

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

Denying the Appeal of Planning)
Commission Vice Chair Brenda Luster)
Appealing Planning Commission's)
decision on June 3, 2019 (PC Resolution)
05-19) and Upholding, as Amended, the)
Planning Commission's Approval of an)
Amendment to the Los Encinos)
Subdivision Vesting Tentative Map and)
Hillside Development Permit Conditions of)
Approval, Revisions to Grading Design,)
Design Review for 10 Homes and)
Consideration of Design Guideline)
Exceptions)

Resolution No. 61 - 2019

WHEREAS, on August 29, 2000, an application for a Hillside Development Permit and Vesting Tentative Map was filed for property located east of the intersection of Ketelsen Drive, Baitx Drive and Vista Encinos north of Larch Avenue ("Property"); and

WHEREAS, on November 5, 2001, the Planning Commission made all of the necessary findings and approved the Mitigated Negative Declaration, Hillside Development Permit and Vesting Tentative Map (Sub. 8444); and

WHEREAS, on November 12, 2001, an appeal was filed of Planning Commission Resolution No. 21-01 approving the Mitigated Negative Declaration, Hillside Development Permit and Vesting Tentative Map (Sub. 8444); and

WHEREAS, on December 12, 2001, the Town Council denied the appeal, thereby upholding the Planning Commission decision approving the Mitigated Negative Declaration, Hillside Development Permit and Vesting Tentative Map (Sub 8444) for an 11-lot subdivision, including 10 single-family residential lots (7.4 acres) and a designated remainder parcel (58.1 acres); and

WHEREAS, on January 9, 2002, the Town Council adopted Resolution 3-2002 adopting the Mitigated Negative Declaration, and approving the Hillside Development Permit and Vesting Tentative Map (Sub 8444) for an 11-lot subdivision, including 10 single-family residential lots (7.4 acres) and a designated remainder parcel (58.1 acres); and

WHEREAS, on August 24, 2005, the Town Council approved Resolution 15-2005 accepting and approving the Final Map and Subdivision Improvement Agreement for Los Encinos (Sub 8444); and

WHEREAS, on December 8, 2005, the Los Encinos Final Subdivision Map (Sub 8444) and Subdivision Improvement Agreement were recorded with the Contra Costa County Recorder's Office; and

WHEREAS, on April 10, 2006, the Design Review Board approved an Action Memorandum for the perimeter landscaping for Los Encinos required by Condition #7 of Town Council Resolution 3-2002; and

WHEREAS, on August 9, 2018, Moraga Builders Corp. (Current Applicant) submitted an application requesting to modify Condition of Approval I.8 of Town Council Resolution 3-2002 and grading application to regrade the existing lots; and

WHEREAS, on November 21, 2018, revised application materials were submitted by the Current Applicant which included the request to modify Condition of Approval I.9 of Town Council Resolution 3-2002; and

WHEREAS, on January 15, 2019, an application was submitted by the Current Applicant for Design Review for 10 single-family residences; and

WHEREAS, on March 26, 2019, public hearing notices for a Planning Commission hearing were mailed to all property owners within five hundred (500) feet of the project site and posted on at least three public locations within the Town; and

WHEREAS, on April 8, 2019, the Planning Commission conducted a Public Hearing and heard testimony from the applicant, and interested parties, and continued the hearing to a date certain of May 6, 2019; and

WHEREAS, on May 6, 2019, the Planning Commission continued the Public Hearing to a date certain of June 3, 2019 to allow the applicant additional time to continue working on revisions to their plans; and

WHEREAS, on June 3, 2019, the Planning Commission conducted a Public Hearing and heard testimony from the applicant, and interested parties and adopted Planning Commission Resolution No. 05-2019, approving amendments to the Los Encinos subdivision Vesting Tentative Map and Hillside Development Permit conditions of approval I.8 and I.9, revisions to grading design, design review for 10 homes and consideration of design guideline exceptions; and

WHEREAS, on June 13, 2019, Planning Commission Vice Chair Brenda Luster filed an appeal of the Planning Commission approval to the Town Council; and

WHEREAS, on June 26, 2019, public hearing notices for a Town Council hearing were mailed to all property owners within five hundred (500) feet of the project site and posted in at least three public locations within the Town; and

WHEREAS, on July 10, 2019, the Town Council held a public hearing at which time it considered all oral and documentary evidence presented relating to the Appeal, and incorporated all testimony and documents into the record by reference and continued the hearing to a date certain of July 31, 2019; and

WHEREAS, on July 31, 2019, the Town Council held a Special meeting for the public hearing at which time it considered all oral and documentary evidence presented relating to the Appeal, and incorporated all testimony and documents into the record by reference.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Moraga as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its findings, the Town Council relied upon and hereby incorporates by reference all correspondence, staff reports and other related materials.

BE IT FURTHER RESOLVED, that the Town Council of the Town of Moraga does hereby deny the Appeal based upon the project plans, the staff report, all attachments, all written and oral testimony and comments and all other information presented in this matter, and makes the following findings pertaining to its denial of the Appeal of the Planning Commission's action.

1. Exception from Design Guideline SFR 1.2 setback variation.

Design Guideline SFR 1.2 states that "Front setbacks should be varied, with no more than two adjacent units having the same setback. Setback variation shall be a minimum of three feet." The homes at their nearest points are all set back approximately 20 feet from their front property lines. Vista Encinos ends in a cul-de-sac, which does create an appearance of setback variation for the homes on Lots 4 through 6 at the end of the street (bulb of Vista Encinos). In order to provide better separation from the homes in the existing neighborhood below, the homes on the lower lots (1 through 5) have been set as close as they can to the street which also helps to minimize grading at the rear of the lots by keeping development closer to the street. On these homes, design differentiation is created with variations in color, roof styles, porch designs and garage sizes. The homes on the uphill lots (6 through 10) have been placed forward towards the street in order to increase the level usable yard area of the lots. These five lots include three different home designs to create the feel of setback variation. Additionally, as Vista Encinos slopes upward from west to east, the homes will be at differing elevations which should also help to create the appearance of variation. This is a hillside site which creates some challenges that are not present on more level properties. Keeping the homes as close as possible to the street also helps to minimize grading.

2. Exception from Design Guideline SFR 1.11 usable yard area.

This design guideline states that there should be at least 25' x 40' of near level area other than the front yard, for usable open area. The purpose of this guideline is to ensure that the quality and general character of single family homes are consistent across neighborhoods and that each home has usable outdoor space. None of the redesigned lots meet the dimensions standard, but Lots 5 through 10 provide at least 1,000 square feet of level yard areas at the rear and sides of the homes. Lots 1 through 4 are located on the lower hillside and more constrained as expanding the yard areas further downslope would result in higher or additional retaining walls. Additionally, if homes of similar size or smaller homes were built on the current topography, without any site regrading, this exception would be necessary on all lots, except for 9 and 10. Due to the challenges of the existing topography and limited areas on the site to meet this guideline, this exception has been granted.

3. Exception from Design Guideline SFR 2.9 for blank walls.

This exception is no longer necessary as a result of applicant's agreement to add a special design feature to the home designs on lots 1, 2, 4 and 5 pursuant to Condition No. 21.

4. Exception from Design Guideline ID10 for grading:

The grading includes 9,400 cubic yards of cuts and approximately 5,300 cubic yards of fill. The proposed area of grading has previously been modified to accommodate a street, retaining walls and building pads constructed as part of the original subdivision improvements. In particular, the lower elevations of the uphill lots have been significantly altered where the homes are proposed and are not in a natural state. The purpose of the grading is to create pads for the individual homes. The grading contours have been rounded and will generally follow the existing contours of the site with elevation changes of 2:1 between the lots to create level pad areas. The grading also includes slopes as steep as 2:1 behind the homes on lots 6 through 10, which will be substantially screened from offsite views by construction of the proposed homes. Grading on the lower lots (1 through 5) includes slopes as steep as 2:1 below the building pads which will be substantially screened by fences and existing and proposed vegetation.

5. Exceptions from Design Guidelines ID11.2, ID11.4 and ID11.5 for retaining walls:

The project proposes two stacked retaining walls of up to 5 feet in height and approximately 4 feet apart on Lots 6, 7, 8 and 10. These will be substantially screened from off-site views by the proposed homes. Some of the walls on lots 6, 7 and 8 extend across the property lines. The project has been conditioned by this permit to require that the homeowners' association be responsible for these shared retaining walls. The lower lots include a small portion retaining wall on

Lot 1 that is 3.7 feet in height and 4 foot high stacked retaining walls on Lot 3 with approximately 4 feet of separation between the walls. Retaining walls extend across the property lines of lots 1 through 4 which are conditioned by this permit to be maintained by the homeowners' association. The walls on the lower lots are downslope of the homes and will be substantially screened from off-site views by existing fencing and vegetation and proposed additional trees and shrubs that will be planted as part of this project to provide screening between the existing neighborhood and the project.

BE IT FURTHER RESOLVED, that the Town Council of the Town of Moraga, based on the project plans, the staff report, all attachments, all written and oral testimony and comments and all other information presented in this matter, does hereby make the following findings set forth in Part I, approving the CEQA Addendum attached hereto.

PART I: CEQA FINDINGS:

A Mitigated Negative Declaration was adopted on January 9, 2002 for the Los Encinos Vesting Tentative Map and Hillside Development Permit, which addressed the construction of single-family homes within the subdivision. A CEQA Addendum was prepared to address potential environmental impacts of the proposed condition modifications and grading. The Addendum determined the following:

1. The proposed project would not result in any of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent Mitigated Negative Declaration. The Addendum did not identify any new or more severe significant impacts, and no new mitigation measures would be required.
2. The proposed project modifications would not constitute substantial changes to the project or the project circumstances, which would require major revisions to the Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified environmental effects. There have been no other changes or evidence or new information which would require revisions to the Mitigated Negative Declaration. Since none of the criterion in CEQA Guidelines Section 15162 has been met, an Addendum is the appropriate CEQA document.

BE IT FURTHER RESOLVED, that the Town Council of the Town of Moraga, based on the project plans, the staff report, all attachments, all written and oral testimony and comments and all other information presented in this matter, does hereby make the following findings set forth in Parts II and III, upholding the Planning Commission's June 3, 2019 decision and approving, as amended, the amendment to the Los Encinos subdivision Vesting Tentative Map and Hillside Development Permit conditions of approval, revisions to grading design, design review for 10 homes and consideration of design guideline exceptions subject to the conditions of approval set forth in Part IV.

PART II: DESIGN REVIEW FINDINGS:

The findings below are required in accordance with Moraga Municipal Code §8.72.040.B. in order to approve an application within a single-family residential district:

- 1. The proposed improvements conform with good design as set forth in the Town of Moraga Design Guidelines, and in general contribute to the character and image of the town as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality** because, as conditioned, the proposed homes would meet all standards of the 3 DUA zoning district, including height and setback limits. The homes have a Craftsman style design which includes architectural detailing on all elevations. The exterior elevations of the homes include two primary siding types, horizontal lap and shingle. The homes include a variety of decorative features, such as wood trim around windows and doors, corbels, rafter tails, stone wainscoting along portions of the front of the homes, covered front porches and carriage style garage doors. Some of the designs include dormers, popout windows and belly bands. The homes are painted various shades of grey with white or black trim. All of the homes have composite shingle roofs with a combination of gable and hip roofs, the majority of roof pitches between 3:12 and 5:12 with roof pitches as steep as 8:12 on the rear of the homes on Lots 1 through 5. The lots will be regraded to create level building pads for each home. Design exceptions for grading, retaining walls, building setback variation, size of usable yard areas and blank walls will accommodate the unique conditions of the site topography and will result in an overall project design that integrates into the surrounding neighborhood and reduces impacts on neighbors. Additionally, partial screening of the project site from the surrounding neighborhood would be provided by existing trees and vegetation located along the rear property lines of lots 1 through 5 and the planting of additional screening trees as required by conditions of approval.
- 2. The proposed improvements will not have a substantial adverse effect on neighboring properties or the community due to poor planning; neglect of proper design standards; or the existence of buildings and structures unsuitable to and incompatible with the character of the neighborhood and the character of the community** because the residences would utilize traditional construction materials including horizontal lap and shingle siding, wood trim around windows and doors, corbels, rafter tails, stone wainscoting along portions of the front of the homes and composite shingle roofing. The homes meet the development standards of the 3 DUA residential zoning district, including minimum setbacks and height, and do not exceed the maximum allowed Floor Area Ratio (FAR). The project includes landscaping for the front yard of all of the homes and a condition of approval requires that all other graded areas with no proposed landscaping to be reseeded with native grasses, with tree and shrub screening planted near the rear property lines of Lots 1 through 5. The granted design exceptions are necessary because of the existing topography of the site and would allow the project to be less impactful to neighboring properties, specifically so that the homes on Lots 1-4 can be located further north towards Vista Encinos and further away from the downslope properties, creating additional separation from the downslope homes.

3. **The proposed improvements will not lower property values; discourage the maintenance and improvement of surrounding properties; or preclude the most appropriate development of other properties in the vicinity** because the new homes are designed in a Craftsman-influenced style creating a cohesive neighborhood theme. They utilize natural materials such as wood and stone, which are compatible with other residences in the surrounding neighborhood and in substantial conformance with the Design Guidelines for Single Family Residential Neighborhoods, with design exceptions granted to address site topography and proximity to adjacent residences. Additionally, the project site is zoned for residential development and approval of the subdivision anticipated the construction of 10 new single-family homes. The subdivision has been in a partially constructed state consisting of the street, drainage facilities and retaining walls for many years, with the street blocked by cyclone fencing to prevent access to the undeveloped lots. This has given the project site an unfinished, partially developed appearance that detracts from the visual quality and cohesiveness of the neighborhood. Conditions for this project require all remaining applicable Conditions of Approval per the approved subdivision (TC Resolution 3-2002) and in the Subdivision Improvement Agreement, to be completed prior to issuance of the first building permit for a home. A tree screen will be maintained along the rear property line of Lots 1-5 to maintain the privacy of the residences located downslope on Larch Avenue. With completion of the homes, landscaping, and infrastructure, the visual appearance and character of the neighborhood will improve, resulting in a positive impact to property values for adjacent and nearby residences since the new construction will represent an investment in the neighborhood that will encourage maintenance and improvement of surrounding properties.

4. **The proposed improvements will not impair public health, safety or welfare** because the development includes grading, drainage and stormwater management plans that adequately address and mitigate potential environmental and public safety impacts. The grading and building plans will be reviewed by the Lamorinda Building Inspection Division and the new homes would be built in accordance with the California Building Code. The completed project is not anticipated to have adverse health or safety impacts on the community. There could be some temporary noise and dust impacts that are normally expected during grading and construction. The proposed conditions of approval mitigate the adverse construction impacts.

PART III: GRADING PERMIT FINDINGS:

In accordance with MMC §14.12.030, for grading operations on average slopes less than twenty-five (25) percent and greater than or equal to twenty (20) percent, the Town Council hereby approves the project grading, with a determination that the grading is:

1. **Consistent with the town design guidelines**

The purpose of the proposed grading is to lower the elevations of the proposed homes by creating level building pads. Design Guideline ID10.5 states that *“cut slopes should be placed behind buildings or other structures where they will be*

screened.” The building pads that will be created on the upper lots (6-10) will require cutting into the slope behind where the homes are proposed. The cut slope will be 2:1 and will be located behind the proposed homes which will serve to substantially screen them from off-site views. On the lower lots, the proposed grading would generally follow the existing contours, but would be steepened below the building pads to a 2:1 slope, and between Lots 1 and 2, 2 and 3 and 4 and 5 in order to create level building pads within the middle of the lots. The pad heights will be slightly higher than street level on the uphill lots, and lower than street level on the downhill lots. The contours around the pads have been rounded, but in some cases run perpendicular to the slope for as much as 80 feet. However, these areas on the lots would be largely obscured from off-site views since they are at the lower elevations of the subdivision, and while they do not follow the natural slope of the land in order to create level building pads, the contours would be significantly screened from neighboring properties by existing landscaping along rear property boundaries and further landscaping as required through conditions of approval.

2. Consistent with the regulations of this Chapter (MMC§ 14.12)

The preliminary grading plans and geotechnical reports prepared for the project show that there will be 9,400 cubic yards of cuts and approximately 5,300 cubic yards of fill. The geotechnical reports include recommendations for site preparation, slope stabilization, cut/fill transitions, foundation design, drainage, and retaining wall construction to ensure that the proposed grading and site improvements will be stable and not create a hazard to public or private property. These documents were peer reviewed by the Town’s geotechnical consultant who concurred with the recommendations of the preliminary grading plans and geotechnical reports. The project conditions of approval ensure that all grading activities will be conducted in accordance with this chapter.

3. Not detrimental to public safety

The proposed grading plan is based on geotechnical reports of site conditions, soils reports, and other similar technical reports which were peer reviewed by licensed geotechnical professionals on behalf of the Town. The recommendations of these professionals resulted in a site plan that avoids public safety impacts. The geotechnical reports include a number of recommendations required to be followed through the conditions of approval to ensure that slope stability is maintained before, during and after construction. The project grading would result in a number of slope areas below and above the building pads with gradients as steep as 2:1. While Section 14.48.021 of the Grading Ordinance generally requires fill slopes to be less than 3:1, *steeper slopes are allowed where natural slopes are greater, and where it can be demonstrated that proposed fill slopes will not create a hazard to public or private property.* Both of these provisions would be met, since existing slopes on the site are as steep as 2:1, and peer-reviewed engineering reports have been provided, indicating that, with appropriate stabilization measures, slopes of up to 2:1 will be stable and not create hazards.

4. Not detrimental to storm water runoff

The proposed project will be developed in compliance with the requirements of the Regional Water Quality Control Board C.3 Guidelines. A Storm Water Control Plan prepared by the applicant's engineers was submitted to the Town and reviewed by the Town's Public Works Department for compliance with the Contra Costa County Clean Water Program. A final Storm Water Control Plan must be submitted and approved by the Town's Public Works Department prior to issuance of the grading permit.

5. Consistent with the requirements of Chapter 8.136 of the Municipal Code

Chapter 8.136 sets forth the Town's Slope Density (Hillside Development Permit) requirements. A Hillside Development Permit was approved for this project under Town Council Resolution 3-2002 which approved development of 10 residential lots on 7.4 acres from a 65.5-acre parcel. The revised grading will be within the 7.4-acre area which was contemplated for development and the area of disturbance has an average slope of 22%.

6. Natural contour grading

Contour grading is defined in Title 14 as "the grading of cut and fill slopes to blend with existing contours and to provide horizontal and vertical variation to eliminate the artificial appearance of slopes." The proposed area to be regraded has previously been modified to accommodate a street, retaining walls and building pads constructed as part of the original subdivision improvements. In particular, the lower elevations of the uphill lots have been significantly altered where the homes are proposed and are not in a natural state. These areas will be excavated to create level lots with a 2:1 slope and retaining walls up to 5 feet in height up slope from the building pads, these features will be substantially screened from off-site views by the proposed homes. The upper elevations of these lots are comprised of a hillside that has been preserved with a scenic easement and will not be disturbed. On the lower lots, the proposed grading would generally follow the existing contours, with the slope steepened below the building pads to a 2:1 slope, and between Lots 1 and 2, 2 and 3 and 4 and 5 in order to create level building pads within the middle of the lots. These contours have been rounded off, but in some cases run perpendicular to the slope for as much as 80 feet. These areas on the lots would be largely obscured from off-site views since they are at the lower elevations of the subdivision, the contours would be significantly screened from neighboring properties by existing landscaping along rear property boundaries and further landscaping as required through conditions of approval.

7. Minimizes soil displacement

The project includes 9,400 cubic yards of cuts and approximately 5,300 cubic yards of fill, which will result in soil displacement and off haul of materials. The intent of the grading is to create level building pads for the homes on this hillside property. The grading on the uphill lots would result in a 2:1 slope in the rear yards behind the proposed homes, substantially screening the slope from off-site views. The grading on the lower lots will be at the lower elevations of the

property and would be screened from neighboring properties by existing fencing and existing and proposed vegetation and trees.

8. Minimizes the use of retaining walls

The rear of the developable area of the uphill lots would consist of two stacked retaining walls ranging up to 5 feet in height on Lots 6 and 7, one retaining wall on Lot 8 and three retaining walls on Lot 10. On the downslope edge of the building pads for Lots 1 through 5, a new five-foot-high retaining wall is proposed on Lot 2, this wall extends approximately 11 feet into the eastern portion of Lot 1. A 2 foot high retaining wall would be constructed along the rear pad of Lot 3 and a 1 foot high retaining wall along the rear pad of Lot 4. A maximum 3 foot high retaining wall would be constructed along the eastern building pad edge of Lot 5. The project will require design exceptions from ID 11.4 and ID 11.5 as the stacked retaining walls will not meet the horizontal depth guidelines for the terraces and they will extend across property lines, not meeting the setback guideline. Exceptions from ID 11.4 and 11.5 are required for retaining walls that do not meet the horizontal depth requirement on Lot 3 and retaining walls that extend across property lines on Lots 1 through 4. Both Lots 1 and 3 have retaining walls that will exceed 3 feet in height requiring an exception from ID 11.2. The retaining walls on the upper lots will be substantially screened from off-site views by the proposed homes and the retaining walls on the lower lots would be screened by existing fencing and new and existing vegetation.

9. Not inconsistent with the general plan

The purpose of the grading is for the development of building pads for 10 new homes on property designated Residential – 3 DUA in the General Plan with a corresponding 3-DUA Zoning District, which allows for the development of homes as permitted uses subject to design review. The project is consistent with General Plan Policy LU 1.8, since the site is not on MOSO-designated land, and the average predevelopment slope on the site is less than 25 percent. While there would be new development on slopes of 20 percent or steeper, the project-specific geotechnical and storm water analysis has determined that with implementation of all site preparation, slope stabilization, cut/fill transitions, foundation design, drainage and retaining wall construction, the proposed grading will be stable and not create a hazard to public or private property.

PART IV: CONDITIONS OF APPROVAL:

The following conditions of approval are for design review of 10 homes, site grading and two modifications to Town Council Resolution 03-2002.

1. The plans submitted for amendments to Vesting Tentative Map and Hillside Development Permit conditions of approval (Subdivision 8444), revisions to grading design, Design Review for 10 homes and consideration of Design Guideline Exceptions within the Los Encinos Subdivision shall be substantially in accordance with the Town Council approvals on July 31, 2019. The Planning

Director may approve minor revisions; any significant changes to the plans will require re-submittal to the Planning Commission for approval.

Conditions Shall be Printed on Plans

2. The conditions of this permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this approval, under the title 'Planning Commission Conditions.' The second sheet may also be used if the first sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

Applicant Responsible for Compliance with Conditions

3. The applicant shall ensure compliance with all of the following conditions. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the approval.

Subject to all Town and Other Regulations

4. The approved construction is subject to, and shall comply with, all applicable Town Ordinances and laws and regulations of other governmental agencies.
5. The approved construction shall comply with the Conditions of Approval of Town Council Resolution 3-2002 and the Mitigation Monitoring and Reporting Program.
6. The applicant shall apply for and pay all appropriate fees for building permits, plan checks and inspections.
7. Required improvement plans and reports shall be prepared by a registered Civil Engineer and shall be submitted to the Public Works Department, Engineering Division, along with review and inspection fees.

Prior to Grading Permit Issuance

8. A Storm Water Control Plan ("SWCP") shall be reviewed and approved prior to issuance of a grading permit.
9. A hauling permit shall be obtained for movement of five hundred (500) cubic yards of earth material on public streets in accordance with Planning Commission Resolution 46-82.
10. This development shall fully comply with the Contra Costa Clean Water Program's Stormwater C.3 Guidebook ("C.3 Guidebook), Addendum, and the requirements of the Regional Water Quality Control Board. As part of these requirements, the applicant shall implement Low Impact Design ("LID") into the design of this project,

implement the techniques, and provide for perpetual operation and maintenance for all treatment facilities.

11. All construction plans (including, but not limited to, site, improvement, structural, mechanical, architectural, building, grading and landscaping plans) shall comply with the approved SWCP or any subsequently revised SWCP, the C.3 Guidebook, and the requirements of the Regional Water Quality Control Board. All construction plans shall include details and specifications necessary to implement all measures of the SWCP, subject to the review and approval of the Public Works Department. To ensure conformance with the SWCP, the applicant shall submit completed checklists, indicating the location on the construction plans of all elements of the SWCP as described in the C.3 Guidebook.
12. The development shall include measures to comply with the hydromodification requirements of provision C.3 if the total new impervious surface exceeds one acre.
13. Proposed bioretention areas shall include a subdrain system if the soils onsite do not support infiltration of stormwater into existing ground. The bioretention areas shall be reviewed by the project geotechnical engineer to ensure that adequate measures and / or setbacks are included in the project to protect nearby structures and site improvements from potential water intrusion.
14. Grading, drainage and foundation plans shall incorporate the design recommendations of the Geotechnical Exploration prepared by ENGEO dated July 10, 2003 and supplemental recommendations prepared by ENGEO dated May 11, 2015, the recommendations of the ENGEO Preliminary Grading Plan Review dated August 1, 2018, ENGEO Updated Geotechnical Recommendations dated August 2, 2018 and Revised January 7, 2019 and in compliance with Moraga Municipal Code, Title 14 Grading Ordinance.

Prior to Building Permit Issuance for the Homes

15. The applicant shall apply for and pay all appropriate development impact fees.
16. The applicant shall obtain and resubmit proof of Moraga-Orinda Fire District approval for the project to the Planning Department and the project shall be subject to any conditions of approval imposed by the Fire District.
17. The applicant shall obtain and resubmit proof of Central Contra Costa Sanitation District (CCCSD) approval for the project to the Planning Department and the project shall be subject to any conditions of approval imposed by CCCSD.
18. Town Council Resolution 3-2002 conditions of approval shall be completed, which include Conditions 5 (Subdivision Improvement Agreement), 6 (Deed Restrictions),

7 (Replanting Screen Trees), and 9 (Lot Line Adjustments). Prior to issuance of the first residential building permit within the Los Encinos subdivision, screen trees shall be replanted in conformance with the April 10, 2006 Design Review Board perimeter landscape approval.

19. All outstanding items of the Subdivision Improvement Agreement for Subdivision 8444 (Los Encinos) shall be completed, including but not limited to, (1) payment of an outstanding balance of \$2,938 for the increased quantities on the grading permit and additional \$8,000 for the hauling permit issued in 2008 (for a total of \$10,938), (2) repair of cracked and failing sections of a "v-ditch" at the Los Encinos property, (3) cleaning and removal of accumulated debris and drainage devices, (4) sealing of cracks in existing pavement, (5) restoration of the graded trail access at the end of Vista Encino per original plan, (6) creation of a homeowners' association, (7) construction of the approved trail system as shown on the approved Los Encinos grading plans and (8) complete drainage conveyance system for lots 1 through 5.
20. The construction plans shall incorporate energy efficiency measures with a minimum GreenPoint "Silver" certification rating or LEED equivalent.
21. The architectural plans for Lot 1 shall be revised to eliminate the window of the master bedroom walk in closet (West building elevation) and the sides of the second story of the homes on lots 1,2,4 and 5 shall have a special design treatment (no windows) added to the plans, subject to review and approval of the Planning Director, in order to comply with design guideline SFR 2.9.
22. A Construction & Demolition Debris Recycling Waste Management Plan shall be submitted to the Town.
23. The applicant shall submit a lighting plan for all exterior lighting fixtures, including landscape lighting, showing location, specifications and type of lighting fixture for Planning Department review and approval. Outdoor lighting shall be directed inward toward the property and may require additional screening to avoid spillage onto adjacent residential properties.

During Grading and Construction

24. At least two weeks prior to starting heavy construction (e.g. grading), the applicant shall provide to all residents on Ketelsen Drive, the north side of Baitx Drive (between Larch Avenue and Vista Encinos), and residents immediately adjacent to the site, a construction report which at minimum will include:
 - a. Approximate schedule of construction operations which might affect them;
 - b. Confirmation of work hours and days;
 - c. Traffic safety mitigations; and
 - d. Contact information.

As appropriate, the schedule shall be updated and reissued as the project progresses.

25. Grading shall be completed in accordance with the recommendations of the ENGEO Preliminary Grading Plan Review dated August 1, 2018, ENGEO Updated Geotechnical Recommendations dated August 2, 2018 and Revised January 7, 2019 and in compliance with Moraga Municipal Code, Title 14 Grading Ordinance.
26. Grading operations shall occur between April 15 and October 15, in order to avoid seasonal rainfall, except as allowed outside this period in accordance with provisions of the Grading Ordinance. All erosion control measures shall be installed and deemed operational by the project engineer.
27. Grading activities shall take place only between the hours of 8:00 AM and 5:00 PM on weekdays. Grading work may be permitted by the Planning Director during a weekend or holiday if the grading is deemed necessary by the project geotechnical engineer due to a potentially hazardous and unforeseen condition that requires immediate attention per Moraga Municipal Code §14.04.033.
28. Noise-generating construction activities shall take place on weekdays only between the hours of 8:00 AM and 5:00 PM. No construction shall be permitted Saturdays, Sundays or Town observed holidays, unless it is an emergency and prior Town approval has been obtained.
29.
 - a. Dust control and equipment wash-down shall be done with Title 22 recycled water and contained on-site. Runoff from these procedures shall not be allowed to flow onto adjoining properties or into the Town's storm drain system.
 - b. The applicant and their contractors shall be responsible for preventing spills of any demolition debris or construction materials on Town streets. If any spills of debris occur, then the applicant will be held responsible for the immediate cleanup of the spill and repair of any damage that may have been done to the street. The correction of the problem shall be made to the satisfaction of the Town Engineer.
30. Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District.
31. Prior to occupancy of the first residence, the applicant shall submit to the Public Works Department a final SWCP, if any revisions have been made, that has been certified and stamped by a licensed Civil Engineer, Architect, or Landscape Architect for the review and approval of the Public Works Department.
32. Prior to occupancy of the first residence, the applicant shall provide a Stormwater Control Operation and Maintenance (O&M) Plan for the review of the Public Works Department and is encouraged to record an Operation and Maintenance

Agreement, including any necessary rights-of-entry, and in accordance with the "C.3 Guidebook."

33. Prior to occupancy of the first residence, the applicant shall record a Deed Restriction, or similar recorded document (such as CC&R's), over the bioretention area of each lot. The intent of this recorded document is to ensure that private property owners do not alter or remove the bioretention areas and are aware of their responsibility to maintain these areas.

Retaining Walls

34. No fencing shall be placed above a retaining wall that will result in the combined height of the fence and retaining wall exceeding 8 feet. Railings on a retaining wall required by building code may be installed at the minimum height necessary.
35. Prior to occupancy of the first residence, the CC&Rs shall be amended, or alternative method established, to provide a maintenance plan for retaining walls that cross property lines, subject to review and approval by the Town Attorney. The HOA shall maintain retaining walls that span property lines.

Landscaping

36. Prior to occupancy of the first residence, a deed restriction shall be recorded or a restriction placed in the Los Encinos CC&R's or alternative method as determined by the Town Attorney to require that the tree screen at the rear of lots 1 through 5 be maintained in perpetuity by the property owners of said lots. The tree screen includes plantings specified by the Los Encinos Subdivision 8444 Landscape Plan approved by the Design Review Board on April 8, 2006 and existing trees as delineated on Sheet 3 of the grading plans. All existing healthy trees, including those within the area of grading, shall be preserved.
37. Prior to issuance of the first building permit for a home, per Town Council Resolution 3-2002 Condition 7, all trees required for the tree screen at the rear of Lots 1 through 5 shall be a minimum of 15 gallon in size as approved by the Design Review Board on April 8, 2006. The tree screen may be planted on an adjacent property at the applicant's expense. If the neighboring property owner chooses this option, the Planning Department shall be notified in writing and a revised tree screen plan submitted for review by the Planning Director.
38. Prior to building permit Final for each home with specific additional landscaping requirements (Lots 1-5), additional screening trees and shrubs shall be planted as shown on Sheet L-1 of the Conceptual Landscape Plan and as shown on photo simulation View 9. Plantings may occur after home construction to allow for trees and shrubs to be positioned to provide optimal screening in both height and placement as soon as is practicable. As specified in the Conceptual Landscape Plan, these trees are to provide immediate screening at planting. Locations of landscaping may be adjusted from the Conceptual Landscape Plan to achieve optimal screening subject to approval of the Planning Director. The approximate

location of these plantings shall be shown in the deed restriction or alternative method required by Condition 35.

39. At least 25% of the trees in the final landscaping plan for the front yards shall be a minimum of 24" box size and the remaining trees a minimum of 15-gallon size.
40. For each home, front yard landscaping must be installed in compliance with the approved landscaping plan prior to building permit Final.
41. Prior to building permit Final for each home, graded areas that will be left for future landowners to install custom landscaping shall be hydro seeded to match the existing native grasses.
42. The landscape irrigation shall include programmable controls that can be set to vary with seasons and weather.
43. The applicant shall pay the costs of the purchase and installation of one tree on the property located at 1099 Larch Avenue in a size and location mutually agreeable between applicant and the property owner. The applicant shall also pay the costs of the purchase and installation of two trees on the property located at 1101 Larch Avenue in a size and location mutually agreed upon between applicant and the property owner.

Modifications to Town Council Resolution 3-2002 Conditions of Approval

44. Condition I.9 is hereby modified to allow as an alternative to a lot line adjustment the recordation of a landscape easement in favor of the adjacent property owners in the same locations as the proposed lot line adjustments, only if preferred and agreed to by the adjacent property owners and subject to review by the Town Attorney.

At All Times

45. In compliance with Condition 7 of Town Council Resolution 3-2002 the screen trees and shrubs at the rear of Lots 1 through 5 shall be maintained in perpetuity by the property owners of the respective lots. This shall also include new plantings as shown on Sheet L-1 of the Conceptual Landscape Plan and photo simulation View 9 approved by the Planning Commission on June 3, 2019. Town approval is required prior to the removal of any of the required screen trees or shrubs. Tree and shrub removal may be granted only if the Planning Director finds that an emergency situation exists or that property is threatened due to the condition of the tree(s). If any screen trees or shrubs are removed, appropriate replacements shall be installed to the satisfaction of the Planning Director.
46. Outdoor light fixtures shall be designed and mounted so that the source of light has minimal impact off site. Outdoor lighting shall be directed inward toward the property and may require additional screening to avoid spillage onto adjacent residential properties.

47. This permit and each condition contained herein shall be binding upon applicant and any transferor, or successor in interest.
48. If a grading or building permit is not issued within one year from the date of final action, the permit becomes null and void. However, this discretionary action may be renewed by the Planning Director for a maximum period of one (1) year provided the applicant places such a request in writing to the Planning Director, showing good cause, prior to the expiration of the discretionary action.
49. The Applicant/Owner shall defend, indemnify, and hold harmless the Town and its agents, officers and employees from any claim, action or proceeding against the Town or its agents, officers or employees to attack, review, set aside, void, or annul any approval by the Town or any of its agencies, departments, commissions, agents, officers, employees, or legislative or advisory body concerning or in any way related to the Project. The Town will promptly notify the Applicant/Owner of any such claim, action or proceeding, and will cooperate fully in the defense.

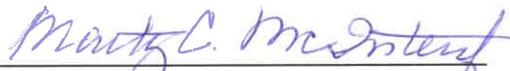
PASSED AND ADOPTED by the Town Council of the Town of Moraga at a special meeting on July 31, 2019.

AYES: Mayor Wykle, Vice Mayor Korpus, Councilmembers Sos and Woehleke
NOES: None
ABSTAIN: None
RECUSED: Councilmember McCluer



Roger N. Wykle, Mayor

ATTEST:



Marty C. McInturf, Town Clerk