



<b>Town of Moraga</b>	<b>Agenda Item</b>
<b>Ordinances, Resolutions, Requests for Action</b>	<b>10. A.</b>

Meeting Date: January 12, 2022

**TOWN OF MORAGA**

**STAFF REPORT**

**To: Honorable Mayor and Councilmembers**

**From: Cynthia Battenberg, Town Manager**

**Subject: Receive a Report and Discuss the Town of Moraga's Strengths, Weaknesses Opportunities, and Threats Analysis**

**Background and Discussion**

Town staff recently completed an analysis to identify the Town's strengths, weaknesses, opportunities and threats (SWOT) to assist the Council in better understanding the organization, and specifically, the opportunities available to improve operations and the level of service provided to the community.

**Strengths**

- Great elementary, middle and high schools. Home to Saint Mary's College.
- Amazing parks, open space and recreation programs.
- Highly educated community with high average household income
- Strong financial foundation. The Town of Moraga ranks in the top 13% statewide in terms of low financial risk.
- Stable revenue base.
- Accurate and transparent financial records.
- Low-cost police services and low crime rate.
- Town Attorney with significant institutional knowledge based on 30-years' experience serving the Town.
- Active community groups and high volunteerism.
- Hardworking and dedicated staff with a customer service orientation.
- Analytical, creative, and collaborative executive team.

**Weaknesses**

- The Town of Moraga receives 5.3% of property tax revenue, the lowest rate in the County.
- Minimal staffing levels results in inadequate staffing to manage increasing workloads, low capacity for special projects, and employee burnout. The loss of any employee (including while on leave) strains operations..

- 1 • Ongoing loss of institutional knowledge due to small staff and few opportunities
- 2 for professional growth.
- 3 • Unfunded Pension Liability due to past deferrals, CalPERS losses and changing
- 4 methodology.
- 5 • Not competitive for many infrastructure grant funds due to lack of public transit,
- 6 strong demographics and being a high resourced area.
- 7 • Aging infrastructure, including storm drains and assets, in need of repair and
- 8 maintenance.
- 9 • Lack of adequate evacuation routes for emergencies and disasters.

10

#### 11 Opportunities

- 12 • \$4.2 million in American Rescue Plan Act funds available to repair and maintain
- 13 public storm drain system.
- 14 • Develop Palos Colorados and Town-wide Recreation and Open Space Plan.
- 15 • Increase public outreach and community engagement.
- 16 • Fund phase II of the Advanced Planning Initiative to complete update of the
- 17 Town's General Plan.
- 18 • Increased legal and planning collaboration on land use issues.
- 19 • Increase use of technology to increase efficiency and transparency, including
- 20 exploration of Civic Clerk to streamline the agenda management process.
- 21 • Refinancing 2013 Certificates of Participation in April 2023.
- 22 • Continued evaluation of insourcing/outourcing opportunities
- 23 • Increase efficiency of Town Council meetings.
- 24 • Succession planning.
- 25 • Increase Saint Mary's College integration.
- 26 • Labor negotiations and update Personnel Rules.
- 27 • Improve broadband connection and replace VPN with a cloud based system.
- 28 • Implementation of Facility Generation and Energy Efficiency Study
- 29 recommendations.
- 30 • Consider future allocation of Measure K, General Fund revenue, to unfunded
- 31 infrastructure needs.

32

#### 33 Threats

- 34 • Failure of aging infrastructure.
- 35 • Increasing cost and scope of fire abatement work.
- 36 • Unfunded legislative mandates that have significant impact on the cost and
- 37 method of service delivery across all departments.
- 38 • Employee attraction and retention (given increasing competition from other
- 39 agencies and the private sector for qualified candidates and the great
- 40 resignation).
- 41 • Increasing cost of goods and services due to inflation.
- 42 • Volatility of CalPERS returns and changing economic and political conditions.
- 43 • Increasing tendency of individuals to attempt to resolve issues with legal actions.
- 44 • Highly politicized development environment.
- 45 • Increasing State mandates and resulting loss of local control over development
- 46 and land use issues.

- Proliferation of misinformation through unofficial channels regarding Town business.

Possible 2022 Council and Community Goals

Based on the Opportunities identified above, Town staff recommends the Council consider the following projects for inclusion as 2022 Council and Community Goals. These initiatives would be led by the Parks and Recreation Director, given the additional capacity available in that department due to Wedgewood taking over events management.

**Develop Palos Colorados and Town-wide Recreation and Open Space Plan** – The Town received a \$2.25 million payment from Richfield Real Estate Corporation for the Palos Colorados development in November 2021 and the projected FY 2021/22 fund balance in Fund 100 – One-Time Development Fees (Palos Colorados) is \$3.95 million. In addition to the current fund balance, the Town’s General Fund borrowed \$625,000 in an interdepartmental loan to pay off the 2010 Certificates of Participation which will be paid in annual installments through 2027. To date, the Town has received \$8,250,000 from the Palos Colorados developer and an additional \$10,250,000 is outstanding. The January 9, 2019 staff report (Attachment A) that details the background of the settlement agreement, payment schedule and expenditures as of that date is attached for your information. The following is a summary of the payment schedule.

Golf Course Fee Installment Schedule

	<u>Outstanding</u>	<u>Paid</u>
1. Approval of Vesting Tentative Map		\$250,000
2. Issuance of All Agency Approvals		2,250,000
3. Interest (due upon Grading Permit Issuance)	<u>1,500,000</u>	
	\$1,500,000	\$2,500,000

General Plan Fee Installment Schedule

	<u>Outstanding</u>	<u>Paid</u>
1. Approval of Vesting Tentative Map		\$3,500,000
2. Grading Permit Issuance	1,250,000	2,250,000
3. Building Permit Issuance (\$25,203/unit)	3,100,000	
4. Certificate of Occupancy Issuance (\$35,772/unit)	<u>4,400,000</u>	
	\$8,750,000	\$5,750,000

There are no restrictions on the use of these funds. To date, the Town has used the funds for one-time expenditures and recreation purposes such as: an accelerated payment of the CalPERS unfunded liability; the purchase of the Town Council Chambers and Corporation Yard; loans to the General Fund for the Rheem Sinkhole repairs, Canyon Road temporary bridge and repayment of the 2010 Certificates of Participation; various capital improvement projects generally related to parks and open space; and for litigation.

Development of a strategic plan for use of Palos Colorados development fees would assist the Town in identifying and prioritizing options for the future use of the funds. The

1 analysis would include an evaluation of the park and open space improvements to be  
2 constructed as part of the Palos Colorados development project and the opportunities  
3 that exist to improve the nearby trail system and construct projects and improvements  
4 identified in the Parks and Recreation Master Plan, the Moraga Commons Park Site  
5 Specific Master Plan, and the Hacienda de las Flores Conceptual Feasibility Study.  
6 Funding to maintain Mullholland Ridge and contribute to the acquisition of additional open  
7 space could also be considered as well as how to handle the development impact fees  
8 (as the settlement agreement includes all fees due to the Town). The Council has  
9 discussed the possibility of using some of the Palos Colorados funds to cover the Town's  
10 unfunded pension liability and the use of the funds for other unfunded infrastructure needs  
11 could also be considered.

12  
13 **Increase public outreach and community engagement** – The Town's outreach  
14 currently includes: distribution of issues of the About Town newsletter to a 1,140 member  
15 list and via NextDoor following Council meetings; Parks and Recreation and Public Works  
16 Departments management of active Facebook and Instagram accounts; and, distribution  
17 of public safety alerts by the Police Department through Nixel and social media outlets.  
18 More frequent outreach as well as increasing the Town's social media presence would  
19 improve transparency and keep the community better informed regarding items of  
20 interest. Additional public outreach may also decrease misinformation regarding Town  
21 business that is communicated through unofficial channels.

22  
23 Future Funding Considerations  
24 The following Opportunities could be considered for funding during the mid-year budget  
25 cycle or the Fiscal Year (FY) 2022/23 Budget process, or as part of the Town's American  
26 Rescue Plan Act Expenditure Plan.

27  
28 **\$4.2 million in American Rescue Plan Act (ARPA) funds available for revenue loss**  
29 **and to repair and maintain the public storm drain system** – The Final Rules for  
30 expenditure of ARPA funds which go into effect on April 1, 2022 were published by the  
31 Federal government on January 6, 2022. Staff will analyze the Final Rules and the  
32 Council will be asked to provide direction regarding the future planned uses of the Town's  
33 ARPA funds and submit an ARPA Expenditure Plan to the Department of Finance by the  
34 April 30, 2022 deadline.

35  
36 **Fund Phase II of the Advanced Planning Initiative to complete the Bollinger Valley**  
37 **(BV) rezone and update of the Town's General Plan** – An additional \$169,000 in  
38 funding for legal fees, project costs and contingencies is needed in FY 2022/23 to  
39 complete the BV rezone and phase 1 of the Advanced Planning Initiative which includes  
40 updates to 7 of the 8 elements of the General Plan. \$314,00 in additional funding is also  
41 needed in Fiscal Years 2023/24 and 2024/25 to complete phase II of the Advanced  
42 Planning Initiative, which is a comprehensive update of the Town's General Plan to  
43 ensure the documents are aligned and have internal consistency. The total funding  
44 needed in FYs 2022/23 – 2024/25 to complete the Comprehensive Advanced Planning  
45 Initiative is \$483,000.

46  
47 **Refinancing 2013 Certificates of Participation in April 2023** – In August 2013,  
48 following the passage of Measure K, the Town leveraged the local sales tax revenue and

1 issued \$7.72 million Certificates to Participation (COPS) for street and storm drain  
2 improvements. The interest rate on the 2013 COPS is 4.0 – 5.0 percent. The mechanism  
3 to potentially refinance the COPS prior to the first call date in April 2023 is complicated  
4 and would cost more than \$100,000. Staff recommends refinancing of the COPS at a  
5 lower rate in April 2023.

6  
7 **Implementation of Facility Generation and Energy Efficiency Study**  
8 **recommendations** – Funding for a Facility Generation and Energy Efficiency Study was  
9 included in the FY 2021/22 Adopted Budget. Based on the study results, funding for  
10 capital projects to implement the priority items in the study should be considered for  
11 inclusion in the FY 2022/23 Budget.

12  
13 **Allocation of Measure K General Fund revenue to unfunded infrastructure needs –**  
14 All Measure K revenue will likely need to be allocated to the 2022-23 Worst-First  
15 Pavement Reconstruction project (CIP 22-401) in FYs 2022-23 and 2023-24 to  
16 reconstruct all very poor and most poor streets in 2022 and 2023. However, during the  
17 FY 2024-25 budget process, the opportunity will exist for the Town Council to determine  
18 if a portion of Measure K revenue which currently exceeds \$2.4 million annually, more  
19 than twice the \$1 million projection, is available for some of the Town’s unfunded needs.  
20 The timing of this decision should coincide with the Town’s depletion of ARPA funds  
21 currently funding public storm drain maintenance and repairs.

22  
23 **Fiscal Impact**

24 None.

25  
26 **Attachments**

- 27  
28 **A.** January 9, 2019 Staff Report for Policy Discussion of Fund 100 - One Time  
29 Developer Fees (Palos Colorado Funds)

# **ATTACHMENT A**

January 9, 2019 Staff Report for Policy Discussion of Fund 100 -  
One Time Developer Fees (Palos Colorados Funds)



<b>Town of Moraga</b>	<b>Agenda Item</b>
<b>Ordinances, Resolutions, Requests for Action</b>	<b>11. B.</b>

Meeting Date: January 9, 2019

**TOWN OF MORAGA**

**STAFF REPORT**

**To: Honorable Mayor and Councilmembers**

**From: Norm Veloso, Administrative Services Director**

**Subject: Policy Discussion of Fund 100 - One Time Developer Fees (Palos Colorados Funds)**

**Background**

The Town Council, at its May 9, 2018 meeting, requested a future discussion of the best use of Palos Colorados funds. Fund 100 – One Time Developer Fees (Palos Colorados Funds) is a fund established to earmark funds paid by Richfield Real Estate Corporation and Bigbury Company (“Richfield”), the developers of the Palos Colorados project. Richfield has paid these fees as a result of both conditions of approval imposed on the project approvals and to comply with settlement agreements related to the Palos Colorados development project. As there were no restrictions placed on the use of these funds, since the receipt of the initial deposits, the Town has used these funds for one-time expenditures such as an accelerated payment of the CalPERS unfunded liability, to purchase of the Town Council Chambers and Corporation Yard, loans to fund the Rheem Sinkhole repairs and Canyon Road temporary bridge, and various capital improvement projects. As part of the FY 2018/19 budget, the Town Council allocated \$250,000 from Fund 100 to defend the Hillside and Ridgeline Regulations lawsuit.

The Palos Colorados development has been in various stages of the development process for more than three decades, with the original plans submitted in 1986 for 146 homes and a golf course. Following several years of litigation, on August 23, 1999, Lafayette, Richfield and the Town entered into a Settlement Agreement to resolve litigation surrounding the original Palos Colorados project which proposed a 123 unit residential project with a golf course. Among other requirements, Richland agreed to the future golf course operator’s payment of the Golf Course Municipal Fund.

After entering into the 1999 Settlement Agreement, Richfield was unable to obtain approvals from the state and federal agencies related to the residential and golf course development. Richfield ultimately filed an application for a General Development Plan which eliminated the golf course from the project (“GDP”). The City of Lafayette appealed the determination that the elimination of the golf course was consistent with the 1999 Settlement Agreement and the Town’s General Plan. The Town Council

1 denied Lafayette’s appeal and the City of Lafayette filed a lawsuit challenging the  
 2 processing of the revised GDP. In February 2007, Richfield, Lafayette and the Town  
 3 entered into another settlement agreement which clarified Richfield’s obligations to pay  
 4 a fee to both the City of Lafayette and the Town as payment in full of its prior obligation  
 5 to pay a Golf Course Fee. (“2007 Settlement Agreement” – see Attachment A).  
 6

7 In May 2007, the Town approved the Vesting Tentative Map and Hillside Development  
 8 Permit for the Palos Colorados Project with conditions of approval that included  
 9 payment of \$5 million in Golf Course Funds to the Town and the City of Lafayette (“Golf  
 10 Course Fee”) and payment to the Town of \$14.5 million in four installments to maintain  
 11 consistency with the Town’s General Plan and satisfy other Town fee requirements  
 12 (“General Plan Fee”).  
 13

14 The Golf Course Fee requires Richfield to pay the City of Lafayette and the Town of  
 15 Moraga each the sum of \$2,500,000 to fully satisfy the Golf Course Operation Municipal  
 16 Fund payment requirement pursuant to the 1999 Settlement Agreement. Richfield  
 17 made an initial payment of \$250,000 to Moraga and Lafayette in May 2007 when the  
 18 Palos Colorados Vesting Tentative Map was approved. The remaining \$2.25 million  
 19 payment of the Golf Course Fee will be made upon issuance of all local state and  
 20 federal agency approvals, including grading permits. In the event the remaining amount  
 21 of the Golf Course Fee is not made, a simple interest of 5% will accrue for any unpaid  
 22 portion. Not all agency approvals have been issued to date.  
 23

24 Table 1 - Golf Course Fee Installment Schedule

	<u>Due</u>	<u>Paid</u>
25 1. Approval of Vesting Tentative Map	\$250,000	\$250,000
26 2. Issuance of All Agency Approvals	<u>2,250,000</u>	
	\$2,500,000	\$250,000

27  
 28  
 29  
 30 The conditions of approval for the Vesting Tentative Map (“VTM”) (see Attachment B),  
 31 approved on May 7, 2007 included a condition that Developer pay the sum of \$14.5  
 32 million in four installments to maintain consistency with the Town of Moraga General  
 33 Plan and satisfy various Town requirements. There were no restrictions placed on the  
 34 Town’s use of the funds.  
 35

36 This obligation was further clarified in The Palos Colorados Agreement for Processing  
 37 Future Grading Authorizations (see Attachment C), entered into between the Town and  
 38 Richfield on February 10, 2016 (“2016 Processing Agreement”). In the 2016 Processing  
 39 Agreement Richfield paid a “good-faith” deposit of \$2.25 million towards the second  
 40 installment and Grading Permit Inspection Fees to be credited against the \$3.5 million  
 41 Second Installment payment required under the condition of approval.  
 42

43 Table 2 - General Plan Fee Installment Schedule

	<u>Due</u>	<u>Paid</u>
44 1. Approval of Vesting Tentative Map	\$3,500,000	\$3,500,000
45 2. Grading Permit Issuance	3,500,000	2,250,000
46 3. Building Permit Issuance (\$25,203/unit)	3,100,000	
47 4. Certificate of Occupancy Issuance (\$35,772/unit)	<u>4,400,000</u>	
48	\$14,500,000	\$5,750,000



The 2016 Processing Agreement includes language that identifies the Developer's obligations for payment of funds. The language was not intended to restrict the Town's use of funds, but to ensure that the payment would be considered payment for all developer's obligations as set forth in the 2016 Processing Agreement. Recital I of the 2016 Processing Agreement includes the following language regarding the \$14.5 million in payments:

*"In addition to the Golf Course Fund as defined in the 2007 Settlement Agreement, Moraga required as a condition of approval of the Vesting Tentative Map (see Condition A.VTM.2) that Developer pay the sum of \$14.5 million dollars in four installments (defined in Condition A.VTM.2) to maintain consistency with the Town of Moraga General plan and satisfy any and all (1) Town-imposed development impact fees, (2) permit fees imposed solely by the Town with the exception of grading permit fees, (3) Town imposed exactions, and (4) any recreational requirements applicable to the Palos Colorados Project necessitated by the replacement of the golf course with open space as contemplated by the approved Palos Colorados General Development Plan."*

Table 3 - Installment Schedule for Remaining Golf Course and General Plan Fees

	<u>Golf Course</u>	<u>General Plan</u>	<u>Total</u>
Issuance of Agency Approvals	\$2,250,000		\$2,250,000
Issuance of Grading Permit		1,250,000	1,250,000
Issuance of Building Permits		3,100,000	3,100,000
Issuance of Certificate of Occupancy		4,400,000	4,400,000
	<u>\$2,250,000</u>	<u>\$8,750,000</u>	<u>\$11,000,000</u>

The Palos Colorados funds are unrestricted funds and the use of the funds is not limited or constrained and may be utilized for any purposes the governing body sees fit. Given that these funds are not restricted, the Town can establish policies and guidelines to articulate a framework and process for how the government would use or designate these funds over a specific time period while considering the Town's unique circumstances and priorities.

Additional Fund 100 Revenue Sources

Two additional deposits were made to Fund 100 – One Time Developer Fees. In the initial set-up of the Fund 100, a total of \$94,939 in interest was posted directly to Fund 100 for interest earned on the carrying balances for fiscal years 2007 and 2008. The second deposit was in 2015 when Council approved a one-time transfer of funds from the General Fund to Fund 100 in the amount of \$179,305 for the difference in the actual and budgeted property tax revenue for fiscal year 2014/15.

Table – 4 Fund 100 Revenue Summary

	<u>Golf Course</u>	<u>General Plan</u>	<u>Other</u>	<u>Total</u>
Palos Funds Received	\$250,000	\$5,750,000		\$6,000,000
Interest			94,939	94,939
Property Tax Transfer			179,305	179,305
Total Revenue in Fund 100	<u>\$250,000</u>	<u>\$5,750,000</u>	<u>\$274,244</u>	<u>\$6,274,244</u>

1  
 2 Fund 100 Expenditures  
 3 To date, \$4.72 million in funds have been used and committed to various expenses.  
 4

5 Table 5 – Fund 100 Expenditure Summary

<u>Expense</u>	<u>Amount</u>
7 CalPERS Side Fund Liability	\$1,454,202
8 Payment of 335 Rheem Promissory Note	225,000
9 Hacienda Repair/Replacement Program	102,316
10 Hacienda Improvements/Enhancements	190,943
11 Commons Park Repair/Replacement Program	231,856
12 Commons Park Improvements/Enhancements	178,027
13 Hillside and Ridgeline Study	507,600
14 Moraga Library	515,290
15 Municipal Parking Lots & Pathways Resurfacing	35,055
16 Art in Public Spaces (Fund 134)	5,000
17 Community Priorities Survey	26,408
18 Canyon Bridge Emergency Loan	1,000,000
19 <u>Hillside and Ridgeline Litigation</u>	<u>250,000</u>
	<u>\$4,721,698</u>

21  
 22 Fund 100 Current Available Balance  
 23 The current available balance of Fund 100 - One Time Developer Fees (Palos  
 24 Colorados Funds) as of June 30, 2018 is \$1,552,546. The \$1 million Federal Highway  
 25 Administration Emergency Relief reimbursement for the Canyon Road Temporary  
 26 Bridge Project is projected to be received this fiscal year and would result in a  
 27 \$2,552,546 balance.  
 28

29 Table 6 – Fund 100 Projected Balance as of June 30, 2019

30 Funds Remaining in Fund 100	\$1,552,546
31 Canyon Road Bridge Emergency Reimbursement	<u>1,000,000</u>
32 Total Available	<u>\$2,552,546</u>

33  
 34 Potential Funds Available  
 35 The potential funds available include the projected available balance as of June 30,  
 36 2019 and \$11 million of outstanding receivables from the developer for both the Golf  
 37 Course and General Plan Fees.  
 38

39 Table 7 – Fund 100 Potential Funds Available

	<u>Golf Course</u>	<u>General Plan</u>	<u>Total</u>
40 Current Balance (Incl. \$1M Reimbursement)			\$2,552,546
41 Remaining Balance To Receive	<u>\$2,250,000</u>	<u>\$8,750,000</u>	<u>\$11,000,000</u>
42 Total Potential Funds Available	<u>\$2,250,000</u>	<u>\$11,302,546</u>	<u>\$13,552,546</u>

44  
 45 Discussion  
 46

1 Staff provided background and context information on key issues surrounding the Palos  
2 Colorados 123-unit residential development as well as a financial implication of the  
3 settlement agreements. The purpose of the presentation is to open broad discussion,  
4 identify possible policy directions and develop policy recommendations in relation to the  
5 use of the up to \$13.5 million in potential funds which could be available in the future.  
6

7 The Palos Colorados revenue is General Fund revenue and unrestricted and the use of  
8 its funds may be utilized for any purposes the governing body sees fit. Past Town  
9 Councils have used these funds on one-time expenditures with a focus on parks and  
10 open space and the funds have been loaned to the Town for emergency repairs  
11 (sinkhole and temporary bridge).  
12

13 A few questions for consideration follow:  
14

15 Should the \$2.5 million in funds currently available be used to establish an Emergency  
16 Reserve Fund for financial and physical emergencies and to temporarily fund capital  
17 projects prior to receiving grant reimbursements (i.e. Canyon Rd permanent bridge)?  
18

19 In the event the \$2.25 million Golf Course Fee and \$1.25 million General Plan Fee is  
20 received when/if agency approvals and grading permits are issued, what should this  
21 \$3.5 million in revenue be used for? Parks, open space, asset replacement, unfunded  
22 pension liability, CIP, other?  
23

24 How should the remaining \$7.5 million in General Plan Fees due, when/if building  
25 permits and certificates of occupancy are issued, be expended? Should the Town  
26 evaluate the impacts of the project and the recreational and open space requirements in  
27 order to determine if any of the \$7.5 million should be set aside to pay for these costs?  
28

### 29 **Recommendation**

30  
31 Receive presentation and provide direction to staff.  
32

### 33 **Report reviewed by:**

34 **Cynthia Battenberg, Town Manager**

35 **Michelle Kenyon, Town Attorney**  
36

### 37 **Attachments:**

38  
39 **A. 2007 Settlement Agreement**

40 **B. PC Resolution 26-07, Approving the Vesting Tentative Map**

41 **C. 2016 Processing Agreement**  
42