TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING

February 10, 2010
MINUTES

7:30 P.M. Regular Meeting

Joaquin Moraga Intermediate School Auditorium
1010 Camino Pablo, Moraga, California 94556

I. CALL TO ORDER

The regular meeting was called to order at 7:32 P.M. by **Mayor Ken Chew**

ROLL CALL

Councilmembers present: Mayor Ken Chew, Vice Mayor Karen Mendonca, and Councilmembers Howard Harpham, Michael Metcalf and Dave Trotter

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Councilmember Harpham led the Pledge of Allegiance.

III. ANNOUNCEMENTS AND PRESENTATIONS

A. Presentation of Statewide Local Streets and Roads Needs Assessment

Given technical problems with the video portion of the presentation, the presentation was deferred to a future meeting.

IV. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Items 2, 3 and 4 were pulled from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Harpham/Mendonca) to approve Consent Agenda item 1. Vote: 5-0.

1)	Accounts Payable Claims for 1/29/2010 ($123,749.94)	Approved
2)	*Approve Minutes from the Town Council Meeting of January 27, 2010*	*Removed*

3) *Adoption of Ordinance 226 Rezoning 24 Acres within the Moraga Center Specific Plan Area to 20 Dwelling Units per Acre* — *Removed*

4) *Adoption of Ordinance 227 Adding Chapter 8.34 to the Town of Moraga Municipal Code to Establish Minimum Twenty Dwelling Unit per Acre (20 DUA) Residential Districts* — *Removed*

B. Approval of Consent Items Removed for Discussion

1. Adoption of Ordinance 226 Rezoning 24 Acres within the Moraga Center Specific Plan Area to 20 Dwelling Units per Acre

2. Adoption of Ordinance 227 Adding Chapter 8.34 to the Town of Moraga Municipal Code to Establish Minimum Twenty Dwelling Units per Acre (20 DUA) Residential Districts

Councilmember Trotter understood that both items adopting an ordinance required a roll call vote of the Town Council and therefore should not have been placed on the Consent Agenda. When advised by Town Attorney James Atencio that a roll call vote was only a formality, was not necessarily required, and did not have to be done, **Councilmember Trotter** stated he would be more comfortable with a roll call vote on the item. He recommended that the two items be placed on the regular agenda.

3. Approve Minutes from the Town Council Meeting of January 27, 2010

The following corrections were made to the minutes of the January 27, 2010 meeting:

To the next to the last paragraph on Page 3:

Bill Snider and Susan Marconi had been invited to sponsor the contest and Moraga Hardware and Lumber and Across the Way had agreed to sponsor the event, with gift certificates issued for First, Second, and Third Place Winners.

To the last line on Page 3:

Mr. Ingram expressed his appreciation to Mr. Snider for the generous donation.

To the first sentence in the last paragraph on Page 10:

***Vice Mayor Mendonca** commented that a member of the community had approached her during the recess to reiterate the request to refer to the community center as a multi-use facility in the MCSP, not as a community center.*

Councilmember Trotter stated that during the meeting of January 27, the Town Council had adopted the MCSP and Housing Element with each Councilmember making comments as to why the documents should be approved and moved forward. Given the importance of the items, in his opinion, those comments should have been included in the meeting minutes. He asked that the meeting minutes from January 27 be modified and returned to the Town Council for approval at the next meeting with the additional comments from each Councilmember.

By consensus, the January 27, 2010 meeting minutes were to be returned to the Council at its next meeting for approval.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

V. ADOPTION OF MEETING AGENDA

Consent Agenda Items 3 and 4 were moved to Agenda Item VII. Special Orders - Public Hearings as Items B and C.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to adopt the Meeting Agenda, as modified. Vote: 5-0.

VI. PUBLIC COMMENTS AND SUGGESTIONS

There were no comments or suggestions from the public.

IX. SPECIAL ORDERS - PUBLIC HEARINGS

A. Public Hearing and Consideration of an Interim Urgency Ordinance of the Town Council of the Town of Moraga Adopting a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries

Chief of Police Robert Priebe reported on the request for the Consideration of an Interim Urgency Ordinance of the Town Council of the Town of Moraga Adopting a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries, which he suggested was necessary to allow sufficient time to study all of the different issues related to the subject particularly given the discrepancies between state and federal laws.

The Town Council was asked to adopt the urgency ordinance which would expire 45 days from its adoption. The Council may request after public notice and hearing to extend the interim ordinance for ten months and 15 days, and subsequently extend the interim ordinance for one year. Ten days prior to the expiration of the interim ordinance, the Town Council is required to issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the ordinance.

Chief Priebe described the law on the subject as evolving and stated that the moratorium would allow the Town to take the time to determine what was best for the community. He added that the adoption of the ordinance and subsequent extensions would not preclude anyone with a legitimate need for medical marijuana since it was available in nearby communities. The method proposed was similar to those used by neighboring jurisdictions.

In response to the Council, Chief Priebe explained that the Town had received inquiries from individuals asking of the Town's regulations for such a facility, which would involve a use permit application before the Planning Department through the normal process. The Town did not have a Zoning Ordinance which specifically addressed the issue and the Town could be at risk given that it was a federal felony to allow medical marijuana dispensaries. In this case, federal case law was clear.

The Government Code also prohibited a local governing body from adopting an ordinance specifically allowing anything contrary to state and federal law and constitution. As to the number of local jurisdictions that had similar moratoriums, it was noted that the cities of Lafayette, Pleasant Hill and Orinda had moratoriums in place. The cities of Walnut Creek and El Cerrito were considering similar actions.

Mr. Atencio clarified, when asked, that the proposed moratorium was something that the Town could do, but the decision was up to the Town Council.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The following language was added to the last WHEREAS clause on the first page of the proposed ordinance:

> *WHEREAS, the Town Council has directed Town staff to begin studying and analyzing potential zoning regulations for medical marijuana dispensaries and to bring to the Planning Commission and Town Council proposed zoning regulations regarding whether medical marijuana dispensaries shall be permitted in the Town of Moraga, and regarding the permissible location, hours of operation, security and signage for medical marijuana dispensaries together with other appropriate regulation; and*

An amendment was also proposed to Page 2, Section 1. Findings G:

> G. *To protect residents and businesses from harmful secondary effects of medical marijuana dispensaries, Town staff needs time to study whether such dispensaries shall be permitted, licensing and criminal background check procedures, analyze which zoning districts may be appropriate for such a use, and study the appropriate level of discretionary review which should be required for these uses.*

As to the last WHEREAS clause and whether or not such a use would be in conflict with the contemplated General Plan, Specific Plan and the like, staff noted that such analysis had not yet been done to identify any conflict.

Chief Priebe explained that most ordinances of such type had been the responsibility of the Planning Department although given the work load of the Town's Planning Department, it had been unable to address the ordinance. He reiterated the changes in law and how the issue would have to be addressed taking into account the continual changes in conditions.

ACTION: It was M/S (Trotter/Harpham) to adopt an Interim Urgency Ordinance of the Town Council of the Town of Moraga Adopting a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries, as amended. Roll Call Vote: 5-0.

B. Adoption of Ordinance 226 Rezoning 24 Acres within the Moraga Center Specific Plan Area to 20 Dwelling Units per Acre

Planning Director Lori Salamack explained the process for adopting ordinances and advised that the Town Council had conducted the first reading of the ordinance during its prior meeting. The ordinance would become effective 30 days following the second reading. No changes,

other than spelling changes, were permitted between the first and second reading of an ordinance.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Mendonca) to conduct a second reading, waiving that reading, and adopting Ordinance 226 Rezoning 24 acres within the Moraga Center Specific Plan Area to 20 Dwelling Units per Acre. Roll Call Vote: 5-0.

C. Adoption of Ordinance 227 Adding Chapter 8.34 to the Town of Moraga Municipal Code to Establish Minimum Twenty Dwelling Units per Acre (20 DUA) Residential Districts

Ms. Salamack reiterated her prior comments regarding the previous ordinance.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Mendonca) to conduct a second reading, waiving that reading, and adopting Ordinance 227 Adding Chapter 8.34 to the Town of Moraga Municipal Code to Establish Minimum Twenty Dwelling Units per Acre (20 DUA) Residential Districts. Roll Call Vote: 5-0.

VIII. UNFINISHED BUSINESS

A. Adopt Resolution 18-2010 Approving the Execution and Delivery on Behalf of the Town of not-to-exceed $1,650,000 of 2010 Certificates of Participation (Town Hall Improvement Project); Approving the Forms of and Authorizing and Directing the Execution and Delivery of a Site Lease, a Facility Lease, a Continuing Disclosure Certificate, and a Certificate of Purchase Contract; Authorizing a Lease Financing with ABAG Finance Authority for Nonprofit Corporations and the Taking of all Necessary Actions in Connection Therewith; and Approving the Forms of a Trust Agreement and a Preliminary Official Statement.

Administrative Services Director Joan Streit introduced the Town's Underwriter and Financial Advisor and Bond Counsel present in the audience to answer any questions from the Town Council. She explained the definition of a Certificate of Participation (COP), a financial leaseback agreement in the form of securities marketed to investors. The COP was not considered to be debt. The COP would be used to fund construction and acquisition. The purpose in this case was to provide funding for the acquisition of 331 Rheem Boulevard for the Corporation Yard and the seismic upgrading of 329 Rheem Boulevard.

Ms. Streit described in detail how the COP would be used in this case as outlined in the February 10, 2010 staff report. She noted that the COP would require a third party to the transaction, and in this case ABAG would act as the third party. The next step of the process would be issuing the COPs to approve as to form the legal documents that underpin the financial transaction. The documents were needed to be in place prior to going to market to

price the COPs. There were three basic legal agreements that would provide for execution and delivery of the COPs including the Site Lease, Facility Agreement, and Trust Agreement. She noted that the financing structure would involve three separate parties; the Town, US Bank as trustee, and ABAG Authority for Nonprofit Corporations. She outlined the roles and obligations of each of the parties and described the legal agreements in detail.

Ms. Streit explained that there would be no fiscal impact to the Town by approving the documents as to form which would trigger the next step in the process of executing the COPs, sending information to the market and establishing pricing for the certificates. The next step would then incur costs related to the sale which would include the costs for the Underwriter and Bond Counsel, with said costs to be paid by the sale of the certificates. There would be no immediate impact on any of the Town's operating funds.

Sam Sperry, Meyers Nave, Bond Counsel, described the history of the proposed financing technique. He noted that the Facility Lease, specifically Section 8.05, would preclude the Town from subleasing any of the properties, consistent with what the Town wanted to do in remodeling the second floor of 329 Rheem Boulevard, and in giving notice to the month-to-month tenants that were currently in the building. Subleasing any portion of the building would require modification to Section 8.05 which would be permissible. He clarified Federal Income Tax law as it related to preserving the status of the COP interest payment to investors as federally tax exempt where there would be a constraint of ten percent of the space that could be made available to private parties.

Mr. Sperry went on to clarify the financing plan as contained in the Preliminary Official Statement, noting that nothing in the legal documents imposed any constraint as to how 331 Rheem Boulevard could be used by the Town. The intention was to scribe the use of proceeds of the COPs. 331 Rheem Boulevard would not be utilized as a basis for the subject transaction. It was the subject of a Site and Facility Lease and could be used at the discretion of the Town. He understood the intended use of 331 Rheem Boulevard as a Corporation Yard, which was the stated intention. The documents stated to investors what would be done with the proceeds. If the description was not accurate, it could be modified in the documents.

Eileen Gallagher, Underwriter, also clarified the tax exemptions for the sale of the bonds. She described the next steps in the process in the sale of the COPs and clarified that pre-payment penalties were typical in COPs.

Mr. Sperry acknowledged, when asked, that the Preliminary Official Statement was a work in progress and would continue to be refined. The Facility Lease only dealt with the property at 329 Rheem Boulevard. The tax certificate document would detail the limitations imposed on the Town as to the property at 331 Rheem Boulevard, which would stipulate the constraints under Federal Tax Law.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The Council discussed the various legal documents and requested the following modifications:

- Identify a date when the lease would expire in Section 2 of the Site Lease;
- Change reference to David Trotter with *Dave Trotter* in the section prior to the Table of Contents in the Preliminary Official Statement; and

- Staff, Bond Counsel and Underwriter to make changes to address concerns with respect to the private subleasing of 329 and 331 Rheem Boulevard and make appropriate conforming changes to the documents to reflect those changes.

ACTION: It was M/S (Metcalf/Trotter) to adopt Resolution 18-2010 to approve the Execution and Delivery on Behalf of the Town not-to-exceed $1,650,000 of 2010 Certificates of Participation (Town Hall Improvement Project); Approving the Forms of and Authorizing and Directing the Execution and Delivery of a Site Lease, a Facility Lease, Continuing Disclosure Certificate, and a Certificate Purchase Contract; Authorizing a Lease Financing with ABAG Finance Authority for Nonprofit Corporations and the Taking of all Necessary Actions in Connection Therewith; and Approving the Forms of a Trust Agreement and a Preliminary Official Statement, as amended. Vote: 5-0.

IX. NEW BUSINESS

A. Report from the Traffic Safety Advisory Committee (TSAC) Regarding Improvements at St. Mary's Road/Rheem Boulevard/Bollinger Canyon and Request for Direction

Joe Mahoney, a member of TSAC, introduced the members of the TSAC Committee who were present in the audience. He asked the Town Council to indicate how it would like TSAC to proceed with the proposed project to make potential improvements to Saint Mary's Road/Rheem Boulevard/Bollinger Canyon. He identified a chart of the area depicting the two intersections, Rheem Boulevard into St. Mary's Road, the Bollinger Canyon Road 'S' curve and the Bollinger Canyon entrance, which had been a problem area.

Mr. Mahoney explained that the Town Council had commissioned Fehr & Peers to conduct a study and make recommendations. The study had been completed in January 2009. Fehr & Peers had met with TSAC in March 2009 to discuss the study with a great deal of public input at that time from those who resided in the area under discussion. He spoke to the high traffic volume on St. Mary's Road and described the seven options identified by Fehr & Peers including combinations of stop signs, roundabouts, and traffic signals. While the options would slow traffic they would have unintended consequences of creating hazards along Saint Mary's Road. As such, those options had not been recommended. Fehr & Peers had recommended a modern roundabout at Rheem Boulevard, St. Mary's Road and Bollinger Canyon. The roundabout would slow, not stop traffic, and would ensure a smooth flow of traffic on St. Mary's Road and reduce the level of service (LOS) issues existing on Rheem Boulevard. The roundabout would cost approximately $500,000 and another $50,000 for a left hand turn lane into Bollinger Canyon.

Mr. Mahoney identified another option for consideration to reroute Bollinger Canyon Road with one access point to St. Mary's Road, rather than two, although the 'S' curve would remain. This solution would cost approximately $4 million not including the cost of land acquisitions.

Mr. Mahoney advised that the TSAC had recommended a simple roundabout although it was recognized that the $500,000 cost was an issue as to how it could be funded or prioritized by the Town Council. He noted that staff had recommended that further consideration and activity be deferred until the project could be included for prioritization in the 2010-2011 budget. He reported that TSAC was in agreement with that recommendation.

Mr. Mahoney explained, in response to the Council, that the Police Department and the MOFD had reviewed the recommendation and were supportive of the concept, although they would have to sign off on any final design for a roundabout. He referenced a roundabout located in the City of Walnut Creek at Oak Grove and Walnut which appeared to work well in that

community. Fehr & Peers had been requested to provide information on accident and safety results of that roundabout. He noted that those studied had shown a reduction in the percentage of accidents.

Mayor Chew thanked all the members of TSAC for their hard work.

Barry Behr, Moraga, commented that he had noticed that pedestrian and bicycle traffic had increased on Moraga Road. He asked the Town to immediately restripe the crosswalk and install appropriate warning signage. He asked that the existing trees in the intersection be cut back to increase visibility in the intersection which was currently dangerous. He added that during the morning and afternoon periods there was school bus traffic in the intersection which was a potential safety concern.

Bob Creek, Moraga, complimented TSAC on a plan that would improve the safety and flow of automobile traffic in the intersection, although if the plan included the removal of the stop sign, it could pose a safety hazard to existing bicycle and pedestrian traffic traveling to the trail from the intersection.

Barbara Simpson, Moraga, commented in response to the Council, that the realignment of the pedestrian trail had been considered although it would be required on both sides of the street and the cost would be prohibitive. She suggested that restriping and better signage would represent an improvement.

PUBLIC COMMENTS CLOSED

The Council recognized the hard work and effort of the TSAC Committee, discussed the recommendation from TSAC, and offered the following direction:

- Agreed with the need for annual pruning of trees and vegetation;
- Received and accepted the report; and
- Deferred further action on the recommendation from TSAC to the 2010-2011 budget discussions.

ACTION: It was M/S (Trotter/Mendonca) to receive and accept the Report from the Traffic Safety Advisory Committee Regarding Improvements at St. Mary's Road/Rheem Boulevard/Bollinger Canyon, deferred further action on the recommendation from TSAC to the 2010-2011 budget discussions, and thanked the TSAC members for their hard work. Vote: 5-0.

B. Adopt Resolution 19-2010 Approving CIP No. 10-101, Rheem Boulevard Pavement Rehabilitation Project, Funding Design Activities from Proposition 42 Funds, and Find the Project in Compliance with the Town's General Plan; and Adopt Resolution 20-2010 Awarding the Design Contract for CIP No. 10-101, Rheem Boulevard Pavement Rehabilitation Project, to Associated Engineering Consultants, Inc.

John Sherbert, Engineering Department, explained that the Capital Improvement Program (CIP) project would be accomplished through the second round of funding from the Stimulus II package.

The Town had submitted a package proposal to rehabilitate the pavement on Rheem Boulevard, from St. Mary's Road to the eastern edge of the slide area and resume on the other side of the slide area to Moraga Road. Staff was in the process of submitting the paperwork to receive the stimulus funds, with initial estimates being refined. The current estimate was close

to $500,000 which would shift as the limits on the project may change depending on the amount of funds made available. The project must involve an arterial collector street and must be shovel ready. He noted that the Town would have to act quickly to have the project designed to meet the required deadlines and had included in the package a contract to design the project which would not be covered by the stimulus funds. It would be covered under Proposition 42 funds. The project design and administrative costs were identified, as outlined in the February 10, 2010 staff report. He asked the Town Council to adopt the resolutions, as submitted.

In response to the Council, Mr. Sherbert acknowledged that the Stimulus II funds had yet to be approved, although it was anticipated those funds would be approved. He noted that once the bill was signed, there would be a limited time for the design process, which was the reason staff was bringing the item before the Council at this time. As to whether or not the Town must go through a competitive bidding process for the project, he acknowledged that must be done through the Request for Proposal (RFP) process where the bid would be awarded to the best candidate.

Town Manager Michael Segrest explained that the proposed project would be the next shovel ready project for the Town and was a wise investment of money to get the project ready to go for a project that needed to be done.

PUBLIC COMMENTS OPENED

Barbara Simpson, Moraga, recalled that as part of the Rancho Laguna approval, the developer had agreed to pay for the restoration of Rheem Boulevard. She commented on the amount of slide activity in the area and questioned why the Town was going through the exercise of trying to obtain federal funds.

Mr. Segrest explained that the area under consideration was not part of the agreement with the Rancho Laguna developer. The developer would deal with the piece of land that had failed, the repair of which would far exceed the funds under discussion.

Mr. Sherbert reiterated that the area to be covered for the rehabilitation plan would start from St. Mary's Road to the eastern edge of the slide area and resume on the other side of the slide area to Moraga Road, excluding the slide area that would be addressed by the developer.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Metcalf/Mendonca) to adopt Resolution 19-2010 Approving CIP No. 10-101, Rheem Boulevard Pavement Rehabilitation Project, Funding Design Activities from Proposition 42 Funds, and Find the Project in Compliance with the Town's General Plan. Vote: 5-0.

ACTION: It was M/S (Metcalf/Mendonca) to adopt Resolution 20-2010 Awarding the Design Contract for CIP No. 10-101, Rheem Boulevard Pavement Rehabilitation Project, to Associated Engineering Consultants, Inc. Vote: 5-0.

Mayor Chew declared a recess at 9:22 P.M. The Town Council reconvened at 9:31 P.M. with all Councilmembers present.

C. Rancho Laguna Park Recommendation: Receive Report and Select a Park and Recreation Commission Recommended Option that will Accomplish the Town Council Directive of Spatial Separation Between Dogs and Other Park Uses

Parks and Recreation Director Jay Ingram described the history and sequence of events leading to the Town Council direction of July 22, 2009 for the Park and Recreation Commission to study a permanent spatial separation solution that would provide for a separation between dogs and other users in Rancho Laguna Park, with sufficient acreage to make it a proper dog park facility, as outlined in the February 20, 2010 staff report. During the August 2009 Park and Recreation Commission meeting, the Commission had established a Rancho Laguna Park Program Planning Subcommittee, comprised of members of the community and the Commission, to study the issue of spatial separation in the hopes of coming up with a plan for the park. The subcommittee held six meetings, provided status reports to four Park and Recreation Commission meetings, held two community workshops, and had a presence at community-wide events. A park survey had been presented in draft form during the September 22, 2009 subcommittee meeting, receiving input from the public and eventual approval from the subcommittee. The surveys were tabulated from September to November 2009 with the responses outlined in the February 10, 2010 staff report.

Staff had also conducted research and found that of the 19 jurisdictions in the County, ten provided spatially separated dedicated dog parks and eight had not provided spatially separated dog parks. Moraga was the only Town in the Lamorinda area that allowed off-leash dogs in a public park. Information and details from work done by the Lafayette Parks, Trails, and Recreation Commission in 2001 was also identified for informational purposes.

Based on the community input and after numerous meetings and outreach, the subcommittee had presented nine redesigns of Rancho Laguna Park. During a November 5, 2009 meeting, four of those redesigns had been eliminated from consideration. During the many public meetings, three improvement recommendations had gained acceptance from everyone involved including the removal of poison oak and brush from the east side of the park, preservation of the amphitheater, and the location of two age-specific play structures together on the same side of the park. After numerous discussions and public meetings, and after consideration of five draft plans for recommendation to the Park and Recreation Commission from the subcommittee, two options were identified for Town Council consideration.

Option A suggested fencing the north and south picnic/playground areas to provide a spatial separation while making the picnic/playground areas dog free, with dogs to continue to use the existing turf area, the northeast corner of the park, and the amphitheater area. The current temporal separation would continue to exist before 9:00 A.M. and after 4:00 P.M. and 6:00 P.M. depending upon the time of year. Option A would allow dogs off-leash on the grass area, in the northeast corner, and in the amphitheater. In addition, there would be a dedicated/fenced park for small dogs located in the back of the park where poison oak currently existed. The option with minimal modifications would require between $25,000 and $50,000 from the Friends of Rancho Laguna Park. The donated funds must go only toward the fencing on the north and south sides (excluding the dedicated/fenced park for small dogs).

Option B suggested fencing only the north section of the park and providing modifications that should include newly irrigated turf and an additional walking path within the newly fenced area. This option would dedicate the entire north section (approximately 68,900 square feet or 1.582 acres) to off-leash dogs during any time the park was open to the public. The temporal separation would no longer be an issue because off-leash dogs would have the ability to use the entire north section of the park from park opening to park closing. The proposed fencing would be ranch style similar to the existing fencing along the front of Rancho Laguna Park. The costs for Options A and B were outlined in detail in the February 10, 2010 staff report.

Mr. Ingram advised that during the December 15, 2009 Park and Recreation Commission meeting, by a vote of 4-3, the Commission supported Option B although it decided to forward Options A and B for Council consideration since they both offered spatial separation. He

explained that the project was eligible for East Bay Regional Park District (EBRPD) Measure WW funds. The Moraga School District (MSD) and the Town had agreed to move forward with sports field improvements to Camino Pablo Elementary School, although both parties must still agree to a site specific lease agreement. Such an approval could take place as early as February 9 for the MSD and February 24 for the Town Council. If approved by both parties, the Measure WW application could be submitted by March 31, 2010. The project would have to be publicly bid and if a satisfactory bid was awarded to a company at a price less than $734,000, the Town may potentially fund a portion of the improvements to Rancho Laguna Park with Measure WW funds.

Mr. Ingram reiterated the recommendation from the Park and Recreation Commission and advised that the staff recommendation was to support Option B, which would provide spatial and temporal separation and allow the Town to maximize its public park resources. Depending on the action taken by the Council, the capital improvement project could be considered in the 2010-2011 budget process.

PUBLIC COMMENTS OPENED

Don Larwood, Orinda, commented that his family used Rancho Laguna Park. He suggested that Option A was viable and the least expensive option. He suggested that the work could be done for even less than the staff estimate with the use of volunteer labor.

Scott Bowhay, Moraga, stated that he had been a member of the Rancho Laguna Park Program Planning Subcommittee and had been disappointed in working with Town staff as part of that process. He noted that the Friends of Rancho Laguna Park desired to maintain the current use of the park, off-leash hours, and temporal separation. He recognized the need and desire of the community for spatial separation but noted that there was enough space to do both. He suggested that a one-acre dog park would not be suitable given the existing infrastructure that would have to be removed in order to provide turf. He suggested that Option A offered sharing of the resource, would augment the park with fencing to prevent dogs from getting into the picnic and play areas, and dogs could be off-leash during specific hours. He wanted to see dog owners have the opportunity to have their dogs off-leash a few hours of the day to allow dogs and owners to congregate in an open and free atmosphere.

Margaret Hoffman, Moraga, advised that she was not a dog owner but she used the park and enjoyed walking in the park in the mornings. Since there were no children in the park at that time, she did not oppose the dog use during the morning hours. She noted that the park was being utilized by a large number of people. She did not understand why the Town would not allow the park for off-leash use during the morning hours given the limited use during that time.

Chris Gerding, Lafayette, understood that the spatial separation point had been raised months ago based on a legal issue that local advisors believed never existed. The spatial separation was only the goal of others in the process. He enjoyed the open air of the facility, was disappointed that the process had gone on so far, and expressed his preference for Option A as opposed to Option B given the donations that the Town may realize.

Bob Stoltenberg, Orinda, understood that Option B would eliminate one of the picnic areas, which would reduce the use of the park and was not an option he supported.

Ruth Pedrotti, Moraga, liked the park as it was and would like to see the Town leave it as is, for dogs and children who had enjoyed the park, as she had, for the last 50 years.

Larry Kahns, Orinda, concurred with the previous speaker, and saw no reason to change the current use of the park. He agreed that most dog owners used the park in the morning hours

and that the park could be used by everyone. He was not opposed to dogs being off-leash. He understood that there was a conflict of use and there had been complaints about dogs in the park, although that did not mean there was a problem. He suggested that Town funds could be spent on other things. He supported Option C, the option to do nothing.

Mike Weinberger, Moraga, understood that an enclosed dog park had not been recommended and had been addressed in the Town's 2008 approved Park and Recreation Master Plan. The Master Plan established a community supported road map for high quality, well-managed parks and recreation facilities in the community. The Town had paid a professional fee for the Master Plan and he would not like to see the regulations in the plan be disregarded through the pursuit of an ad hoc project taking resources from higher priority projects. He identified the priorities as contained in the Master Plan, pointing out that the construction of a fenced in dog park at Rancho Laguna had not been a priority. The Master Plan had discussed a dog park since dog walking ranked fifth out of 23 participating activities, but had ranked last in the list of priorities of recreation facilities. He questioned why a dog park was now being discussed. He understood that there were concerns in the community that off-leash dogs were keeping people away from Rancho Laguna Park although that had not been supported in the Master Plan. He emphasized that sport fields had been recommended to be developed and there was a clear need and the Master Plan repeatedly recommended the use of Joaquin Moraga School. He would like to see the Town save its resources for the priorities that had been identified in the Master Plan.

Teresa Onoda, Moraga, questioned the logic of Option B and fencing a small portion of the park and leaving the vast majority of the park for very few people. If the Town supported Option B, she expressed her hope that the Town Council would visit the park and see the number of people without dogs that would justify such a decision.

Melanie Bell, Moraga, commented that she had a view of the park from many windows of her home and had observed a change in the population in the number of dogs off-leash in the park. As a park patron who had utilized the park with family and church activities, she commented that church activities had not been held in the park over the past three years given that the dogs had been too disruptive for a variety of reasons. While she recognized that large dogs needed a lot of exercise, large dogs tended to be the primary dogs off-leash and were the most disruptive. She had also discontinued walking her small dog on leash in the park given the disruptive dogs in the park. She found the existing atmosphere in the park to be intimidating. She also commented on the problem with dog owners not cleaning up after their pets which had also led to her discontinued use of the park. She otherwise suggested that dog owners wanted key hours, particularly in the summer and the evening hours. She preferred to see a better balance in the use of the park.

Shirley Lawrence, Moraga, a 45-year resident, expressed concern with dogs running wild in the park all day long. She had avoided the park for many years. She noted that now that she was older Rancho Laguna Park offered the only flat area where she could walk.

Kirpal Khanna, Moraga, a member of the Park and Recreation Commission, commented on the amount of time the Commission had spent on the issue. He expressed his hope that the Town Council would support the recommendation from the Park and Recreation Commission and support Option B.

Liz Faoro, Moraga, recently elected Chair of the Park and Recreation Commission, urged the Town Council to consider either Option A or Option B. She suggested that the Town had some liability by having a free and open dog park. Having spoken to a local District Attorney, she had been informed that the Town was liable if nothing was done. She commented that during the Commission deliberations, she had recommended that Option B be selected for at least 18 months to allow the Parks and Recreation Department to see how it worked, and then the Town

could consider Option A. When asked, she clarified that the Commission had not voted separately on Options A and B. While the Commission had voted 4-3 to support Option B, the entire Commission voted to bring both options before the Town Council for consideration.

Karen Reed, Chair of the Rancho Laguna Subcommittee, supported the staff recommendation of Option B. She noted that the number one concern of those who had completed the survey and based on public testimony was that there would be more use of Rancho Laguna Park if residents did not have to deal with off-leash dogs and the waste left behind. She suggested that Option A would clutter the natural beauty of the park with lots of fences and would not solve the problem of people safely using the park. Option B would be a better solution and would provide a large fenced in and safe play area for the dogs while park users may also enjoy the park.

Kay Biondo, Orinda, commented on the fact that Rancho Laguna Park was the only place for off-leash dogs. She suggested that the park should be left as is.

Bob Reynolds, Moraga, past member and President of the Moraga Park Foundation, commented that he had not been to the off-leash area at Rancho Laguna Park and he understood that the focus was on the considerations of Options A or B. He suggested that the discussion should be broader as to whether or not a dog play area should exist at Rancho Laguna Park. He supported a dedicated dog play area in Moraga, but was not convinced it should be at Rancho Laguna Park. He suggested that all aspects for a mixed use of dogs and people was a poor idea. He reported that the surveys from the subcommittee had suggested conflicting opinions with regard to the use of Rancho Laguna Park.

Mr. Reynolds suggested that an absolute policy of no off-leash dogs in Moraga parks would make them safer and more effective recreation devices for the community. He did support the construction of a dog play area. He suggested that the Council's responsibility was to step back from Option A or B at Ranch Laguna Park and consider whether or not a dog play area was a need in the community, and establish funds for such a use. He suggested that a better use of land for such a use would be the area referred to as the back/south forty of the Commons or on Town-owned land off of the EBRPD trail across from the Saint Mary's soccer fields, with both sites relatively flat and amendable to development as dog play areas of sufficient size. Having been involved in community efforts for the Town in the past through the Park Foundation, he would be willing to work on any fundraising activities if there was an appropriate design.

Ravi Mallela, Moraga, member of the Park and Recreation Commission commented on the two options recommended by the subcommittee. The Commission had decided to present both options to the Town Council for consideration because of the potential risk to the Town. He referred to a recent incident in the park where an elderly person had been knocked down, which was a serious concern. He asked the Town Council to consider a spatial separation and the two options presented.

Bill Cosden, Orinda, commented that given the almost year and a half spent on the issue, he had requested during the Park and Recreation Commission meeting that the staff report be filed as soon as possible, which had not been done. He had subsequently asked the Town Manager to consider an extension to the process. The Town Manager had suggested some ground rules, such as specific spokespersons who would speak to specific issues and he later responded to those suggestions.

Mr. Cosden understood that speakers only had three minutes to speak and that a decision would be made by the Town Council this date. He suggested that the presumption that there would be a liability issue had triggered the past almost year and a half of discussions. He suggested that a decision had already been made. He noted that the surveys referenced had not made a distinction between off-leash dogs or off-leash hours.

Mr. Cosden suggested that many comments made in opposition to off-leash dogs had not established that those individuals were opposed to off-leash hours. He referenced parks in the Bay Area that had mixed use and off-leash hours which had worked well. He asked that comments be allowed to be submitted in writing before a decision was made.

Frank Stevens, Moraga, commented on his legal experience with public entity defense and similar issues. He referenced Civil Code Section 3342.A, where dog owners were strictly liable, and suggested that the question was the Town's liability for allowing off-leash during limited hours. He stated that the Government Code included immunities and in his opinion, liability was not an issue. As to whether or not such an activity was insurable, he advised that through the association of Towns, reasonable rates were available to cover such an activity with slim liability exposure. As a user of the park, he was impressed with the air of reasonableness of the dog owners. He presented a written memorandum to the Council for consideration.

In response to the Council, Mr. Stevens suggested that the Town could insure against the risk and he could see situations where a Town could ignore a dangerous dog which was not something they were discussing. The issue at hand was the Town's liability inherent with the adoption of an ordinance allowing dog owners off-leash freedom during specified hours.

Rob Lucacher, Moraga, a member of the Park and Recreation Commission, supported Option A. He noted that while he had initially been concerned with potential liability that had changed. While both options were imperfect, he urged that a solution be found.

Luis Salvago-Toledo, Moraga, a member of the Park and Recreation Commission, noted that the Parks and Recreation Director had given the Commission the impression that they would be considering alternatives if necessary, otherwise they would continue with a spatial separation. That view had disappeared quickly, with the Commission informed that was for the Council to decide. He suggested that one of the Commissioners was not even sure what they were voting on when the Commission had made a decision on what option to recommend.

Barry Behr, Moraga, commented that the dog park at Rancho Laguna was a community with residents there during morning and evening hours. He questioned the survey given that the question had not been asked as to whether or not off-leash hours, if enforced, would be supported. He asked that the survey be restructured and residents be asked their opinion of strictly enforced off-leash hours. He added that the Town Council had just approved a project to improve Rheem Boulevard and he suggested the cost to install a dog park and make the field usable would fund 20 percent of that project. He questioned the expenditure of such a large amount of money on a dog park that could better be used for streets and roads.

Blaire Newell, Lafayette, presented the Town Council with written information on the criteria being used to discuss the status of Rancho Laguna Park. She asked the Town Council to identify the problems that the Town was trying to resolve and which had shifted through the entire subcommittee process. Of the options before the Town Council, she urged that both options be reviewed based on the criteria. She identified some of the issues that had become discussions points and criteria needing to be addressed.

Ms. Newell commented that Option A had been the plan favored by the subcommittee and had been rated high on all the discussion points. She suggested if there was money available from the Measure WW funds, those funds could be used for improvements to the park that would benefit all park users. She suggested that Option B was inadequate since it would require the removal of trees to accommodate a dedicated dog use area. She found Option B to not be fiscally prudent.

Barbara Simpson, Moraga, commented that she had never taken her dogs to Rancho Laguna Park, had not known it was there for years, and had used the trail for her leashed dogs. She commented that other dog owners using the trail were responsible. She suggested that the land behind the Commons area was more logical than the descriptions proposed in both options. She asked the Town Council not to make a decision on the issue and to consider other options given that other land could be available.

Jim Renton, Moraga, explained that he had never had a problem with dogs in the park which he had found to be well behaved, attentive and comfortable in that environment. He supported Option A, noting that Option B would include the barbecue zone, which was an inappropriate area for dogs given the food in that area. He agreed that Option B was expensive and fiscally irresponsible. He urged the Town Council to consider Option A, which would best accommodate the dogs and merge well with the needs of those in the community.

Nathan Bell, Moraga, supported as much utilization of the Town's parks as possible. He suggested that the morning periods were underutilized by people and that dog owners frequently used the park; however, he suggested that the evening periods were a concern. Morning periods up to 11:00 A.M. could be off-leash while on-leash should be required at other times. He recognized that many people using the park were not residents of Moraga.

Diane Renton, Moraga, commented that she too patronized the park frequently for barbecues and had been uplifted to see the dogs running around. She understood that many had complained of the dogs being off-leash during improper times. She suggested that the greatest concern was for those who were not using the park properly. In terms of the potential for liability, she was more concerned with the potential liability of the skateboard park. She asked the Town Council to follow the General Plan in terms of priorities on expenditures. Given the Town's financial limitations, she would like to see the Town Council consider spending money where the people really wanted it to be spent.

Marco Micosia, Moraga, stated that he utilized Rancho Laguna Park on a routine basis. He urged the Town Council to enforce off-leash hours and suggested that a temporal separation would work well. He suggested that fencing would change the character of the park. Since Option B would curtail the dog owners enjoyment of the park, he asked the Town Council not to consider that option.

Jeanne Moreau, Moraga, frequented Rancho Laguna Park with her dog on a daily basis. She suggested that some of the problems referenced in the park were because of those who were not following the rules. She urged signage at the park posting the hours that dogs were allowed off-leash. She encouraged the Town Council not to spend a lot of money and if it had to consider an option, to consider Option A.

Linda Matheson, Moraga, advised that her family had enjoyed Rancho Laguna Park for the past seven years on a regular basis. She commented that the level path offered her and her dog daily exercise. She noted that the ability to allow off-leash dogs in Rancho Laguna Park offered residents the opportunity to congregate on a daily basis to meet their friends.

Ms. Matheson acknowledged that there were many who were elderly with few options to socialize and the camaraderie of the dog park was the most important part of their day. She noted that the solution was not to fence off the area for dogs and she did not support the expense of such an option. She added that no one wanted to fix a problem that did not exist, when Option A would cost the Town little or nothing.

Ed Traley, Moraga, supported the do nothing proposal but suggested that if an option was mandated, Option A could be considered although it was imperfect. He asked the Town Council

to consider the majority of the users of the park. He too questioned the adequacy of the survey that had been published. He commented on his understanding that the Council had been advised by the Town Attorney that liability would not be any different if there was a physical separation and the Town had insurance coverage in those areas. He agreed with the speaker who indicated that the Town would have minimal liability and could insure against that liability.

William Carmen, Moraga, opposed Option B based on the Parks and Recreation Master Plan where a large percentage of Moraga residents did not want any changes to the park. He questioned modifying the park at this time. As to the survey that had been used by the subcommittee, he suggested that most of those who had submitted the surveys were dog users and used the park for exercise. Many of the questions on the survey were confusing and he expressed concern that it was being used to prohibit dogs in the park. He affirmed that an elderly woman had been knocked down in the park, and noted that he had been ticketed in the park in the past for being there after sunset. He expressed concern with the movement to ticket individuals. He also expressed disappointment with the subcommittee and reported that the Chair of the subcommittee had questioned members' decisions and input during deliberations on the options. He urged the Town Council to carefully review the options.

Larry McKenzie, Moraga, stated that he had enjoyed Rancho Laguna Park during off-leash hours. He wanted to see the park remain as it had for many years. If not, he would support Option A.

ACTION: It was M/S (Mendonca/Trotter) to extend the Town Council meeting from 11:30 P.M. to 12:00 A.M. Vote: 5-0.

Councilmember Metcalf left the Council Chambers at 11:30 P.M. He returned to the Town Council meeting at 11:33 P.M.

Rick Vance, Moraga, explained that if the option with fencing was approved, people would not be fenced in because the gates would be left open during non-dog use hours. In response to the concerns with respect to potential liability, he suggested that liability would not be any different even if the use was separated and it would be the same either way if the dogs were present.

Debra Armand, Moraga, commented that she had observed evidence of illegal drug activity in the skatepark and the Rheem Shopping Center. She expressed concern that Rancho Laguna Park was dark and isolated and ideal for minors or others to congregate and drink illegally. She encouraged a regular presence at the park which would serve as a deterrent. If the use of the park was to decrease she suggested there would be a serious concern.

Harriet Kanter, Moraga, asked whether or not an Environmental Impact Report (EIR) would be required as part of any option since there could be a change in the use. She found Rancho Laguna Park to be a wonderful place, would like to see it left as is, and noted the many people who had enjoyed the park in the mornings and evenings. During these current difficult times, she would not want to see the use taken away from a large group of people.

Christina DaRodda, Moraga, suggested that if the park were restricted and not usable, dog owners may go elsewhere at other places and times where they should not be.

PUBLIC COMMENTS CLOSED

In response to the Council, as to the proposed options' compatibility with the Moraga General Plan or Parks and Recreation Master Plan, Mr. Segrest did not see that the Town Council would be precluded from making a decision on the dog park. As to the area at the rear of the

Commons or land near Saint Mary's that had been referenced, he understood that the subcommittee had discounted the back forty property in regard to the challenges with respect to the proximity of parking that would be needed to support a dog park. The site across from Saint Mary's was wet and would take some research to see whether or not a large enough space could be achieved. The Town would have to also consult with the EBRPD on the potential use of that property. As to concerns with respect to Option B and ADA accessibility, he advised that the Town would have to comply with ADA and other issues.

In response to the memorandum which had been presented with respect to municipal liability on off-leash parks from a member of the public, Mr. Atencio explained that there was the potential for the Town to be liable. He added that there were certain defenses and immunities that had been addressed in the information that would serve to help the Town with such an action coming forward. He added that liability was not exclusively with the dog owner.

Given the lateness of the hour, and the likelihood that a decision could not be made at this time on the Rancho Laguna Park recommendation, Mr. Segrest suggested that the Council table the deliberations on the recommendation to a later date or direct staff to conduct additional investigation on the feasibility of the back forty area of the Commons to be brought back as an alternative to the recommendation. As to whether or not the item should be sent back to the subcommittee to reevaluate the entire scheme, he pointed out that the Park and Recreation Commission had been directed by the Town Council to consider a spatial separation in the park. It had not been directed to consider a dog park in an alternate location. The Town Council could remand the issue back to the Park and Recreation Commission for consideration of the back forty area of the Commons, or that issue could be brought back to the Town Council after staff had the opportunity to conduct additional research.

ACTION: It was M/S (Trotter/Mendonca) to extend the Town Council meeting to 12:15 A.M. Vote: 5-0.

The Town Council discussed and deliberated the Rancho Laguna Park Recommendation and made the following comments and direction:

- Directed staff to consider the feasibility of all viable options for a dog park (including Options A and B), particularly the back forty area of the Commons since that site was fenced, flat, had access and was owned by the Town, along with the site across from the Saint Mary's College soccer fields, with staff to return to the Town Council with a report; and
- The entire Council expressed its appreciation to the Park and Recreation Commission and the Rancho Laguna Subcommittee for all their work.

ACTION: It was M/S (Metcalf/Mendonca) to direct staff to examine the feasibility of a dog park facility on Town owned lands with staff directed to return to the Town Council with a detailed report. Vote: 5-0.

Given the lateness of the hour, the remaining agenda items, Reports and Town Manager's Update were continued to the next meeting of the Council.

X. ORDINANCES - None

XI. REPORTS

A. Council Requests for Future Agenda Items

Reports were continued to the next meeting.

B. Mayor's and Councilmembers' Reports

There were no reports.

C. Town Manager Update – No report.

XII. COMMUNICATIONS - None

XIII. ADJOURNMENT

ACTION: It was M/S (Trotter/Harpham) to adjourn the meeting at 12:12 A.M. Vote: 5-0.

Respectfully submitted by:

Marty C. McInturf, Town Clerk

Approved by the Town Council:

Ken Chew, Mayor