

**TOWN OF MORAGA  
TOWN COUNCIL REGULAR MEETING**

**January 26, 2011  
MINUTES**

**7:00 P.M.**

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

**I. CALL TO ORDER**

The regular meeting was called to order at 7:03 P.M. by **Mayor Karen Mendonca**.

**ROLL CALL**

Councilmembers present: Mayor Karen Mendonca, Vice Mayor Michael Metcalf and Councilmembers Ken Chew\*, Howard Harpham, and Dave Trotter  
\*(Councilmember Chew arrived at 8:56 P.M. and was seated in the audience until he joined the Council at the dais upon the completion of the Public Hearing.)

Councilmembers absent: None

**II. PLEDGE OF ALLEGIANCE**

**Councilmember Trotter** led the Pledge of Allegiance.

**III. SPECIAL ANNOUNCEMENTS**

There were no special announcements.

**IV. PROCLAMATIONS AND PRESENTATIONS**

**A. Proclamation Declaring January 2011 as National Blood Donor Month**

**Mayor Mendonca** read into the record the proclamation declaring January 2011 as National Blood Donor Month.

**PUBLIC COMMENTS OPENED**

Lisa Eversole, representing the American Red Cross, expressed her appreciation to the Town Council for the proclamation and for the support from the Moraga community. She highlighted the benefits of blood donation, and detailed the Blood Drives that had been scheduled for March in Moraga. She reported that information on American Red Cross Blood Drives was available at the American Red Cross website at [www.redcrossblood.org](http://www.redcrossblood.org).

**PUBLIC COMMENTS CLOSED**

**V. PUBLIC COMMENTS AND SUGGESTIONS**

Beau Behan, California Independent Film Festival (CAIFF), announced that the 13<sup>th</sup> Annual California Film Festival would run from January 28 through February 3, 2011 at the Rheem Theatre. He encouraged everyone to attend the festival and provided a brochure of the program for festival events to the Town Council. Additional information could be found at [www.caiff.org](http://www.caiff.org).

## VI. ADOPTION OF THE CONSENT AGENDA

### A. Approval of the Consent Items

No Consent Agenda items were removed from the agenda.

**Mayor Mendonca** commented on the Proclamation for Saint Mary's College. She noted that Saint Mary's College had advanced to the second round in the bid process to host a Presidential Debate in 2012 and that Tim Farley, Director of Community and Government Relations at the College, would be requesting similar proclamations of support from the remaining cities in Contra Costa County.

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

<b>ACTION: It was M/S (Trotter/Metcalf) to approve the Consent Agenda, as shown. Vote: 4-0-1. Absent: Chew</b>
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- |  |          |
|--|----------|
| 1) Accounts Payable Claims for 01/14/11 (\$102,950.26)                                   | Approved |
| 2) Proclamation of Support for Saint Mary's College's Bid for a 2012 Presidential Debate | Approved |

### B. Consideration of Consent Items Removed for Discussion

No Consent Items were removed for discussion.

## VII. ADOPTION OF MEETING AGENDA

#### PUBLIC COMMENTS OPENED

There were no comments from the public.

#### PUBLIC COMMENTS CLOSED

<b>ACTION: It was M/S (Metcalf/Harpham) to adopt the Meeting Agenda, as shown. Vote: 4-0-1. Absent: Chew</b>
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## VIII. REPORTS

### A. Mayor's and Councilmembers' Reports

**Mayor Mendonca** - Reported that she and the Town Manager had attended a session at the State Capitol where she had met Governor Brown; she had attended a MYIC meeting on January 13; and she encouraged everyone to participate in the

California Independent Film Festival on January 28 through February 3. She also reported that the Saint Mary's College Lifelong Learning Advisory Board had met on January 26 with a review of proposed community outreach, and the Saint Mary's College Sesquicentennial Committee had met and created subcommittees where Councilmember Harpham had been chosen as her alternate to the committee.

**Vice Mayor Metcalf** - Reported that the Contra Costa Transportation Authority (CCTA) had its annual rotation where he had been selected as the alternate with the City of Lafayette representative; ridership for the School Bus Program was down for 2011; and the Revenue Enhancement Community Outreach to Neighborhoods (RECON) Committee had recently met to discuss its presentation to the Town Council scheduled for February 16.

**Councilmember Harpham** - Reported that RECON had discussed the Town's economic problems.

**Councilmember Trotter** - Reported as the Chair of the Contra Costa Mayors' Conference he had participated in a meeting with its Executive Committee and Sacramento Delegation to discuss local government concerns regarding the Governor's proposed budget, particularly the taking away of redevelopment agencies throughout the State. The next Mayors' Conference would include an agenda item to authorize a letter to the Governor asking him to reconsider his proposal regarding redevelopment agencies.

- C. Town Manager Update – Town Manager Jill Keimach reminded the Town Council that the Traffic Safety Advisory Committee (TSAC) had two vacancies which would remain open until filled. Interested applicants were encouraged to submit applications. She encouraged members of the audience to sign up on the e-mail list in order to receive the About Town newsletter.

## IX. DISCUSSION ITEMS

There were no discussion items.

## X. PUBLIC HEARINGS

- A. Public Hearing and Consideration of an Appeal of the August 17, 2009, Decision of the Planning Commission Approving the Rancho Laguna II Residential Development Proposal with 27 single-family 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, 2009, November 4, 2009, January 27, 2010, March 10, 2010, May 12, 2010, May 26, 2010, October 27, 2010 and January 12, 2011*).

**Vice Mayor Metcalf** recused himself from the discussion due to the proximity of his residence to the subject property. He stepped down from the dais but remained in the Council Chambers.

Town Attorney Michelle Kenyon clarified for the benefit of the audience that if the conflict of interest was personal in nature, such as a personal residence, the conflicted Councilmember could sit in the audience and speak to the item but could not participate in the Council discussion. Any other conflict would require that the Councilmember leave the room although he or she could speak to the item during public comment.

Reporting on ex-parte communications, **Councilmember Harpham** advised that he had spoken on the telephone on three occasions with the applicant Mark Armstrong, and one time with the appellant Suzanne Jones.

**Councilmember Trotter** reported that he had met with the applicant Mark Armstrong and had conversations with the appellant Suzanne Jones.

**Mayor Mendonca** reported that she had telephone conversations with the applicant Mark Armstrong and the appellant Suzanne Jones. She then identified the Rules of Order for the conduct of the meeting and the presentation timeframe for both the applicant and the appellants including the rebuttal portion of the meeting.

Planning Director Lori Salamack reported on the background of the appeal of the August 17, 2009, Decision of the Planning Commission Approving the Rancho Laguna II Residential Development Proposal with 27 single-family lots, per Resolutions Certifying the Final Environmental Impact Report (Final EIR) and Approving a Conceptual Development Plan (CDP) and Conditional Use Permit (CUP). She advised that the matter had been considered by the Town Council on several occasions over the past 17 months and the Planning Commission over several years prior to its approval in 2009. During each public hearing, suggestions had been made from interested persons for revisions to the project with the applicant having responded with revised plans.

Ms. Salamack explained that during the October 2010 meeting, it had been recommended that "A" Way be eliminated from the plan and access provided along the approximate route of the existing fire trail. Since the October hearing the applicant had reconfigured the plan and submitted a new plan set to the Town in December 2010. In addition, the applicant recently offered modification to the plan to address ongoing concerns with development along the proposed "B" Court. She added that on Monday, January 24, 2011, staff had recommended approval of the December 2010 plan with modifications proposed on Monday January 24, 2011. The current plan called for Lots 7, 8, and 9 to be relocated away from "B" Court to "E" Street adjacent to Lot 25. This revision would result in a more compact development footprint in the area previously identified for development, and the area previously identified for the development of Lots 7, 8, and 9 would be preserved.

Ms. Salamack commented that after consulting with the applicant and the appellant group, staff had prepared a new condition that was the final staff recommendation for the project. A copy of the draft condition had been provided to the applicant, a representative for the appellants, and the Town Council. She presented the new condition and explained the staff reasoning for its recommendation. A Minute Order with the new draft condition identified as Condition No. I.3 had been added to the conditions of approval, to be addressed prior to the approval of the General Development Plan (GDP). The new condition was identified as follows:

*Prior to approval of the General Development Plan (GDP) and Precise Development Plan (PDP) the Planning Commission shall find each plan in substantial compliance with the December 16, 2010 Conceptual Development Plan (CDP) with 19 lots in the upper development area and 8 lots in the upper valley area as modified by the January 24, 2011 plan, which substituted Lots "A," "B," and "C" in the location as shown for Lots 7, 8, and 9. In addition, the GDP shall incorporate the modifications to "B" Court that are represented in the January 24, 2011 plan and made possible by the relocation of Lots 7, 8, and 9. Provided however, in the GDP, Lot 10 shall be relocated as a slope pad or at the applicant's discretion, a split pad to the previous location in the December 16, 2010 plan. In the GDP Lot "A" shall be relocated 50 feet further south than shown on the January 24, 2011 plan and the setbacks for Lots "A," "B," and "C" and Lots 17 through 25 shall be reduced to 15 feet, 10 feet on one side and 5 feet on the other.*

*Prior to approval of the PDP the Planning Commission shall determine that the deeper cut on "E" Street in the road segment north of "A," "B," "C" has been reduced to the extent reasonably feasible and still provide for final grading plan that has balance cut and fill for "E" Street grades in that road segments do not exceed 16 percent and for "E" Street vertical curves in the road segments and "B" Court and "C" Court intersections that meet the normal standard of care for engineering design. Two-story homes with a maximum height of 28 feet are allowed on Lots "A," "B," and "C" provided applicant conforms to the satisfaction of the Design Review Board (DRB) during the design review process for those homes that rooftops will not be visible from Rheem Boulevard or from the Saint Mary's Road Lafayette/Moraga Trail locations.*

Ms. Salamack explained that staff had reviewed the proposed conditions with the applicant and a representative for the appellant group in an attempt to address outstanding issues. The appellant group remained concerned with Lot 10 and was interested in either its elimination or relocation elsewhere within the subdivision. Staff did not support the relocation of Lot 10 to "D" Drive because the slope pad on "D" Drive appeared to address the concern of the appellants making relocation unnecessary. Also, adding a lot to "D" Drive would increase the development activity at that point making it more visible to Moraga residents. Staff's judgment was that the slope pad was the better solution for Lot 10. Staff had requested two modifications to "E" Street which the applicant had agreed to make. Pursuant to the modifications received from the applicant on January 24, 2011, adjustments had been made to the width of the lots and in the shape and relocation of Lots 24 and 25 where the extent of development along "E" Street had been reduced by 80 feet. The applicant had also recently agreed to a further reduction in the extent of development along "E" Street by 50 feet.

In response to the Council, Ms. Salamack advised that the finalized version of the new condition as detailed by staff had been provided to the applicant and a representative for the appellant group that afternoon. She also clarified the design review process for two-story homes as outlined in the condition.

#### APPELLANTS:

Suzanne Jones, representing the appellant group, summarized the appellants' remaining concerns with the Rancho Laguna II development. She referenced recent correspondence from Visual Impacts Specialists, the appellants' visual analysis expert, who had opined that the Environmental Impact Report (EIR) had not analyzed the visual impacts from public trails or open spaces. At this time she submitted excerpts from two Bureau of Land Management (BLM) documents that dealt with visual resource management and USDA Forest Service Procedure Management which provided the criteria used by professionals to evaluate significant visual impacts, which had shown that trails and trail users were always afforded the highest concern. She stated that there was no California Environmental Quality Act (CEQA) analysis to date that had analyzed the visual impacts to public trails and suggested the EIR could not be certified absent that analysis. She added that there had been responses to the letter from Visual Impacts Specialists to the appellants although the letter had not been included in the Council packets or posted online on the Town's website.

Ms. Jones also submitted a copy of the East Bay Regional Park District (EBRPD) Master Plan for the EBRPD Existing and Potential Park Lands and Trails, which had shown the old Moraga Ranch Trail and the EBRPD trail through the Palos Colorados Regional Trail having been identified in that plan. In addition, she suggested that the EIR alternatives analysis had not analyzed an adequate range of project alternatives but had assumed that the residential development on the adjacent property was the only financing method for road repair.

Ms. Jones suggested that the EIR also included a flawed analysis of the environmental impacts of the valley buttress fill alternative. She suggested that the EIR should not be certified until those conclusions had been stricken from the EIR. She added that the appellants remained concerned with the CEQA process which had led to the valley buttress fill alternative, with little or no analysis of the potential environmental impacts of the geo-grid reinforced buttress fill method to demonstrate that it was a reasonable alternative.

Bill Vaughn, a member of the appellant group, reiterated prior testimony that the development was not consistent with the General Plan, particularly Community Design Element 1.5. He disagreed that the project would protect the ridgelines and suggested that the modification to the Minute Order that had been presented to the Council was not a protection of the ridgelines. He pointed out that Rheem Ridge was a ridgeline that must be protected from development under the requirements of the General Plan. He added that while the most recent modifications to the plan would place the homes closer together, the amount of grading of the crest of the ridgeline would be increased. He commented that while protection of the ridgelines would allow some development in the area it did not allow the flattening of the ridgeline but sensitively placed development on the ridgeline consistent with the existing land forms and protection of the ridgelines. He asked for greater clarification on that issue from the Town Council including the justification for the project.

In response to Council comments, Ms. Jones affirmed that she had just received the new condition identified by staff that afternoon but had not had the opportunity to discuss it with the remaining members of the appellant group. In response to the condition itself, she commented that the appellants had met with Town staff and the applicant to review the December 16, 2010 plan. After that meeting, the appellant group reviewed the plan and addressed their concerns with Lots 7 through 10. At that time, the appellants had proposed that Lots 7, 8, and 9 be moved down to "D" Drive while preserving the lot sizes and still making room for three lots. The appellants saw no way to have all four lots on "D" Drive and had later asked the developer to consider moving Lot 10 to the east and down off of the ridgeline. The applicant seriously considered that alternative but had rejected it. The applicant then proposed an alternative identified as the plan now being proposed. She suggested that by placing Lots "A," "B," and "C" as now shown on the applicant's plans, the grading on "E" Drive would increase dramatically with the width of the cuts substantially wider as compared to the December 16, 2010 plan.

Ms. Jones suggested that if the appellants were to accept the additional grading and removal of ridgeline material there was a straightforward and simple way to offset that increase elsewhere on the ridgeline by removing Lot 10 off of the ridgeline completely and relocating it down to "D" Drive. Such modification would automatically preserve an additional 100 feet of the ridgeline which was important to the appellants' argument and would be in compliance with the ridgeline policies of the General Plan. She stated that the appellants did not care where "D" Drive came into the project; whether on Rheem Boulevard or on "E" Street. She suggested that the simple way to accommodate an additional lot and not change the footprint would be to make each lot a bit narrower and make room for a ninth lot. She suggested it would be fine to add Lot 10 beyond the north end next to Lot 27.

Ms. Jones added that during the October 27, 2010 Town Council meeting, a Minute Order had been distributed which had stated that Lots 23 through 26 in the location where Lots "A," "B," and "C" at that time would be relocated would be either eliminated from the project or a minimum of two lots could be moved down to "D" Drive. At that time there were seven lots on "D" Drive. She reiterated that it would be feasible to relocate Lot 10 off of the ridgeline and along "D" Drive and that it would be consistent with the direction the Town had offered in October 2010.

## APPLICANT:

Mark Armstrong, Project Manager, Rancho Laguna II, referenced the many modifications that had been made to the project during the Planning Commission and Town Council meetings. He emphasized that the Planning Commission had conditioned the preservation of the wetland swale located on the north side "D" Drive where a lot had previously been located and later eliminated. If adding another lot in that area, he suggested that could open the door to mitigation of the wetland swale. He noted that he had been fine with the December 16, 2010 plan but supported the staff recommendations as an appropriate compromise. He commented that Lot 10 had nothing to do with the Minute Order from the October 2010 Town Council meeting. He pointed out that the Town Council had never expressed any concern with Lot 10. In its present location, Lot 10 was not on a ridgeline but was off the crest of the ridge area and in the same location as it had been when Town staff found it to be consistent with the General Plan.

Mr. Armstrong explained that the revised plan was .6 of an acre less than the disturbed area in terms of lots and roads as before with much of that acreage made up with the removal of a portion of "B" Court and the street itself. He acknowledged that the project was now more compact. He saw no justification nor would he support the removal of Lot 10 as part of the staff recommendation. He commented that the area that most Moragans would see traveling along Rheem Boulevard would be "D" Drive and pains had been taken through the Planning Commission process to modify the plan to ensure that the impacts were less than significant. He added that with the modifications to the plan, there would be no significant visual impacts. Adding more units in that area would result in a more crowded condition where currently a 2,500 square foot single-story home could be accommodated comfortably on those lots. He noted the value of eight lots in that area of "D" Drive as opposed to nine crowded lots. He pointed out that a two-story home could not make the finding of less than significant.

When asked by the Council, Mr. Armstrong reiterated that he would not support the removal of Lot 10 from the project given that there was no substantive reason to do so, and that it had not been a concern of the Planning Commission or Town staff, in an environmental or General Plan context. He emphasized that there had been no such revision recommended by Town staff as necessary to comply with the General Plan. He emphasized the importance of Lot 10 in its location and stated that placing it down below on "D" Drive made no economic sense. In addition, the applicant had made efforts to address all mitigation measures and assistance to the Town in terms of contributions and participation in improving the project management for the lower valley buttress fill.

## PUBLIC HEARING OPENED

Malcolm Sproul, Moraga, commented that he had spoken many times on the proposal and his objection to ridgeline development had not changed nor had his opinion that the development was not in conformance with the General Plan. He thanked all parties for the process that had taken place. Speaking to the new condition of approval, he suggested it would make for a better site plan and he agreed with the staff report on that issue. As to the necessary grading for "E" Street as shown, he suggested it should be reduced. He questioned how the grading could be minimized to pull in the width of the cut on the ridgeline. He suggested that Lot 10 should be relocated to ensure the best planning principles, adding that the economics of that lot should not be a reason for the Town Council to make a decision.

Mr. Sproul spoke to the conditions of approval, specifically Condition 5.11 regarding roadways, and asked that the condition be amended to require rolled curbs along "E" Street unless there was a legitimate reason not to do that. He provided information on the Lafayette/Moraga Trail

suggesting that the information provided by staff had not accurately provided the necessary information on the trail. He also offered his recommendations for reducing the grading on "E" Street and how Lot 10 could be accommodated along "D" Drive.

Lynda Deschambault, Moraga, questioned the bartering of moving lots with a lot remaining on the ridgeline, private meetings and last minute conditions, and potential development and cuts of the ridgelines. She believed that the Town Council had been elected to protect the Town's ridgelines and to enforce the General Plan. She expressed her hope that a longer term solution would be considered given that the project would impact many locations in the Town.

Theresa Onoda, Moraga, echoed the comments made by Ms. Deshambault. She was uncertain how the Town Council would resolve the situation but emphasized that Moraga residents valued open space and ridgelines. She asked that the ridgelines be preserved.

Phyllis Schultz, Moraga, questioned the potential impacts to existing Moraga schools and traffic impacts. She also commented on the fact there was only one grocery store in Moraga and the condition of the Town's roadways which should be considered before any expansion was approved. She opposed any damage to the Town's existing ridgelines and impacts to the existing wildlife.

#### REBUTTAL:

Mr. Armstrong emphasized that the project had been evaluated based on planning principles and fairly applying the General Plan as it currently existed and as it had been interpreted properly by Town staff. He suggested that there was no reason in the General Plan, environmentally, or any other reason to remove Lot 10 or place it elsewhere on the site. He emphasized that any changes to Lot 10 would create other impacts. Adding more lots would impact the wetland swale, placing a lot below the "D" Drive entry would have to be flattened out and extending out into the creek would result in other impacts and was something that had not been supported by the public. Visual quality effects would also result with such modifications including the widening of "D" Drive. He suggested that the eight-lot plan along "D" Drive would meet the criteria for providing a visually appropriate location along the scenic corridor with Lot 10 in its proposed location consistent with the General Plan and planning principles. Placing an additional lot on "D" Drive would also require a Statement of Overriding Considerations. He noted that the lots further to the north on "D" Drive would be two-story homes identified as Lots 26 and 27. The lot sizes would be 90 feet in width with the exception of Lot 6 which was slightly larger.

Mr. Vaughn suggested that all of the lots along the ridge were in violation of the General Plan. The relocation of Lot 10 would spare at least another 100 feet of the ridgeline and would be consistent with the goals of the Minute Order. As such, he suggested that the relocation of Lot 10 would be appropriate. He acknowledged that there were issues with respect to moving any of the lots, and pointed out the constraints due to the topography of site. He suggested there were too many lots regardless of the location, and that the Town's values and policies should be taken into consideration not maximizing the profitability of the project.

Ms. Jones added in terms of the wetland swale at the north end of "D" Drive that a lot could be added adjacent to Lot 27 and would not add to the already identified impacts to the wetland swale.

#### PUBLIC HEARING CLOSED

**Mayor Mendonca** declared a recess at 9:12 P.M. The Town Council meeting reconvened at 9:22 P.M. with all Councilmembers present, recused or absent, as shown.

**Mayor Mendonca** reported that **Councilmember Chew** had arrived at 8:56 P.M. and had been sitting in the audience, not at the dais.

Ms. Salamack spoke to the issue of Lot 10. While she had hoped there would be some agreement between Town staff, the applicant, and the appellants prior to the public hearing, an agreement could not be reached. She suggested that there were merits to both sides of the discussion although in the work submitted by the appellants to the Town early in the process, identified as Attachment F-2 to the staff report, a diagram for Alternate Scheme D and a modified "B" Court with Lots 7, 8, and 9 relocated, Lot 10 was in the location where staff recommended it remain. Staff supported that concept which was the reason for the staff recommendation for a sloped in addition to a stepped pad, which was consistent with what had previously been submitted. She commented that there had been no evidence presented by the appellants as to why that would not work. As to the relocation of Lot 10 to "D" Drive, while technically possible, based on her judgment the lots would be better served as larger, wider pads since they would be single-story construction and would not have rear yards that could be utilized by the occupants.

Town Planning Consultant David Storer clarified the issues related to the Draft EIR, Final EIR and its preparation, and the CEQA Statement of Findings in the Minute Order. He referenced Attachment I to the supplemental staff report as it related to the viewshed questions and where it had been confirmed the Draft EIR had been prepared subject to certain criteria and which determined that the visual impacts would be less than significant. The Town Council had been provided with his e-mail response on the aerial photographs regarding the impacts to the identified trails. He added that the alternative analysis identified in Attachment 7 had addressed the 27-lot project and the CEQA findings and statements.

Ms. Salamack again spoke to the issue of Lot 10 and explained that she had not considered profitability or litigation when considering a recommendation to the Town Council. She acknowledged the concerns being expressed with Lot 10 and suggested that those concerns could be addressed as suggested in the draft conditions.

Town Attorney Kenyon clarified that placing an additional lot on "D" Drive would depend on a review by the environmental consultant as to whether or not that would create a significant new impact that would require additional environmental review.

Mr. Storer affirmed that an additional lot on "D" Drive might create an additional significant environmental impact to the intermittent drainage. Placing another lot on the north end of the upper valley area or placing it in the same area as Lots 26 and 27 might result in significant unavoidable impacts. He noted that staff was hesitant with the placement of Lots 26 and 27 where located given the proximity to the wetland area.

Ms. Kenyon affirmed that the Town Council did have the planning discretion, consistent with the General Plan, to place Lot 10 in the upper valley area, although she questioned whether or not the relocation of Lot 10 to an area that had not been considered as part of an existing development plan would create a significant and unavoidable impact. If that was the case, she would recommend not, since additional environmental review would be required. As to whether or not the homes were clustered in the same developed area as what had been reviewed in the EIR, she stated that would not create a new significant impact.

Ms. Salamack pointed out that the development of Lot 10 on the B Court would not be visible. She added that there were General Plan policies with respect to the development of Lot 10, particularly General Plan Policy CD1.5 dealing with development on a hillside and sloped pad.

The Town Council discussed the Rancho Laguna II Appeal and offered the following comments and/or recommendations to staff:

**Councilmember Harpham:**

- Recognized the work done by everyone and suggested that everyone had acted in good faith; and
- Supported a motion approving the recommendations of the Planning Director

**Councilmember Trotter:**

- Acknowledged that the plan had vastly improved but remained flawed;
- Suggested the plan suffered from being inconsistent with the Town's General Plan, particularly General Plan Policy CD1.5;
- Questioned the adequacy of the CEQA documents which continued to refer to "A" Way and which may not have been properly updated;
- Suggested that Lot 10 was still problematic under General Plan Policy CD1.5 and Community Design Element Policy CD1.1, as written;
- Suggested that Lot 10 as currently located off the ridgeline and served by a road on the ridgeline in an area that was not flat or sloping gently would be problematic;
- Recommended that Lot 10 be moved down to "D" Drive;
- Was not concerned that the relocation of Lot 10 to "D" Drive would raise additional environmental issues as suggested by the applicant;
- Suggested that an increase from eight to nine lots on "D" Drive would not result in a significant change; and
- Absent the relocation of Lot 10, as recommended, would not support the project.

**Mayor Mendonca:**

- Recognized the lengthy process with the applicant and appellants working in a positive way and commended all parties including Town staff for their hard work;
- Suggested that the project had vastly improved over past iterations before the Planning Commission and Town Council;
- Was not opposed to the relocation of Lot 10 but pointed out that the present location of Lot 10 with a sloped pad would do what the appellants had initially requested; and
- Supported the staff recommendation related to Lot 10 unless there was information yet to be presented that would support its relocation to the lower area of "D" Drive

**ACTION: It was M/S (Harpham/Mendonca) to grant the Appeal; Certify the adequacy of the Final Environmental Impact Report (EIR) for the 27-lot Rancho Laguna II Project; adopt the Mitigation Monitoring and Reporting Program; and adopt Minute Order No. 01-2011 and its attachment. Vote: 2-0-1. Noes: Trotter. (Councilmember Chew and Vice Mayor Metcalf recused).**

**Mayor Mendonca** thanked everyone for their hard work and comments. She recognized the long process but suggested it had resulted in a better project than had initially been envisioned for the Town.

**Vice Mayor Metcalf** and **Councilmember Chew** returned to the dais at this time.

## **XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION**

**A. Approve the Issuance of the *Report on the Process for Studying and Recommending Policies and Regulations for Medical Marijuana Dispensaries within the Town of Moraga***

Chief of Police Robert Priebe reported that the issue was a combination of zoning and public safety. On March 24, 2010, the Town Council had adopted Ordinance 229 extending Interim Urgency Ordinance 228, prohibiting the opening of medical marijuana dispensaries in the Town of Moraga. As part of the urgency ordinance, he stated that the Government Code required that the Town Council issue a written report describing the steps that had been taken to study the relevant issues and establish policies and regulations for medical marijuana dispensaries within the Town of Moraga, ten days prior to the expiration of the interim ordinance. Staff had prepared a report for the Town Council for review and issuance, if approved. He recommended the issuance of the report, identified as Exhibit A, on February 1, 2011 as required by Ordinance 229.

In response to the Council, Chief Priebe described the background of the Chiefs Association in relation to its participation and input in the report. He affirmed that as part of the recommendation from the report, the growing of residential medical marijuana would not be permitted outside of the home although several ordinances in effect in the State were being evaluated as part of the process in that regard. He reported that he had received one vociferous complaint regarding the outdoor growing of marijuana plants in the Town. He clarified that the intent of the ordinance was not to deny anyone with a legitimate medical marijuana need from accessing medical marijuana if someone chose to grow it indoors. The law provided affirmative defense against arrest. He added that the ordinance was a land use ordinance.

Ms. Salamack commented that medical marijuana dispensaries would be defined in the Health and Safety Chapter of the MMC, and in the zoning code a chapter would be added prohibiting medical marijuana dispensaries in the Town where it would essentially be a prohibited use. She described the process that would be followed in the event of a medical marijuana dispensary application and added that the draft ordinance declared such a facility to be a public nuisance. That process would be further reviewed once the ordinance was brought to the Planning Commission and the Town Council along with review by the Town Attorney.

Chief Priebe commented on the enforcement of the ordinance and acknowledged that the Police Department would be the initial responders to a complaint although once notification was made it would become a civil process. He clarified that the Town was not interested in denying any qualified patient under the act and laws from getting what they were entitled to, based on the law, and in that respect it was prudent and responsible for the Town to regulate such uses in the best interests of everyone. He emphasized that the cultivation of marijuana for sale outside of the medical marijuana exemption remained a prosecutable offense.

**PUBLIC COMMENTS OPENED**

There were no comments from the public.

**PUBLIC COMMENTS CLOSED**

<b>ACTION: It was M/S (Harpham/Trotter) to approve the Issuance of the Report on the Process for Studying and Recommending Policies and Regulations for Medical Marijuana Dispensaries within the Town of Moraga. Vote: 5-0.</b>
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**XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS**

There were no requests for future agenda items.

### XIII. COMMUNICATIONS

There were no communications.

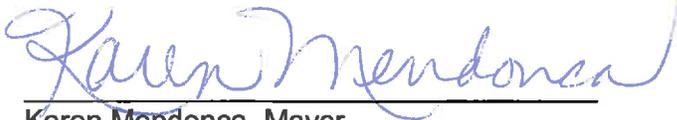
### XIV. ADJOURNMENT

**ACTION: It was M/S (Harpham/Trotter) to adjourn the meeting at 10:31 P.M. Vote: 5-0.**

Respectfully submitted by:

  
Marty C. McInturf, Town Clerk

Approved by the Town Council:

  
Karen Mendonca, Mayor