TOWN OF MORAGA
REGULAR MEETING

February 24, 2016
MINUTES

7:00 P.M. Regular Meeting

Council Chambers and Community Meeting Room
335 Rheem Boulevard, Moraga, California 94556

1. CALL TO ORDER

The regular meeting was called to order at 7:00 P.M. by **Mayor Michael Metcalf**.

ROLL CALL

Councilmembers present: Mayor Michael Metcalf, Vice Mayor Dave Trotter, and Councilmembers Phil Arth and Teresa Onoda

Councilmembers absent: Councilmember Roger Wykle

2. PLEDGE OF ALLEGIANCE

Assistant Town Attorney Karen Murphy led the Pledge of Allegiance.

3. SPECIAL ANNOUNCEMENTS

There were no special announcements.

4. PROCLAMATIONS AND PRESENTATIONS

There were no proclamations or presentations.

5. PUBLIC COMMENTS AND SUGGESTIONS

Lynda Deschambault, Moraga, Executive Director Contra Costa County Climate Leaders (4CL), reported that 4CL had been awarded the 2015 and 2016 Contra Costa Sustainability Award. She thanked the Town Council for its adoption of the Climate Action Plan (CAP), and its support of the California Youth Energy Services (CYES) Program, with Moraga's partnership with the City of Lafayette providing over 170 audits for energy and water savings in the two communities. She asked the Town Council to reconsider extending the program in Moraga into 2017. She also asked the Town Council to consider updating the General Plan to include a General Health Element which includes CO_2 emissions and the CAP. She urged the Town Council to consider the materials available on the subject from the 4CL website.

Ms. Deschambault also referenced the item on the agenda for the Marin Clean Energy Program and suggested it was missing an important element: consideration of Contra

Costa County's Community Choice Aggregation (CCA) Program. She requested that the Town Council consider continuing the item until after the Contra Costa County Board of Supervisors had made a decision on the County CCA Program.

Assistant Town Attorney Murphy advised that the status of the County's CCA effort could be discussed as part of the agenda item for the Marin Clean Energy Program.

Emily Matthews, Moraga, a student at Saint Mary's College (SMC) and a private consultant for 4CL, thanked the Town for participating in the Property Assessed Clean Energy (PACE) Ygrene Program; urged the Town to also consider participation in the Figtree and Hero PACE Programs; asked that the Town Council consider the adoption of a plastic bag ban; and detailed the On Bill Financing Program which provided a million dollar tax free loan for cities and towns for projects that would save electricity and/or water. She also introduced new score cards which ranked the different towns and cities on the quality and quantity of different environmental goals and elements, and reported the Town of Moraga had been ranked 14 out of 19 cities, and on electrical vehicle charging stations the Town had ranked 19 out of 19 cities. She expressed her hope the Town would be able to improve its scores for the next year.

6. ADOPTION OF CONSENT AGENDA

Consent Agenda Items 6.2 and 6.5 were removed from the Consent Agenda.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Arth) to adopt Consent Agenda Items 6.1, 6.3, and 6.4. Vote: 4-0-1. Absent: Wykle.

6.1	Accounts Payable Claims for: 02/05/2016 ($217,560.25); 02/05/2016 ($110.17)	Approved
6.2	*Approve Minutes for the Regular Town Council Meeting on January 13, 2016*	*Removed*
6.3	NPDES Rate per Equivalent Runoff Unit Consider Resolution 13-2016 Continuing the Existing Rate Per Equivalent Runoff Unit (ERU) for FY 2016/17 of $35 per ERU as the Annual Assessment for Drainage Maintenance and the National Pollutant Discharge Elimination System (NPDES) Program	Approved
6.4	Bollinger Valley EIR Contracts Consider Resolution 14-2016: Authorizing the Town Manager to Sign a Contract Amendment with Hauge Brueck Associates (HBA) in the Amount of $7,500 for a New Total Contract Amount of $364,710, Plus a Contingency of $30,000,	Approved

to Complete Work Necessary to Respond to Comments on the Draft Environmental Impact Report (DEIR) and Prepare a Final Environmental Impact Report (FEIR) for Bollinger Valley Applications; and

Authorizing the Interim Town Manager to Sign a Contract Amendment with Fehr & Peers in the Amount of $13,457.50, for a New Total Contract Amount of $66,160.85, to Complete Work Necessary to Respond to Comments on the Draft Environmental Impact Report (DEIR) for Bollinger Valley Applications

6.5 *Letter of Opposition to Senate Bill 876 (Liu)* *Removed*
Consider Letter of Opposition to Senate Bill 876 (Liu) Homelessness

A. Consideration of Consent Items Removed for Discussion

1. Approve Minutes for the Regular Town Council Meeting on January 13, 2016

Councilmember Arth stated that the Town Council had been provided with a redline revision to Page 7 of the January 13, 2016 Meeting Minutes. He asked that the meeting minutes be approved, as modified.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENT CLOSED

ACTION: By consensus, the Town Council approved the January 13, 2016 Regular Town Council Meeting Minutes, subject to the redline revisions to Page 7 of the minutes. Vote: 4-0-1. Absent: Wykle.

2. Letter of Opposition to Senate Bill 876 (Liu)
Consider Letter of Opposition to Senate Bill 876 (Liu) Homelessness

Vice Mayor Trotter requested the following modifications to the letter:

The first sentence of the first page of the letter to be revised to read:

I must inform you of our strong opposition to Senate Bill 876 (Liu).

And eliminate the term "regrets" from the last sentence on Page 2 of the letter.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENT CLOSED

ACTION: It was M/S (/Trotter/Onoda) to approve the Letter of Opposition to Senate Bill 876 (Liu) Homelessness, as modified. Vote: 4-0-1. Absent: Wykle.

7. ADOPTION OF MEETING AGENDA

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENT CLOSED

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

8. REPORTS

A. Mayor's and Councilmembers' Reports

Mayor Metcalf – Reported that he had attended a meeting of the Southwest Area Transportation Committee (SWAT) with continued review of the proposed Measure J reauthorization and focus on a report from the Public Managers' Association (PMA); a Lamorinda School Bus Transportation Agency meeting to discuss the dire driver's shortage; the reopening of the refurbished Orchard Supply Hardware (OSH); and the Moraga Business Person of the Year Dinner honoring Kevin Reneau on February 23.

Vice Mayor Trotter – Reported that he had attended the Special Town Council meeting to conduct interviews for Town Boards and Committees on February 17; briefly attended the Carr Ranch Open House at Terzetto's Restaurant hosted by the John Muir Land Trust on February 23; and the Campolindo High School Boys and Girls Basketball Teams California Interscholastic Federation (CIF) games on February 23.

Councilmember Arth – Reported that he had attended the Special Town Council meeting to conduct interviews for Town Boards and Committees on February 17; and had presented the Certificate for the Business Person of the Year to Kevin Reneau during the Business Person of the Year Dinner on February 23.

Councilmember Onoda – No report.

Councilmember Wykle – Absent.

B. Town Manager Update – Interim Town Manager Robert Priebe thanked the Town Council, staff, and the Assistant Town Attorney for accommodating his ability to work remotely over the past week. He reminded the Town Council and the public of the Open House at the

Hacienda from 6:00 to 8:00 p.m. on February 25 to review the Hacienda de las Flores Conceptual Plans, with the concept boards to be displayed in the Hacienda Monday through Friday. He also invited everyone to attend a special Joint Tri-City Meeting of the Lafayette, Moraga, and Orinda Councils on Monday, February 29, at 7:00 p.m. in the Lafayette Library and Learning Center. He added that the final Palos Colorados Map would be brought to the Town Council sometime in March.

9. DISCUSSION ITEMS

There were no discussion items.

10. PUBLIC HEARINGS

A. Development Impact Fee Update (2016 Nexus Study)

1. Consider Resolution __-2016 to: Adopt the 2016 Comprehensive Development Impact Fee Update (2016 Nexus Study); and Adopt Updated General Government, Public Safety, Storm Drainage, and Park Development Impact Fees; and Adopt an Updated Fee In-Lieu of Parkland Dedication; and

2. Consider Waiving the First Reading and Introducing an Ordinance Amending Moraga Municipal Code Chapter 8.140: Park Dedications and Chapter 17.24, Park Development Impact Fee *(Continued from the Town Council Meeting of February 10, 2016)*

Planning Director Ellen Clark presented a PowerPoint presentation on the Comprehensive Development Impact Fee Update authorized by the California Mitigation Fee Act (AB1600), where new development was required to pay its fair share of costs for facilities needed to serve that development. She introduced Libby Seifel of Seifel Consulting, who had prepared the Nexus Study. Fees were to be based on the proportional relationship or nexus between the new development and its impact, and the Nexus Study was to document the basis and justification for the proposed fees. She identified Moraga's Impact Fee & Parkland Mitigation program for pre-2008 fees and 2008 Impact Fees that had been adopted for General Government, Public Safety, Storm Drainage, and Park Development; detailed the 2016 Nexus Study process which had been initiated in 2013 with Seifel Consulting; and identified the key changes and fee categories, along with a summary of the proposed fees.

Ms. Clark also identified the conforming Moraga Municipal Code (MMC) amendments to Chapter 8.140 Parkland Dedication (In-Lieu Fee), and Chapter 17.24 Park Development Impact Fee (Intent). She requested that the Town Council adopt the 2016 Comprehensive Development Impact Fee Update (2016 Nexus Study): adopt Updated General Government, Public Safety, Storm Drainage, and Park Development Impact Fees; and adopt an Updated Fee In-Lieu of Parkland Dedication; and Consider Waiving the First Reading and Introducing an Ordinance amending MMC Chapter 8.140, Park Dedications, and Chapter 17.24, Park Development Impact Fee.

Responding to Council, Ms. Clark described some of the assumptions that had been made about specific properties to develop an impervious surface rate. Staff was comfortable they had properly reflected the mix of properties in the Town.

Libby Seifel, Seifel Consulting, clarified that the impervious surface for Non-Residential was 75 percent.

Ms. Clark understood that the Lafayette City Council would consider the Lamorinda Fee and Financing Authority (LFFA) Nexus Study on March 18, and understood it would be supported by the Lafayette City Council. The City of Orinda had approved the Nexus Study and Joint Powers Agreement (JPA) but had not taken action the required separate action to adopt the fee.

In response to the Mayor in terms of the Public Safety Fee and Saint Mary's College (SMC), Ms. Seifel advised that SMC would be listed under the Miscellaneous Non-Residential category, with the fees calculated based on the calculations used for Miscellaneous Residential and Non-Residential. As an example, if SMC were to build student housing and it had a different generation factor, the Miscellaneous Residential category would apply calculated on a per resident basis for the General Government and Public Safety Fee. If Non-Residential, and if adding a certain number of employees or persons by way of occupancy, that would be measured on a per person basis.

When asked, Interim Town Manager Priebe acknowledged that some of the most time-intensive cases for the Moraga Police Department had been generated from SMC.

Ms. Seifel acknowledged the Town Council's concerns that the fees for SMC were not that high given the impacts to the Town, clarifying that they were based on the relationship between per resident and per unit based on persons per household. For all Single-Family Detached Units, they had assumed 3.4 persons per household, or residents per household, which was the relationship of the Miscellaneous category being about one third of the Single-Family Detached Fee, calculated per resident. SMC would have more students in the same square footage proportionately and they would have a higher density fee since the dorms had more students per square footage.

PUBLIC HEARING OPENED

Charity Wagner, City Ventures, spoke to the Table of Land Use Assumptions and Projection, as contained on Page 11 of the Nexus Study, and projected growth which had relied on the future growth of the Town based on current projects and the build out of the Moraga Center Specific Plan (MCSP) Area. The growth projections had also been based on detached homes, townhomes, and mixed use. She understood that the MCSP Area was to look at multifamily housing with over 600 homes anticipated in the build out of that plan. She asked how the projections had been generated in terms of distributing the fair share costs of future development. She also referenced Page 5 of the staff report and the increase in fees for Single-Family and Multifamily homes, as shown, and noted that redefining the categories there would be Residential homes that were currently defined as Multifamily with no square footage cap and no attached category for duplexes and multifamily units, with those units to pay $14,264 in fees resulting in a substantial increase.

Ms. Wagner added that a number of communities had looked at the maximum that could be charged and had made a decision on the growth that they would like to see, and either encouraged Commercial or a type of Residential, with the projections anticipating a lot of Single-Family Detached homes.

Ms. Seifel described the effort with staff to review the vacant land inventory and the development potential and take into account the Moraga Center Specific Plan (MCSP) to ensure the assumptions were consistent with the LFFA study and with the Association of Bay Area Governments (ABAG) projections. The information represented in Table 1 was a fair and reasonable projection of what was left to be built that was not currently considered to be entitled as of the date of the analysis, approximately six months to one year ago. She added that there was potential for more Miscellaneous Residential units in the NCSP area. Given that it was not known what those units would be, they had not been included in the calculations.

Ms. Clark commented that as to the new scheme of what projects were counted in what category, the Town had two to three very broad categories; Single-Family Detached, Multifamily/Townhome, and Senior Housing, and the Town Council wanted more specificity about what categories the projects fell into. It was conceivable that the 2008 Nexus Study would have defined projects differently than they were now, whereby an attached unit of any type regardless of size and the number of bedrooms, could fall under the Attached or Multifamily category unless detached in a Single-Family unit. She added there was validity to the Town Council's direction that a larger unit with more bedrooms and more people was more akin to a single-family detached unit that would generate more impacts whether attached or not. Considering that change, the fees would increase significantly for some projects.

Vice Mayor Trotter noted the Town Council discussion and direction to staff in October 2015 to modify the Nexus Study. As to the Miscellaneous category, he understood the Town would have discretion to look at projects on a case-by-case basis related to the unique characteristics of a project that could modify the impact fees.

Ms. Clark affirmed his understanding and noted the intent was not to create a long list of categories and uses and attempt to differentiate between all of them, but to have a category to allow latitude to make a decision based on the facts of the project.

Vice Mayor Trotter thanked and complimented staff and Seifel Consulting for the precise and clear staff report, but asked staff to identify where in the resolution or ordinance the Town Council had the authority to adjust the fee upward or downward for projects in the Miscellaneous categories of development. Absent that written information that would give notice to those who wanted to develop, there was a gap in the materials that could not be resolved at this time. He requested more thought on the table, the language in the resolution, and if necessary language in the ordinance to pick up and codify that concept.

Ms. Seifel advised that the fee amount had been established by the schedule, and studies would be conducted as part of the development approval for any land use that did not fit within the categories to determine the number of residents. There was flexibility in the program as to how the land uses were evaluated, and through the environmental or planning review process, determining the service population that

would be demanding the amount of new facilities. The schedule proposed for adoption would be the schedule put forward. While there may be some legal language that should go along with that, the actual fee amounts would not be changed but how they would be applied to the particular land uses would be determined when the land use came forward.

Vice Mayor Trotter supported some legal language to reflect that the unit prices could increase if supported by a project specific study.

Mayor Metcalf noted the same issues applied to the Public Safety Fees.

Ms. Murphy advised that where Miscellaneous was listed in the fee schedule in Exhibits 1 and 2, a footnote could be added to note there would be that flexibility in determining how many residents or how many units could be counted in the Miscellaneous category.

Vice Mayor Trotter sought specific language to ensure that everything was done right, with the item to be returned to the Council for consideration, not as a Consent Agenda item, and if necessary be noticed for a future public hearing. He had the same reaction for the Retail Commercial per acre fee and noted the existing fee was almost four times as high as what had been proposed as a new fee. He suggested the real number for new Commercial development in greenfield areas should be higher and the methodology should address that.

Ms. Seifel stated that presently all of the Non-Residential property that had been reviewed was located within the core area with no greenfield commercial sites.

Vice Mayor Trotter suggested that did not make sense for the MCSP Area given the proposal to build a new street to link School Street with St. Mary's Road, although Ms. Clark commented that the calculations were somewhat broad based on a review of all of the zoned areas and condition of properties. She described the assumptions that had been made and explained that a developer could come to the Town Council to show that a development would not create any new runoff, and with studies to support that, request a fee waiver for consideration by the Town Council.

Vice Mayor Trotter agreed the impact fee for storm drainage should be small if speaking of an existing paved area for an existing impervious surface, although for new development that would not be the case. As to the Single-Family Residential per unit fees for Storm Drainage, he had assumed the impact fees had made certain assumptions as to the impacts on storm drainage on the individual lots, and the associated impervious subdivision improvements around them, and captured all the impervious surface created and projected by future residential subdivisions.

Ms. Clark explained that the assumptions had been created based on the zone in particular and had assumed, for MOSO properties as an example, that there would be a clustered project, and relative to the overall size and acreage of that property, a fraction would be developed and paved. The calculations had assumed the capture of the totality of that development. The numbers would scale up with more intensive development, and once reaching a 6-dwelling units to the acre (DUA) zone, it would assume more of the property would be paved.

Vice Mayor Trotter commented that given the overall fact there was a proposal to reduce certain fees and increase certain fees based on a detailed nexus study, it tended to suggest the Nexus Study would be defensible and withstand any challenge.

Mayor Metcalf agreed some work needed to be done. He would like to see the Miscellaneous category tightened up based on the comments from the Vice Mayor.

Ms. Seifel acknowledged the need to define the Miscellaneous categories for Residential and Non-Residential so that it would be called out similar to how Multifamily housing had been defined, and Ms. Clark added there should be more specificity on what mechanism the Town needed to employ to determine what specific fee applied to those land uses.

Mayor Metcalf asked that the impacts from college development be clarified further to determine that all potential impacts had been captured in the Public Safety category.

Ms. Clark reported that SMC was in the process of updating its Master Plan and the Town's consultant was in the midst of working on an EIR to address all impacts, including impacts to Public Services and growth on Public Safety.

Councilmember Onoda understood that the State would allow three to five acres per 1,000 people for dedicated parkland and that the Town was providing the minimum. She sought a middle ground, although Ms. Clark advised that the State was very specific that a city/town may only require as much parkland as the parkland was available. The Town of Moraga currently had about three acres of parkland per 1,000 people and did not have enough parkland to legally justify a higher standard pursuant to the provisions of the Quimby Act.

Councilmember Onoda spoke to the proposed amendments to Chapter 17.24 Park Development Impact Fee of the MMC, and pointed out some inconsistencies in the documentation provided between the staff report and the language in Attachment B to the staff report, Ordinance Amending Moraga Municipal Code Section 8.140, Park Dedications, and Chapter 17.24: Park Development Impact Fee, Page 2, Section 1, "17.24.010 – Intent."

Since the item would return for further consideration, **Councilmember Onoda** requested that the action being sought be clarified and the ordinance be revised to ensure consistency with the direction being asked of the Town Council.

Vice Mayor Trotter suggested the following revision to the referenced Attachment B, to read:

> *It is the intent of the Town Council to adopt by this chapter a fair and equitable method of securing some of the revenues necessary to fund the construction and implementation of improvements to the Town's park facilities, recreation facilities, trails and open space sufficient to accommodate the demand generated by new development and preserve acceptable levels of service throughout the Town"*

Vice Mayor Trotter also sought a consensus from the Town Council to direct staff to propose a different storm drainage impact fee for development on already impervious surfaces versus on greenfield sites.

Ms. Clark advised that staff would look into that issue to determine whether it made sense to disaggregate those two and whether it would make a difference to the fee, and return with a recommendation.

By consensus, the Town Council offered that direction to staff.

Ms. Murphy clarified that a continuation would not require a re-notification unless there were substantive changes to the Nexus Study, which would need to allow more of a review period. Staff would determine whether re-notification would need to occur.

As to when the item could return, Ms. Seifel suggested the issues related to the Miscellaneous categories were straight forward, although the issues related to storm drainage would require consultation with the Storm Drain Consultant and the Town Attorney given that nothing in the Town's vacant land inventory was zoned Greenfield Non-Residential. She commented that as with the 2008 study, they had made all of the fees use a consistent set of data points and she wanted to be mindful of that, with the vacant land inventory used for everything.

Vice Mayor Trotter recommended that the item be continued to a date certain two months out, and if another continuation was needed that could occur at that time.

Interim Town Manager Priebe advised that the agenda for April 27, 2016 could accommodate the item if continued to that date.

On the discussion, **Vice Mayor Trotter** defined the term "greenfield" as an area that had not previously been paved.

ACTION: It was M/S (Trotter/Onoda) to continue consideration of Resolution __-2016 to Adopt the 2016 Comprehensive Development Impact Fee Update (2016 Nexus Study): Adopt Updated General Government, Public Safety, Storm Drainage, and Park Development Impact Fees; and Adopt an Updated Fee In-Lieu of Parkland Dedication; and Consider Waiving the First Reading and Introducing an Ordinance Amending Moraga Municipal Code Chapter 8.140, Park Dedications, and Chapter 17.24, Park Development Impact Fee, to a date certain of April 27, 2016. Vote: 4-0-1. Absent: Wykle.

B. Hetfield Estates Tentative Map Extension

Consider Resolution 15-2016 Granting a Two-Year Extension of a Vesting Tentative Map, General Development Plan, Conditional Use Permit, and Hillside Development Permit for the Hetfield Estates Subdivision (Sub 9051), a Seven-Lot Single-Family Residential Project on a 58.2-Acre Property, and Modification to Condition 173 of Town Council Resolution 43-2014. *(An Environmental Impact Report for the project was certified on July 16, 2012 and a CEQA Addendum was approved by the Town Council on May 21, 2014 for the Emergency Vehicle Access Easement.)*

Associate Planner Brian Horn presented the staff report and asked that the Town Council approve the request for a two-year extension of a Vesting Tentative Map, General Development Plan, Conditional Use Permit, and Hillside Development Permit for the Hetfield Estates Subdivision (Sub 9051), a seven-lot Single-Family Residential project on a 58.2-acre property, and modification to Condition 173 of Town Council Resolution 43-2014.

PUBLIC HEARING OPENED

John Wyro, Orinda, representing the property owners/applicants, Robert Lipson and Sanford Gage, spoke to the project's multiyear effort since 2005, which involved a number of conditions of approval, and the involvement of other agencies which required time. When asked, he acknowledged that the applicants had originally requested a one-year extension of the Vesting Tentative Map, and while the property owner was of the opinion a one-year extension would be sufficient, he agreed and supported the staff recommendation for a two-year extension to avoid another extension request.

Tim Meltzer, Moraga, referenced the property owner's request for a one-year extension and disagreed a two-year extension should be granted given the time the project had already taken. As to the project itself, he referenced the site designation as High Risk due to landslide hazards among other geologic and hydromorphic issues, which point had been included in the May 21, 2014 Town Council Resolution. One of the reasons the project had been allowed to proceed despite the High Risk designation was the extensive mitigation measures included in the conditions of approval. He reported at least 50 homeowners in the Sanders Drive area had worked to ensure that the mitigation measures were met, and if not satisfied in full, the grounds for permitting the project in its current form would be undermined and the approval of the EIR would be invalid. He urged the Council to grant only a one-year extension or less to move the project forward.

Daran Santi, Moraga, echoed Mr. Meltzer's comments. If the property owner had requested a one-year extension, he questioned why the Town Council was now considering a request from the property owner's representative for a two-year extension. He objected to the project itself.

PUBLIC HEARING CLOSED

Councilmember Onoda understood the Town Council had the discretion whether to allow an extension of the Vesting Tentative Map for one or two years. If the Town Council wanted to allow the project to move forward, it should identify a timeframe. She recommended the granting of a one-year extension as the property owner had requested.

Councilmember Arth supported a two-year extension of the Vesting Tentative Map given factors that affected the timing of the project beyond the applicant's control. In his opinion, it was one thing for the property owner to request a one-year extension while the skilled representative had requested a two-year extension as a more reasonable period. He understood that the applicants wanted to move forward with the project given the investment in the project.

Mayor Metcalf understood that staff had recommended a two-year extension given all factors involved and he agreed and supported the staff recommendation.

Vice Mayor Trotter understood Councilmember Onoda's concerns although her recommendation would likely not result in an affirmative vote. He also agreed that the Town Council had the discretion whether or not to allow an extension, but clarified with staff his understanding the Town had never denied an initial two-year extension request for a Vesting Tentative Map. He suggested it would not be appropriate to deny the request for a two-year extension on the first occasion, and therefore supported a two-year extension.

Ms. Clark commented that the project also included a Conceptual Development Plan (CDP), and not to include the Vesting Tentative Map and let the entitlement expire, which would occur on a date in May 2016, could raise questions as to the validity of the CDP which established the project and its density in the Vesting Tentative Map.

On the discussion, Ms. Murphy explained if there was a tie vote there would be no action and the item could be continued.

Councilmember Onoda suggested the Town Council could wait until the Vesting Tentative Map expired in May and then reconsider the item when a full Council was present.

ACTION: It was M/S (Arth/Metcalf) to adopt Resolution 15-2016 Granting a Two-Year Extension of a Vesting Tentative Map, General Development Plan, Conditional Use Permit, and Hillside Development Permit, for the Hetfield Estates Subdivision (Sub 9051), a Seven-Lot Single-Family, Residential Project on a 58.2-Acre Property, and Modification to Condition 173 of Town Council Resolution 43-2014. Vote: 3-1-1. Noes: Onoda. Absent: Wykle.

11. ORDINANCES, RESOLUTIONS AND REQUESTS FOR ACTION

A. Marin Clean Energy Program

Consider Actions Required for the Town of Moraga to Join Marin Clean Energy (MCE) and Implement a Community Choice Aggregation (CCA) Program in the Town, and Allow MCE to Conduct a Membership Analysis before the March 31, 2016 Inclusion Period Deadline, Including Consideration of:

1. Introducing and Waiving the First Reading of an Ordinance Approving a Joint Powers Agreement with Marin Clean Energy and Authorizing the Implementation of a Community Choice Aggregation Program; and

2. Adopting Resolution __-2016 Requesting Membership in Marin Clean Energy; and

3. Authorizing the Interim Town Manager to Execute a Memorandum of Understanding Between the Town of Moraga and Marin Clean Energy (MCE) Exploring Inclusion in MCE; and

4. Authorizing the Interim Town Manager to Send a Letter to PG&E Requesting that Electric Use Data within Town Limits is shared with Marin Clean Energy for the Purpose of Membership in a CCA Program

Assistant Planner Coleman Frick presented the staff report and asked that the Town Council take the requested actions to allow MCE to conduct a membership analysis before the March 31, 2016 inclusion period deadline, and to then direct staff to continue monitoring the efforts of Contra Costa County as an alternative to MCE, if, upon completion of MCE's membership analysis, MCE determines that it is not in the Town's or MCE's best interests for Moraga to join MCE.

Responding to Council, Mr. Frick explained that the staff report included information on Contra Costa County's CCA efforts. The County was in the early stages of deciding whether to conduct a feasibility analysis. The Contra Costa Board of Supervisors would make a decision at the end of the month whether to create its own CCA Program. He understood that Alameda County had also gone through the process, a year's effort, and the process was not yet complete. He explained that MCE had an established track record, a structure in place, and a customer base to make it viable.

Mr. Frick affirmed that if the Town Council took action to opt into MCE, all PG&E customers would be part of the program, and if any of those PG&E customers wanted to opt out they would have to go through a process. Referring to the March 31, 2016 inclusion period deadline, in speaking with MCE there was not a clear time when the next inclusion period would occur, which was the reason staff had recommended the actions before the Town Council. If the Town Council took the actions as recommended, while customers would have to opt out if they wanted to stay with PG&E, it would be a cost-effective way for the Town to achieve the overall goal of its Climate Action Plan (CAP), would involve no cost to the Town, and would allow residents the opportunity to choose the electricity generation source they wanted.

Councilmember Arth commented that while initially supportive of pursuing the MCE program, he was concerned with Items 3 and 4 because they were open ended, and characterized Items 1 and 2 as compelling documents if executed.

Mr. Frick acknowledged the quick timeline involved and clarified a second reading would have to be completed by the Town Council's March meeting to meet the March 31 deadline.

Vice Mayor Trotter pointed out the membership document included no language on the Town's rights to stop exploring or to withdraw from further consideration. As discussed previously, there were concerns that leaving the JPA after joining could potentially become a multi-million dollar cost to the Town.

Mr. Frick explained that the document had been worded as it had because taking the actions did not guarantee that the Town of Moraga would become a member of MCE given the need to complete the feasibility analysis and action taken by the Board of the JPA. If the Town were to choose not to continue after passing the items under consideration, the question could be addressed by MCE's representatives.

He acknowledged that withdrawing after joining MCE would be financially unfeasible, and the Town could not join another JPA for CCA, as outlined in the staff report. He was unaware whether any other cities/towns had tried to withdraw from MCE and suggested MCE also provide clarification on that issue.

Dawn Weisz, Chief Executive Officer, Marin Clean Energy (MCE), explained that MCE had been serving and collaborating with Contra Costa County since 2013 when the City of Richmond had joined MCE. The MCE Board's mission was to get renewables on the grid, provide choice, and drive down prices, which had resulted in interest from elected officials in neighboring communities and agencies interested in joining MCE. The MCE Board, which included representatives from each city served, had decided to add other communities if there was interest and if they were close by. While MCE received requests from all over the State, MCE wanted to remain local and transparent, and allow its members to attend MCE meetings, and weigh in on rates and power purchase decisions. She noted that feedback had expressed concern that the upfront fee was difficult to pay and there was a desire for a streamlined process, leading to the six-month inclusion period for those expressing an interest in joining MCE, which allowed MCE to bundle and minimize costs. The six-month inclusion period started in October 2015 and would end on March 31, 2016.

Ms. Weisz commented that the suggestion to extend the inclusion period another three months beyond March 31, 2016, pending the County's efforts, was not out of the question, but would have to be presented to the MCE Board, although there were five communities in Napa that had taken all steps and were eager to proceed with the program. An extension would require bifurcation of MCE's procurement and analysis process and could impact costs.

Ms. Weisz clarified there would be no fee to re-join PG&E, although customers choosing to opt out of MCE after the inclusion period would be held by PG&E for a year and not allowed to go back to MCE during that time. There was also a one-time $5 administration fee if a customer went back after the enrollment period. In addition, MCE conducted customer outreach and allowed customers to tell MCE whether they wanted to be enrolled or not in MCE. Customers who informed MCE before the enrollment period that they did not want to join were never enrolled in MCE. She provided several pieces of written materials to staff and the Town Council on the MCE Program.

Interim Town Manager Priebe advised that he had forwarded an article to Town Councilmembers this date with information as to how ratepayers could opt out of MCE within a 60-day period at no cost.

Ms. Weisz clarified that it was a six-month period at no cost, and after that a one-time only $5 administrative fee for residential customers, and a $25 fee for commercial customers would be required. She added that MCE had a well-established timeframe for any community enrollment, which started with outreach to community groups; work with local Councils and staff to ensure that everything was covered in developing the plan for the community; attendance during many events and meetings in the community and hosting one or two meetings in the Council Chambers; mailers sent out to the community three months prior to cutover which occurred during the course of a month on the meter read day for each customer; advertising in the local newspaper four to five months in advance of the cutover; multiple noticings to notify customers when MCE took

over; and more information on the opt-out options. She stated that MCE's call center was open 24/7 during the entire six-month period.

Ms. Weisz stated if the Town Council took the recommended actions, the first step for MCE would be to procure power for the Town; conduct an analysis of the load to ensure it would not have a negative impact on MCE's budget; and if the MCE Board accepted the Town of Moraga as a member, the Town Council would select a Councilmember to sit on the MCE Board. MCE would then begin outreach in the community at the earliest in June/July with enrollment as early as October 2016. However, if that time period was too fast, MCE could wait until 2017, which could involve further dialogue with the Town Council.

Ms. Weisz emphasized that MCE, not the Town, would conduct the outreach efforts for the program. She clarified the power of competition, stated that MCE had never promised a lower rate but could promise a choice with customers to choose the lower rate. MCE offered its customers historically lower rates over time; MCE's rates were currently lower than PG&E rates, although the exit fee imposed for PG&E's departing customers consumed a lot of those savings, with customers paying a bit more per month with MCE given the exit fees. She added that in the last two years that had not been the case and MCE's savings had been so substantial that they had absorbed all of the exit fees.

Ms. Weisz acknowledged that rates would change from time to time and would fluctuate. The MCE Board established rates once a year; the rates would not change for this year and would remain flat for a two-year period while PG&E rates tended to change three to four times a year.

Ms. Weisz also commented that MCE rates were not set by the California Public Utility Commission (CPUC) as were PG&E's. MCE had been engaged with the CPUC since its launch in 2010. MCE exceeded all State mandates for Greenhouse Gas Emissions (GHGs), and was building a CCA Coalition with the four existing CCAs in the State including Sonoma County CCA, Lancaster CCA, and the City of San Francisco which was planning to launch its CCA Program in May 2016. A joint meeting of the CCA Directors had been held this date with the effort to work jointly on issues including rates. She emphasized the importance of the CCA programs if PG&E rates continued to increase to allow a counter-balancing effect.

Alex DiGiorgio, Community Development Manager, MCE, detailed the history and chronology of Contra Costa and Alameda County CCA efforts. He stated MCE would support whatever choice the Town made on a CCA Program. He added that the City of Walnut Creek had passed a first reading of its ordinance; the City of Lafayette had a second reading coming up as well; and three cities in West County had made a final decision to join MCE.

Responding again to the Vice Mayor's recommendation to extend the deadline of the inclusion period beyond March 31, 2016, and the possibility that they may have a critical mass of jurisdictions who were not yet ready to make a decision due to the upcoming inclusion deadline, Ms. Weisz commented that the timing of being able to add new communities must also take into consideration the cost of power. Currently, if an economic analysis was done, she suggested with a 90 percent certainty the cost of

power would allow MCE to add any new community with a few outliers depending upon load. That could change with any large fluctuation in the market. She commented that the cost of natural gas and oil tended to align, but oil prices were causing what was occurring with natural gas prices. Both had been very low and the natural gas prices had been at historic lows. Solar prices had also been at a historic low in the last couple of years. If MCE were to procure for the five communities that had already committed, she was uncertain MCE could extend the deadline for three months absent the knowledge of certainty at that time.

Ms. Weisz expected the MCE Board would move forward with the communities that had committed to join within the inclusion period and possibly consider additional load in the future, although at that time the market might have changed. She would present the idea of extending the inclusion period to the MCE Board.

Bill Durkin, Moraga, urged the Town Council to consider leadership and provide the residents with choices for clean energy. He suggested the March 31, 2016 inclusion deadline had been imposed by the Town itself given letters on the topic and the status of the County's efforts. He asked that the PG&E exit fees be better clarified by MCE.

Lynda Deschambault, Moraga, requested that the Town Council defer a second reading until after the February 29 Contra Costa County Board of Supervisors meeting. She liked the idea of moving the soft deadline and understood the discussion had been ongoing since October/November. She noted the cities of San Mateo and San Francisco wanted to consider their own CCA Program in order to keep the money and jobs local. She also understood that San Mateo would be able to reduce its rates seven percent in comparison to MCE's rates; suggested there were a host of reasons to consider CCA Programs and keep it in the community; liked the fact that the agenda item had been expanded beyond consideration of MCE's CCA Program; and was optimistic that the County's action on February 29 could carry some financial support and movement behind it with an opportunity for the County to keep the monies local and save taxpayers money.

PUBLIC COMMENTS CLOSED

Vice Mayor Trotter supported choices for residents' energy needs, and found that any CCA Program and the movement was a good thing. While he understood the rationale for the deadline, the Town of Moraga had not considered the possibility of joining MCE until the last month. He wanted the Town to have more time to make an intelligent choice, and absent that additional time, the Town Council was being pressed to move more quickly than it should.

Vice Mayor Trotter suggested a compromise could be considered by MCE which could meet the needs of the Town and Town Council, and offer an opportunity for constituents to determine where they received their energy, but not be forced to make a decision given the inclusion deadline. He appreciated the presentation offered by MCE last month, although he wanted to further explore some of the potential costs. He saw no reason to move in the next 30 days and would be interested in MCE allowing the Town more time. Based on some of the comments, he suggested there could be a split vote and given the importance of the item, he preferred that the full Town Council be present to make a decision on the matter.

Mayor Metcalf pointed out that Councilmember Wykle, who was not present, would have to recuse himself from the discussion if he were present due to a potential conflict of interest.

Councilmember Onoda liked the opportunity for a choice, liked that the program would address some of the Town's CAP goals, and liked the different scale of renewable choices not available in the past. She understood residents had the opportunity to opt out if they wanted to stay with PG&E, although she agreed with the Vice Mayor that it would take the community time to understand what the program was all about. She was not comfortable moving forward unless the residents were willing to consider the program, and she too preferred more time beyond the March 31 inclusion deadline. She also wanted to wait and see the outcome of the decision from the City of Lafayette. She expressed her hope that Orinda would consider the CCA Program as well since she supported a complete Lamorinda effort.

Councilmember Arth suggested that MCE was offering an interesting and valuable program. If moving forward, he suggested the majority of Moraga residents would likely support MCE since residents were environmentally conscious, but agreed that the matter was moving too fast to consider an approval at this time. He thanked MCE for the additional written materials and wanted more time to review them. As the Town Council representative to the Chamber of Commerce, he would like to provide information to the Chamber and solicit feedback. He asked that the March 31 inclusion deadline be extended to allow more time to consider the program.

Mayor Metcalf supported additional time to consider the item, did not want to give up on the County's efforts, and would like to see the County succeed. He understood the County had not moved forward before this time given the financial impacts from the recession. With an improved economy, the County was moving forward to consider a CCA option, and he preferred a County CCA option. He did not support the agenda items at this time.

Vice Mayor Trotter preferred that the Town Council keep its options open, did not want to eliminate MCE as an option, suggested that the first two actions were premature, and the remaining two would leave the options open. He saw no reason not to consider Items 3 and 4, and authorize the Interim Town Manager to execute a MOU between the Town and MCE exploring inclusion in MCE, assuming it could be done independently. He also supported the recommendation to authorize the Interim Town Manager to send a letter to PG&E requesting that electricity use data within Town limits be shared with MCE for the purpose of membership in a CCA Program, which would allow the Town to preserve that option or proceed down more than one track at a time. He asked MCE whether that was a parallel action that MCE would recognize.

Ms. Weisz affirmed the action proposed by the Vice Mayor could be taken at this time, although based on MCE Board policy it would not meet the requirements for membership that had been established by the time inclusion deadline. The data from PG&E was important, and if the MCE Board decided to grant an extension, having that information up front would be a great start.

Vice Mayor Trotter offered a motion to authorize the Interim Town Manager to execute a MOU between the Town of Moraga and MCE exploring inclusion in MCE in the form

of the agreement provided in the staff report; authorize the Interim Town Manager to send a letter to PG&E requesting that electricity use data within Town limits be shared with MCE for the purpose of potential membership in a CCA Program; and that the Town Council request that MCE respond in writing either at the MCE Board or staff level whether it was willing to consider a three-month extension of the opt-in period to June 30, 2016.

Councilmember Arth seconded the motion.

Mayor Metcalf asked that the motion be expanded to include direction to staff to continue monitoring the Contra Costa County efforts as an alternative to MCE, if, upon completion of MCE's membership analysis, MCE determined that it was not in the Town's or MCE's best interests for Moraga to join MCE.

Vice Mayor Trotter suggested that language was not a necessary addition to his motion, although when advised by staff of the additional direction which had been included in the staff report, he was not opposed to adding said direction to staff.

Councilmember Arth as the second to the motion, accepted the amendment.

On the motion, Interim Town Manager Priebe asked MCE to comment on when or if there was a term by which the load data provided by PG&E became stale, and whether MCE would request additional load data information.

Ms. Weisz affirmed there was a term by which the load data would become stale, although three months would not make a difference. She was uncertain whether MCE would move forward to analyze the data before the Town Council took action on whether to join MCE, and there would be some concern with a three-month delay without the knowledge and certainty of joining MCE after that period, which would be something she would have to discuss further with the MCE Board. The MCE Board would next meet on March 17, 2016, and an Executive Committee meeting was scheduled in the next week, at which time she could raise the Town's issues.

Councilmember Onoda thanked MCE for the written materials and requested more copies so they could be shared with members of the public.

ACTION: It was M/S (Trotter/Arth) to authorize the Interim Town Manager to Execute a Memorandum of Understanding Between the Town of Moraga and Marin Clean Energy (MCE) Exploring Inclusion in MCE in the Form of the Agreement Provided in the Staff Report; authorize the Interim Town Manager to Send a Letter to PG&E Requesting that Electricity Use Data within Town Limits is Shared with MCE for the Purpose of Potential Membership in a CCA Program; the Town Council Requests that MCE Respond in Writing either at the MCE Board or Staff Level, whether MCE was Willing to Consider a Three-Month Extension of the Opt-In Period to June 30, 2016; and Direct Staff to Continue Monitoring the Efforts of Contra Costa County as an Alternative to MCE, if, upon completion of MCE's Membership Analysis, MCE Determines that it is not in the Town's or MCE's Best Interest for Moraga to Join MCE. Vote: 4-0-1. Absent: Wykle.

B. **Joint Moraga-Lafayette Surface Seal Project**
Consider Resolution 16-2016 Authorizing the Interim Town Manager to Execute an Agreement with the City of Lafayette to Partner in the Joint Moraga-Lafayette Pavement Management Surface Seal Project

Public Works Director/Town Engineer Edric Kwan presented the staff report and requested the Town Council approve a resolution authorizing the Interim Town Manager to execute an agreement with the City of Lafayette to partner in the Joint Moraga-Lafayette Pavement Management Surface Seal Project.

Vice Mayor Trotter reported that he had received complaints from residents about the poor condition of Bollinger Canyon Road, which was full of potholes as a result of recent rains. Mr. Kwan clarified the road was on schedule to be repaired, and would be a separate project from the Moraga-Lafayette Pavement Management Surface Seal Project.

Responding to the Mayor, Mr. Kwan added that the Measure K Oversight Committee had not been made aware of the details of the subject project but were aware of plans to pursue a joint Moraga/Lafayette/Orinda project. In preparation for the Oversight Committee's annual report, the Committee would review the reimbursements and invoices generated after the Town reviewed and approved the progress payments. Upon paying the contractor through the City of Lafayette, the Town of Moraga would reimburse Lafayette for its share. All receipts would be part of the documents for the Oversight Committee. He emphasized the Oversight Committee would have the same level of oversight for the subject project had it been done by the Town of Moraga. The Oversight Committee was scheduled to meet in late March, at which time he would provide an update on all pavement projects in the Town including the subject project.

Vice Mayor Trotter commented the Mayor's concerns regarding the level of oversight from the Oversight Committee would be a good topic of discussion for the Committee, but would not change the action before the Town Council.

PUBLIC COMMENTS OPENED

There were no comments from the public.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Trotter/Arth) to adopt Resolution 16-2016 Authorizing the Interim Town Manager to Execute an Agreement with the City of Lafayette to Partner in the Joint Moraga-Lafayette Pavement Management Surface Seal Project. Vote: 4-0-1. Absent: Wykle.

12. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

Mayor Metcalf reported that there were no appointed Commission/Board members to the Hillside and Ridgeline Steering Committee other than the two Town Council representatives given that those members had either termed out or resigned.

He clarified with Ms. Clark that changes to the Hillside and Ridgeline Steering Committee Charter may be necessary. The Committee was due to sunset in June 2016; the term of the charter would require modification as well; and staff suggested the issue be agendized for discussion as part of a Special Meeting of the Town Council scheduled for March 10, 2016, at which time the Hillside and Ridgeline Policy Options would be presented to the Town Council.

13. COMMUNICATIONS

There were no communications.

14. ADJOURNMENT

ACTION: It was M/S (Arth/Onoda) to adjourn the meeting at 10:05 P.M. Vote: 4-0-1. Absent: Wykle.

Respectfully submitted by:

Marty C. McInturf, Town Clerk

Approved by the Town Council:

Michael Metcalf, Mayor