

EXHIBIT D
TO RESOLUTION XX – 2009
APPROVING THE RANCHO LAGUNA II
CONCEPTUAL DEVELOPMENT PLAN

AUGUST 17, 2009

**FINDINGS RELATED TO THE CERTIFIED FINAL ENVIRONMENTAL IMPACT
REPORT FOR APPROVAL OF THE 27 LOT RANCHO LAGUNA II PROJECT**

CEQA FINDINGS
Rancho Laguna II

SECTION	PAGE NO.
PART I.....	1
1. INTRODUCTION AND PROCEDURAL HISTORY.....	1
2. DESCRIPTION OF 27 LOT PROJECT.....	2
3. LOCATION OF PROJECT	3
4. APPROVALS FOR 27 LOT PROJECT.....	3
5. OBJECTIVES OF 27 LOT PROJECT	3
6. SCOPE OF FINDINGS FOR 27 LOT PROJECT	4
7. DESCRIPTION OF ADMINISTRATIVE RECORD	5
8. GENERAL CONSIDERATIONS	6
PART II.....	9
1. FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FOR APPROVAL OF THE 27 LOT RANCHO LAGUNA II PROJECT	9
2. MITIGATION OF POTENTIALLY SIGNIFICANT IMPACTS.....	11
PART III.	47
1. LIST OF 27 LOT PROJECT IMPACTS	47
2. ALTERNATIVES TO 27 LOT PROJECT.....	51
3. CONCLUSIONS REGARDING AND BENEFITS OF 27 LOT PROJECT.....	59

**FINDINGS RELATED TO THE FINAL CERTIFIED ENVIRONMENTAL IMPACT
REPORT FOR APPROVAL OF THE 27 LOT RANCHO LAGUNA II PROJECT**

AUGUST 17, 2009

This Planning Commission (“Commission”) of the Town of Moraga (“Town”) pursuant to the requirements of the California Environmental Quality Act (“CEQA”) hereby adopts and makes the following findings (“CEQA Findings,” “Findings” or singularly “Finding”) relating to its approval of the recommended 27 lot Rancho Laguna II Project (“Project” or “27 Lot Project”) under CEQA and its certification for adequacy of the final environmental impact report (“EIR”), prepared for and relied on by the Commission in its consideration of the Project. Rancho Laguna, LLC is the “Project Sponsor” (also referred to as the “Applicant”).

PART I.

1. INTRODUCTION AND PROCEDURAL HISTORY

To assist the reader in understanding the course of events leading to the Commission’s approval of the 27 Lot Project and certification of the EIR, and in understanding the format and content of these Findings, references are made herein to documents in the administrative record for this Project. The administrative record sets forth the history of the Rancho Laguna planning and environmental review processes leading to preparation and certification of the EIR, adoption of these Findings, and approval of the Project. The specific materials which constitute the administrative record for this Project are described below, and generally consist of the EIR, staff reports, hearing minutes, map, exhibits and correspondence. All of those documents in the administrative record and public testimony throughout the public planning process have been reviewed and considered by the Commission. To avoid duplication and unnecessarily longer Findings, where possible brief summaries are made instead of repeating descriptions, analysis or facts in the administrative record, and reference is made to the locations in the administrative record where more detailed discussion is available to the reader. All references to mitigation measures are to the mitigation measures in the Mitigation Monitoring and Reporting Program for the 27 Lot Project (“MMRP”).

As set forth in the administrative record, the Project being approved is a residential development of 27 lots on a 180 acre site located on the east side of Rheem Boulevard between Via Barcelona and Fernwood Drive in the Town of Moraga. The Project being approved and as mitigated is different from the 35 lot Rancho Laguna II project proposed by the Applicant and analyzed in the Draft EIR and Responses to Comments. The modifications are the result of efforts in the environmental review and planning process to reduce all environmental impacts to less than significant, to better comply with applicable General Plan Goals and Policies, and meet Town objectives. The improvements to the Project as revised and its modified impacts and mitigation

measures are more fully described in the Staff Report for this public hearing and the Update for Final EIR and MMRP for the 27 Lot Project, each of which is incorporated by this reference.

2. DESCRIPTION OF 27 LOT PROJECT

The Project as mitigated includes 27 single-family residences on large lots in two development areas: the upper Rheem valley and the southern plateau. The 6 upper valley lots range in size from 15,237 to 17,091 sq. ft., with a minimum lot width of 119 ft. The 21 southern plateau lots range in size from approximately 18,000 to 32,000 sq. ft., with a minimum lot width of 100 ft. All the pads are essentially flat, except for the split pads on Lots 8-11. The two development areas comprise 18 acres (slightly less than 10%) of the property. The rest of the property will be permanently preserved as open space with public trails, which will be maintained by a Geologic Hazard Abatement District (“GHAD”) formed by the Town Council and paid for by the Applicant and homeowners. The graded area in the open space is limited to approximately 7.5 acres. No grading is proposed in the MOSO portion of the property.

The development areas have separate private roads and access off Rheem Boulevard. As part of the Project development, Rheem Boulevard will be stabilized along the entire frontage, utilizing an engineered valley buttress. Rheem Boulevard will be repaved and the section improved with 12 foot travel lanes, turn pockets at “A” Way and “D” Drive, 3 foot striped shoulders, and for pedestrian use a 2-3 foot decomposed granite path on the easterly project side and a concrete curb and 5 foot sidewalk on the easterly non-project side. The sidewalk will connect with the existing sidewalk to Moraga Road.

The filled wetlands will be recreated in the open space on the valley buttress. The cut and fill grading is 209,000 cubic yards and balances on site. All geologic hazards on the property that may impact development areas will be mitigated consistent with the studies and recommendations of the Applicant’s geotechnical engineers, which have been reviewed and approved by the Town and EIR geotechnical engineers and Town Engineer. Stormwater peak flows and water quality of runoff are fully mitigated, primarily through oversized storm drain pipes and water quality basins.

The Project will be a sustainable green community that mitigates all its environmental impacts and achieves at least 90 Green Points under the Town’s Green Building Program. The green building design of each home will provide at least 90% of its electrical energy target load through a combination of photovoltaic cells and construction design, and include solar water heating.

With the mitigated grading plan and landscape plan for the 27 Lot Project, the visual quality of the Project site as seen from all public views, including Rheem Boulevard (a scenic road) is less than significant. With the Project as developed and mitigated, the Rancho Laguna property will have a semi-rural appearance.

3. LOCATION OF PROJECT

The Project is located in the northeastern part of the Town of Moraga on the easterly side of Rheem Boulevard between St. Mary's Road and the EBMUD Fay Hill Reservoir. The City of Lafayette boundary is located near the easterly side of the Project.

4. APPROVALS FOR 27 LOT PROJECT

The Town of Moraga's discretionary approvals for this Project include but are not limited to the following:

- Approval of a Conditional Use Permit and Conceptual Development Plan by the Planning Commission.
- Approval of a General Development Plan by the Planning Commission.
- Approval of the Precise Development Plan by the Planning Commission.
- Approval of a Tentative Subdivision Map by the Planning Commission and Town Council.
- Approval of Design Review for the Precise Development Plan and the homes.

5. OBJECTIVES OF 27 LOT PROJECT

The following objectives for development of the Rancho Laguna property have been identified by the Town of Moraga Draft EIR, and by Town staff and the Planning Commission:

- (1) Ensure development is consistent with the Moraga 2002 General Plan considered as a whole, and has a semi-rural character;
- (2) Preserve a significant amount of open space with public trails in perpetuity and professionally managed at no cost to the Town;
- (3) Help to meet the housing goals established by the Moraga 2002 General Plan;
- (4) Provide for a development that is not a drain on the Town's fiscal resources;
- (5) Stabilize Rheem Boulevard along the entire Rancho Laguna frontage as part of the project development and, to the extent feasible, improve that road section for vehicles, bicycle and pedestrian use, at minimal cost to the Town;

- (6) Reduce to the extent feasible the volume of peak stormwater discharge into the intermittent drainage below "A" Way behind the downstream homes along Rheem Boulevard;
- (7) Include an effective green building program as part of the project development;
- (8) Not significantly impact public views of the project site, including from Rheem Boulevard, a scenic road;
- (9) Protect new development from geologic hazards through adoption of geotechnical mitigation measures, peer reviewed and approved by the Town's geotechnical consultants, and through the long term management of the project site; and
- (10) Limit all environmental impacts of the project as designed and mitigated to less than significant, to the extent feasible.

Project objectives have also been identified by the Project Sponsor as set forth below:

- (1) Develop a large lot, single-family residential community on its property that is semi-rural in character and compatible with the overall high quality of the Town of Moraga;
- (2) Develop a residential community that has a special identity within the Town of Moraga as a well-designed, environmentally sound and attractive development;
- (3) Develop a residential community consistent with the Moraga 2002 General Plan as a whole, zoning regulations and development standards; and
- (4) Complete a residential development on its property that is economically feasible.

6. SCOPE OF FINDINGS FOR 27 LOT PROJECT

These CEQA Findings are adopted pursuant to Public Resources Code §21000 et seq. (CEQA) and the CEQA Guidelines," California Code of Regulations, Title 14, §15000, et seq. CEQA §21081 and CEQA Guidelines §15091 require that a project's significant environmental impacts identified in an EIR must be addressed by one of three findings, as set forth at §15091(a) (1)-(3). These Findings describe the disposition of each significant environmental impact of the 27 Lot Project, indicating generally: if the impact is reduced to a less than significant level through mitigation adopted by the Planning Commission; if the impact could be reduced through mitigation that can and should be adopted by another public agency (other than the Town); or if the impact is significant and unavoidable. To ensure that all Project impacts are identified and necessary findings made, these CEQA Findings will identify the Project impacts and mitigation measures set forth in the EIR (see the updated mitigation measures in the MMRP for the 27 Lot

Project) and set forth the corresponding required Findings and rationale, with appropriate references to the administrative record.

Mitigation measures in the Draft EIR have been modified by the Commission, at the recommendation of Town staff, to more accurately reflect changes in the 27 Lot Project design as compared to the 35 lot project reviewed in the Draft EIR. In each instance the revised mitigation measure provides the same or better mitigation than previous ones and reduces to less than significant any otherwise significant environmental impacts. Each mitigation measure is also included as a condition of approval of the Conceptual Development Plan for the 27 Lot Project. Each corresponding condition number is included the MMRP.

7. DESCRIPTION OF ADMINISTRATIVE RECORD

For the purposes of CEQA and these Findings, the administrative record (also “record”) before this Commission relating to the Project includes, without limitation, the following documents: They include:

- (1) The 2002 Moraga General Plan and the Moraga Zoning Ordinance;
- (2) The final Environmental Impact Report for the Rancho Laguna II Project, which consists of:
 - (a) The final EIR dated August, 2008, comprised of the Draft EIR and Appendices, dated July, 2006 (“DEIR”), Comments on the Draft EIR, Responses to Comments on the Draft EIR,
 - (b) Update for Final EIR for 27 Lot Project, and
 - (c) MMRP for 27 Lot Project;
- (3) The Staff Reports to the Commission, with attachments;
- (4) Minutes of Commission public meetings and hearings on the Project; and
- (5) All documents, exhibits, maps and drawings submitted from time to time as part of the Project application as revised and by the Applicant at public meetings, and all studies, reports, and materials accompanying or referenced in the application as revised and for proposed development of the Rancho Laguna property by the Applicant. Included as attachments to the Staff Reports are all written documents submitted by the public, other public officials, and the Applicant to the Commission, through the public planning process. The documents which constitute the administrative record are located at the Town of Moraga Planning Department, 329 Rheem Boulevard, Moraga, pursuant to CEQA §21081.6.

8. GENERAL CONSIDERATIONS

- A. **Reliance on the Record.** Each and all of the Findings and determinations herein are based upon competent and substantial evidence, both written and as reflected in the detailed minutes, contained in the entire record relating to development of the Rancho Laguna property and the Project. The Findings and determinations constitute the independent Findings and determinations of the Commission in all respects and are supported by substantial evidence in the record as a whole.
- B. **Nature of Findings.** Any Finding made by the Commission shall be deemed made regardless of where it appears in this document and the other approval documents. All of the language included in this document and the other approval documents constitute Findings by the Commission, whether or not any particular sentence or clause includes a statement to this effect. The Commission intends that the Findings and the other approval documents be considered as an integrated whole and, whether or not any part of these Findings fails to cross-reference or incorporate by reference any other part of these Findings, that any Finding required or permitted to be made by the Commission with respect to any particular subject matter of the Project shall be deemed made if it appears in any portion of these Findings or the other approval documents.
- C. **Limitations.** The Commission's analysis and evaluation of the Project is based on the best information currently and reasonably available to the Town.
- D. **Summaries of Impacts, Mitigation Measures, Alternatives, and other Matters.** All summaries of information related to the Project are based on the referenced environmental documents and/or other evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular Finding is not based in part on that fact. This document includes only as much detail as may be reasonably necessary in the judgment of the Commission to show the basis for each Finding as set forth below. Citations to the EIR and its MMRP have been included for these Findings. The reader should refer directly to the referenced documents and other evidence in the record for more precise information regarding the facts on which a summary is based. That a cross reference or citation to a particular relevant portion of the administrative record has not been made in this document does not mean it has not been relied on by the Commission as part of the substantial evidence to support a particular Finding or its decision to approve the Project. The Commission has relied on the record as a whole to make each and every Finding and determination in approving the Project.
- E. **Adoption of Mitigation Measures and Conditions of Approval.** These Findings are based upon the mitigation measures required for the 27 Lot Project recommended by the EIR as included in the MMRP (or as may have been thereafter modified by the Commission), or as already having been incorporated into the design of the Project by the Applicant. The Commission is hereby adopting and incorporating into the 27 Lot Project those mitigation measures in the MMRP in Exhibit A to Resolution X-2009 – see

Attachment 2 (and the corresponding conditions of approval for the Conceptual Development Plan in Exhibit B to **Resolution XX-2009 – see Attachment 5**), which have not already been incorporated into the Project as designed. The Commission finds that all mitigation measures approved for the 27 Lot Project, (or previously incorporated in its design) are desirable and feasible and shall be timely implemented in accordance with the adopted MMRP and conditions of approval.

- F. Specific and General Mitigation.** For each potentially significant impact of the Project, the EIR in its MMRP for the 27 Lot Project generally identifies one or more corresponding mitigation measure(s) to lessen or avoid such impact. For ease of reference to the EIR documents, this document is organized in a manner that corresponds to the MMRP. However, the Commission recognizes that any of the mitigation measures described below may lessen or avoid other impacts in addition to those identified impacts for which they are specifically proposed.

In light of the above, the Commission finds that:

(a) each mitigation measure adopted by the Commission or already incorporated into the Project may avoid or substantially lessen more than one potentially significant; and

(b) each significant impact identified by the EIR may be mitigated both by its corresponding mitigation measures to the extent set forth in such documents or below ("Specific Mitigation") and by other, non-corresponding mitigation measures, conditions of approval or required Project redesign adopted by the Commission or already incorporated into the Project ("General Mitigation"). These Findings of General Mitigation shall be applicable wherever supported by the evidence in the record regardless of whether a specific Finding of an instance of such General Mitigation is made.

- G. Judgment of Planning Commission and Reliance on Professionals.** The Commission acknowledges that development of the Rancho Laguna I as first proposed and Rancho Laguna II as thereafter proposed, as well as the approved 27 Lot Project, have been and will continue to be of interest within the community. Many individuals oppose the Project as approved and disagree with some of the analyses and conclusions in the EIR, Staff Reports and the administrative record. Furthermore, the Commission acknowledges that individuals in the community with professional expertise disagree with the professional analyses, conclusions and determinations of Town staff, peer review consultants retained by the Town, and the EIR consultants and sub-consultants. The Commission further acknowledges that opponents to the Project are skeptical about and disagree that the efforts by the Applicant and its professional consultants to design the Project, in part in response to community, staff and Commission concerns and suggestions, will result in a sensitively designed neighborhood that will fit well on the site and provide for a sustainable, beneficial and safe combination of residential and open space uses for both new residents there and the public. The Commission recognizes that some Project opponents do not believe this property can reasonably accommodate the

proposed density of development. The Commission has carefully considered these concerns and opinions, while at the same time recognizing that, under Public Resources Code Section 21082.2 (c), substantial evidence of the significance of an environmental effect is not demonstrated by mere public controversy alone.

With the foregoing in mind, the Commission has carefully and critically reviewed the analyses and conclusions by the Applicant's consultants, Town staff, peer review consultants, and the EIR consultants and sub-consultants. The Commission accepts their professional analyses, conclusions and opinions and determines that they have reasonably and consistently addressed and responded to specific questions and criticisms during this long and thorough planning process. Where there is a disagreement among professionals, the Commission has therefore elected, after careful evaluation, to rely on, accept, and endorse the analyses, conclusions and assessment of the Project by Town staff and consultants and the Applicant's consultants. The Commission endorses their general conclusion that, with the Conceptual Development Plan as approved and with further detailed review and consideration of the 27 Lot Project as the planning and development process continues, the Project has been and will continue to be sensitively and well designed for the site, and there is no substantial evidence to justify a further reduction in the number of lots or a change in the location of lots due to site or environmental constraints or General Plan considerations. The Project as designed and mitigated reduces all environmental impacts to below the thresholds of significance, as informed by the General Plan. The analyses, opinions and conclusions to the contrary by project opponents, including those with a professional background, are not supported by substantial evidence in the record.

The Commission recognizes that others may disagree and respects their judgments and opinions about the Project and its environmental effects. However, as to some impacts where there is a professional or public disagreement over the effectiveness of mitigation measures and Project design to reduce environmental impacts to less than significant, there is no substantial evidence in the record to support the opinions expressed by some opponents these measures will not work. Examples include their opinions as to the effectiveness of the mitigation and project design to protect new development from geotechnical hazards, of the valley buttress plan to stabilize Rheem Boulevard, and of the biological resources mitigation measures.

As another example, there is no substantial evidence in the record to support the opinion expressed by some opponents that development of the 27 Lot Project as designed and mitigated will have unavoidable significant impacts on public views, which are limited in location, extent of Project development viewed, the number of people who see it, and/or the change in character or site characteristics as to the particular view. Public views of the Project site from the east are generally of the preserved minor ridgeline. Public views from the west are mostly open space, too. Project homes and streets are effectively screened while still maintaining open views of the hillsides, ridgelines and valleys. The Town's obligation is to address public views, not private views. Under the circumstances and as the Project is designed and mitigated, it is not appropriate for the

Town to reduce density in order to avoid seeing new homes on this site from other private property.

The Commission also recognizes the consistent participation by project opponents in the Rancho Laguna II planning process has resulted over the past few years in a very critical and careful review of the Applicant's project submittals by the Commission, Staff, and the Town's professional and environmental consultants, and have resulted in project revisions and mitigation as part of the 27 Lot Project that reduce or avoid all significant environmental impacts. In the Commission's judgment, this active participation by project opponents, along with the efforts by the Applicant and its consultants and Town staff and consultants to respond to their testimony, and to the comments and suggestions of Planning Commissioners, has resulted in a better 27 Lot Project, as designed and mitigated, than the 35 lot project analyzed in the Draft EIR.

PART II.

1. FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FOR APPROVAL OF THE 27 LOT RANCHO LAGUNA II PROJECT

A. A Guide to CEQA Findings.

These Findings are made pursuant to the requirements of CEQA, as set forth at Cal. Public Resources Code §21000 *et seq.* In §21081, CEQA provides that:

No public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant environmental effects that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:*
 - (1) Changes or alterations have been required in, or incorporated into, the project, which mitigate or avoid the significant effects on the environment.*
 - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.*
 - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment*

opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

- (b) *With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.*

Because the EIR identified significant effects which would occur as a result of the Project, and in accordance with the provisions of CEQA, the Commission hereby adopts these Findings as part of the approval of the Rancho Laguna II 27 Lot Project.

B. Organization of Findings.

These CEQA Findings are set forth as follows. Section 2 identifies the 27 Lot Project's potentially significant impacts and necessary corresponding mitigation measures and sets forth the required CEQA Findings. The sequence of the discussion of impacts in Section 2 corresponds to the impacts sequence in the MMRP for the 27 Lot Project. Following each potentially significant impact are the Findings required by CEQA (§21081) and CEQA Guidelines (§15091(a)(1)-(3)). Each Finding and rationale is based on and supported by substantial evidence in the record as a whole.

C. Less Than Significant Impacts.

As previously described, CEQA findings are made on impacts that are considered significant. Such findings describe the disposition of the impact following application of feasible and adopted mitigation measures. CEQA findings are not required to be made on impacts that were found to be less than significant without mitigations. The final EIR already addresses the disposition of these impacts; mitigation is not required to reduce the magnitude of these impacts any further. Consequently, the Commission need not make any further findings with respect to these impacts. For example, the City of Lafayette's contention there are other City locations with public views of the Project that may constitute a significant visual quality impact was demonstrated to be incorrect, due to topographic features between the Project site and the view point. That determination was made by visiting the locations and through photosimulations.

In making this determination on the impacts of the 27 Lot Project that are less than significant without mitigation, the Commission has reviewed the entire administrative record, and concurs with the analyses in the certified EIR with respect to conclusions on significance of the 27 Lot Project impacts as mitigated. Individual impacts that were potentially significant for the 35 lot project in the Draft EIR, but are no longer significant based on the design of the 27 Lot Project, are also discussed below.

2. MITIGATION OF POTENTIALLY SIGNIFICANT IMPACTS

LAND USE

(DEIR, Section 3.10)

Impact 3.10 #2. Conversion of Agricultural Land (reviewed in DEIR, pp. 3.10 – 11 and MMRP, pp.1-2).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant land use effects on the environment with respect to “Conversion of Agricultural Land.” This Impact 3.10 #2 is less than significant with the implementation of Mitigation Measure 3.10 #2 for the 27 Lot Project as designed.

In Support of Finding: The adverse land use effects of the Project with respect to conversion of agricultural land are avoided by the preservation of open space on the Project site and the continuation of grazing after Project development. Grazing is the historical agricultural use of this hillside property. In the Project as designed 90% of the 180 acre site is preserved as permanent open space. The open space will be professionally managed by the GHAD, consistent with an Open Space Management Plan. Grazing is appropriate on most of the 162 acres of open space. Grazing will be managed by the GHAD consistent with the other Plan objectives and mitigation measures for fire protection and to avoid the degradation of preserved or enhanced environmental resources, in particular Coyote Creek and the Rheem valley areas. Conversion of a portion of the property from grazing use is a less than significant impact.

Impact 3.10 #4. Density (reviewed in DEIR, pp. 3.10 – 14, Responses to Comments, Master Responses 2 and 3, and MMRP, pp.2-5).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant land use effects on the environment with respect to its “Density.” This Impact 3.10 #4 is less than significant for the 27 Lot Project as designed, without the need for an additional, separate mitigation measure.

In Support of Finding: The adverse land use effects of 27 lots on the 180 acre Project site, in terms of its density, are avoided by the design of the 27 Lot Project in two development clusters that total 18 acres in size. The density and design of the 35 lot project analyzed in the Draft EIR resulted in potentially significant effects on the environment. The proposed water quality basin at the end of “C” Court on the southern plateau required significant excavation. The grading plan created slope issues on some of the lots, inconsistent with the OS-PD requirement that pads and driveways be developed on average slopes of less than 25%. The project resulted in significant visual quality impacts as seen from public views. As redesigned, the 27 Lot Project includes a relocated water quality basin at the end of “C” Court that does not require significant

excavation or any other adverse environmental effect. All pads and driveways meet OS-PD average slope standards.

As redesigned and mitigated, all visual quality impacts are less than significant. For example, valley development is limited to a shortened “D” Drive and 6 lots and a revised mitigation measure requires the new landscape be placed so as to preserve open views as seen from Rheem Boulevard, a scenic road. The 27 Lot Project as designed and mitigated has no significant environmental impacts. Its overall density of one unit per 6.7 acres (75% of the maximum density) is determined to be appropriate based on site characteristics, site-specific analysis and Project design and mitigation, and does not result in any significant impacts, as those significance thresholds are informed by the General Plan.

Impact 3.10 #5. MOSO/Non-MOSO Land Use (reviewed in DEIR, pp. 3.10 – 15, Responses to Comments, Master Responses 2 and 3, and MMRP, pp.5-7).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant land use effects on the environment with respect to its “MOSO/Non-MOSO Land Use” designation. This Impact 3.10 #5 is less than significant for the 27 Lot Project as designed, without the need for an additional, separate mitigation measure.

In Support of Finding: The adverse land use effects of development on MOSO and Non-MOSO land are avoided by the 27 Lot Project as designed and mitigated. Through implementation of Mitigation Measures 3.20 #1 - 3.20 #10 and 3.30 #1 – 3.30 #3 all impacts related to geotechnical and hydrologic constraints will be mitigated. No streets or homes are located on MOSO land, let alone in designated high risk areas on MOSO land. No streets or homes as developed on Non-MOSO land will be subject to high or moderate geologic risk. All risk has been minimized to an acceptably low level.

No development, including grading, is proposed on the MOSO portion of the property, other than dirt public trails and potentially a portion of a sewer line off “C” Court. Completion of the two development clusters, comprised of 18 acres of the Non-MOSO portion of the property, as designed and mitigated will result in no significant environmental impacts (including visual quality impacts). The Project is in harmony with the General Plan considered as a whole, including the Open Space Lands goals and policies (see Attachment 6 - the General Plan Consistency Finding in Exhibit C to Resolution **XX-2009**). The public trails in the permanent open space are outdoor recreational facilities that permit lot sizes down to 15,000 square feet. The 27 Lot Project as designed and mitigated meets the land use requirements of its MOSO/Non-MOSO designation, without the need for an additional, separate mitigation measure.

GEOLOGY AND SOILS

(DEIR, Section 3.20)

Impact 3.20 #1. Ground Shaking (DEIR, pp. 3.20 – 14, Responses to Comments, Master Response 4, and MMRP, p. 7).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to “Ground Shaking.” This Impact 3.20 #1 is less than significant with the implementation of Mitigation Measure 3.20 #1.

In Support of Finding: The adverse geology and soils effects of the Project with respect to ground shaking are avoided by the design and construction of buildings and other improvements in accordance with the latest UBC and other code requirements.

Impact 3.20 #3. Expansive Soils (DEIR, pp. 3.20 – 15, Responses to Comments, Master Response 4, and MMRP, pp. 7-9).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to “Expansive Soils.” This Impact 3.20 #3 is less than significant with the implementation of Mitigation Measure 3.20 #3.

In Support of Finding: The adverse geology and soils effects of the Project with respect to expansive soils are avoided by the implementation of protective measures for Project improvements, set forth in Mitigation Measure 3.20 #3, during the design and construction phase of the Project. Those measures include overexcavation of cut and fill lots and moisture conditioning of fills to over optimum. Documentation by the Project geotechnical engineer, submitted to the Town’s geotechnical consultant, will help assure that implementation.

Impact 3.20 #4. Groundwater (DEIR, pp. 3.20 – 16, Responses to Comments, Master Response 4, and MMRP, p. 8).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to “Groundwater.” This Impact 3.20 #4 is less than significant with implementation of Mitigation Measure 3.20 #4.

In Support of Finding: The adverse geology and soils effects of the Project with respect to shallow groundwater are avoided by the implementation of protective measures for Project improvements, set forth in Mitigation Measure 3.20 #4, during the design and construction phase of the Project. Those measures include construction of subdrains in keyways and reconstructed landslide areas.

Documentation by the Project geotechnical engineer, submitted to the Town's geotechnical consultant, will help assure that implementation.

Impact 3.20 #5a. Landslides (DEIR, pp. 3.20 – 17, Responses to Comments, Master Response 4, and MMRP, pp. 8-10).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to "Landslides." This Impact 3.20 #5a is less than significant with implementation of Mitigation Measure 3.20 #5a.

In Support of Finding: The adverse geology and soils effects of the Project with respect to landslides are avoided by placing the two residential development clusters in locations that are most suitable for stabilization, and by the implementation of protective measures, set forth in Mitigation Measure 3.20 #5a, during the design and construction phase of the Project. Prior to approval of the Precise Development Plan, a final Geotechnical Plan of Control and a final Drainage Plan will be completed and approved. Formation of the GHAD will provide for professional management of geologic and hydrologic conditions on the property after it is developed, consistent with those Plans, so that Project improvements are protected long term. Permanent GHAD funding will be provided by lot owners through assessments, both for routine maintenance and specific repairs.

Impact 3.20 #5b. Landslides (Rheem Boulevard) (DEIR, pp. 3.20 – 17, Responses to Comments, Master Response 4, and MMRP, pp. 10-14).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology effects on the environment with respect to "Rheem Boulevard Landslides." This Impact 3.20 #5b is less than significant with implementation of Mitigation Measure 3.20 #5b.

In Support of Finding: The adverse geology and soils effects of the Project with respect to landslides under Rheem Boulevard along the Project frontage are avoided by the measures that will be undertaken by the Project Sponsor to stabilize that frontage. The technique and strategy to stabilize Rheem Boulevard is recommended by ENGEO, the Applicant's geotechnical engineer, and approved by the Town and EIR geotechnical consultants. "A" Way frontage will be stabilized with engineered slopes and geogrid reinforcement. The rest of the frontage will be stabilized with a valley buttress of engineered fill. Following its stabilization, the Project Sponsor will repair and improve Rheem Boulevard. The GHAD will monitor and maintain these stabilization improvements on the Project site once completed.

The Town and Project Sponsor will be co-applicants for the required permits from resource agencies. If they are unable to secure permits, with feasible conditions, to fill the lower valley intermittent drainage with the valley buttress, then instead the Project

Sponsor will pay its fair share of the Town's cost to construct a buried retaining wall/tie-back system or geogrid reinforcement between "A" Way and the upper valley. Stabilization, repair and improvement of that section of Rheem Boulevard are not necessary to safely develop the Project as proposed. Its continued instability, unlike the "A" Way and upper valley frontage sections, does not adversely affect Project improvements, as confirmed by ENGEO and the Town and EIR geotechnical consultants. The Rheem Boulevard Landslides Impact at this lower valley frontage section has been avoided by the location of Project improvements away from that landslide condition. However, assuming the feasible permits from resource agencies may be secured, the Project Sponsor has agreed as part of this mitigation to complete the lower valley buttress at its cost, as a public benefit and the most logical and practicable way to stabilize Rheem Boulevard.

Impact 3.20 #6. Soil Creep (DEIR, pp. 3.20 – 18 and MMRP, p. 14).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to "Soil Creep." This Impact 3.20 #6 is less than significant with implementation of Mitigation Measure 3.20 #6.

In Support of Finding: The adverse geology and soils effects of the Project with respect to soil creep are avoided by the implementation of protective measures for Project improvements, set forth in Mitigation Measure #6, during the design and construction phase of the Project. These measures include excavation and compaction of soils in development areas that is subject to creep. The effectiveness of the measures used will be verified and tested by the Project geotechnical consultant, and submitted to the Town's geotechnical consultant, during that phase.

Impact 3.20 #7. Erosion (DEIR, pp. 3.20 – 18, Response to Comments, Master Responses 4 and 5, and MMRP, pp. 14-15).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to "Erosion." This Impact 3.20 #7 is less than significant with implementation of Mitigation Measure 3.20 #7.

In Support of Finding: The adverse geology and soils effects of the Project with respect to erosion are avoided by the implementation of the erosion control measures during construction and the permanent measures incorporated into the design and grading of the Project, described in Mitigation Measure 3.20 #7. Those design measures include providing positive drainage from building pads. The recreated wetland swale and intermittent drainage on the valley buttress will be designed to minimize erosion on their banks. In addition, the Project Sponsor has agreed to Condition II.4 of the Conceptual Development Plan, whereby it will work with interested homeowners along Rheem Boulevard below "A" Way to help secure permits for the placement of buried sections of

riprap in strategic locations in the intermittent drainage on their lots in order to reduce erosion. The Project Sponsor will construct the buried riprap at its cost, assuming the permits do not require replacement mitigation. The homeowner will be responsible to maintain the riprap on his/her lot.

Impact 3.20 #8. Cuts and Fills (DEIR, pp. 3.20 – 19, Update for Final EIR, and MMRP, pp.15-16).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to “Cuts and Fills.” This Impact 3.20 #8 is less than significant based on the design of the 27 Lot Project.

In Support of Finding: The adverse geology and soils effects of the Project with respect to cuts and fills are avoided by the redesign of the 27 Lot Project, in which all slopes are limited to a maximum grade of 3:1. Thus, Mitigation Measure 3.20 #8 in the Draft EIR is no longer necessary.

Impact 3.20 #9. Building Pads (DEIR, pp. 3.20 – 20 and MMRP, p. 16).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant effects on the environment with respect to “Building Pads.” This Impact 3.20 #9 is less than significant with implementation of Mitigation Measure 3.20 #9.

In Support of Finding: The adverse geology and soils effects of the Project with respect to its building pads are avoided by implementation of protective measures for building pads, set forth in Mitigation Measure 3.20 #9, during the design and construction of the Project. Those measures to minimize settlement include deep fills being placed at a higher relative compaction and conditioned to above optimum moisture. Techniques to minimize differential settlement include replacement of cut with engineered fill and use of a rigid type foundation such as drilled pier and grade beam.

Impact 3.20 #10. Foundations (DEIR, pp. 3.20 – 21 and MMRP, p. 17).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant geology and soils effects on the environment with respect to “Foundations” of buildings. This Impact 3.20 #10 is less than significant with implementation of Mitigation Measure 3.20 #10.

In Support of Finding: The adverse geology and soils effects of the Project with respect to its building foundations are avoided by implementation of protective measures, set forth in Mitigation Measure 3.20 #10, in the design and construction of the Project. Those measures include meeting all recommendations by ENGEO in its preliminary soil investigation report. Observation and testing by the Project geotechnical engineer,

submitted to the Town's geotechnical consultant, will help assure that implementation.

HAZARDS AND HAZARDOUS MATERIALS

(DEIR, Section 3.25)

Impact 3.25 #2. Construction-Related Hazardous Materials (DEIR, pp. 3.25 – 3 and MMRP, pp. 17-18).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant effects on the environment with respect to "Construction-Related Hazardous Materials." This Impact 3.25 #2 is less than significant with implementation of Mitigation Measure 3.25 #2.

In Support of Finding: The adverse hazards and hazardous materials effects of the Project with respect to construction-related hazardous materials used in the course of Project construction are avoided by the implementation of Mitigation Measure 3.25 #2. It requires compliance with all Federal, State and local laws regarding use of hazardous materials at construction sites.

HYDROLOGY, DRAINAGE AND WATER QUALITY

(DEIR, Section 3.30)

Impact 3.30 #1. Storm Drainage (DEIR, pp. 3.30 – 8, Responses to Comments, Master Response 5, and MMRP, pp. 18-21).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant hydrology, drainage and water quality effects on the environment with respect to "Storm Drainage." This Impact 3.30 #1 is less than significant with implementation of Mitigation Measure 3.30 #1 and #2.

In Support of Finding: The adverse hydrology, drainage and water quality effects of the Project with respect to stormwater drainage are avoided by the implementation of the performance standards, set forth in Mitigation Measure 3.30 #1, in the design and construction of the Project, as required in Mitigation Measure 3.30 #2. Peak stormwater flow increases resulting from the Project's impervious surface will be reduced to existing peak flows at the points of off site discharge by the implementation of those performance standards. The required detention will be provided through oversized underground stormdrain pipes and water quality basins. The water quality of stormwater discharges from those basins will meet Regional Water Quality Control Board ("RWQCB") standards. The performance standards and required design details will be set forth in the final Drainage Plan for the Project, which must be approved by the Town Engineer. Although not required to mitigate the storm drainage impact to less than significant, the Project Sponsor has agreed to Condition II.4 of the Conceptual Development Plan,

whereby it will increase the size of stormwater pipes with the objective to the reduce off site discharge during the larger 10-year through 100-year average recurrence storms to less than existing conditions, to the extent reasonably feasible.

Impact 3.30 #2. Groundwater Recharge (DEIR, pp. 3.30 – 12 and MMRP, pp. 21-22).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant hydrology, drainage and water quality effects on the environment with respect to “Groundwater Recharge.” This Impact 3.30 #2 is less than significant with implementation of Mitigation Measure 3.30 #2.

In Support of Finding: The adverse hydrology, drainage and water quality effects of the Project with respect to groundwater recharge are avoided by implementation of the performance standard in Mitigation Measure 3.30 #2 in the final design of the Project. The final Drainage Plan must demonstrate that existing springs and seeps are not dependent on the existing rainwater recharge from the Project development cluster areas. Details in the final grading plan and Precise Development Plan must be completed to demonstrate this lack of dependency. The final Drainage Plan, including this element of it, must be reviewed and approved by the Town Engineer. In the event spring and seep recharge is reduced by the final design of the development clusters and their impervious surfaces, and a supplemental water supply is needed to provide adequate recharge, further environmental analysis may be necessary. That will not be known until the final details of the Project design are completed. The performance standard to be applied to that final design is established by Mitigation Measure 3.30 #2.

Impact 3.30 #3. Water Quality (DEIR, pp. 3.30 – 13, Responses to Comments, Master Response 5, and MMRP, pp. 22-24).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant hydrology, drainage and water quality effects on the environment with respect to the “Water Quality” of storm and irrigation runoff. This Impact 3.30 #3 is less than significant with implementation of Mitigation Measure 3.30 #3.

In Support of Finding: The adverse hydrology, drainage and water quality effects of the Project with respect to the water quality of storm and irrigation runoff are avoided by implementation of performance standards, set forth in Mitigation Measure 3.30 #3, in the design, construction and maintenance of the Project. The final Drainage Plan will identify appropriate BMPs for erosion and siltation control during construction. The water quality basins will be designed to maintain runoff water quality consistent with regulatory standards, including the Contra Costa Clean Water Program Provision C.3 stormwater standards and the National Pollution Discharge Elimination System (NPDES) standards. RWQCB water quality certification is required. Fencing will be provided if needed to prevent grazing animals from entering drainage areas subject to these

regulations (e.g. water quality basins; wetland swale and intermittent drainage in the Rheem valley areas). The GHAD will be responsible for long term maintenance of the water quality basins and other drainage features of the Project, as well as enforcement of restrictions and requirements imposed on individual lots and with respect to street maintenance and use. The final Drainage Plan will incorporate the final C3 Stormwater Control Plan, and must be reviewed and approved by the Town Engineer. At a minimum, the performance standards in Mitigation Measure 3.30 #3 must be satisfied in the final Drainage Plan and its implementation.

VISUAL QUALITY, PARKS, RECREATION AND OPEN SPACE

(DEIR, Section 3.35)

Impact 3.35 #1. Change in Community Character (DEIR, pp. 3.35 - 7, Responses to Comments, Master Response 3, Update for Final EIR, and MMRP, pp. 24-26).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant visual quality effects on the environment with respect to “Change in Community Character.” This Impact 3.35 #1 is less than significant with implementation of Mitigation Measure 3.35 #1, as well as other visual quality mitigation measures.

In Support of Finding: The adverse visual quality effects of the Project with respect to a change in community character are avoided by implementation of Mitigation Measure 3.35 #1, as well as other visual quality mitigation measures. This impact concerns change in community character of the Project site as seen from public views. The change in community character caused by the Project as mitigated must be adverse to be significant and unavoidable. In other words, just because there is some change in community character does not mean the change is significant. The significance thresholds for visual quality impacts are informed by applicable General Plan policies. Under CEQA, the significance threshold for visual quality impacts, as informed by General Plan policies, addresses the impact of the Project with respect to public views of the Project site in the context of that whole particular public view.

For further support of Findings with respect to visual quality, see generally also the MMRP summary discussion in Impacts 3.35 #1-4, discussion of applicable General Plan goals and policies in the General Plan Consistency Statement and Matrix, and the discussion for the other visual quality Findings. Implementation of Mitigation Measures 3.35 #2, #3 and #4 also reduces the change in community character to less than significant.

Impacts on views of this private property as seen from other private properties are not environmental impacts considered under CEQA. This is not a situation where new development adversely obstructs views from existing private homes of other important scenery on or off the Project site (e.g., Mt. Diablo or ridgeline background behind the

Project site). Existing homes are not in close proximity to the new homes. The Project merely changes the current appearance of 10% of the 180-acre Project site, and only some of that limited development area is seen from some existing homes. That is a private matter, not a public matter in terms of environmental impacts.

In fact, the number of such views from private homes is relatively small based on intervening topography and existing landscape, as confirmed by photosimulations prepared by the Project Sponsor's photovisualist and included in his slide presentations. In any event, the appearance of the Project site and its vicinity as seen from those existing homes that see it after development of the 27 Lot Project will be open space trees, hillsides and ridgelines (e.g., from some homes on the westerly side of Birchwood Drive and some homes in Lafayette). Thus, the design and mitigation of the 27 Lot Project included to reduce to less than significant its impacts on public views, also benefits private views that include portions of the Project site.

Where new natural groupings of native evergreen trees are being planted to screen the view of some of the new homes from public views, the screening will not be effective for approximately 15 years (deciduous trees will be planted in locations not required for screening). The short term impact of seeing those homes or their rooftops without vegetative screening is not significant given their location and context as part of the overall public views. Most of those public views looking toward the Project site will continue to be of Project open space, and off site open space, trees and homes. The new homes will be designed to blend with the environment. Only a few new homes will be visible from any one public view location. Portions of the new streets, where visible from public views in the short term until the landscape screening matures (Rheem Boulevard and Joseph Drive), represent a relatively small part of those views.

The design of the water quality basins in the 27 Lot Project eliminates the significant grading required to create some of them in the 35 lot project. Low lying landscape around and in the open area of the water quality basins in the upper and lower Rheem valley will not impede open views of the valley, hillsides and ridgeline.

The public views of the Project site as developed will be predominately its open valley, hillsides and/or minor ridgeline. In the 27 Lot Project, the most direct view for travelers on Rheem Boulevard will continue to be one that includes an open view of the upper valley wetland swale, the open lower valley and intermittent drainage, and the hillsides and ridgeline. In contrast, the 35 lot project obstructs those views with tall trees and shrubs in close proximity to Rheem Boulevard and "D" Drive, lots extending into the lower Rheem valley, and two-story homes. "A" Way landscape has been changed to natural groupings of native evergreen trees and shrubs on both sides instead of the previous linear appearance. The valley buttress in the upper and lower Rheem valleys does not adversely change the character of views from Rheem Boulevard, compared to the existing conditions. Restricting the lower valley above "A" Way to permanent open space use, instead of open space plus houses, maintains a key character element of the current open view along this scenic road.

The predominant views for travelers on Rheem Boulevard will be open valleys with recreated wetland swale and intermittent drainage, trees and shrubs that screen the single-story homes and much of “D” Drive, native evergreen tree groupings in the area of “A” Way, and open hillsides and ridgeline. The enhanced new wetland swale and intermittent drainage represent a visual improvement to the degraded character of the existing swale on fill in the upper valley and the intermittent drainage in the lower valley.

Travelers at the bottom of Fernwood looking up at the Project site will see a hillside with natural groupings of native trees (instead of linear trees at the top of the hill as proposed for the 35 lot project). Similar changes in the landscape mitigation for Joseph Drive, Bollinger Canyon and St. Mary’s Road public views are provided. These public views of new homes on the southern plateau are limited in the number of homes and their small part in the overall view, the duration of the view, and/or the number of people who see them. Views from the top of Rohrer Drive and the nearby dirt trail to Lafayette Park include portions of 4 homes, which will be screened by new trees in natural groupings in the open space behind the lots. Those new homes and trees represent only a small part of the hillside and ridgeline view from those two locations.

Photosimulations by the Project Sponsor’s photovisualist support the determination that the impacts of the 27 Lot Project as designed and mitigated will have a less than significant effect on public views. The accuracy of the photosimulations and the photovisualist’s determination and investigation with respect to the number of public viewpoints and the impacts are supported by Town staff and EIR consultants in field investigations conducted after Comments to the Draft EIR were received. Based on that additional analysis and revisions to the 35 lot project and its landscape plan, the Commission concurs with Town staff and EIR consultants that visual quality impacts previously identified as significant and unavoidable for the 35 lot project are reduced to less than significant for the 27 Lot Project as designed and with implementation of the revised visual quality mitigation measures in the MMRP.

With 90% of the site (162 acres) preserved as permanent open space, the overall character of the 27 Lot Project as designed and mitigated will be semi-rural in appearance, with development limited to two relatively small clusters and the predominant character of the Project site its rural, contiguous open space component. The change in community character is less than significant with the 27 Lot Project as designed and mitigated, unlike the 35 lot project.

Impact 3.35 #2. Ridgeline Development (DEIR, pp. 3.35 - 8, Responses to Comments, Master Response 3, Update for Final EIR, and MMRP, pp. 26-30).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant visual quality effects on the environment with respect to “Ridgeline Development.” This Impact 3.35 #2 is less than significant with implementation of Mitigation Measure 3.35 #2, as well as other visual quality mitigation measures.

In Support of Finding: The adverse visual quality effects of the Project with respect to ridgeline development are avoided by implementation of Mitigation Measure 3.35 #2, as well as other visual quality mitigation measures. For further support of visual quality Findings, see generally also the MMRP summary discussion in Impacts 3.35 #1-4, discussion of applicable General Plan goals and policies in the General Plan Consistency Statement and Matrix, and the discussion on the other visual quality Findings. Implementation of Mitigation Measures 3.55 #1, #3 and #4 also reduces the ridgeline development visual quality impact to less than significant.

The minor ridgeline is not being developed with homes, unlike the original Rancho Laguna I project. 21 homes are located on the southern plateau which is less than 800 feet in elevation so it is not a minor ridgeline under the MOSO definition. The term “southern plateau” is used to avoid confusion with the MOSO “minor ridgeline” definition. In a CEQA context the southern plateau is the wider, bottom end of a ridgeline above those hillsides. The CEQA issue is whether or not the proposed development cluster there results in a significant visual quality impact, based on the significance threshold informed by the General Plan.

Public views of the minor ridgeline are more significant than public views of the southern plateau based on the topography of the Project site in relationship to off site public views and surrounding elements of those views. The view from the dirt trail off Rohrer Drive to Lafayette Park is a good example in that regard, where the minor ridgeline is the predominant view along with higher ridgelines to the north. No public views of the southern plateau development cluster include more than a few of the homes. Topographic and existing landscape blocks fuller views of the southern plateau development cluster as seen from public views in Lafayette and Moraga.

Views of southern plateau homes from Rheem Boulevard and the bottom of Fernwood Drive are restricted to a few rooftops. This is accomplished in part by lowering the building pad elevations below the existing southern plateau elevation and extending the top of the easterly hillside through placement of a natural contoured berm. Homes will be designed to blend with the environmental setting. Those short term views are thus not significant visual quality impacts. Long term views of those rooftops may be mitigated by locating natural groupings of evergreen native trees.

More of the southern plateau homes will be seen from the short public view toward the top of Joseph Drive, a cul-de-sac. A relatively small number of people will see that public view for a few seconds. Natural groupings of native evergreen trees in the open space on the southeasterly side of the development cluster are sufficient mitigation in light of those facts. The same is true with respect to the short view from an opening on an undeveloped lot on the easterly side of Birchwood Drive (natural tree groupings will be planted on the westerly side of Lots 23-27 and “B” Court).

Public views of an unnatural line of tree on the southern plateau ridgeline, as seen from the bottom of Fernwood Drive and from Birchwood Drive, are avoided by planting

screen trees in natural groupings. All ridgeline and hillside screen mitigation trees will be planted in permanent open space, managed and maintained by the GHAD. There is no reliance on trees that may be planted on individual lots for screen mitigation.

Impact 3.35 #3. Site Characteristics (DEIR, pp. 3.35 - 9, Responses to Comments, Master Response 3, Update for Final EIR, and MMRP, pp. 30-32).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant visual quality effects on the environment with respect to “Site Characteristics.” This Impact 3.35 #3 is less than significant with implementation of Mitigation Measure 3.35 #3, as well as other visual quality mitigation measures.

In Support of Finding: The adverse visual quality effects of the Project with respect to site characteristics are avoided by implementation of Mitigation Measure 3.35 #3, as well as other visual quality mitigation measures. For further support of visual quality Findings, see generally also the MMRP summary discussion in Impacts 3.35 #1-4, discussion of applicable General Plan goals and policies in the General Plan Consistency Statement and Matrix, and the discussion on the other visual quality Findings. Implementation of Mitigation Measures 3.55 #1, #2 and #4 also reduces the ridgeline development visual quality impact to less than significant.

The visual quality impact with respect to site characteristics involves an analysis similar to that for a change in community character. The 35 lot project changed the site characteristics from a semi-rural open setting to a suburban one, in particular along Rheem Boulevard. The 27 Lot Project as designed and mitigated maintains an open, semi-rural view of the valley, hillsides and ridgeline as seen from Rheem Boulevard. The tall retaining walls behind “D” Drive homes in the 35 lot project are eliminated. “D” Drive is shortened to the upper valley and homes are single-story. The recreated wetland swale and intermittent drainage on the valley butress, which will have a natural contoured appearance, is a site characteristic comparable to the existing valley features, albeit in an enhanced visual condition compared to the existing degraded condition.

The most important upper elevation characteristic of the site, as seen from public views, is the minor ridgeline and its associated westerly and easterly slopes. Those public views are preserved. As discussed in the other visual quality Findings, the natural grouping of native evergreen trees planted in Project open space between any new homes and any of the seven public viewpoints reduce any long term impact to less than significant. The short term views of those homes which will be designed to blend with the environment, prior to maturation of screen trees, is not a significant site characteristic visual impact in the full context of those public views (duration of view, number of people who see it, and/or small part of overall view).

90% of the site will be permanent open space. Professionally managed by the GHAD, its visual quality site characteristics will be improved. New groupings of native trees and

the new wetland swale and intermittent drainage will be visual enhancements of that open space. The two development clusters as designed and mitigated will blend with that predominantly open space setting. The Project will be semi-rural in appearance.

Impact 3.35 #4. Scenic Corridors (DEIR, pp. 3.35 - 10, Responses to Comments, Master Response 3, Update for Final EIR, and MMRP, pp. 32-37).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant visual quality effects on the environment with respect to “Scenic Corridors.” This Impact 3.35 #4 is less than significant with implementation of Mitigation Measure 3.35 #4, as well as other visual quality mitigation measures.

In Support of Finding: The adverse visual quality effects of the Project with respect to scenic corridors are avoided by implementation of Mitigation Measure 3.35 #4, as well as other visual quality mitigation measures. For further support of visual quality Findings, see generally also the MMRP summary discussion in Impacts 3.35 #1-4, discussion of applicable General Plan goals and policies in the General Plan Consistency Statement and Matrix, and the discussion on the other visual quality Findings. Implementation of Mitigation Measures 3.55 #1, #2 and #3 also reduces the scenic corridors visual quality impact to less than significant.

The public view of development on the Project site from only one location on St. Mary’s Road is restricted to a few rooftops on the southern plateau (Lots 24-27, and the view is very brief, indirect and a minor part of the view from that location. Planting natural groups of native evergreen trees in the Project open space between those homes and that viewpoint to screen those rooftops is sufficient to mitigate this scenic corridor impact to less than significant. The short term impact is not significant in the full context of this public view (short duration, indirect view, small part of overall view, four rooftops).

The public view of the Project site as seen by travelers along Rheem Boulevard in that scenic corridor represents the longest view time of the largest amount of the development seen by the most people. The Project site is the predominant view looking toward the east when traveling along the Rancho Laguna frontage.

In the 35 lot project, the Project Sponsor proposed 14 homes on “D” Drive along the entire length of the upper and lower valley buttness. A recreated intermittent drainage was proposed between “D” Drive and Rheem Boulevard with tall riparian landscape as well as Rheem Boulevard frontage trees. With that proposal, open views of the upper and lower valley would be effectively blocked from public view along Rheem Boulevard. To a certain extent hillside and ridgeline views would at least be partially blocked by the Rheem Boulevard trees. Two story homes and the high retaining walls behind those homes would adversely affect the views of the lower hillside.

In the 27 Lot Project the lower valley buttness is included, but there are no homes in order to maintain the most significant open valley view above the "A" Way crossing. The 6 homes on shortened "D" Drive will be single story on wide lots with room for buffer landscaping, including evergreen trees in the landscape easement along "D" Drive in front of the homes. Those trees and the ones on the other side of "D" Drive will be native species that grow tall enough to screen the homes but not so tall as to block hillside views. The relatively flat debris benches behind the 6 lots will be screened from view along Rheem Boulevard by the landscape and the homes. The tall retaining walls in the 35 lot project have been eliminated. A wetland swale will be recreated between "D" Drive and Rheem Boulevard with no tall landscape. The existing swale condition likewise does not include trees or any tall shrubs. "D" Drive entry has been relocated to the south which will eliminate the entry landscape necessary to screen the graded slopes and retaining wall required for an entry at the northerly end. Natural groupings of native evergreen trees will screen "A" Way for south bound travelers, without creating a suburban linear appearance. Travelers heading north and south on Rheem Boulevard will have open "cones of vision" for valley, hillside and ridgeline views.

The short term scenic corridor visual impact is not significant. The homes will be designed to blend with the environment. The recreated wetland swale and intermittent drainage Rheem valley areas, the hillsides and minor ridgeline will be the predominant views for travelers on Rheem Boulevard, both in the short term and long term. Thus, the public view of the Project side of the Rheem Boulevard scenic corridor will be open and semi-rural in appearance, with the open space views being prominent.

Impact 3.35 #5. Light and Glare (DEIR, pp. 3.35 – 12 and MMRP, pp. 37-38).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant visual quality effects on the environment with respect to "Light and Glare." This Impact 3.35 #5 is less than significant with implementation of Mitigation Measure 3.35 #5, as well as Mitigation Measure 3.35 #2.

In Support of Finding: The adverse visual quality effects of the Project with respect to light and glare are avoided by implementation of Mitigation Measure 3.35 #5 in the final design review of the Project, as well as Mitigation Measure 3.35 #2 with respect to the final landscape plan for the Project. Landscape screening and buffering in the open space and along the streets will also have the effect of limiting the off site visibility of residential lighting. Residences along "D" Drive will be single story. No street lights are included in the Project. Design features to limit light and glare include use of non-reflective material and finishes and downward, low-voltage exterior lighting (e.g., for driveways and yard areas). The HOA will be responsible to enforce these restrictions in the long term. The distances and topographic differences between the development clusters and existing residences or public views are such that these landscape and design features will be sufficient mitigation.

Impact 3.35 #6. Recreation & Trails (DEIR, pp. 3.35 – 13, Update for Final EIR, and MMRP, pp. 38-39).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant visual quality, parks, recreation and open space effects on the environment with respect to “Recreation and Trails” in open space. This Impact 3.30 #6 is less than significant with implementation of Mitigation Measure 3.35 #6.

In Support of Finding: The adverse environmental effects of the Project with respect to open space recreation opportunities are avoided by implementation of Mitigation Measure 3.30 #6 to establish and maintain public trails and public parking in the Project. The internal trail system is depicted on the Conceptual Development Plan. Dirt trails are narrow and suitable for steeper slopes. A decomposed granite path is included along Rheem Boulevard on the Project side. The EVA also serves as a trail. Public parking spaces are provided at the north end of “B” Drive. Public use of the private roads is provided. The opportunity is present to connect Project trails on the Coyote Creek side to future trails in Palos Colorados and to the Lafayette-Moraga Regional Trail. Public trails and parking will be maintained by the GHAD. The trails, parking area and internal roads will be open to public use in perpetuity, per Mitigation Measure 3.40 #5. A recorded covenant will so provide. Public views of open space within the site will be expanded by the trail access and locations.

Impact 3.35 #7. Wetlands Restoration (DEIR, pp. 3.35 – 13, Update for Final EIR, and MMRP 3.35 #7, pp.39-40).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant visual quality and open space effects on the environment with respect to “Wetlands Restoration.” This Impact 3.35 #7 is less than significant with implementation of Mitigation Measure 3.35 #7 and the other mitigation measures referenced therein.

In Support of Finding: The adverse visual quality and open space effects of the Project with respect to restoration of wetlands as mitigation for filling existing wetlands are avoided by implementation of Mitigation Measure 3.35 #7, as well as the other mitigation measures referenced therein, and the visual quality mitigation measures. The 27 Lot Project as designed and mitigated addresses both biological resources impacts and visual quality impacts. The wetland restoration will include a wetland swale in the upper valley, replacing the existing one, and intermittent drainage in the lower valley, replacing the existing one. Both replacements will be visual enhancements over the existing wetlands and revegetated in a manner to maintain open valley, hillside and ridgeline views.

TRAFFIC, TRANSPORTATION AND CIRCULATION

(DEIR, Section 3.40)

Impact 3.40 #2. Traffic Control Needs and Vehicle Queues at St. Mary's Road/Rheem Boulevard (DEIR, pp. 3.40 – 10, Responses to Comments, Master Response 8, and MMRP, pp. 40-41).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant traffic, transportation and circulation effects on the environment with respect to "Traffic Control Needs and Vehicle Queues at St. Mary's Road/Rheem Boulevard." This Impact 3.40 #2 is less than significant with implementation of Mitigation Measure 3.40 #2.

In Support of Finding: The adverse traffic, transportation and circulation effects of the Project with respect to traffic control needs and vehicle queues at St. Mary's/Rheem Boulevard are avoided by implementation of Mitigation Measure 3.40 #2. The Project traffic plus baseline (existing) traffic is less than with the 35 lot project but may still add to the need for a northbound left turn lane from St. Mary's Road to Rheem Boulevard, at least during PM peak hour conditions. Since Project traffic does not create the need for that left turn lane, the appropriate mitigation is payment at building permit to the Town of a fair share of its costs to construct the intersection improvement. That fair share would be 2.8% by current calculation based on 27 lots (previously 3.6% for 35 lots), which is the same as the Project's average share of current cumulative traffic during AM and PM peak hours based on EIR traffic counts. The Town Engineer will determine the fair share contribution prior to issuance of building permits, unless the contribution toward that impact has already been included by ordinance as part of the standard traffic mitigation fee for new development in Moraga.

Impact 3.40 #4. Access Intersection Design (DEIR, pp. 3.40 – 11, Responses to Comments, Master Response 8, Update for Final EIR, and MMRP, pp. 41-42).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant traffic, transportation and circulation effects on the environment with respect to "Access Intersection Design." This Impact 3.40 #4 is less than significant with the relocation of the "D" Drive intersection in the 27 Lot Project.

Facts in Support of Finding: The adverse traffic, transportation and circulation effects of the Project with respect to the "D" Drive access intersection design are avoided by the relocation of that intersection to the south. The sight distance concerns with the previous northerly entry where the Fay Hill Reservoir access intersection is located are not present with the southerly location. Mitigation Measure 3.40 #4 in the Draft EIR is no longer required.

Impact 3.40 #5. Internal Circulation (DEIR, pp. 3.40 – 12, Update for Final EIR, and MMRP, pp. 42-43).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant traffic, transportation and circulation effects on the environment with respect to “Internal Circulation.” This Impact 3.40 #5 is less than significant with implementation of Mitigation Measure 3.40 #5.

Facts in Support of Finding: The adverse effects on traffic, transportation and circulation of the Project with respect to internal circulation are avoided with implementation of Mitigation Measure 3.40 #5. The road, court and EVA grading sections on Sheet 2 of the Preliminary Grading Plan by CTA Engineering dated August, 2008, have been reviewed by and are acceptable to the Town Engineer and the Fire Marshall for the Moraga-Orinda Fire District (“Fire District”). They meet Town and Fire District standards for private roads and EVAs. Roadway widths and parking have been limited in order to reduce the grading and need for retaining walls. Mitigation Measure 3.40 #5 requires their final design to be consistent with those grading sections.

AIR QUALITY

(DEIR, Section 3.45)

Impact 3.45 #2. Construction Activities (DEIR, pp. 3.45 – 12 and MMRP, pp.43-45).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant air quality effects on the environment with respect to “Construction Activities.” This Impact 3.45 #2 is less than significant with implementation of Mitigation Measure 3.45 #2.

Facts in Support of Finding: The adverse short-term effects on air quality of the Project during its construction are avoided by implementation of Mitigation Measure 3.45 #2. It requires measures to reduce dust and equipment exhaust emissions be incorporated into construction plans and final grading plans. The consistent implementation of these measures during the course of construction will be the responsibility of the Project Sponsor’s Construction Manager, subject to review and oversight by the Town Engineer and Building Inspection Services. Measures include watering all active construction areas, hydroseeding graded areas, and monitoring wind conditions to limit short-term dust, and properly maintain construction equipment to limit short-term exhaust emissions. The Project Sponsor will also need to comply with the Bay Area Air Quality Management District regulations applicable to construction sites, as they may be updated.

The Responses to Comments at Section C.3.b include an analysis and discussion of greenhouse gas emissions (“GHG” emissions) associated with the 35 lot project. GHG emissions are so small as to be virtually non-measurable. The 27

Lot Project GHG emissions are even less. There are fewer homes and, per Condition II.9, each of them must be designed to achieve 90 points in the Town's "Greenbuilding Program." In so doing, each home must provide at least 90% of its electrical energy target load through photovoltaic cells and construction design and must include solar water heating. Thus, GHG emissions and climate change impacts of the 27 Lot Project are insignificant, both on a project and cumulative level.

NOISE

(DEIR, Section 3.50)

Impact 3.50 #2. Construction Activities (DEIR, pp. 3.50 – 6 and MMRP, pp.46-47).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant noise effects on the environment with respect to "Construction Activities." This Impact 3.50 #2 is less than significant with implementation of Mitigation Measure 3.50 #2.

Facts in Support of Finding: The adverse short-term effects on noise of the Project during its construction are avoided by implementation of Mitigation Measure 3.5 #2. It requires measures to reduce construction noise be implemented during construction and as part of the construction plans. Measures include construction scheduling limitations, equipment muffler maintenance, and equipment location and shielding. The Project Sponsor must retain a Disturbance Coordinator to receive and timely respond to noise complaints

BIOLOGICAL RESOURCES

(DEIR, Section 3.55)

Impact 3.55 #3. Loss of USACE - Jurisdictional Wetlands (DEIR, pp. 3.55 – 32, Responses to Comments, Master Responses 5, 6 and 7, Update for Final EIR, and MMRP, pp. 48-52).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to "Loss of USACE – Jurisdictional Wetlands." This Impact 3.55 #3 is less than significant with implementation of Mitigation Measures #3.55 #3a and #3b.

In Support of Finding: The adverse biological resources effects of the Project with respect to loss of USACE jurisdictional wetlands are avoided by implementation of Mitigation Measures 3.55 #3a and #3b. The Project requires the filling of jurisdictional wetlands in the upper Rheem valley to create the valley buttress in order to stabilize that section of Rheem Boulevard and develop 6

residential lots, and in the lower Rheem valley to create the valley buttress required to stabilize that section of Rheem Boulevard. There is no practicable alternative to filling those jurisdictional wetlands and still meet a key Project objective of the Town: stabilization, repair and improvement of Rheem Boulevard along the entire Project frontage. Completion of that repair by the Project Sponsor with a full valley buttress is the only economically feasible way for the Town to accomplish this objective.

The mitigation measures require creation of a new wetland swale, intermittent drainage, seasonal wetland and seeps on the new valley buttress. The measures set forth performance standards necessary to accomplish that mitigation. Unlike the 35 lot project, the Project Sponsor is not relying on an off site location to provide mitigation for the loss of jurisdictional wetlands in the 27 Lot Project, because without the homes in the lower valley there should be sufficient acreage to fully mitigate on site. Off site mitigation is a back up to be used only if determined necessary, at the more detailed design stage and as part of the 404 permitting process, to satisfy performance standards.

A final Rheem Valley Revegetation Plan and final Wetland/Special-Status Species Plan shall demonstrate how those performance standards will be met. The Plans must be prepared by a qualified restoration ecologist. Final details and conditions for filling the jurisdictional waters of the U.S. will be determined through the Section 404 permitting process with the Army Corps of Engineers. The GHAD formed by the Town for the Project will be responsible for long-term professional monitoring and management of the new wetlands.

Impact 3.55 #4. Non-Corps Jurisdictional Wetlands (DEIR, pp. 3.55 – 34, Master Responses 5, 6 and 7, and MMRP, pp.52-55).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Non-Corps Jurisdictional Wetlands.” This Impact 3.55 #4 is less than significant with implementation of Mitigation Measures #4a and #4b.

In Support of Finding: The adverse biological resources effects of the Project with respect to riparian habitats not otherwise qualifying as federally regulated wetlands (i.e., Central Coast riparian scrub habitat) are avoided by implementation of Mitigation Measures #4a and #4b. The Central Coast riparian scrub removal is required to construct the Project in the lower Rheem valley, including the stabilization of Rheem Boulevard and construction of “A” Way. The mitigation measures require the creation of new Central Coast riparian scrub habitat on the lower valley buttress and, if necessary, in the Coyote Creek area. The measures set forth performance standards to accomplish that mitigation. A final Rheem Valley Revegetation Plan shall demonstrate how those performance standards will be met. The Plan must be prepared by a qualified restoration ecologist. Final details and

conditions for removal of the Central Coast riparian scrub will be subject to the requirements of the California Department of Fish and Game (“CDFG”) and the RWQCB. The GHAD formed by the Town for the Project will be responsible for long-term professional monitoring and management of the new wetlands.

Impact 3.55 #5. Loss of Native Trees (DEIR, pp. 3.55 – 37 and MMRP, pp. 55-60).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Loss of Native Trees” in the lower Rheem valley. This Impact 3.55 #5 is less than significant with implementation of Mitigation Measures 3.55 #5a, #5b and #5c.

In Support of Finding: The adverse biological resources effects of the Project with respect to loss of 64 mature native trees (55 arroyo willows and 9 upland trees) in the lower Rheem valley are avoided by implementation of Mitigation Measures 3.55 #5a, #5b and #5c. The mitigation measures require replacement arroyo willow trees be planted (201 trees) in the lower Rheem valley and the Coyote Creek area, and replacement upland trees planted (42 trees) in the permanent open space. The final Rheem Valley Revegetation Plan shall demonstrate how the performance standards in the mitigation measures will be met. The GHAD formed by the Town for the Project will be responsible for long-term professional monitoring and management of the new trees.

Impact 3.55 #6. Loss of Native Trees on the East Slope (DEIR, pp. 3.55 – 40 and MMRP, pp. 60-67).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Loss of Native Trees on the East Slope.” This Impact 3.55 #6 is less than significant with implementation of Mitigation Measures 3.55 #6a, #6b and #6c.

In Support of Finding: The adverse biological resources effects of the Project with respect to loss of native trees on the east slope (southern plateau) are avoided by implementation of Mitigation Measures 3.55 #6a, #6b and #6c. Measure #6a requires the recommendations of a qualified arborist for protection of the single mature valley oak at Lot 7 be implemented in the final grading plan for any necessary grading within its dripline. The revised grading plan for the 27 Lot Project in the area of Lots 7-12 and Lots 16 and 17 avoids impacts to several native trees impacted by the grading plan for the 35 lot project. Measure #6b requires a survey of all trees within 50 feet of the limits of grading for the southern plateau development cluster and any direct impacts to trees (i.e., grading overlaps with

driplines) be mitigated per the recommendations of a qualified arborist included with the final grading plan. Measure #6c will be implemented only if a sewer line for Lots 13-22 is extended from the end of “C” Court through open space to a manhole in the Lafayette-Moraga Regional Trail.

Impact 3.55 #9. California Red-Legged Frog (“CRLF”) (DEIR, pp. 3.55 – 42, Responses to Comments, Master Response 6, and MMRP, pp. 62-67).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “CRLF” direct impacts. This Impact 3.55 #9 is less than significant with implementation of Mitigation Measures 3.55 #9a – f.

In Support of Finding: The adverse biological resources effects of the Project with respect to CRLF direct impacts are avoided by implementation of Mitigation Measures 3.55 #9a – f. The Project site is not within designated CRLF “critical habitat.” It includes no suitable CRLF breeding habitat. The Coyote Creek portion of the Project site is a likely CRLF dispersal area, because the breeding populations have been documented in ponds in the upper watershed of Coyote Creek (Palos Colorados site) and suitable habitat occurs in nearby Las Trampas Creek. The potential for CRLF dispersal in the upper and lower Rheem valley areas is low due to lack of vegetative cover and standing water for nine months of the year. Habitat replacement mitigation is not required. A permit will be required from the United States Fish and Wildlife Service (“USFWS”) based on the dispersal potential in order to avoid a CRLF “take.” The final Wetland/Special-Status Species Plan for the 27 Lot Project will be submitted for approval as part of that permit review. Mitigation is included to protect CRLF movement in the Coyote Creek dispersal area. Those measures include fencing off the Coyote Creek banks and monitoring average grass height. Mitigation is included to avoid CRLF direct mortalities in the course of construction in the Rheem valley area, even though the potential is low. Those measures include restricting grading in that area until after the peak season of CRLF dispersal (May 1) and to require night surveys by a qualified wildlife biologist no more than 48 hours from the time clearing and grubbing is commenced. The final Wetland/Special Status Species Plan must demonstrate that performance standards in the mitigation measures will be met. The GHAD formed by the Town Council will be responsible for long-term professional monitoring and management of the open space to protect its CRLF dispersal locations confirmed by the USFWS.

Impact 3.55 #10. Direct Impacts to Alameda Whipsnake (“AWS”) (DEIR, pp. 3.55 – 46, Responses to Comments, Master Response 6, and MMRP, pp. 67-72).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Direct Impacts to Alameda Whipsnake.” This Impact 3.55 #10 is less than significant with implementation of Mitigation Measures 3.55 #10a – f.

In Support of Finding: The adverse biological resources effects of the Project with respect to direct impacts to the AWS are avoided by implementation of Mitigation Measures 3.55 #10a – f. The Project site is located within an area proposed to be AWS “critical habitat.” The site has some suitable habitat for foraging and dispersal of AWS individuals. The potential for that occurrence is low and the site is not suitable for a breeding population. A permit will be required from the USFWS based on the dispersal potential in order to avoid an AWS “take.” The final Wetland/Special-Status Species Plan for the 27 Lot Project will be submitted for approval as part of that permit review. Mitigation is included to protect potential AWS dispersal and foraging habitat, such as creation of rock piles, grazing management that retains suitable grassland habitat, and the permanent preservation of open space. Mitigation is included to avoid direct mortalities during construction, such as by initiating brush clearing and grading only after the peak season of AWS dispersal (June 1) and conducting surveys no more than 24 hours before commencement of that work. The final Wetland/Special Status Species Plan must demonstrate that performance standards in the mitigation measures will be met. The GHAD formed by the Town Council will be responsible for long-term professional monitoring and management of the open space to protect its AWS dispersal and foraging locations.

Impact 3.55 #12. Direct Impacts to Nesting Raptors and Other Nesting Migratory Birds, Occupied Nests, and Active Bat Roosts (DEIR, pp. 3.55 – 50, Responses to Comments, Master Response 6, and MMRP, pp. 73-75).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Direct Impacts to Nesting Raptors and Other Nesting Migratory Birds, Occupied Nests, and Active Bat Roosts.” This Impact 3.55 #12 is less than significant with implementation of Mitigation Measures 3.55 #12a – e.

In Support of Finding: The adverse biological resources effects of the Project with respect to direct impacts on nesting raptors and other nesting migratory birds, occupied nests, and active bat roosts are avoided by implementation of Mitigation Measures 3.55 #12a – e. Measures to avoid direct impacts to birds include limitation on the months in which land clearing activities may be conducted, or the requirement of pre-construction surveys by a qualified biologist to determine if occupied nests are present and the protection of any such nests, fledglings and young birds. Measures to avoid direct impacts to bats include pre-construction surveys of large trees and snags by a qualified wildlife biologist and protection of identified bat roosts.

Impact 3.55 #13. Direct Impacts on Sensitive Plant Communities (DEIR, pp. 3.55 – 51 and MMRP, pp. 75-77).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Direct Impacts on Sensitive Plant Communities.” This Impact 3.55 #13 is less than significant with implementation of Mitigation Measures #13a – f.

In Support of Finding: The adverse biological resources effects of the Project with respect to direct, inadvertent impacts on sensitive plant communities are avoided by implementation of Mitigation Measures #13a – f. Those sensitive plant communities that are not removed as part of the Project construction will be protected from inadvertent impacts such as accidental grading, vehicle traffic, stockpiling of materials and fugitive dust by mitigation measures undertaken during the course of construction. Those measures include fencing plant communities and erosion control.

Impact 3.55 #15. Degradation of Wildlife Habitats and Decrease in the Carrying Capacity for Wildlife and Special-Status Species (DEIR, pp. 3 55 – 53, Responses to Comments, Master Response 6, and MMRP, pp. 77-78).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Degradation of Wildlife Habitats and Decrease in the Carrying Capacity for Wildlife and Special-Status Species.” This Impact 3.55 #15 is less than significant with implementation of Mitigation Measures 3.55 #15a – c.

In Support of Finding: The adverse biological resources effects of the Project with respect to degradation of wildlife habitats and decrease in the carrying capacity for wildlife and special-status species are avoided by implementation of Mitigation Measures #15a – c, as well as other biological resources mitigation measures. The final Wetland/Special-Status Species Plan will be included as part of the final Open Space Management Plan for the 27 Lot Project. Those Plans will provide for ecologically based management of the habitats in the 162 acres of Project permanent open space. The Plans will be reviewed and approved by the Town and resource agencies, and must demonstrate that, through their implementation, performance standards in the applicable mitigation measures will be achieved. The GHAD formed by the Town Council will fund and provide that professional management in perpetuity. Otherwise, these habitats could degrade over time through benign neglect, in part through increased human interface (public trails and nearby new homes). With implementation of these Plans, the habitats on the Project site should permanently be improved, compared to the existing condition of benign neglect.

Impact 3.55 #16. California Red-Legged Frog Habitat (DEIR, pp. 3.55 – 54, Responses to Comments, Master Response 6, and MMRP, pp. 78-79).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “CRLF Habitat.” This Impact 3.55 #16 is less than significant with implementation of Mitigation Measures 3.55 #16a and #16b.

In Support of Finding: The adverse biological resources effects of the Project with respect to CRLF habitat are avoided by implementation of Mitigation Measures 3.55 #16a and #16b, as well as other biological resources mitigation measures. The measures to protect and maintain CRLF dispersal habitat will be implemented through the final Wetland/Special-Status Species Plan as part of the final Open Space Management Plan for the 27 Lot Project. Those measures include steps to be implemented by homeowners and enforced by the GHAD or HOA, so that new homes do not attract increased numbers of CRLF predators, such as raccoons and skunks, to the habitat areas (e.g., secured waste receptacles, homeowner guidelines for safely co-existing with wildlife).

Impact 3.55 #17. Indirect Recreational Effects on California Red-Legged Frog (DEIR, pp. 3.55 – 55 and MMRP, p. 79).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Indirect Recreational Effects on CRLF.” This Impact 3.55 #17 is less than significant with implementation of Mitigation Measures 3.55 #17a and #17b.

In Support of Finding: The adverse biological resources effects of the Project with respect to indirect recreational effects on CRLF are avoided by implementation of Mitigation Measures 3.55 #17a and #17b, as well as other biological resources mitigation measures. The final Wetland/Special-Status Species Plan for the 27 Lot Project will include required measures relative to CRLF protection and managing its preserved aquatic and upland habitat. Year-round water features are not allowed as part of the recreated wetland swale and intermittent drainage or elsewhere in the open space, in order to avoid attracting and keeping individual CRLF on site and subject to predation. Mitigation habitats should be the same as presently on site for that reason. Recreational features in habitat areas are limited to narrow dirt trails. Habitat signage and education brochures will identify the CRLF habitat, as well as the prohibited activities and homeowner responsibilities related to that habitat. Recreational uses in the habitat areas will be limited to public use of narrow pedestrian dirt trails in specific, limited locations and the EVA trail.

Impact 3.55 #18. Indirect Impacts on California Red-Legged Frog Habitat (DEIR, pp. 3.55 -56 and MMRP, p. 80).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Indirect Impacts on CRLF Habitat.” This Impact 3.55 #18 is less than significant with implementation of Mitigation Measure 3.55 18.

In Support of Finding: The adverse biological resources effects of the Project with respect to indirect impacts on CRLF habitat are avoided by implementation of Mitigation Measure 3.55 #18, as well as other biological resources mitigation measures. Grading, filling and construction of the recreated wetland swale and intermittent drainage could temporarily affect CRLF dispersal routes. Measures to avoid that potential impact include grading outside the peak season of CRLF dispersal, sediment control, silt and construction fencing, and periodic monitoring by a qualified wildlife biologist. These measures will be implemented in part through the final Rheem Valley Revegetation Plan and final Wetland/Special-Status Species Plan for the 27 Lot Project.

Impact 3.55 #19. Indirect Effects on Alameda Whipsnake (DEIR, pp. 3.55 – 57 and MMRP, pp.80-81).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Indirect Effects on AWS.” This Impact 3.55 #19 is less than significant with implementation of Mitigation Measure 3.55 #19.

In Support of Finding: The adverse biological resources effects of the Project with respect to indirect effects on AWS are avoided by implementation of Mitigation Measure 3.55 #19, as well as other biological resources mitigation measures. Measures include maintaining AWS dispersal habitat similar to what exists now and not allowing year-round water features that will attract AWS prey species.

Impact 3.55 #20. Recreational Impacts to Alameda Whipsnake (DEIR, pp. 3.55 – 57 and MMRP, pp.81-82).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Recreational Impacts to AWS.” This Impact 3.55 #20 is less than significant with implementation of Mitigation Measures 3.55 #20a and #20b.

In Support of Finding: The adverse biological resources effects of the Project with respect to recreational impacts to AWS are avoided by implementation of Mitigation Measures 3.55 #20a and #20b. Measures include those described above regarding indirect effects on AWS, as well as locating AWS rockpiles away from

high activity areas like trails. The final Wetland/Special-Status Species Plan for the 27 Lot Project will include measures described elsewhere herein to limit the effects of human activity on AWS and other species (e.g., signage, homeowner guidelines). Recreational activities in the habitat areas will be limited to public use of narrow pedestrian dirt trails in specific, limited locations and the EVA trail.

Impact 3.55 #21. Recreational Impacts to Wildlife and Wildlife Habitat (DEIR, pp. 3.55 – 58 and MMRP, pp.82-83).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid the significant biological resources effects on the environment with respect to “Recreational Impacts to Wildlife and Wildlife Habitat.” This Impact 3.55 #21 is less than significant with implementation of Mitigation Measures 3.55 #21a and #21b.

In Support of Finding: The adverse biological resources effects of the Project with respect to recreational impacts to wildlife and wildlife habitat are avoided by implementation of Mitigation Measures 3.55 #21a and #21b. Recreational facilities in the open space are limited to public use of narrow dirt trails in the limited locations shown on the Conceptual Development Plan dated August, 2008, and the EVA trail, with future connections limited to the Lafayette-Moraga Regional Trail and new trails in Palos Colorados. Trails do not branch off into Coyote Creek or the new wetland swale and intermittent drainage. Public use and activities in the open space outside trails will not be allowed. Dirt trailheads will be marked. Posted signs will require pets to be leashed and prohibit bicyclists. No trash cans are allowed. The final Open Space Management Plan for the 27 Lot Project shall include provisions for public trail management by the GHAD consistent with such measures in perpetuity.

Impact 3.55 #22. Invasive Species (DEIR, pp. 3.55 – 59 and MMRP, pp. 83-84).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Invasive Species.” This Impact 3.55 #22 is less than significant with implementation of Mitigation Measures 3.55 #22a – c.

In Support of Finding: The adverse biological resources effects of the Project with respect to invasive non-native plant species are avoided by implementation of Mitigation Measures 3.55 #21a – c. Use of non-native species known to invade wetlands and natural areas are prohibited in landscaping for streets, open space and residential lots. See the California Invasive Plant Council’s Invasive Plant Inventory. A deed restriction on each residential lot will so provide (enforceable by the GHAD and HOA), as will CC&Rs for the HOA and the final Open Space Management Plan and Landscape Plan for the 27 Lot Project. The final Wetland/Special-Status Species Plan will include measures to eradicate existing

artichoke thistle infestation. The Grazing Management Plan will include measures to prevent overgrazing. A restoration ecologist will monitor the site and make recommendations for locations that fail to show suitable vegetative cover. Long - term professional management to avoid invasive species on the Project site will be undertaken by the GHAD.

Impact 3.55 #23. Habitat Loss and Fragmentation (DEIR, pp. 3.55 – 62, Responses to Comments, Master Response 6, and MMRP, pp. 84-86)

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Habitat Loss and Fragmentation.” This Impact 3.55 #23 is less than significant with implementation of Mitigation Measures 3.55 #23a – c.

In Support of Finding: The adverse biological resources effects of the Project with respect to habitat loss and fragmentation are avoided by implementation of Mitigation Measures 3.55 #23a – c, as well as other biological resources mitigation measures. With the 27 Lot Project, fragmentation of the Project open space has been reduced compared to the 35 lot project which included homes in the lower Rheem valley. 90% of the Project site will now be permanent open space. Measures to prevent incremental degradation of habitat, in addition to other mitigation measures described herein, include a prohibition on stockpiling of soil in open space areas to be preserved, construction fencing, and long term management of preserved open space by the GHAD.

Impact 3.55 #24. Interruption to and Loss of Wildlife Movement Corridors (DEIR, pp. 3.55 – 63, Responses to Comments, Master Response 6, and MMRP, pp. 86-87).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Interruption to and Loss of Wildlife Movement Corridors.” This Impact 3.55 #24 is less than significant with implementation of Mitigation Measures 3.55 #24a and #24b.

In Support of Finding: The adverse biological resources effects of the Project with respect to interruption to and loss of wildlife movement corridors are avoided by implementation of Mitigation Measures 3.55 #24a and #24b, as well as other biological resources mitigation measures. Lost habitats in the Rheem valley areas will be recreated, per the final Rheem Valley Revegetation Plan for the 27 Lot Project. The “A” Way arch culvert design must conform to permit conditions from the CDFG and RWQCB intended to promote wildlife movement under it. Fragmentation of open space and thus interruption of wildlife corridors has been reduced in the 27 Lot Project compared to the 35 lot project, with no homes in the lower Rheem valley and no staging area along Rheem Boulevard.

Impact 3.55 #25. Indirect Impacts of Domestic Animals on Wildlife (DEIR, pp. 3.55 – 64 and MMRP, p. 87).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Indirect Impacts of Domestic Animals on Wildlife.” This Impact 3.55 #25 is less than significant with implementation of Mitigation Measure 3.5525.

In Support of Finding: The adverse biological resources effects of the Project with respect to the indirect impacts of domestic animals on wildlife are avoided by implementation of Mitigation Measure 3.55 #25. That measure requires a recorded restrictive covenant prohibiting unleashed pets in the Project open space, enforceable by the HOA, GHAD and Town. Signs will be posted to that effect.

Impact 3.55 #26. Grading Impacts (DEIR, pp. 3.55 – 65 and MMRP, pp. 87-88).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Grading Impacts.” This Impact 3.55 #26 is less than significant with implementation of Mitigation Measures 3.55 #26a and #26b.

In Support of Finding: The adverse biological resources effects of the Project with respect to grading are avoided by implementation of Mitigation Measures 3.55 #26a and #26b. In order to avoid degradation of upland habitats and downstream water quality impacts during Project grading and construction, these measures require standard erosion control procedures (e.g., silt fences, diversion ditches) and seeding bare ground upon completion of surface disturbance. The seed mix must be approved by a qualified restoration ecologist.

Impact 3.55 #29. Pollutants (DEIR, pp. 3.55 – 66 and MMRP, pp. 88-89).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Pollutants.” This Impact 3.55 #29 is less than significant with implementation of Mitigation Measure 3.55 #29, as well as other measures (see Mitigation Measure 3.30 #3).

In Support of Finding: The adverse biological resources effects of the Project with respect to pollutants from urban runoff are avoided by implementation of Mitigation Measures 3.55 #29 and 3.30 #3. The Project Sponsor must employ Best Management Practices in the Project design and maintenance that meet Contra Costa County’s C3 requirements for runoff water quality and RWQCB water quality certification requirements, in order to protect against degrading pollutants entering the recreated Rheem valley wetland swale and intermittent drainage and Coyote Creek. Water Quality basins and other water quality features will be professionally

managed and maintained and/or enforced by the GHAD. The GHAD will have the authority to enforce urban runoff pollution control restrictions and maintenance in common areas and on individual lots within the Project.

Impact 3.55 #30. Long-Term Adverse Effects on Native Oak Trees (DEIR, pp. 3.55 – 67 and MMRP, p. 89).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Long-Term Adverse Effects on Native Oak Trees.” This Impact is less than significant with implementation of Mitigation Measure 3.55 #30.

In Support of Finding: The adverse biological resources effects of the Project with respect to long-term adverse effects on native oak trees are avoided by implementation of Mitigation Measure 3.55 #30. Measures to protect native oak trees in the design and construction of streets, finished lots and the lower valley buttress are set forth in Mitigation Measures 3.55 #5 and #6. Measure 3.35 #30 addresses, after the finished lots are completed, the long-term protection of any native oak trees located on or near a finished lot against the adverse effects of nearby ornamental landscaping, irrigation and location, as well as the siting of structures on the finished lot. During the course of design review on lots associated with native oak trees, the plans and siting for house and landscape design must be reviewed by certified arborist.

Impact 3.55 #31. Impacts to Semaphore Grass, Floating Water Primrose and Davy Mannagrass (DEIR, pp. 3.55 – 67 and MMRP, pp. 89-91).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Impacts to Semaphore Grass, Floating Water Primrose and Davy Mannagrass.” This Impact 3.55 #31 is less than significant with implementation of Mitigation Measure 3.55 #31.

In Support of Finding: The adverse biological resources effects of the Project with respect to impacts on Semaphore Grass, Floating Water Primrose and Davy Mannagrass are avoided by implementation of Mitigation Measure 3.55 #31. These unique resources on the Project site are to be avoided if feasible. If grading in their location is required for the 27 Lot Project in its final design, or it is not feasible to maintain their hydrologic conditions, then seeds will be collected, plants grown, and seeds and plants transferred to suitable locations on the Project site. The mitigation plan will include success standards and remedial measures submitted for review and approval by CDFG as part of its Streambed Alteration Agreement. The GHAD will professionally manage and maintain these plant populations.

Impact 3.55 #32. Off-Road Vehicle Activity (DEIR, pp. 3.55 – 69 and MMRP, p. 91).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Off-Road Vehicle Activity.” This Impact 3.55 #32 is less than significant with implementation of Mitigation Measure 3.55 #32.

In Support of Finding: The adverse biological resources effects of the Project with respect to off-road vehicle activity in the preserved open space are avoided by implementation of Mitigation Measure 3.55 #32. Physical barriers will be installed where appropriate to prevent vehicles and motorcycles from driving in the open space, in particular during grading and construction of the Project. Prevention of such trespass activities in the long term will be part of the Open Space Management Plan and the responsibility of the GHAD.

Impact 3.55 #33. Long-Term Degradation of Open Space and Conserved Habitats (DEIR, pp. 3.55 – 69, Responses to Comments, Master Response 6, and MMRP, pp. 91-92).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant biological resources effects on the environment with respect to “Long-Term Degradation of Open Space and Conserved Habitats.” This Impact 3.55 #33 is less than significant with implementation of Mitigation Measure 3.55 #33.

In Support of Finding: The adverse biological resources effects of the Project with respect to long-term degradation of open space and conserved habitats are avoided by implementation of Mitigation Measure 3.55 #33, as well as other biological resources mitigation measures. The Open Space Management Plan for the 27 Lot Project will include the final Fire Protection Plan, Grazing Management Plan, and Wetland/Special-Status Species Plan as compatible components. The GHAD will employ qualified biological and fire protection monitors to assure implementation of fire protection and grazing plans is consistent with biological protection. Reports will be submitted to the Town confirming that determination by the monitors.

FIRE PROTECTION

(DEIR, Section 3.61)

Impact 3.61 #1. Wildland Fires (DEIR, pp. 3.61 – 4 and MMRP, pp. 92-94).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant fire protection effects on the environment with respect to “Wildland Fires.” This Impact 3.61 #1 is less than significant with implementation of Mitigation Measure 3.61 #1.

In Support of Finding: The adverse fire protection effects of the Project with respect to wildland fires are avoided with implementation of Mitigation Measure 3.61 #1. It requires a Fire Protection Plan be included as part of the Open Space Management Plan. The Fire Protection Plan must be reviewed and approved by the Fire District. The Plan will be managed by the GHAD, which must submit annual compliance reports to the Fire District. The Plan must include measures to keep fire risk in open space at reasonable levels, including vegetation mitigation and control and established maintenance intervals. The Plan must be compatible with protection of biological resources. Housing must be constructed with fire resistant materials. The EVA, road and court sections meet Fire District standards and will improve access to open space on and near the property, compared to current access.

Impact 3.61 #2. Fire Protection (DEIR, pp. 3.61 – 5 and MMRP, pp. 94-95).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant effects on the environment with respect to “Fire Protection” of the new residents and homes. This Impact 3.61 #2 is less than significant with implementation of Mitigation Measure 3.61 #2.

In Support of Finding: The adverse effects of the Project with respect to fire protection of the new residents and homes are avoided by implementation of Mitigation Measure 3.61 #2. It requires the Fire Protection Plan to incorporate the identified protection measures, such as residential fire sprinklers, fire hydrants at the accepted distances from homes, and fire flows that meet the most current Fire Code standards.

LAW ENFORCEMENT

(DEIR, Section 3.62)

Impact 3.62 #1. Police Protection (DEIR, pp. 3.62 – 2 and MMRP, p. 95).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant law enforcement effects on the environment with respect to “Police Protection.” This Impact 3.62 #1 is less than significant with implementation of Mitigation Measure 3.62 #1.

In Support of Finding: The adverse law enforcement effects of the Project with respect to police protection in the Town are avoided by implementation of Mitigation Measure 3.62 #1. The Town has established by ordinance development impact fees to offset cumulative impacts from new development, including the impact on police services. The police services portion of the development fees for the Project, paid at issuance of building permits, will be used by the Town to improve police services and response times. Ongoing revenues collected by the Town as a result of the Project after its full occupancy will be more than Town’s ongoing costs as a result of the Project, including police services.

SCHOOLS

(DEIR, Section 3.63)

Impact 3.63 #1. School Capacity (DEIR, pp. 3.63 – 3 and MMRP, pp. 95-96).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid the significant effects on the environment with respect to “Schools.” This Impact 3.63 #1 is less than significant with implementation of Mitigation Measure 3.63 #1.

In Support of Finding: The adverse effects of the Project with respect to schools are avoided by implementation of Mitigation Measure 3.63 #1. It requires the payment of the applicable school impact fees established by the Moraga School District and Acalanes Union School District. In accordance with State law those fees sufficiently mitigate school impacts of a residential project. The fees will be collected at building permit issuance.

WATER SUPPLY

(DEIR, Section 3.64)

Impact 3.64 #1. Water Demand (DEIR, pp. 3.64 – 7 and MMRP, pp. 96-97).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant water supply effects on the environment with respect to its “Water Demand.” This Impact 3.64 #1 is less than significant with implementation of Mitigation Measure 3.64 #1a and #1b.

In Support of Finding: The adverse water supply effects of the Project with respect to its water demand are avoided by implementation of the water conservation measures in Mitigation Measure 3.64 #1. Those required measures include drought-tolerant landscaping, efficient irrigation systems, and additional Demand Reduction Measures identified by the East Bay Municipal Utilities District (“EBMUD”) for the Project based on its water demand. The Project Sponsor will also be subject to the EBMUD Water Service Regulations and Schedule of Rates and Charges.

Impact 3.64 #2. Pressure Zones (DEIR, pp. 3.64 – 9 and MMRP, p. 97).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant water supply effects on the environment with respect to “Pressure Zones.” This Impact 3.64 #2 is less than significant with implementation of Mitigation Measure 3.64 #2.

In Support of Finding: The adverse water supply effects of the Project with respect to pressure zones are avoided by implementation of Mitigation Measure 3.64 #2. It requires the Project Sponsor to extend the existing main to the Project and to maintain the integrity of the existing main pipeline in Rheem Boulevard at all times during construction of the Project. The existing EBMUD reservoirs are sufficient to accommodate this Project in its pressure zones.

Impact 3.64 #3a. Encroachment into EBMUD Properties (DEIR, pp. 3.64 – 10 and MMRP, pp. 97-98).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant water supply effects on the environment with respect to “Encroachment into EBMUD Properties.” This Impact 3.64 #3a is less than significant with implementation of Mitigation Measure 3.64 #3a.

In Support of Finding: The adverse water supply effects of the Project with respect to encroachment on EBMUD properties are avoided by implementation of Mitigation Measure 3.64 #3a. The Project Sponsor must work with EBMUD and demonstrate the Project will not affect the existing or future use of EBMUD property. Based on the design of the 27 Lot Project, it does not appear that adverse effect will be present. For example, access to Fay Hill Reservoir through the EBMUD right-of-way on the Project site will not be adversely affected by extending the EVA to the end of “B” Drive, and the use of the EVA as a public trail.

Impact 3.64 #3b. Fay Hill Access Road (DEIR, pp. 3.64 – 10 and MMRP, p.98).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant water supply effects on the environment with respect to “Fay Hill Access Road.” This Impact 3.64 #3b is less than significant as a result of the design of the 27 Lot Project.

In Support of Finding: The adverse water supply effects of the Project with respect to Fay Hill Reservoir access are avoided by design and grading changes incorporated in the 27 Lot Project, which leave the Fay Hill Reservoir access in its existing location and condition. Mitigation Measure 3.64 #3b in the Draft EIR is no longer necessary.

Impact 3.64 #5. EBMUD Distribution System (DEIR, pp. 3.64 – 11 and MMRP, pp. 98-99).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant water supply effects on the environment with respect to the “EBMUD Distribution System.” This Impact 3.64 #5 is less than significant with implementation of Mitigation Measure 3.64 #5.

In Support of Finding: The adverse water supply effects of the Project with respect to the EBMUD distribution system are avoided by implementation of Mitigation Measure 3.64 #5. It requires the Project Sponsor to prevent any impacts to the existing main pipeline in Rheem Boulevard when modifications to the road occur.

WASTEWATER SERVICES

(DEIR, Section 3.65)

Impact 3.65 #2. Off-Site Sewer Line (DEIR, pp. 3.65 – 3 and MMRP, pp. 99-100).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant wastewater services effects on the environment with respect to an “Off-Site Sewer Line.” This Impact 3.65 #2 is less than significant with implementation of Mitigation Measure 3.65 #2, as well as Mitigation Measure 3.55 #6c.

In Support of Finding: The adverse wastewater services effects of the Project with respect to a possible sewer line at the end of “C” Court are avoided by implementation of Mitigation Measure 3.65 #2, as well as Mitigation Measure 3.55 #6c. If a gravity sewer line is used for Lots 13-22 in “C” Court, it must be extended through the Project open space and connect off site to the main sewer line at a manhole in the Lafayette-Moraga Trail. Per Mitigation Measures 3.65 #2 and 3.55 #6c. Construction of that off-site sewer line must meet identified performance standards. The standards vary depending on the manner of construction in the particular location, open trench or boring. Common standards include a detailed tree survey within 50 feet of the centerline of the proposed sewer easement, tree protection measures, and the avoidance of tree removal to the maximum extent feasible. Alternatively, a pumping system such as a lift station for Lots 13-22 on “C” Court for a sewer line that connects to the uphill gravity sewer line in “B” Drive will be utilized. That pump system must be reviewed and approved by the Contra Costa Central Sanitary District (“CCSD”).

Impact 3.65 #3. Transmission Facilities (DEIR, pp. 3.65 – 4 and MMRP, pp. 100).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant wastewater services effects on the environment with respect to “Transmission Facilities.” This Impact 3.65 #3 is less than significant with implementation of Mitigation Measure 3.65 #3.

In Support of Finding: The adverse wastewater services effects of the Project with respect to CCSD sewage transmission facilities are avoided by implementation of Mitigation Measure 3.65 #3. The Project Sponsor must secure a will serve letter from the CCSD and pay all fees and charges required by CCSD. The CCSD plans to make corrections to deficiencies in its downstream transmission as part of its

Capital Improvement Program, and expects to complete them prior to Project buildout. Fees and charges paid by the Project Sponsor will include the Project's fair share of those costs to the extent determined necessary by CCSD.

SOLID WASTE DISPOSAL

(DEIR, Section 3.66)

Impact 3.66 #2: Solid Waste (DEIR, pp. 3.66 – 2 and MMRP, pp. 100-101).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant solid waste disposal effects on the environment with respect to generation of “Solid Waste.” This Impact 3.66 #2 is less than significant with implementation of Mitigation Measure 3.66 #2.

In Support of Finding: The adverse solid waste disposal effects of the Project with respect to its generation solid waste are avoided by implementation of Mitigation Measure 3.66 #2. Solid waste generated by the Project will not inhibit the Town's ability to maintain its 50% diversion rate. The Project Sponsor must complete and implement a Construction Debris Recycling Plan that complies with the Town's ordinance requirements for diversion of such debris.

CULTURAL RESOURCES

(DEIR, Section 3.70)

Impact 3.70 #1. Archaeological Resources (DEIR, pp. 3.70 – 6 and MMRP, pp. 101-102).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant cultural resources effects on the environment with respect to “Archeological Resources.” This Impact 3.70 #1 is less than significant with implementation of Mitigation Measure 3.70 #1.

In Support of Finding: The adverse cultural resources effects of the Project with respect to archeological resources are avoided by implementation of Mitigation Measure 3.70 #1. There are no known archeological resources on the Project site, based on Native American consultations, archival research, and field survey. Mitigation Measure 3.70 #1 is the standard protocol to be followed when there is an accidental discovery of buried archeological deposits during the course of grading and construction operations. It requires an immediate halt in construction activities pending evaluation of the find by a qualified archeologist. Prehistoric archeological site indicators are listed. In addition, prior to completion of the final grading plan, a qualified archeologist will evaluate any artifact that may be provided to the Project

Sponsor by the neighbor who said in public testimony he recovered one from the Rheem valley portion of the Project site.

Impact 3.70 #2. Fossils (DEIR, pp. 3.70 – 7 and MMRP, p. 102).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant cultural resources effects on the environment with respect to “Fossils.” This Impact 3.79 #2 is less than significant with implementation of Mitigation Measure 3.70 #2.

In Support of Finding: The adverse cultural resources effects of the Project with respect to the discovery of fossils are avoided by implementation of Mitigation Measure 3.70 #2. Per standard protocol, upon the accidental discovery of a fossil it requires a suspension in grading operations in the vicinity of the find, pending its evaluation for scientific significance and recovery, if warranted.

Impact 3.70 #3. Human Remains (DEIR, pp. 3.70 – 7 and MMRP, pp. 102-103).

Finding: Changes or alterations have been required in, or incorporated into the Project, which mitigate or avoid its significant cultural resources effects on the environment with respect to “Human Remains.” This Impact 3.70 #3 is less than significant with implementation of Mitigation Measure 3.70 #3.

In Support of Finding: The adverse cultural resources effects of the Project with respect to the discovery of human remains are avoided by implementation of Mitigation Measure 3.70 #3. Per standard protocol, it requires a halt in construction in the vicinity of the find, contacting the Native American Heritage Commission, and identifying the person or persons believed to be most likely descended from the deceased Native American. The most likely descendent makes recommendations regarding the treatment of the remains with appropriate dignity.

PART III.

LIST OF 27 LOT PROJECT IMPACTS, ALTERNATIVES TO 27 LOT PROJECT, BENEFITS OF 27 LOT PROJECT, AND CONCLUSION

1. LIST OF 27 LOT PROJECT IMPACTS

The certified final EIR identified potential environmental impacts associated with implementation of the project. These impacts include the areas shown below:

- 3.10 LAND USE**
Impact 3.10 #2 Conversion of Agricultural Land
- 3.20 GEOLOGY AND SOILS**
Impact 3.20 #1 Ground Shaking
Impact 3.20 #3 Expansive Soils
Impact 3.20 #4 Groundwater
Impact 3.20 #5a Landslides
Impact 3.20 #5b Landslides (Rheem Boulevard)
Impact 3.20 #6 Soil Creep
Impact 3.20 #7 Erosion
Impact 3.20 #9 Building Pads
Impact 3.20 #10 Foundations
- 3.25 HAZARDS AND HAZARDOUS MATERIALS**
Impact 3.25 #2 Construction-Related Hazardous Materials
- 3.30 HYDROLOGY, DRAINAGE AND WATER QUALITY**
Impact 3.30 #1 Storm Drainage
Impact 3.30 #2 Groundwater Recharge
Impact 3.30 #3 Water Quality
- 3.35 VISUAL QUALITY, PARKS, RECREATION AND OPEN SPACE**
Impact 3.35 #1 Change in Community Character
Impact 3.35 #2 Ridgeline Development
Impact 3.35 #3 Site Characteristics
Impact 3.35 #4 Scenic Corridors
Impact 3.35 #5 Light and Glare
Impact 3.35 #6. Recreation & Trails
Impact 3.35 #7 Wetlands Restoration
- 3.40 TRAFFIC, TRANSPORTATION AND CIRCULATION**
Impact 3.40 #2 Traffic Control Needs and Vehicle Queues at
St. Mary's Road/Rheem Boulevard
Impact 3.40 #5 Internal Circulation
- 3.45 AIR QUALITY**
Impact 3.45 #2 Construction Activities
- 3.50 NOISE**
Impact 3.50 #2 Construction Activities
- 3.55 BIOLOGICAL RESOURCES**
Impact 3.55 #3 Loss of USACE - Jurisdictional Wetlands

Impact 3.55 #4	Non-Corps Jurisdictional Wetlands
Impact 3.55 #5	Loss of Native Trees
Impact 3.55 #6	Loss of Native Trees on the East Slope
Impact 3.55 #9	Direct Impacts on California Red-Legged Frog
Impact 3.55 #10	Direct Impacts to Alameda Whipsnake
Impact 3.55 #1	Direct Impacts to Nesting Raptors and Other Nesting Migratory Birds, Occupied Nests, and Active Bat Roosts
Impact 3.55 #13	Direct Impacts on Sensitive Plant Communities
Impact 3.55 #15	Degradation of Wildlife Habitats and Decrease in the Carrying Capacity for Wildlife and Special-Status Species
Impact 3.55 #16	California Red-Legged Frog Habitat
Impact 3.55 #17	Indirect Recreational Effects on California Red-Legged Frog
Impact 3.55 #18	Indirect Impacts on California Red-Legged Frog Habitat
Impact 3.55 #19	Indirect Effects on Alameda Whipsnake
Impact 3.55 #20	Recreational Impacts to Alameda Whipsnake
Impact 3.55 #21	Recreational Impacts to Wildlife and Wildlife Habitat
Impact 3.55 #22	Invasive Species
Impact 3.55 #2.	Habitat Loss and Fragmentation
Impact 3.55 #24	Interruption to and Loss of Wildlife Movement Corridors
Impact 3.55 #25	Indirect Impacts of Domestic Animals On Wildlife
Impact 3.55 #26	Grading Impacts
Impact 3.55 #29	Pollutants
Impact 3.55 #30.	Long-Term Adverse Effects on Native Oak Trees
Impact 3.55 #31	Impacts to Semaphore Grass Floating Water Primrose and Davy Mannagrass
Impact 3.55 #32	Off-Road Vehicle Activity
Impact 3.55 #33	Long-Term Degradation of Open Space and Conserved Habitats

3.61 FIRE PROTECTION

Impact 3.61 #1	Wildland Fires
Impact 3.61 #2	Fire Protection

3.62 LAW ENFORCEMENT

Impact 3.62 #1	Police Protection
----------------	-------------------

3.63 SCHOOLS

Impact 3.63 #1	School Capacity
----------------	-----------------

3.64 WATER SUPPLY

- Impact 3.64 #1 Water Demand
- Impact 3.64 #2 Pressure Zones.
- Impact 3.64 #3a Encroachment into EBMUD Properties
- Impact 3.64 #5 EBMUD Distribution System

3.65 WASTEWATER SERVICES

- Impact 3.65 #2 Off-Site Sewer Line
- Impact 3.65 #3 Transmission Facilities

3.66 SOLID WASTE DISPOSAL

- Impact 3.66 #2 Solid Waste

3.70 CULTURAL RESOURCES

- Impact 3.70 #1 Archaeological Resources
- Impact 3.70 #2 Fossils
- Impact 3.70 #3 Human Remains

These potential impacts listed above will be mitigated to levels of less than significant by the mitigation measures adopted in the MMRP and conditions of approval adopted for the 27 Lot Project Conceptual Development Plan and Conditional Use Permit. Other potential impacts of the 35 lot project reviewed in the Draft EIR were determined to be less than significant for that project. They are also insignificant for the 27 Lot Project, which includes less development acreage than the 35 lot project, no grading outside the limits of grading for that project, and fewer residential units. The 27 Lot Project does not increase the severity of any potentially significant impacts of the 35 lot project analyzed in the Draft EIR and Responses to Comments. Rather, a primary objective of the design changes to the 35 lot project was to reduce impacts identified in the Draft EIR or the Responses to Comments, as those thresholds are informed by the General Plan.

As a result of additional analysis since the preparation of the Draft EIR, changes made to the 35 lot project in the Draft EIR by the Project Sponsor, and by the identification of modified mitigation measures included in the Responses to Comments and the MMRP, the following visual quality impacts were reduced from levels of significant and unavoidable for the 35 lot project to less than significant for the 27 lot project (see Responses to Comments, Vol. 1, Chapter II – Section C.1 page 16 and 17 and Master Response 3):

- Impact 3.35 #1 Change in Community Character
- Impact 3.35 #2 Ridgeline Development
- Impact 3.35 #3 Site Characteristics
- Impact 3.35 #4 Scenic Corridors

In addition, with the redesign of the 35 lot project in the Draft EIR to the 27 Lot Project, other mitigation measures in the Draft EIR have been modified and, in some cases, no longer required in order to mitigate Project impacts to less than significant. None of the changes in mitigation

measures, compared to those set forth in the Draft EIR, result in new significant environmental impacts or an increase in the severity of significant impacts identified in the Draft EIR.

2. ALTERNATIVES TO 27 LOT PROJECT

6 alternatives to the Rancho Laguna II 35 lot project are discussed in the Draft EIR. 3 other alternative layouts were presented and evaluated in the Responses to Comments at Master Response 10. Alternatives to the valley buttress method to stabilize Rheem Boulevard were also addressed in Master Response 10. None of the alternatives are necessary to mitigate all project impacts to less than significant levels, because the 27 Lot Project does that (see Update for Final EIR). The Commission has considered and rejected each of the alternatives as discussed below and instead has determined to approve the 27 Lot Project as designed and mitigated. Each of the alternatives in the final EIR is summarized below:

1. The No Project Alternative assumes the project site would maintain existing conditions and remain undeveloped so that no new environmental impacts would occur.

2. The General Plan Minimum Density Alternative is a variation of the No Project Alternative and assesses development allowable under the General Plan and zoning with a density of one unit per 20 acres; i.e., 9 units. No particular development plan to locate those 9 units is included.

3. Alternative Sites is an alternative which evaluates alternative sites within the Town of Moraga that potentially may meet the stated project objectives of the Project Sponsor and the Town.

4. The Mitigated Plan Alternative is a development plan that reduces impacts as compared to those associated with the Rancho Laguna II 35 lot project, based in large part on application of mitigation measures in the Draft EIR.

5. The Rheem Boulevard Alternative with Frontage Road is a development plan that eliminates all development on the southern plateau and expands the development area and number of lots in the upper and lower Rheem valleys.

6. The Rheem Boulevard Alternative with Modified "D" Drive limits project development to 9 lots in the upper valley, with 2 of the lots on the northerly side of the Fay Hill Reservoir access road, and no development on the southern plateau.

7. Layout Alternatives in Master Response 10 are intended to be modifications to the Mitigation Plan Alternative. One is for 17 lots with no valley lots and no lower valley buttress. One is for 21 lots with 4 upper valley lots and no lower valley buttress. The last one is for 23 lots with 6 valley lots and a partial lower valley buttress.

8. Rheem Boulevard Stabilization Alternatives. Two alternatives to the valley buttress method to stabilize Rheem Boulevard are further discussed in Master Response 10.

Under CEQA, the Commission must at least consider the alternatives evaluated in the EIR, even though the 27 Lot Project reduces all environmental impacts to less than significant. The Commission has considered these alternatives and finds none of them to be an acceptable alternative to the 27 Lot Project as more fully discussed below:

1. No Project Alternative. While there are no new environmental impacts with this alternative (because land use of the site does not change from its current use for grazing), it does not meet any of the objectives of the Town or Project Sponsor, and is not justified under the General Plan. It is not an economically feasible use of the property for residential development, one of the Project Sponsor's objectives. It does not stabilize, repair and improve Rheem Boulevard, one of the Town's objectives. It will not result in the long-term professional management of the biological and open space resources of the property, enhance fire protection, or make the open space available for public use through a public trail system.

2. The General Plan Minimum Density Alternative. With all environmental impacts reduced to less than significant by the 27 Lot Project, as designed and mitigated, requiring the number of units to be restricted to the General Plan minimum of 9 is not justified based on site constraints or characteristics, or for purposes of compliance with CEQA and/or the General Plan. The benefits of lowering the density from 27 lots to further increase the amount of open space by a few acres more than 90% of the property, as provided in the 27 Lot Project, are insignificant. Developing the project site at the minimum density of one unit per 20 acres is not justified on geotechnical safety grounds. The risk to new development in the 27 Lot Project, as designed and mitigated, has been professionally assessed and is acceptably low. It does not include development in "high risk" or "moderate risk" areas as defined in the General Plan, or on MOSO land designated as "high risk," so one dwelling unit per 20 acres is not the maximum density for the Project site. The 27 Lot Project is 75% of the maximum density of 36 units, and a further reduction in density is not warranted.

Restricting the site development to 9 units means Rheem Boulevard will not be stabilized as part of the Project, inconsistent with an important Town objective. As part of the 27 Lot Project, the Project Sponsor has agreed to absorb the costs to complete the full valley buttress stabilizing Rheem Boulevard, the biological resources mitigation required to do so, and the repair and improvement of Rheem Boulevard even though the 27 Lot Project may be safely developed without stabilizing Rheem Boulevard between "A" Way and "D" Drive.

The 27 Lot Project preserves 90% of the project site as permanent open space with public trails. The open space will be professionally managed in all environmental respects by the GHAD, which will be funded by the 27 homeowners. The Project Sponsor will not commit 9 homeowners to maintain the vast majority of the project site as managed open space with public access. To require permanent funding by so few homeowners to manage that significant amount of open space, through a GHAD or HOA, is not reasonable or realistic.

The minimum General Plan density of one unit per 20 acres is not warranted for geologic safety reasons or due to other site characteristics, as discussed above. In fact, it would eliminate an important geologic safety repair for Rheem Boulevard. The 27 Lot Project is superior to the General Plan Minimum Alternative because it reduces all environmental impacts to less than significant and, at the same time and unlike the General Plan Minimum Alternative, it provides among other public benefits: (i) preservation of 90% of the site as permanent open space that is professionally managed by a GHAD funded by its 27 lot owners, and which includes public trails; and (ii) stabilization, repair and improvement of Rheem Boulevard at minimal cost to the Town. The General Plan Minimum Alternative is an inferior and unreasonable alternative given the public benefits of the 27 Lot Project, its consistency with the Moraga 2002 General Plan as a whole, and its mitigation of all significant environmental impacts.

3. Alternative Sites. After analyzing the available properties that may meet, or closely meet, the stated project objectives, it is evident that only the Rancho Laguna II site could accommodate the Project in or near the Town of Moraga. The Rancho Laguna II site meets the Town's policies with respect to development and preservation of open space. It is located within the designated Urban Limit Line. It includes the minimum acreage required. It is controlled by the Project Sponsor. No other location is controlled by the Project Sponsor, or is expected to be controlled by the Project Sponsor in the reasonably foreseeable future. For example, other properties that might be considered somewhat appropriate for the Project Sponsor's proposed use have long been owned by the Bruzzone family with the objective of developing them on their own. No other location is suitable compared to the Project site.

All environmental constraints and impacts of the 27 Lot Project on the Rancho Laguna II site can and will be reduced to less than significant. It is speculative to think that would be the case at any other locations. The Rancho Laguna II site is the only location that may be utilized to stabilize Rheem Boulevard with a valley buttress and at minimal cost to the Town. Use of this site owned by the Project Sponsor is the only practicable and feasible location available to the Project Sponsor and that meets all its stated objectives, and those of the Town.

4. The Mitigated Plan Alternative. As a result of continued efforts by the Town staff, Commission and Project Sponsor since the Draft EIR was released, the 27 Lot Project, as designed and mitigated, reduces all environmental impacts to less than significant. The 27 Lot Project is essentially a mitigated plan alternative that meets the project objectives of the Project Sponsor and the Town. The Draft EIR Mitigated Plan Alternative includes several changes to the 35 lot project to make it environmentally superior. A primary objective of those changes is to incorporate Draft EIR mitigation measures into its design, or otherwise address significant impacts of the 35 lot project. The 27 Lot Project has that same objective, but in some respects achieves them in a different manner than does the Mitigated Plan Alternative.

All finished slopes are no steeper than 3:1 in both plans. The water quality basin at the end of "C" Court in both plans has been changed to a location that does not require the extensive grading necessary at the location in the 35 lot project.

Like the Mitigated Plan Alternative, the public trail system of the 27 Lot Project has been revised to eliminate the trails of concerns in the Draft EIR. The staging area in the valley is eliminated. Parking is instead provided at the end of “B” Drive. Multi-use trails to accommodate bicyclists are proposed for the Mitigated Plan Alternative. Such trails in this open space could result in biological resources and erosion impacts, and would be difficult to maintain on steep terrain. The narrow dirt trails in the 27 Lot Project are part of an environmentally superior trail plan.

The reconfiguration of a shortened “D” Drive with the southerly access, as provided in the 27 Lot Project, is superior to the Mitigated Plan Alternative configuration. Its northerly access requires more grading, including changes to the Fay Hill Reservoir access road, and has line of sight concerns. Reconfigured and shortened “D” Drive with the southerly access does not require the second access an EVA or traffic calming features still necessary in the Mitigated Plan Alternative.

The Mitigated Plan Alternative calls for Class 1 bike trails in an improved Rheem Boulevard section. There are no Class 1 bike trails on either end of the project frontage. Separated pedestrian path/sidewalk, Class 1 bike trails, and new turn pockets will result in a new Rheem Boulevard section that is too wide for this relatively narrow right-of-way, even with dedication of additional right-of-way from the Project site. The significant realignment of the existing centerline required for this new section would create connection and alignment constraints on the northerly and southerly end of the frontage. Such a wide road section is not representative of the semi-rural character of the area. The improved section in the 27 Lot Project, which includes striped shoulders that accommodate bicycle use, a separated pedestrian trail (decomposed granite) on the project side and a sidewalk on the easterly, non-project side, is a better engineering and semi-rural fit.

In the southern plateau development area, the Mitigated Plan Alternative does not include the landscape mitigation measures incorporated into the 27 Lot Project design. Application of those measures in the Mitigated Plan Alternative would result in the significant visual quality impacts of that alternative with respect to the southern plateau development being reduced to close to the same insignificant level as the 27 Lot Project.

Refinements in the 27 Lot Project, as to the configuration of the southern plateau development cluster (grading, streets and homes) and the planting of natural groupings of native trees in open space, have reduced Project impacts with respect to slopes, grading, tree protection, water basin location, and visual quality to less than significant (e.g.. see MMRP at Impacts 3.10 #4, 3.20 #8, 3.35 #1, 3.55 #6). That has been accomplished without the need to reduce that development cluster from 21 to 17 units, as proposed in the Mitigated Plan Alternative. Thus, the only added accomplishment of the reduction from 21 to 17 units in the Mitigated Plan Alternative is to create somewhat wider and larger lots. That is unnecessary, because the 21 lots in the 27 Lot Project are already wide (100 ft. minimum) and large (ranging in size from 18,000 to 32,000 sq. ft.). The building pads are flat (with split flat pads at Lots 11-14) and of sufficient size (averaging 6,635 sf. ft.) to accommodate a residence of reasonable size designed, per Condition III.8, to blend with the environment instead of overpowering it.

The visual quality impacts of the 27 Lot Project as seen by travelers along Rheem Boulevard are less than significant with mitigation. In the Mitigated Plan Alternative homes are included in the lower valley which, along with the landscape plan design and other features, causes these impacts to remain significant and unavoidable.

In the upper valley, a landscape easement for screening trees in the front of “D” Drive homes is provided in the 27 Lot Project. Lots are more widely spaced. The 27 Lot Project does not include high retaining walls behind those homes, so landscape easements are not required between the homes to screen those walls. The number of homes are reduced to 6 and limited to single-story. Reconfiguration of “D” Drive eliminates the landscape around the northerly entry that blocks valley and hillside views for those traveling south on Rheem Boulevard. The Mitigated Plan Alternative does not include any of these visual quality features.

In the lower Rheem valley and unlike the 27 Lot Project, the Mitigated Plan Alternative includes homes between “A” Way and “D” Drive. In the 27 Lot Project, new tree and shrub species will be planted in locations that will maintain open views of the valley, hillside and ridgeline for travelers on Rheem Boulevard. The Mitigated Plan Alternative will obstruct those views, in particular in the lower valley.

Both plans require an upper valley buttress for the stabilization of Rheem Boulevard and the development along “D” Drive. Both plans include a valley buttress between “A” Way and the bottom of “D” Drive and, therefore, require filling that intermittent drainage and mitigating that impact. However, the 27 Lot Project does not include any homes on that intermittent drainage. Therefore, its wetland mitigation may be created on site: a recreated wetland swale in the upper valley and recreated intermittent drainage, seasonal wetland and seeps in the lower valley. This on site mitigation more closely replicates the existing wetland conditions and is superior to the Mitigated Plan Alternative, which recreates intermittent drainage in both the upper and lower valley areas and still requires off site mitigation. The wetland restoration plan for the 27 Lot Project helps to mitigate visual quality impacts along Rheem Boulevard to less than significant, unlike in the Mitigated Plan Alternative, which includes tall riparian trees in both the upper and lower valleys that will obstruct open views for travelers on this arterial road.

Preservation of the intermittent drainage in the lower Rheem valley, or the wetland swale in the upper valley, might be considered environmentally superior to both the 27 Lot Project or the Mitigated Plan Alternative by some, because existing biological resources are preserved, in particular the riparian woodland in the lower valley. However, it is not practicable because it does not meet the Town objective to stabilize Rheem Boulevard in its entirety as part of this Project. Removal of much of that riparian woodland would be required whichever stabilization method was used. If this arterial road is not stabilized by the Project Sponsor as part of the development of the project site, it is very doubtful the Town will be able to secure the outside grants or funding for that work as a public capital improvement project, even with fair share contributions by new development. It is not economically feasible for the Town to pay for this expensive stabilization and repair project through its limited general fund. The Commission also considers the recreated wetland swale and intermittent drainage to be a visual enhancement over the existing wetlands in their degraded condition.

Hydrology, drainage and water quality impacts of the 27 Lot Project are mitigated to a greater extent than the Mitigated Plan Alternative. The 27 Lot Project includes oversized stormwater pipes to reduce off site peak discharge below “A” Way to less than existing conditions during large storm events. Provided the appropriate permits can be secured, downstream neighbors along Rheem Boulevard will be given the opportunity to have the Project Sponsor place buried riprap in strategic locations along the intermittent drainage on the back side of their lots to reduce erosion. The Mitigated Plan Alternative includes no such extra mitigation.

The Mitigated Plan Alternative includes one lot more than the 27 Lot Project. For any of the impacts the significance of which is based on the number of residential units, the effects are essentially the same with both plans: traffic levels of service, air quality, noise, public services and utilities, and cultural resources.

Duplex units are suggested for some of the Mitigated Plan Alternative lots but not shown on the Draft EIR illustration. Duplex units are not consistent with the semi-rural development of the project site on Non-MOSO land and near neighborhoods that are limited to single-family homes. In that regard, the 27 Lot Project is superior in neighborhood compatibility.

The Draft EIR identified the Mitigated Plan Alternative as the environmentally superior alternative. With that plan, visual quality impacts were still considered significant and unavoidable. Unlike the Mitigated Plan Alternative, the 27 Lot Project mitigates those visual quality impacts to less than significant. It accomplishes other environmental objectives of the Mitigated Plan Alternative, as described above. The Mitigated Plan Alternative with 28 lots does not reduce any significant environmental impacts to a greater extent than does the 27 Lot Project. Thus, the Commission considers the 27 Lot Project, as designed and mitigated, to be the environmentally superior alternative. Further reductions in density or development acreages are not warranted for purposes of CEQA or General Plan compliance, or for any other planning reason.

5. The Rheem Boulevard Alternative with Frontage Road. This alternative significantly expands the number of residential units (from 14 to 23) and the amount of development acreage in the Rheem valley area, with the goal of eliminating the significant environmental impacts of grading and development on the southern plateau. More of the intermittent drainage is filled to accommodate the additional lower valley lots, so the biological resources impacts are greater with this alternative. Providing for development on the southern plateau, as in the 27 Lot Project, is a less environmentally damaging alternative to filling even more of the intermittent drainage in the lower valley. With the 27 Lot Project all significant impacts are less than significant.

The Commission considers it very important to keep the lower valley between “A” Way and the end of “D” Drive free of homes and with open views of the hillsides and ridgeline above it. The 27 Lot Project does that. This alternative does not. The significant visual quality impacts of this Rheem Boulevard alternative are unavoidable, because open valley and hillside view as seen from this scenic road are essentially blocked along the entire frontage. Unlike the 35 lot project

to which the Rheem Boulevard Alternative with Frontage Road was compared, the visual quality impacts of the southern plateau development in the 27 Lot Project, as designed and mitigated, are less than significant. Therefore, the increased visual quality and biological resources impacts of this alternative in the Rheem Boulevard scenic corridor do not justify removing the southern plateau grading and development.

With this alternative, stabilizing, repairing and improving Rheem Boulevard is not feasible. The valley buttress is created with fill from the southern plateau grading and development. Without fill from that location, the importation by trucks of well over 200,000 cubic yards of fill would be required, because the southern plateau is not being graded for development. This alternative is inferior to the 27 Lot Project for that reason alone. The cost to stabilize Rheem Boulevard as a public capital improvement project is unreasonably high and the impacts on public roads, safety and circulation too great.

The 27 Lot Project is environmentally superior to the Mitigated Plan Alternative, with respect to the design of and mitigation for both the southern plateau and Rheem valley development. The Mitigated Plan Alternative is environmentally superior to the Rheem Boulevard Alternative with Frontage Road Alternative. The 27 Lot Project fixes Rheem Boulevard. Thus, the 27 Lot Project is superior to that Rheem Boulevard Alternative.

6. Rheem Boulevard Alternative with Modified “D” Drive. This alternative creates 9 lots in the upper valley. It is one version of the General Plan Minimum Density Alternative. The valley buttress is not extended to the lower valley in order to preserve it in its current condition. The reconfigured “D” Drive and its 6 lots in the 27 Lot Project is superior to the modified “D” Drive and its 9 lots in this alternative. The northerly access for this alternative has sight distance and visual quality limitations. Its required grading potentially affects the Fay Hill Reservoir access. 6 single-story homes on a reconfigured “D” Drive are visually preferable to 9 homes on a longer “D” Drive, some of which could be two stories. This increase in visual quality impacts may arguably be somewhat offset by eliminating “A” Way. However, the Rheem Boulevard visual quality impacts of this alternative are still, at best, at a level of insignificance comparable to the 27 Lot Project.

As with the other Rheem Boulevard alternative, the importation of over 200,000 cubic yards of fill would be required to include the lower valley buttress in the alternative. This alternative is inferior to the 27 Lot Project for that reason alone. Even if the valley buttress was not extended to the lower valley, importation of well over 100,000 cubic yard of fill would be required. That cost is unreasonable and the impact on public roads is not acceptable.

The Town objectives to fully stabilize Rheem Boulevard and preserve in perpetuity professionally managed open space that includes public trails would not be achieved with this alternative. The Project Sponsor has stated its unwillingness to absorb the cost of stabilizing the lower valley for a project with only 9 lots, or commit 9 homeowners to be responsible to manage even more open space than set aside in the 27 Lot Project, and maintain its public trails.

As a variation of the General Plan Minimum Density Alternative, the Rheem Boulevard Alternative with Modified “D” Drive is an inferior and unreasonable alternative given the public benefits of the 27 Lot Project, and the fact that development of the 21 lots on the southern plateau, as designed and mitigated, has no significant environmental impacts and is consistent with the Moraga 2002 General Plan. Removing all development from the southern plateau as provided in this minimum density alternative is not warranted.

7. Layout Alternatives in Master Response 10. In the Responses to Comments at Master Response 10, three new lot layout alternatives were provided and evaluated. Each of them is a variation on the Mitigated Plan Alternative. One option includes 17 lots, another 21 lots and the third 23 lots. Each of them includes the 17 lot plan for the southern plateau development cluster that is part of the Mitigated Plan Alternative. Each of them includes the landscape mitigation described in Master Response 3 that reduces the visual quality impacts of southern plateau development to less than significant. Per the discussion above, this 17 lot plan for the southern plateau has significant environmental impacts comparable to the 21 lots in the 27 Lot Project. In other words, the reduction by 4 lots is environmentally insignificant.

None of the three layout options include the landscape refinements and other project modifications in the Visual Quality Mitigation Exhibits that further address visual quality impacts of the project as seen from Rheem Boulevard. Those exhibits were completed after the Responses to Comments were released. Including similar project modifications in the 17 lot option and 21 lot option (tailored to fit each option) could reduce visual quality impacts of these options along Rheem Boulevard to less than significant, like the 27 Lot Project. With no homes in the upper valley in the 17 lot option, the insignificant visual quality impacts would be even smaller. With respect to the 21 lot option compared to the 27 Lot Project, it is hard to discern a difference that two fewer lots on “D” Drive would make. The 23 lot option impact would still be greater than the 27 Lot Project, because “D” Drive would extend into the lower valley, the most important element of the Rheem Boulevard view and with respect to riparian biological resources. 6 wide lots in the upper valley, as provided in the 27 Lot Project, is preferable to 6 even wider lots on a “D” Drive that extends 400 feet into the lower valley.

None of the three options fully stabilize the Rheem Boulevard frontage. The 17 lot and 21 lot options stabilize only the upper valley frontage. The 23 lot option stabilizes the upper valley frontage and some, but not all, of the lower valley frontage. The 27 Lot Project is the superior alternative because it includes stabilization, repair and improvement of the entire Rheem Boulevard frontage, and does so while also reducing all environmental impacts to less than significant and achieving General Plan consistency.

The three layouts are inferior to the 27 Lot Project, because they do not achieve the Town objective of stabilizing, repairing and improving Rheem Boulevard, and it is financially infeasible for the Town to do so as a capital improvement project. The Project Sponsor has stated its unwillingness to be solely responsible for the costs to complete the upper valley buttress if no lots are included there (the 17 lot option). The same is true if the southern plateau development was limited to 21 lots as provided in the 27 Lot Project. The full stabilization of the lower valley is not required for any of the residential development in those options.

8. Rheem Boulevard Stabilization Alternatives. There are two engineering alternatives to the valley buttress method of stabilizing Rheem Boulevard. One is a combination of a buried retaining wall/tie back system (high risk frontage) and geogrid/engineered slopes (moderate risk frontage). The other is a combination of roadway keyway (high risk) and geogrid/engineered slopes (moderate risk). Neither one has the high safety factor of the valley buttress fix. The valley buttress method is feasible only if the fill comes from the project site. Importation of fill as part of a capital improvement project is too expensive and its impacts too great, as discussed above.

The Town Engineer would recommend the buried retaining wall approach if the Town was to make this repair as a capital improvement project, whether for only the lower valley or the entire frontage. The reasons for that selection are: (i) the high cost of importing fill, (ii) the desire to avoid filling jurisdictional and non-jurisdictional wetlands and the permitting and mitigation costs involved, and (ii) the fact that the keyway alternative requires road closure and could trigger an uphill landslide during excavation. However, with the buried retaining wall and keyway alternatives, most of the non-jurisdictional riparian trees and coastal scrub habitat on the slope between the intermittent drainage and Rheem Boulevard still must be removed in order to make the repair, and portions of the jurisdictional drainage closest to Rheem Boulevard may have to be graded. That includes removal of the trees and scrub habitat on the slope where “A” Way would be constructed.

The Project Sponsor has stated that it will not construct the other methods of repair or be responsible for their success; the Project Sponsor would instead only pay its nexus fair share toward one of those methods of repair. The Town does not have the resources (grants, development fees and/or general fund) to cover the rest. The only feasible method of repair for the Town is the valley buttress as part of the 27 Lot Project.

3. CONCLUSIONS REGARDING AND BENEFITS OF 27 LOT PROJECT

The Planning Commission has reviewed the final EIR, Staff Reports, correspondence, public meeting and hearing testimony, and other documents contained in the administrative record. After careful consideration, the Commission has reached each of the conclusions described above and provided below.

The Commission determines the adopted mitigation measures will reduce all significant environmental impacts of the 27 Lot Project to less than significant. Thus, the 27 Lot Project will have no significant adverse unavoidable impacts. The Project will have no growth inducing impacts given its location and design. Cumulative impacts of the Project are addressed through some of the mitigation measures for Project impacts (e.g., traffic, police services, greenhouse gas emissions; see also Responses to Comments, Master Response 10).

CEQA at Public Resources Code Section 21081 and Guideline 15093 requires a lead agency to adopt a Statement of Overriding Considerations in which it explains why the benefits of the project it intends to approve outweigh any unavoidable significant adverse environmental impacts. Since all environmental impacts of the 27 Lot Project have been avoided or reduced to less than significant with mitigation, a Statement of Overriding Considerations is not required for its approval by the Commission. In any event, the Commission specifically agrees that the Staff Report for this public hearing, and the documents approving the Project, accurately describe the several public benefits of the 27 Lot Project as fully mitigated, and that the Project objectives described above for the Project Sponsor and the Town have been achieved.