

May 9, 2006

Lori Salamack
Planning Director
Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556

Phil Vince
Town Manager
Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556

Re: Appeal to the Moraga Town Council of the Planning Commission's Determination Related to the Elimination of the Palos Colorados Golf Course in Resolution 04-2006

Dear Lori and Phil:

As you are aware, the City of Lafayette appealed Planning Director Salamack's determination that the elimination of the golf course from the Palos Colorados Project ("Project") is consistent with the Settlement Agreement and the determination to process the Project without the golf course as a General Development Plan and Vesting Tentative Subdivision Map application.

On May 1, 2006, the Planning Commission adopted Resolution 04-2006, which upheld Planning Director Salamack's determination. We are encouraged by the comments made by Planning Director Salamack, the Planning Commission, and Richfield at that meeting. However, because there are several outstanding issues that must be addressed before Lafayette is "made whole" under the Settlement Agreement, we feel we have no choice but to appeal the decision of the Planning Commission. Only by doing so can we, in the unlikely event that the parties are unable to reach agreement on this matter, protect the City's interests.

Although we seek to appeal the decision of the Planning Commission, we also want to assure you that we will continue to work diligently with Moraga and Richfield to see that all remaining issues are adequately addressed to the satisfaction of all parties. After last week's meeting, we are very encouraged that this will be the case. We were particularly heartened by the developer's pledge to abide by all of the terms of the Settlement Agreement and, in particular, the developer's acknowledgement that the golf course fee is subject to inflation indexing.

Appeal of Planning Commission Resolution

With this letter, then, Lafayette is appealing all of the findings in Resolution 04-2006 adopted by the Planning Commission, in which it found in summary: (1) the elimination of the golf course to be consistent with the Settlement Agreement; and (2) based on that finding, determined to process the revised project as a General Development Plan. In light of all parties' desire to resolve this matter, we hereby request that the Town Council postpone a determination that the elimination of the golf course is consistent with the Settlement Agreement until the entire project and its relationship to the Settlement Agreement have been thoroughly reviewed. If the Town Council feels compelled to make a determination at this time, we request that the Town Council determine that the elimination of the golf course is inconsistent with the Settlement Agreement for the reasons enumerated below.

Background

As you know, Moraga, Lafayette, and Richfield (the successor in interest to Richland) entered into a Settlement Agreement in 1999 to address numerous issues. Lafayette was particularly concerned with viewshed, trails, drainage and traffic impacts of the Project. The Settlement Agreement addressed each of these issues in great detail. Richfield, however, has failed to adequately address several important conditions required by the Settlement Agreement in its most recent submittal to Moraga.

Lafayette called out Richfield's failure to address these issues in letters addressed to you both, dated April 13, 2006 and April 20, 2006. Ms. Salamack, in a letter dated April 14, 2006, agreed with many of our concerns, and she deemed Richfield's application incomplete for numerous reasons and attached our April 13th letter. We appreciate the cooperation that the Town has shown and your decision regarding the completeness of the application.

Reasons for Lafayette's Appeal

Please consider:

1. It is Premature or Incorrect to Determine that the Elimination of the Golf Course is Consistent with the Settlement Agreement

We believe it is premature for Moraga to make a determination that the elimination of the golf course is consistent with Section 20(d) of the Settlement Agreement. Accepting the revised Project (i.e., without a golf course) as a General Development Plan based on this narrow finding immediately renders the Project inconsistent with other sections of the Settlement Agreement. As you know, Richfield has failed to submit a complete application. Ms. Salamack's April 14th letter, for instance, contains 14 pages of comments and requests for additional information. Accordingly, we believe that the Town Council should defer its determination of consistency until Richfield submits responses to and adequately addresses all issues identified by Moraga and Lafayette in recent correspondence, particularly those issues relating to the Project's consistency with the Settlement Agreement.

The Project as proposed is inconsistent with the Settlement Agreement because the Settlement Agreement specifically calls for the creation and operation of the golf course and a golf course operation municipal fund. From every 18 hole round of golf played at the golf course, Moraga and Lafayette would equally divide \$5 dollars per round, adjusted for inflation.

The purpose of this fund, as enumerated in Exhibit 2, Section 6(b) of the Settlement Agreement, is twofold. First, the Settlement Agreement specifically anticipates that revenue generated from the fund will be used to address future traffic impacts on Lamorinda road corridors that will result not only from the operation of the golf course but also from the occupancy of the residential component of the Project, and more generally, from use of those roads by Moraga drivers. Second, the Agreement says that the fund will be used to acquire private property or secure easements as public open space and maintain public open space and trails outside of the Project's boundaries in Moraga, Lafayette, Orinda, and/or adjacent unincorporated vicinities as permanent open space. The enlightened vision behind this fund was to create a mechanism for preserving Lamorinda's precious remaining open space and avoid traffic impacts from future development of such property.

More specifically, the Settlement Agreement says that the golf course fund would reimburse Lafayette for improvements to the Mt. Diablo Blvd./Moraga Road corridor, to be completed in advance of the Project. Lafayette assiduously adhered to this program and just recently completed those improvements to the Moraga Road corridor as required by the Settlement Agreement. Lafayette has

spent \$7.7M¹ on these improvements since 1999 and not been reimbursed for those improvements which directly benefit the Project. Instead, the developer has proposed to eliminate the funding source from the Project and has not come to an agreement with all of the parties to “make the parties whole” under the Settlement Agreement.

Furthermore, while excising of the golf course will eliminate golf course traffic, it also eliminates the mechanism by which the other significant impacts on our communities would be mitigated. Unless and until the Developer satisfactorily addresses these issues, it is our presumption that the unmitigated impacts will lead to significant environmental impacts that must be addressed and mitigated in a new environmental impact report.

As you can see, removal of the golf course from the Settlement Agreement is a substantial change to the Project that was not contemplated by the Settlement Agreement. The changes contemplated and permitted under Section 20(d) are minor in nature such as the relocation of a road segment or lot because of soil instability and is not susceptible to repair. Such changes are significantly less substantial than the Developer’s proposal to eliminate a use covering approximately 34 % of the Project.

In sum, approving the elimination of the golf course and processing the application as a General Development Plan without Richfield adequately mitigating Moraga and Lafayette is premature, would functionally eviscerate the Settlement Agreement, and, absent a comprehensive mitigation plan, will require additional and thorough environmental review.

2. Substantial Evidence Does Not Support the Finding That Elimination of the Golf Course is Consistent with the Settlement Agreement

Richfield has also not convincingly demonstrated that the elimination of the golf course is necessary to avoid a previously unknown substantial health or safety risk. The Planning Director and Planning Commission made their determination based upon three letters, one received from the California Regional Water Quality Control Board (“Water Quality Control Board”) and two from the United States Environmental Protection Agency (“USEPA”).

The letter from the Water Quality Control Board states that the Board has:

¹ Inflation adjusted

yet to receive a copy of the requested Report on Landscape Stability and Geotechnical Issues (Report). In the absence of an acceptable Report which clearly demonstrates the feasibility of the golf course proposal, based on information provided, we believe the Project as proposed with the golf course would likely result in violation of State water quality standards.

Richfield has thus far failed to produce the Landscape Stability and Geotechnical Issues report and also, to our understanding, has not yet submitted a new 401 application. Therefore, Richfield has apparently not been denied a permit from the Water Quality Control Board.

While the letters from the USEPA indicate USEPA's preliminary objection to the golf course, they do not deny the 404 Permit. It appears that the withdrawal of the golf course is, at this time, at the developer's option. The Settlement Agreement, however, obligates the developer to produce a golf course and a golf course fund. If either of these features is to be removed, it must be with the mutual concurrence of all three parties to the Settlement Agreement.

Finally, soil instability, which was addressed by both the USEPA and the Water Quality Control Board, must be reviewed in an Initial Study under State CEQA Guidelines. Appendix G, VI, C, is required by Section 20(d) of the Settlement Agreement and presumably, addressed in the Final EIR. Richfield cannot however rely on an EIR that fails to address these issues (that presumably are still relevant to the residential component of the Project) when legally required, and then subsequently request elimination of the golf course because of a previously unknown substantial health or safety risks the existence of which were raised by new submitted information.

And so, given these many and substantial flaws, we hope you can see that, absent a complete application that adequately addresses all of our communities' concerns, it is premature to make a decision that the elimination of the golf course is consistent with the Settlement Agreement. We therefore respectfully request that the Town Council either: (1) defer making any such determination until Moraga receives all information requested by Moraga and Lafayette and can ensure that our mutual concerns are adequately addressed, or (2) overturn the Planning Commission's decision in Resolution 04-2006.

Thank you for your careful consideration. We look forward to working with Moraga and Richfield to resolve the remaining issues.

Most sincerely,

Steven B. Falk
Lafayette City Manager

Cc: Lafayette City Council