

# PLANNING COMMISSION STAFF REPORT

**DATE:** August 31, 2006 for the September 5, 2006 MEETING

**ITEM:** IX.A.

**SUBJECT:** STUDY SESSION – GENERAL DEVELOPMENT PLAN AND RELATED APPLICATIONS FOR THE PALOS COLORADOS PROJECT SUBDIVISION 8378 Richfield Investment Corporation (Applicant), Bigbury Company (Owner)

The Palos Colorados project is a 123-lot residential subdivision on a 460-acre site in the Town of Moraga just south of the City of Lafayette. Earlier this year, the Town of Moraga authorized the processing of this project without a golf course as a General Development Plan (GDP) application in accordance with the Moraga Municipal Code and project Settlement Agreement. This study session will focus on land use issue pertaining to the GDP, Moraga Open Space Ordinance (MOSO) conditional use permit applications and the hillside development permit application. The next study session will include information regarding the project subdivision application and outstanding settlement agreement issues.

## **REQUESTED ACTION:**

Receive a report from staff regarding the revised applications for the Palos Colorados residential development project and request additional information from staff as appropriate. Receive a presentation from the applicant and questions or comments from the public.

## **PROJECT STATUS:**

On August 21, 2006, the Town of Moraga Planning Commission conducted a study session on the revised Palos Colorados submittals. This staff report and study session continues the on-going analysis of this project.

On August 21, 2006, the City of Lafayette submitted a copy of the attached letter (Exhibit 1-090506). According to the letter, Lafayette was to have provided the Town of Moraga with a detailed set of comments for the September 5, 2006 Planning Commission meeting. However, on August 23, 2006 when the Moraga Planning Director met with the Lafayette Planning Manager, the Planning Director was informed that Lafayette would not be providing any comments until after the workshops had been concluded. Therefore, despite Lafayette's written indication that they would be providing comments for the September 5, 2006 meeting, no comments have been received by the Town of Moraga and none are expected given the Planning Manager's verbal representation on August 23<sup>rd</sup>.

No Planning Commission decisions are required at this meeting. Public input is welcome.

**PROJECT HISTORY:**

On September 24, 1996, the Town of Moraga Planning Commission adopted Resolutions 20-96 and 21-96 approving a 146-lot single-family residential development with an 18-hole golf course on a 460-acre site in the Town of Moraga. On October 3, 1996, the City of Lafayette, Sierra Club, and others appealed the decision of the Planning Commission. On October 30, 1996, the Moraga Town Council denied the appeals and adopted resolutions 41-96 and 42-96 approving the 146-lot residential golf course CDP.

The City of Lafayette thereafter filed a Request for Reconsideration of the project, which was approved by the Town Council on December 19, 1996. The project applicant and property owner, Richland Development Corporation and Bigbury Company, filed a lawsuit, which was ultimately resolved with a Settlement Agreement in 1999.

The Settlement Agreement modified the previously approved CDP by reducing the number of lots from 146 to 123. The 123-lot configuration was depicted in Exhibit 1 to the July 21, 1999 Settlement Agreement. In effect the July 21, 1999 Settlement Agreement Exhibit 1 became the revised CDP by way of the Settlement Agreement.

**CURRENT PLANNING COMMISSION CONSIDERATION:**

While no Planning Commission decisions are called for at this meeting, ultimately the Planning Commission will be required to make a determination as to whether or not the revised project applications are in substantial compliance with the Settlement Agreement and prior Town approvals.

If the applicant had submitted a GDP that was identical to Settlement Agreement Exhibit 1 then the Town would be required to determine that the GDP was in substantial compliance with the Settlement Agreement. But since the GDP varies in some ways from the CDP, the Town has discretion to determine whether or not it is in substantial compliance with the Settlement Agreement. The discretion of the Town to make the required substantial compliance determination is limited, however, by the Settlement Agreement; specifically paragraph 20c.

This report provides a detailed comparative analysis of the proposed project with prior Town approvals. In comparing the site plans it is apparent that the revised project follows substantially the same development footprint as the earlier approvals. It is noted, however, that lot numbers have been revised so it is essential to refer to locations on the Settlement Agreement Exhibit 1 in determining compliance rather than comparing data for lot numbers.

The attached Exhibit 2-090506 provides a key to comparing the GDP with the CDP. As indicated by the tables analyzing all lot areas, the GDP appears to be in substantial compliance with the Settlement Agreement. Staff has indicated a few areas where further analysis or conditions of approval may be desirable but staff has not identified any areas to date where the GDP is not in substantial compliance with the Settlement Agreement.

As noted in Exhibit 2-090506, the GDP call for a primary east/west access road off of Moraga Road and north/south cul-de-sac development off of the primary access road. The GDP is consistent with Settlement Agreement Exhibit 1 in that 123 residential lots are proposed in both plans and the site is proposed to be graded in accordance with the requirements of Settlement Agreement paragraph 6 noted in Exhibit 3-090506.

The attached Exhibit 3-090506 provides an analysis of Settlement Agreement paragraph 6. No inconsistencies with the Settlement Agreement have been identified. Similarly, the attached Exhibit 5-090506 provides an analysis of Settlement Agreement paragraph 7. Again, no inconsistencies with the Settlement Agreement have been identified. Finally, Exhibit 7-090506 identifies the processing requirements for Settlement Agreement paragraphs 8 and 9 and Exhibit 8-090506 confirms compliance with these Settlement Agreement provisions.

Aside from needing to determine substantial compliance with the Settlement Agreement, the Planning Commission will also need to approve or disapprove applications for open space condition use permits and a hillside development permit at a future meeting. These requirements are discussed in Exhibits 9-090506 and 10-090506. The project subdivision requirements will be discussed on September 18, 2006.

**RECOMMENDED PROCEDURES FOR THE MEETING:**

Staff recommends that the Planning Commission:

1. Hear the staff presentation;
2. Ask questions of staff;
3. Receive a presentation from the applicant;
4. Ask questions of the applicant;
5. Receive public testimony;
6. Continue the study session on Monday, September 18, 2006

**ATTACHMENTS:**

- EXHIBIT 1-090506** City of Lafayette letter dated 8/21/06
- EXHIBIT 2-090506** GDP site plan analysis
- EXHIBIT 3-090506** Settlement Agreement paragraph 6 analysis
- EXHIBIT 4-090506** GDP report (white binding with corrected page numbers)
- EXHIBIT 5-090506** Settlement Agreement paragraph 7 analysis
- EXHIBIT 6-090506** Email regarding trails
- EXHIBIT 7-090506** Settlement Agreement paragraph 8 analysis
- EXHIBIT 8-090506** Memo from Town engineering consultant regarding Settlement Agreement paragraphs 9 and 10
- EXHIBIT 9-090506** MOSO conditional use permit analysis
- EXHIBIT 10-090506** Hillside Development Permit analysis

**Prepared by:** Lori Salamack, Planning Director  
**Reviewed by:** Michelle Kenyon, Town Attorney

**Exhibit 2-090506**

The following analysis of the project is conducted from west to east (left to right) and north to south (top to bottom) as if the Settlement Agreement Exhibit 1 were being read like a page of written text.

**Northwest project corner south of Sky Hy Drive (no change in lot count)**  
*CDP lots 1-9 and GDP lots 4-12 (Yellow area A)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots on cul-de-sac north of the pond	9	9	Yes
EVA from Sky Hy Drive to cul-de-sac	Yes	Yes.	Yes
Elevation of lots backing up to Moraga Road	700 ft.	695 ft.	Yes. Lower elevation has less visual impact.
Number of lots adjacent to Sky Hy Drive	7	3	Yes. Fewer lots backing up to Sky Hy result in fewer impacts on neighbors. More lots interior to the project.

**Northwest portion of project east of PG&E easement (no change in lot count)**  
*CDP lots 10-13 and GDP lots 13-16 (Orange area B)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots	4	4	Yes
Multi-use trail (bicycle path) along lot frontages	Yes	Yes.	Yes
Elevation of lots	690 to 700 ft.	705 to 716 ft.	Yes, with a condition of approval that limits residential development to one story (19 ft).
Total maximum elevation of lot plus residence	725 to 735 ft.	724 to 735 ft.	Yes

**Exhibit 2-090506**

Northernmost portion of the property adjacent to Lafayette (+ 6 lots)  
*CDP lots 15-19 and GDP lots 17-27 (Green area C)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Land Use	Active open space (golf course), trails and residential development	Passive open space with conservation easement, trail and residential development	Yes. The passive open space conservation easement will have less impact on neighboring properties than the active open space golf course.
Number of lots	5	11	Yes. While the number of lots is increased the level of activity will be reduced through the elimination of the golf course and imposition of a conservation easement.
Elevation of lots	756 to 758 ft.	750 to 758 ft.	Yes, with a condition of approval that limits residential development to one story (25 ft) per Settlement Agreement paragraph 6.
Total maximum elevation of lot plus residence	781 to 783 ft.	775 to 783 ft.	Yes. Lots in this area are limited to one story (25 ft) by Settlement Agreement paragraph 6.
Elevation of L-1	Required 758	Proposed 758	Yes.

**Exhibit 2-090506**

Northeast corner of the property above Woodview Drive in Lafayette (- 2 lots)  
*CDP lots 20-30 and GDP lots 28-36 (Purple area D)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots	11	9	Yes. Two lots have been relocated on the site to increase the open space buffer adjacent to Lafayette
Multi-use trail (bicycle path)	Connect to existing fire trail	Connect to existing fire trail	Yes
Minimum lot size	40,000 sq. ft.	40,000 sq. ft.	Yes
Elevation of L-3	Required 774	Proposed 774	Yes
Elevation of L-4	Required 769	Proposed 766	Yes

Westernmost portion of the property primarily south of the main access road off of Moraga Road to the first southern cul-de-sac (- 6 lots)  
*CDP lots 119-123, 98-118, 14 and GDP lots 1-3, 106-123 (Red area E)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots	27	21	Yes. All five lots closest to Moraga Road have been relocated to the interior of the project thus reducing impacts on the adjacent existing Moraga Road / Campolindo Drive neighborhood.
Highest lot elevation	780 ft. (lot 112)	748 ft. (lot 106)	Yes
Range of Lot elevations	670 ft to 746 ft	700 ft to 748 ft	Yes

**Exhibit 2-090506**

Cul-de-sac south of the main access road and west of the pond (+ 14 lots)  
*CDP lots 94-97 and GDP lots 88-105 (Brown area F)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots	4	18	Yes. The elimination of the golf course presented an opportunity to relocate lots that were previously adjacent to existing neighborhoods to the interior of the project. 6 of the new lots are in virtually the same location as the 4 previously approved lots. The 12 lots that have been relocated to this interior area are in the vicinity of the previously approved golf practice facility which has been eliminated.
Highest elevation for 4 original lots	815 ft. (lot 94)	790 ft. (lot 90)	Yes. The revised lot elevation is 25 feet below the original lot elevation and thus it does not increase visual impacts.
Elevation of lots in the vicinity of the previously approved practice facility	N/A	790 to 800 ft.	To be determined. These lots may have adverse impacts on visibility. Either further visual analysis or reductions in elevation and/or building height may be required.

**Exhibit 2-090506**

Cul-de-sac south of main access road east of the pond (no change in lot count)  
*CDP lots 67-89 and GDP lots 65-87 (Blue area G)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots	23	23	Yes.
Range of elevations from north to south	758 ft. to 775 ft. to 725 ft.	758 ft. to 775 ft. to 750 ft.	Yes. The increase in lot elevation at the southernmost portion of the cul-de-sac is not visible off-site due to intervening higher topography

Cul-de-sac south of the main access road on the eastern portion of the property in the vicinity of L-2 and L-5 (- 8 lots)  
*CDP lots 31-66 and GDP lots 37-64 (Black area H)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots	36	28	Yes. Some lots have been relocated within the project to increase the buffer zone around the pond at the end of the cul-de-sac.
Range of elevations from north to south	770 ft. to 750 ft. to 720 ft.	770 ft. to 750 ft. to 755 ft.	To be determined. Lots 42, 43, and 44 appear to be at a higher elevation than the CDP. Further visual analysis or a reduction in elevation may be required to make the determination of substantial compliance.
Elevation of L-2	Required 770	Proposed 770	Yes
L-5	Not graded	Not graded	Yes

**Exhibit 2-090506**

Lots adjacent to Woodford Drive (- 4 lots)

*CDP lots 90-93 and GDP lots N/A (Pink area I)*

	Exhibit 1	Current Proposal	Substantial Compliance?
Number of lots	4	0	Yes. Four lots adjacent to Woodford Drive Road have been relocated to the interior of the project thus reducing impacts on the existing neighborhood.

Other project features

	Exhibit 1	Current Proposal	Substantial Compliance?
Park and Ride Lot	Two small lots near project entrance	One larger lot near project entrance	Yes
Access Road off of Moraga Road	Roadway divided by median	Roadway divided by median	Yes
Vista Points	6	9	Yes. The increase in vista points is not detrimental to the project. More opportunities for vista points exist due to the elimination of the golf course
Grading	1,250,000 cu. yds.	650,000 cu. yds.	Yes. The decrease in grading is not detrimental to the project. Less grading is required due to the elimination of the golf course

This exhibit analyzes the project's compliance with Settlement Agreement paragraph 6 and Settlement Agreement Exhibit 2 condition 1. The August 21, 2006 correspondence from the City of Lafayette notes that the “number of lots on the north side of the main road that are most visible from Lafayette as well as the road itself appear to have been moved north, i.e., closer to the Lafayette border resulting in a reduction of the open space buffer zone indicated in the conceptual development plan”. While it is true that the main access road has been moved to the north, the City of Lafayette is not correct in the claim that the open space buffer zone adjacent to Lafayette has been reduced. In the CDP, the golf course cart path was proposed to be located approximately 300 feet from the project boundary, with the area between the cart path and the boundary preserved as open space. In the GDP, this 300 foot zone is proposed to be covered by a conservation easement so as to preserve the open space buffer adjacent to Lafayette. In the opinion of Town staff, the conservation easement is in substantial compliance with the Settlement Agreement. Paragraph 6 of the Settlement Agreement is further analyzed below. (Staff comments are in **bold**)

Settlement Agreement Paragraph 6. Processing Requirements for BART Station Viewshed Conditions. To provide for BART Station Viewshed Settlement Agreement General Development Plan Condition – No. 1 (incorporated herein by reference) in Exhibit 2 Conditions:

a. Richland shall submit a detailed plan for Lots 15-25 on the Revised Palos Colorados Map, located in the northeast portion of the Palos Colorados Project (“Project”) site, for review and approval by the Moraga Planning Commission as a part of the Palos Colorados General Development Plan Submittals. ***This requirement is satisfied on page 135 of the General Development Plan Report (GDPR) which is attached as EXHIBIT 4-090506.*** Rooflines of homes on those lots shall not protrude above the elevations of the existing skyline behind them as viewed from the platform of the Lafayette BART Station. The detailed plan and guidelines shall provide the means by which to eliminate potential visual impacts of the proposed residential structures as viewed from the platform of the Lafayette BART Station. In order to meet this requirement, each lot shall have a home elevation limit of one story and each home shall not exceed 25 feet in height from the approved subdivision lot grade to the highest point of the roofline, excepting chimneys. ***This requirement will be a condition of approval if the application is approved.*** In addition, the Palos Colorados Project shall be graded for lots, streets and the fairways as shown on the Revised Palos Colorados Map in the Lots 15-25 area. Specifically, pads for Lots 15-19 shall be graded to at least 25 feet below the present elevation of Location 1 (L-1) as depicted on the Revised Palos Colorados Map. ***This requirement is satisfied with a new***

**subdivision elevation of 758 feet in the vicinity of L-1.** The pad for Lot 20 shall be graded to at least 25 feet below the present elevation of Location 2 (L-2) as depicted on the Revised Palos Colorados Map. **This requirement is satisfied with a new subdivision elevation of 770 feet in the vicinity of L-2.** The pad for Lot 21 shall be graded to at least 25 feet below the present elevation of Location 3 (L-3) as depicted on the Revised Palos Colorados Map. **This requirement is satisfied with a new subdivision elevation of 774 feet in the vicinity of L-3.** The pads for Lots 22-25 shall be graded to at least 25 feet below the present elevation of Location 4 (L-4). **This requirement is satisfied with a new subdivision elevation of 766 feet in the vicinity of L-4.** All such grading shall allow for gravity flow of drainage and utilities. **This requirement will be studied on September 18, 2006.** The knoll in this area on Moraga Open Space Ordinance (MOSO) designated land (area depicted as Location 5 or L-5) shall not be graded. **This requirement is satisfied in the revised submittal.** As final measures and if necessary for some lots to insure that rooflines of homes on Lots 15-25 do not intrude into the skyline behind the homes, specifications for home design and roof materials shall be provided and oak woodland shall be added below homes on the north side of the lots or along the golf course property on the south side of the fairway, so as to eliminate rooflines of homes from protruding above the skyline behind them as the oak woodland matures. None of these lots shall be deleted or relocated elsewhere on the Project site to address this viewshed issue.

b. Prior to occupancy of any of Lots 15-25, a deed restriction shall be recorded on the lot and apply to the owner and successor owners of the lot in favor of the City of Lafayette, limiting the house to one story and no more than 25 feet in height. It shall further provide that no addition proposed by a successor owner of a house and a lot following its initial sale shall exceed one story or be more than 25 feet in height, unless an exception to the height restriction is granted by the City of Lafayette. At the request of any such successor owner, the Lafayette City Council shall grant an exception to the residential height deed restriction for a proposed addition, unless it makes a written finding that the proposed addition, upon completion of construction, will protrude above the skyline as viewed from the platform of the Lafayette BART Station. Any finding in that regard shall be supported by substantial evidence. A note referencing this deed restriction shall be set forth on the final subdivision map that includes Lots 15-25. Any changes or improvements to these lots shall be subject to the usual planning, design and building permit processes in the Town of Moraga. **The paragraph 6b requirements will be a condition of approval if the application is approved.**

c. Where oak woodland on a lot must be added to eliminate rooflines of homes protruding above the skyline as viewed from the platform of the Lafayette BART Station, then prior to occupancy of that lot, a scenic easement shall be recorded against that lot in favor of the City of Lafayette. The scenic easement shall require the lot owner and successor owners of such a lot to retain existing and any added oak woodland. The scenic easement shall apply to the oak woodland area on the lot and it shall provide that no trees in the oak woodland shall be removed or reduced in height without the prior written approval of the City of Lafayette. The scenic easement shall further provide that removal of a proposed tree(s) or reduction in tree height in the oak woodland scenic easement area on such a lot shall be authorized by the Lafayette City Council on behalf of the City of Lafayette, if it finds that the home behind the tree(s) will not protrude above the skyline as viewed from the platform of the Lafayette BART Station once the tree(s) is removed or reduced in height. Any scenic easement decision by the City of Lafayette on such a tree removal or height reduction request shall be supported by substantial evidence. A similar scenic easement shall be recorded on the golf course if oak woodland is added for BART Station viewshed mitigation purposes. A note referencing such scenic easements shall be set forth on the final subdivision map that includes these lots. Tree removal or tree height reduction on these lots shall be subject to any of the usual permit processes in the Town of Moraga. ***The paragraph 6c requirements will be a condition of approval if the application is approved.***

This exhibit analyzes the project's compliance with Settlement Agreement paragraph 7 and Settlement Agreement Exhibit 2 condition 2. The correspondence from Alison Hill to Niroop and Jennifer acknowledges a positive meeting with Richfield Investments including Debi Chung (project manager) and Malcolm Sproul (consultant).

7. Processing Requirements for Trails Condition. To provide for Trails Settlement Agreement General Development Plan Condition No. 2 (incorporated herein by reference) in Exhibit 2 Conditions:

a. Richland shall offer an easement of the Project site to be dedicated for public use as a future pedestrian hiking trail system, which helps to eventually provide a generally east-west connection near the Project entry to the East Bay Municipal Utility District (EBMUD) trail system for the Lafayette reservoir area from: (1) the East Bay Regional Park District (EBRPD) Lafayette/Moraga Regional Trail at its location south of Lafayette Valley Estates, and (2) eventually Rheem Boulevard on a north-south trail on the western portion of the Project site (the Moraga Road side) along the existing fire road leading to the Rheem-Saratoga property line. The public hiking trails shall be located within an easement of twenty feet, more or less. ***The identification of the easement will be considered when the subdivision plans are reviewed by the Planning Commission.***

b. On the east side of the Project site (the St. Mary's Road side), the east-west public hiking trail connecting to the Lafayette/Moraga Regional Trail shall be located no closer to Lafayette Valley Estates than as depicted on the Revised Palos Colorados Map. On the north side of the Project site (the Sky-Hy Ranch side), between Lots 13 and 21 and behind the eighth hole of the golf course , the east-west hiking trail shall be located entirely within the Project site and generally adjacent to its north edge. In that area, connections of the east-west hiking trail to the Silver Springs Trail shall be provided at the Lafayette border. To address concern of the Sky-Hy Ranch homeowners, the hiking trail shall not be located behind Lots 3-13 and next to the Sky-Hy Ranch neighborhood west of the eighth hole. On the west side of the Project site (the Moraga Road side), the north-south hiking trail and vista points shall be located between the existing neighborhoods and Golf Holes Nos. 3, 4, 5 and 6 such that the trail and vista points are a safe distance from the golf holes and as far from the east edge of the neighborhoods as reasonable practicable. ***Progress is being made on the location of the trails see Exhibit 6-090506.***

c. Richland shall also offer an easement to be dedicated for use as a separate east-west combination pedestrian/bicycle trail at the north end of the Project site, which is a first step to provide for an improved and more direct northerly

connection between Moraga Road and St. Mary's Road for pedestrians and bicyclist. The combination pedestrian/bicycle path shall be located next to and separated by landscape from the street where depicted on the Revised Palos Colorados Map. In this location, it replaces the sidewalk that would otherwise be provided on the north side of the street. In this location, the offer of dedication shall be included in the road right-of-way. Elsewhere, the easement for the combination pedestrian/bicycle path shall be located within an easement of twenty feet in width, more or less. The easement shall be located along the north side of the roadway. To address concerns of Sky-Hy Ranch homeowners, the combination pedestrian/bicycle trail shall not be located behind Lots 3-13 and adjoining Sky-Hy Ranch west of the eighth hole. ***The identification of the easement will be considered when the subdivision plans are reviewed by the Planning Commission.***

d. To the extent reasonably feasible, final trail locations shall be set forth by the Town of Moraga in approving the Palos Colorados General Development Plan Submittals. Such locations shall be consistent with the requirements of this section. Final trail locations other than the trail locations set forth on the Revised Palos Colorados Map shall not interfere with safe golf course operations. The Project site public trails system as depicted on the Revised Palos Colorados Map is supported by the City of Lafayette. ***The trail locations will not interfere with the safe operation of the golf course as the golf course is no longer proposed.***

e. Richland shall be responsible to make the easement or right-of-way public trail offers of dedication at the time of the first final subdivision map approval, to construct the surface improvements to the combination pedestrian/bicycle trail and to create the dirt pedestrian hiking trails within the Project site, only if, prior to or as part of approval of the Palos Colorados precise Development Plan, the Town of Moraga sets the final trail locations, improvements and specifications and the appropriate public entity agrees to accept the easement for right-of-way for those trails. The parties anticipate that the EBRPD may be interested in accepting the combination pedestrian/bicycle trail and all or some of the dirt pedestrian hiking trails. The parties will work with EBRPD representatives to design trails that are satisfactory to EBRPD in order for it to accept and maintain them. Only in locations where there is acceptance of easement or right-of-way by a public entity shall a trail, public or private, be required from Richland. The parties agree the public trails system as depicted on the Revised Palos Colorados map is consistent with the 1995 Mater Plan For Trails For The Town Of Moraga, approved by the Town Council on February 8, 1995 by Minute Order and also adopted by the Moraga parks and Recreation commission. ***This provision***

***should be addressed as a condition of approval if the project is approved.***

f. Richland's obligation to construct the above-referenced trail improvements on the Palos Colorados Project site is further contingent on the Town of Moraga's future agreement to waive park and recreation fees, as allowed for in the Moraga Municipal Code, in an amount equal to or more than the value of the dedication of the trails and the estimated cost to make the trail improvements on the Palos Colorados site, above and beyond other development costs. For these purposes, the parties shall accept trail cost estimates reviewed and approved by the EBRPD Trails Coordinator. If the cost to complete the public trail from Moraga Road to the vista point at elevation 807 feet, adjacent to Lot 30, cannot reasonably be estimated as a separate cost, then Richland shall be responsible for that cost without credit being provided. ***This provision should be addressed as a condition of approval if the project is approved.***

g. The Town of Moraga and the City of Lafayette will consider means to finance ongoing maintenance of the public trails system on the Project site, including through potential use of the Golf Course Operation Municipal Fund described in General Development Plan Condition No. 6 of Exhibit 2 to the Palos Colorados Settlement Agreement. Neither Richland nor its assigns or successor owners of the Palos Colorados site shall be responsible for maintenance of public trails on said properties. ***This provision should be addressed as a condition of approval if the project is approved.***

h. The Trails Settlement Agreement General Development Plan Condition No. 2 shall be deemed for all purposes among the parties to be substantially consistent with Conditions For Palos Colorados Conceptual Development Plan (see also Section 4 hereinabove). The requirements in Conditions Nos. I.11, I.12 and I.13 are hereby superseded to the extent of any conflict with Condition No. 2 in Exhibit 2 and this section. Use of EVAs for pedestrian/bicycle access as provided for in Condition No. V.4 may still be considered. ***Use of the EVAs will be evaluated in the final trail layout.***

This exhibit identifies the processing requirements for Settlement Agreement paragraphs 8 and 9 and Settlement Agreement Exhibit 2 condition 3 and 4. The August 30, 2006 memorandum from Frank Kennedy to Jill Mercurio, which is attached as Exhibit 8-090506, acknowledges that “the developer’s plan responds appropriately to the requirements”.

8. Processing Requirements for Las Trampas Creek Drainage Condition. To provide for Las Trampas Creek Drainage Settlement Agreement General Development Plan condition No. 3 (incorporated herein by reference) in Exhibit 2 Conditions:

a. As part of the Palos Colorado General Development Plan Submittals process, Richland shall obtain a hydrologic analysis of the Project to be performed by a professional registered engineer it selects. The analysis shall evaluate the existing (i.e., historic) peak runoff rate and associated peak runoff duration for undeveloped Project site conditions based on the 100-year-return storm event. The analysis shall determine the foregoing existing conditions and the incremental increase in peak runoff rate and associated peak runoff duration due to proposed Project improvements based on the 100-year-return storm event at the Coyote Gulch outfall point on the Project’s southern boundary. Additionally, the hydrology study shall evaluate the Las Trampas Creek drainage basin and determine the existing (historic) maximum peak runoff rate and associated peak runoff duration at a study point on the creek based on the 100-year-return storm event. A point on Las Trampas Creek at or near the Lafayette/Moraga border shall be used as the study point. The professional registered engineer shall determine the extent to which the existing (historic) maximum peak runoff rate and associated peak flow duration in Las Trampas Creek at the study point are impacted by proposed Project improvements. In the event that said developed conditions of the Project site increase the existing (historic) maximum peak storm runoff rate and associated peak runoff duration at the study point during the 100-year-return storm event, then the effects of detaining and lag of timing in the release of flows from the Project sited shall be analyzed.

b. On-site detention storage facilities shall be designed as necessary to provide sufficient volume so that the stormwater contribution from the developed Project site does not exceed the existing pattern of contribution from the undeveloped Project site at the Coyote Gulch outfall point on the Project’s southern boundary. If it is determined that stormwater runoff from the developed site impacts the maximum peak runoff rate and associated peak runoff duration on Las Trampas Creek at the study point, then on-site detention storage facilities shall also be designed as necessary to maintain and existing (historic) conditions at the

study point. To accomplish the foregoing, design of the on-site detention facilities shall satisfy the requirements set forth in Condition No. 3 in Exhibit 2 and this section.

c. The hydrological method used by the professional registered engineer for determining peak runoff rates and associated peak runoff duration shall be Technical Release 55 (TR55), developed by the Natural Resources Conservation Services (NRCS).

d. The hydrologic analysis and supporting data shall be submitted to the Contra Costa Flood Control District ("CCFCD"). As a check on the sufficiency of the foregoing TR55 analysis, CCFCD shall be requested by Richland to evaluate the hydrology using the Contra Costa County "HYDRO" program to make the foregoing determinations set forth above in Section 8.b using the standards set forth above in Section 8.a. Those results shall be utilized by Richland's professional registered engineer to prepare a comparative report of the hydrology results. The Moraga Town Engineer and the Lafayette City Engineer shall select the preferred hydrological program results to use in the design of the detention facilities. If they do not agree on the selection, then the parties shall identify an independent professional registered engineer to make the selection. If the parties cannot agree on the engineer who should make the selection, then the Court shall be requested to appoint that engineer. On-site detention within the Project's boundaries is here identified as the preferred method of mitigation of the parties. On-site detention or other flood control improvements within Coyote Gulch below the southernmost existing pond area shall be avoided, unless there is no other way on site to meet the design criteria set forth in this section and Condition 3.

e. The Las Trampas Creek Drainage Settlement Agreement General Development Plan Condition No. 3 shall be deemed for all purposes among the parties to be substantially consistent with the Conditions For Palos Colorados Conceptual Development Plan (see also Section 4 hereinabove). The drainage, water quality and erosion control requirements in Conditions Nos. VII.1-16 are hereby superseded only to the extent of any conflict with this Condition No. 3 in Exhibit 2 and this section (for example, on-site drainage provisions in Condition No VII.1 still applicable but the financial requirements in Condition No. VII.16 are hereby superseded). Construction of on-site detention shall be timely phased so as to receive storm water runoff from improved surrounding Project residential areas (see Condition No. VII.7).

9. Processing Requirements for Lafayette Valley Estates Drainage Condition. To provide for Lafayette Valley Estates Drainage Settlement Agreement General Development Plan Condition No. 4 (incorporated herein by reference) in Exhibit 2 conditions:

a. As part of the Palos Colorado General Development Plan Submittals process, Richland shall provide plans of the drain system (as detailed as reasonable feasible) that is proposed to be installed at its eastern perimeter of the Project site along Lafayette Valley Estates for the purpose of improving hillside stability. Drainage system hydrology shall be provided to show, to the extent feasible, the amount of additional drainage volume, if any that the drain system will add to the existing public drain system in Lafayette Valley Estates.

b. If such additional drainage volume is added to the public drain system as determined by the Lafayette City Engineer and the Moraga Town Engineer, then Richland shall examine the public concrete drainage ditch and the CMP storm drain pipe between the Project site and the outfall at Las Trampas Creek. Inspection of the CMP storm pipe shall be accomplished with a T.V (video) pipe test. If such additional drainage volume is added to the public drain system and any part of the concrete ditch in the public drainage system needs repair, then Richland shall be responsible for the cost to repair the channel as may be determined by the Lafayette City Engineer and the Moraga Town Engineer to be necessary. If the CMP pipe in the public drainage system needs repair, then Richland shall be responsible to line the bottom one-third of the pipes and the bottom flowline of the pipe-arch with concrete along its length and make repairs to the top of the pipe and/or to the concrete ditch where necessary along its length. Lafayette commits to issue the necessary encroachment and related permits. If there is a disagreement among the Lafayette City Engineer and the Moraga Town Engineer with respect to either of the two foregoing determinations, then the parties shall identify an independent professional registered engineer to make the determinations(s). If the parties cannot agree on the engineer who should make the determinations(s), then the Court shall be requested to appoint the engineer.

c. The Lafayette Valley Estates Drainage Settlement Agreement condition No. 4 shall be deemed for all purposes among the parties to be substantially consistent with the Conditions For Palos Colorado Conceptual Development Plan (see also Section 4 hereinabove).

MOSO conditional use permit analysis

**EXHIBIT 9-090506**

Hillside Development Permit analysis

**EXHIBIT 10-090506**