

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**January 25, 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 7:21 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 Mendonca led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

Mayor Metcalf reported that the Town Council had come out of a Closed Session. There was no reportable action.

IV. PROCLAMATIONS AND PRESENTATIONS

A. Update on Central Contra Costa Transit Authority (CCCTA) by Al Dessayer

Al Dessayer, the Town of Moraga's representative to the Central Contra Costa Transit Authority (CCCTA), reported that the CCCTA was financially stable for the next couple of years subject to the State budget. He reported on issues that seniors had experienced with the Clipper card utilized by BART and other transportation systems in the Bay Area, and noted that applications to the system were not available online or through the mail. His personal experience was that the Clipper card for Seniors was difficult to obtain, the marketing for the system was an issue, and he had discussed his concerns with the Town's BART representative and with the head of the Metropolitan Transportation Commission (MTC).

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

B. Presentation by Chief Robert Priebe regarding the Community Information and Notification Service Provided by the Nixle Company

Chief of Police Priebe reported that the recent closure of Moraga Way had created considerable inconvenience for Lamorinda residents and served as a reminder to do a better job of notifying the community in times of emergency or other events. The Town had been asked to assist in traffic control during that event, had posted e-mail blasts to the About Town subscribers, and placed advisory signs. The event had emphasized the need and benefit for a real time notification system. He had contacted the cities of Pleasant Hill and Walnut Creek law enforcement agencies which utilized the Nixle Company system and received positive reviews and recommendations. The Nixle system would require citizens to register online to receive information from the Town and the service would be free beyond the normal data charges that apply to an individual's mobile phone service plan. Information released to the public would comply with privacy laws and could include public service announcements and press releases. Nixle would allow the Town to connect with the public in real time, via text message, e-mail, and over the web, which would fit in well with the Town's Emergency Preparedness Plan. A PowerPoint presentation on the Nixle system was presented to the Town Council to illustrate the services the system would provide and the benefits to the community. Registration information for the service would be posted on the Town's website with a link to www.nixle.com. The system would be subscription driven with community involvement and anticipated support, at no cost to the Town.

Chief Priebe asked that the Town Council endorse the Community Information and Notification Service provided by the Nixle Company. He added that the service had been used by the City of Pleasant Hill for the past three years. The only issue he was aware of with the system in Pleasant Hill was a recent issue when someone forgot to provide the Nixle notification to the public. He understood that there were upgraded plans available at a cost and that the City of Pleasant Hill had declined the upgrade and decided to continue with the free service it had been utilizing.

Chief Priebe added that the Nixle notification service also had the ability to provide messages for a geographic location as did other services available for cellular phones. Given that there would be no cost to the Town, if the service was found to be ineffective, the Town could close the account, discontinue its use, and remove the link from the Town's website.

PUBLIC COMMENTS OPENED

Barry Behr, Moraga, commended the Chief of Police relative to the recent incident on Moraga Way since he had received an e-mail alerting him to the road issues. He congratulated the Town on the services provided and expressed his hope that the Town Council would endorse the services from Nixle.

Fire Chief Randy Bradley, Moraga-Orinda Fire District (MOFD), reported that he and Chief Priebe had recently met with the MOFD Emergency Preparedness Coordinator and would be working to see if the cities of Lafayette and Orinda would also be interested in the Nixle system in terms of regional cooperation, and work to identify ways in which the MOFD could also use the system through the Moraga Police Department. He supported Chief Priebe's efforts.

Chief Priebe affirmed that the Nixle notification service could be incorporated into efforts related to the Town's Emergency Preparedness Plan.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Mendonca/Chew) to endorse the Community Information and Notification Service provided by the Nixle Company and encourage the public to register for the service. Vote: 5-0.

V. PUBLIC COMMENTS AND SUGGESTIONS

Barry Behr, Moraga, emphasized the community support for the replacement of the playground structure at Rancho Laguna Park as soon as possible given that the Town had existing funds for the replacement of equipment. He asked the Town Council to direct the Town Manager and the Town Attorney to reach out to whomever had filed litigation to provide documentation that would allow the playground to be replaced, separate from other issues. He also understood the Town had not issued competitive bids for the replacement of the playground equipment and asked the Town to request an additional discount over and above the initial bid.

Tina Briar, Moraga, stated that she had spoken with the Parks and Recreation Director regarding Measure WW fund allocation, and she had understood the funds could be rolled over for the next year. She felt there had been a misconception about the use of those funds.

Seth Freeman, Moraga, also commented on the issue of the replacement of the playground equipment at Rancho Laguna Park, stating the Town faced a lack of funds due to the lack of budgeting for the Park and Recreation Replacement Fund. He suggested it was inappropriate for the Town to encourage an increase in the utilization of the park and not provide a basic playground given the population in Moraga that would use the playground.

Councilmember Mendonca left the dais and the Council Chambers between 7:49 and 7:54 P.M. She returned to the dais at 7:54 P.M.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Item Nos. 2 and 3 were removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Harpham/Trotter) to approve Consent Agenda Items 1 and 4. Vote: 4-0-1. Absent: Mendonca.

- | | | |
|----|---|----------------|
| 1) | Accounts Payable Claims for 01/13/2012 (\$161,149.91); | Approved |
| 2) | <i>Approve Minutes for Town Council Regular Meeting December 14, 2011</i> | <i>Removed</i> |
| 3) | <i>Adopt Resolution 5-2012 Authorizing Town Manager to Sign a Contract with Jerry Haag to Provide Contract Planning Services to the Town of Moraga to Process a Development Application Package for Saint Mary's College to Construct and Operate a Student Recreation Building, Swim Facility, Baseball Field Seating, Parking Facilities and Related Improvements</i> | <i>Removed</i> |
| 4) | Approval of Revised Climate Action Plan Task Force Charter and Endorsement of Proposed Membership | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for Town Council Regular Meeting December 14, 2011

The minutes of the December 14, 2011 meeting were to be brought back for Council consideration after corrections had been made by staff.

2. Adopt Resolution 5-2012 Authorizing Town Manager to Sign a Contract with Jerry Haag to Provide Contract Planning Services to the Town of Moraga to Process a Development Application Package for Saint Mary's College to Construct and Operate a Student Recreation Building, Swim Facility, Baseball Field Seating, Parking Facilities and Related Improvements

In response to the Council, Planning Director Shawna Brekke-Read explained that the Saint Mary's College (SMC) application had been deemed incomplete since the application had not included information on the borrow pit to be used as fill for the recreation center and staff had requested more geotechnical information. In addition, a previous project on the college campus had included a condition that future development would require an analysis for traffic and parking impacts. She understood that SMC would be subcontracting with a traffic engineering firm for the traffic analysis at SMC's cost.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Chew) to adopt Resolution 5-2012 Authorizing Town Manager to Sign a Contract with Jerry Haag to Provide Contract Planning Services to the Town of Moraga to Process a Development Application Package for Saint Mary's College to Construct and Operate a Student Recreation Building, Swim Facility, Baseball Field Seating, Parking Facilities and Related Improvements. Vote: 4-0-1. Absent: Mendonca.

VII. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Harpham) to adopt the Meeting Agenda, as shown. Vote: 4-0-1. Absent: Mendonca.

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Metcalf - Reported that he had attended a Revenue Enhancement Community Outreach to Neighborhoods (RECON) meeting with a presentation from paving experts on different technologies used in the country; and had attended the Audit and Finance Committee (AFC) meeting with a report to the Town Council scheduled for February 8.

Vice Mayor Harpham - Reported that he had attended the RECON presentations to homeowners groups; and the Acalanes Union High School District meeting with a report on the budget.

Councilmember Chew - No report.

Councilmember Trotter - No report.

Councilmember Mendonca - Reported that she had attended the Moraga Youth Involvement Committee (MYIC) meeting on January 12; the Grand Re-Opening of the Moraga Gallery on January 14; a tour of the new Moraga Country Club Clubhouse with Frank Melon; the AFC meeting on January 17; participated in the Green Rheem discussion on the same date; attended the agenda review meeting for the Central Contra Costa Solid Waste Authority Board meeting on January 19; and the farewell reception to Public Works Director/Town Engineer Jill Mercurio.

- B. Town Manager Update – Town Manager Jill Keimach reported that the AFC report would be presented to the Town Council on February 8; and a report from RECON had been scheduled for February 22. She also invited interested persons to participate in the Town Council Goal Setting Session scheduled for Saturday, January 28 at 9:00 a.m. at the Hacienda.

IX. DISCUSSION ITEMS

There were no discussion items.

X. PUBLIC HEARINGS

- A. Consideration of Appeal of Planning Commission Decision to Deny a Conditional Use Permit for East Bay Regional Communications System Authority (EBRCSA) Radio Communications Facility to Allow a Fifty-Foot High Tower and Associated Equipment at 1180 Alta Mesa Drive; and

Adopt Resolution 6-2012 Approving a Conditional Use Permit for EBRCSA Alternative Plans to Construct and Operate a Wireless Communications Facility for Public Safety Purposes Near the East Bay Municipal Utility District (EBMUD) Carter Reservoir at 1180 Alta Mesa Drive in Accordance with Findings and Conditions of Approval (APN 258-160-056)

Vice Mayor Harpham reported that he had asked the Town Attorney to determine whether or not he must recuse himself due to the potential proximity of his home to the site and had been informed that he would not have to recuse himself from the discussion.

Senior Planner Richard Chamberlain presented the appeal of the Planning Commission decision to deny a Conditional Use Permit for East Bay Regional Communications System Authority (EBRCSA) Radio Communications Facility allowing a 50-foot high tower and associated equipment at 1180 Alta Mesa Drive. The initial application had called for the installation and operation of a 10-foot by 20-foot communications equipment shelter and a 50-foot tall antenna tower adjacent to the EBMUD Carter Reservoir site at the top of Alta Mesa Drive. The project also included the grading of 4,000 square feet for a berm around the building pad, a standby generator, and a fenced security enclosure for a facility to provide essential coverage to consolidate communications among first responders in Contra Costa and Alameda Counties including the MOFD and the Moraga Police Department.

On December 5, 2011, the Planning Commission held a public hearing to consider the proposal and discussed a number of issues including the fact that the height of the tower would exceed the Moraga Municipal Code (MMC) which stated that antennas, towers, and poles shall be of a minimum height, or no greater than 20 feet with the building height limit at 35 feet maximum in most of the residential and commercial zoning districts in the Town. Portions of the site exceeded the 20 percent slope and the MMC prohibited new wireless communication facilities on slopes of 20 percent or greater in MOSO [Moraga Open Space Ordinance] open space. The proposed plan did not comply with the General Plan policies pertaining to ridgeline protection, wireless facilities, and public safety facility compatibility.

The Planning Commission had determined that it could not make three of the required findings to approve the Conditional Use Permit and had denied the permit. The Commission had also discussed the fact that issues of public safety and fiscal impact warranted Town Council consideration of the application. On that basis, Planning Commissioner Russell Driver had appealed the decision of the Planning Commission based on the fact that the project was critical to the public safety and the Town Council was the appropriate body to resolve the trade-offs between the protection of Moraga's hillsides and public safety and budget impacts of not moving forward with the proposed project.

Mr. Chamberlain advised that on January 3, 2012, EBRCSA had submitted alternative plans, identified as Concept II, for a 10-foot high antenna mast and two 10-foot high monopole antennas at the top to be located on the slope above the water tank adjacent to the service road where all of the buildings for six other cell sites were located. Because it would be higher up on the site, the proposed 20-foot high antenna would achieve the same level of coverage as the 50-foot antenna and conform to the Town's maximum antenna and tower height. A microwave dish antenna would be located on a 14-foot high mast adjacent to the building and there would be an above ground cable tray to connect the antenna above the water tank with the equipment building.

Mr. Chamberlain explained that EBRCSA had also submitted the alternative plans, Concept II, to EBMUD for its approval. Concept II would comply with the development standards under the Town's Wireless Communications Ordinance because the overall height of the antenna would not exceed 20 feet. Staff was of the opinion the findings could be made to approve the Conditional Use Permit based on the alternative plans identified as Concept II.

Mr. Chamberlain advised that this was a de novo hearing; the Town Council could hear the appeal as a new matter with all pertinent information and the proposed alternative plan. Staff also prepared a new public hearing, describing both the original and alternative proposals. The staff report included comments on the applicable General Plan policies, the discussion during the December Planning Commission meeting, and had included information showing that the MOFD and the Moraga Police Department had a long-term contract for radio communication service with EBRCSA, and that denial of the project could have a potential fiscal impact to the Town if the project were not approved since the Moraga Police Department would have to provide alternative radio communications. The site did have an existing repeater for police communications which had been installed when the original site for GTE Mobile Net had been approved but the signal did not reach everywhere in the Town, and it also operated in different frequencies where the EBRCSA communications facility would operate regionally in both counties.

Mr. Chamberlain identified the options for Council consideration as outlined in the staff report. He recommended that the findings could be made for the Town Council to adopt Resolution 6-2012, denying the appeal and approving a Conditional Use Permit for an alternative antenna location as shown in Concept II dated January 3, 2012 for EBRCSA to construct and operate a

wireless communications facility for first responders at the EBMUD Carter Reservoir site at 1180 Alta Mesa Drive in accordance with findings and conditions of approval. In the event the Town Council approved Resolution 6-2012, the application would still have to go to the DRB for approval of grading, and a Hillside Development Permit (HDP) would also be required.

PUBLIC COMMENTS OPENED

Bill McCammon, Executive Director for EBRCSA, explained that EBRCSA had been formed in 2007, was comprised of 38 member agencies including two State agencies, and all public safety agencies within Alameda and Contra Costa Counties. He identified the financing sources to build the main body of the system which was anticipated to be completed by July 2012. A design consultant firm had worked with the staff of both Alameda and Contra Costa Counties to identify all publicly used repeater sites and read coverage maps to identify any holes in coverage. A large hole in coverage had been found in Moraga.

Mr. McCammon stated that due to the unique topography of Moraga, a repeater site had to be located somewhere in the subject area. EBRCSA had worked with the Communications Manager for the MOFD to evaluate a number of potential sites and had identified the Alta Mesa Drive site to be the preferred site with coverage studies having been prepared for the site. He explained that a 50-foot tall tower had initially been proposed so that it would be above the water tank and provide coverage to the southwest area around Sanders Ranch. He acknowledged that the Planning Commission had not supported that option and had requested that alternative options be considered. The Project Engineers had then recommended that 20-foot antennas be moved higher up the hill, which while more complicated, would still work. The alternative plans identified as Concept II had essentially become a second design.

Mr. McCammon identified each elevation as the antennas would sit on the hill and identified the predicted coverage maps used with USGS maps to determine coverage while considering topography. The system would be designed to meet the coverage model. He described in detail the intent of the predicted coverage maps which had been verified as to accuracy by an independent consulting firm. He explained how a 50-foot tower would add to the coverage map from the Alta Mesa site as compared to Concept II with a 10-foot high antenna mast, and two 10-foot high monopole antennas at the top, to be located above the water tank to achieve comparable coverage. He suggested that there would be no significant degradation in coverage by pursuing Concept II.

Mr. McCammon explained that Concept II would provide needed coverage in the areas that were not currently receiving coverage. As to the area of Canyon, he acknowledged that Pinehurst Road would be a challenge given that it was located in a deep ravine, however once the sites were operational and through real-life testing they would better know of any deficiencies. Most of the fire responses in that area would be through Cal Fire through a VHF frequency and the primary frequency would not be through the EBRCSA system. The East Bay Regional Park District (EBRPD) was also a member of EBRCSA and had tested the radios in its parks and found that the EBRCSA system worked better than their own. As to cost differences between the initial concept and Concept II, he stated it would be less expensive to install Concept II although he was uncertain of the actual costs at this time. There would be increased costs with Concept II given the need to run wave guides almost 280 feet up the hill but it should not cost more than the initial concept. As to the security of the site, he acknowledged that EBRCSA had concerns with vandalism for all of its sites. The subject site would be equipped with security cameras and would be monitored with an alarm system tied to the Sheriff's Departments in both counties.

Jonathan Goodwin, Canyon, understood that if the Town Council denied the approval of a Conditional Use Permit for the project it would impact other agencies given the regional radio

system required of all the agencies. He acknowledged that the radio coverage to Canyon was difficult from every direction although the Moraga Public Works repeater, also located at Alta Mesa and near the subject site, could be used by Canyon in the event of an emergency. He was confident that Concept II would add to the coverage in the Canyon area and he urged Council support for that concept.

Fire Chief Bradley explained that the MOFD had invested significant funds into the EBRCSA system, had received a grant for replacement of its radios, and had no choice but to be part of the system since the MOFD was dispatched by the Contra Costa County Fire District which was going to the EBRCSA system. He was pleased to see that the Town and EBRCSA had proposed a solution that would work for both agencies.

Chief Priebe advised that the Town of Moraga had expended over \$200,000 on the EBRCSA system and had committed to untold thousands in the future for the maintenance fees on each radio. The Town also contracted with the County Sheriff's Department for dispatch services, had no other options, and it was a critically needed function.

Mr. Chamberlain reported that Russell Driver, the Appellant was unable to attend the meeting, although his e-mail attached to the appeal was precise as to his position.

PUBLIC COMMENTS CLOSED

Mr. Chamberlain acknowledged in response to the Council that the facility would be located on MOSO land, on or near a major ridgeline crest (Moraga Ridge), but that the original GTE Mobile cell site had received a variance approval under the Ridgeline Protection Ordinance. Following that approval, the variance provisions were removed from the Ridgeline Protection Ordinance based on the advice of the Town Attorney at that time that it was not consistent with the MOSO Initiative. The variance had continued to be applied to all other cellular sites in the area and the existing repeater site. Another former Town Attorney at that time had found that the initiative passed by voters in 1986 included nothing that stated that the section of the Ridgeline Protection Ordinance should be rescinded or there should be anything changed in the ordinance and that Town Attorney found that there was no contradiction to the MOSO requirements as it related to the variance. A later Town Attorney found that it was not so much specifically in the initiative as that it was inconsistent with the intent of MOSO.

Town Attorney Karen Murphy affirmed that GTE had been allowed, rightly or wrongly, under MOSO and later the Telecommunications Act of 1996, the result was that the Town had been placed in a position having allowed one competitor to have a wireless facility in the MOSO area where development was prohibited, and there was a provision in that statute that the Town could not discriminate between wireless providers in terms of approval or disapproval of applications for facilities. That section of the MOSO open space district standards, as contained in the Wireless Ordinance, Section 8.144.060(B), dealt with that issue in terms of some of the exceptions to the MOSO standards if those standards violate federal law.

Ms. Murphy explained that the anti-discrimination laws related to the Telecommunications Act had referred to Telecommunications Carriers and Telecommunications Service, defined as a service offered for a fee directly to the public or for classes of users to be effectively available directly to the public. As to whether or not the anti-discrimination language would apply to an agency or Joint Powers Authority (JPA) doing the business of providing wireless service was unclear as to being addressed to services available to the public versus services not available to the public.

Mr. McCammon clarified that the facility being proposed was not technically a wireless facility, but a land mobile radio repeater site.

Ms. Murphy added that it was her understanding that the facility would be required to comply with MMC Section 8.144.060(B), which stated that the wireless facility shall comply with all development standards unless the applicant establishes that there was no other optimal location for the carrier to provide adequate coverage and it was determined that compliance with the standards would violate federal law. The Town had taken the position of processing the application where the MOSO and wireless facilities standards apply to the application given that there were essentially the same impacts.

Councilmember Trotter expressed concern with the approval of a Conditional Use Permit since it appeared to violate the MOSO requirements as development on or near a major ridgeline, involved grading for an equipment structure, and would produce a 20-foot high antenna. He questioned whether alternative locations were possible, whether there was a basis that compliance with the standards would violate federal law, and he was unsure the anti-discrimination provisions contained in the Telecommunications Act provided justification approving all other wireless carriers to be located on the site such as the GTE site. He questioned whether the non-discrimination language in federal law could fairly or legally and correctly be applied to a non-commercial use such as what had been proposed.

Mayor Metcalf suggested that the problem with the application was with MOSO, expressed concern with blindly following MOSO and not approving the project which would be a mistake and was not what the voters would like the Town Council or any Council to do, recognized that when MOSO had been conceived it had been in a previous technological regime in the telecommunications world and he suspected there were things in this application that was beyond what MOSO had envisioned, and as to the concerns with the anti-discrimination language being applied to an agency expressed his hope that the Council would side on reason as opposed to a strict interpretation of the rules. He urged a common sense approach and approval of the application for a Conditional Use Permit.

Councilmember Trotter sought a finding from the Town Council that not approving the application for a Conditional Use Permit in MOSO would be a violation of federal law and suggested that it would be incumbent upon the applicant to be able to demonstrate there were no other optimal locations. He asked the applicant whether or not there were other reservoir locations in the Town where the coverage could be split, as an example, offering coverage in the north and south sides of the Town.

Mr. McCammon explained that they could not split their radio coverage in other reservoir sites in the Town. Cell sites had small sectors given the density of users. He stated that EBRCSA did not have that density of users and their system had high sites that provided better coverage spaces. He responded to Council that he could not say for certain whether or not the area of Mulholland Reservoir at the top of Donald Drive had been considered as a potential site.

Mr. McCammon emphasized that EBRCSA respected the Town's processes for the application but noted that when the original JPA had been executed there had been a clause that if EBRCSA were to build on public property it would be exempt from local zoning and planning regulations, a clause which had been signed by the Town pursuant to Section 9, Page 3 of the JPA agreement.

Councilmember Trotter was not convinced that such a provision in a JPA would trump the Town's regulations for an initiative supported by the voters.

Ms. Murphy advised that Section 8.144.060(B) of the MMC represented standard land use regulations for wireless facilities. The JPA contract entered into by the Town would be exempt to the extent set forth in the contract. As an example, if another local agency or county was

exempt, the JPA to the extent it had similar exemptions may fall into that category. Given that issue had just been raised she would have to look into that issue in more detail if the Council so desired.

When asked, Mr. Chamberlain could recall use permits for the existing cell sites on the property but could not recall any process for the existing repeater site which may have been approved by the county since it was a Contra Costa County system.

Councilmember Trotter suggested that information would be useful to know.

As to how development was defined in MOSO and whether or not the tower that would be used for public safety reasons would be considered development, Ms. Murphy explained that the adoption of the Wireless Communications Ordinance had included findings which were consistent with the General Plan, including MOSO. The ordinance on facilities implemented MOSO and would be consistent at its adoption including subsection (B) that had been discussed. With respect to the issue of the type of facility, she stated that may depend on whether or not there were exemptions in the JPA but as far as development in MOSO for such facilities, that was covered in the adopted ordinance.

Mr. Chamberlain pointed out that the application involved the grading of a berm and there would be an equipment building which would be considered development. He reported that the most recent application approved by the Town, which was also under MOSO but which was not located on a major ridgeline, had been for new antennas for AT&T and Verizon, to be located on a PG&E tower on Rheem Boulevard. In that case, the project complied with the MOSO guidelines adopted by the Town Council. Another application for a facility on Fayhill Reservoir involved a minor ridgeline where a variance had been granted. He understood that some of the existing cell sites in the Town had been approved prior to the adoption of the 1996 Federal Telecommunications Act.

Councilmember Trotter sought a legally sustainable rationale for approval of the application that acknowledged it would present issues under MOSO. He suggested that the basis of Town Council approval could be the fact that the facility would be an application by a public agency, and because it was a public agency coming into the Town there was a public agency/public safety rationale for allowing something that would otherwise be a technical violation of the MOSO strictures on development on major ridgelines.

Ms. Murphy suggested that would be appropriate along with a reference in the approval to the JPA.

Mr. Chamberlain referred to Page 3 of Resolution 6-2012, Finding 1, which had suggested that the proposed use would be appropriate to the specific location because it would be co-located with the EBMUD water tank that currently existed on the property, which was a preferred location under the development guidelines, and the facility could be considered an incremental modification of the site.

Ms. Murphy explained that the JPA included a section that designated the County of Alameda as the member for determination of the restrictions for the members and exercising the powers of the JPA which meant that the county would be exempt from the Town's zoning. She recommended that Page 4, Part 1: Required Findings for Conditional Use Permit from Moraga Municipal Code Section 8.12.120, Resolution 6-2012, be modified with the addition of two findings, as follows:

- j. *The Joint Powers Agreement (JPA) for the East Bay Regional Communications System Authority (EBRCSA) provides that new building facilities for communications*

improvements located on property owned by a public entity shall be provided public notice of the proposed actions that shall be exempt from all local land use and zoning regulations and provided that this is an item regarding public safety that was applied for by a local governmental agency and that the property in question is owned by a public utility, East Bay Municipal Utility District (EBMUD).

- k. *It is determined that there is no other optimal location for the carrier to provide adequate coverage and that denial of Concept II would arguably violate federal law.*

And revise the second WHEREAS clause on Page 2:

WHEREAS, on August 2, 2009, the Town Attorney opined that Government Code section 65964(b) prohibits the Town from limiting the conditional use permit to less than 10 years; and

Ms. Murphy advised that the application would not have to go back to the Planning Commission for consideration since this was a de novo hearing.

ACTION: It was M/S (Trotter/Harpham) to adopt Resolution 6-2012, Approving a Conditional Use Permit for East Bay Regional Communications System Authority (EBRCSA) Alternative Plans to Construct and Operate a Wireless Communications Facility for Public Safety Purposes Near the East Bay Municipal Utility District (EBMUD) Carter Reservoir at 1180 Alta Mesa Drive in Accordance with Findings and Conditions of Approval (APN 258-160-056), as modified. Vote: 5-0.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Discuss the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC) Sustainable Communities Strategy (SCS) Alternatives and Provide Comments

Ms. Brekke-Read explained that the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC) had recently released the five scenarios for the Sustainable Communities Strategy (SCS) as required by State law, in addition to soliciting community feedback from local agencies. The Town of Moraga would be discussing the item with the cities of Lafayette and Orinda during the Tri-City meeting on February 9. The Lafayette City Council had already seen the SCS alternatives twice and the Orinda City Council would discuss it once before meeting with the Town of Moraga. ABAG had also made a presentation last year during the Tri-City meeting.

Ms. Brekke-Read reiterated that the SCS was State law intended to reduce greenhouse gas emissions (GHGs) with a 15 percent target reduction. All regional agencies must develop an SCS and identify how the agencies and regional governments had done so. It was unprecedented in the Bay Area for several agencies to come together to develop an SCS, with involvement from ABAG, MTC, the Bay Area Air Quality Management District (BAAQMD), Bay Conservation and Development Commission (BCDC), and the Contra Costa Transportation Authority (CCTA).

Ms. Brekke-Read outlined the background in developing the five SCS scenarios for consideration. In June 2011, MTC and ABAG had approved five alternative Plan Bay Area land use and transportation scenarios for evaluation and testing to demonstrate how the region might achieve a set of performance targets for the environment, the economy, and social equity as follows: Initial Vision Scenario, Core Construction, Focused Growth, Constrained Core Construction, and Outward Growth. A series of workshops had been hosted by ABAG in each of the counties to explain the scenarios and solicit feedback. Planning staff had attended a

workshop in Alameda County. The workshop for Contra Costa County had been held on January 23. Planners from most cities and counties throughout the Bay Area had discussed the five scenarios in a number of forums and had generally questioned the ABAG and MTC origin and assumptions for projections, whether local agencies' comments had been taken into account with development of the additional alternatives, how the projections would accommodate a variety of housing types for the region, and how the elimination of redevelopment would affect the SCS. Since the Town of Moraga was not a major transit or transportation corridor, the five scenarios would not greatly affect the Town of Moraga but its share of federal funding for transportation projects may decrease as a result of the SCS and the Regional Transportation Plan (RTP). She understood that the City of Lafayette was not pleased with the plans and had decided not to complete a required survey.

Ms. Brekke-Read asked the Town Council to discuss the ABAG and MTC SCS alternatives and provide comments. The Town Council could also either accept the report without comment, or accept the report and comment individually during the Tri-City Council meeting on February 9. As to potential future impacts to the Town as a result of the five scenarios, she was uncertain the scenarios would have a great deal of impact other than those related to Priority Development Areas (PDAs) where the Town may have difficulty obtaining the One Bay Area Grant and potential funding in the future although she noted that market forces dictated where future development growth would occur. The City of Clayton, as an example, was also slow growing as compared to other communities in the county. The projected additional population between 1990 and 2000 for the Town of Moraga was 3,000 people. The population at build out had been considered in 2000 and the 10-year projection in the General Plan was 19,500. The Town's current population was 16,016.

Ms. Brekke-Read also stated that based on her understanding with State and federal law as to how transportation funds were to be allocated, ABAG and MTC had come up with different criteria for future transportation funding, including federal funds. One of the criteria was a Certified Housing Element which the Town of Moraga had and another was being located in a PDA. The funds would have to be spent in the PDA and the current criteria required 70 percent of the funds to be spent in the PDA and the Town would be competing with PDAs throughout the Bay Area. She also understood that all of the federal funds may be funneled through the SCS distributed by the transportation authorities. As to what the Town may have to do to be proactive to reduce the risks, the Town had applied for a PDA for the Rheem Planning Area and had tried to make that PDA as large as possible. Another effort would be the identification of Priority Conservation Areas (PCAs) in the Town, such as for the area of Mulholland Ridge.

Ms. Brekke-Read asked the Town Council to consider whether or not the entire Town should be placed in a PDA and noted that although the CCTA had suggested all transportation corridors linking PDAs should be eligible for funding; ABAG and MTC had not accepted that suggestion at this time.

Mayor Metcalf recognized that the entire process was being driven by the larger population areas such as the cities of San Francisco, Oakland, and San Jose. He expressed concern that remote and rural areas such as Moraga and the City of Clayton, as examples, were not growing as fast resulting in fewer State and federal funds. He was not particularly concerned with the possible loss of federal transportation funds given the challenges of utilizing those funds and given that those funds would likely decrease in the future.

PUBLIC COMMENTS OPENED

Dave Bruzzone, Moraga, expressed concern with the massiveness of the SCS government proposal, the potential loss of local control, suggested the Town knew its General Plan better, and referenced the formalization of a PDA in the Rheem Planning Area under the FOCUS

program in an effort to obtain federal funds. He questioned the intent to reduce GHGs and energy reduction per capita absent viable alternatives while creating additional problems. He suggested that this was a larger issue. He asked the Town to be proactive, better inform the community of the potential impacts, and asked the Town Council not to accept State and federal monies to cut down existing roads in the Town.

In response to the Council, Mr. Bruzzone acknowledged that the Town had expended a lot of time and effort to inform the community about potential development for the vast majority of the undeveloped land in the downtown area in the Moraga Center Specific Plan Area (MCSP), but not the Rheem Planning Area which was 90 percent built out. He suggested that the infrastructure improvements in the MCSP could be done correctly by adding and enhancing, not by taking, restricting, and reducing road capacity.

Ms. Keimach advised that the City of Orinda planned to discuss the item at its meeting scheduled for February 7 prior to the Tri-City Council meeting.

The Town Council looked forward to the discussions on the issue during the February 9 Tri-City Council meeting.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Councilmember Chew asked the Town Manager to speak to the Lafayette and Orinda City Managers to discuss a joint effort for the recycling of pavement material. He understood that there was a machine that could recycle that material and the investment would be in the machine itself.

Mayor Metcalf suggested that topic could be discussed during the Tri-City Council meeting.

Ms. Keimach advised that she would discuss the issue with the City Managers of Lafayette and Orinda and it could also be discussed during the Tri-City Council meeting.

XIII. COMMUNICATIONS

There were no communications.

XIV. ADJOURNMENT

ACTION: It was M/S (Chew/Mendonca) to adjourn the meeting at 9:34 P.M. Vote: 5-0.

Respectfully submitted by:



Marty C. McInturf, Town Clerk

Approved by the Town Council:



Michael Metcalf, Mayor