leave the density the same and allow the flexibility to pursue any necessary remediation activity.

Commissioner Kuckuk commented that in her experience remediation of slides had been done for the purpose of increasing density. At the time of the MOSO Initiative, she questioned whether it had been identified as high risk and needed to remain in that condition, versus whether it was currently high risk but could be remediated to be removed from that category.

When asked, Mr. Noble reiterated the MOSO language that: *Areas identified as high risk areas as defined in this ordinance shall be limited to a maximum density of one dwelling unit per 20 acres.*

Commissioner Kuckuk stated that mass grading was disruptive and should be considered cautiously and sparingly to rectify unsafe conditions. Option A would allow discretion, and she emphasized the need to allow discretion as much as possible, and therefore, she considered Option 1, as slightly modified by the Steering Committee, to be potentially unsafe and an unwise choice for the Town. Option 2 also raised concerns given the pressure to avoid mass grading when it was the prudent thing to do. She therefore supported Option 3, which would provide discretion and not restrictions.

Commissioner Kovac disagreed with the idea of allowing mass grading given homes that had been approved in the past, and although not high risk had been required to blend into the hillside and they could end up with future walls that were graded. He understood in speaking with civil engineers they did not want to use some of the other methods that were more expensive and preferred mass grading. He found the definition of mass grading to be unclear and a potential risk. Given that mass grading had not been clearly defined, he suggested it was left to Option 3 although that was not in the spirit of MOSO and not what residents wanted pursuant to the results of the survey. He would like to support Option 2, but if he had to make a choice he would have to support Option 1.

Commissioner D'Arcy agreed with Commissioner Mallela's comments that there were two different issues; remediation and density. There was nothing in MOSO about increasing the density with remediation. It was not the intent of MOSO to have density increases on MOSO lands. She agreed that health and safety were real issues and if it came to pre-existing landslides on MOSO land, they could be remediated for the one home on 20 acres and that was it. She was uncertain of the appropriate method between mass grading and stitching; supported methods that had less impact on the land; and recognized it would depend on what the developer had been told as to what could or could not be done. She supported a strong message to developers; no increase in density on high risk lands and remediation was required.

Chairperson Marnane suggested if remediation was not allowed there would have been no Port of Oakland, no downtown San Francisco, or any coastal development. He was not familiar with the landslide situation at Hetfield Estates but had been involved in other situations which had been successfully remediated over the years. He supported the least restrictive option with attention to detail, and recognized there was no Planning Commission consensus on this issue.

Ms. Clark noted the Steering Committee had not reached a consensus on many issues either. The Commission's comments would be forwarded to the Town Council.

Mr. Noble explained that the Planning Commission would next meet on February 1 to discuss the remaining issues and Commission representation on the Hillsides and Ridgelines Steering Committee, as outlined in the staff report. The Steering Committee would begin meeting again in the spring with four to six meetings, with recommended revisions on the recommendations to then be forwarded on to the Planning Commission and Town Council.

The Town Council would meet on February 10, 2016 to receive recommendations from the Steering Committee and comments from the Planning Commission, and be asked to select preferred options to address each issue and direct staff and consultants to prepare draft materials consistent with the recommendations. The draft materials would be presented to the Steering Committee in mid-2016 and at a public workshop shortly thereafter. Public hearings with the Planning Commission and Town Council had been planned for later in 2016, with a completion of the project by the end of 2016.

## **6. ROUTINE AND OTHER MATTERS**

There were no routine and other matters.

## **7. REPORTS**

### **A. Planning Commission**

Commissioner Kovac reported that he had attended the Liaison Meeting on January 8. He advised that Campolindo High School planned to install solar panels. He requested that staff review any presentation prior to its presentation to the Planning Commission to ensure its appropriateness.

Commissioner D'Arcy reported that she had attended the January 11 Design Review Board meeting when the DRB had approved an arbor and shade screen for properties at 152 and 158 Willowbrook Lane. She clarified with staff why the project did not require Planning Commission review. She also reported that the DRB had received a presentation and provided input on the Draft Wayfinding Signage Alternatives; and had discussed the role of the Planning Commission Liaison.

### **B. Staff**

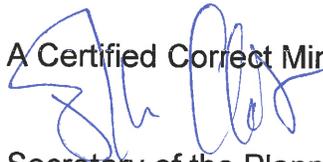
Ms. Clark reminded the Commission of the joint Planning Commission/DRB meeting scheduled for January 25, 2016, to receive a presentation from the consultant on the Moraga Center Specific Plan (MCSP) Implementation Steering Committee recommendations, with an Open House to be held prior to the meeting at 6:00 P.M., and with a regular DRB meeting to be held directly after the joint meeting.

Ms. Clark reported that she had been a presenter for the Moraga Chamber of Commerce Economic Symposium held at Saint Mary's College (SMC); there was a new owner of the Rheem Valley Shopping Center who was aware of the need to refresh, revitalize, and retain new tenants for the center; and Police Chief Robert Priebe had been appointed Interim Town Manager pending recruitment for a new Town Manager.

## **8. ADJOURNMENT**

On motion by Commissioner Woehleke, seconded by Commissioner Kuckuk and carried unanimously to adjourn the Planning Commission meeting at approximately 11:15 P.M.

A Certified Correct Minutes Copy



Secretary of the Planning Commission

