

**TOWN OF MORAGA
TOWN COUNCIL REGULAR MEETING**

**February 26, 2014
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 7:07 P.M. by **Mayor Ken Chew**.

ROLL CALL

Councilmembers present: Mayor Ken Chew, Vice Mayor Roger Wykle, and Councilmembers Phil Arth, Michael Metcalf, and Dave Trotter

Councilmembers absent: None

II. PLEDGE OF ALLEGIANCE

Mayor Chew led the Pledge of Allegiance.

III. SPECIAL ANNOUNCEMENTS

There were no special announcements.

IV. PROCLAMATIONS AND PRESENTATIONS

- A.** Update on the Status of the Advisory Council on Aging (ACOA) and Senior Issues in the Town of Moraga by Keith Katzman, Liaison to the ACOA

Keith Katzman, Liaison to the Advisory Council on Aging (ACOA), reported on his focus on transportation as a member of ACOA's Transportation Subcommittee, and briefly detailed ACOA's discussions related to health benefits including prescription drugs, ambulatory services, housing, senior care, and transportation. Responding to Council, he advised that mobility management had been discussed at the last Transportation Subcommittee meeting; he questioned best methods for providing information to seniors; and emphasized the importance of emergency preparedness for seniors, stating that many did not use email.

Councilmember Metcalf advised that he would make a request under Council Requests for Future Agenda Items to consider the formation of a Town Committee on Aging.

Responding to Council, Mr. Katzman added that the ACOA had discussed the issue of safety as it related to multiple prescription medications taken by seniors and the importance of ensuring that the prescriptions did not conflict with one another.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

V. PUBLIC COMMENTS AND SUGGESTIONS

Evan Edgar, representing California Compost Coalition, reported he had previously addressed the Town Council regarding the Town's green/food waste to be composted or used for Alternative Daily Cover (ADC), and had attended the Contra Costa County Board of Supervisors meeting on February 25, 2014. He looked forward to the County's full compliance audit of the Keller Canyon Landfill and reiterated that California Compost Coalition had made allegations as part of the public record related to what he found to be non-compliance with the green/food waste mandate, and although a third party audit had determined the allegations to be unfounded, he suggested it was actually a cover-up. He looked forward to a resolution of the process to allow the Lamorinda area full accountability.

Mayor Chew reported that the Central Contra Costa Solid Waste Authority (CCCSWA) Board would meet on February 27, 2014 to discuss the franchise agreement process.

Edy Schwartz, Moraga, announced that the Classic Film Hall of Fame would start on Sunday, March 2, 2014 at 3:00 pm at the Rheem Theatre and she encouraged the community's support and attendance.

Councilmember Trotter congratulated Ms. Schwartz for her selection by the Contra Costa Commission on Women as an inductee to the 2014 Women's Hall of Fame.

Michael Caprio, Area President, Allied Waste/Republic Services Operations in Northern California, reported he had also attended the February 12, 2014 Town Council meeting, reported on his agency's management of green waste for the Lamorinda area and its intention to fully cooperate with the CCCSWA independent consultant's audit of its performance, and reported he had submitted the cover page of the third party report to the Town Clerk which had been prepared by IntelliWaste, Inc., where the allegations against the authority had been determined to be unfounded. He emphasized the agency had been managing the green waste pursuant to its contract and the material would continue to be composted. He pointed out that CCCSWA staff recommended a continuation of the franchise agreement with Republic Services and he looked forward to a continued partnership and providing numerous services to the Town of Moraga and the other member agencies.

Councilmember Metcalf asked that the Town Council agendaize a discussion of the issue between California Compost Coalition and Republic Services at a future meeting.

Mayor Chew commented on the volume of information and ongoing discussions on the issue. He encouraged interested persons to attend the February 27, 2014 CCCSWA Board meeting.

VI. ADOPTION OF THE CONSENT AGENDA

A. Approval of the Consent Items

Consent Agenda Item 6 was removed from the agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Metcalf) to approve Consent Agenda Items 1, 2, 3, 4, 5, 7, and 8. Vote: 5-0.

- | | | |
|----|--|----------------|
| 1) | Accounts Payable Claims for: 2/7/14 (\$174,305.10) | Approved |
| 2) | Approve Minutes for the Regular Town Council Meeting on January 22, 2014 | Approved |
| 3) | Approve by Motion Authorization for the Town Manager to Deem Identified Town-Owned Furniture and Equipment as Surplus | Approved |
| 4) | Consider Resolution 16-2014 Authorizing the Town Manager to Award Construction Contracts with AMP Electric (Redwood City), Contra Costa Electric (Martinez), and Snell Electric (San Ramon) for On-Call Electrical Services in an Amount Not to Exceed \$75,000 Annually, Contingent on Available Annual Budget Appropriations for a Total Contract Period of Three Years with an Option to Extend for an Additional Two Years | Approved |
| 5) | Consider Resolution 17-2014 Authorizing the Town Manager to Enter into the Contra Costa Transit Authority Measure J Master Cooperative Agreement in Order to Receive and Utilize Program 28c Funds | Approved |
| 6) | <i>Consider Resolution 20-2014 Authorizing the Contra Costa Bicycle Advisory Committee to Act as the Local Bicycle Advisory Committee for Purposes of Reviewing FY 2014/15 Transportation Development Act Article 3 (TDA) Grant Applications</i> | <i>Removed</i> |
| 7) | Consider Rescinding Resolution 8-2014 and Replacing it with Resolution 18-2014 Reflecting Council Direction on January 22, 2014 to Appropriate \$270,000 from Palos Colorados (Fund 100); and Authorize the Town Manager to Award a Professional Services Contract to The Planning Center/Design Community & Environment for \$169,000 with a \$26,000 Contingency for an Amount Not to Exceed \$195,000 for Completion of the Hillside and Ridgeline Regulations Study | Approved |
| 8) | Consider Resolution 19-2014 Rescinding and Replacing Resolution 68-2013 and Authorizing the Town Manager to Sign a Contract Amendment with Hauge Brueck Associates for \$109,185.00 for a New Total Contract Amount of \$357,210.00 with a 15% Contingency for a Total Contract Amendment Amount Not to Exceed \$125,562.75 (for a new Total Amount Not to Exceed \$373,587.75) to Complete Work Necessary to Respond to Comments on the Draft Environmental Impact Report (DEIR) for Bollinger Valley Applications; and Authorizing the Town Manager to Sign a Contract with Fehr & Peers for \$45,829.00 with a 15% Contingency for a Total Amount Not to Exceed \$52,703.35 to Complete Work Necessary to Respond to Comments on the Draft Environmental Impact Report (DEIR) for Bollinger Valley Applications | Approved |

B. Consideration of Consent Items Removed for Discussion

1. Consider Resolution 20-2014 Authorizing the Contra Costa Bicycle Advisory Committee to Act as the Local Bicycle Advisory Committee for Purposes of Reviewing FY 2014/15 Transportation Development Act Article 3 (TDA) Grant Applications

Councilmember Trotter reported that staff had provided copies of a revised resolution for the agenda item to the Town Council and public, and recommended the amended resolution be approved.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Arth) to adopt Resolution 20-2014 Authorizing the Contra Costa Bicycle Advisory Committee to Act as the Local Bicycle Advisory Committee for Purposes of Reviewing FY2014/15 Transportation Development Act Article 3 (TDA) Grant Applications, as amended. Vote: 5-0.

VII. ADOPTION OF MEETING AGENDA

Councilmember Trotter requested that the meeting agenda be modified with the Town Council to consider the first item under Ordinances, Resolutions and Requests for Action prior to Public Hearings as a courtesy to the volunteer committee present.

Town Attorney Karen Murphy advised that typically agendas started with public hearings first although the Town Council had the authority to modify the meeting agenda.

ACTION: It was M/S (Trotter/Metcalf) to consider Agenda Item A under Ordinances, Resolutions and Requests for Action prior to the Public Hearing item. Vote: 5-0.

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

VIII. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Chew - Offered his condolences to Councilmember Trotter on the recent passing of his mother; reported he and the Town Manager had attended the Lamorinda Mayors' monthly meeting on February 13; the next Tri-City Council meeting would be hosted by the Town of Moraga on April 7; made a PowerPoint presentation to the Moraga Rotary Club to provide updates on Moraga businesses on February 18; attended the Moraga Business Person of the Year Dinner honoring Jason Evans at which time he presented Mr. Evans a Certificate of Appreciation on February 24; attended an East Bay Municipal Utility District (EBMUD) Water Supply Workshop on February 25, and expected a presentation would be made to the Town Council from EBMUD on the drought and rate increases in the near future.

Vice Mayor Wykle - No report.

Councilmember Arth - Reported he had attended a Moraga Chamber of Commerce Board meeting at which time Jason Evans had been nominated as

Business Person of the Year on February 5; a dinner honoring Mr. Evans on February 24; a Ribbon Cutting Ceremony/Grand Opening for Filice Insurance on February 14; and while he had been unable to attend the recent Moraga-Orinda Fire District (MOFD) Board meeting he commended the report of the meeting as shown in the Contra Costa Times.

Councilmember Metcalf - Reported the Contra Costa Transportation Authority (CCTA) was in the process of developing a new Countywide Transportation Plan (CTP); spoke to the Measure J sales tax and commented on the discussions before the CCTA to determine whether to support an extension of the half cent sales tax in order to realize the identified wish list projects; and identified the results of a focus group session with the Southwest Area Transportation Committee (SWAT) in September 2013 with a telephone poll conducted from a portion of the Lamorinda area in January 2014, and with a second poll to be conducted to further examine the results.

Councilmember Trotter - Reported that his mother, Maxine Murdy Trotter, had passed away on February 8 at the age of 88. He also reported that he had attended the Moraga Business Person of the Year Dinner honoring Jason Evans.

- B. Town Manager Update – Town Manager Jill Keimach reported that the Tri-City meeting would be held on April 7, 2014 at Saint Mary's College (SMC) Soda Center at 7:00 pm, and provided an overview of the agenda. She also reported the Town had received improvement plans for Palos Colorados which were under review by staff. The Town had received comments on the inoperable solar panel crosswalk at Campolindo High School with all efforts being made to replace the equipment, and while the County had assisted the Town by ordering the equipment, there had been delays and it was hoped it would be repaired soon. The public would be informed of the status of the repairs in the About Town newsletter. She added that PG&E would make a presentation to the Town Council in the future on a number of PG&E projects, one of which was creating controversy, since it involved cutting trees for a wider pathway under the utility lines. She explained if that became an issue in Moraga, it would be brought to the Town Council.

IX. DISCUSSION ITEMS

There were no discussion items.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- A. Review and Approve Local Sales Tax Oversight Committee's 2013 Independent Report to the Town Council Regarding the Revenue and Expenditures of the Transactions and Use Tax

Administrative Services Director Stephanie Hom introduced the Local Sales Tax Oversight Committee (LSTOC) Chair Larry Rosenberg to make the presentation.

Larry Rosenberg, Chair of the LSTOC, presented the Annual Report of the source and uses of the Transaction and Use Tax (Measure K sales tax) for calendar year 2013. He thanked Town staff for their assistance in the preparation of the Annual Report; noted that four public meetings had been held; and reported that the next scheduled meeting would be held in June 2014. He introduced the LSTOC members present in the audience; identified the duties of the LSTOC to annually review revenue receipts and expenditures of Measure K; monitor status and

performance of the Measure K programs and services; and to prepare an independent report to the Town Council on the revenue and expenditures of Measure K.

Mr. Rosenberg outlined the 2013 Annual Report and the LSTOC's findings and reported that the revenue from Measure K was being appropriately sequestered and routinely tracked and monitored; based on a cursory review of expensed invoices totaling about \$2.2 million for the period of June 2013 to December 2013. He stated that expenditures appeared to be consistent and appropriate with respect to the stated objectives of Measure K; the initial phase goals and objectives had been accomplished on time and within budget; a Certificate of Completion for the pavement improvements completed by VSS International Inc. had been filed with the County on November 14, 2013; and the Pavement Repair Project was proceeding in a manner consistent with the commitments made to the voters of Moraga.

Responding to the Council, Ms. Rosenberg affirmed that a member of the LSTOC had met with the Administrative Services Director to review a sampling of the 2013 invoices for the pavement program, had reported his findings and analysis to the full LSTOC, and had been satisfied the funds were being spent on the pavement programs as committed to the voters. He was confident the numbers in the Annual Report were accurate and stated the system the Town had in place was transparent and it had been easy for the LSTOC to ask any questions of staff. As to the use of the term "cursory" in the second bullet point under the Conclusion as shown on Page 2 of the Annual Report, he acknowledged there had been a complete review although the LSTOC was not the Town auditor and the Town utilized an auditing firm which conducted annual audits for the Town. He was not opposed to striking the term "cursory" from the Annual Report and replacing it with the term "review."

Bob Foxall, Moraga, a member of the LSTOC, concurred that the LSTOC had reviewed the information very carefully and the term "cursory" had been used to differentiate the LSTOC's review from an auditor's review since LSTOC members were not auditors.

Ms. Murphy stated that the Annual Report was a report which had been adopted by the LSTOC as part of a publicly agendized meeting. The report could only be changed at a similarly agendized meeting. If the Council so directed, it could be sent back to the LSTOC.

Mr. Rosenberg recommended that the term "cursory" be eliminated from the second bullet point on Page 2 of the Annual Report. Responding to Council, he stated there was nothing in the report that needed improvement. Staff had provided the LSTOC with needed information, the process had been transparent, and staff had answered all questions. He was comfortable with the findings that had been made, with the conclusions in the Annual Report, and the makeup of the LSTOC and he could make no suggestions for improvement. As to the charter for the LSTOC, he agreed it was adequate for the LSTOC to complete its charge. He also commented that LSTOC meetings did not have a great deal of public participation although the meetings had been publicly noticed and the LSTOC had invited comments from the public.

Councilmember Arth suggested that the second bullet point as shown on Page 2 of the Annual Report be modified to read:

Based upon a review of sampled invoices totaling about \$2.2 million for the period of June 2013 to December 2013, expenditure appeared to be consistent and appropriate with respect to the stated objectives of Measure K;

Benny Lee, Moraga, a member of the LSTOC, advised that he had reviewed a sampling of the invoices but it had been focused on high dollar amounts with approximately 96 percent of the total expenditures reviewed. Some expenditures had been jointly funded with other sources of funds involving smaller amounts that were not part of the focus.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

Ms. Murphy reiterated that the LSTOC had adopted the Annual Report at a publicly noticed meeting, and therefore another publicly agendized meeting of the LSTOC would be required to make any changes subject to a full quorum of the LSTOC.

By consensus, the Town Council directed the LSTOC to hold another meeting to discuss whether to include modest word changes to the 2013 Annual Report dated February 13, 2014, with the item to return to the Town Council as a consent item on the March 12, 2014 agenda.

X. PUBLIC HEARINGS

- A. Consider Introducing and Waiving the First reading of an Ordinance Approving a Development Agreement between the Town of Moraga and SummerHill Homes for the Camino Ricardo Subdivision (CEQA Status: The Planning Commission certified the EIR for the project, including components of the Development Agreement on January 7, 2014) (*Continued from February 12, 2014*)

Senior Planner Ellen Clark reported that this was a continued public hearing from the Town Council meeting of February 12, 2014 regarding a Development Agreement (DA) for the 26-unit Camino Ricardo project that had been approved by the Planning Commission on January 7, 2014. The DA would be between the Town of Moraga, the landowner C&C Equities, and the developer SummerHill Homes, and would carry an initial ten-year term which could be extended by the Town for an additional five years at the request of the developer. The DA would vest the applicant's development rights including all Town land use and zoning regulations and fees in place at the time of project approvals unless otherwise excluded by the terms of the DA. The Town Council had discussed the DA terms at length during the February 12, 2014 meeting along with a proposed pedestrian bridge across Laguna Creek and a related high-visibility crosswalk recommended as a condition of the Environmental Impact Report (EIR) to connect the bridge across Moraga Road in the vicinity of the skate park.

Ms. Clark explained that as part of its deliberations and approvals for the project, the Planning Commission had included a condition of approval allowing the bridge to be considered as an optional element and potentially a \$75,000 cash payment, if the bridge was not found to be appropriate based on alternate design locations. The majority of the Town Council had not agreed with that determination, finding the bridge was an important feature for connectivity and that it and the related crosswalk should be required as a component of the DA and the project. Because the direction was inconsistent with what had been provided by the Planning Commission, amendments had been made to the DA reflecting the Town Council's direction for inclusion of the bridge and the crosswalk. As a related item, because the DA would no longer be consistent with the conditions of approval, direction had been provided to the applicant requesting a modification of those conditions by the Planning Commission to bring the two documents into conformance.

Ms. Clark stated that at the last Town Council meeting, a member of the Council had asked that the terms of the DA be amended and augmented with a request to provide additional funding for a third pedestrian bridge as identified in the Moraga Center Specific Plan (MCSP) in addition to the bridge proposed as part of the DA, as well as a contribution for the maintenance of the park.

While there was no consensus from the Town Council on the request following that meeting, SummerHill Homes had approached Town staff and had offered to provide additional funding in the amount of \$30,000 for the construction of a third bridge in the future, with the provision that the costs of the park be capped at \$300,000, consistent with the cost estimate for the park facilities, as conceptually approved by the Planning Commission. Staff was not recommending approval of this option due to the burden placed on the Town to monitor construction costs for the park. Staff also sought flexibility to finalize the park design.

Ms. Clark also noted that the Planning Commission approvals included a condition that described the park as a passive park with a loop trail and that a conceptual design had been included as part of the Planning Commission approvals. This provided sufficient certainty and guidance for the Town and the developer in terms of the scope of the park improvements, and would allow the design to be fine-tuned to meet the Town's public benefit, address maintenance needs, and be aesthetically pleasing.

Ms. Clark recommended that the Town Council introduce and waive the first reading of an ordinance approving the DA, identified as Exhibit 1 to the staff report dated February 26, 2014, as drafted and as presented.

PUBLIC HEARING OPENED

Denise Cunningham, Director of Development, SummerHill Homes, thanked the Town Council, Mayor, and staff for the direction on the project. She spoke to the amount of work on the DA and requested that the Town Council approve the DA at this time. Responding to the request for the developer to provide additional contributions for the park parcel and the third bridge, she advised that the developer had offered an additional \$30,000 for park maintenance. She emphasized the benefits and amenities that would be provided as part of the DA above and beyond a project of the subject size including pedestrian circulation as required in the MCSP, two bridges, multiple trails, crosswalks, sidewalk extension, public overlook, financial contributions and the dedication of a two and a half-acre park for open space and passive use. The DA also included the improvement to the park as required based on the numerous public meetings on the park, which resulted in an open space park with native trees, grasses, and a looped trail. She was confident the improvements would be within the construction budget of \$300,000 but emphasized it was important not to exceed that number. She explained that SummerHill Homes would absorb various costs including the design and construction drawings, consultant fees, and inventory permitting. She emphasized the benefits and amenities that SummerHill Homes would be providing to the Town through the DA and requested approval of the DA at this time.

Responding to the Council, Ms. Clark reiterated the offer of \$30,000 for park maintenance had not been included in the DA since it had been offered by the developer in conjunction with terms that would cap the maximum cost of park improvements. She noted the developer was willing to make the conceptual design as presented to the Planning Commission including the detailed landscaping plan and the final plan for the park. Staff was concerned if there would be fine tuning of the park design, for example, minor realignment of the trail, trail surface, combination of benches and trash cans, and interpretative signs, there needed to be some flexibility in the costs. She reiterated the challenge of the Town needing to monitor construction costs.

Edy Schwartz, Moraga, commented that she had been invited to speak to the Moraga Juniors and as part of her discussion she had brought up the issue of the passive park at Camino Ricardo. She reported that while the park may remain passive as part of the project plans, she wanted the Council to be aware that many residents wanted active parks for families.

Karen Lewis, Moraga, asked for clarification that the park parcel would remain passive with no amenities.

Ms. Clark clarified that the concept plan for the park described a publicly accessible park area that would be a passive use facility with no ball fields, play structures or facilities typically associated with other more active Town parks.

Karen Reed, Moraga, former Chair of the Park and Recreation Commission, described the process the Park and Recreation Commission had taken when reviewing the park space for the Camino Ricardo Subdivision, with a focus on safe trails and pathways in Town, the need for connectivity and the like, and with the park parcel envisioned as a passive park.

Brita Harris, Moraga, expressed concern with a high-visibility pedestrian crossing across a major artery along Moraga Road impacting the entire Town. She emphasized the importance of public comment, suggested that the Council meeting would be crowded with residents if the public was aware of the possibility of another high-visibility crossing at Moraga Road, and stated that if the Town Council approved that element of the project design it would not be transparent to the public who were unaware of that component of the design. She noted the Livable Moraga Road Project process was underway and urged the Town Council to make the public aware of the process, the project timeline, and encourage public comment. She also asked that the DA leave two options open pending the outcome of the Livable Moraga Road Project; the pedestrian bridge and the high-visibility crossing, and reserve the cash contribution of \$75,000 pending the development of more parcels to determine what was or was not working, and what was needed to better make a decision on the community's needs and determine the best and safest location for the crosswalk. As to the passive park, she recommended an opportunity for environmental education and efforts through the Park and Recreation Commission, Moraga Historical Society, and the Garden Club.

Paul Kline, Moraga, reported that he had attended all of the Planning Commission meetings on the Camino Ricardo Subdivision, expressed concern with the second crossing across Laguna Creek connecting to the skate park, and was uncertain of the Town's review process from the Planning Commission to the Town Council. He expressed concern with the fact that the Planning Commission had approved the project subject to specific direction on the bridge although the Town Council now supported the second bridge in a location that was not desired in the MCSP. He pointed out that the Bruzzone property was unresolved and while connectivity was needed for the trail system, he sought more time to discuss the location of the second bridge crossing over Laguna Creek and the crossing across Moraga Road given the potential safety impacts between pedestrians and vehicular traffic. He asked whether the exact location of the second bridge and the high-visibility crosswalk had been identified in the DA and if not suggested potential alternatives as part of the Livable Moraga Road Project.

Bill Carman, Park and Recreation Commissioner, outlined the Park and Recreation Commission's discussions on the park whether it be passive or active, the idea of two bridges, and trail connectivity. In his opinion, people should be mandated not to walk across Moraga Road from the skate park for safety reasons. He agreed there was a need for more parks and trails in the Town, and he encouraged a joint meeting between the Parks and Recreation Commission and the Planning Commission to discuss a Trails Master Plan. While the Camino Ricardo Subdivision was not a bad project, he suggested it would be good to have more planning and connectivity throughout the Town.

PUBLIC HEARING CLOSED

Councilmember Metcalf acknowledged that many people had requested that the Town Council reconsider its direction from its previous meeting. He stated that no action had been taken

during that meeting other than direction to staff to modify the DA. The Town Council was now being asked to approve the DA, as revised, and he found that staff had fulfilled the Council's requests. He had no further questions and was prepared to take action on the DA.

Vice Mayor Wykle clarified the timeline for the Livable Moraga Road Project, with Ms. Clark reporting that alternatives would be discussed in a public meeting during the month of March with a preferred concept to be presented to the Town Council in July. She expected the project to be wrapped up in early 2015. She explained that the Corliss Drive intersection had been in the Capital Improvement Project (CIP) for a number of years with recognition the intersection did not function well and would only become worse with increased traffic volumes. She also identified the total project budget for the Livable Moraga Road Project and clarified that the project would not use Town funds in that it was being funded from an outside grant.

Vice Mayor Wykle commented that the Livable Moraga Road Project was already in process and in a few months the experts would offer recommendations. Given the public testimony, he supported the option to build the bridge and crossing, or hold some of the funds pending the completion of the Livable Moraga Road Project. He disagreed that decisions should be made now pending the completion of that process, and expressed concern with the public hearing notification process in that if the public was aware of the possibility of another high-visibility crosswalk along Moraga Road, more residents would have been present to address the Town Council.

Councilmember Trotter referenced the second sentence of Section 5.11 Moraga Road Trail and Access Improvements, as shown on Page 14 of the DA, and requested clarification from staff on the intent of that section, to which Ms. Keimach explained that the section regarding the construction of the improvements was to be completed and open for use to the public in a good serviceable condition prior to the issuance of the certificate of occupancy for the 16th residential unit, with another ten units under construction after the bridge had been completed. The section intended to also restrict the public from using the trail if the area was unsafe. The park was to be completed after the 16th residential unit, but the area would still be a construction site and possibly unsafe. Up to the construction of the 26th home, the Town would consult with the developer as to whether it was safe for the public to be there. The clause had been written in such a way that there would not be an unreasonable delay in public use, but that public safety was to be addressed.

Councilmember Trotter again referenced Section 5.11, noted the clause in the first sentence would be subject to the fair share reimbursement as set forth in the Mitigation Monitoring and Reporting Program (MMRP), Moraga Road Trail and Access Improvements, and asked whether that clause should be conditioned to "vicinity" because of the Livable Moraga Road Project. He asked that the first sentence be modified to read:

5.11 Moraga Road Trail and Access Improvements. Developer shall design and construct, at its expense, the following improvements on Town-owned property to connect the Open Space Park/Area to Moraga Road and the existing Moraga Commons Park: (i) a pedestrian bridge and trail across Laguna Creek connecting the Open Space/Park Area to Moraga Road in the location shown on the Vesting Tentative Map; and (ii) a high-visibility crosswalk from the bridge and trail crossing Laguna Creek across Moraga Road to the vicinity of the Skatepark at the Moraga Commons, subject to fair share reimbursement as set forth in the MMRP (the "Moraga Road Trail and Access Improvements"), and appropriate considerations of the Livable Moraga Road Project.

Councilmember Metcalf understood that the use of the term "vicinity" in Section 5.11 was to ensure the location of the bridge and the high-visibility crosswalk from the bridge was sufficiently flexible and that the findings of the Livable Moraga Road Project would be accommodated.

Councilmember Trotter reiterated his concern with Section 5.11 as written and reiterated his recommended revision.

Councilmember Metcalf commented that a high-visibility crosswalk involved restriping. In this case there would not be a signalized intersection. He did not understand the concerns with the language in Section 5.11 and referenced the testimony from the Chief of Police during the February 12, 2014 Town Council meeting on this issue and the suggestion that a crosswalk should be placed since people would cross the street whether there was a crosswalk or not; a high-visibility crosswalk would improve safety.

Planning Director Shawna Brekke-Read advised that the Town had two different traffic consultants review a crosswalk across Moraga Road: Fehr & Peers had concluded that a crosswalk could be safely located in the area discussed; and DKS, the Town's Traffic Consultant for the Livable Moraga Road Project, had been directed by staff to look at the specifics of the site plan for the Camino Ricardo Subdivision. DKS had prepared a conceptual design showing a crosswalk directly from the bridge over to the entrance to the skate park and had suggested it was a design and location that would work well. Staff and the consultant had looked at the entirety of Moraga Road and how pedestrians and bicycles would be accommodated for the street sections themselves and at nearby intersections. DKS had been asked to opine on a trail leading pedestrians down to St. Mary's Road and had found that would not be advisable given the distance to the roadway. DKS had also opined that when the bridge was placed, it was likely that people would take the shortest route to the Commons Park which was how DKS had developed its concept.

Ms. Brekke-Read described the various technologies for high-visibility crosswalks, including a Rapid Flashing Beacon, a relatively new design approved by Caltrans, and In-Pavement Lights, all of which would be discussed as part of the Livable Moraga Road Project effort.

Responding to the Council, Ms. Murphy referenced Article 6 of the DA which had addressed administrative amendments to the project approvals, with the DA to be amended through the process set forth in the Government Code. While there could be minor changes to the project therein it was in conformity with the DA. In response to Councilmember Trotter's recommended revision to Section 5.11, she recommended a revision to the first sentence of Section 5.11, as follows:

5.11 Moraga Road Trail and Access Improvements. Developer shall design and construct, at its expense, the following improvements on Town-owned property to connect the Open Space Park/Area to Moraga Road and the existing Moraga Commons Park: (i) a pedestrian bridge and trail across Laguna Creek connecting the Open Space/Park Area to Moraga Road in the location shown on the Vesting Tentative Map; and (ii) a high-visibility crosswalk from the bridge and trail crossing Laguna Creek across Moraga Road to the vicinity of the Skatepark at the Moraga Commons, as determined in coordination with the Livable Moraga Road Project to the greatest extent possible and subject to fair share reimbursement as set forth in the MMRP (the "Moraga Road Trail and Access Improvements").

On the discussion of modifying Section 5.11, **Councilmember Metcalf** did not want to tie the developer to something over which the developer had no control. He noted the Town Council also did not have control over the long planning process for the Livable Moraga Road Project given that the extent of public comment was unknown and the project could take more time. He was not opposed to the language modification proposed by the Town Attorney.

Councilmember Trotter was not opposed to the Town Attorney's recommended language revision but understood the developer would have to agree to the revision. He spoke to clause (y) in Section 5.11 which he found had not been included in the other provisions for the pedestrian bridge over the Corliss Tributary or the park itself.

Ms. Murphy advised that the same clause had been included in Section 5.9 Pedestrian Bridge over Corliss Tributary (b) and the park in small numeral (ii), and similar language in Section 5.7 Open Space/Park Area (b). She suggested that the first sentence of clause (y) of Section 5.11 could be amended to read:

- (y) *if the Developer and Town in consultation determines that public safety would be compromised by having public access over the improvements through Project construction work, then this completion deadline shall reasonably be extended by the Town, and such delay shall not delay the issuance of further permits by the Town.*

Vice Mayor Wykle commented that the language proposed by the Town Attorney was better although he still had concerns.

Councilmember Arth was not opposed to the language amendments by the Town Attorney to Section 5.11.

As to the recommended language modification by the Town Attorney to Section 5.11, Ms. Cunningham commented on the coordination that would be involved in designing both bridges, opening them, and opening the park, and commented that the timing restriction tied to the permit for the 16th residential unit had more to do with the opening of the trail through the new home construction building from Camino Ricardo to the east. At the 16th occupancy, the road would be blocked off from the 16th home all the way to the park and there would be no public access through the construction zone although it could be opened from Moraga Road. She wanted to retain language in the DA to prevent the public from entering the construction zone where the homes were being built. She also had concerns tying the work to the Livable Moraga Road Project because of the timing, the need to proceed if they were to install the bridge given the regulatory permits, and the construction that would be required since in order to open the bridge they would need a crosswalk installed as part of the mitigation.

Ms. Cunningham advised that SummerHill Homes would begin grading for the homes during the summer/fall of 2014, with the home construction to occur in 2015, and with seven to eight months required for the construction of each home. As such, the 16th permit could be in early 2016 although the developer wanted to install the park as soon as possible. She did not object to language reading "subject to" or "to the extent possible," and asked to be able to work with Town staff to avoid unnecessary restrictions on the developer. She acknowledged the language proposed by and discussed by the Town Council and the Town Attorney would be sufficiently flexible to meet the developer's needs.

Ms. Murphy advised that the language she had proposed for Section 5.11 would be sufficient for a first reading unless changes came up at the second reading. She restated the revision to Section 5.11, (ii) to read as follows:

- (ii) *a high-visibility crosswalk from the bridge and trail crossing Laguna Creek across Moraga Road to the vicinity of the Skatepark at the Moraga Commons, as determined in coordination with the Livable Moraga Road Project to the greatest extent possible, subject to fair share reimbursement as set forth in the MMRP (the "Moraga Road Trail and Access Improvements").*

Councilmember Metcalf offered a motion, seconded by **Councilmember Arth** to Introduce and waive the First Reading of an Ordinance Approving a Development Agreement between the Town of Moraga and SummerHill Homes for the Camino Ricardo Subdivision (CEQA Status: The Planning Commission certified the EIR for the project, including components of the Development Agreement on January 7, 2014); subject to the language as provided by the Town Attorney to the fifth line of Section 5.11 clause (ii) of the DA.

On the motion, **Councilmember Trotter** commented that he supported the motion as stated since on balance the DA was a good thing; however, he found it was unfortunate the Town would not obtain additional benefits from the developer with respect to an additional \$30,000 free and clear contribution for future maintenance of the open space passive use park.

Vice Mayor Wykle supported the DA, with the exception of the high-visibility crosswalk and suggested the Livable Moraga Road Project process should be allowed to run its course before such decisions were made. As a result, he would not support the motion.

ACTION: It was M/S (Metcalf/Arth) to Introduce and waive the First Reading of an Ordinance Approving a Development Agreement between the Town of Moraga and SummerHill Homes for the Camino Ricardo Subdivision (CEQA Status: The Planning Commission certified the EIR for the project, including components of the Development Agreement on January 7, 2014); subject to the language read into the record by the Town Attorney to the fifth line of Section 5.11 as shown on Page 14 of the Development Agreement, (ii). Roll Call Vote: 4-1. Noes: Wykle.

Ms. Murphy advised that the second reading of the ordinance would be on the next Town Council meeting agenda scheduled for March 12, 2014.

XI. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

- B. Receive Report to Town Council of Comprehensive Development Impact Fee Update and Provide Direction to Staff**

Ms. Brekke-Read reported that the Town Council had adopted a Development Impact Fee Ordinance in 2008, with the fees to be updated on a five-year schedule. As part of the CIP, the Town had identified a Comprehensive Fee Update and the firm of Seifel Consulting Inc. had prepared the update. The item had been scheduled for Town Council consideration to allow an opportunity to understand the scope of work, the work performed by Seifel Consulting, and to be apprised of the steps ahead. Both Saint Mary's College (SMC) and the Bruzzone family had been contacted and notified of the agenda item and staff had included outreach to stakeholders in the scope of work.

Libby Seifel, President, Seifel Consulting, Inc., Real Estate Economists and Urban Planners, provided a PowerPoint presentation and an overview of the Comprehensive Development Impact Fee Update. She identified the special considerations to the use of impact fees, described what the impact fees did for the community, the basis for the impact fee charges in Moraga, the Comprehensive Program Update versus Annual Cost Adjustment, the update components for existing and new development, the upcoming process and timeline for the update with the intent for meetings with stakeholders, a study session with the Town Council, and with the updated Development Impact Fees to be adopted in the fall. The role of the Town Council would be to advise on future policy issues and approve impact fee updates. She also identified the key issues and considerations for future planned development, land use categories, and the establishment of new impact fees.

Responding to Council, Ms. Brekke-Read explained the Town had its own impact fees including a Traffic Impact Fee, and the Town also charged a fee as part of the Lamorinda Fee and Finance Authority (LFFA). The Town kept its own impact fees and a portion of the LFFA fee, the rest of which was distributed to the LFFA. She noted the objective was to ensure the projects on the LFFA list were not duplicated as part of the Town's own project list.

Ms. Seifel added that all effort would be made to ensure there was no duplication in terms of the improvements and the way to achieve that goal would be to ensure that the improvements were distinct. Based on her review of the prior studies, no overlap had been identified. She commented there could be traffic impacts if a home expanded into another living space and was something she would be exploring with staff through the process with recommendations to be presented to the Town Council. Currently, the Town's Development Impact Fees dealt with expansions in a generalized way and the intent was to ensure that impacts in the future captured a development's fair share. She emphasized that impervious surfaces would also be taken into account. As to the Development Impact Fees for existing new development, the fees shown in the PowerPoint presentation were still being defined with Town staff although she had taken into account Plan Bay Area, and the numbers provided by the Association of Bay Area Governments (ABAG), and would identify any assumptions.

Ms. Brekke-Read reiterated that the Bruzzone family had been sent notices of the agenda item and staff had spoken with SMC to advise that they would be part of the process.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

The Town Council received the report of the Comprehensive Development Impact Fee Update.

- C. Consider Resolution 21-2014 Appropriating an Additional \$100,000 from the Infrastructure Preservation and Improvement Fund 705 for a Total Project Budget of \$200,000 to fully Fund the Storm Drain Master Plan Project (CIP 14-201) and Authorizing the Town Manager to Award a Professional Services Contract to Schaaf & Wheeler (San Francisco) in an Amount Not to Exceed \$160,000 for the Project

Public Works Director/Town Engineer Edric Kwan reported there was very little available data on the Town's storm drain infrastructure system. He was uncertain of all locations and sizes of the infrastructure with information based on maps from 1995. A Storm Drainage Needs Study had been prepared by Harris & Associates in 2006 and had been updated in 2008, specifically for Storm Drain Impact Fee calculations to address the creek and its culvert system improvements but not the storm drain collection systems from watersheds that fed into the creek system. An Evaluation of Storm Drains that were 36 inches and larger had been completed by V&A Consulting Engineers in 2009, but had not provided condition assessments for the remaining pipeline system or the costs of the identified failing pipelines. He noted that as part of the CIP Program which had been adopted for this Fiscal Year, \$100,000 had been appropriated for Phases 1 and 2 of the project. Phase 1 included system mapping, Phase 2 condition assessment, Phase 3 hydrology and hydraulics for current land use, and Phase 4 hydrology and hydraulics for future land use conditions.

Mr. Kwan asked that the Town Council approve the resolution appropriating an additional \$100,000 from the Infrastructure Preservation and Improvement Fund 705 for a total project budget of \$200,000 to fully fund the Storm Drain Master Plan Project (CIP 14-201) and

authorize the Town Manager to award a Professional Services Contract to Schaaf & Wheeler (San Francisco) in an amount not to exceed \$160,000 for the project. He noted that the action would fully fund the project and allow a ten to fifteen percent savings through start up and staging costs to incorporate Phases 3 and 4 as part of the project. He added that although staff had recommended funding through the Infrastructure Preservation and Improvement Fund 705, an alternate funding source to fund a portion of the \$100,000 was available through the Measure K Pavement Program if the Town Council so directed.

Ms. Keimach commented that based on her perspective of the Measure K and Revenue Enhancement Community Outreach to Neighborhoods (RECON) meetings, this discussion had been raised frequently given the potential for sink holes with unrepaired storm drains under roads. She confirmed that a portion of the funds could come from Measure K.

Councilmember Metcalf affirmed the extent to which storm drains affected the roads had come up often during RECON meetings. He wanted the LSTOC to completely understand the discussion and suggested that the issue should be well explained to the LSTOC if the Town Council approved the use of Measure K funds. He otherwise questioned why there were two resolutions before the Council for consideration.

Ms. Murphy clarified the recommendation was to adopt the first resolution, identified as Attachment C, Resolution for an Additional \$100,000 from the Infrastructure Preservation and Improvement Fund 705 for a Total Project Budget of \$200,000 to fully Fund the Storm Drain Master Plan Project (CIP 14-201), and Authorizing the Town Manager to Award a Professional Services Contract to Schaaf & Wheeler (San Francisco) in an Amount Not to Exceed \$160,000 for the Project, which would fully fund the project. Attachment D, an alternate resolution would Authorize the Town Manager to Award a Professional Services Contract with Schaaf & Wheeler (San Francisco) in an Amount Not to Exceed \$80,000 for Phase 1 and 2 of the Storm Drain Master Plan Project (CIP 14-201).

Mr. Kwan explained that during the course of evaluation, the project engineers would focus on 15 inch or greater pipelines, taking into account the age of the pipelines and any known failures. As part of the preliminary stick camera evaluation process, if it was discovered that more pipelines needed to be televised and required repair, he would come back to the Town Council to request additional funding. The initial focus would be on the original budget for all four phases.

Ms. Keimach added that staff had discussed whether to address all storm drains or whether to address them incrementally to avoid a situation in the future where all pipelines could fail at the same time.

PUBLIC COMMENTS OPENED

Bob Kennedy, Moraga, a member of the Audit and Finance Committee (AFC), supported the idea of doing the televising work but was concerned with the method of funding. He commented that when the Town Council had previously determined the funding at the budget period, \$50,000 was to come from the National Pollutants Discharge Elimination System (NPDES) and \$50,000 from Measure K. He expressed concern with the use of Measure K funds since Measure K funds were to be used primarily for roads. For the non-construction portion of the storm drain project, he suggested the initial funding for the project come from NPDES and the remainder from the Infrastructure Preservation and Improvement Fund.

PUBLIC COMMENTS CLOSED

Councilmember Metcalf clarified that storm drains were part of the roadwork. He recommended that the drainage be fixed along with the pavement, and explained that the RECON had also reached the same conclusion.

Councilmember Trotter agreed with Mr. Kennedy, supported spending Measure K funds on hard construction for storm drain projects, preferred the use of a non-Measure K source to fund soft costs, recommended that \$150,000 be taken out of the Infrastructure Preservation and Improvement Fund to fully fund the project, and that the \$50,000 budgeted item be allocated to a more direct construction/hard construction activity. **Councilmember Wykle** agreed that soft costs and studies should be funded through the Infrastructure Preservation and Improvement Fund. **Councilmember Arth** also agreed and suggested there was a perception issue.

Councilmember Trotter clarified that the work would be done; the discussion related only to the fund that would pay for the work.

Councilmember Metcalf disagreed that engineering work was a soft cost, and emphasized that engineering was as important as pavement in that without proper engineering, construction could fail.

Councilmember Trotter offered a motion to adopt Resolution 21-2014 Appropriating an Additional \$150,000 from the Infrastructure Preservation and Improvement Fund 705 for a Total Project Budget of \$200,000 to fully Fund the Storm Drain Master Plan Project (CIP 14-201); without taking any portion of that \$200,000 from Fund 705; and to authorize the Town Manager to Award a Professional Services Contract to Schaaf & Wheeler (San Francisco) in an Amount Not to Exceed \$160,000 for the Project.

Councilmember Arth seconded the motion.

Ms. Keimach explained that the motion, as stated, would allocate \$150,000 to the Infrastructure Preservation and Improvement Fund 705, and de-fund or take away the \$50,000 previously appropriated in Fund 711.

Councilmember Trotter was not opposed to the use of the term de-fund in the motion.

ACTION: It was M/S (Trotter/Arth) to adopt Resolution 21-2014 Appropriating an Additional \$150,000 from the Infrastructure Preservation and Improvement Fund 705 for a Total Project Budget of \$200,000 to fully Fund the Storm Drain Master Plan Project (CIP 14-201); to de-fund \$50,000 from Fund 711; and to authorize the Town Manager to Award a Professional Services Contract to Schaaf & Wheeler (San Francisco) in an Amount Not to Exceed \$160,000 for the Project. Vote: 5-0.

- D. Consider Resolution 22-2014 Appropriating \$40,000 from the Asset Replacement Fund 750 and \$6,000 from the Small Cities Climate Action Partnership Grant to Fund the Town Offices (329 Rheem Boulevard) HVAC Replacement Project and Authorizing the Town Manager to Award a Construction Contract to Total Environmental and Power Systems, Inc. (Concord) in the Amount of \$28,233 for the Construction of the Project and Execute Contract Change Orders up to 15% of the Contract Amount

Senior Civil Engineer Laurie Suggang described the background of the building at 329 Rheem Boulevard intended to house all Town departments, as outlined in the staff report, noting that none of the renovations, upgrades, or changes to the building included the existing HVAC system. The existing units were 20 years old, inefficient, inconsistent with current codes, and in need of replacement. The HVAC units had been assessed by a mechanical engineer who had

made recommendations for their replacement. The replacement of the equipment had been placed out to bid on January 30, 2014, with a pre-bid meeting held on February 10, 2014, with six prospective contractors in attendance. The public bid opening had been held on February 18, 2014, when four bid packages had been received. The bid amount had been summarized in the staff report. Staff recommended the award of the contract to the lowest responsible bidder, Total Environmental and Power Systems, Inc. of Concord.

Ms. Succang recommended that the Town Council approve the resolution appropriating \$40,000 from the Asset Replacement Fund 750 and \$6,000 from the Small Cities Climate Action Partnership Grant to Fund the Town Offices (329 Rheem Boulevard) HVAC Replacement Project and authorize the Town Manager to award a Construction Contract to Total Environmental and Power Systems Inc. (Concord) in the amount of \$28,233 for the construction of the project and execute contract change orders up to 15 percent of the contract amount.

Responding to the Council, Ms. Succang explained as part of the bid package that submittal of contractor qualifications and references had been provided with staff having checked the references. As to the difference between the engineer's estimate and the bid provided by the lowest most responsible bidder, Total Environmental and Power Systems, Inc., she could not speak to the contractor's bid proposal but noted that staff had reviewed the bid packages, determined they were complete, and had received a responsive and responsible bid on the project as advertised.

PUBLIC COMMENTS OPENED

Karl Uhrenbolt, Total Environmental and Power Systems, Inc., Concord, commented that he was uncertain what the Town Engineer had evaluated to reach his estimate as outlined in the staff report. He understood the project was just the replacement of the air conditioning units, with the same brand, size, and model. All of the prospective bidders had walked the site at the mandatory pre-bid meeting, had considered the same scope of work, including replacing the same units which resulted in the estimate he had provided. He was confident in the estimate he had provided to the Town, did not intend to have any large change orders, and based on the scope of work and tour of the building suggested the estimate as provided was good.

Ms. Succang added that an addendum had been put out as part of the initial bid which had changed one item in the specifications. It was possible the other bidders had not reviewed the addendum that had fully reflected the changes Town staff had made to the bid. The addendum had clarified the scope of work which had also been clarified as part of the pre-mandatory bid meeting, with no balancing or adjustments of the equipment required.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/Trotter) to adopt Resolution 22-2014 Appropriating \$40,000 from the Asset Replacement Fund 750 and \$6,000 from the Small Cities Climate Action Partnership Grant to Fund the Town Offices (329 Rheem Boulevard) HVAC Replacement Project and Authorizing the Town Manager to Award a Construction Contract to Total Environmental and Power Systems, Inc. (Concord) in the Amount of \$28,233 for the Construction of the Project and Execute Contract Change Orders up to 15% of the Contract Amount. Vote: 5-0.

XII. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Councilmember Trotter was pleased that a future agenda item would include a presentation from EBMUD, particularly given EBMUD's plans to increase rates. **Mayor Chew** added that

Katy Foulkes with EBMUD had recently lost her husband and he requested that staff send a letter of condolence on behalf of the Town Council.

Councilmember Trotter also asked that a future agenda item include a general policy discussion as to how to handle and process DAs to ensure the Council had the ability to make policy decisions on potential terms and trade-offs. He suggested that one of the first steps for a DA should be a Town Council study session.

Mayor Chew was not interested in such direction at the current time given the staff volume of work and since he was confident with the current process followed by staff.

Councilmember Arth was also not interested in that direction and suggested the details of a DA could be discussed at the time a project was being considered by the Town Council.

Vice Mayor Wykle was not opposed to such a discussion, and **Councilmember Metcalf** welcomed a general discussion although not at the present time.

Ms. Murphy clarified that the question was only whether there was a Council consensus to agendaize a discussion of Development Agreements in greater detail on a future agenda. Based on the comments, there was consensus to bring the item back at which time all issues could be discussed in greater detail, with the agenda item broadly framed in terms of process.

Councilmember Trotter reiterated his request for a future agenda item to include a discussion of DAs, the role of the Town Council, and the timing in which the Town Council had the ability to advise on a DA, the terms of the DA, and an early study session with the Town Council.

Ms. Keimach advised that the next DA could be with City Ventures for development on Moraga Way and it may be possible to place that project on a future Town Council agenda to allow for discussion of that specific project. She clarified the DA process with respect to the Camino Ricardo project where the Planning Commission had discussed what it wanted to see in the DA in the form of recommendations to the Town Council.

Ms. Murphy understood the direction recommended by the Town Manager, with consensus from three members of the Town Council to bring a future agenda item on the DA that would be negotiated for the City Ventures project for Town Council discussion to provide input.

Councilmember Metcalf requested that a future agenda item include consideration of a Town Committee on Aging.

Mayor Chew suggested there were other priorities such as the Pedestrian and Bicycle Committee and the status of the Traffic Safety Advisory Committee (TSAC).

Ms. Keimach advised that the status of TSAC would be scheduled for discussion on a future agenda.

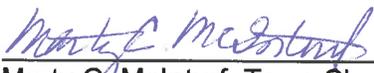
XIII. COMMUNICATIONS

There were no comments from the public.

XIV. ADJOURNMENT

ACTION: It was M/S (Wykle/Arth) to adjourn the meeting at 10:17 P.M. Vote: 5-0.

Respectfully submitted by:



Marty C. McInturf, Town Clerk

Approved by the Town Council:



Ken Chew, Mayor

