



**TOWN OF MORAGA
TOWN COUNCIL SPECIAL MEETING**

**JUNE 24, 2020
MINUTES**

6:00 p.m.

TELECONFERENCED MEETING LOCATION ONLY

COVID-19 NOTICE

THIS MEETING WAS CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPEND CERTAIN REQUIREMENTS OF THE BROWN ACT, AND PURSUANT TO THE SHELTER IN PLACE ORDERS OF THE HEALTH OFFICER OF CONTRA COSTA COUNTY INCLUDING THE MOST RECENT ORDER DATED JUNE 16, 2020, WHICH PERMIT THE TOWN TO CONDUCT ESSENTIAL BUSINESS AND IS PERMITTED UNDER THE ORDER AS AN ESSENTIAL GOVERNMENTAL FUNCTION.

Consistent with Executive Orders Nos. N-25-20 and N-29-20 from Governor Gavin Newsom and the Contra Costa County Health Officer Shelter in Place Orders including the most recent Order dated June 16, 2020, the June 24, 2020 special meeting was not physically open to the public.

All Town Councilmembers and Town staff participated in this meeting via teleconference.

1. CALL TO ORDER

The special meeting was called to order at 6:00 p.m. by Mayor Kymberleigh Korpus.

ROLL CALL

Councilmembers present: Mayor Kymberleigh Korpus, Vice Mayor Mike McCluer, Councilmembers Renata Sos, Steve Woehleke and Roger Wykle

2. PUBLIC COMMENTS AND SUGGESTIONS

The following comment was received via e-mail and read into the record by Town Attorney Michelle Kenyon:

Dave Trotter: Madam Mayor and Honorable Councilmembers. Thank you for this opportunity to address you this evening.

The identity of the party (or parties) which is the subject of the two Closed Session items is not set forth on the special meeting agenda. That said, I'm making these comments for your consideration on the assumption that the potential adverse litigant is, or may be, the East Bay Municipal Utility District (EBMUD). As some of you will recall, I do have firsthand knowledge during the last 2 – 3 years of my tenure on the Council.

Regarding the Town's potential initiation of litigation against EBMUD:

If the Council is now weighing whether or not to file a lawsuit against EBMUD, I would strongly urge the Council to authorize that action.

There is no evidence that EBMUD undertook any hydrologic or other environmental studies to assess, much less mitigate, the potential impacts of these water releases.

EMBUD artificially diverted Sacramento River water and there is no evidence that EBMUD undertook any hydrologic or other environmental studies.

It is my understanding that the Town has been endeavoring to reach a settlement of its claims against EBMUD. I am not privy to the current status of any negotiations. But if those negotiations have reached an impasse, then it is time to hold EBMUD fully accountable through the judicial process.

Regarding a possible settlement with EBMUD:

I do not have current information regarding the calculation of the Town's damage claim against EBMUD. If the Council is now weighing whether or not to settle these claims, then I have a few key thoughts for your consideration:

- 1. Any settlement should be sufficient to make the Town reasonably whole. The evidence is that EBMUD did nothing – and within a few months, the earth movement down creek deformed the structural supports under the Canyon Road Bridge and forced its closure and demolition.*
- 2. There is the fact that since the winter of 2016 – more than four years – the segment of the regional trail owned by EBMUD below Augusta Drive has been completely closed to use by the Moraga community. Prior to 2016 the trail was open, used and enjoyed by hundreds of Moraga residents each day. It was a designated 'Safe Route to School' used by children walking or riding their bikes from Moraga County Club to JM and Camino Pablo. All of this was taken away by EBMUD.*
- 3. Thus, any settlement with EBMUD – whether at this time, or at some time in the future – should not just provide for the payment of money. The Town Council should insist on enforceable settlement language under which EBMUD will commit to fund part of all of a geotechnical solution to re-establish and re-open the trail link to Canyon Road in the area below Augusta Drive. The Moraga community deserves to have this important recreational amenity restored. And while development of a solution may not yet be in hand, this issue should be addressed in the public interest now, with strong settlement language, so that some future Town Council will have the ability to enforce an obligation on EBMUD's part to be part of that solution and to contribute to its development and construction.*

Thank you for your consideration of these comments.

3. RECESS TO CLOSED SESSION

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code § 54956.9(d)(4): (1 potential case).

B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code § 54956.9(d)(2):
(1 potential case).

4. RETURN TO OPEN SESSION

Mayor Korpus advised that there was no reportable action from the Closed Session.

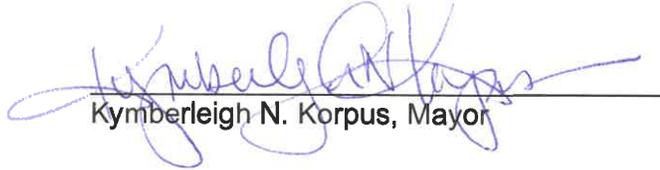
5. ADJOURNMENT

ACTION: It was M/S to adjourn the meeting at 7:00 p.m. Vote: 5-0.

Respectfully submitted by:


Marty C. McInturf, Town Clerk

Approved by the Town Council:


Kimberleigh N. Korpus, Mayor