

**BEFORE THE TOWN OF MORAGA PLANNING COMMISSION**

**In the Matter of:**

**Resolution No. 18-2002 PC**

Approval of a Conditional Use Permit to allow )  
the dedication, construction, maintenance and )  
use of a public trail system on portions of a )  
65.6-acre property located north of Larch )  
Avenue, east of Ketelsen Drive, south of )  
Sanders Drive and west of Sanders Ranch. )

File No. UP 07-2002

Planning Commission Adoption  
Date: September 3, 2002

Effective Date: September 14, 2002

**WHEREAS**, Robert Lipson ("Owner") owns property (APN 258-600-003) within the Town of Moraga; and

**WHEREAS**, the Owner authorized John Wyro ("Applicant") to submit a Conditional Use Permit application to allow the dedication, construction, maintenance and use of a public trail system on portions of the property; and

**WHEREAS**, a Mitigated Negative Declaration was approved by the Planning Commission on November 5, 2001 and by the Town Council on January 9, 2002 based upon an environmental study dated February 21, 2001 prepared by Mills Associates; and

**WHEREAS**, a Public Hearing Notice for the proposed public trail system was published in the August 23, 2002 edition of the Contra Costa Sun and was mailed to property owners within 500 feet of property on August 16, 2002; and

**WHEREAS**, on September 3, 2002, the Planning Commission held a public hearing where testimony was heard from the applicant and interested parties.

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the Town of Moraga hereby approves a Conditional Use Permit for the proposed public trail system subject to the findings and conditions listed below.

**SPECIFIC FINDINGS NECESSARY FOR ALL CONDITIONAL USE PERMITS UNDER SECTION 8.12.120 OF THE MUNICIPAL CODE:**

- 1. The proposed use is appropriate to the specific location;**  
The proposed public trail system is compatible with surrounding uses. The property is surrounded by existing single-family residential uses to the north, west and south. The more recent Sanders Ranch Planned Development is adjacent to the site on the east.
- 2. The proposed use is not detrimental to the health, safety, and general welfare of the Town;**

A rectangular section at the end of the proposed private street is a proposed 20-foot wide Emergency Vehicle Access (EVA) easement that will provide adequate emergency access to the designated remainder. With implementation of the mitigation measures and conditions of approval, there will be no significant adverse impacts to the health, safety or general welfare of the Town.

**3. The proposed use will not adversely affect the orderly development of property within the Town;**

The proposed public trail system conforms to the requirements of the Town's General Plan and Zoning Ordinance. With the implementation of the mitigation measures and conditions of approval, the project would not adversely affect the orderly development of other properties within the Town.

**4. The proposed use will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenue sources within the Town;**

The proposed public trail system is consistent with surrounding uses. The mitigation measures and conditions of approval should reduce any potential adverse impacts on adjacent residential properties. The project is not expected to have any effect on property values or revenue sources within the Town.

**5. The proposed use is consistent with the objectives, policies, general land uses and programs specified in the general plan;**

The Planning Commission finds that the construction of the proposed public trail system in accordance with the conditions of approval and mitigation measures will be consistent with Policies Policy C4.1 of the Circulation Element and Policies FS3.21 and FS3.22 of the Community Facilities and Services Element as follows:

Trail access is proposed from the end of proposed private street (i.e., extension of Baitx Drive) that would be connected to the regional "Moraga Ranch" trail. The 58.2 acre designated remainder supports non-native grassland, stands of native grassland, coastal scrub, woodland, freshwater seeps, and riparian vegetation. The native grasslands, scrub, woodland, seeps, and riparian habitat types are all sensitive resources, providing important resources for wildlife such as surface water, protective cover, and nesting or denning areas.

To prevent harassment of wildlife, Mitigation Measure 4.1-4 recommends signs requiring that dogs be leashed at all times on the trails within the designated remainder parcel. However, under the existing Municipal Code provisions, the only locations in the Town where dogs are currently required to be on leashes are at the Hacienda, Moraga Commons and Rancho Laguna. The Town currently contracts with the County for animal control services for enforcement of the leash law. A condition of approval of the subdivision requires the applicant to apply to the Town Council for an amendment to the Town Code to mandate that dogs be leashed at all times on the designated remainder parcel. On August 23, 2002, the applicant submitted a letter to the Town requesting approval of this Code amendment.

If the Code amendment is approved, the applicant would be required to install sign(s) at the access point to the proposed public trails from the private street. The sign(s) would indicate that dogs must be leashed at all times on the designated remainder parcel.

The offer for dedication and its acceptance is contingent on the Town identifying a public entity that is prepared to accept the easement and maintenance of the trails. In the event that the trails are not accepted by a public entity, the Los Encinos homeowner's association or other entity would be required to maintain the trails under the provisions of an agreement between the homeowner's association and the Town.

Access to the Los Encinos subdivision is proposed from Baitx Drive via Larch Avenue. The proposed street will consist of an approximately 450 foot long privately owned and maintained cul-de-sac. The proposed conditions of approval require that a homeowners association or private maintenance assessment district be formed to guarantee maintenance of the private street and other commonly shared facilities within the development. Condition II.9. of Subdivision 8444 requires that public access to the proposed private street (i.e., extension of Baitx Drive) shall be restricted from vehicular use other than maintenance and emergency vehicles and access to public trail easements on the adjacent 58.2-acre designated remainder. A rectangular section at the end of the proposed private street is a proposed 20-foot wide Emergency Vehicle Access (EVA) easement that will provide adequate emergency access to the designated remainder.

**6. The proposed use will not create a nuisance or enforcement problem within the neighborhood;**

The proposed public trail system is located in relatively close proximity to several residential homes. The conditions of approval provide mechanisms to assure the use does not create a nuisance or enforcement problem within the neighborhood.

**7. The proposed use will not encourage marginal development within the neighborhood;**

The proposed public trail system conforms to the requirements of the Town's General Plan and Zoning Ordinance. With the implementation of the mitigation measures and conditions of approval, the project would not adversely affect the orderly development of other properties within the Town.

**8. The proposed use will not create a demand for public services within the Town beyond that of the ability of the Town to meet in the light of taxation and spending restraints imposed by law;**

The proposed public trail system is not likely to create a demand for public services beyond the ability of the Town to provide. The offer for dedication and its acceptance is contingent on the Town identifying a public entity that is prepared to accept the easement and maintenance of the trails. In the event that the trails are not accepted by a public entity, the Los Encinos homeowner's association or other

entity would be required to maintain the trails under the provisions of an agreement between the homeowner's association and the Town.

- 9. The proposed use is consistent with the Town's approved funding priorities.**  
The project is not expected to have a significant impact on the Town's funding priorities as the trails would be designed and constructed at the applicant's expense.

**CONDITIONS OF APPROVAL:**

1. All previous conditions of the January 9, 2002, subdivision approval, including, but not limited to, those set forth in Town Council Resolution No. 3-2002 and the August 5, 2002 parcel map approval, including, but not limited to, those set forth in Planning Commission Resolution No. 15-2002, shall remain in full force and effect.
2. The public trail system shall be constructed in accordance with the conditions of approval of Town Council Resolution No. 3-2002 (File No. Sub. 8444) and Planning Commission Resolution No. 15-2002. Prior to construction of the public trail system, the applicant or his successor in interest shall submit revised plans to the Planning Director showing the elimination of that portion of the proposed trail which runs parallel to the existing Moraga Ranch Trail. The revised plans shall include a grading plan for the trails and legal descriptions of the easements. The public trail system shall be included in the subdivision improvement agreement as well as the performance bond for the subdivision (File No. Sub. 8444).
3. In order to provide public access to the public trail system on the 58.2-acre designated remainder parcel, the final map shall include an access easement for public pedestrian use of the private street Baitx Drive. The public access shall be restricted from use other than maintenance and emergency vehicles and access to the public trail system on the designated remainder parcel.
4. The USFWS and CDFG shall be informally consulted over the potential for occurrence of California red-legged frog, Alameda whipsnake, and San Francisco dusky-footed woodrat on the 58.2-acre designated remainder parcel and the need for possible authorization as part of the proposed trail construction. Concerns of the trustee agencies and possible restrictions on improvements shall be adhered to as part of trail construction. The applicant shall submit written verification to the Planning Director from the trustee agencies that the requirements of this condition have been satisfied. MITIGATION MEASURE 4.1-1b.
5. The final trail alignment on the 58.2-acre designated remainder parcel shall avoid passing by or through any freshwater seeps. If this cannot be achieved, the proposed improvements should be coordinated with representatives of the U.S. Army Corps of Engineers, California Department of Fish and Game (CDFG), and Regional Water Quality Control Board, and required authorization obtained prior to any modification to jurisdictional wetlands and waters. MITIGATION MEASURE 4.1-3.

6. To implement Mitigation Measure 4.1-4 in the Mitigated Negative Declaration, the applicant has requested the Town Council to amend the Town Code to require that dogs be leashed at all times on the public trail system on the 58.2-acre designated remainder parcel. If the Code amendment is approved and the County Animal Control Officer or other public agency agrees to enforce the leash law, the applicant shall install sign(s) at the access point to the trail at the end of the private street (Baitx Drive) mandating that dogs be leashed at all times on the public trail system on the 58.2-acre designated remainder parcel. MITIGATION MEASURE 4.1-4.

**PASSED AND ADOPTED** by the Planning Commission of the Town of Moraga on September 3, 2002, the following vote:

Ayes: Commissioners Burch, Rei, Woehleke, Metcalf  
Noes: None  
Abstain: None  
Absent: Commissioner Brown, Carey, Fitzinger



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Michael Metcalf, Chairman



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Lori Salamack, Planning Director  
Secretary