



# Town of Moraga

TOWN CLERK'S DEPARTMENT

## MORAGA TOWN COUNCIL MEETING OCTOBER 28, 2020

### CORRESPONDENCE RECEIVED AFTER AGENDA WAS PUBLISHED FOR ITEM:

#### PUBLIC HEARINGS

#### **A. Proposed Zoning Code and Design Guideline Changes for Moraga Center Specific Plan Implementation Project**

1. Consider Waiving the First Reading and Introducing by Title Only an Ordinance Amending Title 8 of the Moraga Municipal Code to:

A. Adopt a new Zoning Map within the MCSP Area; and

B. Amend Title 8 of the Moraga Municipal Code Including Chapters 8.04 – General Provisions and Definitions, 8.24 – One, Two, and Three Dwelling Units per Acre Residential Districts; 8.32 – Six Dwellings per Acre Multifamily Residential District (R-6); 8.34 – Twenty Dwelling Units per Acre Residential District (R-20); 8.36 – Community Commercial District; 8.40 – Limited Commercial District; 8.44 – Suburban Office District; 8.48 – Planned Development District; 8.50 – Planned Development-Commercial (PD-C); 8.52 – MOSO and Non-MOSO Open Space Districts; 8.56 – Institutional District; 8.60 – Study District; 8.76 – Off-Street Parking and Loading; 8.124 - Accessory Dwelling Units; and

C. Establish the Following New Chapters within Title 8 of the Moraga Municipal Code, Chapter 8.32 – MCSP Six Dwelling Units per Acre Multifamily Residential District (MCSP R-6); 8.33 – Twelve Dwelling Units per Acre Multifamily Residential District (R-12); Chapter 8.37 – MCSP Commercial District (MCSP-C); Chapter 8.41 – MCSP Mixed Retail/Residential; (12-20 Dwelling Units per Acre) (MCSP MU-RR); Chapter 8.42 – MCSP Mixed Office/Residential (12-20 Dwelling Units per Acre) (MCSP MU-OR); Chapter 8.65 – Moraga Ranch Overlay District; Chapter 8.200 – Moraga Center Specific Plan Area Regulations.

2. Consider Resolution \_\_\_\_ - 2020 Adopting the Moraga Design Guidelines as Amended to: 1) Establish and Incorporate therein a New Chapter 11 Consisting of a Revised Version of Appendix B to the 2010 Moraga Center Specific Plan (MCSP) Design Guidelines along with Minor Modifications Plus the Addition of New Sections Addressing Street Design Standards, and Pedestrian and Bicycle-Friendly Design and Town Square Guidelines; and 2) Implement Other Minor Non-Substantive Changes, and Rescinding Resolutions 9-2010, 23-2018, and 50-2020 (*CEQA Review: Consistent with the Final Environmental Impact Report for the Moraga Center Specific Plan (SCH 200707212) certified on January 27, 2010; Exempt under CEQA Guidelines Section 15061(b)(3)*)



October 27, 2020

Moraga Town Council:

Regarding the currently Proposed Zoning Code and Design Guideline Changes for the Moraga Specific Plan Implementation Program, the Chamber is concerned that taking any action by the Town Council that would increase costs/regulations and would restrict or limit home sizes (and ultimately the selling price) would limit the marketability of the new homes and drive away perspective home buyers and adversely influence the resale of current properties. Limiting new home sizes could create downward pricing pressure affecting our homes. This could negatively affect the Moraga Business community directly as well as Measure K and property tax income to the Town.

As a Chamber, we support economic development that aligns with the needs and perspectives of the community, arrived at through an inclusive process. We would ask that you reconsider any restrictions that would affect the size of the new properties limiting revenue to the Town, retailers and its restaurants.

Respectfully,

Kathe Nelson  
Executive Director  
Moraga Chamber of Commerce

**From:** Emmanuel Ursu <[emmanuelursu@gmail.com](mailto:emmanuelursu@gmail.com)>

**Sent:** Wednesday, October 28, 2020 2:11 PM

**To:** Afshan Hamid <[ahamid@moraga.ca.us](mailto:ahamid@moraga.ca.us)>; Marty McInturf <[mmcinturf@moraga.ca.us](mailto:mmcinturf@moraga.ca.us)>; Cynthia Battenberg <[cbattenberg@moraga.ca.us](mailto:cbattenberg@moraga.ca.us)>; Marty McInturf <[mmcinturf@moraga.ca.us](mailto:mmcinturf@moraga.ca.us)>

**Cc:** David Bruzzone <[dbruzz@comcast.net](mailto:dbruzz@comcast.net)>; Ross Avedian <[ravedian@padesignresources.com](mailto:ravedian@padesignresources.com)>; Robert Balaian <[rbalaian@padesignresources.com](mailto:rbalaian@padesignresources.com)>

**Subject:** Letter to Town Council re: MCSP Implementation

Hi Afhsan,

Please see attached for distribution to the Town Council for tonight's meeting.

Thank you,  
Emmanuel Ursu



October 28, 2020

Mayor Kymberleigh Korpus and  
Members of the Moraga Town Council  
335 Rheem Boulevard,  
Moraga, CA 94556

Delivered Via Email

Subject: Moraga Center Specific Plan Implementation

Dear Mayor Korpus and Members of the Town Council,

We reviewed the most recent iteration of the proposed amendments to the Moraga Zoning Code and Moraga Center Specific Plan Design Guidelines intended to implement the Moraga Center Specific Plan and respectfully request the Town Council accept input provided on behalf of the Bruzzone family.

Since the Planning Commission made its recommendation on the proposed Zoning Code and Design Guideline amendments, Town staff has rushed to produce five staff reports each with further substantive revisions, corrections, and deviations from the Planning Commission's recommendation. The process has been rushed, driven by a desire to meet an artificial deadline, and the result is a Zoning scheme with many flaws, and which fails to achieve the stated goal of implementing the Moraga Center Specific Plan, it fails to comply with the Town's own criteria by which zoning code amendments are to be evaluated, and it does not comply with state law. We urge the Town Council to carefully consider the proposed amendments as they relate to the MCSP and to direct staff to prepare revisions to address the comments provided below.

Government Code section 65857 states that "[t]he legislative body may approve, modify or disapprove the recommendations of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation, ..."

Significant revisions not considered by the Planning Commission are included in the draft ordinance and therefore, prior to adoption of the proposed code, the law requires referral of the revisions to the planning commission for report and recommendation.

Moraga Municipal Code section 8.12.100 requires the Council find that Zoning Code changes are "consistent with the objectives, policies, general land uses and programs specified in the

general plan and applicable specific plan.” As described below, the proposed Zoning Code amendments are inconsistent with the MCSP. In addition, as stated in the October 14, 2020 Town Council Staff Report (p. 3) “California Government Code section 65300.5) requires that a General Plan be both internally consistent and consistent with other land use and development approvals such as specific plans and the zoning and development regulations. The proposed zoning regulations are not consistent with the MCSP and the Moraga General Plan.

As we wrote in our prior letters, the proposed Zoning Code includes provisions that are in violation of Government Code Section 66300(b)(1)(A) and (C). The law prohibits a city from enacting “...anything that would lessen the intensity of housing.” The pertinent provisions of the law state (with emphasis added):

*(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:*

*(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, “less intensive use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.*

*(C) Imposing or enforcing design standards established on or after January 1, 2020, that are not objective design standards.*

In addition to failing to meet local ordinance and State law, many provisions of the proposed zoning code and design guidelines do not make sense and would not allow the type of development recently approved within the MCSP and envisioned in the specific plan.

We respectfully request the Town Council address our concerns with the following items,

1. “Compact Single-Family Housing”

The proposed code defines “compact single-family housing” as dwelling units of smaller size developed to accommodate segments of the community who otherwise cannot find housing in the area such as students, teachers, and public safety employees. The housing preferences stated in this section of the code may have a disparate impact on protected classes (i.e. race, sex, etc.) in violation of State and Federal housing law. No analysis of the impact on protected classes is included in the staff report.

2. Flexibility in Housing Type.

The MSCP was designed “so as to allow flexibility and a timely response to market opportunities” and “if demand is strong for conventional single-family housing, more units of this type could be constructed.” (MCSP, Summary pp. 3 – 4). Section 8.200.040 of the proposed zoning code should be clarified to account for the flexibility allowed in the MCSP. The reference to Table 4-2 of the MCSP is helpful and we suggest including the following underlined text taken from page 35 the MCSP to section 8.200.040:

To the extent consistent with state law, the maximum development potential for the MCSP Area is established as follows, as set forth in Table 4-1 of the MCSP and subject to the land use equivalents in Table 4-2 of the MCSP which provides for an alternative residential land use mix consistent with the MCSP objectives that would provide flexibility to vary the quantity of individual residential land use components in response to changing market conditions and economic realities.

Minimum lot size and dimension proposed for single-family homes are too large to allow the number of single-family homes called for in the MCSP and preclude the flexibility that is central to the MCSP. Sixty-five (65) single family homes are identified in the Quantified Development Objectives column of Table 4-1 of the MCSP, and depending on market conditions and economic realities, more may be necessary. There are currently 26 single family homes in Subarea 6 leaving 39 single-family homes to be accommodated in Subareas 4 and 15. Subarea 4 can accommodate approximately 10 units leaving 29 single-family homes to be accommodated elsewhere in the MCSP area. Subarea 15 is the only other area of the MCSP that is planned for single-family housing. The 8,000 square foot lot size and the 70-foot average lot width proposed for single-family homes are too large to accommodate 29 single family homes in Area 15, the only Subarea zoned MCSP R-6.

Likewise, in the R-12 zone, the minimum lot size for single-family homes is also 8,000 square feet where the density range is 10 to 12 units per acre. With an 8,000 square foot lot size, no more than 5 units per acre could be developed, less when streets, sidewalks stormwater retention basins and other subdivision requirements are considered.

3. Floor Area Limitations

The proposed floor area limitations in Sections 8.32.050(A)(4) and in 8.33.050(A)(4) for one dwelling unit per lot are not entirely consistent with the MCSP. The MCSP establishes maximum structure size in Table 4-10 at Note (b)(1) with a reference to Table 4-11 for development other than one dwelling unit per lot.

4. Inaccurate Title of Chapter 8.32 - MCSP Six Dwelling per Acre Multifamily Residential District.

The MCSP R-6 district allows both single-family and multifamily development. “Multifamily” should be dropped from the title.



5. Inaccurate Title of Chapter 8.33 – Twelve Dwelling per Acre Multifamily Residential District.

The R-12 district allows both single-family and multifamily development. “Multifamily” should be dropped from the title.

6. MCSP R-6 and R-12 Site Standards

The proposed site and development standards for the MCSP R-6 and R-12 do not make sense. Although the density for the R-12 zone is twice that of the R-6 zone, the standards for lot size, lot dimension, building setbacks, height, number of stories and lot coverage are the same. Furthermore, single-family lots cannot be accommodated in the density range of the respective zones and mysteriously, lots between 4,501 and 6,499 square feet are prohibited.

7. Creek Setback (Section 8.200.100)

At page 33 the MCSP states that “*clustered development shall be encouraged to protect riparian areas and scenic corridors while allowing development of all parcels in accordance with maximum allowable density.*”

No provisions to encourage or allow clustered development are included in the proposed regulations. Clustering provisions could include reductions in building separation requirements, increases in building height, and increases in the number of stories.

As revised, the creek setback regulation would reduce the number of dwelling units that can be constructed and existing buildings in Moraga Ranch would be in the new setback.

To achieve a setback standard that is consistent with the MCSP, allows for reasonable use of the site, and is consistent with State and Federal resource agency legal requirements, we suggest the following Top of Bank definition and Creek structural setback standard:

Top of Bank - The top of the creek bank means the highest edge of the creek channel at the location where the structure, grading or fill is proposed, as determined by the director of public works.

Creek Structural Setback –

<b>Height of top of bank above channel invert</b>	<b>Horizontal distance between top of bank and any structure</b>
Up to 5 feet	5 feet
Over 5 to 10 feet	10 feet
Over 10 to 15 feet	15 feet
Over 15 to 20 feet	20 feet
Over 20 feet	Subject to city engineer review

In addition to revising the proposed setbacks as suggested above, existing structures should be exempt from the proposed creek structural setback regulations and be allowed to be reconstructed, remodeled or otherwise improved and expanded.

8. Scenic Corridor Setback and Stepback (Section 8.200.050(15))

The proposed code requires a 40-foot setback from scenic corridors and 8-foot step-backs for elements above the first floor. This requirement is inconsistent with the MCSP and would significantly restrict residential development. The MCSP allows “clustering” development to lessen visual impacts on scenic corridors. It does not mandate increased setbacks or require step-backs as proposed in the draft code. (See table 4-9 in MCSP) Clustering provisions suggested in the Creek Setback section above could be applied to development along scenic corridors.

9. Moraga Ranch Overlay –The MCSP emphasizes expanding uses providing “incentives for renovation and revitalization of the Moraga Ranch sub-area, while retaining and expanding existing uses...” (MCSP p. 19). Substantial in-fill opportunities exist and should be allowed and encouraged with “fee waivers and other mechanisms to encourage further building improvements and expansion...” (see MCSP pp. 9, 30, 37-38, 58).

The proposed code fails to include fee waivers or other mechanisms to encourage building improvements and expansion.

10. Town Square – Design Guidelines

Regarding a “Town Square,” the MCSP states:

“The ‘Town Square’ should include a fountain, public art or other prominent visual element, and will serve to slow traffic (through use of a plaza or similar facilities) entering the downtown area from Moraga Way and Moraga Road.”

The proposed Town Square Design Guidelines expands the scope envisioned in the MCSP and states that:

“The Town Square should be designed to serve as a community-wide focal point, for civic and commercial activities.”

While the revised language is an improvement over the prior language proposed, the limited scope of slowing traffic entering the downtown area is still not included in the Guidelines.

11. Application of the Town of Moraga Design Guidelines

The Moraga Center Specific Plan Design Guidelines are proposed to be added to the Moraga Design Guidelines as Chapter 11. The consolidated document must make it clear



that Chapters 1 through 10 do not apply to the MCSP area. We suggest including the following statement to the beginning of the consolidated document:

“Chapters 1 through 10 do not apply to development in the Moraga Center Specific Plan Area. Refer to Chapter 11 for design guidelines applicable to the Moraga Center Specific Plan area.”

12. School Street Extension

The proposed guidelines for School Street need to be clarified to only apply to the extension of School Street.

13. Tree Removal

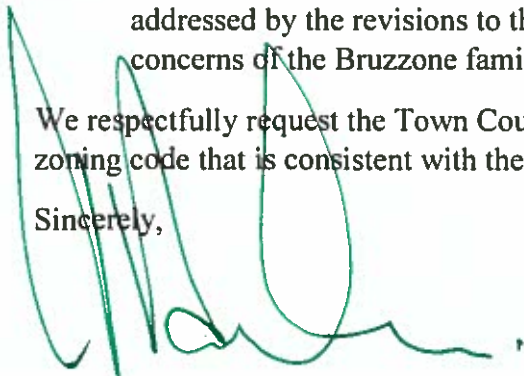
The revised provisions regarding trees of Section 8.200.050(A)(12) provide no guidance to decisionmakers and applicants regarding tree removal and replacement.

14. Prior Comments

Many of the comments and concerns raised in the five letters P/A Design Resource sent on behalf of the Bruzzone family to the Planning Commission between July and September 2020 and in our October 14, 2020 letter to the Town Council have not been addressed by the revisions to the proposed zoning code standards and remain outstanding concerns of the Bruzzone family.

We respectfully request the Town Council thoughtfully consider our comments and adopt a zoning code that is consistent with the MCSP, the Moraga General Plan and state law.

Sincerely,



Ross Avedian, PE, PLS, QSD/P  
President  
P/A Design Resources, Inc.



Emmanuel Ursu  
Principal Planner  
P/A Design Resources, Inc.

October 28, 2020

Moraga Mayor and Councilmembers

C/O Town Clerk & City Manager

329 Rheem Blvd., Moraga, CA 94556    *Sent via Email to:* [mmcinturf@moraga.ca.us](mailto:mmcinturf@moraga.ca.us) and  
[cbattenberg@moraga.ca.us](mailto:cbattenberg@moraga.ca.us)

**SUBJECT: Changes to Moraga Center Specific Including Imposition of Hillside Regulations**

Dear Mayor Korpus and Councilmembers:

I have prepared this letter on behalf of the Bruzzone Family, owners of all property within the Moraga Center Specific Plan (MCSP) area affected by the specific plan changes under consideration on your agenda this evening. I served as the property owner's consulting urban planner who worked closely with Town staff (planning director Lori Salamack), your consultants, and members of the Commission and Town Council between 2006 and 2010 during the drafting, refinement, testing, and ultimate adoption of the 2010 MCSP, the implementing R-20 Zoning District Ordinance, the corresponding 2010 Moraga Housing Element, and the supporting environmental documentation. We were in close communication with staff at HCD during this process, and relied on the 2010 MCSP and Housing Element to accommodate a critically needed portion of Moraga's Regional Housing Needs Allocation (RHNA) which remains unfilled today.

You are in receipt of a letter dated October 14, 2020 from David Bruzzone (copy attached for reference) detailing the reasons why the contemplated MCSP amendments would preclude actual implementation of the 2010 MCSP, including the bulk of the planned affordable and market rate housing, as well as renovation and expansion of the originally planned commercial development. Together these major components of development within Moraga's downtown area were to have created a sense of place, delivered urgently needed housing, and revitalized the economic engine driving the capture the severe sales tax leakage suffered by Moraga to surrounding communities (with associated social and environmental benefits).

On April 11, 2018 the Moraga Town Council adopted amendments to the Town General Plan and Design Guidelines, together with an ordinance establishing new "Hillside Regulations". The General Plan and Design Guidelines policies and programs went into effect immediately, implementing the Hillside Regulations on a Town-wide basis. However, new development within the Moraga Center Specific Plan (MCSP) area was initially "exempted" from the 2018 ordinance, and instead identified as being subject to contemplated future amendments to the 2010 MCSP. The amendments now proposed to the MCSP and its new Design Guidelines would eliminate that 2018 "exemption" thereby precluding all originally planned housing and commercial development not consistent with the Hillside Regulations.

Characterized as both an "Implementing Ordinance" and new "Design Guidelines", the proposed changes to the MCSP would have the following effects: (1) Reduce the allowable density of planned housing throughout the MCSP area; (2) Limit the height of buildings to protect views of distant hillsides and ridgelines as viewed from the downtown streets;

(3) Impose larger setbacks, lower permitted floor area ratios, apply other strict new development standards for both residential and mixed use development; (4) Set aside large areas for open space preservation to establish visibility corridors; and (5) Impose mandatory exactions for new public facilities making a smaller number of housing units and less commercial space much more expensive to build. The combined effect of the proposed changes is to preclude implementation of the MCSP, including its affordable and market rate housing components, as well as the planned revitalization of the commercial downtown area.

Whereas the Town initially exempted the MCSP area from the Hillside Regulations, these proposed changes would now eliminate that exemption through four principal mechanisms. First, the Implementing Ordinance would impose the foregoing new codified development standards as surrogates for the Hillside Regulations. Second, the Ordinance would make all such development "Conditional" whereas this development was expressly called out to be "streamlined" as part of the 2010 MCSP and the Town's Priority Development Area. Rezoning these land uses as "Conditional" means that no uses would be "Permitted" and all development would be subjected to public hearings and discretionary controls. Third, the new standards in the Design Guidelines would be made mandatory, including the requirement to reduce the urban downtown densities approved under the original 2010 MCSP to a "Semi-Rural Character". Finally, discretionary permit procedures would be applied to further reduce the scale of development through mandatory findings of consistency with General Plan policies calling for implementation of the 2018 Hillside Regulations.

As contemplated in the 2018 environmental analysis prepared for the Hillside Regulations, the current proposal would result in less development than originally authorized and evaluated. While that smaller development might not result in greater traffic, grading, or air quality impacts, it would significantly impact the supply of local and regional housing which the staff report and draft regulations before the Council do not currently address.

In summary, the new MCSP regulations would block implementation of both the 2010 MCSP and Moraga's Housing Element, by implementing the old Hillside Regulations and other new regulations ... together significantly reducing the scale of allowed development and prohibiting any development which might block views of distant hillsides and ridgelines from adjoining the public streets. We urge the Council to table this matter so that the issues outlined above and in Mr. Bruzzone's letter can substantively be addressed.

Thank you for your consideration.

Sincerely,



Richard Loewke, AICP  
CC with Attachment:

David Bruzzone, Property Owner MCSP Area  
California Dept. of Housing & Community Development  
California Office of Planning & Research  
Allan Moore and Todd Williams, Weldel Rosen LLP

**DAVID R. BRUZZONE**  
**PO BOX 97 • MORAGA, CA • 94556**  
**PHONE: 925-376-1921**

October 14, 2020

**SENT VIA EMAIL: [townclerk@moraga.ca.us](mailto:townclerk@moraga.ca.us)**

Moraga Mayor Korpus and Town Council  
329 Rheem Boulevard  
Moraga, CA 94556

Honorable Mayor Korpus and Council,

This letter and the attached table serve to communicate my family's concerns with the package of Code and Design Guidelines amendments reflected in the updated staff report made available yesterday. As the principal owner of properties within the MCSP area, we helped to fund and produce the adopted 2010 Specific Plan and have since participated at every available opportunity in the current Town Project to amend the applicable regulations affecting implementation of the Specific Plan.

Respectfully, we are concerned that this proposed Town Project will undermine and block any real implementation of the essential housing and commercial development components of the adopted Plan. As further summarized in the attached Project Conflicts table, the Town Project would have the following broad effects, as applied to the adopted Specific Plan:

- Elimination of the development design flexibility which is a hallmark of the adopted Plan.
- Conversion of "Permitted" uses to "Conditional" uses, thereby causing years of added delay, added costs, discretionary exactions, further design changes, and density reductions.
- Changes to definitions, resulting in further limitations on market housing choices and reduced densities, compared to the adopted Plan.
- Sweeping changes to the development standards prescribed in the adopted Plan, leading to reduced usable development areas, increased costs for infrastructure and public facilities, and other inefficiencies which would ultimately reduce the number, size, and value of housing needed to pay for these increased costs.
- As summarized in the attached table, these changes ignore the essential programs contained in the Implementation Chapter of the Plan, and block the Plan's actual implementation.

October 14, 2020

Consequently, we ask that the package of Code and Guideline Amendments be tabled this evening, and that you appoint a member to help facilitate meaningful discussions with the property owners to meet and resolve these concerns and allow the adopted 2010 MCSIP and your Housing Element to be implemented.

Sincerely,

David Bruzzone

CC: Cynthia Battenburg, Town Manager  
Town Attorney

**Moraga Implementation Project Conflicts with Adopted 2010 MCSP,  
HCD-Certified Housing Element, Certified Project EIR, and SB 330**

	<b>Proposed New Regulation</b>	<b>As-Applied Effect on Adopted January 2010 MCSP Feasibility</b>	<b>References</b>
1.	<b>Land Uses changed from Permitted to Conditional.</b>	<p>Blocks "Streamlining" of the entitlement process as specifically called for in Implementation Chapter 7E to allow "establishment of permitted uses without supplemental findings". MCSP Tables 4-3 through 4-8 specifically establish Commercial, Mixed Retail/Residential, Mixed Office/Residential, and Low, Medium and High-Density Residential uses as "Permitted" uses throughout the planning area. The Town's proposed Project would change these to "Conditional" uses, thereby adding delays, discretionary review, discretionary exactions, and hearings to accommodate even single-family dwellings or any structure with 3 or more units. Creates uncertainty over scale and timing of all development, and follows pattern of requiring smaller projects with more costly exactions and improvements, thereby preventing achievement of critical base of 630 units needed for Plan implementation. In addition, this provision specifically serves an impediment to the design, entitlement, and delivery of affordable housing, and therefore conflicts with the adopted MCSP, the 2010 and 2015 HCD-Certified Housing Elements, and the Certified 2010 EIR. This is also a violation of State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).</p>	<p>Proposed Zoning Sec. 8.32.030. MCSP Pages 40-44, 59.</p>
2.	<b>Interference with housing market accommodation through definitions.</b>	<p>The proposed definitions for "workforce", "compact", and "senior" housing, and "accessory dwelling units", among others, introduce new limitations on the dwelling unit square footage, garage space, density, age of occupancy, and price structure of housing components which are not present in the adopted 2010 MCSP. These definitional changes severely limit the market absorption of housing based on actual demand, as well as the aggregate number of units in relationship to that called for in the adopted Plan. Consequently, these changes have the effect of reducing the economic value of a diminished housing supply, thereby lowering both the per-unit and aggregate ability to pay for needed infrastructure and Town-imposed fees and exactions, making Plan implementation infeasible. In addition, these changes directly</p>	<p>Proposed Zoning Sec. 8.04.020. Certified 2010 EIR.</p>



Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
	conflict with the findings adopted for the Certified 2010 EIR (see discussion below).	
3. <b>Changes to Density calculation methodology to lower the number of dwellings per acre.</b>	<p>The density ranges authorized in the adopted MCSP are based on gross acreage of each of the "sub-areas" and take into account the need to design and cluster housing and mixed-use projects to work with the distinct site conditions present. The proposed Project would reduce the allowable density by 20-30% based on a change which excludes streets from the area on which density is calculated. On top of this, the proposed Project would introduce a discretionary review and determination requirement (with mandatory findings) for any housing project, with the Town's ability to reduce density within a "range" or "framework" which is lower than Plan's otherwise permitted maximums, in order to accommodate newly-identified open space exactions and other competing interests. These changes will translate directly to significant reductions in the aggregate housing accommodated within the Plan area, making its overall implementation infeasible given infrastructure costs, fees and exactions. This is both a direct conflict with the MCSP and a violation of State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).</p>	Proposed Zoning Sec. 8.24.055, 8.32.65 - 8.33.50, and 8.33.40 - 8.34.40.
4. <b>Density Reduction for Plan Sub-Area 15.</b>	<p>The adopted MCSP calls for Medium Density residential development at 6.0 units per gross acre in this sub-area adjoining Moraga Road and Moraga Way, where the "Quantified Development Objective" is 65 "attached or detached" homes. As noted under the Density discussion above, the Town's proposed Project would lower the effective density by approximately 30% to 4.2 units per acre in this area. Further, as noted under Development Standards below, numerous new prescriptive standards in the proposed Project would force lot sizes to be increased and limit the size of homes to be built (both by floor area ratio and by absolute limit). In addition, the planned housing project in Sub-Area 15 (as with other uses throughout the Plan area) would be reclassified from a "Permitted" use to a "Conditional" use, thereby subjecting it to years of discretionary review, public hearings, and exactions. These changes to the</p>	MCSP Pages 32-36. Proposed Zoning Chapter 8.32. Revised staff report pages 16 and 22-26.

	Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
		adopted MCSP are devastating to the accommodation of previously planned "Permitted" housing (for which detailed improvement plans have already been prepared in this case) and for implementation of the Town's HCD-Certified Housing Element, and therefore violate State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).	
5.	<b>Increases to lot and yard requirements in conflict with adopted MCSP.</b>	The adopted MCSP applies minimum area, width, depth, and yard requirements to the "pre-subdivision site area and <i>not any subsequently created individual lots.</i> " The proposed Project changes this by imposing new prescriptive standards to individual subdivision lots. The effect is to force larger lots and lower densities for all housing, inconsistent with the adopted Plan and in violation of State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).	Proposed Zoning Sec. 8.32.65 – 8.33.50.
6.	<b>Other Development Standards imposed to make a smaller base of housing units smaller in size.</b>	Additional changes proposed as part of the Town's Project to amend the adopted Plan's development standards include increased building setbacks, second story "step-backs", more restrictive floor-area ratio (FAR) limits based on house size, building height limits, absolute maximum home sizes, increased street improvement standards, and other prescriptive limitations on accommodation of housing and employment uses. Many of these building limits are codified in the proposed zoning changes, while others have been added to the proposed new Design Guidelines. Some of the exceptionally troubling new exactions and limitations on housing and commercial development (including for example the proposed absolute 30' limit on building height which directly conflicts with the adopted MCSP), have been reserved for application during the new discretionary review and hearing process to be imposed by reclassifying the housing and employment uses from "Permitted" to "Conditional" uses. These proposed new restrictions would further limit the efficiency of land use within the limited development sub-areas identified in the adopted Plan, and ultimately reduce the number and size of dwelling units, inconsistent with the adopted Plan and in violation of	Proposed Zoning Sec. 8.32.65 – 8.33.50. Revised staff report, pages 22-26. Proposed Design Guidelines.

	Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
		State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).	
7.	<b>New prescriptive creek setbacks to reduce development area.</b>	The proposed Project would amend the adopted MCSP by replacing flexibility to satisfy state and federal agency jurisdictional drainage setbacks based on actual site conditions, with new prescriptive standards which force development to maintain an overall creek setback of up to 150 feet (up to 50 feet beyond the top of bank on both sides). This change substantially reduces the available development area along a large portion of the Plan area without regard to actual resource conditions or mitigation needs. The effect is to reduce available housing and commercial development potential, inconsistent with the adopted Plan and in violation of State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).	Proposed Zoning Sec. 8.04.020 and 8.200.100.
8.	<b>Scenic corridor setbacks to reduce development area.</b>	The adopted MCSP encourages more intensive development, walkability and a downtown feel adjoining the major collector streets of Moraga Road and Moraga Way by imposing no street setbacks. The proposed Project changes this by imposing both an absolute minimum setback of 40 feet and additional 8-foot setbacks for each of the floors above the first floor (defined as "step-backs"). This change undermines the design character and feasibility of the Plan by reducing the available development area, making property development less efficient, and reducing both the number of dwelling units in mixed-use projects as well as the square footage on commercial projects. Because of the negative effect on Plan feasibility and reduction of housing, it also violates State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).	Proposed Zoning Sec. 8.200.050(15).
9.	<b>Exactions and improvement obligations for streets, bridges, and trails damage Plan feasibility.</b>	The adopted MCSP provides flexibility for one or more pedestrian or vehicular crossings of the creek with an emphasis on creating "opportunities for non-vehicular circulation in the heart of the MCSP area." In direct conflict with this important policy of the adopted Plan, the proposed Project would mandate a vehicular bridge. This requirement would fundamentally change the character of an intended pedestrian-friendly downtown, while imposing a significantly larger financial burden than required under the	Proposed Zoning Sec. 8.200.070. Revised staff report, pages 21-22. Certified 2010 EIR.

	Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
		<p>adopted MCSP. In addition, while the adopted MCSP does not require dedication and improvement of a public pedestrian/bicycle trail adjoining Laguna Creek, the Town's proposed Project reclassifies all land uses in this area as "Conditional" (see above) and mandates consideration of exactions for public trail corridors and improvements as part of a new discretionary review and hearing process. Together with the reduced number of homes being allowed under the Town's proposed changes would undermine the feasibility of the MCSP as a whole. In addition, this change would block feasible implementation of Mitigation Measures TRANS-4.F-10a and 10b in the Certified EIR.</p>	
10.	<p><b>Limitations on retaining wall height and maximum slopes to further reduce development efficiency and increase costs.</b></p>	<p>The proposed Project would impose suburban development standards on this downtown development area by arbitrarily limiting retaining walls to 5 feet and graded slopes of a 3:1 ratio. Both standards are unnecessary, in conflict with the flexibility called for in the adopted Plan and the Certified EIR, and result in reduced efficiency and fewer housing units.</p>	<p>Proposed Zoning Sec. 8.200.050. Proposed Design Guidelines. Certified 2010 EIR</p>
11.	<p><b>Preservation of decaying orchard trees as additional open space in Sub-Areas 1, 3, and 5.</b></p>	<p>The proposed new Project regulations fail to define "specimen trees" and call for the absolute preservation of all trees. This approach is clearly inconsistent with the adopted Plan's identification of housing development within areas where orchard trees had once thrived and have long since decayed and lost any aesthetic or commercial value. This change has the devastating effect of an open space exaction by precluding all development wherever the remnants of such decaying orchards currently remain. This open space exaction affects a substantial portion of the Medium and High-Density Residential development approved under the MCSP in Sub-Areas 1, 3, and 5, including the R-20 site relied upon in the HCD-Certified Housing Element as accommodating Moraga's RHNA allocation for affordable housing by density. The regulation therefore also violates State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)).</p>	<p>Proposed Zoning Sec. 8.200.050. Proposed Design Guidelines. Revised staff report, page 29.</p>

	Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
12.	Town Square exaction and improvement obligations dramatically expanded with concurrent limitations on private land uses.	As proposed, the Town's Project would dramatically expand and alter the character and use of the Town Square from that called for under the adopted Plan as a "focal point", to mandate dedication and construction of a one-quarter to one-half acre "community-wide focal point, primarily for civic purposes, with secondary commercial activities that are subordinate to civic activity." As with several other exactions called for in the proposed Project, rather than codifying this new dedication and improvement requirement, the proposed Project now calls for its imposition as a mandatory part of the new discretionary review process established to control all land uses within the Plan areas as "Conditional Uses". This change both increases costs and limits use of residential and commercial property authorized under the adopted Plan for private purposes, and therefore severely impacts Plan feasibility and violates State Law (Housing Crisis Act of 2019, codified at Government Code Sections 66300(b)(1)(A) and (C)). As noted below, the Town's Project has failed to incorporate the adopted MCSP's Chapter 7E requirement for provision of economic incentives to offset the cost of improvements and exactions.	Revised staff report, pages 21-26. Proposed Zoning Sec. 8.200.060 and 8.200.050. Proposed Design Guidelines, Chapter 11.10.
13.	Limitations on Development within Moraga Ranch Sub-Area.	The Town's Project would impose substantial changes to the flexible program adopted with the MCSP for Sub-Area 1, the Moraga Ranch, by imposing a discretionary design review process focusing on specific "high quality" architectural styles, and imposing a pre-determined clustered design which would retain a portion of the planned development area as open space. The proposed changes would also eliminate the adopted Plan's "credit" to offset additional peak-hour traffic in order to accommodate additional square footage over and above that listed in the Plan.	MCSP Pages 32, 35. Proposed Design Guidelines.
14.	Failure to Address Implementation Plan Called for in Adopted MCSP	The proposed Town Project conflicts with the adopted MCSP in three important ways that directly affect Plan implementation.	MCSP Page 34 and 58-60. Certified 2010 EIR.



Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
	<p>First, the Town Project has simply ignored the entire Implementation Chapter of the adopted MCSP (Chapter 7E), thereby failing to incorporate the prescribed critical Plan implementation programs involving: (1) Fee waivers; (2) Capture and reinvestment of impact fees to offset Plan area infrastructure costs; (3) Harnessing of available grant funding to pay for roadway and intersection improvements and other infrastructure within the Plan area or as required Plan mitigation; (4) Allocation of return-to-source funds to finance a shuttle program between the Downtown Plan area and the College; (5) Allocation of property and sales tax revenues from within the Plan area to finance infrastructure needed to support development; (6) Direct financing of the gateway intersection improvements planned for Moraga Road and School Street; and (7) Accommodation of development agreements for individual projects to offset the risks of ever-changing Town policies and standards, and voter initiatives; (8) Codification of adopted specific plan policy to rely on the Certified 2010 EIR as the sole basis for compliance by conforming projects with CEQA; (9) Adoption of processing fee waivers and other mechanisms to encourage further building improvements and expansion of approved uses within the Moraga Ranch Sub-Area 1; and (10) Codification of credits to provide a square footage, dwelling unit or equivalent offset to traffic impact calculations when replacing an existing traffic generating use with a new use, or when reducing external vehicular trips (outside of Moraga) through other means.</p> <p>Second and ironically, the Town Program itself was funded by state/federal grants to produce a set of new regulations which, as summarized herein, conflict with or otherwise serve to impede Plan implementation by reducing allowed development, introducing long delays and exactions through new discretionary review, obligating a smaller base of homes and commercial development to pay for an even greater financial burden for infrastructure and public facilities, and precluding flexibility in development projects.</p>	



	Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
		<p>Third, by eliminating the entire set of Plan Implementation Chapter components listed above the Town Project blocks Plan implementation by removing the critical funding of needed infrastructure and impact mitigation, including Mitigation Measures TRANS-4.F-10a and 10b in the Certified EIR.</p>	
15.	<p><b>Schedule delay and conflict with accommodation of RHNA.</b></p>	<p>Conflicts with Implementation Chapter 7E, HCD-Certified 2010 and 2015 Moraga Housing Elements, and 2010 Certified EIR, by failing to incorporate foregoing incentives for implementation of the MCSP within 12 months of adoption of the 2010 Plan (deadline of January 2011). The adopted MCSP states that these incentive programs are "<i>critical to accommodating the Town's 2007-2014 RHNA and creating the opportunity for retail expansion to positively affect current sales tax leakage in Moraga.</i>" As a result, the Town has continuously and overwhelmingly failed to meet its RHNA obligation. Failure to incorporate these incentives effectively blocks implementation of the MCSP, including its affordable housing component, the renovated and expanded retail and employment components, and the environmental impact minimization measures incorporated into the Certified Project EIR.</p>	MCSP Page 59.
16.	<p><b>Land use intensity and housing density reduction Conflicts with SB 330.</b></p>	<p>The foregoing listed effects of the proposed Town Project, both individually and collectively, serve to reduce in square footage, scale, and number, and to outright block or undermine the feasibility of housing, including affordable housing in the MCSP area. These effects fundamental conflict with the adopted Plan,</p>	See above.

Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
	<p>the HCD-Certified Housing Element, and the Certified EIR. In addition, these effects represent a substantive violation of the Housing Crisis Act of 2019 (SB 330), codified at Government Code Sections 66300(b)(1)(A) and (C), which prohibit a city from enacting "... anything that would lessen the intensity of housing" or result in "a less intense land use". Here, the State of California in declaring a "housing emergency" has prohibited the Town from enacting any regulation that would reduce land use intensity by means of "reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing." As explained above, the listed new regulations proposed in the Town's Project for application to the MCSP area literally have all of these prohibited effects.</p>	
<p>17. Failure to address changes to MCSP and resulting impacts inconsistent with Certified EIR according to CEQA.</p>	<p>The EIR certified for the 2010 MCSP based its analysis of housing accommodation and development potential on a set of "Permitted" land uses, residential densities and land use intensities, and "flexible development standards". The CEQA Findings of Fact adopted by the Town specifically identified that flexibility incorporated into the Plan "allows for future developers to be more responsive to the evolving housing needs of Moraga and market conditions." The Statement of Overriding Considerations documents the determination made in 2010 by the Town to adopt the detailed language written into the MCSP providing this flexibility and overall development potential:</p> <p><i>"The Town has chosen to accept certain environmental impacts because to eliminate them would unduly compromise other important benefits of the MCSP. The Town finds and determines that the text of the Project approval document provides for a positive balance of the competing goals and that the economic, fiscal, social, planning, land use and other benefits to be obtained by the MCSP outweigh the specific environmental impacts of the Project that cannot be sufficiently mitigated."</i></p>	<p>Revised staff report, page 30.  Certified 2010 Project EIR.  MCSP CEQA Findings of Fact and Statement of Overriding Considerations.</p>

	Proposed New Regulation	As-Applied Effect on Adopted January 2010 MCSP Feasibility	References
		<p>As detailed above, the currently proposed Town Project would substantially alter the text of adopted MCSP, including elimination of the critically important flexibility in development standards, reduction in the overall number of housing units and aggregate commercial development, imposition of new exactions and open space obligations making development smaller and less feasible, and ultimately blocking implementation of the MCSP's Quantified Objectives which include affordable and market-rate housing to meeting the needs prescribed in the Moraga Housing Element. These changes to the adopted MCSP are clearly substantial in nature and undermine both housing accommodation and the findings adopted with certification of the Project EIR in 2010. Therefore, either the conflicting changes should be eliminated, or a Supplemental EIR should be prepared to evaluate the resulting new and significant effects of this proposed Town Project.</p>	

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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May 17, 2010

Mr. Mike Segrest  
Town Manager  
Town of Moraga  
329 Rheem Boulevard  
Moraga, CA 94556

Dear Mr. Segrest:

**RE: Review of the Town of Moraga's Adopted Housing Element**

Thank you for submitting the Moraga's housing element adopted January 27, 2010 and received for review on February 16, 2010. The Department is required to review adopted housing elements and report the findings to the locality pursuant to Government Code Section 65585(h).

The adopted element, including one minor technical revision to provide clarification as submitted May 14, 2010, addresses the statutory requirements described in the Department's January 14, 2010 review. As a result, the Department finds the element in full compliance with State housing element law (Article 10.6 of the Government Code).

The Department recognizes Moraga's commitment to adopt housing and land-use strategies to address its projected housing needs, including designating additional sites at higher densities as integral to the Moraga Center Specific Plan (MCSP) for a walkable mixed-used village. For example, the element now identifies adequate sites to accommodate the Town's regional housing need for lower-income households through adoption of the MCSP which includes six acres where multifamily developments are permitted by-right at minimum densities of 20 units per acre as well as opportunities for mixed-use developments to accommodate up to 100 mixed-use units at densities of 20 units per acre.

In addition, the Town now meets specific requirements for several State funding programs designed to reward local governments for compliance with State housing element law. For example, the Housing Related Parks Program, authorized by Proposition 1C, Local Housing Trust Fund and the Building Equity and Growth in Neighborhoods (BEGIN) Programs include housing element compliance either as a threshold or competitive factor in rating and ranking applications. More specific information about these and other programs is available on the Department's website at [http://www.hcd.ca.gov/hpd/hrc/plan/he/loan\\_grant\\_hecompl011708.pdf](http://www.hcd.ca.gov/hpd/hrc/plan/he/loan_grant_hecompl011708.pdf).

Mr. Mike Segrest  
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The Department appreciates the cooperation and assistance provided by Ms. Lori Salamack throughout the course of the review and looks forward to following its progress through the General Plan annual progress reports pursuant to Government Code Section 65400. If the Department can provide assistance in implementing the housing element, please contact Janet Myles, of our staff, at (916) 445-7412.

Sincerely,

A handwritten signature in black ink, reading "Cathy E. Creswell". The signature is written in a cursive, flowing style.

Cathy E. Creswell  
Deputy Director

cc: Lori Salamack, Planning Director, Town of Moraga  
Jeffrey C Baird, AICP, Baird and Driskell Planning  
Richard T. Loewke, AICP, Urban and Environmental Planning