PLANNING COMMISSION STAFF REPORT

DATE: July 26, 2007 for **August 6, 2007 MEETING**

ITEM: VIII. B. – Planning Commission Public Hearing

FILE: **CC-01-06 – Parwin W. and M.Taher Sarwary (Applicant and Owner):** A Public Hearing to consider an application for approval of a tentative subdivision map (Tract 9207) for a condominium conversion of an existing 8-unit apartment complex at 2009 Ascot Drive. Draft Covenants, Conditions and Restrictions (CC&R's) have been submitted for the operation and maintenance of the common areas of the proposed subdivision. The application includes a Hillside Development Permit for construction of bedroom additions at the east rear side of Units 6 and 8 over a slope that is greater than 20%.

REQUEST:

This is a condominium conversion application for approval of a tentative subdivision map to divide an existing 8 unit apartment complex on a 21,656 square foot parcel into 8 individually owned condominium units and 1 parcel in common ownership at 2009 Ascot Drive. The plans for the conversion include a 194 sq.ft. bedroom addition to Unit 4 and 198 sq.ft. bedroom additions to Units 6 and 8. Carports for 12 parking spaces will be provided, with a total of 16 assigned parking spaces and 2 guest parking spaces.

ASSESSOR'S PARCEL NUMBER: 255-471-003

TOWN ZONING: 6 (Six Dwelling Units per Acre)

GENERAL PLAN DESIGNATION: Multi-Family: Six Dwelling Units/Acre

ENVIRONMENTAL REVIEW STATUS:
The condominium conversion and proposed additions and improvements to the existing apartment complex are categorically exempt from CEQA under Section 15301 for existing facilities. This exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Examples include but are not limited to:

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than: 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

(k) Division of existing multiple family residences into common-interest ownership, where no physical changes occur which are not otherwise exempt;

BACKGROUND:

The existing apartment complex was built in 1969 on Lot 27 of Subdivision 3051. The density of the project is 16 units per acre and is legally non-conforming with the Town's current zoning of 6 dwelling units per acre. Originally, the property owner wanted to add several more units to the complex as part of the condominium conversion. MMC Section 8.20.30-A-1 does not allow any increase or enlargement of the area, space or volume occupied for non-conforming uses and the owner was told that the number of units could not be increased. The location of the project is shown on the map below:

The conversion of existing multiple-family rental housing to condominiums is subject to the requirements in Chapter 8.96 of the Municipal Code, attached as **Exhibit A**. The purpose of the condominium conversion ordinance is to:

1. Reduce the impact of conversions on residents in rental housing who may be required to relocate due to the conversion;
2. Assure that purchasers of converted housing have been properly informed as to the physical condition of the structure which is offered for purchase;
3. Ensure that converted housing achieves a high degree of appearance, quality and safety and is consistent with the goals of the town;
4. Provide a desirable balance of ownership and rental housing;
5. Attempt to maintain a supply of rental housing for low and moderate income persons.

PUBLIC NOTICE AND CORRESPONDENCE:
Section 8.96.140 of the condominium conversion ordinance requires the owner of the apartment to deliver a notice of intent to convert to each tenant. The form of the notice is to be approved by the planning department. On January 9, 2007, staff prepared a new subdivision application form for townhouse and condominium conversions that included a sample notification form for tenants. The applicant has delivered the required notification to the tenants to inform them of their rights under MMC Sections 8.96.140 through 8.96.240. Copies of the notices signed by each of the tenants are enclosed as **EXHIBIT B**. In accordance with Section 8.96.060-C, public hearing notices were mailed to all tenants currently living at 2009 Ascot Drive, all property owners within 300 feet of the subject property and to public agencies and utilities on July 26, 2007. A copy of the area of notice map, mailing list and public hearing notice for the project is enclosed as **EXHIBIT C**.

ISSUES AND ANALYSIS:

LIMITS ON CONVERSIONS:
Section 8.96.250 of the condominium conversion ordinance limits the number of conversions in any one calendar year to the Town's potentially convertible rental stock. Potentially convertible rental stock is the number of new apartment or duplex rental units added to the existing rental housing stock in the immediate preceding calendar year for which the determination is made. If a maximum number of committed units are not converted in one year, the surplus is carried over to the next year.

The multiple housing survey for the Town of Moraga is attached as **EXHIBIT D**. This document lists all the existing apartment and duplexes, condominiums and townhouses and condominium conversions in the Town as of February 1, 2007. No new rental units were added to the existing rental housing stock during the preceding calendar year; however, 25 new rental units were completed in 1998 (Luxor Apartments). There have been no new conversions since 1982. Therefore the potentially convertible rental stock is currently 25 units. The proposed conversion of 8 apartment units would not exceed the limits on the number of units converted, but the potentially convertible rental stock would be reduced to 17 units if the project is approved.

EXPANSION OF NON-CONFORMING USE:
MMC Section 8.20.30-A-1 does not allow any increase or enlargement of the area, space or volume occupied for non-conforming uses. Sections 8.96.090-E and F of the condominium conversion ordinance generally require some increase or enlargement of the project to meet the minimum physical standards of at least 200 cubic feet of private storage space and laundry facilities for each unit and section 8.96.110 requires a minimum of 150 square feet of private open space for each unit, such as a private patio or deck. Section 8.96.090-I requires refurbishment and restoration of existing buildings, carports, sidewalks, driveways, landscaped areas and the all elements of the apartment complex to achieve a high degree of appearance, quality and safety. In previous condominium conversion applications small additions to meet the minimum physical

standards have been allowed even though the project exceeds the density under the Town zoning. The proposed bedroom additions for units 4, 6 and 8 would be an expansion of the use that is not required by the condominium conversion ordinance. Under MMC Section 8.20.030-B, the regulations that prohibit an increase or enlargement may be modified upon the issuance of a conditional use permit. The proposed additions and all exterior improvements to the project will also require Design Review Board approval.

REQUIRED NUMBER OF OFF-STREET PARKING SPACES:

For each living unit that has two or more bedrooms, Section 8.96.090-J of the Condominium Conversion Ordinance requires 2 parking spaces. The Town's Off-Street Parking Ordinance (MMC Section 8.76.100-C) requires 1 guest parking space for each two units. In order to comply with these two requirements, the project should have 16 assigned parking spaces and 4 guest parking spaces, or a total of 20 parking spaces. The proposed project will have 16 assigned spaces and 2 guest parking spaces. Two more guest parking spaces would be required to make the project fully compliant with the above regulations. Section 8.96.090 does not specify the required number of covered parking spaces, but MMC Section 8.76.100-A states that every dwelling unit shall have two covered off street parking spaces. 12 of the assigned parking spaces will be covered. The project would comply with MMC Section 8.76.100-A if it had 4 more carports.

Although the total amount of parking will be increased by 6 new parking spaces, it may be possible to achieve the required parking on the site. As the photos at right show, there is a fairly level space at the west side of Unit 1 where it is feasible to make tandem covered parking spaces behind the parking spaces designated as P-15 and P-16 on the tentative map. If parking spaces P-8 and P-9 are also covered then the project could comply with the total required covered parking. The uncovered spaces designated as P-1 and P-10 could then become guest parking spaces for a total of 4 guest parking spaces in compliance with the Town's off-street parking ordinance.

Potential tandem carport location at west side of Unit 1

The condominium conversion ordinance states that the Planning Commission may reduce the number of parking spaces required if it makes findings that (1) due to the physical limitations of the site, there would be a severe loss of amenities due to required parking, and (2) a reduction will not result in a deficiency of parking in light of the characteristics of the tenancies and the availability of alternate off-street parking in the vicinity of the site. The availability of parking on Ascot Drive is very limited because most of the existing apartments were built prior to the Town's incorporation and they only have one covered parking space per unit. The applicant may want to consider adding more parking as described above or a variation of that plan.

DRAINAGE:

The assistant Town Engineer, John Sherbert, visited the project site on July 19, 2007 to review the drainage and proposed changes in parking to evaluate the potential increase in impervious surfaces. John recommended that the following issues should be addressed in the condo conversion process:

1. The roof leader/downspout at the northeastern and southeastern corners of Units 2 and 4 are connected to pipes that end on a steep slope without any riprap or other discharge velocity control;

2. The roof leader at the northeastern corner of Units 6 and 8 terminates in the driveway, but has been fitted with a black corrugated pipe leading to the top of the steep slope without appropriate discharge velocity control; (See picture on next page)

3. The roof leader at the southeastern corner of Units 6 and 8 is connected to a black corrugated plastic pipe that ends near the end of a concrete "v-ditch";

4. Correction of the above drainage deficiencies are excellent opportunities for incorporating BMPs such as cisterns, to reduce the velocity of stormwater run-off;

5. The plans indicate additional roofing will be built to provide more covered parking. While most of this roofing will not add impervious coverage because it will be constructed over existing pavement, it does offer the opportunity to add BMPs such as planters, to slow the runoff from the roofs;

6. The concrete "v-ditch" down slope from the back of the complex is clogged with dirt and debris and should be cleaned. Although part of the ditch appears to be outside of the property line, it is strongly encouraged that the entire ditch be cleaned to avoid having debris washing back into the drain area;

7. The fenced trash disposal area is planned to move closer to the street to provide more space for the guest parking. It appears that the corner of the proposed fence is at the property line.

Above: Northeastern corners of Units 2 and 4.

At right: Southeastern corner of Units 6 and 8, showing black plastic drainpipe connection to steep slope below units.

POTENTIAL TREE REMOVAL:

The owner did not circle "yes" or "no" on page 8 of the HDP application form, in answer to the question as to whether the project will require removal of any native trees. The aerial photo on page 2 of this report and the photograph at right show Oak trees at the rear east side of Units 6 and 8. The proposed bedroom additions at the rear of these units could require extensive pruning, if not removal, of the twin 18" and 24" diameter Oak trees shown on the tentative map. The trees appear to be healthy and staff would not recommend a tree removal permit for these native Oak trees.

PHYSICAL ELEMENTS REPORT:

Section 8.96.040-A of the condominium ordinance requires submittal of reports detailing the condition of each element of the property including foundations, roofs, electrical, plumbing, utilities, walls, ceilings, heat insulation factor, windows, recreational facilities, sound transmission characteristics between units, mechanical equipment, parking facilities and appliances. The report is supposed to include the cost of replacing the element and any variation of the physical condition of the element from the Building Code in effect on the date that the last building permit was issued for the subject structure. **Exhibit E** includes a structural inspection by Jaime P. Arafiles and a property investigation report from Foster Engineering, Inc., which address many, but not all of the physical elements listed above.

The structural inspection report lists 11 items on page 1 that require repair and the estimated costs for the repairs on page 2. The total estimated cost of the repairs is $144,000.00. In addition the structural engineer recommends that the project will probably require a seismic retrofit at an estimated cost of $80,000.00. These repairs are recommended as conditions of approval if the condominium conversion is approved. The Foster Engineering Report dated January 25, 2005 also lists defects in the foundations and paving for the project and contains some pictures of the defects. Some of these defects may be redundant with the defects listed in the Arafiles structural inspection report.

The estimated date when each physical element was built or installed, the current condition of each element and the date when the element was last replaced must be included as part of the physical elements report. This information is essential to assist in preparation of a “reserve study” for determining the budget for the homeowners association to replace major components of the project. If the remaining useful life of a major building component, such as the roofs, building siding or driveways is short, then the developer of the condominium project should be required to replace the component so that the new owners of the condominium units are not immediately forced to make major repairs before they can accumulate sufficient funds in their reserve account. **Exhibit F** includes the estimated remaining life of most of the major components of the project. The remaining life of various elements of the project is also listed on page 5 of the Department of Real Estate Budget worksheet, which is enclosed as **Exhibit J**. A note at the bottom of page 5 indicates that the roofs on the project were replaced 5 years ago and that all unit windows and front doors will be replaced with the conversion. The remaining life for both the built-up and composition shingle roofs is 10 years.

The reports submitted by the applicant cover most of the major exterior features of the buildings. However, the reports do not describe the existing condition or characteristics of some of the interior physical elements, such as electrical wiring and plumbing fixtures, which will become the responsibility of the individual unit owners. If significant remodeling of the units occurs, then some ground fault interruption outlets will be required in the bathrooms and kitchens. One significant factor not submitted by the applicant is the sound transmission characteristics between units. An acoustical engineer should be consulted to make recommendations for any improvements to help

reduce sound transmission between units, both vertically between floors and horizontally through common walls. The remaining useful life of the water heaters, heating furnace and air conditioners are listed in **Exhibit F**. The applicant included a list of the average useful life of other home appliances, but the remaining estimated life of the appliances in the units is not listed. Perhaps the applicant intends to completely refurbish all the units and replace all the existing appliances. The applicant will need to provide Title 24 calculations to the building department before any significant remodeling or additions are undertaken. The existing heat insulation factors for the units should be included and disclosed to buyers of the units. If the replacement windows are dual pane, this would improve the energy efficiency of the units. The project does not include any communal recreation facilities.

Section 8.96.040-B requires submittal of a report from a licensed structural pest control operator describing the general condition of the entire project. **Exhibit G** includes two termite and pest reports from James R. Quinn for units 1-4 and units 5-8. The report for units 1-4 has 51 recommendations with a total estimated cost of $64,530.00. The report for units 5-8 has 94 recommendations with a total estimated cost of $72,275.00. The pest infestation and dry rot report on each unit is also required within sixty (60) days of close of escrow for sale of the units.

Section 8.96.040-C requires submittal of a structural engineer's evaluation of the integrity of the foundations, which is included in **Exhibit E**. Section 8.96.040-C also requires a soils report if one was not done at time of original construction or if there has been soil movement since construction. In order to consider the addition of the two extra bedrooms at the east rear side of units 6 and 8, which will be over a slope greater than 20%, a geotechnical report is required for the Hillside Development Permit (HDP). **Exhibit H** is a geotechnical evaluation that was prepared by Seidelman Associates on May 13, 2006. This report was originally prepared when the applicant was planning on adding additional units and parking at the east side of the existing apartment complex. The Seidelmann report was sent to the Town's geotechnical peer review consultant, Cal Engineering and Geology for review. The general conclusions and recommendations of the Seidelman report include the following:

1. The subject parcel does not contain any evidence of landslide debris or hillslope movement and is suitable for the proposed development.
2. Sandstone bedrock was encountered between 16 and 30 feet below the ground surface and foundation piers should extend into the firm underlying soils and designed to resist creep forces in the upper 6 feet of the soil profile.
3. Special adherence to all seismic codes is strongly recommended due to the regional proximity of the concord, San Andreas, Calaveras and Hayward Faults.
4. The addition to the apartment complex should be constructed upon grade beams supported by drilled cast-in-place concrete piers that are 14 to 18-feet deep and 16 to 18-inches in diameter. The piers may be spaced as much as 10-feet on center.
5. Underpinning of the existing foundation along the suture line with the new additions is recommended to minimize differential movement between the different foundation types.

A statement from the applicant that clearly lists the repairs and improvements to the project that the applicant intends to make to refurbish and restore the project in accordance with Section 8.96.040-D would help clarify the scope of work proposed for the conversion. Under Section 8.96.060-A, the final form of the physical elements report and supporting documents, as approved by the Town, shall remain on file with the planning department for review by any interested person. Section 8.96.060-B requires the subdivider to provide each purchaser with a copy of the physical elements report in its final approved form before the purchaser executes a purchase agreement or other contract to purchase a unit in the project.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R's):
Section 8.96.050-A requires submittal of CC&R's. The declaration includes: the conveyance of units; the assignment of parking spaces; indication of appropriate responsibilities for maintenance of all utility lines and services for each unit; provisions for common area maintenance. The common area maintenance includes landscaping maintenance provisions and maintenance of all vehicular access areas within the project. The CC&R's for the proposed condominium conversion are attached as **Exhibit I**. The Town Attorney reviewed the CC&R's on July 13, 2007 and they were found to be consistent with all the requirements of MMC Section 8.96.050, except for the estimate of initial assessment fees anticipated for maintenance.

On July 17, 2007 the applicant submitted a copy of the Budget Worksheet for the State Department of Real Estate (DRE). This document is included as **Exhibit J**. Pages 3 and 4 of the worksheet contain the budget summary for the condominium development. The proposed assessment fee per month for each unit would be $254.00. Page 5 of the worksheet includes the estimates needed for the reserves, which total $96.59 per unit per month. The total assessment fee per unit on page 4 includes the reserve amount. The applicant is proposing equal assessments for all units, even though there will be 4-two bedroom units and 4-three bedroom units. Under DRE rules, variations of less than 20% in the percent of benefit derived from services provided by the homeowners association are allowed to have equal assessments. The only obvious error staff found in the DRE budget worksheet is on page 13 where the estimated amount for landscape irrigation is $0.00. Page 15 shows a total cost of landscaping maintenance as $1,540.00 per year, but this does not include irrigation water.

DEMOGRAPHIC CHARACTERISTICS OF THE PROJECT:
Section 8.96.050-B requires submittal of specific information concerning the demographic characteristics of the project, including the following:

1. Square footage and number of rooms in each unit,
2. Rental rate history for each type of unit for the previous five years,
3. Monthly vacancy rate for each month during the preceding two years and the amount of turnover of tenants during the preceding two years,
4. Makeup of existing tenant households, including family size, length of residence, age of tenants, and whether receiving federal or state rent subsidies,
5. Proposed sale price of units,
6. Proposed home owners' association fee,

7. Financing available, and
8. Names and addresses of all tenants.

The above demographic information is enclosed as **Exhibit K**. The proposed sale price for the units varies from $399,000 for Units 1 and 3 to $425,000 for units 2 and 4. None of the existing tenants of the apartment complex are over the age of 60 and none of the tenants have federal or state rent subsidies. The existing monthly rental rates for the units vary from $1,300 for a 2-bedroom, 2-bathroom unit to $1,800 for a 3-bedroom, 2 bathroom unit. The length of tenancy for all eight tenants is listed as 3 years.

SPECIFIC PHYSICAL STANDARDS:

Section 8.96.090 of the condominium conversion ordinance lists specific physical standards that must be met for approval of the project. The project is required to conform to the applicable standards of the housing code and the building code in effect on the date that the last building permit was issued for the structure except that the project must include the following improvements and maintenance specifications:

1. Each living unit must have approved detectors of products of combustion, other than heat, conforming to the latest UBC standards, and approved by the Moraga-Orinda Fire District.
2. All fire protection systems shall be maintained in an operable condition at all times, including fire hydrants, fire alarm systems, portable fire extinguishers and other fire protective appliances.
3. Permanent mechanical equipment such as motor, compressor, pump and compactor which is determined to be a source of structural vibration or structure-borne noise shall be shock mounted with inertia blocks or bases or vibration isolators, or both, in a manner approved by the chief of code enforcement.
4. The structure shall conform to interior and exterior sound transmission standards of Chapter 35 (Appendix) of the Uniform Building Code. Where present standards cannot be reasonably met, the Planning Commission may require the applicant to notify potential buyers of the noise deficiency currently existing within these units. As previously stated on page 7 of this report, an acoustical engineer should be consulted to make recommendations for improvements to help reduce sound transmission between units, both vertically between floors and horizontally through common walls.
5. Each unit should be separately metered for gas and electricity. The Planning Commission may allow exceptions to this standard if the subdivider can show that the separation of a particular utility service cannot be reasonably accomplished for the project. However, separate utilities will help to conserve energy and water resources. It is very difficult to have unit owners conserve gas, electricity or water when it is paid for in common. Many new devices have been recently developed, such as on-demand tankless water heaters, that make it easier to separate communal utility service and the developer should be strongly encouraged make all utility services separate for each unit. If separate water meters are not possible for each unit, a plan for equitable sharing of communal water metering shall be developed before final map approval and included in the covenants, conditions and restrictions.

6. Each unit shall have at least two hundred (200) cubic feet of enclosed weather-proof and lockable private storage space in addition to guest, linen, pantry and clothes closets customarily provided. The applicant states on the application form that there will be two 4-foot by 4-foot by 8-foot storage areas for each unit. This would be a total of 256 cubic feet. Section 8.96.090-E reads "The space may be provided in a location approved by the planning department, but should generally not be divided into two or more locations." The proposed locations for the two storage areas are not shown on the tentative map. If these storage areas are included within the unit, then they are automatically "exclusive use areas" and do not have to show on the tentative map. If they are located in the carports or some other common area, then they must be shown on the map so that they can be assigned to each unit in the CC&R's. Where the subdivider can demonstrate for good reason that the requirement for 200 cubic feet of storage space cannot be met, the Planning Commission may modify this standard.
7. Section 8.96.090-F requires a laundry area in each unit or common laundry facilities with not less than one automatic washer and dryer for each five units. The applicant states on the application form that each unit has their own laundry hook-ups for washer and dryer. Under items 3 and 4, above, the vibration and noise from the laundry equipment should be considered by the acoustical engineer when the report on sound transmission between units is prepared.
8. All landscaping shall be installed, restored as necessary, and maintained to achieve a high degree of appearance and quality. The existing landscaping at the project, especially shrubs and groundcover, appear to be in poor condition or non-existent as shown in the photographs below and on the next page.

A landscape improvement plan for the condominium conversion is essential for improving the project to achieve a high degree of appearance and quality. If the condominium conversion is approved, a landscaping plan should be submitted for review by the Design Review Board when the plans for the bedroom additions and other exterior building modifications are reviewed.

9. The developer of the condominium conversion is required to provide a one-year warranty to the buyer of each unit on a dishwasher, garbage disposal, stove, refrigerator, hot water tank, and an air conditioner for each unit.
10. Section 8.96.090-I requires the developer of the condominium conversion to refurbish and restore each building, structure, fence, patio enclosure, carport, accessory building, sidewalk, driveway, paved area and landscaped area as necessary to achieve a high degree of appearance, quality and safety. The plans for the refurbishment and restoration of the project will need to be reviewed and approved by the Design Review Board prior to approval of the Final Map.
11. Section 8.96.090-J was previously discussed with regard to required number of parking spaces. Additional parking standards under sub-section J stipulate that the spaces assigned to each unit shall be contiguous to the maximum practical extent. It is unclear in the ordinance as to whether “contiguous” means that the parking spaces and the units should be contiguous or that the 2 parking spaces assigned to each unit should be contiguous. If the condominium conversion is approved, this detail can be specified in the CC&R’s prior to approval of the Final Map. Section 8.96.090-J also states that the private storage area of one unit cannot overhang or take its access from the required off-street parking space of another unit. Since the private storage area for the units is not shown on the plans, a determination of compliance with this standard cannot be made. The CC&R’s need to include a provision that all parking spaces shall be for the use of unit owners within the project and cannot be rented to anyone who does not reside at 2009 Ascot Drive. However, the CC&R’s can make provision for an occupant of a unit with two or more bedrooms to rent one parking space back to the association. The CC&R’s also need to stipulate that all parking spaces shall be used solely for the purpose of parking motor vehicles as defined by the Vehicle Code of the state of California and shall not be used for trailers, unmounted campers, boats, or other recreational vehicles.

UTILITY EASEMENTS OF PRIVATE STREETS AND OTHER AREAS:
Section 8.96.100 requires public utility easements over the private access driveway or any other common areas to accommodate fire hydrants, water meters, storm drainage, sanitary sewers, water and gas mains, electrical lines, and similar public improvements and utilities. The applicant's engineer should provide verification to the Town Engineer from all the public utilities that they have the easements they need prior to approval of the Final Map.

The Planning Commission may also require access routes necessary to assure that fire fighting equipment can reach and operate efficiently in all areas of the project. The center driveway dividing units 1-4 from units 5-8 would provide good access for fire fighting equipment to most of the units. In addition, the subject property is adjacent to a vacant parcel that has a 20-foot wide access corridor along the north side property line. This access corridor provides good access to the hillside at the rear east side of the project site.

PRIVATE OPEN SPACE FOR EACH UNIT:
Section 8.96.110 requires each unit within the project to have a private patio, deck, balcony, atrium or solarium with a minimum area of one hundred fifty (150) square feet. The exclusive use outdoor space for each unit is required to have at least two weatherproofed electrical convenience outlets and a shape that allows for optimal usable space. The space shall be at the same level and immediately accessible from a room within the unit. The Planning Commission may allow variations from the above dimensional standards where it is shown that the required private open space otherwise meets the intent and purpose of this section. The amount of private open space for each unit is listed below:

Unit 1 – No patio is shown on the plans. There is potentially space for a patio at the north side of the unit or at the west front side if the tandem parking spaces are not built.

Unit 2 – 494 square foot patio at the north side of the unit. This patio shows on sheet 1 of the tentative map and should be included on the first level plan on sheet 2. The patio is in need of repair or replacement because the squares of concrete are very uneven. The patio can be seen in the photo at the top left side of page 6 in this report. The patio should also be enclosed with a fence around it and have direct access from a door in the unit.

Unit 3 – 241 square foot patio at the south side of unit over the carport. This patio exceeds the minimum requirement, but there would be space above the carport for expansion of this patio.

Unit 4 – 65 square foot deck at the east side of the unit, which is supported by two posts. This deck shows in the photograph at the top left side of page 6. This small deck does not comply with the minimum 150 square feet requirement, but it could be expanded. To achieve architectural balance, the applicant might want to consider a deck for unit 2, below, even though unit 2 has a large patio at the north side.

Unit 5 – 231 square foot patio at the west front side of the unit. This patio shows on sheet 1 of the tentative map and should be included on the first level plan on sheet 2.

Unit 6 – No patio or deck is shown on the plans; however, a small deck or patio appears in the photograph at the bottom of page 6 in this report. This patio or deck area is at

the south side of unit 6 and should be expanded to comply with the minimum 150 square feet requirement and should be shown on sheet 1 and the first level of sheet 2 of the tentative map.

Unit 7 – 243 square foot patio at north side of unit over the carport. This patio exceeds the minimum requirement, but there would be space above the carport for expansion of this patio.

Unit 8 – No patio or deck is shown on the plans. If a carport is built to cover parking spaces P-8 and P-9, then it could be possible to have a deck for unit 8 on top of the carport similar to units 3 and 7. If this is not a desirable location for a deck, then a deck could be considered at the south side above the deck at unit 6. However, a deck on the north side would extend into the existing 10-foot side yard.

OVERALL DESIGN AND SITE LAYOUT:

Section 8.96.120 requires the following criteria to be considered in reviewing the overall design and site layout of the project:

A. The project should have a comprehensive and integrated design, providing its own open space, off-street parking, and amenities for contemporary living. Insofar as the scale of the project allows, open space, walkways and other areas for people should be separated from parking areas, driveways and areas for automobiles.

   Comment: Unless you tear down the whole project and start over, you cannot do very much to change the design of a condominium conversion project, since it is basically an existing apartment complex. You can make improvements to the landscaping, add more parking, add amenities such as patios, decks and storage areas and improve the buildings structurally to meet code. The project was originally built under the Contra Costa County's development standards for the M-3 zoning district. The required building setbacks for the M-3 zone were 20-foot front, 10-foot side (on both sides) and 15 rear setbacks. The Town of Moraga setbacks for Zone 6 require a 25-foot front, 20-foot side yard (on both sides) and 20-feet rear yard. The existing project does not comply with the 25-foot front and 20-foot side setbacks required by the Town. However, the proposed bedroom additions to units 4, 6 and 8 are located near the center of the property and they do comply with the Town's building setback requirements. The proposed carport at parking space P-16 would comply with the front 25-foot setback. There are no specified setbacks for decks and patios.

B. Architectural unity and harmony should be achieved both within the project and between the project and the surrounding community so that it does not constitute an adverse disruption to the established fabric of the community.

   Comment: The existing project has steeply pitched mansard shingle roofs on top of the carports as shown in the photos below. With the addition of the bedroom at the west side of unit 4 there may be an opportunity to change the mansard to a more attractive parapet or fascia design element that would improve the architectural unity of the project. If the condominium conversion is approved, the required exterior renovations and proposed additions to the units would be reviewed by the Town's Design Review Board prior to approval of the Final Map.

C. The layout of structures and other facilities should effect a conservation in street, driveway, curb cut, utility, and other public or quasi-public improvements. Structures should be designed to minimize, within the context of accepted architectural practice, the consumption of natural resources either directly or indirectly, i.e., gas, water, and electricity.

Comment: As stated under item A, above, there are limitations on the changes that can be made to an existing complex as it was originally built. Nevertheless, the applicant could consider using permeable pavers for the new open guest parking spaces to help reduce the impact to added impervious surfaces on the property. Likewise, on grade patio areas could be pervious pavers or wood decks. To reduce consumption of natural resources it is recommended that all new windows should be double glazed, all new appliances should be the most energy efficient models available and that any new replacement plumbing fixtures, such as shower heads and toilets should be low flow design.

<u>STANDARDS OF REVIEW WITH RESPECT TO LOSS OF RENTAL HOUSING :</u>
Section 8.96.290 of the condominium conversion ordinance requires the Planning Commission to consider the following issues when reviewing a request for conversion of rental stock to condominiums:

A. Whether or not the amount and impact of the displacement of tenants, if the conversion is approved, would be detrimental to the health, safety or general welfare of the community;

Comment: Unless some of the existing tenants decide to purchase one of the condominium units, the project has the potential to displace 8 tenants. Although the reduction in the total number of rental housing units available in Moraga is generally detrimental to amount of affordable housing in the community, the existing rental rates for the units at 2009 Ascot Drive, between $1300 to $1800 per month, is not within the range of most low income renters. In fact, the monthly payment for a mortgage to buy one of the condominium units is likely to be no more than the current monthly rental rate. The Planning Commission also needs to weigh the proposed and required improvements to the existing project to meet current health and safety standards against the negative impact of the displacement of the tenants. It may well be that the general welfare of the community is better served by approving the conversion so that the existing apartment complex can be upgraded.

B. The role that the project structure plays in the existing housing rental market and in particular whether the structure is serving low and moderate income households using standard definitions of low and moderate income rents used by the federal and state governments. Along with other factors, the following will be considered:

1. The number of families on current waiting lists for assisted rental housing programs that operate in the area such as the Section 8, Section 22, and Section 236 programs,

   Comment: Staff is not aware of the current statistics on the number of families on waiting lists for assisted rental housing in Moraga. There are currently only 5 rental units at the Luxor Apartments at Moraga Road and Ascot Drive that are under a program for affordable housing. There are also about 6 one bedroom townhouse units at the Carroll Ranch Townhouse project on Moraga Road that are subject to affordable housing restrictions. At the present time the primary incentive for developers to provide more affordable housing is a 2-unit per acre increase in allowed density. However, the maximum density of only 6-units per acre is so low, that truly affordable housing cannot be built at a total density of 8-units per acre. The Town is currently seeking to designate an area within the Moraga Center Specific Plan for higher density affordable housing at 20-units per acre of more. The loss of 8 rental units, which currently rent for $1300 to $1800 per month, will not have a significant impact on the amount of low and moderate income rental housing available in Moraga.

2. The probable income range of tenants living in existing apartments based on the assumption that households should pay between one-fourth and one-third of their income for housing. That income range should be compared with existing income limits for Section 8 program to determine whether potential displaced tenants can be categorized as low and moderate income;

Comment: None of the existing tenants is receiving any Federal or State rental subsidy and none of the units is rented under the Section 8 program. Based on the current rental rates for the existing apartment complex, the lowest rent of $1300 per month would correspond to an income of $3,900 per month or $46,800 per year assuming it represents 1/3 the income of the tenant. The upper range of estimated income level of the tenants would be $7,200 per month or $86,400 per year based on the highest rent of $1800 per month assuming that it is 1/4 the income of the tenant. The median household income in Moraga from the 2000 Census was $98,080 per year. Therefore, the income of the potentially displaced tenants could be categorized as low to moderate income.

C. The vacancy rate and turnover rate in multiple family rental housing in the community and the extent to which the proposed conversion will create hardships;

Comment: Staff does not know the current vacancy rate of multiple family rental housing in Moraga, but it is assumed that it is very low. Since most of the housing in Moraga is single family residential, the 452 existing rental units represent only 7.8% of the total 5,760 housing units in Moraga. There is a clear need for more multiple family rental housing in Moraga to meet the needs for Saint Mary's College students, senior citizens and other lower income families of people that are employed in the Town of Moraga. Nevertheless, the loss of only 8 rental units would not create any known hardships in the community.

D. The need and demand for lower-cost-home-ownership opportunities which are increased by the conversion of apartments to condominiums;

Comment: The 8 condominium units would provide a lower cost "home" ownership opportunity by comparison to the current selling prices of single family homes in Moraga. The proposed sale prices for the units between $399,000 and $425,000 may have to increase in order to cover the cost of the necessary improvements to the project, but the cost of the units should still be less than half the average price of single family detached homes in the community. This would be especially significant since half of the units will have 3-bedrooms and 2-baths, which is comparable to many of the existing single family homes in Moraga.

E. The current and historical vacancy rate in the project. In evaluating the current vacancy level, the increase in rental rates for each unit over the preceding five years and the average monthly vacancy rate for the project over the preceding two years shall be considered. If the planning commission determines that vacancies in the project have been increased for the purpose of preparing the project for conversion, the tentative map may be disapproved;

Comment: Since all the existing tenants have been at the complex for at least 3 years, the project does not appear to have a vacancy rate. Under Section 8.96.210, no remodeling that is planned as part of the conversion may be performed in a unit still occupied by a non-purchasing tenant without his or her

written permission. The Town's Code Enforcement Officer from the CCC Building Department has noted that extensive remodeling inside the units appears to be taking place at the project site. The officer also thought that only 2 of the units are currently occupied, but he had no direct evidence of this. The applicant should explain the current building situation and whether any building activity is occurring without a permit. If tenants have left in anticipation of the conversion after they received the notice of conversion, then the applicant should explain the circumstances or reasons that the tenant or tenants have moved.

F. Whether or not the conversion will be detrimental to the retention of low and moderate housing stock or reduce or alter significantly the opportunity within the area for the housing of young and elderly citizens.

Comment: Young citizens, such as Saint Mary's College students, might consider rents of $1300 to $1800 per month to be too high for their limited budgets. Likewise, senior citizens on fixed retirement incomes would probably find these relatively large apartment units to be more than they could afford. There are one and two bedroom apartment units with only one bathroom in Moraga that rent for a lower amount. The conversion of these 8 larger apartment units to condominiums is not expected to be detrimental to the housing of young and elderly citizens.

REQUIRED FINDINGS:

MMC Section 8.96.300 lists the findings required for approval of a condominium conversion. The planning commission may not approve an application for conversion unless it finds that:

A. Each provision of Chapter 8.96 is met;

B. The proposed conversion is consistent with the general plan and is not detrimental to the health, safety of general welfare of the town;

C. The proposed conversion will conform to the municipal code in effect at the time of tentative map approval except as otherwise provided in this chapter;

D. The overall design and physical condition of the condominium conversion achieves a high degree of appearance, quality and safety;

E. The proposed project will not convert during the current calendar year more than one hundred (100) percent of the potentially convertible rental units for the current calendar year except as otherwise provided in Section 8.96.280;

F. The proposed conversion will not have an adverse effect on the diversity of housing types available in the town;

G. The proposed conversion will not displace a significant percentage of tenants and reduce low and moderate income rental units from the housing stock at a time when no equivalent housing is readily available in the town.

RECOMMENDATION:

Staff has prepared a draft resolution for conditional approval of the condominium conversion. Many improvements are necessary to bring this project up to acceptable standards for a condominium development; nevertheless, staff believes that the findings listed under Section 8.96.300 can be met if all the conditions in the draft resolution are implemented. The conditions of approval include all the necessary structural and foundation repairs, building code related improvements and geotechnical recommendations that have been recommended in Exhibits E, G and H. The conditions also include required payment of fees, such as park land dedication fees, that are required by ordinance for any subdivision application. As mentioned several times in this report, the project will require Design Review Board (DRB) approval for the exterior improvements and a Hillside Development Permit (HDP) for the construction of the bedroom additions at the east side of Units 6 and 8. The draft resolution includes a condition to require approval by the DRB prior to approval of the Final Map. In addition, the improvement plans for paving and drainage, as well as review of the easements on the map, must be approved by the Town Engineer prior to approval of the Final Map. The work needed to bring this project up to code and achieve a high degree of appearance, quality and safety to meet the standards for individual ownership of the units will be quite expensive and the conversion to condominiums is probably the only economically feasible way to finance all the improvements needed.

PREPARED BY: Richard Chamberlain, Senior Planner

EXHIBITS:

A – MMC Chapter 8.98 – Condominium Conversions
B – Signed Notifications of Conversion to Tenants
C – Area of Notice Map, Mailing List and Public Hearing Notice
D – Multiple Housing Survey for Town of Moraga
E – Structural Inspection by Jaime P. Arafiles, P.E., S.E. and Property Investigation Report from Foster Engineering, Inc.
F – Estimated Remaining Life of Major Components of the project
G – Termite and Pest Report from James R. Quinn dated 9-13-2005.
H – Geotechnical Evaluation prepared by Seidelman Associates on May 13, 2006.
I – Declaration of Covenants, Conditions and Restrictions (CC&R's) for San Maria of Moraga Condominium Project.
J – State Department of Real Estate (DRE) Budget Worksheet.
K – Demographic Information required by MMC Section 8.96.050-B
L – Draft Resolution for approval of Condominium Conversion and Tentative Map
M – Tentative Subdivision Map
N – Building Improvement Plans