



Comprehensive Advanced Planning Initiative

Final Environmental Impact Report State Clearinghouse No. 2022020106

prepared by

Town of Moraga
Planning Department
329 Rheem Boulevard
Moraga, California 94556
Contact: Afshan Hamid, Planning Director

prepared with the assistance of

Rincon Consultants, Inc.
449 15th Street, Suite 303
Oakland, California 94612

January 2023



RINCON CONSULTANTS, INC.

Environmental Scientists | Planners | Engineers

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Table of Contents

Acronyms and Abbreviations.....	ii
1 Introduction	1-1
1.1 Final EIR Contents	1-1
1.2 Draft EIR Public Review Process.....	1-1
1.3 EIR Certification Process and Project Approval	1-2
2 Responses to Comments on the Draft EIR.....	2-1
2.1 Comment Letters and Responses	2-1
3 Minor Revisions to the Draft EIR	3-1
3.1 Revisions to the Draft EIR.....	3-1
4 Recirculation Not Warranted.....	4-1
5 References	5-1
5.1 Bibliography	5-1

Acronyms and Abbreviations

BAAQMD	Bay Area Air Quality Management District
CAPCOA	California Air Pollution Control Officers Association
CARB	California Air Resource Board
CEQA	California Environmental Quality Act
EBMUD	East Bay Municipal Utility District
MCE	Marin Clean Energy
MOFD	Moraga-Orinda Fire District
NOA	Notice of Availability
NOC	Notice of Completion
PRC	Public Resources Code
RHNA	Regional Housing Needs Allocation
SB	Senate Bill
SCH	State Clearinghouse
USEPA	United States Environmental Protection Agency
VMT	vehicle miles traveled
WUI	wildland-urban interface

1 Introduction

1.1 Final EIR Contents

This Final Environmental Impact Report (EIR) has been prepared by the Town of Moraga (Town) to evaluate the potential environmental impacts of the proposed Town of Moraga Comprehensive Advanced Planning Initiative (“Planning Initiative”).

Pursuant to *California Environmental Quality Act (CEQA) Guidelines* Sections 15088 and 15132, the Town of Moraga, as the lead agency, is required to evaluate comments on environmental issues received from persons who have reviewed the Draft EIR and to prepare written responses to those comments. This document together with the Draft EIR (incorporated by reference) comprise the Final EIR for the Planning Initiative. This Final EIR includes individual responses to each letter received during the public review period for the Draft EIR. In accordance with *CEQA Guidelines* Section 15088(c), the written responses describe the disposition of significant environmental issues raised.

The Town has provided a good faith effort to respond to all significant environmental issues raised by the comments. The Final EIR also includes minor clarifications, corrections, or revisions to the Draft EIR suggested by certain comments. The Final EIR includes the following contents:

- Section 1: Introduction
- Section 2: Responses to Comments on the Draft EIR
- Section 3: Minor Revisions to the Draft EIR
- Section 4: Recirculation Not Warranted
- Section 5: References

1.2 Draft EIR Public Review Process

Pursuant to CEQA, lead agencies are required to consult with public agencies with jurisdiction over a proposed project and to provide the general public with an opportunity to comment on the Draft EIR.

The Town of Moraga filed a notice of completion (NOC) with the Governor’s Office of Planning and Research to begin the 45-day public review period (Public Resources Code [PRC] Section 21161), which began on October 27, 2022, and ended on December 12, 2022. The Draft EIR was made available on the Town’s website.¹ In addition, the Draft EIR was made available for review at the Town’s Planning Department at 329 Rheem Boulevard and the Town Library at 1500 St Mary’s Road. A Notice of Availability (NOA) of the Draft EIR was published on October 27, 2022. As a result of these notification efforts, the Town received seven written comments on the content of the Draft EIR. Section 2, “Responses to Comments on the Draft EIR,” identifies these commenting parties, their respective comments, and responses to these comments. None of the comments received, or the responses provided, constitute “significant new information” by CEQA standards (*CEQA Guidelines* Section 15088.5).

¹ Draft EIR for the Planning Initiative is available here: <https://www.moraga.ca.us/501/Environmental-Review>

1.3 EIR Certification Process and Project Approval

Before adopting the Planning Initiative, the lead agency is required to certify that the EIR has been completed in compliance with CEQA, that the decision-making body reviewed and considered the information in the EIR, and that the EIR reflects the independent judgment of the lead agency.

Upon certification of an EIR, the lead agency makes a decision on the project analyzed in the EIR. A lead agency may: (a) disapprove a project because of its significant environmental effects; (b) require changes to a project to reduce or avoid significant environmental effects; or (c) approve a project despite its significant environmental effects, if the proper findings and statement of overriding considerations are adopted (*CEQA Guidelines* Sections 15042 and 15043).

In approving a project, for each significant impact of the project identified in the EIR, the lead or responsible agency must find, based on substantial evidence, that either: (a) the project has been changed to avoid or substantially reduce the magnitude of the impact; (b) changes to the project are within another agency's jurisdiction and such changes have or should be adopted; or (c) specific economic, social, or other considerations make the mitigation measures or project alternatives infeasible (*CEQA Guidelines* Section 15091). Pursuant to PRC Section 21061.1, feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account, economic, environmental, legal, social, and technological factors.

While the information in the EIR does not constrain the Town's ultimate decision under its land use authority, the Town must respond to each significant effect and mitigation measure identified in the EIR as required by CEQA by making findings supporting its decision. If an agency approves a project with unavoidable significant environmental effects, it must prepare a written Statement of Overriding Considerations that sets forth the specific social, economic, or other reasons supporting the agency's decision and explains why the project's benefits outweigh the significant environmental effects (*CEQA Guidelines* Section 15093).

When an agency makes findings on significant effects identified in the EIR, it must adopt a reporting or monitoring program for mitigation measures that were adopted or made conditions of project approval to mitigate significant effects (*CEQA Guidelines* Section 15091[d]).

2 Responses to Comments on the Draft EIR

This section includes comments received during public circulation of the Draft Environmental Impact Report (Draft EIR) prepared for the Town of Moraga Planning Initiative. The comment letters included herein were submitted to the Town of Moraga by public agencies, organizations, and individuals. The Town prepared these responses to written comments received to address the environmental concerns raised by the commenters and to indicate where and how the Draft EIR addresses pertinent environmental issues. The Draft EIR was circulated for a 45-day public review period that began on October 27, 2022 and ended on December 12, 2022. The Town of Moraga received seven comment letters on the Draft EIR. The commenters and the page number on which each commenter’s letter appear are listed below.

Letter No. and Commenter		Page No.
Commenter		
A.1	East Bay Municipal Utility District	2-2
A.2	California Department of Fish and Wildlife	2-10
P.1	Paul Miller	2-20
P.2	Suzanne Jones	2-27
P.3	Todd Williams, Fennemore Wendel	2-30
P.4	Lydia Deschambault, Contra Costa County Climate Leadership	2-51
P.5	Marti Roach, 350 Contra Costa Action & Zoe Siegel, Greenbelt Alliance	2-26

2.1 Comment Letters and Responses

Written responses to each comment letter received on the Draft EIR are provided in this section. All letters received on the Draft EIR are provided in their entirety. The comment letters have been numbered sequentially and each separate issue raised by the commenter, if more than one, has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response A.1-1, for example, indicates that the response is for the first issue raised in comment Letter A.1). Comments that start with “A” indicate that the commenter represents a public agency; comments that start with “P” indicate that the commenter is an individual or represents a non-governmental organization.

Changes made to the text of the Draft EIR are provided in Section 3, *Minor Revisions to the Draft EIR*, including corrected information, data, or intent, other than minor typographical corrections or minor working changes. Where a comment results in a change to the Draft EIR text, a notation is made in the response indicating that the text is revised. Within the *Minor Revisions to the Draft EIR*, changes in text are signified by strikeouts (~~strikeouts~~) where text is removed and by underlined font (underlined font) where text is added.

Following public review of an EIR, lead agencies are directed to “evaluate comments on environmental issues received from persons who reviewed the draft EIR and prepare a written response” (*CEQA Guidelines* Section 15088(a)). Some of the comments that were received on the Draft EIR did not address specific environmental issues or effects associated with the project or the adequacy of the analysis contained in the Draft EIR. No additional analysis or response is required for these types of comments. All comments, however, will be noted and made available to applicable decision-makers as they consider the project.

December 5, 2022

Afshan Hamid, Planning Director
Town of Moraga Planning Department
329 Rheem Boulevard
Moraga, CA 94556

Re: Notice of Availability of a Draft Environmental Impact Report for the Town of Moraga's Comprehensive Advanced Planning Initiative, Moraga

Dear Mr. Hamid:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Town of Moraga's Comprehensive Advanced Planning Initiative, which encompasses the entirety of the Town of Moraga. EBMUD commented on the Notice of Preparation of a Draft EIR for the project on February 28, 2022. EBMUD's original comments (see enclosure) still apply regarding water service and water conservation.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,



David J. Rehnstrom
Manager of Water Distribution Planning

DJR:WTJ:djr
sb22_338 Town of Moraga's Comprehensive Advanced Planning Initiative.doc

Enclosure: EBMUDs February 28, 2022 Comment Letter on the Notice of Preparation for a Draft Environmental Impact Report for the Town of Moraga's Comprehensive Advanced Planning Initiative

A.1-1



February 28, 2022

Afshan Hamid, Planning Director
Town of Moraga Planning Department
329 Rhecem Boulevard
Moraga, CA 94556

Re: Notice of Preparation of a Draft Environmental Impact Report for the Town of Moraga's Comprehensive Advanced Planning Initiative, Moraga

Dear Mr. Hamid:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the Town of Moraga's Comprehensive Advanced Planning Initiative, which encompasses the entirety of the Town of Moraga (Town). EBMUD has the following comments.

WATER SERVICE

Parts of the Comprehensive Advanced Planning Initiative are located outside EBMUD's current service area and would need to be annexed into EBMUD's current service area before receiving water service from EBMUD. Please note that EBMUD will not deliver water to any annexed property until a formal approval is issued by the U.S. Bureau of Reclamation. A description of the requirements pertaining to annexation is enclosed. Project sponsors for future development located outside EBMUD's current service area should contact the Contra Costa County Local Agency Formation Commission (LAFCO) to apply for annexation.

Effective January 1, 2018, water service for new multi-unit structures shall be individually metered or sub-metered in compliance with California State Senate Bill 7 (SB-7). SB-7 encourages conservation of water in multi-family residential, mixed-use multi-family and commercial buildings through metering infrastructure for each dwelling unit, including appropriate water billing safeguards for both tenants and landlords. EBMUD water services shall be conditioned for all development projects within the Housing Element Update that are subject to SB-7 requirements and will be released only after the project sponsor has satisfied all requirements and provided evidence of conformance with SB-7.

Main extensions that may be required to serve any specific developments within the Comprehensive Advanced Planning Initiative to provide adequate domestic water supply, fire flows, and system redundancy will be at the project sponsor's expense. Pipeline and fire hydrant relocations and replacements due to modifications of existing streets, and off-site pipeline improvements, also at the project sponsor's expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local

↑
A.1-1, cont.
A.1-2
A.1-3
A.1-4
↓

fire department. When the development plans are finalized for individual projects within the Comprehensive Advanced Planning Initiative, project sponsors for individual projects should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the development. Engineering and installation of new and relocated pipelines and services require substantial lead time, which should be provided for in the project sponsor's development schedule.

↑
A.1-4, cont.

Project sponsors for individual projects within the Comprehensive Advanced Planning Initiative should be aware that EBMUD will not install piping or services in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may be hazardous to the health and safety of construction and maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. The project sponsor must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete, and specific written remediation plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and groundwater.

A.1-5

EBMUD will not design piping or services until soil and groundwater quality data and remediation plans have been received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsor is insufficient, EBMUD may require the project sponsor to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation, or EBMUD may perform such sampling and analysis at the project sponsor's expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

WATER CONSERVATION

Individual projects within the Comprehensive Advanced Planning Initiative present an opportunity to incorporate water conservation measures. EBMUD requests that the Town include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). Project sponsors should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

A.1-6

Afshan Hamid, Planning Director
February 28, 2022
Page 3

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,



David J. Rehnstrom
Manager of Water Distribution Planning

Enclosure: Annexation to EBMUD Current Service Area Requirements

DJR:KTL:grd
sh22_037 Moraga's Comprehensive Advanced Planning Initiative NOP Response

A.1-7

ANNEXATION TO EBMUD CURRENT SERVICE AREA REQUIREMENTS

Changes to EBMUD's water supply commitments, such as supplying water to lands outside EBMUD's existing customer service area, require EBMUD to seek and obtain approval from the U.S. Bureau of Reclamation (USBR), with whom EBMUD has a contract for supplemental water supply in dry years. To support its approval of any expansion of EBMUD's customer service area, USBR requires environmental documentation that extends beyond what is typically needed to meet the CEQA requirements. This documentation is required to satisfy federal environmental laws including the National Environmental Protection Act (NEPA), the Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA). EBMUD will require any developer requesting annexation to provide such documentation, which EBMUD will use to support its request for USBR's consent to the provision of water service to the annexed area. In evaluating the adequacy of this environmental documentation, USBR typically consults with other federal agencies, including the U.S. Fish and Wildlife Service. In situations where the U.S. Army Corps of Engineers (Corps), in fulfilling its obligations for issuing permits and documenting environmental impacts under the Clean Water Act, ESA, NEPA and other federal environmental laws, USBR has indicated to EBMUD that it would prefer that the Corps complete all of its requirements under these laws, after which USBR would augment the documentation only as necessary to fulfill its own requirements to support the expansion of EBMUD's customer service area.

A.1-8

Since documentation that fulfills CEQA requirements is generally also sufficient to meet the majority of NEPA requirements, it is advisable when undertaking work to satisfy CEQA to also be cognizant of the parallel NEPA requirements as well as those NEPA requirements that go beyond CEQA requirements. Early discussions with EBMUD in this regard are highly recommended.

Because the NHPA Section 106 requirements are generally less well understood than other environmental requirements under USBR's purview, guidelines have been issued for conducting studies and preparing documentation to address these requirements. In particular, USBR requires a stand-alone report addressing Section 106 requirements. EBMUD will review the developers' Section 106 report and submit it for USBR's approval. Once satisfied with the Section 106 report, USBR may forward it to the State Historic Preservation Officer for approval.

It is important to note that EBMUD's Central Valley Project water supply contract requires payment of USBR's costs incurred to review the relevant documentation supporting any annexation request and to fulfill its own documentation responsibilities under the applicable federal laws. EBMUD requires the developer of any proposed annexation to reimburse EBMUD for these costs. Once a developer approaches EBMUD for annexation approval, EBMUD will require the developer to enter into an agreement (or separate agreements, if necessary) to advance sufficient funds for any related studies or work,

A.1-9



including CEQA documentation if necessary, as well as the USBR costs that will be charged to EBMUD.

↑ A.1-9, cont.

Charges and agreements related to the installation of water delivery facilities and connections are subject to EBMUD's Regulations Governing Water Service to Customers of EBMUD.

A.1-10

Letter A.1

COMMENTER: David J. Rehnstrom, Manager of Water Distribution Planning, East Bay Municipal Utility District

DATE: December 5, 2022

Response A.1-1

The commenter states that the East Bay Municipal Utility District's (EBMUD) comments submitted for the Notice of Preparation on February 28, 2022 still apply regarding water service and water conservation. The commenter enclosed the February 28, 2022 comment letter summarized in Response A1.2 – Response A1.6 below.

The Town thanks EBMUD for reiterating comments submitted during the Notice of Preparation period. The comments previously submitted were considered during preparation of the Draft EIR. No revisions to the Draft EIR are necessary in response to this comment.

Response A.1-2

The commenter explains that parts of the Planning Initiative area would need to be annexed into EBMUD's current service area before receiving water service from EBMUD and that a formal approval issued by the U.S. Bureau of Reclamation is required for water delivery from EBMUD.

The Town understands that portions of the Planning Initiative area are currently outside of EBMUD's service area. As discussed in Section 4.16, *Utilities and Service Systems*, on Page 4.16-16 of the Draft EIR, the Bollinger Canyon Study Area is not currently served by EBMUD and would need to be annexed to EBMUD's service area with formal approval issued by the U.S. Bureau of Reclamation to provide water service. Annexation applications would occur when individual development projects within the Bollinger Canyon Study Area are proposed, and not at the programmatic stage that the Draft EIR analyzes. No revisions to the Draft EIR are necessary in response to this comment.

Response A.1-3

The commenter explains that water service for new multi-unit structures must be individually metered or sub-metered in compliance with California State Senate Bill 7 (SB 7) and that EBMUD water services shall be conditioned for all development projects subject to SB 7 requirements until the project sponsor has satisfied the requirements and provided evidence of conformance with SB 7.

The Town acknowledges that SB 7 requirements would be required for individual development projects facilitated by the Planning Initiative. The metering of development projects facilitated by the Planning Initiative would be required and detailed for each individual development project. No revisions to the Draft EIR are necessary in response to this comment.

Response A.1-4

The commenter states that any main extensions required to provide water supply, fire flow, and system redundancy to developments within the Comprehensive Advanced Planning Initiative as well as any pipeline and fire hydrant relocations or replacements resulting from project implementation would be at the project sponsor's expense. The commenter recommends that project sponsors contact EBMUD's New Business Office to request a water service estimate.

The Town acknowledges that main extensions required for individual development projects facilitated by the Planning Initiative would be at the project sponsor's expense. Project expense, including the cost of physical infrastructure like water mains, for development projects facilitated by the Planning Initiative would be detailed for each individual development project. No revisions to the Draft EIR are necessary in response to this comment.

Response A.1-5

The commenter explains that EBMUD will not install piping or services in contaminated soil or groundwater that may be hazardous to construction or maintenance personnel and outlines the conditions under which EBMUD will install piping or services. The commenter explains that the project sponsor must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project and include a remediation plan to be reviewed prior to the design of piping or services. The commenter explains the procedure for contamination found during EBMUD work on the project site.

As discussed in Section 4.8, *Hazards and Hazardous Materials*, Mitigation Measure HAZ-1 would be required to ensure that hazardous materials in soil and groundwater are identified and remediated prior to construction. The Phase I and, if necessary, Phase II Environmental Site Assessments would identify contaminated soil or groundwater prior to construction on development sites on or adjacent to the two open and active cleanup sites discussed in Section 4.8. Identified contaminants would be remediated prior to construction. The remainder of the development would be subject to Regional Water Quality Control Board and Department of Toxic Substances regulations, as discussed under Impact HAZ-1 on Page 4.8-10 of the Draft EIR. The Town understands that individual development projects facilitated by the Planning Initiative would be liable to submit relevant remediation plans and other known information regarding contamination to the EBMUD prior to installation of piping or other services. No revisions to the Draft EIR are necessary in response to this comment.

Response A.1-6

The commenter requests that the City include in its conditions of approval a requirement that project sponsors must comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance."

As discussed in Section 4.16, *Utilities and Services Systems*, on Page 4.16-13 of the Draft EIR, development facilitated by the Planning Initiative would be subject to California Code of Regulations concerning water-efficient landscapes (Division 2, Title 23, CCR, Chapter 2.7, Sections 490 through 495), which the Town adopted in 2022 as the Model Water Efficient Landscape Ordinance in Chapter 8.178 of the Moraga Municipal Code. No revisions to the Draft EIR are necessary in response to this comment.

Response A.1-7

The commenter provides contact information for questions regarding the response.

The Town thanks EBMUD for the letter and will contact EBMUD if questions arise during implementation of the Planning Initiative.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Letter A.2

December 30, 2022

Ms. Afshan Hamid
Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556
AHamid@moraga.ca.us

Subject: Town of Moraga Comprehensive Advanced Planning Initiative, Draft Environmental Impact Report, SCH No. 2022020106, Town of Moraga, Contra Costa County

Dear Ms. Hamid:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a draft Environmental Impact Report (EIR) from the Town of Moraga (Town) for the Town of Moraga Comprehensive Advanced Planning Initiative (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation (NOP).

CDFW is submitting comments on the draft EIR to inform the Town, as the Lead Agency, of potentially significant impacts to biological and natural resources associated with the Project.

CDFW ROLE

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & Game Code sections 711.7, subd. (a) & 1802; Pub. Resources Code, section 21070; CEQA Guidelines section 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish and Game Code, section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, section 21069; CEQA Guidelines, section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code.

¹ CEQA is codified in the California Public Resources Code in Section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

Afshan Hamid
Town of Moraga
December 30, 2022
Page 2

As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & Game Code, section 1600 *et seq.*). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, section 2050 *et seq.*), related authorization as provided by the Fish and Game Code will be required.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

CDFW requires a Notification, pursuant to Fish and Game Code section 1600 *et seq.*, for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to Notification requirements. In this case, CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

California Endangered Species Act

Please be advised that CDFW recommends that a CESA Incidental Take Permit (ITP) should be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, such as Alameda whipsnake (*Masticophis lateralis euryxanthus*, AWS), either as a result of construction or over the life of the Project. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

Fully Protected Species

Fully Protected species such as golden eagle and white-tailed kite, may not be taken or possessed at any time (Fish & Game Code, sections 3511, 4700, 5050, & 5515).

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take,

Afshan Hamid
Town of Moraga
December 30, 2022
Page 3

possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION AND LOCATION

The Project is the proposed adoption of to the Town's Planning Initiative that addresses: the long-term economic growth in the Town; State mandated housing needs; amendments to the Town's 2002 General Plan; rezoning of areas within the Town's limits; and new zoning designations to the undeveloped area of the Town including Bollinger Canyon. The Project would be implemented from its adoption through the year 2031. The study area for the Project includes all portions of the Town's limits, a total of 9.54 square miles. All portions of the Project, including Town limits, are bordered by the City of Lafayette to the north, the City of Oakland to the south and southwest, and unincorporated Contra Costa County in the remaining directions.

ENVIRONMENTAL SETTING

CDFW recommends that the Bollinger Canyon Study Area's environmental setting explicitly discloses that endangered, rare, threatened, or other special-status species have the potential to occur, and have known adjacent records of positive occurrences (California Natural Diversity Database (CNDDDB), 2022). The Bollinger Canyon Study Area is mostly undeveloped land used primarily for seasonal livestock grazing that is surrounded by hills, including Las Trampas Peak and Las Trampas Ridge to the east. All of these areas support habitat for, and have positive occurrence records within a reasonable dispersal distance of, the following special-status species, including, but not limited to, AWS (CNDDDB, 2022); California red-legged frog (*Rana draytonii*) (CNDDDB, 2022); and San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) (CNDDDB, 2022). The Bollinger Canyon Study Area consists of gentle to steeply sloping terrain, with areas in the western, southern, and far northeastern corner having grades more than 20%. The western and northern boundaries of the Bollinger Canyon Study Area include undulating hills that reach maximum elevations from 900 to 1,000 feet. The interior of the Bollinger Canyon Study Area ranges in elevation from 775 feet near the oak woodland to 900 feet toward the north. Undeveloped portions of the area feature Coast Live Oak Woodland, Central Coast riparian scrub, wetlands, coyote brush and sage scrub, and mostly non-native annual grasslands. Portions of the area have been historically used for cattle grazing. All of these areas hold potential habitat for the sensitive species discussed in this letter, and potentially others as well.

Neighboring areas to the east of the Bollinger Canyon Study Area are located within unincorporated Contra Costa County and are mostly open space or rural residential use. Open spaces to the east and south in Bollinger Canyon and Las Trampas Ridge are permanently protected as open space, owned and managed by East Bay Regional

Afshan Hamid
Town of Moraga
December 30, 2022
Page 4

Parks District. Many of the parcels adjacent to the Bollinger Canyon Study Area are large and undeveloped and support habitat for special-status plant species, including, but not limited to: bent-flowered fiddleneck (*Amsinckia lunaris*) (CNDDDB, 2022) and Mt. Diablo helianthella (*Helianthella castanea*) (CNDDDB, 2022). These neighboring, adjacent, and public open space areas contain suitable special-status species habitat and habitat corridors.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Town in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish, plant, wildlife, and associated habitat (biological) resources.

Revision to Impacts Analysis and Findings

The draft EIR does not appear to analyze or disclose impacts related to permanent loss of habitat for special-status species. Also absent are compensatory mitigation measures to reduce permanent loss of habitat to a level of less-than-significant. Instead, the draft EIR limits the scope of its analysis to habitat conversion and is silent on when this conversion results in permanent loss of the habitat when it no longer is viable for use by special-status species. CDFW recommends that the draft EIR be revised to include an analysis of permanent habitat loss impacts to special-status species and incorporate this analysis into the Lead Agency's significance determination. Based on this analysis, the Town should revise the draft EIR to incorporate compensatory mitigation measures such as purchase of credits from a mitigation bank, or require permanent protection and management of "like for like" habitats through a legal instrument, such as a conservation easement, with an endowment for habitat management in perpetuity. The revised impacts analysis and mitigation measures should then be incorporated into the Findings in the Final EIR.

Closely Related Past, Present, and Reasonably Foreseeable Future Projects

The draft EIR acknowledges that the Project would contribute to the ongoing loss of partially and/or undeveloped lands and would cumulatively impact biological resources without implementation of the mitigation measures required by the draft EIR and other agency driven regulations. However, the draft EIR does not identify specific compensatory mitigation measures to permanently conserve and protect habitats for the impacted special-status species to reduce the impacts from permanent and cumulative loss of their habitats to a level of less-than-significant. Without modifications made to the provided mitigation measures described in this letter, the Project has the potential to result in cumulative impacts over time such as the permanent removal of existing open space, and vacant lands, as described in the draft EIR. Some land use changes appear

Afshan Hamid
 Town of Moraga
 December 30, 2022
 Page 5

to overlap with areas of the Project that have been mapped as sensitive natural communities, such as Coast Live Oak Woodland, or provide critical habitat and/or connectivity for AWS and are within a reasonable dispersal distance for the species from known occurrences (CNDDDB, 2022). The loss of sensitive natural communities and connectivity areas would be cumulatively considerable and could cause potentially significant impacts to the biological resources in and adjacent to the Project.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, sections 21001, subd. (c) and 21083; CEQA Guidelines, sections 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration. The CEQA Lead Agency's Findings of Overriding Consideration does not eliminate the Project proponent's obligation to comply with CESA or other aspects of Fish and Game Code. To reduce the cumulative impacts described above to a level of less-than-significant, CDFW recommends that the draft EIR be revised to address the following:

1. Include a map of sensitive natural communities and connectivity areas for AWS, existing land use designations, and full buildout land use designations that clearly identifies the proposed loss of essential connectivity areas.
2. Include revisions to the mitigation measures recommended by CDFW.
3. Reduce, redesign, restrict, or remove portions of the Bollinger Canyon area that would specifically result in the loss of sensitive natural communities, and/or connectivity areas for AWS including potential habitat for the species.

Revisions to Proposed Mitigation Measures

CDFW recommends the following edits and additions to the provided mitigation measures found in the draft EIR below:

CDFW recommends that any qualified biologist conducting surveys default to the species-specific protocols found at: <https://wildlife.ca.gov/Conservation/Survey-Protocols>. These protocols include special-status plants be surveyed for by a qualified botanist following the Protocols for Surveying and Evaluating Impacts to Special-status Native Plant Populations and Sensitive Natural Communities (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>). This protocol includes the identification of reference populations and adjacent potential habitat areas, to assist in the accuracy and timing of a project area's floristic surveys. Results of surveys performed according to the protocol should be summarized into Botanical Survey Reports, as indicated on page 9 of the Protocol, and be incorporated into a revised draft EIR and other subsequent environmental documents as necessary. In the

Afshan Hamid
Town of Moraga
December 30, 2022
Page 6

absence of protocol-level surveys being performed, additional surveys may be necessary. Additionally, annual weather variations including, but not limited to, drought conditions occurring at the time that a project's biological survey was conducted, may result in the need for additional surveys to be performed. This is especially pertinent when conducting surveys for special-status species such as California red-legged frog or special-status plants.

BIO-2: CDFW recommends the following language be used to replace existing language in BIO-2 regarding nesting birds:

Birds. Project Proponents are responsible for ensuring that the work activities do not result in any violation of Fish and Game Code. If activities will occur during nesting bird season (February 1 to September 15), a qualified biologist will conduct focused surveys for active nests within 5 days prior to the initiation of said activities that could impact nesting birds. Surveys will be conducted in all potential habitat located at, and adjacent to, project work sites and in staging and storage areas. The minimum survey radii surrounding the work area will be the following: (1) 250 feet for non-raptors, and (2) 1,000 feet for raptors. If a lapse in project-related activities of 7 days or longer occurs, another focused survey will be required before project activities can be reinitiated.

Active Nests. A qualified biologist will observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests should be continuously monitored by a qualified biologist to detect any signs of disturbance and behavioral changes as a result of project activities. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. If signs of disturbance and behavioral changes are observed, a qualified biologist will be responsible to cease work causing that change, and may elect to contact CDFW and/or United States Fish and Wildlife Service (USFWS) for guidance prior to the recommencement of activities.

Active Nest Buffers. Active nest sites and protective buffer zones shall be designated as, "Ecologically Sensitive Areas" where no project-related activities or personnel may enter. These designated areas shall be protected during project activities with the establishment of a fence barrier or flagging surrounding the nest site. A qualified biologist shall determine the necessary buffer to protect nesting birds based on existing site conditions, such as construction activity and line of sight, and shall increase buffers if needed to provide sufficient protection of nesting birds and their natural behaviors.

Afshan Hamid
Town of Moraga
December 30, 2022
Page 7

BIO-3: The draft EIR describes the Plan area as containing a variety of vegetation communities, including coast live oak woodland and forest, a sensitive natural community. BIO-3 describes procedures for tree removal during bat roosting season, implying tree removal is planned within the scope of Project activities. However, the draft EIR does not include compensatory mitigation for temporary or permanent loss of this sensitive natural community. Removal of large trees in particular without adequate compensatory mitigation should be considered a substantial adverse change in the physical conditions within the areas affected by the Project.

CDFW recommends the Project avoid large diameter tree removal to the greatest extent feasible. If loss of Coast Live Oak Woodland and forest cannot be avoided, then CDFW recommends that mitigation include in-kind preservation of this sensitive natural community in perpetuity to offset this impact.

CDFW is available to work with the Town to develop a mitigation plan that reduces impacts to a level of less-than-significant.

BIO-4: Due to the cryptic behavioral habits of the species, and given the lack of protocol level surveys adopted by the scientific community to determine presence or absence, AWS should be assumed present in the Bollinger Canyon Study Area (CNDDDB, and any other area where either a positive occurrence record exists within a reasonable dispersal distance for AWS, and/or where potential habitat for AWS occurs. The draft EIR acknowledges that the Project will cause temporary and permanent impacts to AWS habitat, yet does not offset this potentially significant impact through compensatory mitigation measures. Instead, the draft EIR defers this matter to CDFW and/or USFWS to address at a later date. CDFW recommends that the draft EIR be revised to conform to CEQA Guidelines section 15126.4 and identify an enforceable mitigation measure to offset temporary and permanent habitat loss impacts.

To ensure the temporary and permanent impacts to potential AWS habitats are mitigated to a level of less-than-significant, CDFW recommends the Project formulate, and incorporate, enforceable and quantifiable compensatory measures to address these impacts in the draft EIR (CEQA Guidelines section 15126.4). These compensatory measures should include restoring, and/or protecting in perpetuity, areas where AWS is known to occur under a conservation easement. A Project proponent may elect to purchase AWS mitigation bank credits from a CDFW-approved mitigation bank as an alternative to protecting occupied AWS habitat under a conservation easement. CDFW recommends that compensatory mitigation be, in terms of acreage, calculated at a ratio of 3:1 (conserved habitat to impacted habitat) for permanent impacts, 5:1 for the construction of new roads, and 1.1:1 for temporary impacts lasting under a one-year period. These ratios should be calculated after surveying and disclosing the total area of anticipated disturbance caused by the Project.

Afshan Hamid
Town of Moraga
December 30, 2022
Page 8


ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, section 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CDFW appreciates the opportunity to comment on the draft EIR to assist the Town in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Andrew Chambers, Environmental Scientist, at (707) 266-2878 or by email at Andrew.Chambers@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022020106)

CITATIONS

California Native Diversity Database (CNDDDB) (2022). [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved November 22, 2022, from <https://wildlife.ca.gov/Data/BIOS>.

Letter A.2

COMMENTER: Erin Chappell, Regional Manager Bay Delta Region, California Department of Fish and Wildlife (CDFW)

DATE: December 30, 2022

On December 7, 2022, the commentor requested an extension to provide comments on the Draft EIR until December 16, 2022, four days after the Draft EIR comment period closed on December 12, 2022. The commentor submitted Letter A.2 on December 30, 2022, 14 days after the agreed-upon extension. Given the commentor's critical input and expertise to protect biological resources, the Town has considered Letter A.2 and provided a response as follows, as well as made appropriate minor revisions to mitigation.

The commentor identified their role as a trustee and responsible agency. As a matter of clarification, a responsible agency refers to a public agency that has discretionary approval over the project. CDFW does not have discretionary approval over the project; therefore, CDFW is not a responsible agency over this CEQA document. However, the Town does acknowledge that CDFW is a trustee agency.

The commentor summarized regulatory requirements regarding lake and streambed alteration, the California Endangered Species Act, fully protected species, and raptors/other nesting birds. The Town acknowledges that future projects would be required to comply with these regulations. In fact, Section 4.3, *Biological Resources* of the Draft EIR identifies these regulatory requirements.

The commentor summarizes the project description and environmental setting of the Bollinger Canyon Study Area. The Town acknowledges the information provided by CDFW. Section 4.3, *Biological Resources* identifies that there are sensitive biological resources located in the Bollinger Canyon Area.

The commentor recommends that the environmental setting explicitly disclose endangered, rare, threatened, or other special-status species in the Bollinger Canyon Study Area. The Town acknowledges the potential presence of special-status species in the Bollinger Canyon Study Area. Appendix C of the Draft EIR includes a list of 112 special-status plant and animal species, along with habitat requirements, in the Town of Moraga. However, the Draft EIR provides a programmatic analysis and specific special-status species would be identified when the Planning Initiative is implemented, and individual development projects are proposed.

The commentor suggests revisions to the impact analysis and findings, specifically regarding impacts related to the permanent loss of habitat. The commentor recommends that the Draft EIR specify compensatory mitigation measures to permanently conserve and protect habitats for impacted special-status species to reduce impacts from permanent and cumulative habitat loss. Furthermore, to reduce cumulative impacts, the commentor recommends that the Final EIR include a map of sensitive natural community and connectivity areas for Alameda whipsnake; revisions to mitigation measures; and the reduction, redesign, and restriction of portions of the Bollinger Canyon area that result in a loss of sensitive natural communities or connectivity for Alameda whipsnake. At this stage the Draft EIR provides a programmatic analysis of the Planning Initiative. Permanent loss of habitat would be considered when individual development projects are proposed under the Planning Initiative as the exact location or extent of development within the Bollinger Canyon Study Area is not known at this time as there are no project applications. The critical habitat map provided in Figure 4.3-3 provides information known at this stage. To integrate the commentor's

recommendation for compensatory mitigation at the planning stage and ensure it occurs for development facilitated by the Planning Initiative, Mitigation Measure BIO-1 has been revised to provide clarifying edits, as included in Chapter 3, *Minor Revisions to the Draft EIR*.

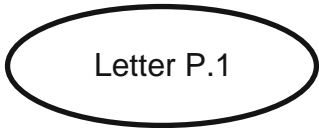
The commentor recommends protocols for the qualified biologist to follow while conducting surveys in compliance with mitigation measures. The commentor recommends additional language regarding birds, active nests, and active nest buffers in Mitigation Measure BIO-2. The commentor suggests revisions to the Mitigation Measure BIO-3 to improve the protection of trees, specifically Coast Live Oak Woodland, through avoidance and in-kind preservation. Additionally, the commentor recommends that Alameda whipsnake should be assumed to be present in the Bollinger Canyon Study area and thus that Mitigation Measure BIO-4 be revised to include compensatory mitigation to protect Alameda whipsnake. Mitigation Measures BIO-2 through BIO-4 have been revised to include the commentor's clarifying recommendations and are included in Chapter 3, *Minor Revisions to the Draft EIR*.

Comments on the Draft EIR for Comprehensive Advanced Planning Initiative dated October 2022

Paul Miller <Paulml967@comcast.net>

Sat 12/10/2022 12:35 PM

To: Make Moraga Home <makemoragahome@moraga.ca.us>



I feel the draft EIR is incomplete and inadequate. It doesn't adequately identify, quantify, address or provide reasonable mitigations to the impacts to wildfire emergency evacuation. I believe the wildfire emergency evacuation route is out Moraga Way into Orinda. I live off of Campolindo Drive; so, my family would have one of the longest drives during a wildfire emergency evacuation. The projects adding roughly 11% to the housing stock in Moraga, all closer to the evacuation routes, will impact the time required for my family to evacuate which significantly increases our risk of being caught in a wildfire.

P.1-1

From my perspective the current wildfire emergency evacuation plan is very poor. When the Campolindo High School lets out, it takes 20 minutes to go 0.7 miles from my house to Moraga Road. I wonder how long it would take to get to Highway 24 in a wildfire emergency evacuation. The EIR failed to quantify the time to evacuate Moraga during a wildfire. The EIR failed to identify the change in evacuation time with the addition of the housing stock identified in the "project". With wildfires traveling 40 to 60 miles per hour the outlook for my family getting to safety is worrisome.

P.1-2

Traffic studies show that traffic slows down with congestion; so, our evacuation time and the risk of being caught in a fire will increase more that 11%.

P.1-3

I've been told that Paradise California had better roads out of town than Moraga does. Please see the link below for a picture of how that turned out. The Paradise fire illustrates the consequences of being caught in a wildfire - lots of people die.

P.1-4

<https://www.nytimes.com/2018/11/11/us/california-fire-paradise.html>

The "project" doesn't identify any specific wildfire emergency evacuation capacity a developer would have to attain as part of a new development.

P.1-5

Additional comments:

1. The Draft EIR failed to consider the cumulative impacts of increasing housing stock in Moraga and Orinda on the safety of residents during a wildfire emergency evacuations from Moraga.
2. If the evacuation routes are changed to include exiting via Lafayette, the Draft EIR fails to consider the cumulative impacts of the increase in Lafayette and Moraga housing stocks and its impacts on wildfire emergency evacuation from Moraga.
3. The Draft EIR failed to consider impacts of increasing housing stock in Moraga on the safety of residents during an emergency wildfire evacuations from Moraga.

P.1-6

P.1-7

P.1-8

- | | |
|--|--------|
| 4. The Draft EIR failed to identify mitigating measures to reduce the impacts of the project to the safety of residents during a wildfire evacuation. A potential mitigation measure could be to allow evacuation through the Country Club and on to the Wilder Development and then to Highway 24. I believe there are additional mitigations as well. I didn't see any discussion of evacuation routes improvements or alternatives. The Draft EIR wrongly states that the impacts are unavoidable. Page 4.17.20 | P.1-9 |
| 5. CEQA Guidelines require including wildfire risks and project impacts on emergency evacuation in EIR's. See The Office of the Attorney General's document on Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under CEQA. | P.1-10 |
| 6. The Draft EIR fails to identify what steps the Town or a developer will take to improve wildfire evacuation safety as a result of the "project". Stating that the General Plan Safety Element will be updated doesn't identify the impacts, risks or mitigation measures for adding more housing stock as indicated in the project. The update of the General Plan Safety Element is not available to review with the Draft EIR and was not considered in the preparation of the Draft EIR. Therefore the Draft EIR is incomplete. | P.1-11 |
| 7. The Draft EIR lists Policy S3.23 Evacuation Routes. On page 4.17-17. Listing a Policy is not a mitigation. There is no discussion of "adequate capacity, safety, and viability of those routes in the event of an emergency". There are no steps listed to improve capacity or safety. The goal is supposed to be part of some update which hasn't been developed so the "project" and its impacts can't have been evaluated. Therefore, the Draft EIR is incomplete. | P.1-12 |
| 8. The Draft EIR lists Policy S3.24: Road and access improvements. Also on page 4.17-17. Again a policy isn't an analysis or a mitigation to the impacts of increasing the housing stock on wildfire emergency evacuation. The goal is supposed to be part of some updated thing which hasn't been developed so the "project" and its impacts can't have been evaluated. Therefore, the Draft EIR is incomplete. | P.1-13 |
| 9. The Mitigation Measure WFR-1 does not address wildfire emergency evacuation. So, the EIR is incomplete. | P.1-14 |
| 10. The "project" doesn't identify any specific wildfire emergency evacuation capacity a developer would have to attain as part of new development. Since the wildfire emergency evacuation is not adequately described the Environmental Impacts of the "project" on wildfire emergency evacuation hasn't been properly analyzed. Therefore the Draft EIR is incomplete. | P.1-15 |
| 11. Page 4.17.3 says "CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents. Consequently, impacts under the thresholds identified above would only be considered significant if the project risks exacerbating those existing environmental conditions.". Increasing the numbers of people who need to evacuate (increasing the housing stock) during a wildfire event, without increasing the capacity to move people, exacerbates the risks to the residents who need to evacuate (existing environmental conditions) so wildfire emergency evacuation should be part of the analysis. (Also wildfire emergency evacuation is already required by CEQA. See item 5). There is no analysis; so, the Draft EIR is incomplete. | P.1-16 |

I look forward to the Planning Departments response to my comments.

Thank you,

Paul Miller

PAULML967@Cpmcast.net

925-360-6022

Letter P.1

COMMENTER: Paul Miller

DATE: December 10, 2022

Response P.1-1

The commenter states an opinion that the Draft EIR is incomplete and inadequate in respect to wildfire emergency evacuation. The commenter is concerned about their personal evacuation route and the potential impact of the addition of housing in Moraga generally on wildfire evacuation.

The Draft EIR acknowledges the potentially significant impact on evacuation routes and times resulting from development on the Housing Element sites (Draft EIR pages 4.17-18 through 4.17-20). The Draft EIR identifies wildfire as a significant and unavoidable environmental impact, with the imposition of possible mitigation measures. As the Draft EIR notes, there are numerous state and local regulations and activities that are designed to help reduce evacuation route impacts and other wildfire risks (Draft EIR pages 4.17-6 through 4.17-14). As stated on pages 4.17-18 and 4.17-19 of the Draft EIR, development facilitated by the Housing Element would accommodate future population growth that would incrementally increase traffic congestion, which could result in delays on evacuation routes in the Town, and into the cities of Lafayette and Orinda and to State Route 24. Population growth because of the Housing Element could also result in adverse effects related to the implementation of emergency plans due to burdened evacuation routes and other emergency response resources in the event of a wildfire. Development facilitated by the project could further inhibit safe evacuation by introducing more residents to the area that would require evacuation on narrow roadways and incrementally increasing congestion during evacuation. Additionally, on Page 4.17-20, the Draft EIR states that residential traffic from the Bollinger Canyon Study Area would rely on St. Mary's Road for potential evacuation, and impacts related to emergency response and evacuation plans would be significant, even with mitigation.

In its next phase of planning work, the Town will prepare an evacuation analysis that will analyze segments and intersections along identified possible evacuation routes that are likely to be the most congested during an evacuation event, as well as residential areas that are the most vulnerable to traffic congestion along the identified constrained routes. The analysis will also consider where there are residents in Moraga who may face other barriers to evacuation due to factors like limited access to a vehicle, internet, or phone service, disabilities, and/or language barriers. This analysis will also consider simultaneous evacuations from the cities of Orinda and Lafayette using the same routes. The analysis will provide the Moraga-Orinda Fire District (MOFD), police and other emergency service providers with recommendations for reducing traffic congestion along congested evacuation route segments and intersections during a Town-wide evacuation event, recommendations for evacuating vulnerable populations, and recommendations for reducing landslide risk along evacuation routes.

This analysis is required for the Town to be consistent with California Government Code Section 65302.15, which requires that a Safety Element assess possible evacuation routes and their capacity, safety, viability, and evacuation locations under different emergency scenarios. The analysis, which will be prepared to help the Town update its Local Hazard Mitigation Plan, will contain ideas for infrastructure improvements and emergency response strategies that could help reduce evacuation times as discussed as part of Mitigation Measure WFR-1 in Section 4.17, *Wildfire* of the Draft EIR (see page 4.17-19). As part of the Contra Costa County Local Hazard Mitigation Plan update, the

County will review these recommendations and adopt those that are effective, feasible, and within the Town's jurisdiction. Even with these additional measures, the project's potential wildfire impacts would remain significant and unavoidable for the same reasons stated in the Draft EIR (see Draft EIR pages 4.17-19, and 4.17-20).

According to Chief of Police Jon B. King, the Town currently uses the Community Warning System, whereby only certain areas impacted by wildfire are notified of the need to evacuate and which evacuation route to use, to retain roadway capacity as efficiently as possible. The Town's Police Department and MOFD would coordinate with adjacent police departments, Orinda and Lafayette, to ensure that evacuation efforts are in sync to expedite traffic. Roadway capacities can also be doubled by using both lanes of a roadway to guide traffic out of Moraga. In the event that evacuation is not possible, the Town would establish Temporary Refuge Areas to shelter people in defensible spaces (King 2022).

In summary, the Draft EIR did consider the potential impacts associated with wildfire evacuation and concluded that the impacts would be significant. No revisions to the Draft EIR are necessary in response to this comment. The Town will continue to develop strategies to minimize the potential impacts on evacuation.

Response P.1-2

The commenter believes that the current wildfire emergency evacuation plan is poor and opines that the EIR fails to identify the change in evacuation time with implementation of the Planning Initiative.

Please refer to Response P.1-1. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-3

The commenter suggests that since traffic slows with congestion, evacuation time will increase proportionally to the increase in housing stock.

The Town acknowledges that traffic increases with more vehicles and leads to additional congestion. Please refer to Response P.1-1 regarding wildfire evacuation. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-4

The commenter compares exit routes from Moraga to Paradise, California and shares a news article from 2018 about the Paradise wildfire.

The Town acknowledges the potential risks from wildfires. Please refer to Response P.1-1 regarding wildfire evacuation within Moraga. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-5

The commenter states an opinion that the Planning Initiative does not identify specific wildfire emergency evacuation capacity a developer would attain as part of new development.

As discussed under Response P.1-1, the Draft EIR concludes that wildfire evacuation would remain a significant and unavoidable impact (Impact WFR-1). This impact would be reduced with Mitigation Measure WFR-1, which requires individual projects facilitated by the Planning Initiative to provide

adequate roadway and driveway widths that are designed to accommodate two-way traffic and large firefighting apparatus. Through Mitigation Measure WFR-1, the Draft EIR does require developers to consider wildfire emergency evacuation during project design. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-6

The commenter states an opinion that the Draft EIR does not account for cumulative wildfire emergency evacuation impacts.

As discussed in Section 3, *Environmental Setting*, on pages 3-2 through 3-3 in the Draft EIR, pursuant to *CEQA Guidelines* Section 15130, analysis in the Draft EIR considers a general plan update to be cumulative in nature. As such, the analysis in the Draft EIR considers cumulative impacts in the Town from implementation of the Planning Initiative. In addition, the evacuation analysis discussed in response P.1-1 will also consider simultaneous evacuations from the cities of Orinda and Lafayette using the same routes. Please refer to Response P.1-1 regarding cumulative wildfire emergency evacuation impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-7

The commenter is concerned about the adequacy of evacuation routes leaving through the City of Lafayette.

Please refer to Response P.1-1 regarding wildfire emergency evacuation and Response P.1-6 regarding cumulative impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-8

The commenter reiterates their concern regarding safety of residents during wildfire emergency evacuations.

Please refer to Response P.1-1. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-9

The commenter states an opinion that mitigation measures in the Draft EIR do not address wildfire evacuation and additional mitigation measures are possible. The commenter proceeds to suggest a new evacuation route that would require construction of a new road.

As discussed on Page 4.17-19 in Section 4.17, *Wildfire*, Mitigation Measure WFR-1 of the Draft EIR would require development facilitated by the project to include a Wildfire Assessment Plan and Guidelines to be approved by MOFD. MOFD, if they deem necessary, may require such a plan and guidelines to include emergency evacuation measures. Mitigation that requires construction of a new roadway would not be feasible mitigation for the Planning Initiative since a project applicant would not necessarily be able to acquire the right-of-way to construct new or wider roadways and such acquisition would be disproportionate to the size of the project's impact, nor would the addition of roadways guarantee that emergency evacuation impacts be reduced to a less than significant level. Additionally, as discussed under Response P.1-1, a new emergency evacuation plan within the Safety Element would reduce impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-10

The commenter provides information about CEQA Guidelines regarding wildfire risks and project impacts on emergency evacuation and the Office of the Attorney General's document on Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under CEQA.

The Attorney General's guidance document cited by the commenter was published after the Notice of Preparation of the EIR was published on February 3, 2022 and was issued by the Attorney General, not the Office of Planning and Research or the California Natural Resources Agency, which are the agencies tasked with implementing CEQA. Nonetheless, the document contains helpful guidance for agencies analyzing a project's potential wildfire impacts under CEQA, and the Draft EIR's analysis is consistent with that guidance.

As a preliminary matter, the Attorney General's guidance is geared more toward project-specific analysis than the programmatic analysis required for a planning document like the Housing Element. This is clear from the introduction ("This guidance is designed to help lead agencies comply with [CEQA] when considering whether to approve projects in wildfire-prone areas"; "This guidance is aimed at proposed development projects, such as residential, recreational, or commercial developments") as well as Section III, Wildfire and Land Use (pointing agencies to other documents for assistance in considering wildfire risks in their general planning processes).

The Draft EIR uses these same thresholds of significance (see Section 4.17.3(a)) and contains a thorough analysis of the project's potential to cause such impacts (see Draft EIR pages 4.17-14 through 4.14-20). The Draft EIR identifies Mitigation Measure WFR-1 and concludes that the project's wildfire impacts remain significant and unavoidable, even after mitigation (see Draft EIR pages 4.14-15 and 4.14-19). Additionally, the proposed Safety Element discussed in Section 4.17 includes proposed Policy S3.23 that would require the Town to "continue to identify and maintain evacuation routes to ensure adequate capacity, safety, and viability of those routes in the event of an emergency." In addition, proposed Policy S3.24 would require the Town to "identify existing public and private roadways in fire hazard severity zones and the wildland-urban interface (WUI) that are not in compliance with current fire safety regulations, including road standards for evacuation and emergency vehicle access, vegetation clearance, and other requirements of Sections 1273 and 1274 of the California Code of Regulations (Title 14, Division 1.5, Chapter 7, Articles 2 and 3), to the extent resources are available." No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-11

The commenter states an opinion that the Draft EIR is incomplete and does not identify what steps will be taken to improve wildfire evacuation safety.

Please refer to Responses P.1-1, P.1-9, and P.1-10. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-12

The commenter references proposed Safety Element Policy S3.23: Evacuation Routes. The commenter states an opinion that the Draft EIR is incomplete and does not identify what steps will be taken to improve capacity or safety regarding emergency evacuation routes.

Please refer to Responses P.1-1, P.1-9, and P.1-10. Additionally, the cited policy is not relied on as mitigation for an impact, the Planning Initiative as a whole is a policy document and Policy S3.23 is a

component of the project. Therefore, Policy S3.23 does reduce impacts to wildfire evacuation, as it sets forth a plan for future action. In addition, the Draft EIR does include Mitigation Measure WFR-1 to mitigate potential impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-13

The commenter references proposed Safety Element Policy S3.24: Road and Access Improvements. The commenter states an opinion that the Draft EIR is incomplete and does not adequately address the impacts of increased housing stock on wildfire emergency evacuation.

Please refer to Responses P.1-1 and P.1-12. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-14

The commenter states an opinion that Mitigation Measure WFR-1 does not address wildfire emergency evacuation.

Please refer to Responses P.1-1, P.1-5, P.1-9, and P.1-10. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-15

The commenter states an opinion that the project does not specify wildfire emergency evacuation capacity and suggests that the environmental impacts of wildfire emergency evacuation are not adequately described.

Please refer to Responses P.1-1, P.1-5, P.1-9, and P.1-10. No revisions to the Draft EIR are necessary in response to this comment.

Response P.1-16

The commenter reiterates points raised through the comment letter and recommends that wildfire emergency evacuation be included in the Draft EIR analysis.

Please refer to Responses P.1-1, P.1-5, P.1-9, and P.1-10. As discussed therein and in the Draft EIR, wildfire impacts related to evacuation are analyzed in the Draft EIR and were found to be significant and unavoidable. No revisions to the Draft EIR are necessary in response to this comment.

Letter P.2

From: Suzanne Jones <suzanne@unwiredltd.com>

Sent: Monday, December 12, 2022 1:00 PM

To: Afshan Hamid <ahamid@moraga.ca.us>

Cc: manager@moraga.ca.us; Steve Woehleke <swoehleke@moraga.ca.us>; Renata Sos <rsos@moraga.ca.us>; Teresa Onoda <tonoda@moraga.ca.us>; Sona Makker <smakker@moraga.ca.us>; Mike McCluer <mmccluer@moraga.ca.us>; dshapiro@moraga.ca.us; khillis@moraga.ca.us

Subject: Comment on Advanced Planning Initiative DEIR

Afshan Hamid, Planning Director
Town of Moraga Planning Department
329 Rheem Blvd.
Moraga, CA 94556

Dear Ms. Hamid,

Thank you for the opportunity to comment on the Comprehensive Advanced Planning Initiative DEIR.

With respect to Section 4.7 regarding greenhouse gas emissions, I am writing to ask that the document be revised to reflect current state and regional emissions policies including the [California Air Resources Board 2022 Scoping Plan](#) and the [Bay Area Air Quality Management District's latest Guidance for GHG Reduction Strategies](#) issued in April of 2022. These policies require further reductions in greenhouse gas emissions beyond what is outlined in the DEIR.

It is now feasible to construct buildings that are “net-zero” in their greenhouse gas emissions, and future construction in Moraga should be required to meet this standard. The use of natural gas is no longer state-of-the art and should not be permitted. Rather, new residential and commercial buildings should be powered by carbon-neutral electricity.

Our planet is on the brink of catastrophic runaway climate disruption. Unless policymakers act boldly and without delay, human beings—particularly today’s young people—and all living things will be forced to endure unspeakable suffering. To avoid the most harrowing outcomes, average warming must be limited to 1.5°C which requires that greenhouse gas emissions be [slashed globally by at least 45% by 2030 and to zero by 2050](#). Every country, state, and local government has an urgent responsibility to help meet this objective.

The changes to Moraga’s General Plan currently in progress will likely remain in effect well beyond 2030, and there will be no “next time” for the Town of Moraga to get this right. Please ensure that the Comprehensive Advanced Planning Initiative, including the DEIR, rises to meet this critical moment and brings the Town into alignment with the most current greenhouse-gas emissions standards.

Thank you,
Suzanne Jones

P.2-1

P.2-2

P.2-3

P.2.4

Letter P.2

COMMENTER: Suzanne Jones

DATE: December 12, 2022

Response P.2-1

The commenter thanks the Planning Department for the opportunity to comment on the Planning Initiative.

The Town is pleased to receive community feedback. No revisions to the Draft EIR are necessary in response to this comment.

Response P.2-2

The commenter requests that the Draft EIR be revised to reflect current state and regional emissions policies, which require additional reductions in greenhouse gas emissions than outlined in the Draft EIR.

The Town is aware of California Air Resources Board's (CARB) 2022 Scoping Plan, which was approved in December 2022, and the Bay Area Air Quality Management District's (BAAQMD) April 2022 guidance regarding greenhouse gas emissions reductions strategies. The Notice of Preparation for the Draft EIR was released on February 3, 2022, and all relevant adopted or released plans and guidelines from State agencies that were available at that time were considered in analysis of the Draft EIR. While CARB's 2022 Scoping Plan and the BAAQMD's guidance is currently available (December 2022), they were not available at the time when analysis of the Planning Initiative commenced in February 2022. Therefore, the environmental conditions baseline used for the analysis of the Draft EIR does not include the 2022 Scoping Plan or April 2022 BAAQMD guidance. No revisions to the Draft EIR are necessary in response to this comment.

Response P.2-3

The commenter proposes that construction in Moraga should achieve net-zero greenhouse gas emissions buildings and eliminate the use of natural gas for residential and commercial buildings.

The Town relies upon Contra Costa County's building code to review and permit proposed projects, including items related to electrification. The Contra Costa County Board of Supervisors has adopted an All-Electric Ordinance (Ordinance 2022-02), which amends a "Reach Code" to the 2019 California Energy Code, requiring residential, hotel, office, and retail buildings to be all-electric. Moraga has not yet adopted this Reach Code in their municipal code, and it is therefore not relied upon in the Draft EIR. However, Town decision-makers will be reviewing and approving adoption of Contra Costa County Ordinance 2022-02 into the municipal code in early 2023. If adopted, all development facilitated by the Planning Initiative would be required to comply with the County Ordinance. The Draft EIR provides a conservative analysis of greenhouse gas emissions from residential and commercial buildings based on current ordinances. No revisions to the Draft EIR are necessary in response to this comment, which is related to the project rather than the analysis or conclusions of the EIR.

Response P.2-4

The commenter stresses the importance of the Planning Initiative in meeting greenhouse gas emissions reductions targets.

The Town is cognizant of the issues raised by the commenter. As such, one of the project objectives, as listed in Section 2, *Project Description*, on Page 2-21 of the Draft EIR, is to update “long-range planning policies and programs that respond to recent State legislation related to VMT, climate change and resilience, fire hazards, evacuation, and other pertinent topics.” Development within the Town facilitated by the Planning Initiative would comply with and be guided by state and regional guidance regarding greenhouse gas emissions, including CARB, the BAAQMD, and the Association of Bay Area Governments. No revisions to the Draft EIR are necessary in response to this comment.

December 12, 2022

VIA ELECTRONIC MAIL ONLY

ahamid@moraga.ca.us

Afshan Hamid, Planning Director
Town of Moraga Planning Department
329 Rheem Blvd.
Moraga, CA 94566

**Re: Town of Moraga Comprehensive Advanced Planning Initiative
Comments re Draft EIR**

Dear Ms. Hamid:

Our office represents the Joan and David Bruzzone and Lafayette Bollinger Development LLC (collectively, the “Bruzzone Family”) with regard to their properties within the Town of Moraga, including 186 acres in Bollinger Valley (“Bollinger Property”) within the Bollinger Canyon Special Study Area, and property in the Bluffs neighborhood area to west (currently zoned 1/du per acre), as well as property in the Moraga Shopping Center and related parcels (“MCSP Property”) located in the Moraga Center Specific Plan (“MCSP”) area. This letter provides comments on the Town of Moraga’s Comprehensive Advanced Planning Initiative’s Draft Environmental Impact Report (“DEIR”) pursuant to the California Environmental Quality Act (“CEQA”). Please respond to these comments in writing in the Final EIR and/or any recirculated EIR.

P.3-1

Please reference our letters on behalf of the Bruzzone Family relating to the Housing Element and/or the Comprehensive Advanced Planning Initiative, dated October 19, 2022; July 13, 2022; May 17, 2022; February 17, 2022; February 9, 2022, January 21, 2022 that are attached hereto and incorporated herein by this reference.

Background

On February 9, 2022, the Town held a Study Session regarding potential options for General Plan and zoning designations for the Study Area, including the Bollinger Property. The Study Session included a Staff Report, and a brief Staff-prepared "White Paper" recommending a Rural Residential (1 unit per 5 acres) option for the Bollinger Property.

P.3-2

Our letter of February 9, 2022, submitted prior to the Study Session, stated as follows:



December 12, 2022

Page 2

*The proposed RR designation is an "open space" designation, which precludes any reasonable use of the Bollinger Property.

*The County designation for the site was for Residential (R-15) , allowing up to 2.9 units per acre (i.e., one unit per 15,000sf); thus the proposed open space designation (allowing one unit per 217,800sf) results in a "taking" of all use of the Bollinger Property.

*The 2002 Moraga General Plan specifically states that the Study Area and the Bollinger Property should not be designated without a "special study" showing opportunities and constraints of the area, and without coordination of such study with the property owners.

*The Town Staff has not prepared such a special study, and, after over 40 years, is now relying only on a "White Paper," with only three pages referencing the Bollinger Property, without any reliance on any expert or consultant analysis, nor on an opportunities and constraints analysis, nor on input or any coordination with the property owners, all contrary to the specific requirements of the current 2002 Moraga General Plan.

*The Town Council therefore *should not direct Staff to move forward with the RR designation prior to an environmental impact report (EIR) being prepared.* Such direction will artificially narrow the options considered by the EIR and will limit study/analysis of the site as required by the General Plan – and will inevitably result in the Town's predetermined objective of a Rural Residential (open space) designation for the Bruzzone Property.

At the conclusion of the Study Session, the Town Council ignored the Bruzzone Family's comments and the 2002 General Plan requirements, and by resolution directed Staff instead to move forward to prepare documentation for a General Plan Amendment (GPA) of the Bruzzone's Bollinger Property, and a consistent rezoning, to a designation of "Rural Residential," 1 unit per five acres.

The Town concurrently issued a Notice of Preparation (NOP) of the EIR for the Comprehensive Advanced Planning Initiative ("Town Initiative"). The NOP encompasses review for: an update to the Town's Housing Element; rezoning of certain sites within the Town, rezoning of the Study Area, and amendments to the General Plan (including the Study area and Bollinger Property).

P.3-2, cont.

P.3-3

December 12, 2022

Page 3

Comments re DEIR and Town's CEQA Proceedings

Set forth below are (i) specific comments submitted regarding the Study Session as they relate to the proposed NOP/Scoping Session; and (ii) comments on the NOP/Scoping Session on which the EIR is based. These comments are also submitted in connection with the DEIR.

I. Town's Improper Reliance on a White Paper

During the Study Session, the Council asked Staff who prepared the "White Paper" proposed for the hearing. Staff indicated that the White Paper had been prepared by "Staff and its planning consultant." Staff did not rely on experts or prior expert/consultant analysis of the site, nor did Staff indicate that the White Paper was based on any technical analysis or evidence-based study. Instead, it appears the White Paper was prepared as a general planning guide, in order to make its recommendation to the Council. This is evidenced by text in the White Paper, which states:

"This Bollinger Canyon Rezoning White Paper is intended to provide *planning context* and analysis as it considers planning and zoning options for the General Plan." (White Paper at p. 1, Sect. A.)

The Town has left the property designated as Study since 1979 (in violation of Government Code section 65302)¹ and the General Plan specifically requires a detailed analysis of opportunities and constraints prepared by consultants and experts. The Staff's White Paper does not reference any such analysis – nor is such analysis adequately set forth in the DEIR. Stated simply, the Town Council cannot, after 40 years, rely on three pages of Staff's conclusory "analysis" in making its decision to designate the Bollinger Property

In our letter regarding the Study Session, we noted that it was/is improper for the Town to accept the Staff Recommendation for RR *prior to any study being done and prior to the EIR and related analysis being prepared*. The White Paper states as follows:

"Once the preferred general plan and zoning direction is confirmed [by the Town Council], the staff and consultant team will complete CEQA analysis and review." (White Paper at p. 1, Section A.)

Staff thus proposed that the Council *first* determine the General Plan designation; and *thereafter* draft an EIR and perform any required analysis. This proposal is *backwards*: the General Plan (and all relevant planning law) requires that the Council *first* prepare the required

¹ The DEIR notes that the "Study Area" designation "does not have an associated density range" which violates Government Code section 65302(a). (DEIR at p. 2-19.)

P.3-4

P.3-5

expert analysis and associated CEQA review—and thereafter base its designation upon such analysis and review. As shown below, the environmental review is required by law to contain a range of alternatives and options.

↑
P.3-4, cont.

The Town's Resolution directing Staff to first move forward with the RR designation, prior to considering the EIR and any options/analysis, is therefore legally flawed and inconsistent with the General Plan. Moreover, it precludes the meaningful analysis of options and alternatives, including more dense development with more substantial infrastructure without any substantial evidence.

II. The Alternatives Analysis is Flawed and Inadequate.

The Town's longstanding failure to produce housing in line with its Regional Housing Needs Allocation ("RHNA"), as well as the state's well-documented housing crisis (see, e.g. Gov. Code § 65582.1 (describing legislative actions taken to address the housing crisis), makes it incumbent on the Town to investigate and exhaust all potential opportunities to develop housing – and not purposefully undermine them. Moreover, given the Town's failure to meet its RHNA, the Housing Element should, and must, identify sufficient sites in the Town for realistic development at all income levels during the planning period. The Town's RHNA for the 2023-2031 cycle is 1,118 units, a 400% increase relative to the allocation for 2015-2022 (where very few units were actually approved and developed.) The Town must do more to accommodate its past shortfall and current allocation. The EIR is deficient in that it fails to study a project that can realistically meet these requirements. Bollinger Valley should be a major part of that solution.

P.3-6
↓

Despite these well-documented facts, the Comprehensive Advanced Planning Initiative intends to downzone Bollinger Valley to Rural Residential ("RR") which would allow (in theory) fewer than 40 units on the Bruzzone Family's 186 acres, rather than the over 500 units that were allowed by the County's R-15 designation that was in place when the Town applied the illegal "Study" designation.² Such action, if implemented, would violate Government Code section 66300.³

² The DEIR estimates that the entire 423-acre Bollinger Canyon area would have a housing potential of only 51 units. This number is far less than the existing Bluffs development that is located in Bollinger Canyon.

P.3-7

³ This would be on top of the Town's 2018 adoption of the Hillside and Ridgeline Regulations which further limited density and made housing development more difficult through the adoption of more stringent restrictions on development in hillside and ridgeline areas (which includes much of Bollinger Valley) and well as increased view protections that limits development in areas with views to ridgelines.

P.3-8

December 12, 2022

Page 5

The Town is missing a huge opportunity to plan for, and accommodate both above-moderate housing (for which it has very little available land) as well as affordable housing (e.g., in the form of accessory dwelling units [“ADUs”]) to help accommodate its low and very low income RHNA requirements. Development in Bollinger Valley would be in close proximity to Saint Mary’s College and ADUs could be used by students as well as other persons (teachers, service providers, first responders), so that they need not commute into Moraga from such remote areas.

↑
P.3-6, cont.

DEIR p. 2-20 tries to provide a graphic that demonstrates which areas of the Bollinger Canyon Study Area rezoning will be rezoned and to what designations. The Figure 2-9 graphic was not loaded properly and thus does not show the entire Bollinger Study Area and what the rezoning would be for the entirety of the Study Area. In the Final EIR this needs to be remedied to properly describe the proposed changes.

P.3-9

The DEIR, as drafted, fails to include a reasonable range of alternatives that provide for greater density in Bollinger Valley, similar to surrounding and nearby developments such as the Bluffs (in Moraga) and Burton Valley (in Lafayette). The alternative (and/or the “project” itself) should have included density in line with the Bollinger Valley last legal designation (i.e., R-15 by Contra Costa County prior to the introduction of the Study designation) as well as other densities that would go much farther in addressing the Town and region’s shortfall in producing housing.

While the project objectives include such items as “A State-certified Housing Element for 2023-2031 that responds to local and regional needs;” “General Plan land use and zoning designations for the Bollinger Canyon Study Area,” and “Rezoning consistent with the Housing Element to meet the Town’s RHNA” (DEIR at 6-1), the project studied include essentially an open space designation (called “Rural Residential”) for Bollinger Valley rather than more robust density that would have better satisfied these and other project objectives. In other words, the EIR and the project started from an unreasonably narrow approach to Bollinger Valley so as to hamper the Town’s ability to meet its RHNA for the current and future housing element cycles.

P.3-10

The DEIR only studied two alternatives (in addition to the no project alternative), including a “Cluster Bollinger Canyon Study Area development.” However, neither of these two alternatives contemplated additional density for Bollinger Valley, only clustering the already extremely constrained development that would be theoretically permitted under the project. (See DEIR 6-16 to 6-21.)

The DEIR’s analysis fails to consider that a more dense project would be accompanied by improved infrastructure that could enhance safety (e.g., development of new evacuation routes and/or additional fire station), and would be less visible to important public viewpoints. Such improvements would mitigate impacts from a potential Bollinger Valley development, as well as

December 12, 2022

Page 6

benefit surrounding properties (in both Moraga and Lafayette) through additional escape routes. Development could still be clustered, but at higher densities would take advantage of more efficiencies than the Cluster alternative. Moreover, the Town's proposal to apply a Rural Residential designation would mean that future development would have to be accommodated elsewhere (i.e., in more remote areas or undeveloped areas), and would result in displacement as demand for future housing would be pushed into other, more distant greenfield locations.

P.3-10 cont.

The Town must analyze how development in Bollinger Canyon, at a density necessary to support and fund improved infrastructure could both assist the Town in meeting its RHNA while also addressing present and future risk from wildfire and emergency evacuation.⁴

III. Air Quality/Transportation

The portion of the Comprehensive Advanced Planning Initiative to rezone Bollinger Canyon would not be consistent with BAAQMD's 2017 Clean Air Plan because impacts would be significant and unavoidable primarily due to home-based VMT. (See ES-5; 4.14-21 to 4.14-24; 4.2-12 to 4.2-13.)

P.3-11

As part of a determination that an impact is significant and unavoidable an EIR must have considered all "feasible mitigation measures." Here the DEIR notes that most of the Clean Air Plan inconsistency impacts would stem from home based VMT. 4.2-12. The DEIR notes that these impacts would be reduced by reliance on Mitigation Measure TRA-1.

P.3-12

The publication relied on by the DEIR for implementation of the TRA-1 is "[California Air Pollution Control Officers Association \(CAPCOA\) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity \(December 2021\)](#)." That [guidance notes all the following measures to reduce VMT](#) (see materials in link incorporated by this reference):

⁴ The EIR should also mention that past Town actions, e.g., not extending Joseph Drive, have limited access route and made escape more difficult. By contrast, development of the Bruzzone Family property in Bollinger Valley could improve and add escape routes for existing homes in Bollinger Valley as well as nearby Hunsaker Canyon.

P.3-13

 Transportation	
<p>LAND USE</p> <ul style="list-style-type: none"> <input type="radio"/> T-1. Increase Residential Density <input type="radio"/> T-2. Increase Job Density <input type="radio"/> T-3. Provide Transit-Oriented Development <input type="radio"/> T-4. Integrate Affordable and Below Market Rate Housing <input type="radio"/> T-17. Improve Street Connectivity <p>TRIP REDUCTION PROGRAMS</p> <ul style="list-style-type: none"> <input type="radio"/> T-5. Implement Commute Trip Reduction Program (Voluntary) <input type="radio"/> T-6. Implement Commute Trip Reduction Program (Mandatory Implementation and Monitoring) <input type="radio"/> T-7. Implement Commute Trip Reduction Marketing <input type="radio"/> T-8. Provide Ridesharing Program <input type="radio"/> T-9. Implement Subsidized or Discounted Transit Program <input type="radio"/> T-10. Provide End-of-Trip Bicycle Facilities <input type="radio"/> T-11. Provide Employer-Sponsored Vanpool <input type="radio"/> T-12. Price Workplace Parking <input type="radio"/> T-13. Implement Employee Parking Cash-Out <input type="radio"/> T-23. Provide Community-Based Travel Planning <p>PARKING OR ROAD PRICING/MANAGEMENT</p> <ul style="list-style-type: none"> <input type="radio"/> T-14. Provide Electric Vehicle Charging Infrastructure <input type="radio"/> T-15. Limit Residential Parking Supply <input type="radio"/> T-16. Unbundle Residential Parking Costs from Property Cost <input type="radio"/> T-24. Implement Market Price Public Parking (On-Street) 	<p>NEIGHBORHOOD DESIGN</p> <ul style="list-style-type: none"> <input type="radio"/> T-18. Provide Pedestrian Network Improvement <input type="radio"/> T-19-A. Construct or Improve Bike Facility <input type="radio"/> T-19-B. Construct or Improve Bike Boulevard <input type="radio"/> T-20. Expand Bikeway Network <input type="radio"/> T-21-A. Implement Conventional Carshare Program <input type="radio"/> T-21-B. Implement Electric Carshare Program <input type="radio"/> T-22-A. Implement Pedal (Non-Electric) Bikeshare Program <input type="radio"/> T-22-B. Implement Electric Bikeshare Program <input type="radio"/> T-22-C. Implement Scootershare Program <p>TRANSIT</p> <ul style="list-style-type: none"> <input type="radio"/> T-25. Extend Transit Network Coverage or Hours <input type="radio"/> T-26. Increase Transit Service Frequency <input type="radio"/> T-27. Implement Transit-Supportive Roadway Treatments <input type="radio"/> T-28. Provide Bus Rapid Transit <input type="radio"/> T-29. Reduce Transit Fares <p>CLEAN VEHICLES AND FUELS</p> <ul style="list-style-type: none"> <input type="radio"/> T-30. Use Cleaner-Fuel Vehicles

P.3-12cont.

The DEIR’s analysis regarding VMT mitigation measures on DEIR pages 4.14-21 to 4.14-24 is thus deficient because the DEIR fails to analyze most of these measures which would help to reduce home-based VMT (or meaningfully consider how VMT has been affected by shifting and reduced commute patterns given the rise of remote work). Additionally the Town has not yet noted why many of these measures would be infeasible to implement prior to concluding what level of mitigation is necessary to claiming impacts are significant and unavoidable. (See *Covington v. Great Basin* (2019) 43 Cal.App.5th 867, 879-883 (holding that revised EIR was required where respondent failed to explain why the petitioners’ proposed mitigation measure was not feasible).

P.3-14

P.3-15

In addition, in Air Quality AQ-1, the mitigation measure as drafted is not clear in what equipment is exactly required to achieve the necessary mitigation to keep impacts at an insignificant level.

P.3-16

The EIR notes where individual projects will need to perform an health risk assessment (HRA) but one of the mitigation measures for an HRA exceedance is reliance on CARB Tier 4

P.3-17

December 12, 2022

Page 8

equipment to reduce those exceedances. This mitigation measure is vague though because CARB Tier 4 is either Tier 4 Final or Tier 4 Interim. (See DEIR at ES-6; 4.2-18.)

Given the significant difference between the two types of equipment in reducing air quality impacts, the current AQ-1 analysis regarding the effectiveness of the mitigation measure is deficient until AQ-1 is amended to specify which Tier 4 equipment will be relied upon.

P.3-17cont.

IV. Bollinger Canyon Rezoning Analysis is Misleading and Incomplete

The DEIR includes analysis of the rezoning of upwards of 400 acres in Bollinger Canyon, including, but not limited to the Bruzzone Family's Bollinger Valley property. As such, the DEIR's analysis of impacts are overstated and used to justify the need for downzoning the Bruzzone Family property. The DEIR should have considered the analysis included in the Final EIR for the Bollinger Valley Project considered by the Town in 2018 and explain why the impact conclusions are different. This letter incorporates, by this reference, the Town's Draft and Final Environmental Impact Report (dated September 2018 and contained in the Town's Planning Department files) for the Bollinger Valley Project.

P.3-18

While that project was not adopted, the EIR for the Bollinger Valley Project was prepared at the Town's direction and the Town should describe and account for any differences between the analysis and conclusions of the two documents given the significant overlap.

V. White Paper's "Bollinger Zoning Principles" Are Improper

The White Paper sets forth seven "Bollinger Zoning Principles" to guide the Council in making its recommendation for RR. The Principles include: (i) pursuing shared goals; (ii) take a fresh look; (iii) understanding constraints; (iv) consider the rural character; (v) provide zoning standards; (vi) utilize existing zoning; and (vi) avoid spot zoning.

These "zoning principles" merely reference *constraints* in the Study Area, without any expert analysis. They cannot substitute for an "opportunities and constraints" analysis as required by the General Plan.

P.3-19

At the Study Session, at least one council member questioned how these zoning principles were prepared and for what purpose. We continue to have the same question. These "zoning principles" do not appear to have a basis in the Town's General Plan. Moreover, these zoning principles are "outcome determinative" – geared toward confirming a certain result rather than providing expert consultant analysis and study of the Bollinger Property.

The rural character of the site is a result of the Town's improper and illegal use of the Study designation for over 40 years which did not identify the allowed use or intensity of uses. Meanwhile, other similar property was allowed to develop (e.g., the Bluffs), and/or was given a

December 12, 2022

Page 9

designation (e.g., South Camino Pablo, designated at 1 du/ac). The Bollinger Property is unique because the Town has illegally restrained development while other areas of similar location and topography were treated differently. The Town may not take advantage of its wrongdoing to try to justify treating the Bollinger Property differently.

↑
P.3-19 cont.

VI. Rural Residential Designation is Open Space Designation and Constitutes a Downzoning of the Bollinger Property.

During the Study Session, several council members asked Staff about the Rural Residential (RR) designation limiting development to a maximum of 1 unit per 5 acres (i.e., one unit per 217,800 sf). *Specifically, they asked how such RR designation is effectively any different from open space*, given the Non-MOSO Open Space designation and certain agricultural use designations also limit residential development to 1 unit per 5 acres.

Staff appeared to indicate that the Rural Residential designation would allow residential use a matter of right (without a use permit) while other open space designations would require a permit. However, this is a distinction with very little (if any) difference. The Town has expressly stated that approval of the RR district will not approve a project – and that the Town reserves all rights to impose restraints and conditions on the site (including the Hillside restrictions) to protect the hillsides, protect the views, protect against fire dangers, and to *significantly reduce the unit count well below 1 unit per 5 acres*. Thus, for example, even if a RR designation theoretically allows approximately 37 units maximum on a 187-acre site – the Town intends to reduce such 37-unit count significantly, using its other planning tools. A "permit" requirement makes no difference.⁵

P.3-20

It is clear that the Rural Residential designation is intended as an *open space* designation, significantly limiting any development on the site. It also constitutes a downzoning. The Bollinger Property was designated as R-15 when the Bruzzone Family purchased the property in the late 1960s, i.e., one unit per 15,000 sf. While the Town has placed the Bollinger Property in "temporary" limbo for over 40 years by virtue of the illegal Study designation (which fails to comply with the requirements of Government Code section 65302(a)), the Town is now proposing to lower the density from 1 unit per 15,000 sf, to one unit per 217,800 sf, and impose additional burdens (such as the Hillside and Ridgeline Regulation adopted in 2018) to further suppress residential density. Such downzoning violates the Bruzzone Family's constitutional

P.3-21

⁵ Further it should be noted that the Town Council, in 2018 when considering a project proposed by the Bruzzone's for 126 homes (including over 20 accessory dwelling units), rejected that project as well as all alternatives included in an EIR, including an alternatives of as few as 37 and 8 homes, based on purported conflicts with broad General Plan policies. The Town did not rely on or incorporate any analysis from the Bollinger Valley Project EIR.

P.3-22

December 12, 2022

Page 10

rights as a taking and also runs afoul of Government Code section 66300(b) (prohibiting general plan and zoning changes that would lessen the intensity of housing).

We note that the Town noted several times, in its Staff Report and at the Study Session, that the City of Lafayette has the "*same designation*." As noted in our February 9 letter, Lafayette's designation is an *open space* designation – not a *residential designation*. (See City of Lafayette General Plan at p. I-6, designating "Rural Residential" as an *open space* designation together with "Open Space" and "Parkland.")

P.3-21
cont.

VII. Designation of Bruzzone Bollinger Property as Transition Area is Misleading and Improper.

The Staff recommended that the Bollinger Property be designated RR in part because it can therefore serve as a "transition area," from (i) the Bluffs property to the west⁶; (ii) to the Bruzzone Bollinger Property (RR); to (ii) the County Property to the east (Agriculture, 1 unit per 5 acres).

This analysis is misleading and improper. First, the Bluffs was developed at 3 units per acre, but after it was developed, the Town down-zoned it 1 unit per acre which is not reflective of the as-built condition. As such, a more reasonable "transition" would be something closer to 3 units, or at least 1 unit per acre, not 1 unit per five acres which is essentially an open space designation. The RR designation (proposed for the Bollinger Property) and the County's agricultural designation are virtually the same – both allow for the same open space density and limited development.

P.3-23

As noted in our February 9 letter, allowing for more dense (i.e., closer to R-15 levels), clustered development of the Bruzzone Property (as rejected by the Town in 2018) would allow for large open spaces on the site to act as buffer/transition area to the County property to the east.

We further note that the County designation of A-2 for property to the east is for an area outside the Town's Urban Limit Line (ULL). The Bollinger Property is within the ULL and was designated by the County for significantly higher density residential use (R-15.).

VIII. Comments on Notice of Preparation/Scoping Session/Project Objectives

A. General Plan Consistency

The Notice of Preparation (NOP) states that the "Project" includes: (i) an update to the Housing Element of the General Plan to cover the 2023-2032 planning period; (ii) rezoning of

P.3-24

⁶ The Bluffs property in Bollinger Valley was developed at approximately 3 du/ac and later downzoned to 1 du/ac.

P.3-25

December 12, 2022

Page 11

specific urbanized parts of Moraga; (iii) rezoning of the Bollinger Canyon Study area; and (iv) amendments to the Town's General Plan.

One of the stated objectives for the Project is as follows:

An *internally-consistent*, easy-to-use General Plan that is legally compliant and addresses emerging issues. (NOP at p. 3; DEIR at 2-21.)

An internally consistent general plan is not just a goal – but is required by state law.

[T]he Legislature intends that the general plan and elements and parts thereof comprise an *integrated, internally consistent* and compatible statement of policies for the adopting agency. (Emphasis added.) (Gov't Code Section 65300.5).

Stated another way, the Housing Element of the General Plan must be consistent with the Land Use Element. As stated, the Moraga 2002 General Plan specifically states (i) the Bollinger Canyon Special Study Area is "one of the few remaining areas of development potential in the Town;" (ii) shall be the subject of a "special study" to document the site's opportunities and constraints prior to designation; and (iii) the Town shall coordinate with the property owners with regard to such special study. (See 2002 Moraga General Plan at p. 3-14.) These circumstances remain as true today as they did in 2002.

Given the Bollinger Canyon area is one of the few remaining areas of development potential in the Town, and is required to have a special study prior to designation, we do not see how the Town can recommend, without such study, that the Bollinger Property be designated as RR (an open space designation). How can such designation, without any study, be consistent with the Housing Element – which needs to provide significant housing opportunities in order to comply with the Regional Housing Needs Assessment requirements?

Aside from "internal consistency," any decision by a city affecting land use must be consistent with the current general plan ("horizontal consistency").

Since the general plan is the constitution for all future development, any decision by a city affecting land use and development must be consistent with the general plan. (Barclay & Gray, *California Land Use & Planning Law*, 37th Ed. 2020, at 35.)

How is the City's recommendation for a RR designation and zoning, without any special study, analysis, or property owner input, consistent with the referenced text in the 2002 General Plan, requiring a "special study," an opportunities and constraints analysis, and cooperation with

P.3-24,cont.

P.3-26

the property owner? Is the Town going to formally amend the entire General Plan text? Or is the Town going to just ignore the current 2002 General Plan, and simply make up a new process as it goes along?

↑
P.3-26,
cont.

B. Scope of EIR

As noted above, the DEIR is required by law to set forth a *range of reasonable alternatives* to a project, which would feasibly obtain most of the benefits of the project, but would avoid or lessen any of the significant effects of the project. The EIR is further required to evaluate the comparative merits of the alternatives. (See CEQA Guidelines Sect. 15126.6.)

P.3-27

Given the premature direction of the Town Council for a RR designation, we assert that the scope of the DEIR, including the project objective and the alternatives, must not be limited to the open space and limited development options as set forth in DEIR and as introduced in the Staff's White Paper and the Council's direction on February 9, 2022. If the Staff's White Paper as reflected in the DEIR's project objectives, continues to be followed, then reasonable higher density residential alternatives will not even be discussed or considered – as demonstrated in the DEIR. Instead, the DEIR should be recirculated and updated to consider a range of higher density residential options as part of the project.

P.3-28

In addition, the EIR must analyze the impacts of the proposed strict reduction on development in Bollinger Valley including the impacts of displaced development to other areas of the Town and the surrounding region. The Town is proposing to limit the Bollinger Property from its most recent legal designation of R-15, i.e., 2.9 units per acre or approximately 543 units on the 187 Bollinger Property, with additional accessory dwelling units providing affordable housing opportunities, to a maximum of 37 units. The Town must analyze the displacement of these units, including the transportation, air quality and greenhouse gas impacts resulting from such displacement.

P.3-29

The EIR should also analyze how the Town's decision to limit development in Bollinger Valley will impact its ability to meet its Housing Element RHNA numbers in the current cycle as well as future cycles. Where will the Town accommodate future growth.

P.3-30

The EIR should also analyze how the Town's decision to limit development in Bollinger Valley will also impact its ability to address traffic, public health and safety concerns in the Bluffs Development and other areas of Bollinger Valley. By downzoning the Bollinger Property, the Town would lose out on opportunities for additional emergency vehicle access to the area that would greatly improve public safety from the current situation of a single route in and out of Bollinger Valley in the case of a fire or natural disaster.

P.3-31

December 12, 2022

Page 13

IX. Conclusion

The Bollinger Property is a tremendous opportunity for a win-win situation. A willing developer is interested in doing responsible residential development would help the Town due its part to address the housing crisis, meet its housing goals and RHNA requirements, including the inclusion of both above-moderate homes and affordable accessory dwelling units, improve infrastructure to alleviate critical public health and safety needs, and avoid a taking of the Bruzzone Family property. The Town should reconsider the preordained, anti-development path on which it is headed and as is reflected in the DEIR which should be updated and recirculated.

P.3-32

Sincerely,

FENNEMORE WENDEL



Todd A. Williams

TAWI/tawi

Attachments

Cc: Jamillah Williams, Analyst, Dept. of Housing and Community Development
(Jamillah.Williams@hcd.ca.gov)
David Bruzzone

Letter P.3

COMMENTER: Todd A. Williams, Director at Fenimore Wendel, representing Joan and David Bruzzone and Lafayette Bollinger Development LLC (collectively, the “Bruzzone Family”)

DATE: December 12, 2012

Response P.3-1

The commenter introduces himself as a legal representative for the Bruzzone Family, who are property owners within the Bollinger Canyon Study Area and elsewhere in Moraga. The commenter directs the reader to previous letters submitted on behalf of the Bruzzone Family.

This comment does not pertain to the environmental analysis or conclusions of the Draft EIR. The comment has been noted and will be passed on to decision-makers. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-2

The commenter recaps a February 2022 study session regarding the Bollinger Canyon Study Area and attached a letter submitted prior to the study session.

This comment pertains to the Town’s development of the Planning Initiative, as described in Section 2, *Project Description*. No revisions to the Draft EIR are necessary in response to this comment, which relates to the project rather than the analysis or conclusions of the EIR.

Response P.3-3

The commenter notes that the Notice of Preparation for the Planning Initiative EIR was issued concurrently with the February 2022 study session.

The Town confirms that the Notice of Preparation was published in February. As a matter of clarification, the NOP was published on February 3rd, 2022, six days prior to the February 9th study session. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-4

The commenter outlines their opinion regarding the Town’s alleged improper usage of the Bollinger Canyon Rezoning White Paper and incorrect procedure.

Please refer to Response P.3-2, insofar as this comment pertains to the project description itself, and not CEQA analysis. The project analyzed in the Draft EIR is defined in accordance with *CEQA Guidelines*, in Section 2, *Project Description*. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-5

The commenter’s Footnote 1 states an opinion that the Study Area’s designation is in violation of State law.

The legality of a project site’s designation prior to CEQA analysis is not within the scope of the Draft EIR. Please refer to the Responses P.3-2 and P.3-4 regarding the project description itself. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-6

The commenter describes the Town's and California's housing crisis and the role the Regional Housing Needs Allocation (RHNA) plays in increasing housing in Moraga and statewide. The commenter claims that the Draft EIR does not study a project that meets the RHNA and that the Town fails to take advantage of housing possibilities in the Bollinger Canyon Study Area.

The Town does not include the Bollinger Canyon Study Area as a Housing Opportunity Site in the Housing Element, and adequately meets the Town's RHNA using infill sites in the rest of the Town, primarily in the Moraga Center area and Rheem Park area. As described in Section 2, *Project Description*, on Page 2-12 of the Draft EIR, the Housing Element identifies sites to accommodate 1,770 dwelling units, which meets the Town's RHNA of 1,118 dwelling units across all income levels and exceeds the California Department of Housing and Community Development's recommended 20 percent no net loss buffer. As discussed under Response P.3-2, this comment pertains to the project itself, rather than the analysis or conclusions of the EIR. The omission of the Bollinger Canyon Study Area as a Housing Opportunity Site does not address adequacy of the EIR. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-7

The commenter's Footnote 2 suggests that the 51 units estimated for development in the Bollinger Canyon Study Area is fewer than existing development allowed in that area.

Please refer to Response P.3-2, insofar as this comment pertains to the project description itself, and not the CEQA analysis. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-8

The commenter's Footnote 3 suggests that the Town's Hillside and Ridgeline Regulations limit development within the Bollinger Canyon Study Area.

This comment does not specifically pertain to potential impacts related to the implementation of the Town's proposed Planning Initiative. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-9

The commenter notes that Figure 2-9 was not fully viewable.

To remedy this issue, Figure 2-9 has been replaced with a legible version in the printed copies of the Draft EIR provided by the Town. Figure 2-9 is visible online on Page 2-20 of the Draft EIR.¹ No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-10

The commenter states an opinion that the Draft EIR does not contain a reasonable range of alternatives and should include an alternative for higher density in the Bollinger Canyon Study Area. The commenter proceeds to state that such an alternative would better meet project objectives, including meeting the Town's RHNA. The commenter claims that denser development within the Bollinger Canyon Study Area would improve impacts to aesthetics and wildfire. The commenter

¹ Website link: <https://www.moraga.ca.us/DocumentCenter/View/7387/Draft-Environmental-Impact-Report-PDF?bidId=>

suggests that a lack of development within the Bollinger Canyon Study Area would lead to development in more remote or undeveloped areas.

Page 6-21 in Section 6, *Alternatives* of the Draft EIR states the following:

[T]he Town considered an alternative that would include development on the Bollinger Canyon Study Area with greater intensity, such that zoning and General Plan designations would allow for approximately 120 to 180 units. With this larger number of units, several impacts would be exacerbated due to greater ground disturbance and greater impacts on air quality, GHG, noise, transportation, and utilities.

As described in Section 6.4, *Alternatives Considered but Rejected* (pages 6-21 and 6-22 of the Draft EIR), the Town considered an alternative that would increase the density in Bollinger Canyon; however, that alternative was rejected from further consideration because it would result in greater environmental impacts than the proposed project.

Pursuant to *CEQA Guidelines* Section 15126.6, alternatives that are considered must be feasible, meet most of the project objectives, and reduce significant impacts. While increasing density in the Bollinger Canyon Study Area would meet project objectives and would be feasible, increased density does not reduce any significant impact, such as air quality, greenhouse gas emissions, noise, transportation, utilities, or wildfire, considering that development would occur on previously undeveloped land without transit or near goods, jobs, and services. In other words, residents would be reliant on personal vehicles to travel, which generate air quality, greenhouse gas emissions, noise, and transportation impacts.

The commenter does not provide evidence to indicate that additional density would improve wildfire evacuation. Any alternative that includes residential units would require adequate emergency evacuation, not just one that involves more density. In fact, increased density, especially in an area that requires residents to be entirely reliant on personal vehicles for transportation, could exacerbate evacuation impacts by adding more cars to evacuation routes.

Likewise, the commenter does not provide evidence to indicate that additional density would improve views from public viewpoints. In fact, greater density in the Bollinger Canyon Study Area would add more and potentially taller dwelling units that would detract from public viewpoints of the Bollinger Valley.

The commenter's claim that less intensive development in the Bollinger Canyon Study Area would lead to development elsewhere in more remote and undeveloped areas is speculative. In fact, as part of the Housing Element, the Town has identified Housing Opportunity Sites in infill locations in proximity to goods, jobs, and services, intended to reduce suburban sprawl and transportation related impacts (e.g., air quality, energy, greenhouse gas emissions, and noise).

Please refer to Response P.3-6 regarding the Town's RHNA. The Town has identified adequate Housing Opportunity Sites in infill locations and the Bollinger Canyon Study Area is not included in the Housing Element. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-11

The commenter refers to the conclusion in the EIR that the Bollinger Canyon Rezoning would not be consistent with the BAAQMD's 2017 Clean Air Plan and that impacts would be significant and unavoidable due to home-based vehicle miles traveled (VMT).

The commenter correctly identifies the conclusions made in the Draft EIR. In subsequent comments, the commenter provides specific comments related to this conclusion and responses to those subsequent comments are provided in Responses P.3-12 through P.3-15. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-12

The commenter states that an EIR must consider all “feasible mitigation measures” as part of a determination that an impact is significant and unavoidable; that the Draft EIR notes that VMT impacts would be reduced by Mitigation Measure TRA-1; that the Draft EIR relied on the California Air Pollution Control Officers Association (CAPCOA) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity; and provided guidance from the CAPCO Handbook for measures to reduce VMT.

The commenter correctly identifies that Mitigation Measure TRA-1 uses the CAPCOA Handbook to identify measures that could be implemented for future development associated with the Planning Initiative in order to reduce VMT impacts. Mitigation Measure TRA-1 states the following on pages 4.14-23 and 4.14-24 of the Draft EIR:

Projects which result in a significant impact shall include measures to reduce VMT. These shall include travel demand management measures and physical measures to reduce VMT, including but not limited to the measures below, which have been identified as potentially VMT reducing in the California Air Pollution Control Officers Association (CAPCOA) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity (December 2021).

As shown in the excerpt from Mitigation Measure TRA-1 above, the Draft EIR would allow future projects which result in a significant VMT impact to implement any of the measures in the CAPCOA Handbook that have been identified to reduce VMT. All of the measures identified in this comment would be available to reduce the VMT impacts for any future developments associated with the Planning Initiative, and therefore the Draft EIR includes all feasible mitigation measures to reduce VMT. Nonetheless, the application of measures is subject to project-specific guidance on appropriate application. Furthermore, because this analysis is programmatic and the specifics of individual development are unknown, it is not feasible to determine VMT reductions for individual developments associated with the Bollinger Canyon Rezoning. Page 4.14-25 of the Draft EIR acknowledges that “[because] the effectiveness of the above measures in reducing an individual project’s VMT impact to a less than significant level cannot be determined in this analysis, the impact for projects which do not screen out from VMT impact analysis would remain significant and unavoidable even with mitigation.”

Measure T-1 in the CAPCOA Handbook identifies increasing residential density as a measure to reduce VMT. For Measure T-1, as described in pages 70 to 72 of the CAPCOA Handbook, the expected reduction in VMT from increasing project density is based on comparing the existing and proposed density to a comparable baseline, such as a national residential density average (9.1 dwelling units per acre) (CAPCOA 2021). Densities above this baseline may be expected to have lower VMT using the equation presented in the Handbook. Since the proposed density would allow for 1 dwelling unit per 5 acres, substantially lower than 9.1 dwelling units per acre, Measure T-1 would not be expected to result in reduced project VMT for this site. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-13

The commenter's Footnote 4 suggests that development of the Bruzzone Family property in the Bollinger Canyon Study Area could improve evacuation from the Town.

Please refer to Response P.3-10. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-14

The commenter states an opinion that the Draft EIR's analysis related to VMT mitigation is deficient because it fails to analyze how measures to reduce VMT (provided in Comment P.3-12) would reduce home-based VMT or to consider how VMT has been reduced due to the rise of remote work.

As described in Response P.3-12, implementation of Mitigation Measure TRA-1 would allow the flexibility for future applicants to implement feasible measures to reduce VMT identified in the CAPCOA Handbook. Because this analysis is programmatic and the specifics of individual development are unknown, it is not feasible to determine VMT reductions for individual developments associated with the Bollinger Canyon Rezoning. Page 4.14-25 of the Draft EIR acknowledges that "[because] the effectiveness of the above measures in reducing an individual project's VMT impact to a less than significant level cannot be determined in this analysis, the impact for projects which do not screen out from VMT impact analysis would remain significant and unavoidable even with mitigation."

The conclusions made in the transportation analysis are based on substantial evidence. For example, the significance conclusion is based in part on the fact that the Bollinger Canyon Rezoning area is in an area with a home-based VMT above significance thresholds, as shown in Figure 4.14-4 of the Draft EIR. In addition, the significance conclusion is based in part on the modeling conducted for the cumulative scenario. As noted on page 4.14-17 of the Draft EIR, the analysis in Impact TRA-3 also applies to the Bollinger Canyon Rezoning. Page 4.14-17 of the Draft EIR states the following:

This analysis quantified VMT for the total Planning Initiative, which includes VMT from the future development associated with the Housing Element and the Bollinger Canyon Rezoning. Unlike other analyses in this EIR, where the impacts were separated out, the VMT impact analysis considers the effect of all the housing in the Planning Initiative as a whole and does not assess individual development project site VMT. As such, this analysis uses the term "Planning Initiative" and the results here apply to both the Housing Element and the Bollinger Canyon Rezoning.

While the commenter makes the statement that measures in the CAPCOA handbook would help reduce VMT and that VMT has been shifted by the rise of remote work, they provide no evidence that these measures or effects would reduce impacts to a less than significant level. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-15

The commenter states an opinion that the Town has not identified why the measures shown in Comment P.3-12 would be infeasible prior to concluding a significant unavoidable impact. The commenter also cites case law where an EIR was recirculated because a respondent failed to explain why the petitioner's proposed mitigation was not feasible.

As described in Response P.3-12, implementation of Mitigation Measure TRA-1 would allow the flexibility for future applicants to implement feasible measures to reduce VMT identified in the CAPCOA Handbook. The measures cited by the commenter would be available for a future applicant to implement, provided that the measure is feasible based on the future project that is proposed. The commenter has not identified a new mitigation measure that the Town has not already considered in its analysis. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-16

The commenter states an opinion that Mitigation Measure AQ-1 does not clearly specify what equipment is required.

Mitigation Measure AQ-1 would require United States Environmental Protection Agency (USEPA) Tier 4 Final equipment when feasible, and USEPA Tier 4 Interim or USEPA Tier 3 equipment when USEPA Tier 4 Final equipment is not feasible to use. In response to this comment and to clarify the type of equipment required to comply with Mitigation Measure AQ-1, the Draft EIR has been revised (see Section 3, *Minor Revisions to the Draft EIR*). No additional revisions to the Draft EIR are required in response to this comment and it does not result in changes to impacts identified in the Draft EIR.

Response P.3-17

The commenter notes the Draft EIR does not specify whether Tier 4 Final or Tier 4 Interim engines would be required for the Health Risk Assessment.

Please refer to Response P.3-16.

Response P.3-18

The commenter states an opinion that impacts in the Bollinger Canyon Study Area are overstated and that the analysis differs from the Final EIR for the Bollinger Valley Project rejected by the Town in 2018.

The analysis of the Planning Initiative in the Bollinger Canyon Study Area and conclusions reached in the Draft EIR are based on substantial evidence, as required by CEQA. The 2018 Final EIR that the commenter refers to commenced in 2011 and substantial changes to both CEQA procedure, thresholds, existing conditions, and the project itself have occurred since then. The Town's Draft EIR for the Planning Initiative contains the most updated information related to environmental setting and regulatory setting. In addition, the commenter does not provide evidence or specific examples as to how the discrepancy with the 2018 Final EIR results in any misleading or incomplete environmental impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-19

The commenter summarizes zoning principles from the Bollinger Canyon White Paper and suggests that the Bollinger Canyon Study Area's designation as a study area has illegally restrained development.

Please refer to Response P.3-5. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-20

The commenter summarizes the conversation from the February Study Session regarding the Bollinger Canyon Study Area's designation as Rural Residential.

Please refer to Response P.3-2. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-21

The commenter states that designating the Bollinger Canyon Study Area as Rural Residential constitutes a downzoning.

Please refer to Response P.3-2. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-22

The commenter's Footnote 5 notes that the Draft EIR did not rely on analysis from the 2018 FEIR.

Please refer to Response P.3-18. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-23

The commenter disagrees with the Town's recommendation for the Bollinger Canyon Study Area to serve as a "transition area" and the Town's overall density recommendation.

Please refer to Response P.3-2. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-24

The commenter summarizes the Planning Initiative's components and one objective. The commenter expresses that the Planning Initiative does not meet its own objective for general plan consistency and takes issue with the designation assigned to the Bollinger Canyon Study Area.

Please refer to Response P.3-2. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-25

The commenter's Footnote 6 purports that the Bollinger Canyon Study Area was downzoned.

Please refer to Response P.3-2. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-26

The commenter questions how the Rural Residential designation was permissible without a special study, analysis, or property owner input.

Please refer to Response P.3-2. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-27

The commenter states that a Draft EIR is required to set forth a reasonable range of alternatives in compliance with CEQA Guidelines.

Please refer to Response P.3-10. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-28

The commenter states an opinion that the Draft EIR should be recirculated to consider a range of higher density residential options.

Please refer to Response P.3-2 regarding the project scope and Response P.3-10 regarding alternatives. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-29

The commenter states an opinion that the Draft EIR must analyze how the restriction of development within the Bollinger Canyon Study Area would displace development to elsewhere.

Please refer to Response P.3-10. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-30

The commenter requests that the Draft EIR consider development within the Bollinger Canyon Study Area in respect to the Town's RHNA.

Please refer to Response P.3-6. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-31

The commenter requests that the Draft EIR analyze potential negative impacts of limited development in the Bollinger Canyon Study Area.

Please refer to Response P.3-10. No revisions to the Draft EIR are necessary in response to this comment.

Response P.3-32

The commenter concludes their letter, recounting their opinion of how development within the Bollinger Canyon Study Area could provide housing, improve infrastructure, and avoid a taking of private property.

Please refer to Responses P.3-2, P.3-5, P.3-6, P.3-10, P.3-12, P.3-14, and P.3-15. No revisions to the Draft EIR are necessary in response to this comment.



A project of Generation Green, a 501(c)3 nonprofit organization

Letter P.4

Find Links to Other Local Government Policy Opportunities at: www.cccclimateleaders.org

December 12, 2002

To: 'Afshan Hamid' <ahamid@moraga.ca.us>

Re: the Moraga Draft EIR for the Moraga Housing Element.

Thank you for all the effort on the Comprehensive Advanced Planning Initiative DEIR

Given the state of Climate Emergency that our city and all cities are facing, <https://www.cccclimateleaders.org/issue-of-the-month/climate-emergency/> it is essential that any planning in Moraga, reflect not only the goals state by the State and the regional agencies---particularly given that this General Plan update may be in place for at least 10 or 20 year, we ask you to go beyond what is required—and plan for what is expected as policy in 2023.

P-4-1

We request that you please include the following items:

- **Please ensure that any new construction is “Net Zero” USEPA Definition [here](#).** Simply put, Net Zero means consuming only as much energy as produced, achieving a sustainable balance between water availability and demand, and eliminating solid waste sent to landfills P-4.2
- ENERGY: Please ensure the plan specifies that all new construction ban the use of natural gas and instead ensure that residential and commercial buildings are electrified and powered by carbon-neutral electricity. P-4.3
 - The DEIR report admits that natural gas use will increase. But then goes on to say that this increase as “insignificant”. Given the significance of planning and housing expected to meet state requirements, and given we have the technology--and many city policy examples: but to go beyond what is required—and plan for what is expected as policy in 2023. We simply ask you to specify that all natural gas will be eliminated from new construction. Moreover, that you will consider best opportunities to retrofit existing construction. P-4.4
 - Please ensure the homes are solar ready, off the grid, and have full EV charging stations for all new construction P-4.5

○ WATER: Please also consider compostable toilets, mandating drought tolerant landscaping, allowing “purple pipe” and use of reclaimed and recycled water, and water collection options for new construction during this drought and wildfire emergency we are facing. P-4.6

○ WASTE: Please include opportunities for waste Prevention, and waste diversion. Please increase the cities requirements for Construction and demolition debris, particularly for new construction. P-4.7

Further, Please ensure that equity considerations are fully included, and you delegate a task force to review and stay abreast of this issue. P-4.8





A project of Generation Green, a 501(c)3 nonprofit organization

Find Links to Other Local Government Policy Opportunities at: www.cccclimateleaders.org

Every elected official and every city has an urgent responsibility to help meet the objective of reducing carbon emissions be more than 30% by 2030 (30 x 30)

While also ensuring that new housing is not sprawled, to ensure that 30% of natural areas are also protected by 2030 (30 x 30)

<https://www.theguardian.com/environment/2022/dec/12/plan-to-protect-30-of-earth-divides-and-inspires-at-cop15>

P-4.9

Thank you for considering our comments and please make the recommended changes before approving this document.

P-4.10

This planning document will affect our community for many decades--and for many generations to come!

Yours,

Lynda Deschambault

Lynda Deschambault
Environmental Scientist and Educator
Former USEPA Region 09
Former Mayor, Moraga CA
Executive Director
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Thank you for your consideration, and all that you do to make our communities a better place to live.



Letter P.4

COMMENTER: Lynda Deschambault, Executive Director, Contra Costa County Climate Leaders

DATE: December 12, 2022

Response P.4-1

The commenter thanks the Town for preparation of the Planning Initiative and recommends that planning in Moraga go beyond required policy to address climate change.

Please see Responses P.4-2 through P.4-8. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-2

The commenter requests that new construction under the Planning Initiative achieve “Net Zero” as defined by the United States Environmental Protection Agency, particularly regarding energy use, water demand, and solid waste.

The use of energy is discussed under Responses P-4.3 through P-4.5 below. Water demand is discussed under Response P-4.6. Solid waste is discussed under Response P-4.7. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-3

The commenter requests that the Planning Initiative Draft EIR include specific language regarding the ban of natural gas for all new construction and the use of carbon-neutral electricity to power residential and commercial buildings.

Refer to Response P.2-3 regarding the electrification ordinance.

Regarding the use of carbon-neutral electricity, as discussed in Section 4.5, *Energy*, on page 4.5-18 of the Draft EIR, development facilitated by the Planning Initiative would be supplied with electricity by Pacific Gas & Electric (PG&E) or Marin Clean Energy (MCE). Both energy providers are required to provide 100 percent renewable energy by 2045 pursuant to the California Renewable Portfolio Standard under Senate Bill 100. PG&E’s power mix is approximately 93 percent carbon free, while MCE offers either 50 percent renewable energy sources or 100 percent renewable energy sources. Electricity users in Moraga are automatically enrolled to source energy from MCE. As such, residential and commercial buildings already have the option to source from MCE’s 100 percent renewable sources and by 2045 all residents and businesses will use carbon-neutral electricity. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-4

The commenter suggests that an increase in natural gas use contradicts the conclusion that the natural gas demand increase from the project would be “insignificant.” The commenter requests that the Draft EIR include specific language regarding the elimination of natural gas from new construction.

The Draft EIR does not describe natural gas use as “insignificant,” as suggested by the commenter. Natural gas use is discussed in Section 4.5, *Energy* under Impact ENG-1, whereby natural gas consumption is characterized as more efficient as compared to existing conditions. As discussed in

Response P.2-3, an electrification ordinance may be adopted into Moraga Municipal Code in 2023; however, since this ordinance was not adopted at the time of analysis, it cannot be included in the Draft EIR. If adopted, development facilitated by the Planning Initiative would be required to comply with the Ordinance. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-5

The commenter recommends that new residences under the Planning Initiative are solar ready, off the grid, and have full EV charging stations.

As discussed in Section 4.5, *Energy*, and Section 4.7, *Greenhouse Gas Emissions*, in compliance with 2019 Title 24 Building Energy Efficiency Standards, single-family and multi-family residences of three stories and less are required to install a solar photovoltaic system equal to the electricity usage of the proposed residential building. Additionally, under Title 24, residential development must provide pre-wired electric vehicle chargers.

Regarding off the grid residences in relation to energy use, as discussed under Response P-4.3, energy providers are mandated to provide 100 percent renewable energy by 2045, and renewable energy would theoretically power an off-grid residence. Connections to the grid further allow single-family residences and multi-family residences below three stories to store energy generated from said residences and power older residences that may not include photovoltaic solar. Additionally, Moraga is an urbanized town with substantial energy infrastructure, whereby grid connections to development facilitated by the Planning Initiative, would be more feasible and realistic than off-grid residences. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-6

The commenter recommends water conservation opportunities for new construction.

As discussed under Response A.1-6, the Town adopted the Model Water Efficient Landscape Ordinance in Chapter 8.178 of the Moraga Municipal Code, which would reduce water use for landscaping, including planting drought tolerant vegetation and using recycled/reclaimed water. Compostable toilets are not a feasible mandate under the Planning Initiative, considering the developed nature of the Town and type of development (e.g., multi-family units) that would result from the Planning Initiative. As concluded under Impacts UTIL-1 and UTIL-2 (pages 4.16-11 through 4.16-19 in the Draft EIR), impacts to water supply would be less than significant based upon East Bay Municipal Utility District's Urban Water Management Plan's projections. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-7

The commenter recommends waste prevention opportunities for new construction.

As discussed in Section 4.16, *Utilities and Service Systems*, on page 4.16-20 of the Draft EIR, Assembly Bill 939 requires the Town to divert 50 percent of solid waste from landfills, and Senate Bill 1383 would require the Town to reduce organic waste disposal by 75 percent by 2025; additionally, Moraga Municipal Code Section 8.156, requires recycling and diversion of at least 65 percent construction and demolition debris. Therefore, the Planning Initiative would adequately prevent waste, which would be a less than significant impact related solid waste, as concluded under Impacts UTIL-3 and UTIL-4 (pages 4.16-19 through 4.16-21 in the Draft EIR). No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-8

The commenter proposes equity considerations and the delegation of a task force.

The Town acknowledges the need to consider equity in decision making. Equity and the delegation of a task force is not an issue that requires analysis under CEQA. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-9

The commenter states an opinion that every city has an urgent responsibility to reduce carbon emissions by more than 30 percent and protect 30 percent of natural areas by 2030.

The Town is cognizant of issues related to climate change on a local and regional level. As such, one of the project objectives, as listed in Section 2, *Project Description*, on page 2-21 of the Draft EIR, is to update “long-range planning policies and programs that respond to recent State legislation related to VMT, climate change and resilience, fire hazards, evacuation, and other pertinent topics.” Development within the Town facilitated by the Planning Initiative would comply with and be guided by state and regional guidance regarding greenhouse gas emissions, including CARB, the BAAQMD, and the Association of Bay Area Governments to reduce carbon emissions 30 percent by 2030.

Regarding protection of natural areas, the Town is strategically directing most residential growth to infill sites and sites in commercial areas that are already urbanized, as mentioned in Section 2, *Project Description*, on Page 2-8 of the Draft EIR. No revisions to the Draft EIR are necessary in response to this comment.

Response P.4-10

The commenter thanks the Planning Department for considering the comments and requests recommended changes be made prior to approval of the document.

The Town thanks the commenter for their suggestions. No revisions to the Draft EIR are necessary in response to this comment.



December 12, 2022

To: Afshan Hamid, Planning Director
Town of Moraga Planning Department

CC: Moraga Town Clerk, Moraga Town Council Members

Dear Ms. Hamid:

350 Contra Costa Action, a local non-profit organization with members who live in Moraga, is focused on getting local governments to take quick and bold actions to address the climate crisis in ways that can help local community health and well-being. Greenbelt Alliance is a Bay Area non-profit organization that does significant work in Contra Costa County, working closely with local governments and community members advocating for healthy and resilient communities as we face the harsh impacts from climate change.

We are writing today with comment and recommended alterations on the EIR developed for the Moraga Housing Element.

Studies conducted under the auspices of the U.N. (Intergovernmental Panel on Climate Change, <https://www.ipcc.ch/>), backed by overwhelming numbers of climate scientists, indicate that we are not moving fast enough to avoid catastrophic climate change – where feedback effects will create a situation where GHG-caused climate changes will not be stoppable.

P.5-1

These conclusions are shared by the State of California in its most recently updated policies, the 2023 California Air Resources Board Scoping Plan and the BAAQMD Threshold requirements issued in April 2022.

<https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa-thresholds-2022/justification-report-pdf.pdf?la=en>

We have reviewed the draft EIR to the city’s Housing Element update, and offer the following comments:

I Project Objectives. P. Es2

We note and appreciate the comprehensive objectives. The third objective mentioned is: “Updated long-range planning policies and programs that respond to **recent** State legislation related to vehicle miles traveled, **climate change and resilience**, fire hazards, evacuation, and other pertinent topics. (Emphasis added)

P.5-2

Given that a stated planning objective was to be aligned with the latest state policies and plans related to, among other things, addressing climate change, we note that the EIR refers to the CARB 2017 scoping plan when a new 2023 scoping plan is out, due to be finalized within months. Further references to BAAQMD does not reference the updated guidance released in the CEQA Thresholds Report of April, 2022.

P.5-2,
cont.

Both policy directives call for much more stringent reduction of fossil fuel usage (mitigation), including no natural gas in new buildings.

II. Operational Emissions used in modeling p 4.7.11

In discussion of operational emissions used in the modeling on total greenhouse gas emissions from the project, there is reference to including natural gas but not specific mention of using PGE data on natural gas use, while all other greenhouse gas sources are identified. We assume that PGE natural gas emissions was part of the modeling but it is not clear from the EIR. Please clarify this.

P.5-3

Regardless, the report states that natural gas use will increase. The report authors label this increase as “insignificant”. However, CARB and BAAQMD, in concert with the IPCC and most climate scientists, clearly state that we cannot afford to have any increase in fossil fuel use. And in fact, global heating will only make the earth increasingly inhospitable unless there are very large reductions in fossil fuel use.

III. Greenhouse Gas Emissions Impact Analysis.

These were the findings of your greenhouse gas analysis that we want to comment on:

- **Impact GHG-1.** GHG emissions from development facilitated by the Housing Element would not exceed the BAAQMD interpolated 2031 project-level or plan-level thresholds. ***This impact would be less than significant.***
- **Impact GHG-2.** GHG emissions from development facilitated by the Bollinger Canyon Rezoning would not exceed the BAAQMD interpolated 2031 project-level or plan-level thresholds. ***This impact would be less than significant.***
- **Impact GHG-3.** The Housing Element would be consistent with GHG reduction goals contained in the CARB 2017 Scoping Plan, ABAG/MTC Plan Bay Area 2050, and Moraga 2002 General Plan. The Housing Element would not conflict with State policies or regulations. ***Impacts would be less than significant.***

P.5-4

Our analysis: We have questions on the data put into your model but have no technical capacity to assess this. We do, however, note that the EIR used outdated state policy by referring to the 2017 CARB Scoping Plan, now being superseded, and the outdated BAAQMD guidance, also being superseded as of 2023. While it appears that, due to the timing of your work, this is probably legal, it is not aligned with your project objectives nor is it forward looking and taking advantage of health and planetary benefits of action to reduce greenhouse gas emissions. All

new State policy and regulatory guidance calls for more rapid reduction of fossil fuel use and the necessity of moving to electrify all energy use wherever possible, particularly in transportation and in building operations.

P.5-4, cont.

Our recommended remedy: Include in the Housing Element the requirement for all new residences to use all electric systems instead of natural gas. Over 60 jurisdictions in CA, including Contra Costa County, have adopted policy for all electric new buildings.

The EIR references the Town’s own inventory of cumulative greenhouse gas emissions (referred to as CO2e) and notes that 34% is generated from residential energy use.

P.5-5

The new BAAQMD Threshold requirements note that BAAQMD has determined that projects that do not include natural gas would not result in any wasteful, inefficient, or unnecessary energy usage and that this action would be a strong and effective local mitigation measure.

The City of Danville has this approach in its EIR to the housing Element to meet state requirements coming into place to reduce greenhouse gas emissions.

Benefits of all electric new residences for Moraga:

Even if the Town of Moraga finds that the increased use of natural gas in new buildings would be small, there are overwhelming health, safety and economic considerations that make removing it beneficial:

(1) **Health**

- Burning fossil fuels inside the home with gas appliances results in poorer air quality. There is a 42% increase in childhood asthma in homes with gas cooktops. <https://slate.com/technology/2020/12/gas-stoves-hazardous-asthma.html>
- See also this study on health risks from gas stoves. <https://docs.google.com/document/d/189jd0ux2lb1A4vfbilDSzeq-cDjqe4rbVVke8YLZH70/edit>
- Announcement of American Medical Association warning of dangers of gas cook stoves. <https://pirg.org/edfund/updates/update-american-medical-association-recognizes-health-dangers-gas-stoves/>

P.5-6

(2) **Safety**

- Gas lines are dangerous in our area due to earthquakes which can break gas lines and cause fires. We have aging gas lines that are not being repaired causing explosions like the one in San Bruno. The costs of repair are high and so repairs do not happen.

P.5-7

- Our Country is dependent on natural gas from foreign countries, locally generated electricity builds our independence and resilience in the face of global instability

↑
P.5-7,
cont.

(3) Less expensive to build

- Save on the costs of installing gas lines
- Save on the costs of required inspections of gas lines in a new building by town staff

P.5-8

- (4) **Equity considerations.** State policy is moving to all electric, which will cause gas prices, which are already rising, to increase more. Low-income homeowners and renters have the highest energy cost burden to begin with. Ensuring all new buildings are all-electric can ensure the benefits of decarbonized buildings--from healthier air and reduced risk of asthma and other health problems and more stable, lower energy bills--can accrue to low-income County residents and frontline communities.

P.5-9

Thank you for your review of these comments and we await your response.
Please contact us if you have any questions or wish to discuss these comments.

Respectfully,

Marti Roach, 350 Contra Costa Action Leadership Team Member
56 Amberwood Court
Moraga, CA
925-376-3853

P.5-10

Zoe Siegel, Director of Climate Resilience
Greenbelt Alliance
510- 367-4464

Letter P.5

COMMENTER: Marti Roach, Leadership Team Member, 350 Contra Costa Action & Zoe Siegel, Director of Climate Resilience, Greenbelt Alliance

DATE: December 12, 2022

Response P.5-1

The commenter introduces 350 Contra Costa Action and Greenbelt Alliance and states that their comments include recommended alterations to the Draft EIR. The commenter provides information about climate change and a link to the 2023 CARB Scoping Plan and the BAAQMD Threshold requirements issued in April 2022.

The Town is pleased to receive community feedback and the Town is aware of the CARB Scoping Plan and updated BAAQMD guidance. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-2

The commenter provides information about the 2023 CARB scoping plan and updated BAAQMD guidance included in the CEQA Thresholds Report released in April 2022. The commenter suggests that these plans call for more stringent reduction of fossil fuel use including the elimination of natural gas usage in new buildings.

Please refer to Response P.2-2 regarding CARB and the BAAQMD updated guidance.

Regarding elimination of natural gas, the Town relies upon Contra Costa County to guide building code, including items related to electrification. The Contra Costa County Board of Supervisors adopted an All-Electric Ordinance (Ordinance 2022-02), which amends a “Reach Code” to the 2019 California Energy Code, requiring residential, hotel, office, and retail buildings to be all-electric. Moraga has not yet adopted this Reach Code in their municipal code, and is therefore not included in the Draft EIR. However, the Town is currently contemplating adoption of Contra Costa County Ordinance 2022-02 into their municipal code in 2023. If adopted, development facilitated by the Planning Initiative would be required to show compliance with the Ordinance at the project application stage. As such, analysis in the Draft EIR accurately represents the Planning Initiative at this juncture. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-3

The commenter requests clarification about whether PG&E natural gas emissions were included in the greenhouse gas emissions modeling for the Draft EIR. The commenter suggests that the Draft EIR’s characterization of natural gas use under the Planning Initiative as insignificant is incorrect

The commenter is correct in their assertion that PG&E is assumed to be the provider for natural gas supply in greenhouse gas emissions modeling. Page 4.5-15 of Section 4.5, *Energy*, of the Draft EIR includes the amount of natural gas use modeled for the Planning Initiative, and full modeling results can be found in Appendix D, *CalEEMod Outputs*.

There is no point in the Draft EIR where natural gas use is referred to as “insignificant,” as suggested by the commenter. Natural gas use is discussed in Section 4.5, *Energy* under Impact ENG-1, whereby natural gas consumption is characterized as more efficient as compared to existing conditions.

Additionally, as discussed under Response P.5-2, the potential All-Electric Ordinance would eliminate natural gas use in some new development facilitated by the Planning Initiative. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-4

The commenter suggests references to the 2017 CARB Scoping Plan and BAAQMD in the Draft EIR are outdated and states that both are being superseded as of 2023. The commenter opines that using outdated greenhouse gas emissions guidance does not align with project objectives. The commenter suggests that policy and regulatory guidance calls for more rapid reduction of fossil fuel use and electrification.

Please refer to Response P.5-2; as discussed therein, the environmental conditions baseline used for the analysis of the Draft EIR does not include the 2022 Scoping Plan or April 2022 BAAQMD guidance. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-5

The commenter recommends updating the Housing Element language to require all new residences to use all electric systems instead of natural gas, citing BAAQMD guidance and the City of Danville's own Housing Element EIR.

Please refer to Response P.5-2; as discussed therein, the potential All-Electric Ordinance would eliminate natural gas use in some new development facilitated by the Planning Initiative. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-6

The commenter provides information regarding health risks of using natural gas.

Pursuant to California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (BIA v. BAAQMD), effects of the environment on the project are not considered CEQA impacts. CEQA does not require analysis of indoor air quality impacts from natural gas and it is assumed that future development would be constructed based on the current building code; therefore, the EIR did not include an analysis of potential indoor air quality impacts for future residents. Regardless, as noted under Response P.5-2, the Town may adopt an All-Electric Ordinance that would eliminate natural gas use. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-7

The commenter suggests that gas lines are dangerous due to earthquakes and the potential for fires and explosions. The commenter expresses that the high cost of repairs prohibits gas lines from being repaired and that locally generated electricity builds independence and resilience during global instability.

As discussed in Section 4.6, *Geology and Soils*, in the Draft EIR, impacts related to seismic hazards would be less than significant. This significance conclusion includes extension of existing or construction of new utilities, including natural gas lines. Economic factors, such as cost, and geopolitical concerns, such as energy independence, are not CEQA impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-8

The commenter provides cost considerations of installing and inspecting gas lines and opines that all electric new buildings are less expensive to build.

Economic factors, such as cost of installation and maintenance of gas lines and building cost, are not considered CEQA impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-9

The commenter provides equity considerations of all electric new buildings and opines that low-income residents would benefit from decarbonized buildings, including healthier air, reduced risk of asthma and other health problems and more stable, lower energy bills.

Equity considerations are not considered CEQA impacts. No revisions to the Draft EIR are necessary in response to this comment.

Response P.5-10

The commenter thanks the Planning Department and provides contact information to address any questions about the comments.

The Town thanks the commenter for their suggestions. No revisions to the Draft EIR are necessary in response to this comment.

3 Minor Revisions to the Draft EIR

This chapter presents specific text changes made to the Draft EIR since its publication and public review. The changes are presented in the order in which they appear in the original Draft EIR and are identified by the Draft EIR page number. Text deletions are shown in ~~striketrough~~, and text additions are shown in underline. The information contained within this chapter clarifies and expands on information in the Draft EIR and does not constitute “significant new information” requiring recirculation, as described in Section 4, *Recirculation Not Warranted*.

3.1 Revisions to the Draft EIR

Project Description

The following text has been added to page 2-13 (Section 2.5.1, *Housing Element Update*).

California Department of Housing and Community Development Comments

The Draft EIR was published on October 27, 2022. On November 10, 2022, the Town received the initial findings letter on its Draft Housing Element from the California Department of Housing and Community Development (HCD). One of HCD’s comments was that the Housing Opportunity Site identified as F4 (1540 School Street, APN: 257-190-029) was potentially not viable for the 2023-2031 period as it was leased to the Moraga School District and in active use. The Town subsequently eliminated this site from its Housing Opportunity Site inventory and replaced it with a site located at 1405 Moraga Way (APN 255-321-013). The replacement site is a vacant lot with no improvements, to be rezoned from MCSP-Commercial to MCSP Mixed Retail-Residential. While the removed site was 1.15 acres and estimated to have a capacity for 23 units, the replacement site is 1.0 acre with a capacity for 20 units. The new site is labeled E-3.

The replacement site is less than 500 feet from the School Street site and has the same general physical characteristics (flat, with frontage on two streets). Given the programmatic nature of the EIR and the proximity of the two sites to each other, the change does not have a material impact on the EIR conclusions.

HCD had additional comments regarding the vacancy status of Site E-1 since a portion of that site includes a recreational vehicle storage yard and two cottages that are potentially occupied. This required splitting Site E-1 into two parts, one of which is vacant (now labeled E-1) and the other of which is non-vacant (now labeled F-4). The realistic capacities of the sites were recalculated when they were divided. The combined capacity of the two sites is now estimated at 82 units rather than 79 units. Thus, the total number of units in the Planning Initiative remains unchanged.

As a result of the removal of former Site F-4, the addition of new Site E-3, and the division of former Site E-1 into two sites, some of the site labels on Figures 2-5 and 2-6 in the Draft EIR Project Description have changed. However, the data in Draft EIR Table 2-2 (*Summary of Housing Opportunities and Impacts of Proposed Rezoning*) remains accurate and correct. All other tables and

Comprehensive Advanced Planning Initiative

numeric estimates of potential housing yields and buildout capacity, and all other quantified estimates of associated environmental impacts would not change as a result of these revisions.

The following figures have been updated on pages 2-10 and 2-11 (Section 2.5.1, *Housing Element Update*):

Figure 2-1 Housing Opportunity Sites: Moraga Center Area



LEGEND

- Vacant Low Density (3 DUA)
- Vacant Medium Density (6 DUA and 12 DUA)
- Vacant High Density (20 DUA and 24 DUA)
- Vacant Mixed Use (24 DUA)
- Non-Vacant Mixed Use (24 DUA)

See Appendix for key to sites

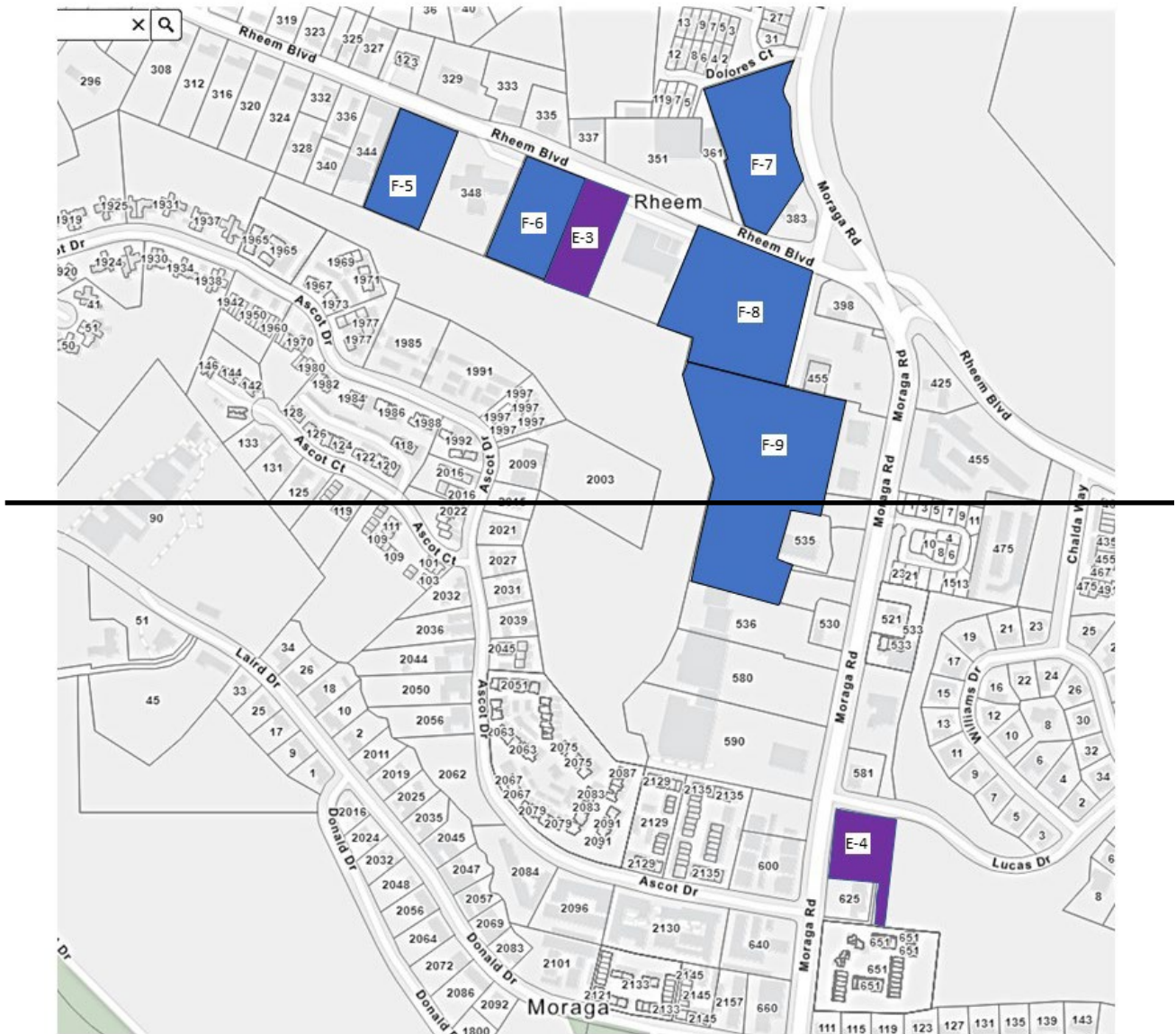
Town of Moraga
Comprehensive Advanced Planning Initiative



LEGEND

- Vacant Low Density (3 DUA)
- Vacant Medium Density (6 DUA and 12 DUA)
- Vacant High Density (20 DUA and 24 DUA)
- Vacant Mixed Use (24 DUA)
- Non-Vacant Mixed Use (24 DUA)

Figure 2-2 Housing Opportunity Sites: Rheem Park Area



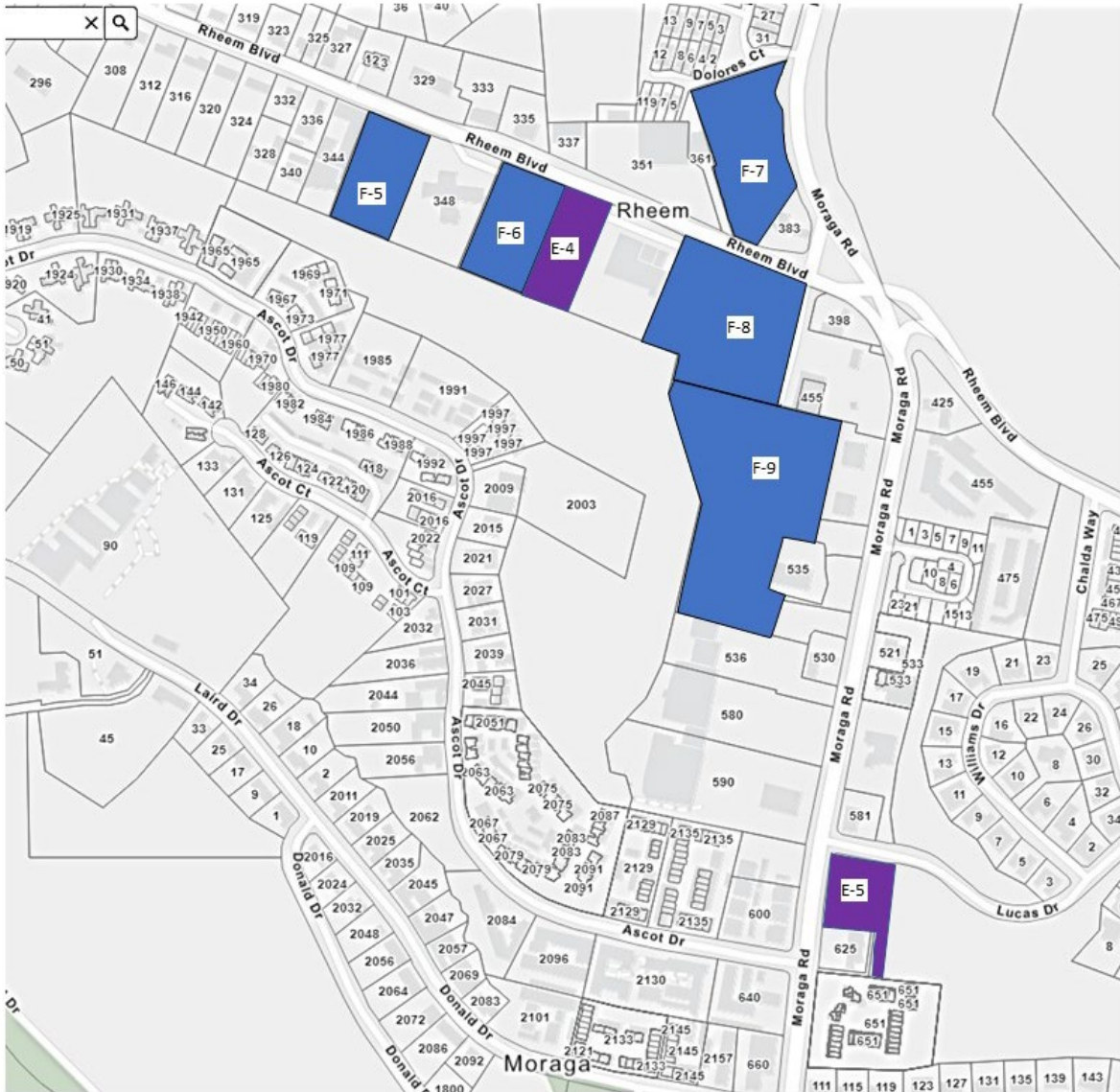
LEGEND



Vacant Mixed Use (24 DUA)
Non-Vacant Mixed Use (24 DUA)

See Appendix for key to sites

Town of Moraga
Comprehensive Advanced Planning Initiative



LEGEND

-  Vacant Mixed Use (24 DUA)
-  Non-Vacant Mixed Use (24 DUA)

Air Quality

Pages 4.2-18 and 4.2-19 (Section 4.2.3, *Impact Analysis*) have been updated as follows. This change will also be reflected in Section ES, *Executive Summary*:

AQ-1 Construction Equipment Emission Control Measures

Based on BAAQMD *CEQA Guidelines* (2017), construction-related TAC and PM impacts should be addressed on a case-by-case basis, taking into consideration the specific construction-related characteristics of each project and proximity to off-site receptors. Construction activity from the projects developed under the Housing Element or Bollinger Canyon Rezone that are within 1,000 feet of sensitive receptors; utilize more than three pieces of construction equipment simultaneously onsite; have a duration of construction longer than two months; and exclude Tier 4 Final construction equipment shall be required to prepare an HRA assessment. An HRA shall be conducted prior to the issuance of a permit to construct. The applicant would be required to have it prepared by a third party or by if Town staff would be capable. The HRA would be reviewed by the Town in-house, or a contracted consultant. If the findings of the HRA assessment exceed BAAQMD health risk thresholds, then development projects under the Housing Element or Bollinger Canyon Rezone shall incorporate the following construction equipment emission control measures to the maximum extent feasible:

- Implement diesel construction equipment meeting CARB USEPA Tier 4 Final emission standards for off-road heavy-duty diesel engines. If use of USEPA Tier 4 equipment is not feasible, diesel construction equipment meeting Tier 4 Interim or Tier 3 emission standards shall be used. Tier 3 equipment shall use a CARB Level 3 diesel particulate filter.
- Perform periodic site inspections during construction to verify compliance of USEPA Tier 4 (Final or Interim) or USEPA Tier 3 equipment.
- Use alternative fueled or catalyst equipped diesel construction equipment.
- Minimize idling time to five minutes or less.
- Limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use.
- Replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable diesel generator set).
- Curtail construction during periods of high-ambient-pollutant concentrations; this may include ceasing of construction activity during the peak-hour vehicular traffic on adjacent roadways.
- Implement activity management (e.g., rescheduling activities to reduce short-term impacts).

Significance After Mitigation

Implementation of Mitigation Measure AQ-1 would reduce impacts related to health risks associated with exposure of sensitive receptors to substantial air pollutant concentrations of DPM and TACs during construction. The USEPA Tier 4 Final standards reduce DPM emissions, depending on the specific horsepower rating of each piece of equipment. Thus, with implementation of Mitigation Measure AQ-1, construction activities would not expose sensitive receptors to substantial TAC concentrations that would potentially exceed BAAQMD's 10 excess

cancer cases in a million for cancer risk threshold. Construction-related health impacts would be reduced to a less than significant level with mitigation.

Biological Resources

Pages 4.3-23 through 4.3-25 (Section 4.3.3, *Impact Analysis*) have been updated as follows. These changes will also be reflected in Section ES, *Executive Summary*:

BIO-1 Biological Resources Screening and Assessment

For development projects facilitated by the Housing Element that would require vegetation trimming or removal, prior to consideration of the application, the project applicant shall hire a qualified biologist to perform a preliminary biological resources screening, for the Town's review and approval, to determine whether the project has any potential to impact special status biological resources, inclusive of special status plants and animals, sensitive vegetation communities, jurisdictional waters (including creeks, drainages, streams, ponds, vernal pools, riparian areas and other wetlands), critical habitat, wildlife movement area, or biological resources protected under local or regional ordinances. If it is determined that the project has no potential to impact biological resources, no further action is required under this mitigation measure.

If the project would have the potential to impact biological resources, a qualified biologist shall conduct a project-specific biological analysis to document the existing biological resources within a project footprint plus a minimum buffer of 50 feet around the project footprint, as is feasible, and to determine the potential impacts to those resources, as approved by the Town. The project-specific biological analysis shall evaluate the potential for impacts to all biological resources including, but not limited to special status species, nesting birds, wildlife movement, sensitive plant communities, critical habitats, and other resources judged to be sensitive by local, State, and/or federal agencies. If the project would have the potential to impact these resources, additional measures may be required and recommendations developed to enhance wildlife movement (e.g., installation of wildlife friendly fencing), as applicable, to reduce impacts to less than significant levels. Additional measures may also include compensatory mitigation when avoidance of a biological resource is not possible. Pending the results of the project-specific biological analysis, Town review, design alterations, further technical studies (e.g., protocol surveys) and consultations with the USFWS, NMFS, CDFW, and/or other local, State, and federal agencies may be required as determined by the Town.

BIO-2 Pre-Construction Bird Surveys, Avoidance, and Notification

For construction activities at development sites under the Housing Element initiated during the bird nesting season (February 1 – September 15) involving removal of vegetation or other nesting bird habitat, including abandoned structures and other man-made features, a qualified biologist hired by the Town shall conduct a pre-construction nesting bird survey no more than ~~14~~ five days prior to initiation of vegetation removal activities. The nesting bird pre-construction survey shall be conducted on foot and shall include a buffer around the construction site at a distance determined by a qualified biologist, including staging and storage areas. The minimum survey radii surrounding the work area shall be the following: 250 feet for non-raptors and 1,000 feet for raptors. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in California Bay Area communities (i.e., qualified

biologist). If construction lapses for seven days or longer, the qualified biologist shall conduct another focused survey before project activities are reinitiated. If nests are found, an avoidance buffer shall be determined by a qualified biologist dependent upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site. The qualified biologist shall observe the active nest to establish a behavioral baseline of the adults and nestlings, if present. The qualified biologist shall continuously monitor the active nests to detect signs of disturbance and behavioral change as a result of construction impacts, such as noise, vibration, odors, or worker/equipment motion. If signs of disturbance and behavioral changes are observed, the qualified biologist shall cease work causing those changes and may contact CDFW or USFWS for guidance. The buffer shall be demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to demarcate the boundary. All construction personnel shall be notified as to the existence of the buffer zone as an “Ecologically Sensitive Area” and to avoid entering the buffer zone during the nesting season. No ground disturbing activities shall occur within the buffer until the biologist has confirmed that breeding/nesting is completed, and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist on the basis that the encroachment will not be detrimental to an active nest. A report summarizing the pre-construction survey(s) shall be prepared by a qualified biologist and shall be submitted to the Town prior to the commencement of construction activities.

Future project site plans proposed at development sites shall include a statement acknowledging compliance with the federal MBTA and California Fish and Game Code that includes avoidance of active bird nests and identification of Best Management Practices to avoid impacts to active nests, including checking for nests prior to construction activities during February 1 to September 15 and what to do if an active nest is found so that the nest is not inadvertently impacted during grading or construction activities.

BIO-3 Roosting Bat Surveys and Avoidance Prior to Removal

Prior to tree or vacant structure removal, a qualified biologist shall conduct a focused survey of all trees and structures to be removed or impacted by construction activities to determine whether active roosts of special-status bats are present on site. Tree or structure removal shall be planned for either the spring or the fall and timed to ensure both suitable conditions for the detection of bats and adequate time for tree and/or structure removal to occur during seasonal periods of bat activity exclusive of the breeding season, as described below. Trees and/or structures containing suitable potential bat roost habitat features shall be clearly marked or identified. If no bat roosts are found, the results of the survey will be documented and submitted to the Town within 30 days of the survey, after which no further action will be required.

If day roosts are present, the biologist shall prepare a site-specific roosting bat protection plan to be implemented by the contractor following the Town’s approval. Additionally, the qualified biologist shall determine compensatory mitigation for temporary or permanent habitat loss due to tree removal, in conjunction with CDFW. The plan shall incorporate the following guidance as applicable:

- When possible, removal of trees/structures identified as suitable roosting habitat shall be conducted during seasonal periods of bat activity (outside the breeding and hibernation periods), including the following:

Comprehensive Advanced Planning Initiative

- a) Between September 1 and about October 15, or before evening temperatures fall below 45 degrees Fahrenheit and/or more than 0.5 inch of rainfall within 24 hours occurs.
 - b) Between March 1 and April 15, or after evening temperatures rise above 45 degrees Fahrenheit and/or no more than 0.5 inch of rainfall within 24 hours occurs.
- If a tree/structure must be removed during the breeding season and is identified as potentially containing a colonial maternity roost, then a qualified biologist shall conduct acoustic emergence surveys or implement other appropriate methods to further evaluate if the roost is an active maternity roost. Under the biologist's guidance, the contractor shall implement measures similar to or better than the following:
 - a) If it is determined that the roost is not an active maternity roost, then the roost may be removed in accordance with the other requirements of this measure.
 - b) If it is found that an active maternity roost of a colonial roosting species is present, the roost shall not be disturbed during the breeding season (April 15 to August 31).
 - Tree removal procedures shall be implemented using a two-step tree removal process. This method is conducted over two consecutive days and works by creating noise and vibration by cutting non-habitat branches and limbs from habitat trees using chainsaws only (no excavators or other heavy machinery) on day one. The noise and vibration disturbance, together with the visible alteration of the tree, is very effective in causing bats that emerge nightly to feed to not return to the roost that night. The remainder of the tree is removed on day two.
 - Prior to the demolition of vacant structures within the project site, a qualified biologist shall conduct a focused habitat assessment of all structures to be demolished. The habitat assessment shall be conducted enough in advance to ensure the commencement of building demolition can be scheduled during seasonal periods of bat activity (see above), if required. If no signs of day roosting activity are observed, no further actions will be required. If bats or signs of day roosting by bats are observed, a qualified biologist will prepare specific recommendations such as partial dismantling to cause bats to abandon the roost, or humane eviction, both to be conducted during seasonal periods of bat activity, if required.
 - If the qualified biologist determines a roost is used by a large number of bats (large hibernaculum), bat boxes shall be installed near the project site. The number of bat boxes installed will depend on the size of the hibernaculum and shall be determined through consultation with CDFW. If a maternity colony has become established, all construction activities shall be postponed within a 500-foot buffer around the maternity colony until it is determined by a qualified biologist that the young have dispersed. Once it has been determined that the roost is clear of bats, the roost shall be removed immediately.

Pages 4.3-26 and 4.3-27 (Section 4.3.3, *Impact Analysis*) have been updated as follows. These changes will also be reflected in Section ES, *Executive Summary*:

BIO-4 Alameda Whipsnake Pre-Construction Surveys and Impact Avoidance

~~If required pursuant to Mitigation Measure BIO-1, and in areas determined by the Biological Resources Screening and Assessment Throughout the Bollinger Canyon Study Area, which is as~~ likely to contain suitable habitat for Alameda whipsnake, ~~near proposed work areas~~ a qualified biologist shall conduct a focused pre-construction survey within 14 days prior to initiation of construction activities within the Bollinger Canyon Study Area. The USFWS and CDFW will be notified should any Alameda whipsnake be observed within any site of future development. Additionally, the following mitigation measures will be implemented to reduce impacts to the Alameda whipsnake:

- Prior to the start of construction, wildlife exclusion fencing (e.g., Animex or Ertec brand fencing) will be installed along the project footprint boundary. The location, extent, and specifications of the wildlife exclusion fencing will be identified by a qualified biologist and included on the final project plans. The fencing will remain in place throughout the duration of the construction activities and will be regularly inspected and fully maintained. Repairs to the fence will be made within 24 hours of discovery. Upon completion of construction activities, the fence will be completely removed; the area cleaned of debris and trash and returned to natural conditions.
- Construction crew shall be trained during the WEAP training to check beneath the staged equipment each morning prior to commencement of daily construction activities. Should Alameda whipsnake occur within the staging areas, construction activities shall be halted until the Alameda whipsnake vacates the project site on its own and approval to begin again is provided by the USFWS and CDFW.
- A qualified biologist shall be present during grading activities. Should Alameda whipsnake be observed within the project site, the USFWS and CDFW shall be notified, and construction shall be halted until the Alameda whipsnake exits the site and approval to begin again is provided by the USFWS and CDFW.
- To prevent the entrapment of Alameda whipsnake and other wildlife, monofilament plastics shall not be used for erosion control.
- All construction activities shall take place during daylight hours or with suitable light so that whipsnakes can be seen. Vehicle speeds on the construction site shall not exceed five miles per hour.
- Site vegetation management shall take place prior to tree removal, grading, excavation, or other construction activities. Construction materials, soil, construction debris, or other material shall be deposited only on areas where vegetation has been mowed. Areas shall be re-mowed if grass or other vegetation on the project site becomes high enough to conceal whipsnakes during the construction period.

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4 Recirculation Not Warranted

As presented in Chapter 3, *Minor Revisions to the Draft EIR*, minor revisions to the Draft EIR would not result in new significant impacts or a substantial increase in the severity of previously identified significant impacts. The Minor Revisions (Chapter 3) identifies textual modifications to the Final EIR. The revised text serves to amplify, correct, supplement or clarify, information in the public review Draft EIR. It does not substantively affect the level of impact nor the conclusions presented. Therefore, recirculation of the Draft EIR is not warranted.

CEQA requires recirculation of a Draft EIR only when “significant new information” is added to a Draft EIR after public notice of the availability of the Draft EIR has occurred but before the EIR is certified (Public Resources Code Section 21092.1; *CEQA Guidelines* Section 15088.5). Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR (*CEQA Guidelines* Section 15088.5(b)).

The relevant portions of *CEQA Guidelines* Section 15088.5 (items a, b and e) read as follows:

- (a) *A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation include, for example, a disclosure showing that:*
- 1) *A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.*
 - 2) *A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.*
 - 3) *A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.*
 - 4) *The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.*
- (b) *Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.*
- (e) *A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.*

The revisions to the Draft EIR in Section 2, *Project Description*, do not change the total number of housing units associated with the Housing Element. As noted in Chapter 3, *Minor Revisions to the Draft EIR*, the revisions move 23 units of housing capacity from one site to another site in the immediate vicinity. The replacement site is a previously developed one-acre property in an

urbanized location. Given the programmatic nature of this EIR and associated analyses, this would not substantively affect its conclusions.

The revisions to Section 4.2, *Air Quality*, refine and clarify Mitigation Measure AQ-1. This revision would strengthen the ability of the Town to implement and enforce Mitigation Measure AQ-1. Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes minor modifications in an EIR (*CEQA Guidelines* Section 15088.5(b)). Revisions to Section 4.2, *Air Quality*, clarify and amplify the standards established by these measures and they would not result in any secondary or otherwise undisclosed effect.

The revisions to Section 4.3, *Biological Resources*, refine and clarify Mitigation Measures BIO-1 through BIO-4. These revisions would strengthen the mitigation measures themselves and the ability of the Town to implement and enforce Mitigation Measures BIO-1 through BIO-4. Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes minor modifications in an EIR (*CEQA Guidelines* Section 15088.5(b)). Revisions to Section 4.3, *Biological Resources*, clarify and amplify the standards established by these measures and they would not result in any secondary or otherwise undisclosed effect.

The information and revised wording of Mitigation Measures AQ-1 and BIO-1 through BIO-4 added to this Final EIR would not result in a substantial increase in the severity of an environmental impact, nor a new significant environmental impact that would result from the revised mitigation. Finally, additional information provided in this Final EIR does not present a feasible project alternative or mitigation measure considerably different from others previously analyzed in the EIR that the Town has declined to adopt and that would lessen an environmental impact.

The information added to this Final EIR supplements, clarifies, amplifies, and corrects information in the Draft EIR. The Town has reviewed the information in the Minor Revisions and has determined that it does not change any of the basic findings or conclusions of the EIR, does not constitute “significant new information” pursuant to *CEQA Guidelines* Section 15088.5, and does not require recirculation of the Draft EIR. This decision is supported by substantial evidence provided in this EIR.

5 References

5.1 Bibliography

Response to Comments

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