

**TOWN OF MORAGA
PLANNING COMMISSION MEETING**

La Sala Building, Hacienda de las Flores
2100 Donald Drive
Moraga, CA 94556

October 20, 2008

7:30 P.M.

MINUTES

I. CALL TO ORDER

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

ROLL CALL

Present: Commissioners Daniels, Driver, Goglia, Levenfeld, Chairman Pro Tem Whitley
Absent: Vice Chairman Sayles, Chairman Hays
Staff: Lori Salamack, Planning Director
Jill Mercurio, Town Engineer
Rafael Mendelmann, Deputy Town Attorney
Nadine Sponomore, Sponomore and Associates
David Storer, Town Planning Consultant

B. Conflict of Interest

There was no reported conflict of interest.

II. ADOPTION OF MEETING AGENDA

Commissioner Goglia asked to add an agenda item for discussion of suspending the approval of development proposals that would reasonably be impacted by either Measure J or Measure K until after the election, and until such time as the Town Council determined that the outcome of any ensuing and/or pending litigation as a result of the passage of either or both of the initiatives was resulted. She presented the basis for that motion and discussion as the fact that there were only 15 days to the election where the residents of Moraga would be able to offer their opinion of those measures.

Chairman Pro Tem Whitley noted that the meeting was subject to the Brown Act. He asked the Deputy Town Attorney how that request could be handled.

Rafael Mendelmann, Deputy Town Attorney, stated that no action could be taken given that the item was not on the agenda and no action could be taken without notice. He added that in the context of discussing the items on the agenda Commissioners could discuss the factors weighing into the Commission's considerations.

Planning Director Lori Salamack advised that as Planning staff had recommended at the last meeting, no decision was being recommended with respect to the application given that staff was late getting material out to the Commission in that the material had not been received until Friday and had not been placed on the Town's website until this date. While not legally obligated to be posted on the website, she stated it was the Town custom to do so. Like the material submitted at the last meeting, she stated that the substantial document was not at the point staff would like it to be. While it was legal for the Commission to take action, she stated it was the custom in Moraga to allow more opportunity for review.

Ms. Salamack therefore suggested that the Commission provide direction with respect to revisions to the draft resolutions provided to the Commission and continue the item to a future meeting date.

Commissioner Goglia expressed her understanding that her request could be discussed under the agenda item itself.

On motion by Commissioner Levenfeld, seconded by Commissioner Driver and carried unanimously to adopt the meeting agenda, as submitted.

III. **ANNOUNCEMENTS**

There were no announcements.

IV. **PUBLIC COMMENTS**

Edy Schwartz, Moraga, referred to the ongoing beautification in the community and questioned what a change from four lanes to two lanes would do on Moraga Road. She suggested that if there was a way to present a videotape, observation or a study of what would actually be done it would be good to know what would occur in the future.

V. **ADOPTION OF THE CONSENT CALENDAR**

Commissioner Levenfeld advised that she would have to abstain from the minutes of August 18, 2008 since she had been absent from that meeting.

Chairman Pro Tem Whitley removed the Consent Calendar item in total to be considered before Routine and Other Matters.

A. **Approval of the August 18, 2008, September 15, 2008 and October 6, 2008 Meeting Minutes**

VI. CONTINUED PUBLIC HEARINGS

A. Public Hearing and Notice of Availability of Final Environmental Impact Report (SCH No. 2003022062) for the Proposed Rancho Laguna II – 35 lot residential subdivision, Conceptual Development Plan (CDP) and Conditional Use Permit (CUP)

PROJECT DESCRIPTION: The Rancho Laguna II project is a proposed residential subdivision of 35 lots on a 180.2 acre site located on the east side of Rheem Boulevard between Woodminster Drive and Fernwood Drive in the Town of Moraga. The project site was formerly part of a larger landholding known as “Rancho Laguna de Los Palos Colorado.” Access to the project will be from Rheem Boulevard at three locations. The proposed project clusters 14 residential lots paralleling Rheem Boulevard (ranging in size from 15,043 square feet to 20,933 square feet) and, by separate access, 21 residential lots on the eastern facing slope of the site (ranging in size from 18,988 square feet to 32,714 square feet). The 35 proposed lots and accompanying roadways encompass approximately 21.7 acres, 12 percent of the 180.2 acre site. A total of approximately 160 acres of open space is proposed to be managed by a Geologic Hazard Abatement District (GHAD) and preserved in perpetuity. The open space area includes all of the minor ridgeline and Coyote Creek and the rest of the Moraga Open Space Ordinance (MOSO) designated property. The GHAD would be responsible for the management and maintenance of the open space in all respects, including the trails, as well as the stormwater peak flows and water quality and geotechnical stability improvements throughout the project site.

EIR CERTIFICATION: A Draft Environmental Impact Report (DEIR) was prepared for this project to assess potential environmental impacts and was made available and circulated for public review and comment pursuant to the provisions of the California Environmental Quality Act (CEQA). It also examined environmental impacts for alternatives to the project as required by CEQA. The DEIR document was available for public comment for a 76-day public review period from July 11, 2006 until September 25, 2006. The Town also held two public hearings on July 17, 2006 and August 7, 2006 to receive public comment on the DEIR.

A Final EIR has been prepared and made available to the public on August 19, 2008. It responds to the comments received on the DEIR and proposes text revisions to the DEIR in response to some comments. The Planning Commission will certify the Final Environmental Impact Report (FEIR) if it finds it acceptable and in conformance with CEQA. EIR certification must occur prior to action on the project. Unlike the DEIR, comments on the FEIR are not required to be responded to by the Town.

If written comments are received, they will be provided to the Planning Commission as part of the staff report. It should be noted that the certification of the FEIR does not constitute approval of the project for which it was prepared. The decision to approve or deny the project will be made separately by the Planning Commission.

David Storer, Town Planning Consultant and the Project Planner, presented the Town Engineer, Legal Counsel, and the environmental consultants and advised that the project had been reviewed by the Planning Commission on September 15, 2008, at which time direction had been given to staff to firm up options for Policy Option No. 3.

Mr. Storer spoke to procedure and described a series of attachments to the staff report as: Attachment 1, a resolution to certify the EIR that had been prepared for the project, which analysis had been prepared for a 35-unit project on 180 acres; and Attachment 2, a resolution to approve a Conditional Use Permit (CUP) which would allow for residential use in the zoning district, which included several exhibits to show associated site plan, grading plan and landscaping plan and which would be an entitlement that would run with the land.

Specifically with respect to Attachment 1, Mr. Storer described that document as addressing whether or not the EIR contained adequate information regarding a 35-lot project and whether it addressed the impacts. He stated that the findings, mitigation measures and the like had been included in Attachment 3 and related to Policy Option 3. He noted that the Conceptual Development Plan (CDP) tied in to the Statement of Overriding Considerations, Mitigation and Monitoring and Reporting Plan and the Conditions of Approval.

Mr. Storer spoke to the exhibits to Attachment 3 and explained that the first exhibit related to consistency findings with the General Plan and the CDP, Exhibit B was the linkage of Policy Option No. 3 related to the findings necessary for CEQA to the project where a Statement of Overriding Considerations had been included. Exhibit D included the Conditions of Approval and Exhibit C was the Mitigation and Monitoring Reporting Plan. Attachment 4 included correspondence provided at the September 15 meeting from a variety of public and private parties. Attachment 5 was the Policy Option Matrix which had been attached to the Commission's September 15 staff report.

Mr. Storer pointed out that the applicant had made a statement at the September 15 meeting that he would make a substantial monetary contribution to the Town Policy Option No. 3 for the lower Rheem drainage area, which had been embodied in Exhibit D as Condition No. 18.

Mr. Storer reported that some correspondence had been received since the preparation of the packet, which correspondence had been provided to the Commission.

Mark Armstrong, Rancho Laguna, LLC, noted that the application had been considered by the Commission over the last several months. He had nothing new to present other than the plan which had been presented at the last couple of meetings, the August 2008 Conceptual Development Plan, grading plan, cross sections and the landscaping plans. He had provided a summary of where the project was at this point, stated it was a good project and added that it was ready for the Commission's consideration and approval. He also noted the point raised by the Planning Director for the lot sizes in the cluster along "D" Drive.

Mr. Armstrong noted that through the study session process, the Commission had expressed a strong interest in preserving the open views in the lower Rheem Valley area, and instead of having the plan extend all the way down with lots extending halfway through the lower valley area, the plan had been revised to cluster narrower lots along "D" Drive in the upper unengineered fill area, which he noted was not the most attractive element of the Rheem Valley area. The plan had been designed such that the open views between Rheem Boulevard and "D" Drive were enhanced and preserved with a swale to replace the existing swale where "D" Drive and the homes were located.

Mr. Armstrong added that the homes would also be screened from view and would be designed to be on split pads which reduced the grading and eliminated the need for retaining walls behind the lots. There would be debris benches behind the lots, within the lot. He noted that Ms. Salamack had expressed a concern for that.

Mr. Armstrong suggested that the plan was appropriate and that the lot widths were appropriate for that location. The debris benches could remain out of the lots and there could be wider lots with a configuration of the plotting plan, which would present 6 lots instead of 10 lots. Instead of 70-foot wide lots, they would be 140 feet wide with the same depth.

From his perspective, Mr. Armstrong stated that much had been done to provide enhancements, improvements and public benefits to the project. He stated it was also important for the applicant to make sure that things were done in an aesthetically appropriate way and he did not want to unnecessarily lose lots without there being a strong reason to do so. He added that they were committed to a \$500,000 contribution to the Town to help stabilize Rheem Boulevard between "A" Way and the bottom "D" Drive, but only with some development. While they were willing to make a contribution if there were only 6 lots, the contribution would be reduced by the loss of the 4 lots, or \$16,000 each.

With no development along "D" Drive, Mr. Armstrong stated that all they would do, as had previously been stated, would be to stabilize the fill in that location and stabilize Rheem Boulevard above.

Mr. Armstrong explained that the plan did not include a lower valley buttress although he acknowledged that the Commission at the September 15 meeting had indicated a desire to discuss that issue. He reiterated as he had previously reported that including the lower valley buttress in the plan would not cause a dramatic change to the plan. It would mean taking down another foot or two of dirt from the southern plateau and placing that 25,000 cubic yards in the lower valley area to create the buttress. In that scenario, there would be no need for the Town in the future to stabilize Rheem Boulevard in that location, which was different from the Rancho Laguna II plan in the EIR because that would still not include homes in that lower location which would then preserve the open views.

Mr. Armstrong commented that he liked the plan the way it was although he noted the discussions to the contrary.

With respect to the suggestion of delaying consideration of projects that might be affected by either Measure J or Measure K until after the election and after any ensuing litigation, Mr. Armstrong stated that the project had been in process for several years with over a million dollars in Rancho Laguna LLC costs and staff costs. He added that the Town had an obligation to continue to process the project based on the rules and regulations in effect. He noted that the Town Council could have pursued a moratorium process as set forth in the Government Code which required a four fifths vote of the Town Council. Moratoriums had specific time restrictions and would be the mechanism for a jurisdiction to place applications on hold. Stating that the matter had been brought to the Town Council's attention previously, he noted that the Town Council had not pursued that possibility. He suggested that the Town Council was not interested in considering a moratorium on development applications

Mr. Armstrong requested that the application be considered on its merits with all the information and analysis provided, and with the Commission to make its judgment call on the kind of project it would like to see based on the General Plan in effect.

Speaking to the applicant's comment on the lot widths, Ms. Salamack stated that the lots proposed at 70 feet in width were narrower than any land use district in the Town of Moraga. She stated that lot width was important in the Town's development standards, in particular with respect to Design Review, or Section 8.72.090(B)1, of the Moraga Municipal Code (MMC), which would apply to the project.

Ms. Salamack advised that the Town was to consider *Whether or not the structure conforms with good taste, good design and in general contributes to the character and image of the Town as a place of beauty, spaciousness, balance, taste, broad vistas and high quality.* She stated that “spaciousness” applied directly to wider lots and a sense of spaciousness. She reiterated that lot width was an important factor in the Town’s standards and that the lots, as proposed, were more narrow than any standard in the Town’s code.

When asked how he had arrived at a rate of \$16,000 per lot, Mr. Armstrong explained he had divided the proposed \$500,000 contribution by 31 lots. When asked how a \$500,000 contribution had been identified, he stated that the applicant was prepared to make a substantial contribution and while he had spoken to the Town Manager and Town Engineer on the issue, Town staff had not identified that number as the right number. He noted that he had recommended that amount and while there had been no negotiations to date, there had also been no objection to date to that contribution amount.

Mr. Armstrong expressed a willingness to negotiate with the Planning Commission in open session on that issue. He recognized that was not necessarily a final number as far as Town staff or the Town Council was concerned. In what he described as the unlikely event the application was not appealed to the Town Council, he suggested that the Commission could adjust that condition to stipulate “subject to further review and consideration when the matter was presented to the Town Council at the General Development Plan stage or earlier.” He added that input from the Town Engineer included suggestions for a cost of living index and bringing the sub payment up to an earlier time if the Town received funding for the roadway.

When asked why Rancho Laguna would still be willing to stabilize the upper portion of Rheem Boulevard if no houses were approved along Rheem Boulevard, Mr. Armstrong stated that would be an appropriate place to take the fill/cut from the southern plateau and put in that location to stabilize Rheem Boulevard. While other locations could be identified up above, he suggested there might be environmental consequences going into areas attempting to be preserved as open space. He added that there was a public benefit in terms of stabilizing Rheem Boulevard in that location which was the most sensible place to place the dirt.

PUBLIC HEARING OPENED

Malcolm Sproul, 45 Williams Drive, Moraga, asked for a clarification of the entitlements to be considered by the hearing.

Chairman Pro Tem Whitley verified that the agenda item was a Public Hearing and Notice of Availability of a Final Environmental Impact Report (EIR) for the proposed Rancho Laguna II, 35-lot residential subdivision, Conceptual Development Plan (CDP) and Conditional Use Permit (CUP). As such, the hearing was for all three items.

Mr. Sproul recommended that the Commission deny the project, as proposed in the EIR. He recommended an alternative that would avoid the creek. He suggested that there were major permitting issues with natural resources agencies that were associated with the fill. He stated that the Palos Colorados project had struggled for years to attempt to resolve similar permitting problems of wetland fill and had ultimately decided that avoidance was the proper course to take.

Mr. Sproul also recommended that the alternative remove development from the ridgelines. He stated it was not a plateau but a ridgeline and that there were policies in the General Plan to support doing that, specifically Policies CD1.3 and CD1.5. He suggested that the applicant consider a project that used the existing fill pad and the area east of the creek along the lower slope as the development area on the property. He suggested that the loop road as shown on the map and a bridge or large oversized arched culvert as the access point at the lower end along Rheem would be appropriate as a viable alternative.

Mr. Sproul also recommended that wetland mitigation be on site. He stated that the mitigation area was the creek, a viable location with a good flow of water the majority of the year and with a good diversity of native plant species growing along that stream.

With respect to the Rheem Boulevard repair, Mr. Sproul did not believe that the repair should be the driving force for the location and number of units on the property. He stated that plan approval should be based on the land use regulations of the Town and then whatever would become of that in terms of road repair and dollars should be considered.

Dan Smith, 288 Rheem Boulevard, Moraga, suggested that the pivotal point of the resolutions to be considered by the Commission was the adequacy of the FEIR. He stated that the FEIR for any project should be a consolidated, comprehensive, transparent and objective account of the environmental impacts of the current project. He suggested that the DEIR released in 2006 was widely deemed by those making comment to be inadequate as did the current comments from the City of Lafayette. He suggested that the responses that were part of the new FEIR were not responses but were evasions.

Mr. Smith stated that he found the entirety of the DEIR to be inadequate. He stated that the responses to comments and the various additional documents that constituted the FEIR did not meet the standards of documentation as required. He stated that a good EIR was needed; a new draft that reflected the current project and actually responded to the comments received and therefore could provide a sound basis for review.

Jon Leuteneker, 31 Birchwood Place, Moraga, stated that for the past five years many in the Town had been providing letters, making public comment and providing constructive input related to the project. And yet he stated that the development remained relatively unchanged.

Mr. Leuteneker commented that the Mitigation Measures and Monitoring Program included references to impacts such as high risk areas, environmentally constrained areas, expansive soils, degradation of wildlife habitats, preexisting landslides, fill areas up to 40 feet deep and the impact that the proposed project would irreversibly alter the character of the project site with development along the ridgelines. To address the issues, mitigation measures had been offered along with engineering solutions, landscaping buffering and screening.

Mr. Leuteneker stated that the leaders of the Town who had drafted MOSO in 1986 and subsequently the General Plan in 2000, assumed that the many safeguards put in place would protect the ridgelines, wetlands and open spaces from this kind of excessive development. If Rancho Laguna as proposed gained approval from the Planning Commission he stated that would offer confirmation that business as usual in the Town would not work and the Town was badly in need of rigorous and restrictive planning tools to preserve Moraga's semi-rural small town environment.

Susan McNeil, 1094 Country Club Drive, Moraga, speaking on behalf of Preserve Lamorinda Open Space, stated that the group had been commenting on the project for six years in writing and at hearings. Members of the group and others had several meetings with the developer and the Town in the early years of the project. In nearly every meeting and with every comment the group had asked the Town to look at an alternative project that left the ridgeline untouched and clustered the development, 10 to 20 houses, on the flat fill area next to Rheem Boulevard.

Ms. McNeil emphasized that the comment had been made again and again through two EIRs, through a dozen Planning Commission meetings, and that the group had even submitted a sketch for a 13 and 20 lot plan and comments on the DEIR, which she stated had never seriously been analyzed.

Once again, Ms. McNeil asked the Town to seriously consider a smaller project with no ridgeline houses. She stated that would be a lower impact project in terms of visual, grading, water quality, and tree and habitat impacts. While she agreed with the FEIR that the visual impacts of the project were significant, she disagreed as to why they were significant. She stated that the FEIR cited seven different public roads from which the ridgeline development would be visible but concluded that tree screening would reduce the impacts to less than significant. She stated that the FEIR highlighted that point on Page 17 of Mitigation Measure Response No. 3 where the project site included grassy hillsides and ridge tops that would undergo a significant change in character.

Stating that was the crux of the issue, Ms. McNeil noted that even in a best case scenario in which the trees were as tall and thick as in the simulations, a ridgeline of a bunch of trees and a row of rooftops perched over them was a long way from the current natural uncluttered ridgeline. She stated that while MOSO did not prohibit development on ridgelines below 800 feet that did not mean that building houses on a ridgeline and relying on trees to screen them was a solution. She added that the point was to leave the Town's remaining ridgelines alone.

Ms. McNeil also stated that Preserve Lamorinda Open Space continued to believe that the open space parcel would more appropriately be developed at a lower density of one house for 10 to 20 acres due to its environmental and visual resources. She stated that 31 houses would mean that the project would be developed at one unit for 5.8 acres, which was nearly the maximum density. Developing the ridgeline would also require a major creek crossing, removal of mature and native trees and construction of 800 feet of road over a steep hillside and a 400 foot retaining wall, among other factors. She stated that those concerns were indicative of the extent the parcel was constrained due to its topography and not suited for the proposed density.

Billie Schultz, a Campolindo resident, Moraga, stated that the impact would not be visual for her but for your friends. She did not see how a creek could be filled to help stabilize soil above. She suggested that area could never be stabilized, would be a problem for everyone, and was just too precarious.

Jillian Bright, 156 Natalie Drive, Moraga, urged the Commission to retain the open rolling hills of Rheem Boulevard as the last significant stretch of open hillside that typified the character of Moraga.

Larry Cort, 591 Rheem Boulevard, Moraga, stated that the Commission should not approve the EIR or the CDP since both were contrary to the stated goals of MOSO to save ridgelines and to save wetlands in the Town. He stated that the proposed plans took no consideration of current neighbors or the additional traffic that would be introduced under the proposal. He did not support a trade-off for a potential repair of Rheem Boulevard.

REBUTTAL:

Mr. Armstrong emphasized the long, complex process, the very thick DEIR, the very thick FEIR, and the extensive findings and mitigation measures. He recognized the difficult process to follow along. He stated, for instance, that the comments did not respond to the project.

Referring to Mr. Sproul's comments about not approving the project in the EIR, Mr. Armstrong stated that the current project was not the project in the EIR. When asked to stay away from the creek, he stated that the project was staying away from the creek. On the comment to develop in the unengineered fill area at 15 to 20 units, he stated that he and the Planning Director were discussing 6 or 10 units in that small development area, which area would need fill to create the buttress required and stabilize Rheem Boulevard in that location.

Mr. Armstrong added that the area above was not part of the MOSO minor ridgeline. It was below that level. He stated that the location, as exhaustively demonstrated in the EIR, would generate no significant visual impacts, not because of the trees which would provide an additional benefit but it was not visible because of the topographic location. He emphasized that the photo simulations that were part of the EIR confirmed that fact. A few trees had been proposed in a couple of locations intended to address the rooflines of some of the homes from the Fernwood perspective. He stated that the cut was taking place on the backside of the top of that hill. Everything was kept off of the back.

Mr. Armstrong pointed out the area of minor tree cover and noted a comment from Town staff and others during the time of the EIR process that there not just be a row of trees but that there be a native landscape appearance. He stated that the photo simulation had demonstrated that fact. From Fernwood there would be a native woodland appearance and the bottom part of the hillside would be preserved. He used the map to identify the expected views from other locations and noted that the most significant public view would be along Rheem Boulevard which he expected was why the Commission had encouraged no development in that location.

Mr. Armstrong acknowledged that the property was at the higher end of the density range, although he emphasized that less than 10 percent of the site was being developed. There were over 160 acres were being preserved in a pristine open space condition. He explained that to have a successful development there would need to be some reasonable level of development on 180 acres. He suggested that what had been proposed was a reasonable level of development. To develop just down in the unengineered fill area for some units getting the dirt from where he did not know, with 6 to 10 units, was not economically feasible and was not reasonable.

Mr. Armstrong also stated that the proposal was staying out of the MOSO area entirely and development was limited to a location that given the topographic circumstances did not represent a significant visual impact, visible from only a few locations.

Mr. Armstrong added that the project had been presented in great detail through a number of study sessions. He stated that the FEIR was abundantly clear that the only significant unavoidable impact was the change in character where the 10 units had been proposed along Rheem Boulevard. He stated that would not mean to say it would look bad, it would just be different, a change in character in that location. He suggested that the level of development was appropriate in exchange for the contribution towards the stabilization of Rheem Boulevard.

Other good public benefits identified by Mr. Armstrong were the preservation of open space and the provision of public trails. He added that the idea of 10 homes being responsible for 170 acres of open space and the maintenance of public trails was ludicrous. He emphasized that there had to be some reasonable level of development to allow the maintenance of the property.

Mr. Armstrong added that developing as Mr. Sproul and Preserve Lamorinda Open Space had suggested digging in the unengineered fill area was totally infeasible. Due to the kinds of things being attempted in terms of public benefit he stated they would not do it.

Mr. Armstrong stated that the Planning Commission had requested a green building level above and beyond anything that had ever been done in the Town. The conditions of approval had included a condition and he had agreed that the homes in the project meet the 90 point level of the green building program. He suggested adding to that condition a reference to green building elements including solar and photovoltaic panels on each of the homes, which would mean that the homes would meet a 90 point and better standard.

With respect to downstream water flows, Mr. Armstrong was committed to provide stormwater mitigation of 100 year stormwater flows beyond just bringing it back to its existing condition as an additional public benefit. He suggested it made sense to include reference to that in the proposed conditions of approval.

Town Engineer Jill Mercurio advised that as had been discussed at a previous meeting, the project proponent had offered to make a significant contribution, although the amount of that contribution had yet to be determined. Noting the offer of \$500,000, she stated that would not help much in the cost of the road repair project, estimated to cost \$2.7 million in just the one section. She commented that the area from Moraga Road to Rheem Boulevard would cost many millions more in the area of sliding and having to stabilize the underlying soils prior to an actual paving project.

Ms. Mercurio explained that a geotechnical fix was required, not an asphalt fix. She also noted that there were no other funds available to do that work even though grant opportunities had been pursued. She commented that if the road were to slide during a major emergency event and Federal Emergency Management Agency (FEMA) money became available, that would be the only foreseeable opportunity to get additional funding. As such, she stated that the proposed project might be the prime opportunity for the Town to have that road repaired.

Ms. Mercurio commented that the Interim Town Manager had been the Town Planning Director a number of years ago and he understood at that time that the stabilization of Rheem Boulevard would be a part of any discussion of any project on that site. While not something new and not a mandate, she stated that was something that the Planning Commission and the Town Council would need to weigh as to the benefits on both sides. She added that as part of the Statement of Overriding Considerations if there were significant and unavoidable impacts what the project proponents could offer to make those unavoidable significant impacts more manageable would include the discussion of the stabilization of Rheem Boulevard.

Commissioner Goglia asked what the correct contribution should be, reported by Ms. Mercurio that was not an engineering decision but a policy decision. She noted that the discussion ranged from the \$500,000 that had been offered up to the full amount.

Ms. Mercurio added that would need to be considered as part of the evaluation of the whole project. She stated that staff had not come up with a dollar amount because that would end up being a policy decision to be made by the policy makers.

Commissioner Goglia asked about the future possibilities for the Town being able to come up with any monies to add to the contribution to stabilize Rheem Boulevard.

Ms. Mercurio advised that the Town received some transportation funding for road repairs and other purposes, but did not receive a lot. She noted that some of the funds covered road maintenance and operations. Even the money received, which ranged between \$300,000 and \$500,000 annually was not all available for road repair, which was why it took some time to get enough money to actually do a road project. If the Town did no other projects, in a few years she suggested there could be enough funds from transportation sources to do something. She clarified, when asked, that the stabilization of Rheem Boulevard was not even on the Capital Improvement Program (CIP) list because it was such a large project, part of the Town's Pavement Management Program.

Ms. Mercurio also advised, when asked, that if the road were to slide during a non-emergency event, it would be closed. The Town did not have the money to repair it.

Commissioner Goglia commented that Rheem Boulevard was a vital connector and any closure would be very problematic.

Ms. Mercurio clarified that Rheem Boulevard was an arterial street, one of few in the Town. If the project were constructed, as proposed in the layout, the upper valley would be stable and would not likely fail. The area of Rheem Boulevard and the lots at the end of "D" Drive and "A" Way through the upper part of the project would fail.

Commissioner Goglia verified that each segment of the proposed project would have a different route out and one way to go, as Ms. Mercurio noted would be the same with any homes bordering Rheem Boulevard.

Chairman Pro Tem Whitley stated that since the developer was a landowner and Rheem Boulevard was slipping onto his property, whether or not the developer absent any development had any obligation now to pay to shore up the road.

Ms. Salamack commented that in other cases neighbors have had a duty to maintain the lateral support for neighboring property. She stated that question would have to be researched to see if that would apply in this case.

Mr. Armstrong explained that question had been addressed early on. He stated that the project could be developed without stabilizing that location in between. He stated that the current and previous property owners had done nothing to change the condition of the property which was in its natural state. The improvements to Rheem Boulevard were improvements done for a public purpose. The landslide had come from above the property to the property. While someone could theoretically try to bring claim to the property owner, he did not think that claim would be successful because the property owner had done nothing to cause the issue. He stated that the property owner would stabilize half of the road.

Chairman Pro Tem Whitley suggested that rather than a range of \$500,000 to \$2.7 million for a contribution, there was actually a range of zero to \$2.7 million since there was a good case that the landowner was not responsible for shoring up Rheem Boulevard. He suggested that part of the analysis in shoring up Rheem Boulevard was the justification, and there were some impacts with respect to a counter veiling significant benefit to the Town which was a final repair solution to Rheem Boulevard. He stated that would be one of the significant benefits that the development would bring, the opportunity that the developer would fix a \$2.7 million problem for Rheem Boulevard.

To clarify the issue, Commissioner Levenfeld suggested that a condition could be imposed that the developer would have an obligation to contribute to the stabilization of Rheem Boulevard, to be considered by the Town Council at a future date. She preferred to speak to the merits of the project as opposed to spending time debating the merits of a road stabilization price tag.

Ms. Salamack suggested that the Commission could consider the relationship between the road repair and the project. She noted that the original project called for the full valley buttress fill in which case the road repair would have been an initial part of the project. The project could not have been approved without the road repair. That full valley buttress fill had since been removed with a partial fill in the upper valley area and the possibility of a buried retaining wall in the lower valley area, or not. She suggested that some of that, as indicated in her memo to the Planning Commission, could turn on whether or not it was appropriate to approve the Rheem Boulevard lots, which would generate a significant and unavoidable impact as determined by the EIR. As a result, the Commission could state that because of a significant and unavoidable impact on Rheem Boulevard some other benefit must come to the Town to be able to approve the project, which could be the Statement of Overriding Consideration where the Commission could identify the dollar contribution required for the repair of Rheem Boulevard and which would help the Town to approve the significant and unavoidable impacts.

Ms. Salamack suggested that another alternative would be for the Commission to state that the Rheem Boulevard lots could not be approved given the significant and unavoidable impact on the community. In that case, the 21-lot project in the southern plateau area could be approved, which would not include the repair to Rheem Boulevard.

Ms. Salamack suggested it should be the Commission's feeling about the project that would drive the road repair and not the road repair driving the project. She suggested that the Commission needed to determine how it felt about the significant and unavoidable impact, and if acceptable, identify the dollar amount of road repair that would make that an acceptable impact.

Ms. Salamack understood from the applicant that Rancho Laguna had looked at the possibility for fewer lots on Rheem Boulevard to address her concern for consistency with the General Plan. She noted if that needed further study and consideration that would be another alternative for the Commission to consider.

When asked, Ms. Salamack stated that the Commission should identify a dollar amount for any contribution to the road repair.

Commissioner Daniels asked if there was a recommendation from staff in that regard as to what would be a feasible contribution. She sought some recommendation to be able to determine the applicant's feasibility and the Town's need.

Ms. Salamack suggested it would be important to include the Town Manager, Town Engineer and the Finance Director in any discussion of fiscal issues. She clarified that a dollar amount would be needed to justify a Statement of Overriding Consideration. If there was no need for a Statement of Overriding Consideration, that negotiation would not need to occur.

Commissioner Goglia suggested it would be irresponsible to approve the project without the road repair given that more dwelling units would be added to an area known to be unstable and with limited access.

Mr. Armstrong referred to the Town Engineer's estimate in excess of \$2 million for the Town to secure additional funding to stabilize Rheem Boulevard. He stated that 10 lots, building "D" Drive, and impacting the fill to accommodate that roadway was not worth \$2 million. If that was the desire, he supported 21 lots with no impacts. He stated that Rancho Laguna's contribution would be stabilizing one half of Rheem Boulevard but it made no sense to do that with 6 or even 10 lots. If there was an interest in stabilizing Rheem Boulevard through the project, he suggested that would get back to where the project was a few years ago with a full valley buttress fill. Without that, the Town had an obligation to come up with monies it did not have.

Commissioner Goglia referred to her earlier request for discussion of suspending the approval of development proposals that would reasonably be impacted by either Measure J or Measure K until after the election and until such time as the Town Council determined that the outcome of any ensuing and/or pending litigation as a result of the passage of either or both of the initiatives was known. She suggested it might be useful to consider agendaizing that discussion for the next meeting. Whatever the outcome of the election she anticipated some issues and suggested it made no sense to pursue something until the effects of the election had been identified.

Commissioner Daniels suggested that waiting for any litigation to be resolved could take years and she questioned whether or not the Town could legally wait years for that to occur.

Mr. Mendelmann advised that the Commission had an obligation to be reasonable and process the application in a timely way. He stated that staff appeared to still be interested in a discussion although he acknowledged that the Commission was not ready to make a decision for a number of reasons not having to do with the election.

Mr. Mendelmann noted the staff recommendation to continue the application in light of the public and the Commission not having an opportunity to be provided with the agenda materials in a timely manner.

Commissioner Levenfeld verified that the Commission was being asked to make a decision on the application based on the current laws and regulations which would be in effect until the end of the year. She did not know that the election would impact the Commission's decision on the project. A decision would still be subject to the passage of a measure. She did not support a moratorium and stated that at some point a decision would have to be made.

Commissioner Driver felt strongly the need to keep the process moving given the number of iterations that had occurred and the work that had been done on the application. He noted that the continuance had been recommended due to late notice and late material. If continued again, he wanted information to be presented in a timely manner to be able to take some action this year. He wanted to see the application through to conclusion.

Ms. Salamack noted her understanding that one of the Initiatives was to become effective immediately unless the Town had already had the maximum number of amendments to the General Plan in that year, in which case it would become effective in January of the following year.

On a straw poll of whether or not a continuance was supported, there was consensus to continue the item.

Commissioner Levenfeld supported some way to avoid another continuance. She wanted to make sure that adequate time was provided for everyone to review the documents.

Ms. Salamack commented that if the Commission decided at the end of this meeting that the materials were ready to go, the application could be continued to November 3 and no further public notice was required. If the documents required substantial revision as a result of the Commission's discussion, she stated that the public hearing notice would not be made until the documents were ready to be distributed to the Planning Commission and had been posted on the Town's website.

Chairman Pro Tem Whitley supported direction on the material that had been presented to the Commission. He commented that the issues that had been raised related to protection of watersheds, viewsheds and open space, all concepts of consistency with the General Plan and the common thread that ran throughout. He asked the question as to whether or not the development was consistent with the General Plan.

Chairman Pro Tem Whitley noted that there were items in the EIR that did not have to do with consistency of the General Plan, such as impact on waterways.

On the question of the certification of the EIR, Mr. Mendelmann explained that the certification of the EIR was that the EIR adequately identifies and analyzes the environmental impacts. He stated that the EIR could be certified and the project did not have to be approved. He too sought comments on the adequacy of the EIR.

Commissioner Goglia commented that an EIR was a threshold document and if not approved the project was moot.

Chairman Pro Tem Whitley suggested that the only thing in dispute with respect to the EIR was consistency with the General Plan.

Mr. Mendelmann asked the Commission to keep in mind that the EIR certifies a 35-unit project that included a valley buttress fill. The question there was whether or not it adequately looked at that project. While that project might be considered, something different might be considered.

Commissioner Goglia clarified that was why the EIR, the CDP and the CUP were a package since it would further limit the approval since the EIR analyzed something broader.

Chairman Pro Tem Whitley asked Commissioners if there was anything in the EIR that was of concern that did not relate to consistency with the General Plan. He stated that the only thing he had been concerned about was consistency with the General Plan. In his mind, the EIR addressed all the environmental concerns.

Commissioner Driver noted that his prior concerns in the EIR were the loss of the creek and the mitigations associated with that. Given that was no longer being proposed, he did not know how to express that concern in a productive way. He noted the prior discussions of the creek and the environmental damage related to it and the concerns for the adequacy of the mitigation.

Chairman Pro Tem Whitley commented that he had not been present at the last hearing on the application where there had been agreement with no valley buttress in the lower half of the valley. He did not necessarily agree with that and suggested that was an issue that could be discussed in another context. With respect to consistency with the General Plan, he referred to the matrix prepared by Town staff that was contained in Attachment 2, Exhibit A, Attachment 1, Project Consistency with Moraga General Plan Goals and Policies. He stated that the matrix was in the context of giving guidance to Town staff.

When asked, Ms. Salamack explained that there had been some issues raised in the letter from Rancho Laguna that she had addressed. She stated that there had been references made to the Planning Director and Town staff in that letter. On the feeling that the letter was speaking for Town staff she had prepared her own comments directly, although she had not done a comprehensive review of consistency with the General Plan and had only addressed the comments that had been raised in the letter. She stated that the matrix, prepared by the Town's consultant, was a comprehensive list. She referred to Mr. Sproul's comments with respect to General Plan Policies CD1.3 and CD1.5 and noted that she had raised issues with respect to other policies.

Ms. Salamack reported that there was to be consistency with the General Plan as a whole. She recognized that there might be competing policies somewhat. She noted, for instance, that the policies that most directly related to project development needed to be verified. She commented that the Commission was being asked to significantly increase the density of the property from one dwelling unit for 20 acres to one dwelling unit for 5 or 6 acres, being asked to develop in hillside areas and in scenic corridors, and being asked to develop in areas of sensitive viewshed. She stated that the Commission would need to look at all of that together with other policies that might have to do with providing recreational amenities to the community, providing housing to the community and looking at the project on value and make a determination as to whether or not the project was consistent with the General Plan.

Chairman Pro Tem Whitley noted that five alternatives had been presented to the Commission in September. He suggested that the policies might have to be discussed for each to be able to make a determination. He commented that the General Plan included policies that were subject to broad interpretation. He noted that reasonable minds could differ on interpretation and each Commissioner would have to choose what he/she were more comfortable with and provide guidance to the Planning Department for an approvable proposal.

Mr. Armstrong stated the plan for 31 lots had been proposed and was the project to analyze. The options had been provided as part of the EIR analysis although the 31-lot plan was the project and the application, which he suggested was consistent with the General Plan. If certain elements were not preferred, he suggested there would have to be a focus on those things in the project. He suggested that was more manageable than trying to go through five different options.

Ms. Salamack suggested that while a project had been proposed by the applicant, the Commission still had the opportunity to approve a project with conditions that may relocate development on the site, change configuration of the lots or include other conditions that the Commission preferred.

Ms. Salamack explained that the Commission had the opportunity to consider some of the options that had been presented to find the project consistent with the General Plan.

When asked for a clarification of the certification of the plan that had been included in the EIR, Mr. Mendelmann explained that the EIR was an analysis of the project that had been proposed. It was not a usable document for a future developer coming in with a different project.

Commissioner Goglia suggested that with the approval of the EIR as currently drafted some other developer could present a CDP and a CUP to build the project.

Mr. Storer explained that an environmental document could be approved and the project could still be denied. If denied without prejudice, Mr. Armstrong or someone else could propose a project at or less than the 35 lots, the question would be whether or not the environmental document had been prepared to adequately address the impacts of the project as proposed. He stated that the EIR was a specific EIR.

Chairman Pro Tem Whitley suggested that one of the things discussed was not doing the valley buttress in the lower half and whether or not that had environmental impacts that had been adequately addressed in the EIR. He stated that had to be done since the full valley buttress had been included in the EIR.

On the questions related to what the EIR had indicated with respect to the full valley buttress fill and his comments in that regard, Commissioner Driver explained that he had commented that the Commission had spent a lot of time discussing whether or not the mitigation was adequate with respect to filling the creek. It may be adequate although he had acknowledged that there were issues and he suggested there might have to be a discussion given the number of weeks since the Commission had reviewed that aspect of the proposal to be comfortable with certifying the EIR.

Commissioner Levenfeld thought that the EIR had addressed scenarios to stabilize the road including the full valley buttress fill. As far as the EIR, she suggested it may have actually addressed the different scenarios and it would be the CDP decision as to how to apply the alternatives to stabilize the road so it may not be an issue that needed to be addressed in the EIR certification in regard to the full valley buttress.

When asked by the Chairman Pro Tem if the EIR addressed alternatives and the impact of those alternatives, Nadine Sponomore, Sponomore Associates stated that the EIR addressed the valley buttress fill as part of the project and looked at alternatives to the valley buttress fill, although it did not go through a specific analysis of each of those alternatives that had been presented by the applicant. However, the impacts of the valley buttress fill were probably much greater than the other alternative scenarios for the road. She stated that there was a letter from the geologist and a response that came to the conclusion that the impacts to the 31-unit plan as proposed were less than those addressed in the EIR.

Chairman Pro Tem Whitley noted that the development analyzed in the EIR was the complete valley buttress and the question had been raised as to whether or not the environmental impact for the valley buttress had been adequately mitigated in the EIR. If the analysis was inadequate in the EIR, he suggested that the EIR could not be approved even if there was a desire to approve a CDP which did not include a valley buttress.

Mr. Storer stated that there was a difference between environmental impacts and mitigating them and whether or not even as mitigated were still consistent with the Town's idea of the General Plan and the scenic corridor. He stated it was not an EIR advocacy question. He cautioned against being too over analytical and engaged in the adequacy of the EIR. He suggested focusing on consistency with the General Plan on issues related to 6 to 10 units, whether or not the lower valley buttress should go in as a General Plan matter, and whether or not significant and unavoidable impacts were justifiable overriding considerations.

Mr. Mendelmann stated that if the Commission did not like the analysis of the valley buttress and was uncomfortable certifying that and were moving toward approving a project and did not want to certify that part of the analysis but also wanted to approve a project that did not include a valley buttress fill, the document could be found to adequately analyze the impacts of the project that would be approved. If there were problems with the analysis, mitigations and conclusions about the valley buttress fill and the valley buttress fill was not going to ultimately be approved, the document did not need to be rejected. He stated that staff would need to craft certification of the document for the project that was going to be approved.

Ms. Salamack asked for a clarification as to whether or not the public hearing had been closed. She stated if it had, it would be inappropriate to take comments from the public without reopening the public hearing. She asked the Planning Commission to direct its questions to the Deputy Town Attorney.

Chairman Pro Tem Whitley referred to the analysis of the General Plan.

On the discussion of General Plan consistency, Commissioner Driver referred to the clustering and the lot sizes raised by the Planning Director's letter. He stated that had introduced a lot of confusion for him. He noted that the Commission had suggested that some additional clustering would be a benefit of the project but which might have opened up a host of other issues just now being raised. Noting the comment in the General Plan about encouraging clustering except along scenic corridors, he stated it was one of those issues that needed to be balanced. He stated that before reading Ms. Salamack's letter he had been comfortable with the situation. He suggested that the site was probably one of the most developable pieces of land on the whole property and maybe one of the ones causing the most General Plan concern. He would have to mull that over before being comfortable with that situation.

Commissioner Driver added that without taking a full accounting of all the concerns laid out by the Planning Director, he suggested the proposal was the right thing to do in that specific area on that specific piece of property given the specific geological conditions in the presence of the unengineered fill. If putting any development along Rheem Boulevard, he suggested that was the way to do it. He remained concerned with the density altogether on the site in terms of General Plan consistency. If recommending an approval on the project as developed without stabilizing Rheem Boulevard, he did not see that the benefit cost/value tradeoff had been achieved. He suggested that the Town might be better off with the development on the ridge and with nothing along Rheem Boulevard. If looking at the technical documents in the EIR and what had been identified as the most significant environmental impact, it was the impact related to those houses in the view corridor, even though that was a disconnect for him.

Commissioner Goglia suggested that there were a number of trade-offs to consider at this point in terms of conformance with the spirit of the General Plan.

Commissioner Driver suggested with respect to the series of options presented that the option with the 21 homes along the ridge was by and large more consistent with the General Plan than the alternative of the 21 lots along with the 10 lots down below, which in turn was more consistent with the General Plan than the original project which had proposed more, bigger and more spread out lots in the lower area. He suggested that there needed to be a more meaningful overriding consideration or benefit to the Town. He reiterated the trade-offs to be discussed at this point and recognized the hard work to try to improve on the proposal.

Commissioner Levenfeld supported an alternative where no precedent setting decisions were being made on lot sizes being the smallest lots approved in the Town as noted earlier. While she would like to see that, she stated that the impact in the corridor and its compatibility with the General Plan depended on the view perspective and the portion of the General Plan for consistency.

In terms of trade-offs, Commissioner Levenfeld spoke to the benefit of having a range of lot and house sizes in the project providing more than custom homes in the Town. As such, she supported a scenario of the houses along Rheem Boulevard that would not set a precedent of smaller lot sizes in Town.

Commissioner Daniels commented that the clustering idea had been an attempt to preserve as much view as possible and open the area at the same time generating more funds to stabilize Rheem Boulevard. If reducing the number of lots she stated that would decrease the monetary contribution to the stabilization of Rheem Boulevard. With the trade-off, she questioned whether the \$500,000 offered contribution would help appreciably given the overall cost involved.

Commissioner Driver noted that the 10 houses were not needed to get the same amount of stabilization.

On Commissioner Goglia's question of whether or not duplexes could be considered along Rheem Boulevard, Ms. Salamack stated that given the zoning multiple units could not be considered although second units could.

Chairman Pro Tem Whitley suggested that development on the 180 acres was extremely problematic for many reasons, most significantly given the non-MOSO land not subject to MOSO restrictions. The land was riddled with geologic hazards and slide zones and safety on the lots was an extreme concern both in the upper area being developed and in the lower area. As a result, the size and placement of the lots was a concern under several different General Plan goals and policies having to do with geologic hazards and size of the lots. He noted that there were General Plan goals of preserving canyon and valley areas that were implicated, there were concerns about preserving creek waterways in their natural states and wildlife corridors which had implication with respect to the lower areas. There were concerns about protecting viewsheds both in the scenic corridor and on the ridgelines, all specific General Plan policies. He stated that those considerations about views from the scenic corridor and ridgeline development were also implicated.

Citing the problematic nature of the property, Chairman Pro Tem Whitley stated that the objections from everyone in Town were well made; however the General Plan policies and goals were open to interpretation. Each policy could go either way with large or small amounts of mitigation.

From his perspective, Chairman Pro Tem Whitley stated that there needed to be something extra, an overriding consideration to develop that many houses on that piece of problematic property.

Chairman Pro Tem Whitley suggested that the overriding consideration in this case was the stabilization of Rheem Boulevard and he referred to the earlier comment that the development should not be approved just to fix the road, although he stated that the road could probably not be fixed without the development.

Further from his perspective, Chairman Pro Tem Whitley stated that the only reason that would make the development approvable would be to fix the road completely. He stated that would involve either a complete valley buttress fill or securing a contribution of \$2.7 million. The consideration from the landowner's perspective would be holding up the natural development of the property by requiring the road to be fixed although he suggested that would not be the case. Given the constraints with respect to the property and under General Plan policies, he suggested that an appropriate level of development would be one dwelling unit for 20 acres, or 9 to 11 houses on the property in appropriate locations. Further, that for a greater number of lots and a greater development, higher risk for the developer and higher risk for the Town, and more marginal General Plan compliance would require something more.

Commissioner Levenfeld did not want to undervalue the dedication of open space associated with the project which had been an overriding consideration in many cases in the past. She did not want to overlook that value which also created a continuous trail system with the adjacent project.

Chairman Pro Tem Whitley responded, when asked his opinion of the policy options that the Commission had previously discussed, that it was a judgment call as to what was more important in the long run. Noting the differing opinions on that issue, he did not believe that the buried retaining wall and tie backs was as permanent a fix as the valley buttress from what he had learned from the engineering reports. He was not as concerned about the environmental impact of the fill on the creek area since he did not see that as much of a creek, more of a blasted out drainage ditch. Under the developer's proposal to remediate that area, he suggested that would create much more of a creek habitat after the placement of the fill and would look better for the Town and for the community than in its natural state.

Chairman Pro Tem Whitley added that he would prefer to have the fill and in that area landscaped in a creek setting than he would to have the tie-back system retaining the creek natural state. He supported Policy Option No. 2 or 5, or somewhere in between.

Addressing the Planning Director's concern for the widening of the lots, Mr. Armstrong noted that there would then be 6 lots and the lot widths would be doubled.

Mr. Armstrong added, when asked, that the pads would be lowered a foot or two, with less fill taken off than the original 14-lot plan. The lower valley buttness would be lower, with the creek

Commissioner Goglia described that option as Policy Option No. 2B.

Chairman Pro Tem Whitley requested that staff return with a full valley buttness, upper and lower, with 6 lots, the current development on top. He verified that the open space was subject to the GHAD.

Mr. Armstrong clarified that the GHAD would own the open space parcel in fee simple and the GHAD would be controlled by the Town of Moraga.

Chairman Pro Tem Whitley stated with respect to the balance of the property not on the lots that he would want to have the Town have an easement that would preclude development. He wanted the Town to have the right not to have that property developed, with open space in perpetuity or whatever would be required.

Commissioner Levenfeld clarified the Chairman Pro Tem's recommendation that his preference would be to include the relocation of the creek as part of the package.

Chairman Pro Tem Whitley stated that the reconditioning of the creek was one of the mitigation measures in the EIR. What that guidance, he stated that he could approve the development under the current rules.

Commissioner Driver commented with respect to a full valley buttness that he recalled Mr. Armstrong indicating that the likelihood of success of getting that permit done would be best if the Town took the lead. He asked how likely it would be for the Town to secure the necessary permits.

Ms. Mercurio explained that she did not know how long that might take with the regulatory agencies. She noted that it had taken years with the Palos Colorados project. While she understood that the regulatory agencies viewed projects more favorably when public agencies were the lead applicant that did not necessarily make much of a difference.

Ms. Salamack referenced a meeting a number of years ago with the regulatory agencies when a question had been posed as to whether or not the Town could obtain a permit from the regulatory agencies for the repair of the road. She suggested that public safety was the issue and she suggested that the Town's ability to press that matter would be better than for other types of new development that were not related to public safety.

On the question of why the Commission had shied away from the full valley buttress fill, Commissioner Driver suggested it was concern around the creek and the risk of permitting and the correspondence from one of the regulatory agencies that had created a lot of discussion and reassessment.

In response to Commissioner Goglia's inquiry as to how the Commission now felt about the creek, Mr. Armstrong suggested that the critical difference would be that there were no homes in that area. It would now become purely a public safety project and not a project with homes.

Commissioner Levenfeld also noted that in the last conversation, the Commission had weighed the willingness of the developer to pay for the stabilization. She did not oppose the full valley buttress fill and suggested that from the presentation the restored creek would look more like a creek. She supported a restoration of the land to look more natural than open grazed grassland, which would be an improvement to the corridor.

Commissioner Daniels commented that she had wavered between options 2 and 3 at the last meeting given her concern for how much the developer would ultimately pay. She would not know that amount until the Town Manager and the Finance Director had been able to offer more guidance in that respect. She did not believe that \$500,000 was sufficient to be able to accomplish what needed to be accomplished.

Commissioner Levenfeld asked staff to prepare a recommendation for the next meeting in light of the Chairman Pro Tem's recommendation. She asked if there was some dollar value offered for dedication of open space in the past, such as with the Palos Colorados project.

Commissioner Goglia suggested that it was hard to place a dollar value on open space which in one perspective was invaluable and in another had no value since there could be no development on that land.

Commissioner Levenfeld stated that if making the decision on the road repair, the Commission would just be picking a number.

Commissioner Goglia clarified with Mr. Armstrong that the permitting side of the full valley buttress fill was a problem of cost for the Town although it was not a problem of cost for the developer.

Commissioner Daniels spoke to the protection of the open space in perpetuity. She asked if the applicant could use the Williamson Act to get some tax benefit, to which Mr. Armstrong stated that a dedication of development rights, a recorded document, would be redundant in this instance because the land would be owned by a GHAD that was approved and controlled by the Town of Moraga.

An unidentified speaker expressed an increasing discomfort with the conversation between the developer and the Planning Commission. He emphasized that this was a public meeting. He noted that the Planning Director had earlier called for a closure of the public hearing. He suggested that the Commission was ill prepared if depending on the applicant's opinion of facts concerned with the project. He urged that the conversation be closed immediately. He urged the Commission to take care of business and noted that there was a whole community concerned with the application.

Commissioner Goglia agreed that the road was an important overriding consideration but from her perspective she had other overriding considerations in order to approve a development such as had been proposed. She stated that had to do with energy conservation and water conservation. She applauded the developer's pursuit of a higher green point rating although she suggested that did not do all that much. She was looking for a development that would be a demonstration kind of a project, particularly such a visible project in the scenic corridor. She supported something like 80 percent off grid supply for heating and cooling, power as well as lighting power.

While Commissioner Goglia suggested that was pushing it, she suggested it was achievable, given good solar angles. She suggested that there needed to be some work on the exact property lines and potentially some better consultants to advise on the design of the landscaping and buildings. She also sought a significant grey water contribution to the irrigation, which she suggested was also feasible.

Commissioner Levenfeld asked that the public hearing be closed.

Chairman Pro Tem Whitley CLOSED THE PUBLIC HEARING and stated that the public hearing had already been closed long ago. He stated that the public hearing was automatically closed immediately prior to the time that the applicant was asked to give a rebuttal, by planning rule of the Planning Commission.

Speaking to the CUP, Commissioner Levenfeld expressed a concern for the point the developer was able to grade the sites with respect to when the actual development would occur. If the development was approved, she stated that there would be a significant impact along the scenic corridor and along the ridgelines if the site was graded years before construction and landscape mitigation might be installed. She supported some condition to address that concern. She wanted to minimize the amount of delay between the grading of the site and the landscape mitigation.

Mr. Storer stated that would become problematic because the CUP was the wrong vehicle to address that concern. The CUP was a use question that ran with the land and just allowed single family homes in that zoning district.

With respect to the timing, Mr. Storer stated it was a question of when the Conceptual Development Permit (CDP) would be approved and how long it and the time the Tentative Map would be valid. When approving the General Development Plan (GDP) there would be the ability to record the lots and then do the grading. With the Final Map and the grading plans being approved there would be a certain amount of time to do that. As such, he stated that the benchmarks would be the approval of the CDP, and then a GDP application concurrent with the Tentative Map, which would have a lifetime, when the improvement plans would be approved, after which the grading permit would be issued and construction could begin.

Noting that the homes on the upper plateau would be custom homes, Commissioner Levenfeld suggested there would be a potential that area would be graded and the property could sit until the homes had been constructed.

Mr. Storer suggested that could occur and depending on the scope of the grading plan permitted there might be a limitation as to how the plan was approved, with certain phases of the subdivision.

Commissioner Levenfeld understood, however, that with no grading the road could not be fixed. She urged some consideration of the situation to ensure some landscaping mitigation.

Commissioner Daniels suggested that could be added as a mitigation measure.

Mr. Storer stated that could be added as a condition of approval or a mitigation and monitoring condition. He was confident that a condition could address that concern.

Ms. Salamack recognized that the Commission was asking for a review of a 6-lot alternative on Rheem Boulevard which would require some analysis to be returned to the Commission. She asked that the application not be continued to a date certain. She stated that staff would renote the meeting after the preparation of the staff report so that there would be no delay in getting materials out to the Planning Commission and the public.

On motion by Commissioner Daniels, seconded by Commissioner Goglia to continue the Public Hearing and Notice of Availability of the FEIR, the Conceptual Development Plan (CDP) and the Conditional Use Permit (CUP) for the proposed Rancho Laguna II project to a date to be determined by staff. The motion carried by the following vote:

Ayes: Commissioners Daniels, Driver, Goglia, Levenfeld, Whitley
Noes: None
Abstain: None
Absent: Vice Chairman Sayles, Chairman Hays

The Chairman Pro Tem declared a five-minute recess at this time. The Commission reconvened with all Commissioners initially shown and present and absent.

VII. NEW PUBLIC HEARING

A. None

VIII. PUBLIC MEETING

A. None

The following item was continued from earlier in the meeting.

V. ADOPTION OF THE CONSENT CALENDAR

Chairman Pro Tem Whitley recommended that the minutes be considered separately.

PUBLIC COMMENTS OPENED

There were none.

PUBLIC COMMENTS CLOSED

A. Approval of the August 18, 2008 Meeting Minutes

Given no quorum of members present to be able to approve the August 18, 2008 minutes, the minutes were continued to the next meeting.

B. Approval of the September 15, 2008 Meeting Minutes

Commissioner Levenfeld commented that the minutes had been corrected adequately.

On motion by Commissioner Levenfeld, seconded by Commissioner Driver to approve the minutes of September 15, 2008, as submitted. The motion carried by the following vote:

Ayes: Commissioners Daniels, Driver, Goglia, Levenfeld
Noes: None
Abstain: Chairman Pro Tem Whitley
Absent: Vice Chairman Sayles, Chairman Hays

C. Approval of the October 6, 2008 Meeting Minutes

On motion by Commissioner Levenfeld, seconded by Commissioner Goglia to approve the minutes of October 6, 2008, as submitted. The motion carried by the following vote:

Ayes: Commissioners Driver, Goglia, Levenfeld, Whitley
Noes: None
Abstain: Commissioner Daniels
Absent: Vice Chairman Sayles, Chairman Hays

IX. ROUTINE & OTHER MATTERS

Ms. Salamack advised that the Planning Commission Rules required the election of Chair and Vice Chair at the first meeting in October although that had not occurred at the last meeting.

Commissioner Goglia verified that the Vice Chair did not automatically become the Chair.

A. Election of Planning Commission Chair and Vice Chair

Chair

Commissioner Levenfeld nominated Margaret Goglia as Chair of the Planning Commission. Chairman Pro Tem Whitley seconded the nomination. There were no other nominations. The nominations were closed. **Margaret Goglia** was unanimously elected as Chair of the Planning Commission.

Vice Chair

Commissioner Driver nominated Bruce Whitley as Vice Chair of the Planning Commission. Commissioner Daniels seconded the nomination. There were no other nominations. **Bruce Whitley** was unanimously elected as the Vice Chair of the Planning Commission.

X. COMMUNICATIONS

A. None

XI. REPORTS

A. Commission

Commissioner Daniels reported that she had served as the Commission Liaison to the Design Review Board (DRB). She highlighted the discussions and actions taken at that meeting.

B. Staff

1. Update on Town Council Actions and Future Agenda Items

Ms. Salamack advised that the next meeting of the Town Council would include a presentation to Moragan Olympians. The following meeting of the Council would likely include a report on the Initiatives and the result of the election. When asked, she stated that Commissioners would also be provided with that report.

XII. ADJOURNMENT

On motion by Commissioner Driver, seconded by Commissioner Levenfeld to adjourn the meeting at approximately 11:00 P.M. to a regular meeting of the Planning Commission on Monday, November 3, 2008 at 7:30 P.M. in the La Sala Building at the Hacienda de las Flores, 2100 Donald Drive, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission