

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**May 26, 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 7:35 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

Mayor Chew led the Pledge of Allegiance.

III. ANNOUNCEMENTS AND PRESENTATIONS

- A.** Announcement Acknowledging Department of Housing and Community Development Certification of the Town of Moraga's Housing Element

Mayor Chew announced that the Town of Moraga's Housing Element had been certified by the Department of Housing and Community Development (HCD), and determined to be in compliance with State law. He commended the adoption of the Moraga Center Specific Plan (MCSP) and the rezoning of property within the MCSP as being instrumental in the certification of the Housing Element. He thanked Town staff, members of the Town Council, and the Planning Commission for all their hard work on the Housing Element. He looked forward to the implementation of the MCSP in order to realize the revitalization of the MCSP area.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

IV. ADOPTION OF THE CONSENT AGENDA

- A.** Approval of the Consent Items

Consent Agenda Item 2 was pulled from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Mendonca) to approve Consent Agenda items 1, 3 and 4. Vote: 5-0.

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| 1) | Accounts Payable Claims for 5/07/10 (\$87,665.63) | Approved |
| 2) | Approve Minutes from the Town Council Meeting of May 12, 2010 | Removed |
| 3) | Approve Minutes from the Special Joint Meeting of the Town Council and Park and Recreation Commission on April 28, 2010 | Approved |
| 4) | Approve Revised Minutes from the Town Council Meeting October 28, 2009 | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes from the Town Council Meeting of May 12, 2010

The following corrections were made to the minutes of May 12, 2010. To the last sentence of the last paragraph on Page 10 under Mayor's and Councilmember's Reports:

She [Vice Mayor Mendonca] too had volunteered at the May 5 Cinco de Mayo celebrations.

To the first sentence of the fourth paragraph on Page 5:

In response to the Council, Ms. Streit explained that currently the interest rate for certificates of deposit (CDs) between \$250,000 and \$350,000 for a maximum of two years was between one to two percent, and two percent for two years.

To the first sentence of the third paragraph on Page 8:

Rob Lucacher, Moraga, asked whether or not the interest rates would be established at a future time.

To the second paragraph on Page 10:

***Councilmember Trotter** recommended consideration of an Environmental Committee to develop a Climate Action Plan for submission to the Council for approval prior to consideration of a broader task force.*

To the sixth paragraph on Page 10:

***Councilmember Trotter** recommended that this be discussed at the next meeting of the Council when the entire Council was present, at which time the Council may give direction to staff on the issue.*

And to Mayor's and Councilmember's Reports on Page 11 under Councilmember Trotter's comments:

Councilmember Trotter - Reported that he had attended the Mayors' Conference in the City of El Cerrito with an informational presentation on public employee pension reforms and had volunteered at the Cinco de Mayo festivities at the Hacienda which had been well attended.

ACTION: It was M/S (Mendonca/Trotter) to approve the minutes of the May 12, 2010 meeting, as amended. Vote: 5-0.

V. ADOPTION OF MEETING AGENDA

The meeting agenda was revised to allow all agenda items, Items XI, XII and Item VII. Special Orders - Public Hearings, A, to be heard prior to Item VII. Special Orders - Public Hearings, B.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

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

VI. PUBLIC COMMENTS AND SUGGESTIONS

Councilmember Metcalf reported that on Saturday, May 22, the Campolindo High School Boys' Swim Team had won the North Coast Championships for the sixth year in a row.

VII. SPECIAL ORDERS - PUBLIC HEARINGS

- A.** Public Hearing Regarding Changes to and Levy of Assessments for Fiscal Year 2010/11 within the Town of Moraga Street Light Assessment District No. 1979-1.

Public Works Director/Town Engineer Jill Mercurio reported that on March 24, 2010, the Town Council had adopted a resolution declaring its intention to authorize an increase in the Street Light Assessment District No. 1979-1. On April 9, 2010, notices and ballots had been mailed to all residents of the Town who resided within the District, with the ballots due back on May 26, 2010 at the end of the public hearing. To-date, 2,542 ballots had been received to date.

Mayor Chew reported that the purpose of the public hearing was to consider the increase in assessments within the Town's existing Street Light Assessment District. If the assessment ballots submitted in opposition to the proposed increase were greater than those in favor of the increase, the increased assessment would not be imposed. He added that ballots would be accepted by the Town Clerk until the close of the current public hearing.

PUBLIC COMMENTS OPENED

Allen Espenmiller, Moraga, stated that it appeared as if there would be a significant increase in the assessment. Not opposed to street lighting, he stated there was nothing in the staff report to indicate that the latest technology would be considered by the Town as part of the increase in assessments.

Ms. Mercurio explained that staff had considered LED street lighting and would be applying for a grant through economic stimulus monies which would replace street lights on major arterials and which would be scheduled for replacement through PG&E. PG&E was also considering

switching out all the street lights owned by the agency. Given the cost of a conversion, she added it would not make sense for the Town to take on that expense if PG&E were to consider the replacement on its own.

Russ Lai, Moraga, understood that the rate increase was a result of a budget shortfall. He asked what was being done to address other shortfalls. He cited, as an example, what he perceived as excessive street sweeping.

Town Manager Michael Segrest reported that the Town Council would be considering reducing its street sweeping, along with other budget considerations during the budget discussions in the next month.

Mayor Chew encouraged all ballots to be submitted to the Town Clerk given that no ballots would be accepted after the close of the public hearing.

PUBLIC COMMENTS CLOSED

Mayor Chew reported that with the public hearing now closed ballots would not be accepted. The tabulation of the ballots would commence on May 27 in the Town Hall, Planning Department Offices, and would be open to the public during the hours of 9:00 A.M. to 5:00 P.M. It would take more than one day for all ballots to be counted. The results would be posted on the Town's website and would be certified and formally announced at the June 9, 2010 Town Council meeting.

ACTION: It was M/S (Trotter/Harpham) to declare that the ballots for Changes and Levy for Fiscal Year 2010/11 within the Town of Moraga Street Light Assessment District No. 1979-1, would be tabulated on May 27, 2010 at 9:00 A.M. in the Planning Department Offices on the first floor at 329 Rheem Boulevard. Vote: 5-0.

VIII. UNFINISHED BUSINESS - None

IX. NEW BUSINESS

- A. Request for Continuance to June 23, 2010 of the Acceptance of Additional New Fees and Modifications to Existing Fees and Direction to Staff to Finalize a Master Fee Schedule

Mr. Segrest requested that the item be continued to June 23, 2010 to allow the Town Council to have the opportunity to address the budget prior to consideration of the proposed item.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to continue to June 23, 2010, request of the Acceptance of Additional New Fees and Modifications to Existing Fees and Direction to Staff to Finalize a Master Fee Schedule. Vote: 5-0.

X. ORDINANCES - None

XI. REPORTS

A. Council Requests for Future Agenda Items

Councilmember Metcalf requested a forum with the Town Council on July 14, 2010, as a single purpose meeting to discuss the RECON sessions.

Councilmember Trotter requested that a future agenda item include a status report presentation on the efforts of staff to have the contractor complete repairs to the rubber cape seal project on Moraga Road.

Mr. Segrest advised that staff was working to schedule a meeting with the contractor to discuss the needed repairs. A status report would be brought back to the Town Council as soon as possible.

Mayor Chew requested that a future agenda item include the potential for a ballot initiative for an off-leash dog park at Rancho Laguna Park.

Mr. Segrest acknowledged that the Town Council had previously requested a future agenda item for a potential ballot initiative for off-leash dogs at Rancho Laguna Park, to be considered on the November ballot, although he expressed concern with what could be an extensive and time-consuming discussion on the language for such an initiative. He asked the Town Council to give specific direction on the issue.

Councilmember Metcalf commented that many members of the public had supported consideration of a possible ballot initiative. He supported a full Council discussion on the topic.

Councilmember Trotter emphasized, as he had previously stated on the record, that he did not support Town staff and Town Council spending the time on an unbinding initiative, although he recognized that the Council had voted 4-1 to consider a ballot initiative.

Councilmember Harpham supported a resolution on the issue based on its merits, and stated if that could be done through a ballot measure, it should be done. He supported a discussion on the issue.

Vice Mayor Mendonca also supported a discussion on the potential for a ballot initiative.

Mayor Chew commented that although he had initially voted in favor of a ballot initiative, he no longer supported that direction. Like Councilmember Trotter, he did not see it as a good use of Town staff resources since it would likely involve a lengthy debate. He acknowledged that three members of the Council had voted to have a ballot initiative agenda item for future discussion, which was the direction to staff.

B. Mayor's and Councilmembers' Reports

Mayor Chew -Reported that on May 16 he had attended the Ribbon Cutting Ceremony at 331 Rheem Boulevard for the new Town Corporation Yard, attended a Local Agency Formation Commission (LAFCO) Workshop on May 24 with a discussion of the Moraga-Orinda Fire District (MOFD), and had served as an observer for one of the RECON focus sessions.

Vice Mayor Mendonca - Reported that she had attended the Ribbon Cutting Ceremony for the new Corporation Yard at 331 Rheem Boulevard, and had also served as an observer for one of the focus group sessions for RECON.

Councilmember Harpham - Reported on the RECON Sessions which had been held over a three-day period and which consisted of an all-volunteer effort.

Councilmember Metcalf - Reported that he too had attended the RECON Sessions. He commended the facilitator of those sessions who was present in the audience.

Councilmember Trotter - Reported that he had attended the May 16 Ribbon Cutting Ceremony at 331 Rheem Boulevard, the Moraga Chamber of Commerce meeting on May 21 with an outreach from the business community, and one of the RECON sessions on May 22.

- C. Town Manager Update – Mr. Segrest reported that he had attended the same meetings referenced by the Council. He had also attended a meeting of the Tri-Agency Subcommittee with the MOFD, with information presented on the services provided by the MOFD and levels of service being proposed. He encouraged everyone to be aware of the discussions of the status of the MOFD which were ongoing and important to the future of the community.

XII. COMMUNICATIONS - None

The Council returned to agenda Item VII. Special Orders - Public Hearings B.

- B. Public Hearing and Appeal of the August 17, 2009, Decision of the Planning Commission Approving the Rancho Laguna II Residential Development Proposal with 27 lots, per Resolutions Certifying the Final Environmental Impact Report (Final EIR) and Approving a Conceptual Development Plan (CDP) and Conditional Use Permit (CUP) (*Continued from October 28 and November 4, 2009, and January 27, March 10, and May 12, 2010.*)

Mayor Chew recused himself from the discussion due to the proximity of his residence which was within 500 feet of the subject property.

Councilmember Metcalf also recused himself from the discussion due to the proximity of his residence, which was also within 500 feet of the boundary of the proposed development.

Town Attorney Michelle Kenyon stated that pursuant to the Political Reform Act, Mayor Chew and Councilmember Metcalf must step down from the dais and leave the Council Chambers unless they wished speak to the item as a resident, not as a Councilmember.

Mayor Chew and **Councilmember Metcalf** stepped down from the dais but remained in the Council Chambers.

Vice Mayor Mendonca chaired the meeting at this time and asked that each member of the Council report on any ex-parte communications.

Vice Mayor Mendonca reported that prior to the last hearing, she had met with the developer, the developer's geotechnical and environmental consultants, the Town's consultants, had walked the property site on two separate occasions, and had taken numerous personal photographs of the site. She also had contact with the developer by telephone on two occasions, with appellant group member Suzanne Jones on two occasions, with former Planning Commissioner Goglia, the Rancho Laguna Architect, and with members of Town staff. Since then she had many telephone calls with the developer, two meetings with one of the appellants, Suzanne Jones, and another telephone conversation with former Planning Commissioner Goglia. She had also received information from the appellant and the applicant, which she would enter into the public record.

Councilmember Trotter reported that his ex-parte communications included a tour of the site with the applicants, the applicant's and Town's consultants, e-mail communications with the applicant Mark Armstrong, telephone conversations on numerous occasions with one of the appellants, Suzanne Jones, and communications with Town staff and the Town Attorney.

Councilmember Harpham reported that he had two site visits with the applicant and applicant's consultants, had personally visited the site by himself, and had telephone calls with the applicant and Town staff on multiple occasions over the past week.

Vice Mayor Mendonca detailed the meeting procedures for the appellants, the applicants and for public comment for the public hearing.

David Storer, AICP, Town Consultant/Contract Planner, presented the staff report dated May 26, 2010 for an appeal of the August 17, 2009, decision of the Planning Commission Approving the Rancho Laguna II Residential Subdivision with 27 lots, per Resolutions Certifying the Final Environmental Impact Report (Final EIR) and approving a Conceptual Development Plan (CDP) and Conditional Use Permit (CUP). He reported that on November 4, 2009, the Town Council had directed the applicant to prepare refined plans to include revisions required by the conditions of approval and mitigation measures required by the Planning Commission, identified as Attachments A and L to the staff report dated May 26, 2010. The Town Council had also directed staff to return with additional history and background of the project identified as Attachment E, additional General Plan consistency analysis identified as Attachment F, additional information regarding financial impacts related to the geotechnical solutions for the stabilization of Rheem Boulevard identified as Attachment G, additional geotechnical analysis for homes along the southerly side of "C" Court identified as Attachment H, and more detailed photo simulations including Rheem Boulevard and the Lafayette-Moraga Regional Trail identified as Attachment J.

Mr. Storer presented numerous photo simulations and slide presentations of the property as identified and shown in Attachment J, which visualized the viewsheds, the proposed landscaping mitigation measures and absent the proposed landscaping mitigation measures, and recreation of the wetland swales and drainage in the upper and lower valleys. He recommended that certain height limitations be imposed for those homes on certain lots in the project and through the Town's consultants, recommended refinements to certain lots relative to viewsheds as one headed southbound on Rheem Boulevard, and provide additional buffering along the east and west side of "D" Drive to screen the homes as one headed southbound on Rheem Boulevard.

Mitch Wolfe, Engineer/Geologist, Cal Engineering & Geology, presented a PowerPoint presentation on the geotechnical component of the May 26, 2010 staff report. He presented the Council with samples of geogrid pieces of reinforcement that would be used as amendments to the soil to increase its strength.

Mr. Wolfe spoke in detail to the technical aspects of the three methods to stabilize Rheem Boulevard including the valley buttress which involves a fill being placed in the valley and intermittent drainage channel up to the edge of the road to hold the slide in place, the geogrid and fill involving excavating the roadway to the slide depth then placing geogrid reinforcing fabric at specified depths as the area is reconstructed, and the tie-back retaining wall which would build and bury a retaining wall along the downslope side of the road to hold the slide in place. The potential costs and the pros and cons for each method were also identified. Based on the factors for consideration of each method, the valley buttress method was the most desirable alternative. The applicant had offered to install the lower valley buttress method at no

cost to the Town as part of the project. Otherwise, if the Town were required to do the work, the potential costs would be extensive.

In response to the Council, Ms. Mercurio provided more information on the tie-back retaining wall method for which no permits from resource agencies would be required and the Town would be able to issue the permit on its own depending on the design and how far off the road it could be.

Mr. Wolfe suggested it would be within 20 to 25 feet of the downhill side of the road. He did not know where the riparian corridor would be delineated. As to the proposed homes on the south side of "C" Court, he noted that area had a complex landslide which occupied portions of the area where the lots were proposed to be built. The proposal was to replace the landslide debris with engineered fill. There were issues with the original configuration of the lots which had a small 3:1 slope which intersected with the ridge on the other side of the swale continuing the landslide. The applicant proposed to mitigate the slope by lengthening the rear of the lot to address the slope and push the back of the lots across the swale for the creation of a uniform area. The proposal had been reviewed by his firm and the method proposed by the applicant was the most common method used to mitigate landslides in building areas in hillside environments. He suggested that the height of the fill slope at the rear proposed by the applicant exceeded 30 vertical feet and would require a slope down which had not been shown on the plan. He acknowledged that while there could be further refinements to that approach, it was technically sound. Mr. Wolfe affirmed that he could provide staff a copy of his PowerPoint Presentation.

Mr. Wolfe further detailed the geogrid method and how it would affect the existing creek as opposed to the valley buttress method. With the geogrid reinforced fill, the bottom of the grading was intended to stay at least 20 to 50 feet away from the top of the bank. The valley buttress would fill in the creek which would be recreated on the top of the fill. In his opinion, the geogrid method was appropriate for the setting. He added that all methods were appropriate for the setting. Excluding costs, all methods were appropriate mitigations to the hazards that had been identified. In addition, he noted that all repair systems would perform as intended in the event of an earthquake.

As to which method was the most intrusive to neighboring properties, Mr. Wolfe suggested that the tie-back retaining wall method would involve the drilling of holes in the hillside below the properties on the opposite side of the road, and while they would not be visible, they would encroach into the property. He acknowledged that an encroachment permit would be required in that case, the costs for which had not been included in the cost estimates.

Mr. Wolfe clarified that in the event the road must be closed for grading, the closure would last one entire grading period, April 15 through October 15, also dependent upon the contractor and the soils conditions. The work could not be done absent the closure of Rheem Boulevard. He acknowledged there would have to be access provided to privately owned properties.

APPLICANTS:

Mark Armstrong, Project Manager for the Rancho Laguna II Residential Subdivision, 412 Cliffside Drive, Danville, clarified the costs identified for the valley buttress method which had been taken from ENGEО Engineering's costs for the entire frontage on Rheem Boulevard. He stated that the costs associated with the geogrid reinforced fill were comparable to the costs identified by ENGEО for the keyway geogrid approach, also proposed by ENGEО. The tie-back system identified as the most desirable method by staff based on the initial review by ENGEО had one tie-back whereas Mr. Wolfe's plan had three tie-backs thereby increasing the costs dramatically. The geogrid plan had not been enthusiastically received at the time given the road

closure. He emphasized that the developer had expressed the willingness all along to do the lower valley buttress method since it was a simple project and the other methods were Public Works Department projects. He reminded the Council that the intervening section of Rheem Boulevard that was unstable would not have to be stabilized in order to develop the property. The area around the "A" Way intersection would be stabilized with a geogrid reinforced slope and up above in the upper valley. The estimates from ENGEO had included costs for rehabbing the road but had not included the costs to stabilize the road.

Mr. Armstrong noted that the southern developed plateau development area had been first used in the EIR as an easier reference to Moraga Open Space Ordinance (MOSO) and non-MOSO ridgelines. He suggested that some had perceived that the developer had tried to understate the visual quality of the ridge and lateral ridge to be developed. He emphasized that the project had been analyzed, designed and redesigned during the lengthy process, based on discussions with staff, the Planning Commission, EIR consultants, and the applicant in recognizing the importance of protection of the visual quality of the southern ridgelines as seen from public views. It had been demonstrated that the visual protection of the southern ridges did not prohibit development of the property in the southern ridge area due to the topography. A number of the views had been mitigated and the project had been designed to address those views. Open valley and hillside views would be maintained through landscaping, wetland swales, and the intermittent stream creation. Other view mitigations would be through the extent of landscaping required to screen homes on the southern ridge and the Rheem hillside. The revised grading plan in the upper development area and limiting some of those homes to single story and reducing some of the landscaping would mitigate the views of those homes. The single-story homes would be restricted to Lot 13, and Lots 23 through 27. The homes on that ridge would be 19 rather than 21 feet in height.

Mr. Armstrong commented that four rooftops would be visible from the upper half of Rheem Boulevard on Lots 24 through 27, at varying times. The developer had reviewed that issue and had refined the grading plan to ensure that no rooftops would be visible from Rheem Boulevard, which would require the relocation of the "B" Drive cul-de-sac, the trail parking area to be moved further to the east, and the relocation of Lot 27. The pads would be approximately six feet lower than they were currently identified, as shown on the revised May 25, 2010 grading plan submitted to staff. Lot 27 could be relocated to "C" or "D" Court if permitted by the Town. It would also result that one cluster of trees on the hillside of Rheem Boulevard would no longer be necessary. The entire hillside would be visible from Rheem Boulevard and the upper hillside and the ridgeline and skyline would remain as is.

Mr. Armstrong explained that the photo simulations visualized how the lots would be graded and fit on the site. As to the biological mitigation measures for the lower valley, as required by the Planning Commission, mitigation would be addressed through improved design, the recreated channel, associated meadows and riparian plantings, with the hydrology and water quality improved over existing conditions and erosion halted or significantly reduced.

Mr. Armstrong noted that downstream homeowners would benefit. It had been agreed by their consultants that the recreation of the riparian channel would offer a better long-term biological and visual solution. He recognized that whatever solution was chosen to repair the roadway was at the discretion of the Town Council. He emphasized that the Planning Commission determination to repair the road through the valley buttress method into the lower valley would be fully mitigated and was consistent with the California Environmental Quality Act (CEQA). He suggested that made more sense until the Town had identified a financial plan to fund another approach, to have the matter before the resource agencies jointly between the applicant and the Town, with a thorough review of the other alternatives.

Mr. Armstrong acknowledged several pieces of correspondence from the Regional Water Quality Control Board (RWQCB) which had suggested that the lower valley buttress method was not a good approach for the recreated creek, although ultimately looking at what was available and what could be done, the proposed alternative was the appropriate method.

Don Carmickle, Previsualists, Inc., El Dorado Hills, presented a three-dimensional video of the visual impacts of the 27-lot Rancho Laguna II Residential Development. He explained that this three-dimensional model had been used to establish the visibility by looking through the hillside. He also detailed the types of camera equipment, lens and angles that had been used and the differences between the use of digital and standard camera equipment which often led to differences in the photographs. He reported that the photos had been taken from a 45-degree field of view. Numerous photo simulations were also presented of the existing conditions of the property, views with mature screen trees including the original views of the rooftops above the ridge prior to the revisions to the plans which moved the homes back off the ridge, and over 108 images along Rheem Boulevard from various viewpoints.

Mr. Carmickle reported that the worst case scenario was at "D" Drive with the homes initially visible above the ridgeline, with views with mature screen trees and absent the trees while also keeping in mind that the homes had now been moved back away from the ridgeline. The original graphics in the EIR absent trees had also been photo simulated and presented for review. A video simulation of the revised plan with no visible rooftops was also presented.

APPELLANTS:

Suzanne Jones, Moraga, of the appellants, reported that the appellants had received the January 28, 2010 grading plan ten days ago and had been preparing comments in response since that time. She understood that a new grading plan had been submitted to the Town a day ago, which had not been presented to the appellants. She pointed out that the grading plan may change the project and the subject hearing was to be about the project as outlined in the staff report. She added that the applicant's visual consultant had also presented new information and asked for additional time to respond to the information that had been provided.

Ms. Kenyon advised that the request for more time was under the discretion of the Chair although the applicant must be given the same amount or equal time. The issue of new information was something the Council must consider if the appellants and the public had not been given the opportunity to review. The Council could decide to continue the item to allow everyone the opportunity to review the information.

Ms. Jones reiterated that the appellants had prepared for the subject hearing based on the project that had been proposed in the staff report. She would like to respond to the applicant's submittal of a new and revised grading plan and additional new information on the photo simulations at a future hearing.

Mr. Armstrong stated that the project application was the same as before. He had been asked to provide a way to revise the plan in the upper area so that the rooftop homes would not be visible, which request had been provided to the Town. The staff report identified that proposed modification which had been provided by the applicant.

Robert Staehle, Owner VIZf/x, Clayton, speaking on behalf of the appellants, explained that his firm conducted visual simulations. He presented a slide presentation with photographs of the project site, including aerial photographs. He commented in detail on the type of camera equipment and lenses that had been used to photograph the project site as opposed to what the applicant had provided. He detailed the methods he used to provide the visual simulations for the ridgeline and analysis done on the applicant's grading where everything would be cut at the

ridge and would be lower than the existing terrain. United States Geological Survey (USGS) terrain data had also been used and found to be consistent with the applicant's survey data. He identified the pad elevations based on information provided by the applicant, and the height of the homes which had been measured at 21 feet from the pad, the line of sight and the existing terrain which currently blocked the roofline. The photo simulations depicted each of the proposed homes in four sections of the project site within the cut line and radius where the grades would be removed.

Mr. Staehle commented that depending on the location of the homes on the pad, in his opinion Lots 10, 11, 12, 13, 14, 22 and 23 would be potentially visible with building heights from 21 or 28 feet, and five lots would be visible regardless of what was done from a grading perspective.

Ms. Jones referenced the October 28, 2009 Town Council public hearing, at which time Mr. Carmickle had stated that he taken numerous photographs every 20 feet on St. Mary's Road, and had stated that there was no other location from St. Mary's Road other than along a road in the City of Lafayette from which the project would be visible. That was not the case based on the new visual simulations that had now been presented from the appellant's visual consultant. Also, based on Mr. Staehle's presentation and analysis, a wide-angle lens had been used to take the photo and the photo simulations depicted that many more homes would be potentially visible, not just one or two. She commented on the number of problems that had been uncovered with the one photo simulation regarding the view from the Lafayette-Moraga trail, and she questioned the credibility of the applicant's visual consultant's photo simulations which were being used as the foundation of the applicant's argument that the visual impacts had been mitigated to less than significant, and a consistency finding could be made with the General Plan.

Renata Sos, Moraga, one of the appellants, was troubled that the bulk of the homes were proposed to be built on the ridgeline. She pointed out that Policy CD1.5 of the General Plan authorized the Town Council to say no to development on the ridgelines and imposed the obligation to say no to the ridgeline homes. She read into the record that policy of the General Plan, defined the definition of "protection," and emphasized that no building should be permitted on the ridgeline. In hillside areas certain conditions would be required of development, one of which would require development on the hillside that would not inhibit the views of the ridgelines, not that development on the ridgelines was permitted. She suggested that per the intended interpretation of Policy CD1.5, the Town Council had discretion for hillsides, not ridgelines, and the obligation to deny the development of homes on the ridgeline.

In response to the Council as to the appellant's visual simulations, Ms. Jones explained that the photos had been taken after receipt of the staff report and the new view from St. Mary's Road and then analyzed with their consultant. The results of that analysis had been available in the last 24 hours. They had not been shared with the applicant prior to this hearing. She had discussed the photos with Councilmember Trotter and Vice Mayor Mendonca.

Mr. Staehle explained in response to the Vice Mayor the effects of photography to the human eye, through the use of a wider angle shot to the human eye, and elements of the lens focal links and a telephoto and wide-angle lens in order to show the field of view. With a wider angle lens, the homes would appear farther from view. The closest approximation to the human eye was 55 millimeter with 33 millimeter film or an approximate 45-degree field of view regardless of the media. He stated a hard copy of the presentation could be provided to the Town Council.

Vice Mayor Mendonca declared a recess at 10:30 P.M. The Town Council reconvened at 10:40 P.M. with all Councilmembers present with the exception of Mayor Chew and Councilmember Metcalf who had recused themselves from the dais.

PUBLIC COMMENTS OPENED

Richard Emmel, Moraga, advised that he had previously submitted correspondence to the Town Council. He spoke to the background and defeat of Measure K in 2009. He suggested that the Planning Commission approval of the Rancho Laguna development had ignored the General Plan restriction against ridgeline development by allowing and possibly encouraging the morphing of the project as a road repair project. The project, as proposed, was in violation of the General Plan and if a road project it still violated the General Plan. He also questioned the proposed mitigation measures as part of the project as making the project less painful to moderate. He asked that the Town Council send the project back to the Planning Commission with the instruction that it follow the General Plan and locate the project in an area where it would be appropriate for its development.

Tony Inzerillo, Moraga, commented that when he had purchased his property located across from the subject site in 1998, he had found he had three potential building sites and at that time had conducted borings up and down Rheem Boulevard. Although an application had been submitted to the Town Council for development of his property, he had been informed that his property was considered high risk, MOSO property and development would only be allowed if the high-risk slides were mitigated. Ultimately the Town permitted only one home to be built on a 10-acre parcel. The subject development would allow one home for every five acres with no mitigation for any of the slide areas for homes on the ridge or on Rheem Boulevard with the entire focus of the project on the road repair of Rheem Boulevard. He recommended no more than one home for every 10 acres which would allow the development of a maximum of 13 homes on the property. He asked the Town Council to reconsider the total number of homes and the mitigation measures that had been proposed.

Frank Comprelli, Moraga, expressed concern with the visual mitigation measures being proposed through trees and shrubs. He understood the Planning Commission's requirements, which the applicant had agreed to provide, although once the homes had been built and the developer moved on, the maintenance of the mitigation landscaping would be up to the future homeowner which could become an issue where views were involved.

Malcom Sproul stated that he had submitted numerous letters commenting on the project and the EIR process, had attended the Planning Commission hearings, participated in the discussions, and had attended the October 28, 2009 Town Council public hearing. The proposed project would build on the ridgelines, fill the creek, and the number of units proposed would be at the upper end of the permitted zoning. Mr. Sproul suggested that the Town Council had discretion while considering the project. The applicant had argued for a better project which was not the proposed project, which should be enough for the basis to support the appeal. He read into the record a number of the General Plan policies which he suggested the project was in direct conflict. He asked the Town Council to uphold the appeal of the Planning Commission's action, deny the project, and give direction to the applicant as to what development would be appropriate, with no development on the ridgeline or in the creek.

Dae Cho, Moraga, a chemist, spoke to the recent British Petroleum (BP) oil spill in the State of Louisiana and the potential costs for clean-up which were still unknown. In that respect, he related that incident to the proposed project in terms of liability for building on the ridgelines.

Larry Corb, Moraga, stated that he lived near the subject property. He emphasized that the area was plagued with weak clay soils with many active landslide and slumps, which was the problem with Rheem Boulevard. While the applicant had agreed to repair a portion of Rheem Boulevard as part of the development of the property the project would not result in the complete repair of Rheem Boulevard. The section below Road "A" had experienced active landslides and would not be mitigated through the project. In addition, there were many active

landslides in the project area including Road "A" up the hill to the project. There was fill above his home that would be located on an active slide and could affect his property. He spoke to MOSO where development in the hillsides and creeks was prohibited, although the subject project would build on the ridgelines and creek, with no mitigation measures proposed for the existing homeowners along Rheem Boulevard who could be faced with a road exposing their rear yards with extensive traffic volume. He asked the Town Council to reject the plan.

Andrew Petrenus, Moraga, an engineer, questioned the Town reviewing and possibly approving a project where State agencies had reviewed and rejected the project Draft EIR and Final EIR.

Teresa Onoda, Moraga, supported open space protections. She spoke to the General Plan policies to protect ridgelines from development, preserve creeks in their natural state, retain natural topographic features, and protect ridgelines and hillside areas in scenic corridors. The Town Council was required to uphold the General Plan policies. She recognized the pressure to interpret the statements of the General Plan to mean something else. She asked the Town Council to reflect the values of the community by upholding the stated General Plan policies and not the repair of Rheem Boulevard. She pointed out that the Town Engineer had previously stated publicly during prior public hearings before the Planning Commission that the tie-back system would work well. She presented the Town Council with copies of the Planning Commission meeting minutes reflecting those discussions.

Phyllis Schultz, Moraga, stated that she was experienced with landslides and water issues which were still continuing in the Campolindo area. She understood that no building on the ridges was to be permitted and since the area was prone to slides she questioned allowing any development. She also questioned filling the creek and suggested it was poor engineering. She asked the Town Council to reject the project.

Mike Larkin, Moraga, commented on the cost estimates for the tie-back repair, which had appeared to have doubled since the last public hearing discussions. He asked whether or not there had been any peer review of the three geotech alternatives. He suggested that a smaller development, possibly 15 lots, on the hill adjacent to Rheem Boulevard would still generate payment to the Town to be used to repair Rheem Boulevard. He spoke to the Gateway and Palos Colorados projects and the revenue they generated for the surrounding communities. Mr. Larkin also commented on the fact that the Town may also realize funds from the development for a keyway system with fewer lots. He suggested that the project should never have been tied to the repair of a portion of Rheem Boulevard. He asked the Town Council to reject the proposal. He presented the Council with copies of the cost estimates he referenced.

Lynda Deschambault, Moraga, expressed concern with the wetland permitting process, conflict with the open space and ridgeline grading ordinance, and land use decisions being based on the Town budget for road repairs. She commented on the fact that the RWQCB had stated it was not happy with the project and spoke to the agency's permitting processes. She questioned the Town Council possibly approving a project that was not supported by a State agency. She emphasized that the ridgelines were to be protected. The Town Council had previously approved a Grading Ordinance where slopes over 25 percent slope would not be provided with a grading permit, except with specific direction from the Town Council or in the event of an emergency. In this case, there was no emergency and the Town Council should not direct any grading or development in the area. She suggested that this was not the way to deal with the needed road repairs and the Town should consider grants or bond measures to deal with the maintenance of the Town's roads.

John Sala, Lafayette, pointed out the number of people who had spoken in opposition to the project. With that in mind, he questioned the Town Council's consideration of the project.

Ms. Kenyon advised, when asked, that the Town Council may consider a continuance of the public hearing if that was the direction of the Council. The public hearing may be closed at this time and re-opened at a future date at the discretion of the Council, but which should be considered after the rebuttal period. In the event action was taken this evening and the only issue brought back was a formal resolution or minute order for final clarification, public comment on that decision was not technically required other than public comment allowed on the items on the meeting agenda. The minute order or resolution could be tailored based on the decision made. If the hearing was continued and a modified proposal was proposed, which in essence presented new information that had not been fully reviewed, she recommended that public comment be taken on the modified project.

APPLICANT REBUTTAL:

Mr. Armstrong stated that the project had been approved unanimously by the Planning Commission, recommended by Town staff, and through analysis found to be in conformance with all provisions and policies of the General Plan, particularly every policy in the General Plan at issue in the project. He emphasized that protection did not mean prohibition. Measure K had proposed the prohibition of development in the southern ridges and filling in the creek, but which had failed at the ballot. He explained that the project had not been at any stage of the process, as evidenced during the Planning Commission hearings and meeting minutes, as an exchange for development for a full repair of Rheem Boulevard.

As to the appellant's visual consultant's presentation of information Mr. Armstrong disagreed with the analysis in that the project had been effectively analyzed. If the appellant's consultant would like to meet with the developer's consultant he stated that could be done and if they wanted a photo taken in a different way that could be done. He noted that the trail view, viewed through the saddle, was Lot 13 and if that was not there, Lot 23 would be visible and if Lot 23 was not there, Lot 24 would be visible. The views prepared by his consultant had shown Lot 13 and the homes behind it which were single story and not visible. The 1,500 foot distance could not tell that fact. He was comfortable with any further review with respect to the photo simulations his consultant had provided. If a wire frame video simulation from that location was desired based on the photographic documentation from the USGS, that could be done.

Mr. Armstrong was comfortable with the integrity of the work that had been prepared. If that meant a continuance to accomplish, that would be acceptable to him. He added that he would like direction from the Council as to the no-rooftops-from-Rheem-Boulevard issue. If of strong interest, he would follow the direction of the Council.

APPELLANT REBUTTAL:

Bill Vaughn, Moraga, disagreed with the applicant's assessment that the Planning Commission had voted unanimously and that the project was consistent with all policies and procedures of the General Plan as evidenced in the comments made by Commissioners during the Planning Commission public hearings and meeting minutes. He read into the record some of the statements made by members of the Planning Commission to support his argument. He suggested that the project had been a road project all along and worthwhile of a trade-off in order to feel comfortable with the inconsistencies with the General Plan.

Mr. Vaughn also questioned the photo simulation presentation that had been presented by the applicants, with recent changes to the positions which he found to be irregular, views of the pads at lower elevations than they had before, the suggestion that the ridge would be graded more severely than before, the lowering of the pad elevations giving the illusion the homes would be screened by a ridge that would no longer be in existence, therefore confusing the

issue. He suggested that the project stuck out more than anything else in recent memory because of the pursuit of funds to repair Rheem Boulevard.

Mr. Vaughn urged the review of past projects. He noted that there had only been three projects approved or considered for approval by the Town Council over the past 15 to 20 years in open space under MOSO or non-MOSO lands. He cited the details of each of those projects as it related to the proposed project noting that the projects would have no homes on the ridges, no filling of the creek, and no roads slashing the face of the ridges, all of which had been approved or considered prior to the imposition of tighter restrictions in the revised General Plan. The tighter restrictions in the General Plan were to be imposed on new development which included the proposed Rancho Laguna II project.

**ACTION: It was M/S (Trotter/Harpham) to extend the Town Council meeting to 12:00 A.M.
Vote: 3-0. (Metcalf and Chew absent)**

Ms. Kenyon explained that in the event any of the three stabilization plans were adopted and encroachment onto an adjacent land was refused by the landowner, the Town may not impose that obligation on the developer if, in fact, they were not in control of the property being asked to build upon. While the power of eminent domain could be imposed, typically a fair market value negotiation would occur. In the event a purchasing landowner decided on their own that whatever biological mitigation features occurred on their property, as an example, trees were removed, conditions of approval could be imposed through the formation of a Homeowners' Association (HOA), which could monitor preservation of whatever habitat was of concern. The Town could also become a beneficiary of the CC&Rs and enforce the regulations itself.

As to the issues with the Town's regulatory and permitting process, Ms. Kenyon stated that the State did not have control over what the Council may or may not permit. The issue was around what the applicant needed from the State in order to develop, such as the RWQCB as an example, and whether or not the applicant received that entitlement from the State. The State did not have control over the Town's approvals although if a State agency did not grant the applicant's permit, the applicant would not be able to develop. She referenced the Palos Colorados development and how the resource agencies in that case had delayed that development because of the required permitting processes as part of the Town's approval. She was unaware whether or not the RWQCB had formally denied a permit for the project.

PUBLIC COMMENTS CLOSED

Although the public hearing had been closed by the **Vice Mayor**, she allowed the appellants to respond to a request for a continuance as it related to the discussion of the photo simulations.

Ms. Sos advised that the appellants were not supportive of a continuance based on photo simulations on homes that should not be on the ridge in the first place.

The Town Council deliberated on the Rancho Laguna II Appeal and offered the following comments and direction to staff:

Councilmember Trotter:

Expressed his appreciation to everyone for their testimony and patience during the public hearing including the applicants, appellants and Town staff. He spoke to the history of the development and the fact he would make his decision based on the facts and the law, referenced the background and policies regarding development as contained in the Town's 2002 General Plan and the constitutional right of a property owner to not be deprived of the economic viable use of the property, and suggested that the Rancho Laguna II project which would place 12 homes on the ridgeline was not

consistent with the principles and policies of the 2002 General Plan, specifically Guiding Principles 1 and 2, and Policies CD1.1, CD1.3, and CD1.5. He therefore supported upholding the appeal and remanding the project back to the Planning Commission or to Town staff with specific direction as to how the project should be reconfigured so that it could be approved by the Town in the not-too-distant future. He suggested that Lots 7 through 13 and Lots 23 through 27 on the ridgeline "B" Drive and "B" Court were inconsistent with the Moraga General Plan and must be eliminated from the project. Lots 14 through 22 on "C" Court which were visible from the bluffs and located off the ridgeline, based on the administrative record and language in the General Plan, were not inconsistent with the General Plan and therefore he would vote to deny the appeal in part so far as it was directed to those lots. He had heard no testimony that any of those homes could not be built based on a geotechnical perspective. Lots 1 through 6 located in the upper valley area, was the area of the property where new residential development should occur and be concentrated per Policy CD1.1 of the General Plan since the lots would be located next to an existing road, have few or no impacts on distant viewsheds, no ridgeline impacts and the terrain was level and gently sloping and previously graded in that area.

He recognized that the applicant had proposed previous plans with 10 homes in the upper valley area and to ensure that action taken by the Town did not violate the developer's economic viable use of the property, he would support the 10-lot alternative proposal for the development of the upper valley area resulting in a 19-lot subdivision overall. He was also open to additional homes beyond the 10 lots previously proposed by the applicant in the upper valley area if the appropriate and site specific geotechnical findings to support such development could be made. In that scenario, the upper valley buttress fill method to repair Rheem Boulevard would be taken care of by the applicant by constructing the homes in that area. With that approach, the amount of grading for the lower valley buttress fill would be significantly reduced. It would not be necessary to grade for any homes on the ridgeline. The project would not generate enough grading material to fill in the natural lower creek area or construct the lower buttress fill along Rheem Boulevard, the lower creek would be left in its natural state for the time being upholding General Plan Policy OS.3.5, and it would avoid a fight with the resource agencies to fill in the creek and destroy the riparian habitat and lower fill area. Further, the developer would not have to take on the cost of importing fill and repair the lower section of Rheem Boulevard, although the applicant could be asked to pay a fair share of repairing Rheem Boulevard. By putting off the decision as how to best repair Rheem Boulevard, the Town would have the opportunity to consider the cost and benefits and environmental impacts of repairing the lower portion of Rheem Boulevard including the proposed tie-back solution.

He questioned whether or not to re-think the location of any new road required to serve the nine homes proposed for "C" Court as proposed by the applicant which would require some grading and other environmental impacts on the creekbed and adjacent riparian areas, and would likely encounter resistance from the resource agencies. He suggested that the applicant and Town should consider relocating that road to the existing access road up to Fayhill Reservoir above the upper valley area where the new homes would be built, which would not infringe on creek or riparian habitat areas, was already graded, and could be widened and paved at reasonable cost and configured to serve the new homes on "C" Court. He suggested that if the appeal was upheld in part, as he had proposed, the project should be remanded back to the Planning Commission or to Town staff, consistent with the direction received from the Town Council.

Councilmember Harpham:

Stated that he had read all of the information that had been presented as part of the appeal and had listened to all oral statements. He suggested that the analysis should start with property rights in that the applicant owned the property and under the Town's laws was not forbidden the use of the property and the ability to build on it. He agreed with the staff analysis and the Planning Commission's determination that the project was consistent with the General Plan. He disagreed that the term "protection" meant "prohibit." He disagreed with Councilmember Trotter's recommendations to change all road configuration and concentrate 19 lots in the upper valley, which in effect would direct the applicant to start all over again on a process that had gone on for many years. He suggested that the homes on the lots were proportional and the project would include open space, mitigation and a Geologic Hazardous Abatement District (GHAD). He questioned imposing so many road blocks where the project could not be built, which he found to be an injustice.

He recognized the staff recommendations as to how to change and further mitigate the project, as the applicant had also proposed, which mitigations he would be open to discuss. He supported a denial of the appeal.

Vice Mayor Mendonca:

Recognized the debate in the use of the terms "protect" versus "prohibit." In her opinion, the term "protect" could also mean "prohibit." She noted that she had been a Measure K advocate and although Measure K had not passed she suggested that there were merits to both arguments. She would like to see the current plan be modified or revised to ensure that no future homes on "B" Drive or "C" Court would be visible from any scenic corridor or from the Lafayette-Moraga Trail. She suggested that modification would be viable, per letters received from the public, and that no building be allowed on the ridgeline. She opposed the use of trees as camouflage. She would like to see views of the ridgelines be protected and not merely be "decorated" with landscaping, essentially preserving and protecting the natural hillside. She would also like to see the applicant and staff work on the geogrid solution including financing. She liked the geogrid solution which would protect the natural creek.

She did not favor sending the project back to the Planning Commission, suggesting that the Commission had done its job as part of the process. In her opinion, the project should remain with staff and staff should work with the applicant. She was also not opposed to relocating some of the higher elevation homes to the lower valley area, as reflected in an older version of the Rancho Laguna project.

**ACTION: It was M/S (Harpham/Trotter) to extend the Town Council meeting to 12:30 A.M.
Vote: 3-0. (Metcalf and Chew absent)**

Councilmember Harpham:

Agreed with the comments made by the Vice Mayor in that if a change was possible so that there would be no homes as described visible in the scenic corridor and the Lafayette-Moraga Trail, and if staff and the applicant were willing to work to find a geogrid solution, as described by the engineers including financing, he would be in favor of not sending the project back to the Planning Commission. If it were possible to have a configuration that would change, not destroy the plan, he would support that.

Ms. Kenyon stated that it appeared as if the Council was leaning towards a modified project. In order for the Town Council to modify the project, the appeal in part would have to be granted. She recommended that the Council give direction to staff to work with the applicant to come up

with a modified plan along the lines the Council majority so chose. She did not recommend action be taken on the appeal at this time, with a modified plan to be brought back to allow everyone the opportunity to comment, which meant that the public hearing would be reopened. She noted that environmental review would also have to be conducted appropriately and if an addendum was necessary to the existing FEIR, as an example, that would have to be done. She would like the Council to either consider a unanimous vote or a two-person vote.

Ms. Kenyon commented that given the Council was only comprised of three members with two members recused, action could be taken through resolution which she would normally advise for a land use decision which would require a unanimous vote. If a unanimous vote was not possible, a majority of the quorum could be acceptable but which would have to be done through minute order and not a resolution. She asked the Council to advise whether or not there was unanimous direction or two Councilmembers providing the same direction.

Councilmember Trotter restated his position and his opposition to any development on the ridgelines. He could not support the direction recommended by the Vice Mayor.

Vice Mayor Mendonca was not comfortable saying no without exploring the opportunities she had outlined. She would like to see the homes be invisible and pointed out if they were they would not be on the ridgeline.

Councilmember Harpham emphasized that he was opposed to remanding the project back to the Planning Commission.

On the discussion, Ms. Kenyon suggested that there was direction that could be given. She recommended a motion to continue the appeal with direction to staff to work with the applicant to modify the project as outlined by the majority of the quorum, which would be brought back at a future date.

ACTION: It was M/S (Harpham/Mendonca) to continue the Appeal of the August 17, 2009 Decision of the Planning Commission Approving the Rancho Laguna II Residential Development Proposal with 27 lots, per Resolutions Certifying the Final Environmental Impact Report (Final EIR) and Approving a Conceptual Development Plan (CDP) and Conditional Use Permit (CUP), with direction to staff to work with the applicant to modify the plans, as discussed. Vote: 2-1. Noes: Trotter. Mayor Chew and Councilmember Metcalf recused.

XIII. ADJOURNMENT

ACTION: It was M/S (Harpham/Trotter) to adjourn the meeting at 12:10 A.M. Vote: 3-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Ken Chew, Mayor