

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

Joaquin Moraga Auditorium
1010 Camino Pablo
Moraga, CA 94556

May 1, 2006

7:30 P.M.

MINUTES

I. CALL TO ORDER

Chairman Kirkpatrick called the regular meeting of the Planning Commission to order at 7:30 P.M.

II. ROLL CALL

Present: Commissioners Brown, Chew, Cummins, Evans, Sos, Whitley*,
Kirkpatrick
Absent: None
Staff: Lori Salamack, Planning Director
Jill Mercurio, Town Engineer
Mitch Wolfe, Town Geotechnical Consultant
John Wagstaff, Environmental Consultant/Palos Colorados
Michelle Kenyon, Town Attorney

* Arrived after Roll Call

A. Conflict of Interest

There was no conflict of interest.

III. ADOPTION OF MEETING AGENDA

On motion by Commissioner Brown, seconded by Commissioner Sos and carried unanimously to adopt the meeting agenda, as posted.

IV. ANNOUNCEMENTS

Planning Director Lori Salamack introduced the additional Town staff present for the meeting.

V. PUBLIC COMMENTS

There were no public comments.

VI. ADOPTION OF THE CONSENT CALENDAR

On motion by Commissioner Brown, seconded by Commissioner Evans and carried unanimously to adopt the Consent Calendar, as follows:

- A. **DRB-03-06 – Y & H Soda Foundation (Owner), Gary Guenther (Applicant), 1635 School Street:** Consideration of an application for approval of a 387 square foot addition and remodeling to an existing 5,982 square foot office building located at 1635 School Street. The primary purpose of the remodeling would be to enclose the perimeter of an existing publicly accessible courtyard and provide a reception area at the front of the building in order to allow access to the building only at the front and the back. A new roof over the front entry is proposed on the School Street side of the building. New handicap ramps are proposed at the front and back entrances. Four existing windows on the south side would be removed. The Design Review Board (DRB) reviewed the project on April 10, 2006 and the Board's recommendations for approval of the project would be considered by the Planning Commission. The property is zoned SO (Suburban Office) District. (APN 257-190-046)
- B. **Approval of the April 3, 2006 Planning Commission Meeting Minutes**

VII. CONTINUED PUBLIC HEARINGS

- A. None

VIII. NEW PUBLIC HEARING

- A. None

IX. ROUTINE & OTHER MATTERS

- A. **REPORT AND DISCUSSION REGARDING THE HISTORY AND STATUS OF THE PALOS COLORADOS RESIDENTIAL DEVELOPMENT PROJECT AND REVIEW AND CONSIDERATION OF A RESOLUTION CONFIRMING PLANNING DIRECTOR'S DISCRETIONARY DECISION TO PROCESS THE REVISED 123-LOT PROJECT WITHOUT THE GOLF COURSE AS A GENERAL DEVELOPMENT PLAN AND VESTING TENTATIVE SUBDIVISION MAP APPLICATION, WHICH IS CONSISTENT WITH THE SETTLEMENT AGREEMENT. THE PALOS COLORADOS PROJECT IS LOCATED OFF OF MORAGA ROAD ON A 460-ACRE SITE IN THE TOWN OF MORAGA JUST SOUTH OF THE SKY HY DEVELOPMENT IN LAFAYETTE**

Planning Director Salamack noted that staff had originally planned to discuss the history and status of the Palos Colorados application that had been submitted to the Town in December 2005, although since the initial scheduling of the item there had been developments with respect to the application that had caused an expansion of the scope of the agenda. As such, a revised agenda had been mailed to the notice list and the revised agenda had been posted to include Planning Commission consideration of the type of application the project represented.

Ms. Salamack reported that a Planning Commissioner had requested having the entire Planning Commission consider whether or not the application could be found consistent with the Settlement Agreement, specifically with respect to provision 20 d. that allows a change in the project description if it meets one of three kinds of changes. She emphasized that request did not represent an appeal of staff's decision. It was a request for consideration by the entire Commission.

Ms. Salamack added that a letter had been received from the City of Lafayette indicating that City's desire to appeal the Planning Director's decision. She explained that the decision was not appealable because it was requested for consideration by the Commission. She clarified that if the Commission rendered a decision with respect to the matter that could be appealed within ten days by any interested person.

Ms. Salamack highlighted the history of the application and explained that in December 2005, the Town had received a revised submittal for the Palos Colorados project at which time the Town had been notified that there would be a new applicant for the project. That applicant had been identified as Richfield Investment Corporation as opposed to Richland Development Corporation. At about the same time, the Town had received letters from resource agencies including the US Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board (RWQCB), involved in the 404 permitting of the application

Ms. Salamack stated that both letters had expressed some concern for the ability to issue the necessary permits for the construction of the golf course. She referred to a letter she had submitted to Richfield Investment Corporation dated January 13, 2006 determining the application incomplete and excerpting some portions from the resource letters.

Ms. Salamack advised that in March 2006, Richfield Investment Corporation had submitted an application that did not include the golf course. That application had responded to her January 13 letter where it had been indicated that the applicant may decide to pursue elimination of the golf course in accordance with paragraph 17 and 20 d. of the Settlement Agreement having to do with California Environmental Quality Act (CEQA) review and changes in the project.

Ms. Salamack added that the revised application that did not include a golf course had raised some processing questions. She described the Town's Planning Development process through three steps; a Conceptual Development Plan, a General Development Plan and a Precise Development Plan.

Ms. Salamack explained that the Palos Colorados project had received Conceptual Development Plan approval from the Town although the Settlement Agreement had changed some aspects of that approval. As such, any new application consistent with that Conceptual Development Plan would be processed as a General Development Plan.

Ms. Salamack stated that the project therefore appeared to be consistent with the Settlement Agreement to the extent that there were known aspects related to a 123-lot single family residential development in the same geographic area as the prior approval, with the exclusion of the golf course. The question had then arisen as to how that application would be processed. She clarified that staff would have to make that determination in order to be able to determine the application as complete or incomplete.

With respect to paragraph 20 d. in the Settlement Agreement, Ms. Salamack explained that the Settlement Agreement set out three circumstances under which a change in a plan could be made. She clarified that any one of three circumstances would apply. All three did not need to be made although she suggested that all three could be made in this case.

Ms. Salamack identified the three circumstances as *to avoid a previously unknown health or safety risk, to provide for a required new mitigation measure, or to allow for a project change pursuant to environmental review required by CEQA.*

With respect to previously unknown health or safety risk, Ms. Salamack referred again to her January 13 letter which had excerpted sections from the resource agency letters, both of which had specifically pointed to the golf course construction as health and safety hazards related to slope instability, resulting in slope failures and large sediment loading at the bottom of Coyote Gulch. Given that the golf course construction had specifically been identified in the USEPA letter as creating the risk, the elimination of the golf course had been recommended in order to be able to permit the project. She stated that a slope failure was clearly a health and safety issue.

Ms. Salamack further explained that the letter had indicated that without the elimination of the golf course, the project would have significant unmitigated impacts, which she noted was a call for a required new mitigation measure, another of the findings for a project that was changed but still consistent with the Settlement Agreement.

Ms. Salamack referred to the January 3, 2006 letter from the RWQCB which had spoken to the grading associated with the golf course which would lead to instability and impacts to waters of the State, also a health and safety concern.

That letter had indicated that the housing component of the project appeared to be consistent.

Ms. Salamack commented that the letters differentiated the golf course from the housing component of the project. She noted that there were twice as many acres associated with the golf course construction as to the residential construction, and the golf course construction would be in some very sensitive areas of the site.

Referring to another USEPA letter having to do with the site being designated in 2003 as an aquatic resource of national importance (ARNI), Ms. Salamack stated that in consultation with the Town's environmental consultant, it had been determined that the designation constituted a changed circumstance under CEQA and that elimination of the golf course would be an appropriate mitigation measure to deal with those changed circumstances under CEQA.

Ms. Salamack suggested therefore that the project met all three of the allowable provisions for making a change in the project in accordance with the Settlement Agreement even though only one finding was required to be made.

If it was determined that the project was consistent with the Settlement Agreement, Ms. Salamack stated that the Town would require a complete application for a General Development Plan and would require consistency with the Settlement Agreement. If determined that the project did not qualify under the identified provisions and the Town considered the revised application without the golf course to be an application for a Conceptual Development Plan, the Settlement Agreement would not apply. As such, seeking compliance with the Settlement Agreement would not be required under that scenario.

In response to Commissioner Sos, Ms. Salamack clarified the strict review of the Commission at this time with respect to the issues that had been identified. She noted that there might be things different with respect to the application although the Town had not yet received a complete application. Once a complete application had been received, the Commission would still need to determine whether or not the application was in substantial conformance with the Settlement Agreement, which was the ultimate determination to be made.

Ms. Salamack added that if the Commission determined that the change was proper under the Settlement Agreement and the Town continued to process the application that way, the applicant would need to provide some alternative mechanism to its other obligations that would have been offered by the golf course. She stated that the applicant had committed in at least three letters of which she was aware to making the jurisdictions whole with respect to that provision. She clarified that the Commission had the right to approve or disapprove what would be proposed to address those provisions.

In further response to Commissioner Sos as to the application of provision 20 d., Town Attorney Michelle Kenyon stated that initially the application had been submitted in December 2005 with the golf course in place. Subsequently, a letter sent by the Planning Director had indicated that a possible change to the project was required due to new information that could require the elimination of the golf course, or a demonstration of why the elimination of the golf course would not be required. As such, she did not characterize the applicant's elimination of the golf course as voluntary. Because of that, she suggested that provision 20 d. did apply.

With regard to the unknown substantial health and safety risk, Ms. Kenyon stated that she had viewed the new information. While there might have been previous evidence of substantial health and safety risks, there had not been the volume of evidence received from other jurisdictions. She suggested that the weight of those other agencies and their view on the health and safety risks had previously been unknown.

Ms. Salamack added that very specific geotechnical work had been done as part of the project, which work had been peer reviewed at a more detailed level. Even with that more advanced work, the USEPA remained unconvinced that the golf course grading, construction and stabilization could occur in a way that would not have significant long-term impacts. She emphasized that every effort had been made to attempt to overcome objections although that had not been possible. She stated that and other new information had developed since the Town's approval of the project in 1996 and since the execution of the Settlement Agreement in 1999.

In response to Commissioner Whitley, Ms. Kenyon clarified that the Commission would have to determine whether or not it agreed with the Planning Director's initial discretionary decision. She noted that discretionary decision entailed the situation where a Conceptual Development Plan had been approved in 1996. Subsequent to that approval, a Settlement Agreement that somewhat modified that Conceptual Development Plan had been approved. Since that time, the applicant had submitted an application for a General Development Plan which was the second step in the Town's planning process.

In order for the Town to process the application for a General Development Plan, Ms. Kenyon stated that a determination would first have to be made whether or not that General Development Plan without a golf course was consistent with the Conceptual Development Plan with a golf course. She clarified that the Settlement Agreement came into play because the Conceptual Development Plan that the Town had approved was modified by the Settlement Agreement so that there were aspects of that Agreement that impacted the consistency of that General Development Plan application with the Conceptual Development Plan.

Ms. Kenyon stated that should not enter into the Commission's deliberation with the exception of the fact that the Settlement Agreement allowed the Planning Commission and ultimately the Town Council to determine whether or not a change, such as the elimination of the golf course, was still consistent with the Conceptual Development Plan.

Ms. Salamack reiterated that the application could not be processed without an answer to that question.

Ms. Kenyon also noted that Planning staff could not offer a discretionary determination as to whether or not the other changes were consistent with the Conceptual Development Plan until there had been a determination that elimination of the golf course itself was consistent with the Settlement Agreement. While there were other consistency findings to be made, the determination of whether or not the elimination of the golf course was consistent with the Conceptual Development Plan was a primary decision that would need to be made to allow future decisions to be made on the application.

Ms. Kenyon also clarified in response to comments that the Planning Commissioner's request to determine whether or not the subject issue was one to be determined by the Planning Director as an administrative action or by Planning Commission review had not been raised because there was a problem.

Ms. Salamack explained in response to Chair Kirkpatrick that such changes were not uncommon in that over time there were changes in requirements and regulations. She used the example of the new stormwater requirements where the lots or the roadways might need to be configured differently to address those stormwater considerations that did not exist when the project had originally been approved.

The attorney for Richfield Investment Corporation spoke to the situation although many of her comments were not audible on tape. With respect to whether or not the change of the exclusion of the golf course was consistent with the terms of the Settlement Agreement, she explained that Richfield was attempting to comply with the terms of the Agreement.

Referencing the comments from the resource agencies, the applicant's attorney noted that Richfield was faced with the choice of eliminating the golf course or convincing the resource agencies that the impacts of the golf course could be mitigated. The recent correspondence from the resource agencies had made clear that there would be no way to mitigate the impacts associated with the golf course. She suggested that the question of eliminating the golf course was a fundamental question of being able to proceed under the Settlement Agreement.

The applicant's attorney stated that Richfield Investment Corporation had no intention of changing the Settlement Agreement. She also stated, among other comments that were not audible on tape, that Richfield wanted to fulfill its obligations and provide the open space and the financial commitments required of the project. She characterized the project as a self-mitigating proposal that fit clearly within the test of changes included in the provisions of the Settlement Agreement. She therefore concurred with the Planning Director's determination.

In response to Commissioner Chew, John Wagstaff, the Town's Environmental Consultant, stated that the elimination of the golf course would substantially reduce the impacts associated with the project, particularly those associated with slope stability and sedimentation, the impacts associated with the maintenance of a golf course, and other environmental impacts. He stated that the changes had all been mitigating changes. He also explained that the key jurisdictional agencies would not entertain an application until it had been approved and only then would the mitigation requirements with respect to the property be specified.

In response to Commissioner Evans, Ms. Salamack referred to the May 15, 2003 letter from the USEPA which had designated the site as an ARNI, and which had included five pages of comments related to the EPA's assessment of the site. She added that the letter offered an indication of substantial evidence. A copy of the letter was made available to the Commission for its reference.

The applicant's attorney responded to questions from Commissioner Sos, although those questions and most of the response was not audible on tape. Comments from others at this point were also not audible on the tape.

The applicant's attorney described the extensive borings and drill rigs at the site over twelve to eighteen months to conduct the geotechnical investigation. She also explained in response to Commissioner Sos that it was Richfield's intention to compensate the Town for the loss of recreation and provide funding to compensate for the loss of the golf course. Further, that every obligation that Richfield had with the Town of Moraga and the City of Lafayette would be honored and would remain whether or not there was a golf course.

An unidentified speaker representing Richfield Investment Corporation, spoke to the particulars of the project. He noted that the plan continued to be refined. He described the amount of dirt to be removed, stated that approximately 115 trees would not be removed, and emphasized that the project was constrained by the requirements of the jurisdictional agencies. He expressed a desire to proceed with the project.

In response to Commissioner Evans, Ms. Salamack explained that in the review process the wild land interface and long term management plan for the open space and geologic hazards would be evaluated, although this was not the time to do that. She emphasized that those and other issues would be addressed later in the process.

Commissioner Chew referred to the trade-offs and benefits that the golf course would have provided to the Town and suggested that the Town would be shortchanged with the loss of the golf course.

The applicant's attorney acknowledged that the elimination of the golf course would represent a loss of recreational opportunity. Separate and apart from the addition of public trails as required by the Settlement Agreement, she explained that Richfield had offered to provide funds to the Town to identify those types of recreational facilities that would serve the Moraga community from a recreation standpoint. She suggested that there also might be some opportunities for some kind of trailhead or staging trail to recreational areas. She added that the open space area would also offer an amenity to the Town.

PUBLIC HEARING OPENED

Stephen Falk, representing the City of Lafayette as its City Manager and as an observer who had followed the project for years, commented that it had taken a long time to get to this point. He noted that was the case because Palos Colorados was the single most important development that the communities of Moraga and Lafayette had seen and would see for decades given that it represented 400 acres in the middle of Lamorinda.

Mr. Falk requested that the Commission continue to handle the development with utmost care and defer making any determination regarding the application's consistency with the Settlement Agreement until the Town had received all the information it had requested and all the parties of the Settlement Agreement were mutually satisfied.

Mr. Falk referred to the City of Lafayette's letter dated April 20, 2006, which recognized that road control, managing traffic, and preserving open space were the residents' top priorities and that the Settlement Agreement demanded that the developer create a fund to ameliorate traffic impacts and purchase open space outside the project's boundaries and outside the Town's limits. That fund had no sunset and would run conceivably in perpetuity. He stated that the elimination of the golf course would eliminate the golf course fee and the revised project would not be consistent with the Settlement Agreement until a substitute fee had been agreed to by all parties. He suggested that the elimination of the golf course appeared to be at the developer's option.

Mr. Falk emphasized that Lafayette was not opposed to the revised Palos Colorados development and supported the revised plan, but not until developers had produced a plan that worked for all the parties involved in the Settlement Agreement.

Larry Beans, Moraga, expressed his appreciation for the fact that a golf course would not be part of the project given the sensitivity of the area where the golf course would have been located. He questioned who would be responsible if the homes to be built were to slide due to the slope instability.

Bud Slater referenced the fund associated with the development and suggested that the fund be split evenly between Lafayette and Moraga and that Lafayette be compensated first.

Mr. Slater was advised by Ms. Kenyon that fifty percent of the proposed Golf Course Revenue Fund would be distributed to the Town of Moraga and fifty percent would be distributed to the City of Lafayette. Lafayette's fifty percent portion would be used to reimburse for road improvements.

Dave Trotter, Moraga, spoke to the question of why a golf course had initially been proposed as part of the project. He explained that under the Town's 1999 General Plan, there was some language that indicated that a public recreational facility in MOSO [Moraga Open Space Ordinance] Open Space would be allowed to occur. He stated that a provision of the 1990 General Plan had encouraged those types of facilities in open space. He explained that had been approved and covered by the Settlement Agreement.

Mr. Trotter suggested that the real question to be considered were the benefits that needed to be assured to replace the now missing recreational facility with new funding. With respect to trails, he also requested assurance that the trails would be located where appropriate and avoid impacts to wildlife.

Mr. Trotter referred to a March 15 letter and referenced a sizable commitment from the applicant to commit more than \$10 million solely to the Town of Moraga, separate from the Golf Course Operations Fund that could be used for the many recreational facilities lacking in the Town. He urged assurances in the process to ensure the benefits of the funds sooner rather than later. He added that he did not have a problem negotiating a replacement for the golf course operation.

Don Freed, Lafayette, a resident of the Sky Hy development immediately adjacent to the subject site, requested a clarification of the purpose of the hearing. He was advised of the determination that the Planning Commission would have to make at this time.

An unidentified speaker made comments that were inaudible on tape.

PUBLIC HEARING CLOSED

The applicant's attorney spoke to the comments from the City of Lafayette and stated that while she appreciated Lafayette's position, it had always been Richfield's intent to make the parties whole. She stated that the elimination of the golf course would allow the provision of open space. She emphasized that Richfield would be responsible for the commitments that had previously been made. She characterized the proposal as a win-win situation to ensure that Lafayette was reimbursed for its obligations and to ensure that Moraga was reimbursed for its obligations as well. She also suggested that the changes would reduce the impacts associated with the proposal.

In response to Commissioner Evans, Ms. Kenyon opined that the determination to be made should be made by Planning staff and that it had been appropriately raised to be considered by the Planning Commission as a whole. She added that it was a decision clearly within the discretion of the Moraga Town planning agency, whether that be the Planning staff, Planning Commission or ultimately the Town Council. She advised that there was a provision in the Settlement Agreement that specifically called out that nothing in the Settlement Agreement would divest the Moraga Town planning agency of its discretion.

Ms. Kenyon suggested therefore in further response to Commissioner Evans that the current situation would not be something to send to the presiding judge. She otherwise commented that if there was a party aggrieved by a decision that interpreted the Settlement Agreement, there was a provision in the Agreement that would allow that issue to be taken back to court. At this time, she reiterated that the appropriate decision making body was the Planning Commission. With an appeal, the matter would be forwarded to the Town Council.

Ms. Salamack commented, when asked, that as currently submitted the application called for just one phase of development.

On the question from Commissioner Chew as to the abuse of discretion under the Settlement Agreement, Ms. Kenyon referred to provision 20 e. She stated that provision only related to whether or not the Town had abused its discretion with regard to interpreting the Settlement Agreement, which did not necessarily relate to the Town's ability to process the application. While intertwined, she emphasized that 20 e. only related to interpretations of the Settlement Agreement and not to the Town's process of the application.

As to what would be an abuse of discretion, Ms. Kenyon stated that was based on the wording of the Settlement Agreement.

Ms. Kenyon added that the Commission was currently charged with determining whether or not it believed that there was substantial evidence to support the Planning Director's decision that elimination of the golf course was due to either *avoid a previously unknown health or safety risk, to provide for a required new mitigation measure, or to allow for a project change pursuant to environmental review required by CEQA.*

Ms. Kenyon opined that the Planning Commission had been provided substantial evidence that would show that either one or all three of those factors had been shown by substantial evidence. She added that by the same token that the developer was bound to comply with the Settlement Agreement, so was the Town of Moraga and the City of Lafayette. She reiterated that she had opined, as had the Planning Director in her discretion, that the elimination of the golf course could not be considered inconsistent with the Settlement Agreement because there was substantial evidence of one or all three of the factors under provision 20 d..

With respect to the position of the City of Lafayette in response to Commissioner Cummins, Ms. Kenyon suggested that Lafayette would assert that it had incurred expenses in constructing improvements that were contemplated by the Settlement Agreement and were entitled to that reimbursement regardless of whether or not the golf course was constructed. She also noted that Lafayette might also assert that there was language in the Settlement Agreement that indicated that part of the golf course fund was to be used for open space purposes. As such, she suggested that Lafayette's argument would be that regardless of whether or not the golf course was constructed, those issues would have to be mitigated.

Mr. Falk clarified that under provision 6 b. of the Settlement Agreement, the primary purposes of the fund was to address future traffic impacts on Lafayette road corridors and other Lamorinda road corridors that would result from the operation of the golf course facilities in the Palos Colorados project, also from the occupancy from the residential component of the project, and generally from the use of those roads by Moraga drivers.

Mr. Falk noted that Lafayette's calculations had found that the golf course would have accounted for 11 percent of the total trips coming out of the project.

Ms. Kenyon did not believe that the Planning Commission needed to make the determination of whether or not the financial settlement with regard to the golf course fund needed to be made at this time in order to decide whether or not provision 20 d. applied to the elimination of the golf course.

Commissioner Brown agreed and suggested that at least two factors applied to the situation to allow the determination to be made.

Commissioner Sos expressed concern with the findings to support the staff recommended determination.

To address Commissioner Sos' concerns, Ms. Kenyon recommended the elimination of the current paragraph 4 in the draft resolution, to be replaced with language that would mirror the first sentence of paragraph 20 d. to state: *This change in the Palos Colorados residential development application which includes the elimination of the golf course is necessary to avoid a previously unknown substantial health or safety risk, provide for a required mitigation measure, and/or a project change pursuant to environmental review required by CEQA, and as such, this change shall not be considered inconsistent with the terms and provisions of the Palos Colorados Settlement Agreement.*

Commissioner Whitley suggested that the intent of the directional language throughout the Settlement Agreement was to preclude the Town from making major changes to the development. He suggested that the elimination of the golf course was a significant change resulting in many changes to the development.

Chairman Kirkpatrick's comments were essentially inaudible on tape.

Commissioner Evans recommended additional language, refined by Ms. Kenyon to be added to the last resolve in the draft resolution, *NOW THEREFORE BE IT RESOLVED, that the Planning Commission of the Town of Moraga hereby confirms that there is a demonstration of substantial evidence to support the Planning Director's discretionary decision to process the 123-lot Palos Colorados residential development application without the golf course as a General Development Plan, which is consistent with the Palos Colorados Settlement Agreement in accordance with the findings listed below..*

Ms. Kenyon added that the first three findings would remain the same. The fourth finding would be changed to read: *This change in the Palos Colorados residential development application which includes the elimination of the golf course is necessary to avoid a previously unknown substantial health or safety risk, provide for a required mitigation measure, and/or a project change pursuant to environmental review required by CEQA, and as such, this change shall not be considered inconsistent with the terms and provisions of the Palos Colorados Settlement Agreement*

Commissioner Sos requested an additional change. To the first finding, she requested the following: *The letters from the resource agencies as attached and set forth in the staff report indicated that a change to the project design was necessary due to previously unknown severe environmental impacts such as long-term, adverse impacts to wildlife habitats in Coyote Gulch and substantial health and/or safety risks associated with threatened surface water quality and unstable landscapes resulting from the project's proposed golf course.*

On motion by Commissioner Sos, seconded by Commissioner Whitley to adopt Resolution No. 04-2006 PC, confirming the Planning Director's discretionary decision to process the 123-lot Palos Colorados residential development application without the golf course as a General Development Plan which is consistent with the Palos Colorados Settlement Agreement, with the changes as follows:

- To the last resolve: *NOW THEREFORE BE IT RESOLVED, that the Planning Commission of the Town of Moraga hereby confirms that there is demonstration of substantial evidence to support the Planning Director's discretionary decision to process the 123-lot Palos Colorados residential development application without the golf course as a General Development Plan which is consistent with the Palos Colorados Settlement Agreement in accordance with the findings listed below..*
- To the first finding: *The letters from the resource agencies as attached and set forth in the staff report indicated that a change to the project design was necessary due to previously unknown severe environmental impacts such as long-term, adverse impacts to wildlife habitats in Coyote Gulch and substantial health and/or safety risks associated with threatened surface water quality and unstable landscapes resulting from the project's proposed golf course.*
- To the fourth finding: *This change in the Palos Colorados residential development application, which eliminates the golf course, is necessary to avoid a previously unknown substantial health or safety risk, provide for a required mitigation measure, and/or a project change pursuant to environmental review required by CEQA, and as such, this change shall not be considered inconsistent with the terms and provisions of the Palos Colorados Settlement Agreement*

The motion carried by the following vote:

Ayes: Commissioners Brown, Cummins, Evans, Sos, Kirkpatrick
Noes: Commissioners Chew, Whitley
Abstain: None
Absent: None

Ms. Salamack advised that there was a ten day right of appeal for anyone wishing to appeal the decision of the Planning Commission to the Town Council by filing a letter stating the grounds for the appeal and through the payment of an appeal fee, through the Planning Department.

X. COMMUNICATIONS

- A. None

XI. REPORTS

- A. Commission

Commissioner reports were not fully audible on tape..

- B. Staff

1. Update on Town Council Actions and Future Agenda Items

Ms. Salamack highlighted the items anticipated for future Planning Commission agendas.

XIII. ADJOURNMENT

On motion by Chairman Evans, seconded by Commissioner Brown to adjourn the meeting at approximately 10:30 P.M. to a regular meeting of the Planning Commission on Monday, May 15, 2006 at 7:30 P.M. in the La Sala Building at the Hacienda de las Flores, 2100 Donald Drive, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission