

# Life in LAMORINDA

## Palos Colorados: A Long Time Coming

...continued from page 1.  
 With Lafayette's objections addressed to its satisfaction, the Palos Colorados project went through the Moraga Planning Commission and Town Council hearing and was approved.  
 At this point, Falk confirms, "Lafayette felt satisfied. We thought we were done."

### Let the Lawsuits Begin

But the project didn't go through as planned. An outpouring of community opposition followed, and after two years of heated public hearing, the Moraga Planning Commission denied the project without prejudice in 1996. Later, in October of 1996, The Town Council overturned the Planning Commission denial and approved the project. In November 1996, a new Town Council was elected and tried to overturn the previous Council's approval by granting a "motion to reconsider" filed by the City of Lafayette. The developer immediately sued the Town of Moraga. The City of Lafayette also sued Moraga.

The project went to Court, which issued a Writ of Mandate saying that the reconsideration was an abuse of discretion on the part of Moraga's new Town Council. The Court ordered the three parties, Moraga, Richfield (then Richland Investments), and Lafayette to come up with an agreement that would allow the Palos Colorados project to move ahead.

That Settlement Agreement was ratified in 1999, and specified 123 units and a golf course. The Settlement Agreement also specified that neither Lafayette nor Moraga could impede the development of the project. For the second time, Moraga's Town Council approved the Palos Colorados subdivision. The project is now under Court Order to proceed. The buzz around the project quieted as the developer went back to the drawing board.

Around 2001, according to Mayor Metcalf, the project became active again. Planning Commission hearings resumed as the applicant returned with their next round of revisions.

At this point, a group of concerned citizens formed Preserve Lamorinda Open Spaces.

The group knew that the project still needed approval from the army corps of Engineers, the Regional Water Quality Control Board, and Fish and Game, because of its impacts to wetlands and wildlife. Says founding member Suzanne Jones, "we realized that it might not be a done deal; community involvement in this project was still possible."

Jones and other like-minded citizens of Moraga, Lafayette, and Orinda wanted to see the project scaled back to minimize the environmental impact of Palos Colorados on wildlife and the ecosystem of the area and to reduce traffic. As Jones explains, "Our interests were in the scale of the Palos Colorados project and its impact on open space. We wanted to protect the character of the towns of Moraga and all of Lamorinda. We wanted to preserve high-quality wildlife habitat and creeks and wetlands. We were concerned about traffic and circulation."

Jones says, "in particular



we didn't think a golf course was a good use of that acreage...that land has such high habitat value, and there's no overriding need for another golf course in Moraga."

So, Preserve Lamorinda Open Spaces launched a letter-writing campaign to urge the Army Corps of Engineers and other agencies "to pay very close attention to the impact a golf course would have on wildlife habitat," says Jones. The San Francisco Office of the Army Corps received more letters on Palos Colorados than it had on any project in years. "We put this project front and center in front of these agencies so they knew they needed to scrutinize it very closely."

That close scrutiny revealed that the Palos Colorados golf course "would have been on a large, unstable part of the land that would require a

tremendous amount of grading with a huge impact on water quality and habitat," Jones says. The Regional Water quality Control Board expressed these concerns in several letters to Richland, the applicant.

Concurrently, Preserve Lamorinda Open Space hired attorneys, economists and environmental specialists (see the sidebar on red-legged frogs for an up close and personal view of a key player in the controversy). Those experts presented evidence to the agencies that impact on wildlife, creeks, and ponds violated state and federal environmental laws.

### Goodbye Golf Course

The developer considered all the reports and decided to forego the golf course in March 2006, saving, according to Suzanne Jones, close to a million cubic yards of grading while greatly reducing impacts to the red-legged frogs, raptors, and other animals crossing the wildlife corridor from Las Trampas Creek to the

Lafayette Reservoir.

The Palos Colorados project was now a subdivision of 123 homes on 423 acres. The golf course disappeared. The subdivision's "footprint" was reduced to 70-75 developed acres from the 280-acre footprint outlined in the Settlement Agreement.

But this new plan no longer looked much like the Settlement Agreement of 1999. Both Moraga and Lafayette had anticipated compensation for the impact of traffic into the new community. That compensation would have been based on an agreed \$5 per pound of golf.

According to Moraga Mayor Mike Metcalf, Richfield agreed to make the town whole for the loss of golf revenues and suggested that the reimbursement for the lost revenue be split 50:50 between Moraga and Lafayette. The next trick would

be to determine, in Metcalf's words, "what was the lump sum value of that golf course fund?"

Enter lawsuit number 3. Lafayette sued the Town of Moraga for agreeing to drop the golf course from its plans for the Palos Colorados development, and argued that their agreement not to impede further development of the project was also no longer valid, since the scope of the project had changed from that of the Settlement Agreement of 1999.

Lafayette Town Manager Steve Falk explains that Lafayette then sued Richfield Developers. Richfield countersued the City of Lafayette. The project was at a seeming standstill again, until, says Falk, "the new Moraga Town Council was elected in November 2006. They worked hard to find a breakthrough, and we're gratified for that."

According to Falk, the Lafayette and Moraga councils recognized that spending thousands of taxpayer dollars in law-

suits was not the best use of funds.

The two cities thus formed a cooperative subcommittee and, according to Falk, "took a real leadership role in bringing this development into a position to benefit all of Lamorinda."

Moraga Mayor Mike Metcalf and Councilmember Dave Trotter met with Lafayette Mayor Carol Federighi and Councilmember Don Tatzin to hammer out a way to move forward.

Along the way, according to Mayor Metcalf, Richfield agreed to pay \$5 million to a fund intended to make the cities whole for the withdrawal of the golf course. The fund would be split between the two cities. Each city will receive \$225,000 when the Vesting Tentative Map (VTM) is approved. That's expected this September. The remaining \$2.25 million per city

will be paid when final plans are approved, perhaps by April 2008.

In exchange for this agreement, in mid-February 2007, Lafayette dropped its lawsuit, Richfield dropped their lawsuit, and—importantly—Lafayette agreed "not to sue as long as Moraga fulfills its requirements," explains Metcalf. The plan will then need to go back through grading permits and final approvals. There could still be complications, but says Mayor Metcalf, "they won't be coming from Lafayette and that's really important. This is a trust issue and Lafayette has shown they believe we are capable of administering this project to everyone's benefit."

Above all, Metcalf is pleased that the development will proceed. "This is a good thing for the Town of Moraga,"

### An Unlikely Protagonist By Emily Schultheis

In the controversial plans for Palos Colorados development, a key player has, um, metamorphosized. Alongside goliaths like developers, federal agencies, two towns, the court system, hundreds of citizens, and the Army Corps of Engineers, the 1.5 to 5 inch California red-legged frog has become a pivotal figure in a project that will impact all of Moraga.

The California red-legged frog can be found from Northern California through Baja California. Its rapidly decreasing numbers have earned it the categorization of a "Federal Threatened Species" under the Endangered Species Act in 1996.

The habitat of the California red-legged frog is distinctive, which is part of the reason it has become so rare. Adult frogs require deep still or slow-moving water surrounded by dense vegetation or cattails. The Palos Colorados site contains the perfect habitat for the California red-legged frog and is one of the places it calls home. The Town of Moraga and developer Richfield are under court order to do all they can to mitigate the development's im-

he says, "and it should happen." From his City's perspective, Lafayette Town Manager Steve Falk explains, "Lafayette got a good deal. The developer really extended itself and I cannot speak highly enough of the new Town Council of Moraga. I think they're doing a great job."

For its part, Protect Lamorinda Open Space says it's "about as satisfied as it could hope to be now that the golf course is gone." Suzanne Jones praises the developer, who was "very willing to work with us. And that's the exception not the rule."

Look for frequent updates on the Palos Colorados project in the pages of Lamorinda Weekly. The General Development Plan is available for public review in the Moraga Planning Offices at 329 Rheem.

pact on the frogs. In case you happen to meet one, adult red-legged frogs have a red abdomen and legs and a brown, gray, olive, and red-flecked backs. They feed on smaller tree frogs and rodents. Tadpoles are dark brown and yellow and eat algae from established ponds (like the ones in the Palos Colorados area).

For more information about the California red-legged frog, visit the Sacramento Fish & Wildlife Service's website at [www.fws.gov/sacramento/es/](http://www.fws.gov/sacramento/es/)



animal\_spp\_acct/red\_legged\_frog.htm. To see how the Palos Colorados subdivision is accommodating the frog and other wildlife, see the Town's Habitat Mitigation Management Plan at the Planning commission Offices at 329 Rheem Blvd. in Moraga.

Emily Schultheis is a feature writer and a student at Campolindo High School. She has a cat and a dog but no frogs of any color.

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