

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**February 22, 2012
MINUTES**

7:00 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 7:15 P.M. by **Mayor Michael Metcalf**.

ROLL CALL

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

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Councilmember Chew led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations and presentations.

V. PUBLIC COMMENTS AND SUGGESTIONS

Jaime Rich, Lamorinda Alcohol Policy Coalition, introduced a new Coalition project "Lamorinda Listens" with the goal of keeping kids safe and raising awareness in the community to encourage Lamorinda families each month to talk about a specific topic related to the health and safety of young people. She explained that AB 1999 (passed in September 2010) granted limited immunity from prosecution to persons under the age of 21 years for a 911 call to report themselves or another person in need of medical assistance due to alcohol consumption. She added that the Coalition had not been in communication with the local Alcoholics Anonymous chapter although she had been in communication with the Moraga Chief of Police who had attended Coalition meetings.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda items 2, 4, and 5 were removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to approve Consent Agenda Items 1 and 3. Vote: 5-0.

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|----|--|----------|
| 1) | Accounts Payable Claims for 2/10/12 (\$83,993.62); | Approved |
| 2) | Approve Revised Minutes for Town Council Regular Meeting on January 11, 2012 | Removed |
| 3) | Approve Minutes for Town Council Special Meeting on January 25, 2012 and the Town Council Regular Meeting on January 25, 2012 | Approved |
| 4) | Adopt Community and Council Identified Goals for 2012 | Removed |
| 5) | Adopt Resolution 10-2012 Appropriating \$225,000 from the General Fund (Fund 101) and \$225,000 from the One-Time Developer Fee Fund (Fund 100) Fund Balances and Authorizing the Town Manager to Make Payment on the Promissory Note of \$450,000 Due on March 10, 2012 Related to the Town of Moraga Corporation Yard Located at 331 Rheem Boulevard | Removed |

B. Consideration of Consent Items Removed for Discussion

1. Approve Revised Minutes for Town Council Regular Meeting on January 11, 2012

Councilmember Chew requested an amendment to the second redline correction that had been made to Page 5 of the Revised Minutes for the Town Council Regular Meeting on January 11, 2012, as follows:

***Councilmember Chew** indicated his agreement with Barbara Simpson's placement on the CAP Task Force given her track record on the Traffic Safety Advisory Committee (TSAC).*

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Mendonca) to approve the Revised Minutes for Town Council Regular Meeting on January 11, 2012, as amended. Vote: 5-0.

2. Adopt Community and Council Identified Goals for 2012

Karen Lewis, Moraga, commented that the Community and Council Identified Goals for 2012 had referenced the Park and Recreation 2007 Master Plan to implement some of the goals and policies and expressed concern that some of the recommendations had been based on a community questionnaire with no information on off-leash dogs. She asked that any reference to the Park and Recreation 2007 Master Plan be rethought and asked the Town Council to

consider those concerns to ensure a more practical goal for what was occurring in Moraga. She also requested a large sign be posted in front of Rancho Laguna Park posting the hours for off-leash dogs with a possible extension of the morning hours, and asked the Town Council to consider seniors' role in the population and the need for adult playgrounds and other amenities beyond sports fields.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Councilmember Trotter pointed out that the Community and Council Identified Goals for 2012 referenced Rancho Laguna Park in terms of resolving park usage and configuration with the upcoming milestone, existing litigation. He acknowledged that the concerns raised by Ms. Lewis should be discussed in the future.

ACTION: It was M/S (Harpham/Mendonca) to adopt Community and Council Identified Goals for 2012. Vote: 5-0.

- C. Adopt Resolution 10-2012 Appropriating \$225,000 from the General Fund (Fund 101) and \$225,000 from the One-Time Developer Fee Fund (Fund 100) Fund Balances and Authorizing the Town Manager to Make Payment on the Promissory Note of \$450,000 Due on March 10, 2012 Related to the Town of Moraga Corporation Yard Located at 331 Rheem Boulevard

Vice Mayor Harpham advised that he had removed the item given his position that all of the funds for the payment of the Promissory Note for 331 Rheem Boulevard should come from the One-Time Developer Fee Fund (Fund 100), and given that position he would vote no on the item.

ACTION: It was M/S (Trotter/Chew) to adopt Resolution 10-2012, Appropriating \$225,000 from the General Fund (Fund 101) and \$225,000 from the One-Time Developer Fee Fund (Fund 100) Fund Balances and Authorizing the Town Manager to Make Payment on the Promissory Note of \$450,000 Due on March 10, 2012 Related to the Town of Moraga Corporation Yard Located at 331 Rheem Boulevard. Vote: 4-0-1. Noes: Harpham.

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

Ellen Beans, Moraga, asked that the Town Council consider moving Item C under Agenda Item XI. Ordinances, Resolutions and Requests first, given the number of people present to speak to that item.

Town Manager Jill Keimach explained that the agenda item had been posted as shown to allow Jerry Bradshaw, the Interim Engineer from the City of El Cerrito, to attend since he had a conflicting meeting that evening.

PUBLIC COMMENTS CLOSED

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

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Metcalf - Reported that he had attended the Loyola Marymount/Saint Mary's College Game and had been presented with a Jersey which he had donated to the Town; and that he had attended several Revenue Enhancement Community Outreach to Neighborhoods (RECON) meetings which would be discussed further that night.

Vice Mayor Harpham - Reported that he had attended several RECON meetings; a docent lecture at the Moraga Library on Mollier; and the Town Gown Breakfast Meeting at Saint Mary's College on February 17 at which time he had learned that Saint Mary's College was in the process of developing a Master Plan, and suggested it would behoove the Town to determine what the plan entailed, and how the Town could cooperate and work with the college.

Councilmember Mendonca - Reported that she had attended the Tri-City meeting in the City of Orinda on February 9, the California Independent Film Festival (CAIFF) events, and the Town Gown Breakfast at Saint Mary's College on February 17.

Councilmember Chew - Reported that he had attended the Town Gown Breakfast; and the Tri-City meeting in the City of Orinda with a discussion on the Lamorinda cities working together on future infrastructure maintenance.

Councilmember Dave Trotter - Reported that he had participated in the CAIFF Association and commended all of the volunteers who had made the event a great success for The New Rheem Theatre and for the Town.

B. Town Manager Update – No report.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

There were no public hearings.

XI

ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Authorize Town Manager to Solicit Qualifications for a Contract Economic Development Coordinator and/or Planner Consistent with Mid-Year Adjustments to the Fiscal Year 2011/12 Budget**

Planning Director Shawna Brekke-Read reported that the Economic Development Action Committee (EDAC) had made a presentation to the Town Council and the Planning Commission during a joint meeting on November 30, 2011 recommending that the Town Council hire a part-time Economic Development Coordinator. Since that time, the Town had conducted its Mid-Year Budget review and subsequently budgeted \$25,000 for the position for the remainder of the Fiscal Year. Staff provided an overview of the position as outlined in the February 22, 2012 staff report. Staff also provided two different approaches for consideration: hiring of a part-time Economic Development Coordinator, and/or combining Economic

Development with a part-time Planner function given the Town's recent increase in development activities.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Ms. Keimach further explained that staff could first solicit and recruit for the combined Economic Development Coordinator/Planner position and, if there was no interest, staff could hire for the part-time Economic Development Coordinator position. She was confident there were potential candidates who had the skills and ability to do both. She noted that the position (planning portion) would be paid by the increase in developer interest and submitted applications at both the Rheem and Moraga Centers given that it was a cost recovery program. If the planning projects did not materialize or were delayed, the number of hours of the position could be adjusted and the position could be reviewed in a year. She outlined the benefits and constraints of hiring an employee versus a consultant. She emphasized that staff could support the Council's decision either way for a contractor or full-time employee.

Town Attorney Karen Murphy stated that the alternatives available to the Council, as outlined on Page 2 of the February 22 staff report, were within the description of the agenda item.

Ms. Keimach added that the intent of an Economic Development Coordinator and Planner was that it would consist of two functions; one part-time function (1,000 hours) for Economic Development and (approximately 1,000 hours) for Planning. She commented that EDAC had laid out a set of goals for the position of Economic Development Coordinator, and had also recommended streamlining processes which could also be used or defined as a planning task.

Ms. Keimach acknowledged that some applications may be part planning/economic development/facilitation, and staff would have to set goals and monitor the process. She emphasized the potential for a large applicant pool of redevelopment/economic/planning staff persons that local jurisdictions had lost due to the elimination of redevelopment. She indicated she would discuss whether the position should ultimately be an employee or contractor with the Planning Director and Administrative Services Director.

ACTION: It was M/S (Trotter/Mendonca) to authorize the Town Manager to Solicit Qualifications for a Contract and/or Full-Time Employee Economic Development Coordinator and Planner Consistent with Mid-Year Adjustments to the Fiscal Year 2011/12 Budget in the amount of \$25,000 Vote: 5-0.

B. Council Discussion Regarding Sustainable Communities Strategy (SCS) and Provide Direction to Staff on Preparation of a Comment Letter

Ms. Brekke-Read reported that the Town Council had discussed the issue of the Sustainable Communities Strategy (SCS) on January 25 and during the Tri-Agency meeting with the cities of Lafayette and Orinda on February 9, 2012. Five different growth scenarios had been identified. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) had requested comment letters be submitted on the SCS by January 30, 2012, although most cities had not met that deadline. A comment letter from the Contra Costa Transportation Authority (CCTA) and letters from the cities of Lafayette and Orinda were attached to the February 22 staff report.

Ms. Brekke-Read noted that the staff report and attachments had included a comparison of the five different scenarios and the Town's projections, with the Initial Vision Scenario based on numbers that were inconsistent with 2010 Census figures and different from the ABAG projections. She commented that the Constrained Core Concentration Scenario matched more closely with Moraga's General Plan projections. She also noted that the No Project alternative for the Environmental Impact Report (EIR) on the Ultimate Preferred Alternative should be based on a city's own General Plan which could be one consideration to include in the comment letter. She asked the Town Council to provide comment and direction to staff.

In response to the Council, Ms. Brekke-Read stated that the reference to a reduction in Greenhouse Gas (GHG) emissions in the letter from the CCTA had come from ABAG and MTC as part of the One Bay Area Plan. She clarified the differences in analyses between the Initial Vision and the Core Concentration Scenarios which had been based on the presumption of no limits on jobs, households created, or funding available for infrastructure, and Core Concentration and Constrained Core Concentration which projected more growth and more resources and focused on Priority Development Area (PDAs) in San Jose, Oakland, and San Francisco. Core Concentration had no limit to resources and Constrained Core Concentration contained limited resources and growth potential.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Mayor Metcalf recommended that although Moraga was not a transit hub and did not have a BART Station; it should be recognized and heard. He noted that a PDA had been considered and formed for the MCSP and another application submitted for the Campolindo High/Rheem Planning Area.

Councilmember Trotter recommended that staff be directed to prepare a letter to ABAG that addressed Moraga specific circumstances. He understood that the impacts on Moraga were not perceived as significant as were the potential impacts on the cities of Orinda and Lafayette since Moraga had vacant land around a transit hub (Moraga Center) that could be developed. He further stated that if issues remained, such as aggressive growth reductions or increases that did not drive the GHG debate, it was worthy of having the Town weigh in on that issue.

Vice Mayor Harpham commented that development meant growth and the intent of reducing GHGs was an unfunded mandate that was being forced on the Town to comply with the letter of the law. He recommended that the response letter to ABAG indicate that Moraga was not in favor of any of the five scenarios but would work on a scenario that was unique to Moraga. He did not want to change or alter the Town's General Plan or any Specific Plan to accommodate the SCS unless the Town was required to do so, and suggested it was incumbent for the Town to plan to accommodate growth with Saint Mary's College (SMC) which could also be addressed in the letter.

Ms. Brekke-Read also reported that she had just received an e-mail from ABAG regarding the Town's application for a PDA for the Rheem Planning Area. The Town's PDA application had been conditionally declined since the plan densities for the area were too low and included a lot of commercial area, as opposed to the MCSP which had involved more residential planning. ABAG had recognized that the Rheem Planning Area was close to BART stations and had benefits if the Town had better transit with 20-minute headways between buses where it would then be worthwhile to explore as a PDA. She recognized that local transit was also affected by State budget reductions. The Town only had one area where it had priority funding pursuant to

the One Bay Area Grant criteria and there appeared to be no funding between the connections in the PDAs and a fixed rail station. If the Town were to write a letter, those issues should be included.

As to the January 30 comment letter submittal deadline, Ms. Brekke-Read stated that waiting until March would likely not be an issue if the Council desired to see the draft letter prior to submittal to ABAG.

The Town Council suspended the discussion on the Comment Letter on SCS to ABAG to allow the Council to proceed on to the next agenda item with the Council to return to the discussion after the completion of Item XI. C.

- C. Revenue Enhancement Community Outreach to Neighborhoods (RECON) Update on Total Construction Cost Estimate to Repair and Maintain Neighborhood Streets; Council Discussion of Revenue Measures Available to Repair Town's Infrastructure in Order to Focus Community Survey and Input; and (1) Adopt Resolution 11-2012, Authorizing Town Manager to Extend Lew Edwards Consultant Contract; and (2) Adopt Resolution 12-2012 Authorizing Town Manager to Sign New Contract for Engineering Services from the City of El Cerrito in Order to Continue Road Repair Effort

Ms. Keimach updated the Town Council on the RECON efforts with 22 RECON neighborhood meetings having been hosted since August 2011, reaching over 460 individuals to discuss the critical nature of the Town's roads. In January 2012, attendees at neighborhood meetings had been encouraged to fill out a survey. 92 responses had been received which identified as the top three issues the need to repair the Town's roads and potholes, the desire for an expenditure plan, and immediate action. In addition to that work, staff had been working with Nichols Engineering to evaluate each section of road and conduct different variations of the StreetSaver model. Nichols had determined that \$25 million was needed to repair Moraga's roads. The \$25 million would consist of \$22.1 million for the first four to five years of construction to bring all roads up to good condition, and a 10 to 15 percent contingency for storm drains which were at the age of potential failure. More recently staff had also reviewed the Pothole Report, a third party objective analysis of every community in the Bay Area, with Moraga in the lowest 15 percent of all Bay Area communities in terms of the quality of its roads.

Ms. Keimach noted that the effort had also been focused on neighborhood roads which the Town did not have the funds to repair. Nichols had been asked to separate the pavement condition index on the overall network from the pavement condition of only the neighborhood roads, which found that the neighborhood roads were on average "poor" or "failing." The Town's neighborhood road pavement condition index (PCI) was at 46. The need was critical and the community was hopefully beginning to realize the Town needed to act now.

Nichols had been asked to analyze the five different 20-year scenarios. Four of the scenarios would assume the initial repair of the Town's roads with various levels of follow-up maintenance to be completed in the first four years; the fifth scenario assumed a status quo with no new investment in neighborhood roads. Based on the comparison of the scenarios, six revenue measure options had been outlined listing the pros and cons and the survey results of each potential measure. She emphasized that the Town Council should not only consider how to improve the condition of the Town's roads but also consider a long-term plan for maintenance in the future.

Ms. Keimach asked the Town Council to review the revenue measure options, noting that the next step would be to hear from the community on its willingness to support the endeavor, with

the Town Council to narrow down the revenue measure options to give the consultants an easier task of surveying the community.

Sam Sperry, a member of the RECON Committee, stated he understood that there was no legal authority to match up the revenue stream of a Utility User Tax (UUT) and debt instruments.

PUBLIC COMMENTS OPENED

Jerry Bradshaw, City Engineer for the City of El Cerrito, explained that prior to the successful passage of a sales tax revenue measure in the City of El Cerrito, El Cerrito had an overall PCI of 52 and the neighborhood streets alone had a PCI score of 44, similar to what the Town of Moraga was facing. At that time, El Cerrito was in the bottom 7 percent and had been facing other infrastructure needs. A statistically valid survey had been conducted in the community at the time, with the community having identified streets as its number one priority. El Cerrito staff had encouraged the consideration of a parcel tax which was more difficult to pass and the City Council ultimately chose to consider a sales tax revenue measure. El Cerrito was different from Moraga in that it had more sales taxes and had been fortunate to pass a sales tax measure in February 2008 which involved a two-thirds vote which passed with 71 percent support. He suggested that the community understood the need and decided to invest. A second half-cent general revenue sales tax measure was passed by the voters a few years later in El Cerrito for a seven year period (which coincided with a City Council election) which needed only a majority to pass. He suggested that the success of the second measure was a testament to the confidence in the community.

Mr. Bradshaw commented that the staff report had included examples of different road treatments and staff had worked on the StreetSaver model to understand the real cost of what Moraga was facing. Nichols had arrived at the same dollar amount with different treatments applied to different road segments, although without engineering and design work for those different treatments. The next step would determine the community's tolerance for paying for that work and then to see if a revenue measure could be placed on the ballot.

In response to the Council, Mr. Bradshaw stated that El Cerrito had reached out to its local retailers in terms of the sales tax measure and the El Cerrito Chamber of Commerce had endorsed the second sales tax measure. He noted that El Cerrito was surrounded by shops in the cities of Albany and Richmond and large big box retailers and the measure had not affected buying habits. He suggested that the polling done by The Lew Edwards Group and Godbe Research would be very important and could offer good advice for any community. He added that El Cerrito had consulted with a consulting group and had expended a little over \$100,000 on consulting work and six separate mailings with a two-year effort before the first sales tax measure had been placed on the ballot. El Cerrito's second half-cent sales tax measure was generating approximately \$1.4 million a year.

Mr. Bradshaw explained that the financial considerations in El Cerrito had been parcel and sales taxes. An Ad Valorem property tax had been considered but had been removed from the list. A special benefit assessment had not been considered at all given that El Cerrito did not have private streets. A Community Facilities District (CFD) had also not been considered. The sales tax measure had polled well enough where the City did not have to consider the other financial considerations. He commented on the process used in El Cerrito as compared to the work already done by Moraga staff on the StreetSaver model along with different treatments that could be considered, suggesting that Moraga staff had fine-tuned the number at this stage.

Mr. Bradshaw also commented that El Cerrito had experienced a few subdrain issues although that had not been done with the pavement project work but had been addressed on a case-by-case basis. El Cerrito had old landslide masses where hills were creeping downhill over time

with roads becoming deformed, requiring complete reconstructions. El Cerrito also had a contingency set up for Americans with Disabilities Act (ADA) requirements and had been fortunate to get more pavement on the road based on the market conditions at that time.

Mr. Bradshaw reiterated that El Cerrito had been able to show that if nothing was done with the City's roads the problem would get worse at an accelerated rate. El Cerrito had formed a "road show" with its Boards, Commissions, and service clubs and although presentations had also been offered in residents' homes none had taken the City up on the offer. Community meetings were held in elementary schools but had not been well attended. He suggested that the mailings had been more beneficial, similar to what Moraga had been doing. As to the time already expended in Moraga on the effort, he suggested that Moraga was well positioned, had focus groups meeting in homes and other meetings on the issue helping to build support or some understanding of the effort. There had been six total mailings in El Cerrito, most of which had been done before the ballot measure and two after the measure had been placed on the ballot. El Cerrito had paid for the informational campaign but could not cross the line to advocacy with El Cerrito's staff having been in constant touch with its legal staff. The Lew Edwards Group had worked in El Cerrito as well and was knowledgeable of the process. Every mailer had been carefully vetted by the City with information provided to the public while not advocating a yes/no proposition, but with information on the facts and questions answered honestly.

Councilmember Trotter commented that based on the revenue measure options chart, two revenue measures were worth looking at; the CFD and Ad Valorem Property Taxes. While a General Purpose Sales Tax had worked in El Cerrito, he suggested it would not be as successful in Moraga given the limited retail and the fact that only 60 percent of the revenue would be able to pay for the bond debt which might not be enough to get the work done. A Special Benefit Assessment District carried concerns with legal challenges. He referenced a Supreme Court case in Santa Clara County regarding a Special Benefit Assessment District which had been struck down by the court. He suggested that would lead to more comfort with the Special Benefit Assessment District approach which he liked since it would require only a simple majority.

Mr. Sperry explained that there had not been any good news in court cases on Special Benefit Assessment Districts. He referenced a case from the City of San Diego which involved the court striking down those assessments as invalid using the same reasoning as the Santa Clara Supreme Court case, exercising independent review and determining that the Engineer's Report, which was the basis for finding the special benefit assessment, failed to meet the burden of proof on the local legislative body. A second case involved fire protection benefit assessments in a small community of West Point, California, with the assessments invalidated based on the Engineer's Report failing to meet the burden of proof for a special benefit assessment for fire suppression and emergency medical response. The Engineer's Reports from the other court cases had been written before the Santa Clara court case and the engineering community was working on that issue.

Mr. Sperry agreed that the use of special benefit assessments to repair local streets where homes fronted on them was a compelling case for a special benefit assessment and had been discussed during the RECON efforts as possibly a fallback if a community-wide program could not be established. He cautioned, however, that there was still a significant legal risk with special benefit assessment districts. As to the legal risks for a CFD, he noted that there was virtually no legal risk and no appellate court cases on record invalidating a CFD. He was a proponent of the CFD approach given that it would allow the Council to achieve fairness although he had been told by the political consultants that it was too complicated to explain, the amount of the tax must be known up front, and it would require a two-thirds majority vote. The only two revenue measures linked to debt that could raise a great deal of money to do

something within three to four years would be the CFD and a General Obligation (GO) bond with Ad Valorem, a euphemism for GO bonds. He knew of no other link for a sales tax measure to a debt instrument and if that was to be done it would have to be done through an indirect mechanism. He added that payment for an Ad Valorem Tax would include deductions on Schedule A, Forms 540 and 1040 for a property owner who itemized deductions where the annual amount is deductible pursuant to present law as stated by a State Franchise Tax Board representative.

As to the use of a Utility User Tax (UUT), Mr. Sperry was unaware of any jurisdiction using this tax but it could be done to achieve that outcome indirectly, whereby a source of unrestricted revenue into the General Fund could be committed to streets, similar to the County Transportation and Gas Taxes which are dedicated to transportation purposes. While some communities in the State were achieving borrowing against those transportation related sources, he characterized it as a sensitive transaction requiring court approval. He reported that a community in Riverside County had completed a \$6 million bond issue borrowing against its sources of transportation revenue and South Lake Tahoe was considering a similar approach.

Mayor Metcalf pointed out that the City of Piedmont utilized a UUT which had been in effect for some time.

Councilmember Trotter commented that the trade-off between legal and political risk was the Special Benefit Assessment District cases involving Engineer's Reports that predated the Santa Clara Supreme Court case which changed the rules. If the Town were to consider that process, it would be able to draft an Engineer's Report for a Special Benefit Assessment District which would address the legal risks up front, and be worth considering.

Mayor Metcalf stated that as discussed during the RECON meetings, one of the issues with a Special Assessment Benefit District would be if there was a collector street serving not just those living on the street but those traveling through the Town, which was a challenge. In such cases the properties could be partially assessed. With the topography of Moraga, he noted that there were many collector streets that served as neighborhood and through streets, which could mean that the Special Benefit Assessment District approach could not be used.

Councilmember Trotter suggested that the Council should not only discuss the revenue measure options but the consultants should be directed to study and poll whether or not a discussion about whether the proposed revenue target was \$25 million by itself, or another scenario as shown in the February 22 staff report, with one of the scenarios as high as \$42 million, what he called a classic example of a political risk. He would like to see a discussion on a measure where the Town could bond for a large lump sum amount up front or look at something else that could provide ongoing revenue for maintenance.

Mayor Metcalf commented that the most likely scenario was Scenario 2 which would allow a PCI of 65 each year, and suggested that the next phase of study was the amount of money needed to get an average pavement condition that would be closer to 65, not 55.

Vice Mayor Harpham commented that it would be wonderful to achieve Scenario 1 where in the year 2031 the Town would have a PCI of 79, as shown on Page 6 of the February 22 staff report, although he was uncertain it would be feasible and as such Scenario 2 was likely the best possible option as confirmed by the condition category table on the same page. He asked whether or not the cases involving the Special Assessment Benefit Districts had been successfully challenged and questioned whether it was a reasonable risk for the Town to take.

Mr. Sperry stated that he had submitted a memorandum to the Town Council a year ago which stated that it was not a reasonable risk.

Vice Mayor Harpham noted that the Town would be taking on a risk with a Special Assessment Benefit District, a risk he would not want to take which left consideration of a CFD and Ad Valorem Property Taxes. He recommended that the Town Council select Scenario 2 and based on that scenario determine the costs for a revenue measure option based on a CFD and Ad Valorem, have those revenue measures tested, and return the matter to the Town Council to determine which one had the best chance to be successful.

Councilmember Mendonca supported the Vice Mayor's direction although she would also like more information on the General Purpose Sales Tax revenue measure option in terms of the community's opinion on that approach.

Councilmember Trotter agreed with the recommendations of the Vice Mayor with an analysis of Scenario 2.

Councilmember Chew asked of the confidence level of reaching a two-thirds majority approval on the proposed revenue measure options and asked Mr. Sperry's opinion as to the community support for any of the proposed revenue measure options. He commented that the CFD approach was a good option but he was not willing to give up the possibility of a Special Assessment Benefit District and wanted a level of confidence that the Town would reach a two-thirds majority. He would be more comfortable with a simple majority revenue measure based on his observations of the community and the surrounding Lamorinda communities. He was not confident Moraga could achieve a two-thirds majority.

Mr. Sperry suggested that based on the polling and surveys done to date, there was not adequate support based on the present level of awareness in the community and a premise behind the significant amount of energy expended to raise community awareness of the need for a new revenue source, which was premised on the notion of increasing the likelihood of passing a measure that had an economic burden on a typical homeowner. He deferred to political consultants as to the potential level of success of a given ballot measure which was not his area of expertise. He acknowledged that a two-thirds majority was not easy to get, which was the reason RECON had been working to raise the level of awareness and the likelihood of getting that two-thirds majority.

Mr. Bradshaw suggested that the level of confidence being sought would depend on the amount the revenue measure proposed. He suggested that the next task would be for the Town to do some polling. Once that was done, there would be different levels of revenue measure options polled which could then be tested as to the level of support. In his opinion, it was too early to determine what approach would fail or pass. He described this part of the process as a calibration and was uncertain that the Town could solicit support to fund a \$25 million measure which the polling would test. As to what scenario should be pursued should not factor into the polling at this point since the Town would be testing the various revenue methods.

Ms. Keimach explained that a General Purpose Sales Tax revenue measure option had been included since it could be a way to help subsidize the long-term maintenance of roads if it tested well and advised that the Town of Moraga could increase its sales taxes one cent since it was currently at 8.25 percent and the limit was 9.25 percent. She commented on her experience with Special Benefit Assessment Districts, reporting that she had spent nearly a year with consultants in the City of Fremont on an Engineer's Report for a community park for maintenance and it had been very difficult to justify the general and special benefits. In that case, the City of Fremont had spent a lot of money on engineering and legal consultants and it

had been decided it was not worth the fraction that could be charged to property owners. The City of Fremont had ended up paying for it instead.

Councilmember Chew recommended the inclusion of another simple majority revenue measure option along with the CFD and Ad Valorem Property Taxes and recommended that a Special Assessment Benefit District should also be considered.

Ms. Keimach She stated that in order for the extensive work of the RECON committee to continue, a number of contracts would need Council authorization, as follows:

1. The Lew Edwards contract was initially authorized by the Town Council and dated February 23, 2011 for \$21,330 for The Lew Edwards Group and \$13,670 for the first community survey for Godbe Research, for a total of \$35,000. On June 10, 2011, The Lew Edwards Group/Godbe contract was extended for a total not-to-exceed \$44,000. A second amendment was authorized for an additional \$27,000 on August 24, 2011 for a total not-to-exceed \$57,300 for The Lew Edwards Group, excluding the subcontract with Godbe Research. The proposed resolution as part of the staff report would extend The Lew Edwards/Godbe Research contract to October 31, 2012 and increase its contract by \$21,000 for a not-to-exceed amount of \$92,000. This total contract amount included the cost for two community surveys completed by Godbe Research services. One of the two surveys had been completed.
2. A professional services contract with the City of El Cerrito for Engineering consulting services and sharing of resources with its City Engineer, Jerry Bradshaw. The Town of Moraga would pay the hourly rate of the City Engineer with a not-to-exceed contract amount of \$20,000.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Chew/Harpham) to authorize the Town Manager to Execute a Third Amendment to the Contract with The Lew Edwards Group Extending the Time Period to October 31, 2012 and Increasing the Amount by \$21,000 for a Not-to-Exceed Contract Amount of \$92,000. Vote: 5-0.

ACTION: It was M/S (Chew/Harpham) to authorize the Town Manager to Enter Into a Professional Services Agreement with the City of El Cerrito for Sharing of Engineering Resources for a Not-to-Exceed Amount of \$20,000. Vote: 5-0.

Ms. Keimach added that two educational mailers were planned for early March and midsummer, with both mailers expected to total less than \$13,000. While a motion was not needed for this item and a resolution had not been prepared, it was up to the Council's discretion. The amount was not part of The Lew Edwards Group contract, was within the Town Manager's signing authority, and had been included in the staff report for transparency purposes.

Dale Walwark asked what type of mailers would be distributed, expressed concern for getting any two-thirds tax increase approval in Moraga particularly several months after a school tax vote, and given his understanding that the City of El Cerrito had prepared six separate mailers for its sale tax initiative, emphasized that there were many people in the community who were still not informed and if the Town needed more impact for the general public that could cost more money and should be considered.

Ms. Keimach advised that the mailer would be educational intended as a visual with photographs of potholes in Town, with survey information, with every resident asked to send the survey back to the Town, and which asks some of the same questions as in the neighborhood

meetings. The second mailer would be more detailed and survey based. Printing costs for the mailers had been determined to cost less than \$13,000 with the Town able to get a good price on those costs. She recommended that Mr. Walwark's concerns be discussed at the next RECON meeting.

Councilmember Trotter left the meeting at 10:09 P.M.

The Town Council returned to agenda item XI. B at this time.

B. Council Discussion Regarding Sustainable Communities Strategy (SCS) and Provide Direction to Staff on Preparation of a Comment Letter

On the continued discussion, **Mayor Metcalf** suggested that the letter to ABAG on the SCS address jobs given the job growth projections which would likely come from SMC which had real restrictions and a practical limit on how large it would allow itself to become due to the topography of the area and how many people could be housed on the campus.

Mayor Metcalf commented that ABAG had also spoken of economic recovery in the Bay Area and in the county and he questioned the suggestion of a robust recovery given the tenuous political climate, which message had been conveyed in the letters from the CCTA, Orinda, and Lafayette. In terms of housing, it should be pointed out that from 1990 to the present Moraga had added less than 100 dwelling units. He questioned ABAG's growth projections, commented that the growth in Moraga was really 620 dwelling units in the MCSP with less emphasis on the green field, and noted that it should be pointed out to ABAG that there were real environmental constraints under the California Environmental Quality Act (CEQA). He emphasized that the Town of Moraga was not a transit hub and the transit services in the Town were continually declining with two-hour headways, not because of demand but because there were no services due to the lack of funding. He further commented on the chart as shown in the second paragraph of Page 6 of the letter from the CCTA and the discussion under AB 375, an 80 percent reduction of carbon dioxide emissions by 2050 and the discussion where all of the land use scenarios would contribute to 4 percent of the total reduction with the rest achieved through other efficiencies and behavioral changes, nothing to do with land uses. He suggested that the One Bay Area Plan was nonsense, was working at the margin at best and was not solving the problem. The chart in the CCTA letter had demonstrated that the plan was much to do about nothing. He would like to see Moraga make that clear, questioning why ABAG was going after land use and to what benefit.

Councilmember Mendonca commented that as she had read through the data and the projections for Moraga as compared to ABAG's projections, it did not fit well. She would like to bring those perspectives to the table, and asked when the letter was drafted that the letter speak to the fit, in that for Orinda and Lafayette the plan did not fit them and both had traffic hubs and a BART Station but Moraga did not. She did not see how the reality fit the report at all. Moraga needed to emphasize its individuality in the same way its Lamorinda sister cities had. She agreed that ABAG had the job growth wrong in that Moraga was not a place of industry and while the Town would realize more development in the next 22 years, it would not be as projected by ABAG. She acknowledged that the report worked and made sense for San Jose, Oakland, and San Francisco, although applying the same report to communities in the Lamorinda area was problematic which must be articulated in the letter.

Councilmember Chew understood that the entire issue was that Moraga, as other communities, would have to play to get paid in relation to obtaining transportation monies. He would not read too much into the empirical data, predictions, and forecasts which were out of tune with reality. He suggested that Moraga should make its views known and be counted. He

was willing to allow staff to have the freedom to draft a letter to be brought back to the Council for further review before it was forwarded on to ABAG.

Vice Mayor Harpham reiterated his concerns with the SCS as previously discussed.

Ms. Brekke-Read understood that ABAG had provided projections in the past and Moraga had its own projections in the General Plan but the market forces would dictate what actually happened. As to job growth, there had been little focus where job growth would occur, with ABAG focusing on economists more than in the past. ABAG had spoken of a jobs/housing balance but had not thought about what that meant and while jobs would help communities immensely, more housing would help the commercial sector in Moraga with fewer vacancies and more jobs would do the same. Also, the single most important factor for new employers was the quality of the school systems with the Town of Moraga having an excellent school district.

Ms. Brekke-Read suggested that the letter take a different tact in terms of the reality of the projections and the one-size-fits-all approach, rather than stressing the uniqueness of Moraga. She emphasized that each community in the Bay Area was unique and each city and county had a unique way of viewing growth and had unusual circumstances which should be taken into account. That way the Town of Moraga would not be marginalized and raise the main stream discussion to a higher level.

The Town Council agreed that it wanted to be counted, stand out as a community, and that the letter should have tact. The Town Council suggested that staff had captured what the Town Council was trying to say and looked forward to a draft copy of the letter prior to its submittal to ABAG.

Ms. Brekke-Read stated that staff would return in March with a revised letter for Council review.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

There were no Council requests for future agenda items.

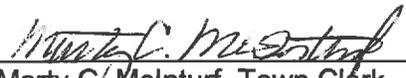
XIII. COMMUNICATIONS

There were no communications.

XIV. ADJOURNMENT

ACTION: It was M/S (Chew/Mendonca) to adjourn the meeting at 10:31 P.M. Vote: 4-0-1. Absent: Trotter.
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Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Michael Metcalf, Mayor