

ATTACHMENT M

Draft Resolution No. xx-2010,
Certifying the EIR

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Resolution Certifying the Legal)	
Adequacy of the Final)	
Environmental Impact Report for)	Resolution No. __- 2010
the Rancho Laguna II 27 Lot)	
Residential Project)	

WHEREAS, Rancho Laguna, LLC ("Applicant"), owns approximately 180 acres of property within the Town of Moraga along Rheem Boulevard (more specifically referred to as APN: 256-040-024); and

WHEREAS, on February 25, 2005, the Applicant applied to the Town of Moraga for the development of its property, requesting approval of a Conditional Use Permit (CUP) and Conceptual Development Plan (CDP) for a 35 lot single-family residential project with associated open space and other public amenities, entitled Rancho Laguna II; and

WHEREAS, the Town retained Sponamore Associates, a well-qualified environmental consulting firm, to prepare an environmental impact report ("EIR") for the proposed Rancho Laguna II 35 lot project; and

WHEREAS, on June 4, 2002, the Town of Moraga adopted the Moraga 2002 General Plan which is a statement of community values and priorities; and

WHEREAS, the purpose of the Moraga General Plan is to provide a framework for development decision-making and directing the orderly growth of the Town, and to provide an adequate level of services to the community; and

WHEREAS, the Moraga 2002 General Plan was prepared as a strategic tool for guiding the physical development of the Town and governs the development of Rancho Laguna II project area site; and

WHEREAS, a Final EIR for the Rancho Laguna II project has been prepared in order to comply with the California Environmental Quality Act (CEQA) and provide information to facilitate the planning of a Rancho Laguna II project that, in meeting project objectives, avoids or mitigates to less than significant all significant environmental impacts, the thresholds of which are informed by the goals and policies of the 2002 Moraga General Plan; the process to complete that Environmental Impact Report is described below; and

WHEREAS, on September 13, 2005, the Town of Moraga published and circulated through October 10, 2005, a Notice of Preparation (NOP) regarding

the preparation of an Environmental Impact Report (EIR) for the Rancho Laguna II project; and

WHEREAS, during the public circulation period for the NOP, on September 19, 2005, the Planning Commission held a public meeting regarding the preparation and scope of the Draft EIR; and

WHEREAS, the Rancho Laguna II Draft EIR was first published on July 11, 2006 and circulated for a public review period through September 25, 2006; and

WHEREAS, On July 17, 2006 and August 1, 2006, the Planning Commission held public hearings to receive comments on the Draft EIR; and

WHEREAS, on September 20, 2006, the Planning Commission held a study session regarding the Rancho Laguna II project to allow the Applicant and its consultants to make presentations and provide information regarding visual quality, slope stability, Rheem Boulevard stabilization, drainage, and hydrology, and to give the public the opportunity to provide testimony and ask questions concerning these and other topics of interest; and

WHEREAS, on August 18, 2008, the Town released for public review a Final Environmental Impact Report (Final EIR) for the 35 lot project pursuant to CEQA; and

WHEREAS, that Final EIR, consists of the following: (i) Draft EIR, (ii) its Appendices, (iii) Comments Received on the Draft EIR, Responses to Comments Document (Volumes 1-3), and (iv) Mitigation Monitoring and Reporting Program (MMRP); and

WHEREAS, included in those documents are the contents required for an EIR as set forth in CEQA Guideline Section 15132 (a)-(d); and

WHEREAS, in compliance with Public Resources Code section 21092.5 (a), copies of the Responses to Comments, Volume 1, were provided to public agencies who commented on the Draft EIR; and Volumes 1-3 and the MMRP were provided to the Planning Commissioners; and the documents were posted on Town website and made available at the Planning Department for public review; and

WHEREAS, after that Final EIR was released, the Applicant modified the 35 lot project described therein, based on that environmental review and input received during the planning process from Town staff, EIR consultants, members of the public, and the Planning Commission; and

WHEREAS, on September 2, 2008 and September 15, 2008, the Planning Commission held public hearings on the project, in part to discuss that Final EIR and receive comments from the public and members of the Planning Commission on its content; and

WHEREAS, at the public hearing on the project on October 20, 2008, the Town EIR consultants responded to written and oral testimony provided by members of the public concerning the contents of that Final EIR, which responses are included as part of the administrative record but not incorporated in the Final EIR; and

WHEREAS, the Planning Commission directed additional project changes recommended by Town staff: (i) reducing the number of lots in the upper Rheem valley area to six in order to create wider and more spacious lots and locate the debris benches outside the lots, and (ii) stabilizing Rheem Boulevard along the entire project frontage by including a lower valley buttress; and

WHEREAS, Commissioners agreed with the Town Engineer that the prospect was very unlikely for the Town to secure funding for it to complete the alternative method of repair for that intervening unstable section, and Commissioners determined that a restored intermittent drainage represented high quality mitigation and an aesthetic improvement over the existing, degraded condition of that intermittent drainage; and that this alternative to be feasible in that it could be accomplished in a successful manner within a reasonable period of time, taking into account economic, legal, social, and technological factors; and

WHEREAS, the Planning Commission directed Town staff to come back at a later public hearing with a 27 lot project that includes the foregoing changes and to evaluate whether the remaining significant impact of the project, the change it makes in the visual character of the project site as seen from Rheem Boulevard, a scenic road, could be reduced to less than significant with different mitigation; and

WHEREAS, in response, the Applicant prepared the "Rheem Boulevard Visual Quality Mitigation Exhibits," comprised of the "27 Lot Preliminary Grading Plan for Rheem Boulevard Visual Quality Mitigation" (one sheet) by the Applicant's engineer dated January, 2009, and the "Rheem Boulevard Visual Quality Mitigation Exhibit" by the Applicant's landscape architect dated January, 26, 2009.

WHEREAS, the Rheem Boulevard Visual Quality Mitigation Exhibits ("Mitigation Exhibits") include the lower Rheem valley buttress and six wider lots on "D" Drive in the upper Rheem valley with the debris benches located outside the lots, as directed by the Planning Commission, and the subsequent design changes recommended by Town staff and the EIR consultant and design sub-consultant; and

WHEREAS, the fully mitigated project described above and as recommended for the Rancho Laguna property is referred to in this Resolution as the Rancho Laguna II 27 Lot Project" or the "27 Lot Project;" and

WHEREAS, an Update for Final EIR (i.e., it updates the Final EIR released in August, 2008) has been prepared which describes the 27 Lot Project and the

reduction in project impacts, and confirms that the changes to the 35 lot project do not result in any new significant impacts or an increase in the severity of any previously identified environmental impacts, that there is no feasible project alternative to clearly lessen the significant environmental impacts of the project and that a project alternative is not required to reduce all environmental impacts to less than significant; and

WHEREAS, a revised Mitigation Monitoring and Reporting Program ("revised MMRP" for the Rancho Laguna II 27 Lot Project has been prepared, pursuant to Public Resources Code Section 21081.6, to ensure compliance with Mitigation Measures and project Conditions of Approval during implementation and is incorporated by reference as part of the Update for the EIR and replaces the MMRP released in August, 2008; and

WHEREAS, the Significant Impacts and Mitigation Measures in the August, 2008 MMRP have been modified in the revised MMRP to better reflect the 27 Lot Project and for clarity (for example, see revised Mitigation Measure 3.35 #4); and

WHEREAS, the Update and revised Mitigation Monitoring and Reporting Program for the 27 Lot Project are incorporated into the Final EIR for the project; and

WHEREAS, recirculation of the Final EIR prior to its certification is not required per the standards for such recirculation in CEQA Guideline 15088.5, for the reasons and based on the substantial evidence set forth in the Update for the Final EIR, this Resolution, the Staff Report, and the administrative record as a whole; and

WHEREAS, on or before August 10, 2009, the Update for the Final EIR, revised MMRP, Staff Report and its Attachments were released for review to interested public members and commenting agencies (and subsequently posted on the Town website) and making copies available for public review at the Town Planning Department), and hard copies were provided to Planning Commissioners.

WHEREAS, on August 17, 2009, the Planning Commission held a duly noticed public hearing and received testimony from the applicant and members of the public; and

WHEREAS, on August 17, 2009, the Planning Commission unanimously adopted Resolutions 10-2009, 11-2009 and 12-2009 certifying the Final EIR and approving the Conceptual Development Plan and Conditional Use Permit, respectively for the project; and

WHEREAS, on August 27, 2009, in accordance with the Municipal Code, an appellant group filed a timely appeal of the Planning Commission action described above with the Planning Department; and

WHEREAS, the Town Council has considered the above referenced appeal previously on October 28 and November 4, 2009, and considered and approved continuances on January 27, March 10, and May 12, 2010; and

WHEREAS, in response to direction of the Town Council, the Applicant prepared updated landscape exhibits, (3 sheets, PL 1.0, PL 1.1 and PL 2.0", prepared by the Applicants landscape architect, dated May 3, 2010) and a 27 Lot Preliminary Grading Plan by the Applicant's engineer dated January 28, 2010; and

WHEREAS, the exhibits referenced above reflect and incorporate the changes required by the Planning Commission in their Conditions of Approval and the adopted updated Mitigation Measures; and

WHEREAS, Town staff and the EIR consultant and design sub-consultants have determined that by requiring minor revisions to the exhibits (for additional screening on Rheem Boulevard), the remaining significant environmental impact of the project is mitigated to less than significant; and

WHEREAS, these changes referenced above are more specifically described herein:

- (i) Restrict the homes on Lots 13, 24 and 25 to single-story and no taller than 21 feet;
- (ii) Eliminate or relocate lots 26 and 27 to `D_ Drive or `C_ Court or otherwise modify the project so future homes on `B_ Drive are no longer visible from Rheem Boulevard;
- (iii) Require all new residences to be earth tones in color;
- (iv) Make changes in the landscape plan on both sides of `D_ Drive and adjust the lot lines between Lots 1 and 2 and between Lots 5 and 6, consistent with the recommendations of the EIR sub-consultant on visual quality, in order to improve the opaque screening of those six homes as seen from the Rheem Boulevard scenic corridor;
- (v) Require the applicant to explore the feasibility of the Town and the applicant jointly financing the geo-grid reinforced fill alternative identified by the Town's geotechnical consultant as part of the stabilization of the intervening section of Rheem Boulevard between the `A_ Way intersection and the upper valley buttress with `D_ Drive and its residential lots. If on the completion of that exploration (no later than Spring 2011), the Town Council determines the geo-grid alternative to be financially feasible, the geo-grid design solution shall be submitted to the resource agencies for permitting.
- (vi) Require state and federal approval of the geo-grid or lower valley buttress fill alternative to stabilize Rheem Boulevard prior to submittal of the tentative map.
- (vii) Require the applicant to submit an application for a Development Agreement to the Town specifying the terms necessary for processing the resource agency permit applications, which shall identify the costs and responsibilities of the Town and the applicant as co-permittees.

WHEREAS, Public Notice of this May 26, 2010, public hearing having been provided, the Town Council opened the public hearing, took testimony from Town staff, the Applicant and the public on the Rancho Laguna II 27 Lot Project, its environmental review (including the opportunity to comment on the Update for the Final EIR and the revised Mitigation Monitoring and Reporting Program), and development of the property in general, then closed the public hearing; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Moraga makes the following findings and determinations with respect to the Final EIR for the proposed Rancho Laguna II 27 Lot Project:

- 1) The Final EIR has been prepared and completed in compliance with the provisions of CEQA and the State CEQA Guidelines; and
- 2) The Town Council has determined the Final EIR reflects the Town's independent judgment and analysis as to the environmental consequences of the 27 Lot Project; and
- 3) The Town Council, as the decision-making body, has considered the information and analysis in the Final EIR and all written documentation and public comments prior to taking action on the recommended project; and
- 4) The documents and other materials, including without limitation staff reports, memoranda, maps, letters and minutes of all relevant meetings, which constitute the administrative record of proceedings upon which the Town Council's decision is based are located at the Town of Moraga, Planning Department, 329 Rheem Boulevard, Moraga, California 94556. The custodian of records is the Town Planning Director; and
- 5) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR, including but not limited to the Update and the changes contained in Attachments K & L to the Town Council staff report dated May 26, 2010 and the recommendations of the Town's two sub-consultants, both dated May 13, 2010 and the following modifications:
 - (i) Restrict the homes on Lots 13, 24 and 25 to single-story and no taller than 21 feet;
 - (ii) Eliminate or relocate lots 26 and 27 to `D_ Drive or `C_ Court or otherwise modify the project so future homes on `B_ Drive are no longer visible from Rheem Boulevard;
 - (iii) Require all new residences to be earth tones in color;
 - (iv) Make changes in the landscape plan on both sides of `D_ Drive and adjust the lot lines between Lots 1 and 2 and between Lots 5 and 6, consistent with the recommendations of the EIR sub-consultant on visual quality, in order to improve the opaque screening of those six homes as seen from the Rheem Boulevard scenic corridor;

- (v) Require the applicant to explore the feasibility of the Town and the applicant jointly financing the geo-grid reinforced fill alternative identified by the Town's geotechnical consultant as part of the stabilization of the intervening section of Rheem Boulevard between the `A_ Way intersection and the upper valley buttress with `D_ Drive and its residential lots. If on the completion of that exploration (no later than Spring 2011), the Town Council determines the geo-grid alternative to be financially feasible, the geo-grid design solution shall be submitted to the resource agencies for permitting.
 - (vi) Require state and federal approval of the geo-grid or lower valley buttress fill alternative to stabilize Rheem Boulevard prior to submittal of the tentative map.
 - (vii) Require the applicant to submit an application for a Development Agreement to the Town specifying the terms necessary for processing the resource agency permit applications, which shall identify the costs and responsibilities of the Town and the applicant as co-permittees.
- 6) Specific economic, legal, social, technological, and other considerations make infeasible certain project alternatives identified in the Final EIR; and
- 7) The project as approved will not have a significant effect on the environment; and

BE IT FURTHER RESOLVED, that the Town Council of the Town of Moraga hereby certifies the legal adequacy of the Final EIR for the Rancho Laguna II 27 Lot Project and, if and when a Conceptual Development Plan and Conditional Use Permit for the project receives approval, directs the filing of a Notice of Determination with the County Clerk; and

PASSED AND ADOPTED, by the Town Council of the Town of Moraga at a regular meeting this 26th day of May 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ken Chew, Mayor

Attest:

Marty C. McInturf, Town Clerk