CITY OF MORGAN HILL

COUNCIL CHAMBERS
17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS	REDEVELOPMENT AGENCY
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Steve Tate, Mayor Pro Tempore	Steve Tate, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Mark Grzan, Council Member	Mark Grzan, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL AND REGULAR MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

and

FINANCING AUTHORITY COMMISSION MEETING

6:00 P.M.

A Special Meeting of the City Council, Redevelopment Agency and Financing Commission is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions.

Dennis Kennedy, Mayor/Chairman/President

CALL TO ORDER
(Mayor/Chairperson/President Kennedy)

ROLL CALL ATTENDANCE
(City Clerk/Agency Secretary/Commission Secretary Torrez)

DECLARATION OF POSTING OF AGENDA
Per Government Code 54954.2
(City Clerk/Agency Secretary/Commission Secretary Torrez)

6:00 P.M.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority:	Pursuant to Government Code 54956.9(a)
Case Name:	City of Morgan Hill v. Howard Vierra
Case Number:	Santa Clara County Superior Court, Case No. 1-04-CV-026723

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

INTRODUCTIONS
Community Development Director
Kathleen Molloy Previsich

CITY COUNCIL REPORT
Council Member Grzan

CITY COUNCIL SUB-COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.
(See notice attached to the end of this agenda.)

PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND PRESENT IT TO THE CITY CLERK.
(See notice attached to the end of this agenda.)

PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND PRESENT IT TO THE CITY CLERK.
(See notice attached to the end of this agenda.)

PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY COUNCIL/REDEVELOPMENT AGENCY.

City Council Action

CONSENT CALENDAR:

ITEMS 1-8 The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate **Page**
Consent Calendar: 1 - 10 Minutes

1. **FISCAL YEAR 2005-2006 OPERATING AND CAPITAL IMPROVEMENT BUDGET SCHEDULE**.....
Recommended Action(s): **Approve** the Recommended Fiscal Year 2005-2006 Budget Schedule.

2. **APPROVAL OF AMENDED SAN PEDRO PONDS JOINT USE AGREEMENT**.....
Recommended Action(s): **Approve** the Amended Joint Use Agreement with the Santa Clara Valley Water District.

3. **AWARD OF TRAFFIC SIGNAL INSTALLATION AT TENNANT AND HIGHWAY 101 SOUTHBOUND RAMPS** .....
Recommended Action(s):
   1. **Appropriate** $180,000 from the Current Year Un-Appropriated Traffic Impact Fund Balance (309) into the Project Account (502K03);
   2. **Award** Contract to Granite Rock Company-Pavex Construction Division for the Construction of the Traffic Signal Installation at Tennant/Highway 101 Southbound Ramps Project in the Amount of $428,309; Subject to Review and Approval by City Attorney; and
   3. **Authorize** Expenditure of Construction Contingency Funds, Not to Exceed $42,831.

4. **RESCHEDULING OF APRIL 2005 GENERAL PLAN AMENDMENT REQUESTS** .....
Recommended Action(s): **Direct Staff** to Reschedule the April General Plan Review Hearings to July 2005.

5. **SUPPORT OF LOCAL LIBRARIES**.....
Recommended Action(s): **Adopt** Resolution in Support of Local Libraries.

6. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2004 QUARTERLY REPORT #4**.....
Recommended Action(s): **Accept** and **File** the RDCS Fourth Quarter Report for 2004.

7. **ACCEPTANCE OF DONATIONS FOR THE AQUATICS CENTER FROM MORGAN HILL AQUATIC CENTER, INC.** .....
Recommended Action(s): **Accept** Donations by the Morgan Hill Aquatics Center, Inc. to the Aquatics Center.

Time Estimate **Page**
Consent Calendar: 1 - 10 Minutes

8. **IMPACT FEE AGREEMENT** .....
Recommended Action(s):
1. **Authorize** the City Manager to do Everything Necessary and Appropriate to Prepare and Execute an Agreement with the Operator and/or Owner of 15750 Monterey Road to:
   a) **Allow** Them to Pay Traffic/Sewer Impact Fees Based on the Maximum Number of Children Permitted at the Site Under Their State License at the Time of Pulling Building Permits for Tenant Improvements; and
   b) **Require** Them to Pay Additional Impact Fees if They Increase the Number of Children Permitted Under Their License in the Future.

Redevelopment Agency, City Council, and Financing Authority Action

CONSENT CALENDAR:

ITEM 9

Time Estimate **Page**
Consent Calendar: 1 - 10 Minutes

9. **APPROVE JOINT REGULAR REDEVELOPMENT AGENCY, SPECIAL CITY COUNCIL, AND MORGAN HILL FINANCING AUTHORITY COMMISSION MEETING MINUTES OF JANUARY 26, 2005** .....

City Council Action

OTHER BUSINESS:
Time Estimate **Page**

10. **15 Minutes** **REPORT FROM THE CITY COUNCIL'S APPOINTED 2006-CENTENNIAL STEERING COMMITTEE** .....
Recommended Action(s):
1. **Consider** Report/Recommendations from the 2006-Centennial Steering Committee; and
2. **Appoint** a Two-Member Council Subcommittee to Assist the 2006-Centennial Committee, If Deemed Appropriate.

11. **15 Minutes** **DEPOT STREET UTILITY UNDERGROUNDING** .....
Recommended Action(s): **Direct** Staff to Proceed with Undergounding Existing Overhead Utilities along Depot Street from Main Avenue to East Dunne Avenue.

12. **10 Minutes** **MONTEREY UNDERGROUND UTILITIES PROJECT** .....
Recommended Action(s): **Direct** Staff to Proceed with a Public Information Meeting and Report Back to Council.

City Council and Redevelopment Agency Action

OTHER BUSINESS:

	Time Estimate		Page
13.	**20 Minutes**	**INVESTMENTS IN CAPITAL EXPENDITURES WITH POTENTIAL RETURN ON INVESTMENT**.....	

Recommended Action(s):

1. **Appropriate** $600,000 of RDA Funds for Projects at the Aquatics Center Identified as "Category A" in the Staff Report; and
2. **Provide** Policy Direction for Preparation of Fiscal Year 2007 Budget.

14. **15 Minutes** **CONSIDER CHANGE IN CITY COUNCIL-REDEVELOPMENT AGENCY MEETING TIME/STREAMLINING MEETINGS** .....

Recommended Action(s):

1. **Discussion/Direction** on the Council/RDA Meeting Start Time;
2. **Discussion/Direction** Regarding the Order of the Agenda;
3. **Direct** Staff to Return with Ordinance Amendment, if Deemed Appropriate;
4. **Amend** City Council Policies, As Deemed Appropriate; and/or
5. **Amend** RDA Bylaws, as Deemed Appropriate.

15. **5 Minutes** **CITY COUNCIL/REDEVELOPMENT AGENCY UPCOMING AND SUMMER MEETING SCHEDULE** .....

Recommended Action(s): **Discussion** and **Direction** Regarding Upcoming and Summer Meeting Schedule.

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: FEBRUARY 16, 2005

Agenda Item # 1
Prepared By:
Budget Manager
Approved By:
Finance Director
Submitted By:
City Manager

TITLE: FISCAL YEAR 2005/06 OPERATING AND CAPITAL IMPROVEMENT BUDGET SCHEDULE

RECOMMENDED ACTION(S):

1) Approve the recommended FY 2005/06 Budget Schedule

EXECUTIVE SUMMARY:

The recommended FY 2005/06 Budget Schedule, developed by the City Manager and Finance Department, is listed below for City Council's review and approval.

Dates	Event
Fri, May 13	Proposed FY 2005/06 Budget given to City Clerk's office for distribution
Wed, May 18	Proposed FY 2005/06 Budget presented to City Council as agenda item
Fri, May 20	Proposed Workshop with City Council. Department presentations
Wed, Jun 15	Public Hearing for Proposed FY 2005/06 Budget & CIP Program and Workplan
Wed, Jun 22	Proposed adoption FY 2005/06 Budget.

Alternatively, if the City Council would prefer Friday, June 3, rather than Friday, May 20, for the proposed Budget Workshop, that date is available.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: February 16, 2005

Agenda Item #2

Prepared By:

_____
Deputy Director Public Works Operations

Approved By:

_____
Public Works Director

Submitted By:

_____
City Manager

APPROVAL OF AMENDED SAN PEDRO PONDS JOINT USE AGREEMENT

RECOMMENDED ACTION(S): Approve the amended Joint Use Agreement with the Santa Clara Valley Water District

EXECUTIVE SUMMARY:

On July 2, 2003 the City Council approved the San Pedro Ponds Joint Use Agreement with the Santa Clara Valley Water District for creating the San Pedro Ponds Trails Project providing a pedestrian trail. In February of 2004 the project was completed and accepted by the City Council.

The San Pedro Ponds Trails Project was funded with State Department of Recreation Proposition 12 Grant funding. After completion of the project staff pursued reimbursement of all projects costs under this grant. The State notified staff that to be eligible to receive grant funding required a revision in the Joint Use Agreement. The revision required that the termination language include a "mutual consent" clause. This would insure that neither the City nor the SCVWD could terminate the JUA unilaterally.

The City Attorney worked with SCVWD to create wording to satisfy the mutual consent termination requirement. The proposed revised agreement is attached.

FISCAL IMPACT: The JUA must be revised to satisfy eligibility requirements under the Prop 12 funding.

JOINT USE AGREEMENT

SANTA CLARA VALLEY WATER DISTRICT, a public entity, hereinafter referred to as "District;" and the City of Morgan Hill, hereinafter referred to as "City;" AGREE this _____ day of _____, 2005 as follows:

RECITALS:

A. District is the owner of certain real property (hereinafter "the Premises"), identified on "Exhibit A" attached hereto, so marked and by this reference made a part hereof.

B. Both parties desire that this Agreement provide opportunities for landscaping, passive nonvehicular recreational use (except for maintenance, emergency, and enforcement vehicles) and for recreational facilities on the Pathway marked on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter "Path"), and as a secondary function to the primary water conservation and groundwater basin recharge functions of the San Pedro Groundwater Recharge Facility.

C. City and District wish to allow pedestrians and bicyclists onto the Path and to erect fencing to restrict access to the recharge ponds.

D. District's policy supports the use of its facilities for joint use by responsible agencies such as the City to provide and operate recreational use of District facilities.

E. City has ascertained that adequate funds have been appropriated to construct and operate on an annual basis its proposed facilities on the premises and that adequate funds have been appropriated to meet all its obligations contained in this agreement.

F. The parties find it to be in the public interest to provide for joint use of the Path by means of an Agreement thereof under the following terms and conditions:

AGREEMENT:

1. For and in consideration of the mutual promises, covenants, and agreements mentioned herein, and other good and valuable consideration, District hereby allows City to use the Path for recreational purposes.

2. District shall and does hereby grant permission to City to use the Path for the following purposes and subject to the following special restrictions for which the City will take reasonable steps to monitor including appropriate signage:

   - Recreational uses shall be passive in nature and shall be restricted to entry during daylight hours.
   - City shall make reasonable attempts to prevent swimming, boating, or fishing on the Premises.
   - City shall not erect or provide picnic facilities on the Premises.
   - City shall take reasonable steps to prevent substantial impact of wildlife on the Premises from use.

3. City understands and agrees that District will use track mounted vehicles for its percolation pond maintenance activities including traversing the areas used for recreational trail purposes.

4. District shall have no responsibility whatsoever to repair or restore damage to City's structures, paving or surfacing on the Premises by reason of District's reasonable and lawful maintenance or other activity, or by reason of natural forces, all such costs for repair or restoration are to be born by City. Provided however, that if District's active negligence or willful misconduct is determined to be the proximate cause of damage to City's property, this paragraph shall not be applicable.

5. City shall be responsible for providing and maintaining any public use recycling and garbage receptacles that may be placed on the Path, and providing for adequate waste removal service on the Path. City shall encourage volunteer groups to participate in the District's Adopt-A-Creek program. City shall also be responsible for providing graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from signs installed in conjunction with and/or accessory to the establishment of pathway consistent with its implementation of the same program at comparable City facilities.

6. The Path may be patrolled by City personnel and or the Santa Clara County Sheriff's Department. District shall have no obligation whatsoever to provide or pay for such services.

7. City shall be responsible for the removal and replacement of recreational improvements installed by the City in the event District is required to improve the San Pedro Recharge Facility in any manner for water conservation purposes. District shall involve City in preconstruction planning, as described in Section 10 in the event a District project is needed, to minimize District's project impact on City's improvements to the Premises.

8. City and District recognize the unique nature of the resources and recreational uses covered by this agreement and the beneficial effects to both parties of providing these resources to the public. City and District resolve to utilize their respective offices to mutually support the efforts of each other to deliver such services to the public. City and District further agree to cooperate in order to resolve disputes and assist each other in responding to public inquiries arising from the activities of the parties of either party.

9. City and District staff shall meet whenever necessary or upon request of the other party and upon reasonable notice for the purpose of scheduling routine maintenance including but not limited to:

- Maintenance issues related to improvements
- Method and timing of issues related to affected wildlife
- Nonemergency work including pond cleaning that will require use of heavy equipment, barricading, and/or will cause restricted access to the Path. District and City further agree to notify one another's designated representative as required at least 10 working days prior to commencement of such work, in order to minimize public impacts.
- In an emergency situation, District shall have rights provided in Paragraph 15 without consulting City, but shall inform the City as soon as possible.

10. Construction work during spring nesting season will be avoided whenever possible. The parties acknowledge that the spring nesting season occurs between February 1 and July 1. If construction must be done during the nesting season, a survey by a qualified biologist will be undertaken to determine the presence of nesting. If no nesting activity is reported, then the work may proceed. If nesting activity is reported, the biologist is expected to recommend the implementation of adequate mitigation measures. Environmental impact shall be considered prior to all work. Any and all work related to this clause shall be completed in accordance with applicable federal, state, and local environmental health and safely regulations including the federal Migratory Bird Act of 1918 and any amendments thereto.

11. The parties shall cooperate to create and install signage which benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Chief Executive Officer of the District and Director of Public Works of the City or their designees shall meet and confer on a periodic basis to plan and install appropriate signage which serves the needs of both parties.

All signs excepting existing ones or publications that identify the facility (e.g. park, trail) by name should include the District's logo in equal size and symmetric relationship to any other logos. All signs or publications that are intended to interpret the water resources should be developed in cooperation with the District's Public Information Office and should also include the District's logo in equal size and symmetric relationship to any other logos. Maintenance responsibility for signage and benches shall be the responsibility of either the District or the City, according to which entity has installed the improvements.

12. ~~This Agreement shall be for a period of twenty-five (25) years beginning on the date it is approved by the District Board of Directors. City may, upon written notice to District of intent to do so, if given not less than ninety (90) days prior to the termination date, renew this Agreement for a like period. This Agreement may be terminated by either party upon ninety (90) days prior written notice to the other. Notice of intent to renew or to terminate may be given by the City Manager for City. Notice of intent to terminate may be given by the District's Chief Executive Officer for the District.~~

This Agreement shall be for a period of thirty (30) years beginning on September 16, 2003. City may, upon written notice to District of intent to do so, and given not less than ninety (90) days prior to the termination date, renew this Agreement for a like period upon the same terms and conditions. This Agreement may be modified or terminated without cause by mutual written agreement of the parties. This Agreement may be terminated for cause by either party upon ninety (90) days prior written notice to the other party. For purposes of this Agreement, "cause" means material breach of the provisions of the Agreement. Notice of intent to renew or to terminate may be given by Director of Public Works for City. Notice of intent to terminate may be given by the Chief Executive Officer for the District.

13. Except as otherwise provided in this agreement, City shall have the full control and authority, for purposes of this Agreement, over the use of the Path, and City may restrict, or control, regulate and supervise the public use thereof. City may, in its uncontrolled discretion (but consistent with the right of District hereinafter described, and without substantial or hazardous diminution of the conservation function of the Premises as now existing or as may hereafter be altered), take any measures of every kind as may in the opinion of City be necessary for the safety of the users of the Path for any joint use agreement purpose. Further, City shall have the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the Path for purposes of this Agreement save and except for those placed or installed by District.

14. District shall have the sole responsibility to maintain the San Pedro Recharge Facility for water conservation purposes, to repair and reconstruct the same where necessary for such purposes and to perform such periodic maintenance as may be appropriate to such purposes, including removal of silt, debris, and obstructive growth. It is expressly understood that District is engaged in flood control and the conservation of water and that the terms and conditions of this Agreement shall not in any way interfere with the absolute, free and unrestricted right of District to operate and maintain for water conservation purposes the recharge ponds or any appurtenant works thereto, or to repair or construct any of its works, or to raise or lower the height of the water present upon the Premises; and it is further understood that nothing herein contained shall be construed as conferring a right upon City to have or a duty upon District to provide water upon the Premises at any time. City shall bear

the cost and expense of any security, police or other expenditure necessary to temporarily prohibit or control public access to the Path that the District would not ordinarily incur to complete the activities described in this clause. Damage to District's or City's facilities arising from use of the Path under this Agreement shall be the responsibility of City.

15. It is also expressly understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same, and that such fluctuations may require greater control over the use of the Premises by City and the public; provided, however, that City shall be responsible for informing itself thereof and of all other conditions of the Premises whether open or covered which may in anywise affect the health and safety of the users of the Premises hereunder, unless such conditions are due to District's negligence or willful misconduct.

16(a). City shall have the right to build any improvements on the Path necessary or convenient to the enjoyment of this Agreement, provided the location of any such improvement is, in each case during the term of this Agreement, first approved by District and signified by issuance of a District permit. It is fully understood and agreed that District's sole basis of approval or disapproval of improvements is its responsibility to insure that the same shall not constitute an obstruction to flood flows and shall not interfere with the use of the Premises for water conservation purposes, and does not in anywise extend to consideration of the health and safety of users of the Premises, which latter consideration is the responsibility of City, or to the advisability of such improvements.

(b). Improvements built by City on the Path shall remain the property of City and upon the termination of this Agreement shall be removed by City, leaving the Premises in a condition as near as reasonably possible to their condition prior to such improvements. If District, in the exercise of lawful powers as stated in subparagraph (a) above, requires that such an improvement must be removed or relocated, the same shall be done at City's expense upon reasonable notice from District.

17(a). City shall assume the defense of, indemnify and hold harmless, District, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature, or description directly or indirectly arising during the initial term of this Agreement, or any renewal thereof resulting from the public use of the District Premises not limited to the Path shown on Exhibit A attached hereto occurring as a consequence of City's or the public's use of the Premises for recreational uses as provided in this Agreement or from acts, omissions, or activities of City's officers, agents, employees, or independent contractors employed by City, excepting claims, liability, loss, damage, or injury which arise from the willful misconduct or negligent acts, omissions, or activities of an officer, agent, or employee of District. This Agreement to defend, indemnify, and hold harmless shall operate irrespective of whether negligence is the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is merely a condition rather than a cause.

(b). District shall assume the defense of, indemnify, and hold harmless, City, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature or description directly or indirectly arising from District's exercise of its flood control or water conservation purposes on the Premises and/or City Portion pursuant hereto or from acts, omissions, or activities of District's officers, agents, employees, or independent contractors employed by District excepting claims, liability, loss, damage, or injury which arises from the willful misconduct or negligent acts, omissions or activities of an officer, agent, or employee of City. This agreement to defend, indemnify, and hold harmless shall operate irrespective of whether negligence is the basis of the claim, liability, loss, damage, or injury, and irrespective of whether the act, omission, or activity is merely a condition rather than a cause.

18. Any and all notices required to be given hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

City	**District**
City of Morgan Hill Public Works Director 17555 Peak Ave Morgan Hill, Ca 95037	Santa Clara Valley Water District 5750 Almaden Expressway San Jose, California 95118 Attention: Clerk of the Board

19. This agreement, and all the terms, covenants, and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto; provided, that neither City nor District shall assign nor sublet this Agreement without prior written consent of the other.

20. This agreement includes any and all exhibits, covenants, agreements, conditions, and understandings between City and District concerning the Premises. There are no covenants, agreements, conditions, or understandings, either oral or written, between the parties hereto other than herein set forth.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

"City"	"District"
CITY OF MORGAN HILL	SANTA CLARA VALLEY WATER DISTRICT, a public entity
By: _____ City Manager	By: _____ Chief Executive Officer

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____ City Attorney	_____ General Counsel

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: FEB. 16, 2005

Agenda Item #3

Prepared By:

_____
Associate Engineer

Approved By:

_____
Public Works Director

Submitted By:

_____
City Manager

AWARD OF TRAFFIC SIGNAL INSTALLATION AT TENNANT/HWY 101 SOUTHBOUND RAMPS

RECOMMENDED ACTION(S):

1. Appropriate $180,000 from the current year un-appropriated Traffic Impact Fund balance (309) into the project account (502K03).
2. Award contract to Granite Rock Company – Pavex Construction Division for the construction of the Traffic Signal Installation at Tennant/Hwy 101 Southbound Ramps project in the amount of $428,309
3. Authorize expenditure of construction contingency funds not to exceed $42,831.

EXECUTIVE SUMMARY:

The scope of the work for this project includes installing traffic signal, street lighting, street widening, and pedestrian pathway improvements per the Plans and Specification documents. In addition, this project will facilitate the interconnect between the northbound HWY 101, southbound HWY 101, Juan Hernandez and Butterfield traffic signals.

The bid opening was held on February 3, 2005 and the bids received are as listed below. The low bidder has many years of experience in road construction projects and has previously performed work for the City of Morgan Hill. Staff recommends award of the contract to Granite Rock Company – Pavex Construction Division. This project is scheduled to begin construction in March 2005 and be completed by August 2005. Granite Rock Company – Pavex Construction Division's bid was 2% higher than the engineer's estimate of $420,000.

During the design review phase of this project, Staff encountered additional requirements from both Caltrans and PG&E. The additional requirements and changes increased the project scope and costs. In addition, Staff also added a traffic interconnect link to the newly installed Highway 101 northbound traffic signal.

Granite Rock Company – Pavex	$428,309
McGuire & Hester	$445,506
Prism Engineering Inc.	$464,867
Granite Construction Co.	$498,498
Stevens Creek Quarry, Inc.	$494,506

FISCAL IMPACT: The total contract cost for this project is $471,140, which includes a 10% contingency of $42,831. Funding was approved by Council on December 17, 2003 under Traffic Impact Fund (309) for $410,000. Presently, insufficient funds are budgeted for this project, therefore Staff recommends that $180,000 be appropriated from the un-appropriated Traffic Impact Fund (309) in order to complete the project. The project will be funded under project #502K03.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: February 16, 2005

Agenda Item # 4

Prepared By:

_____
Planning Manager

Approved By:

_____
Community Development Director

Submitted By:

_____
City Manager

RESCHEDULING OF APRIL 2005 GENERAL PLAN AMENDMENT REQUESTS

RECOMMENDED ACTION(S):

Direct Staff to reschedule the April General Plan review hearings to July 2005.

EXECUTIVE SUMMARY:

City Council policy establishes a schedule for consideration of major land use planning decisions which are reviewed on an annual basis. The policy provides that General Plan Amendment requests would be considered by the City Council during the months of April and October. The policy establishes December 1 as the filing deadline for the April General Plan review. By policy these applications should be considered at either the first or second City Council meeting in April.

The City is currently processing seven General Plan Amendment applications. Two of the applications require Environmental Initial Studies to be prepared and a third requires an Environmental Impact Report (EIR). These studies cannot be completed in time to forward the General Plan Amendments to the City Council in April. The environmental reports and the required public review periods should be completed by the end of June. The reports can then be forwarded to the Planning Commission in late June or early July and to the City Council in mid July. To provide additional time to complete the environmental review process, staff recommends the City Council reschedule the April General Plan review to July 2005.

FISCAL IMPACT:

No budget adjustment required.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

Agenda Item # 5

Prepared/Approved By:

_____
Council Services & Records Manager

Submitted By:

_____
City Manager/ Executive Director

MEETING DATE: *February 16, 2005*

SUPPORT OF LOCAL LIBRARIES

RECOMMENDED ACTION: Adopt Resolution in Support of Local Libraries

EXECUTIVE SUMMARY:

The existing library was built in 1974 and served a population of approximately 7,500. The City's current population is at approximately 35,000 with an anticipated population of 48,000 in 2020. It is clear that the current facility has outlived its useful life and needs to be expanded upon or a new library built to accommodate the current needs of the community and plan for future growth. To this end, the City Council has agreed to proceed with the construction of a new 28,000+ square foot library building with a projected construction completion date of 2007.

On March 2, 2004, the County Library District Ballot Measure B failed to be passed by the voters. Passage of Measure B would have resulted in maintaining the hours of operation for the library as well as providing updated books, materials and computer technology. Failure of Measure B resulted in reduced library hours (Monday closures), fewer books being purchased and fewer services. Expiration of the current parcel tax will result in significant reductions in revenues; resulting in additional library service reductions to be made.

At the January 19, 2005 Council meeting, Council Member Tate reported that the Library Joint Powers Authority would be supporting two mail ballot measures for the May 3, 2005 election for voter consideration.

- The first measure will ask voters if they wish to continue paying the existing $33.66 per year assessment to maintain the level of library services in place at this time.

- The second measure will ask voters if they would be willing to pay an increase in assessments in an amount sufficient to return to the level of library services in place prior to the Monday closures and cutback in services.

The Council is being asked to adopt the attached resolution in support of local libraries, expressing its support of the two local parcel tax measures, and encouraging all citizens concerned with the lack of adequate financial resources for the libraries to vote "yes."

FISCAL IMPACT: Preparation of this staff report is accommodated in the Council Services & Records Manager's operating budget.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL IN SUPPORT OF LOCAL LIBRARIES.

WHEREAS, the pending expiration of the current parcel tax will result in significant reductions in revenues for our local public libraries; and

WHEREAS, current revenues have been inadequate and forced significant reductions in library hours and services; and

WHEREAS, parcel tax revenues can provide a stable, predictable source of local funding to maintain and restore essential library services that students, seniors and other members of our community rely on; and

WHEREAS, parcel tax revenues allow local voters to make investments in their community libraries and the education of our children; and

WHEREAS, maintaining access to our neighborhood libraries for students is essential for maintaining quality education in our community; and

WHEREAS, parcel tax revenues can be spent according to local priorities and all funds are returned to the library that serves the community from which it originated; and

WHEREAS, the City Council supports local control; and

WHEREAS, the Santa Clara County Library has placed two new parcel tax measures on the May 3, 2005 ballot for consideration by their local voters.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill expresses its support for these local parcel tax measures (Measures A and B) and encourages all citizens concerned with lack of adequate financial resources for libraries to vote yes.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill on February 16, 2005, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST: **APPROVED**

_____ _____

Irma Torrez, City Clerk **Dennis Kennedy, Mayor**

❦ CERTIFICATION ❦

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on February 16, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

_____
IRMA TORREZ, City Clerk

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: *February 16, 2005*

Agenda Item # 6

Prepared By:

Planning Technician

Approved By:

Planning Manager

Submitted By:

City Manager

RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2004 QUARTERLY REPORT #4

RECOMMENDED ACTION(S):

Accept and File the RDCS Fourth Quarter Report for 2004

EXECUTIVE SUMMARY:

In accordance with Section 18.78.150 of the Municipal Code, the Community Development Department is required to review, on a quarterly basis, each proposed development which has received a Residential Development Control System (RDCS) allotment. The purpose of this review is to determine whether satisfactory progress is being made with processing of the appropriate plans with the Community Development Department.

The majority of the residential projects are proceeding according to approved development schedules. The following projects are classified as BEHIND SCHEDULE: Cory-San Pedro Partners (MP-02-07), Barrett-Ditri-(MP-02-20), Watsonville-South County Housing (MP-02-26), Christeph-Kosich (MP-99-04), and W. Main-Vierra (MMP-03-09).

Cory-San Pedro Partners has had delays due to inclement weather, and E. Central-Warmington is behind schedule because of higher than anticipated pesticide residues found in the soil. Barrett-Ditri and Watsonville-South County Housing are in final map process. Christeph-Kosich's final map recorded in January 2005. W. Main-Vierra is still under appeal.

During the fourth quarter monitoring period, RDCS projects have secured 38 additional building permits and completed construction of 38 homes.

As of this quarterly report, the projected population for the City of Morgan Hill, based on all dwelling units allocated to date, will be 38,377.

By a vote of 6-0, the Commission approved the Quarterly Report by minute action and recommended the same by the Council. A copy of the 4th Quarterly Report for 2004 and the draft minutes of the January 25, 2005 Planning Commission meeting are attached for the Council's reference.

FISCAL IMPACT:

Preparation of this report was accomplished with monies from the Community Development Fund.

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CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: February16, 2005

Agenda Item # 7

Prepared By:

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Recreation & Community Services Manager

Submitted By:

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City Manager

ACCEPTANCE OF DONATIONS FOR THE AQUATICS CENTER FROM MORGAN HILL AQUATIC CENTER, INC.

RECOMMENDED ACTION(S): Accept donations by the Morgan Hill Aquatics Center Inc to the Aquatics Center

EXECUTIVE SUMMARY:

The Morgan Hill Aquatic Center, Inc. (Foundation) was established in 2001 to subsidize the operational costs of the 50 meter pool during the off-season so there would be a year-round competition/training pool available to swim teams and the community. In that regard, the Morgan Hill Aquatic Center, Inc. (Foundation) has provided subsidized funding for team rental fees, water polo, and masters programs. They have also donated a variety of items listed on the following memo which have benefited the programming of the 50 meter competition pool.

Pursuant to the City's Administrative Policy V009 "Donation Policy", donations with estimated values of $5,000 or more must be formally accepted by the City Council. One item, Colorado console & cabling/pace clock meets this requirement, but staff is presenting all of the donated items for Council acceptance.

FISCAL IMPACT: Increased benefit to program the 50 meter competition pool.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: February 16, 2005

Agenda Item # 8

Submitted By:

BAHS Director

Approved By:

City Manager

IMPACT FEE AGREEMENT

RECOMMENDED ACTIONS:
Authorize the City Manager to do everything necessary and appropriate to prepare and execute an agreement with the operator and/or owner of 15750 Monterey to: 1) allow them to pay traffic/sewer impact fees based on the maximum number of children permitted at the site under their State License at the time of pulling building permits for tenant improvements and 2) require them to pay additional impact fees if they increase the number of children permitted under their license in the future.

EXECUTIVE SUMMARY: The owner of 15750 Monterey Road is currently in discussions with a lessee who wants to operate a day care/preschool facility at the site. The site is located on a vacant lot in the eastern portion of Sutter Plaza (next to Super Tacqueria). The current methodology is to apply the appropriate traffic and sewer coefficients to the proposed square footage of the building to generate the impact fee estimates. However, the proposed operator of the building indicates that her license from the State would only allow up to 120 children to attend the facility. Our current traffic and sewer coefficients assume a much larger number of children would attend the facility at full occupancy. The owner and his proposed lessee indicate that if they have to pay impact fees based on the maximum occupancy of the building, the project is no longer financially viable. One solution to the problem is to allow the operator and/or owner, when they pull building permits for the tenant improvements, to pay traffic and sewer impact fees based on the number of children allowed under their current permit from the State. In the event the operator increases the permissible number of the children she can serve under her license, the operator and/or owner would be responsible to pay the additional traffic and sewer impact fees caused by the increased number of the children attending the facility. Once the operator is up and running, she will be better able to evaluate her ability to expand and pay the additional fees in the future

At this time, staff is still working out the details as to who would be responsible for the payment of additional fees and the structure of the agreement (e.g., payment, remedies). However, in the interest of allowing the parties to finalize their deal, we are recommending authority be granted to the City Manager to prepare and execute the necessary agreements with the appropriate parties.

FISCAL IMPACT: None

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AGENDA ITEM #___9_____
Submitted for Approval: February 16, 2005

CITY OF MORGAN HILL
JOINT REGULAR REDEVELOPMENT AGENCY, SPECIAL CITY COUNCIL, AND MORGAN HILL FINANCING AUTHORITY COMMISSION MEETING
MINUTES – JANUARY 26, 2005

CALL TO ORDER

Chairman/Mayor/President Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council/Commission Members Carr, Grzan, Sellers, Tate and Chairperson/Mayor/President Kennedy

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk/Commission Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Chairman/Mayor/President Kennedy led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented a proclamation for "Silicon Valley Reads" to County Librarian Melinda Cervantes and Community Librarian Rosanne Macek.

Ms. Cervantes indicated that Silicon Valley Reads' event brochures have been made available. She addressed the kickoff event to take place on Tuesday, February 1, 2005 at 7:00 p.m. with the venue being the Montgomery Theater. She stated that Silicon Valley Reads will be featuring the author David Mas Masumoto and his book *Epitaph for a Peach, Four Seasons on My Family Farm*. She said that there are over 30 programs available county-wide and encouraged the public to participate in the programs.

Ms. Macek stated that Morgan Hill will be holding "An Evening with David Mas Masumoto" on February 3, 2005 at 7:00 p.m. at the Community and Cultural Center.

RECOGNITIONS

Mayor Kennedy presented a clock to retiring Senior Advisory Committee Member Marilyn Gadway, and thanked her for her service to the community.

OTHER REPORTS

City Treasurer Roorda presented the Finance and Audit Committee Quarterly Report, focusing primarily on the general fund. He stated that the City typically sees revenues come in slower than expenses early in the year and then picks up during the course of the year. He indicated that there are some improved dollars coming in from property tax, sales tax and other areas. The Finance & Audit Committee is seeing optimistic signs that the City will see some revenue recovery. He stated that there have been strong revenues in the aquatics area and that the Vehicle in Lieu Fees will be coming in January and May and are not part of the current report. He said that there was a delay in ¼ of the sales tax revenue coming in September and has since been received in January. He said that the timing of receiving revenues will improve moving forward. On the expense side, he stated that the aquatics center has been running ahead of budget and that policy changes have impacted the timing of when legal expenses have been posted. He said that there were expenses associated with the November 2004-election and that the cost for the election was seen within the first half of the fiscal year. The good news is that the City's general fund reserve balance remains strong at $9 million, and will help balance the budget over the next 4-5 year period. He said that he is hopeful that the City will see improved revenues that will assist with the budget deficit and the ability to forecast and plan for the coming year.

Council Member Grzan said that it is being shown that the aquatics center has expended 75% of its budget at 50% of the year.

City Treasurer Roorda said that a lot of the expenses and revenues tend to come in early in the year and that they tend to be less in the winter months. He said that it was his understating that the City's strategy is to only spend what is collected in terms of revenues. He stated that the City is planning to keep the aquatics facility open as long as it can pay for itself.

Mayor Kennedy noted that item 4 is an aquatics center update and recommended that the item be pulled from the consent calendar to receive additional clarification at that time.

CITY COUNCIL SUBCOMMITTEE REPORTS

None.

PUBLIC COMMENT

Chairman/Mayor/President Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Mrs. Roberts stated that as a parent, she is concerned about a book that is being read in school. She finds the Huckleberry Finn book a little racist. She indicated that a permission slip was not sent home to read this book. She said that the book is being read out loud and making some students feel uncomfortable. She informed the Council that several schools have banned the back. She indicated that she has

addressed the School Board since 2003 and that she has not had any of her questions answered, including this situation. She stated that her daughter failed the course/class for felling uncomfortable and not reading the book out loud in class. She did not believe that children should be required to read a book if they make them feel uncomfortable.

No further comments were offered.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Sellers and seconded by Vice-chairman Tate, the Agency Board unanimously (5-0)* ***Approved*** *Consent Calendar Item 1 as follows:*

1. DECEMBER 2004 RDA FINANCE & INVESTMENT REPORT
Action: ***Accepted*** *and* ***Filed*** *Report.*

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Council/Agency Member Grzan requested that item 4 be removed from the consent calendar.

Action: *On a motion by Agency/Council Member Sellers and seconded by Vice-chairman/Mayor Pro Tempore Tate, the Agency Board/City Council unanimously (5-0)* ***Approved*** *Consent Calendar Items 2 and 3 as follows:*

2. DECEMBER 2004 CITY FINANCE & INVESTMENT REPORT
Action: ***Accepted*** *and* ***Filed*** *Report.*

3. MORGAN HILL LIBRARY – SELECTION OF CONSTRUCTION MANAGEMENT FIRM
Action: ***Authorized*** *the City Manager to Execute a Consultant Agreement with TBI Construction Management, Inc. for a Total Fee Not to Exceed $1,195,000; Subject to Review and Approval by the City Attorney.*

Mayor Pro Tempore/Vice-Chairman Tate stated that he was delighted that the Council has approved the selection of the consultant, TBI, for the construction of the Library. He said that the City is on track and on schedule and that the City will being moving forward with the library post haste.

Council/Agency Member Sellers was pleased that the project is coming in under budget.

4. AQUATICS CENTER BUDGET UPDATE

Council Member Grzan requested that staff provide the Council with an overview of expenses and revenues and how it relates to the budget.

Finance Director Dilles said that while the City Treasurer's statements that the City spent 78% of the aquatics budget is a true statement, he was comparing it to the original budget. He said that in late October there was a report to the Council projecting a higher level of revenues and costs at approximately $200,000 more. Staff plans to correct the budget on the revenue and expenditure side with the midyear budget adjustments. When staff makes this correction, the percentage will look a lot lower.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Recreation and Community Services Manager Spier indicated that there is a $200,000 difference between the budget that was adopted for July 1, 2004 and the amended budget presented to the Council on October 27, 2004. She stated that the October 27, 2004 budget is being tracked and is the budget included in the report. She said that staff is serious about keeping a close watch on the budget and that if the aquatics center dips too far below the line; the City will close the center and reopen it in May. She noted that the aquatics center is doing better than projected based on the swim teams' use of the lanes as well as the masters program. These programs have benefited the revenue side. Even though the aquatics center is dipping below the budget this time of year, it is staff's projection that the center will increase the revenues as the summer season approaches.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0),* ***Received and filed*** *the Information Report.*

City Council and Morgan Hill Financing Authority Commission Action

PUBLIC HEARINGS:

5. REFINANCING OF MADRONE BUSINESS PARK ASSESSMENT DISTRICT BONDS – SERIES 2000-1 - *Resolution Nos.5884, 5885, 5886, 5887 and MHFA-6*

Finance Director Dilles presented the staff report for the proposed refunding of some outstanding assessment district bonds for the Madrone Business Park Assessment District local obligation improvement bonds issued by the City in 2000. He stated that staff would like to help the property owner reduce their assessments based on current interest rates. Staff projects that the property owners will save approximately $1.4 million in future dollars, 7% of their annual assessment. He informed the Council that Richard Morales, the City's financial advisor, was in attendance to make a few comments about the current market, and the excellent financing that the City would be receiving.

Richard Morales, RBC Dain Rausch, Inc., financial advisor to the City, indicated that the market conditions have continued to be favorable over the last year or so. He stated that this is a good time to refinance this particular debt. He urged the Council and Financing Authority to move forward with this transaction. He said that this action would be a benefit to the owners of the Madrone Business Park. He indicated that the average annual savings on their assessment would be approximately 7.5% per year.

Mayor/President Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Acting as City Council:

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. 5884, Declaring Intention to Issue Refunding Bonds and Directing Preparation of a Reassessment Report.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. 5885, Approving a Reassessment Report and Confirming Reassessments.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. 5886, Authorizing the Issuance and Sale of Bonds.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. 5887, Making a Finding of Significant Public Benefit.*

Acting as Financing Authority Commission:

Action: *On a motion by Vice-President Tate and seconded by Commissioner Sellers, the Financing Authority Commission unanimously (5-0)* ***Adopted*** *Resolution No. MHFA-6, Authorizing the Issuance, Sale, and Delivery of Bonds.*

Acting as City Council:

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Approved*** *Agreements with RBC Dain Rauscher Inc. for Financial Advisory Services.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0)* ***Approved:*** *Agreements with Richards, Watson & Gershon for Bond Counsel and Disclosure Counsel Services; Agreements with NBS Government Finance Group for Reassessment Engineering Services; Agreements with*

Carneghi-Blum & Partners, Inc. for Appraisal Services; and ***Directed*** *the City Manager to Execute these Agreements, Subject to Review and Approval by City Attorney.*

City Council Action

OTHER BUSINESS:

6. VALLEY TRANSPORTATION AUTHORITY (VTA) PRESENTATION OF VALLEY TRANSPORTATION PLAN (VTP) 2030

Planning Manager Rowe presented the staff report. He indicated that the VTA, designated as the congestion management agency for Santa Clara County, has recently released its VTP 2030 Plan. He said that this document is an update of the VTP 2020 Plan and provides the planning framework for making key transportation decisions. He informed the Council that the VTA Board is scheduled to adopt the Plan in early February. At the Council's request, staff has invited VTA staff to make a presentation on the Plan this evening and to answer questions that the Council may have on the Plan before its adoption.

Carolyn Gonot, Chief Development Officer with VTA, said that the Plan is a 30-year snapshot and that it takes a look at what would likely be seen in 30-years in this County. She indicated that VTA staff is attending City Council meetings. It is her hope to return to each of the City Councils with an expenditure plan on the Long Term Transit Investment Capital Program of the Plan and receive public input. She stated that all project costs and revenues are in 2003 dollars as estimates given by the Metropolitan Transportation Commission (MTC).

Chris Augustine, project manager with VTA, presented a brief presentation on the VTP 2030 Plan, a long range transportation plan for Santa Clara County. As the congestion management agency for Santa Clara Valley, the VTA is responsible for the preparation of this plan. He said that the VTP 2030 Plan is an update to the VTP 2020 Plan. He said that a number of new programs have been created, including the local streets and county roads program. He said that the VTP 2030 Plan feeds into the Regional Transportation Plan (RTP) that is prepared by the MTC and that they are developed along the same timelines. He stated that the Plan is updated every 3-4 years. He addressed the investment targets, indicating that approximately $1.46 billion is allocated for Santa Clara County. He said that there are committed programs and projects that will receive a portion of the $400 million. This leaves VTA with approximately $1.08 billion of discretionary money to program projects included in the VTP 2030 Plan. He said that there are a number of program areas that are covered in the Plan. He addressed the funding allocations for the various programs. He informed the Council that the Board of Directors adopted the core element of the Plan in April 2004. Since then, VTA staff has been working with MTC to make sure projects and programs are accurately reflected in the RTP. He said that the draft plan was posted in November on their website and that the Plan was distributed to interested parties. VTA has been conducting presentations to cities who have requested them over the last month. The Plan is scheduled for VTA Board adoption on February 3. He stated that the Board's action of adopting the VTP 2030

Plan does not preclude it from making decisions about programming or about implementation schedules for specific projects. He indicated that this is done under a separate process.

Council Member Grzan inquired how the Coyote Valley development fits into the VTP 2030 Plan.

Mr. Augustine stated that Coyote Valley development is included in the modeling conducted for VTP 2030 and that only a portion of that is in the modeling work. He said that VTA can only include those pieces of Coyote Valley that have had some actions taken. He stated that approximately 5,000 jobs in Coyote Valley have been considered in the Plan. Until the City of San Jose makes a decision on how Coyote Valley will develop, it can not be considered in the Plan. He said that Coyote Valley will be considered in the next update to take place in three years.

Ms. Gonot said that a southern gateway study was completed as part of this Plan in order to identify projects. She said that VTA partnered with San Benito County, Monterey County, and Caltrans District 4 and 5 to look at the area from Coyote Valley down through these counties. She said that there is a South County Highway Advisory Board who requested a circulation study as an additional item that would be part of the expressway study. She said that VTA plans to start this study within the next few weeks. This study will look at Coyote Valley and some of the plans being developed. VTA will look at the circulation that will be required in southern Santa Clara County through San Benito County, focusing on Morgan Hill, Gilroy and the South San Jose area. They will also look at the east-west connections and circulation within the City. She informed the Council that this study should commence within the next six months. This study would feed into the Plan and include the most recent data. She stated that the Plan can be amended to include a project in need.

Council Member Grzan felt that Coyote Valley, at build out, could significantly require a number of resources to accommodate development and may affect the Plan.

Ms. Gonot said that the Plan requires VTA to use the Association of Bay Area Government's (ABAG) land use forecast. When VTA conducted the southern gateway study, they used an aggressive land use pattern for Coyote Valley. There were projects defined and included in the Plan (e.g., widening Highway 101 from Cochrane to the County line, redoing the Highway 25/101 interchange, improvements to the Tennant/Highway 101 interchange). She said that VTA also looked at the land uses that cities would have versus what ABAG requires them to use in the model evaluation of the Plan. She stated that the projects chosen come from various studies and that VTA looked at the land uses.

Mr. Augustine stated that as part of the congestion management program, VTA developed and maintains a county-wide transportation model. In the modeling used for the VTP 2030 Plan, VTA used its own internal model. He said that this model takes into account what happens in Santa Clara County as well as Santa Cruz, Monterey and San Benito Counties in the modeling efforts. He felt that VTA has done a good job of capturing what is taking place in Santa Clara County as well as what is taken place south of the area. He said that before a project can be included in the VTP 2030 Plan, a project has to have a reasonable cost estimate assigned to it. The project(s) than go through an evaluation process to compete with other projects. He said that it is likely that some of the projects may come out of the Coyote Valley

planning and are going to be significant projects. However, they need to have costs and project definition before they can be considered in a plan and put into a model.

Mayor Kennedy said that he attended a San Jose City Council meeting last night and indicated that they are moving full speed ahead with the development of Coyote Valley and that they are starting the environmental impact report process. He felt that Coyote Valley needs to be included in the model.

Mr. Augustine indicated that Coyote Valley will be included in the model once VTA knows what to include.

Ms. Gonot informed the Council that VTA will be using the more aggressive land uses that are planned for Coyote Valley than what the ABAG forecast states.

Council Member Sellers said that there is an opportunity to extend light rail south with an opportunity to go through Coyote Valley and south of Morgan Hill. He said that with creativity, on the part of VTA and the planning process, it may afford an opportunity to look at this sooner rather than later. Of more concern to the citizens of Morgan Hill are the projections that San Jose is undertaking in terms of their projections for transportation. San Jose is stating that 80% of the individuals in Coyote Valley will be heading north. He said that it is evident that just the opposite is taking place. He said that the advantages of living in Morgan Hill versus the constraints of living north, most individuals would choose Morgan Hill. He inquired whether VTA would be in a position to question the 80% model.

Ms. Gonot said that the model used by the City of San Jose is based on VTA's old model. She said that there was another model that was designed for the southern gateway study that took AMBAG's model and appended to VTA's model. She informed the Council that VTA has completely redone its regional model, indicating that VTA's model is more up to date than MTC's and covers the nine-bay area counties as well as Santa Clara County. She noted that a large amount of the population is located to the north of Coyote Valley in the bay area. She did not know if the model will show the same 80% as VTA's model is income sensitive. She stated that VTA's model will match household incomes with incomes on jobs/employment and that they may see a change in the percentage.

Council Member Sellers said that there is restructuring taking place within the Council with Mayor Kennedy ascending to the VTA Board of Directors this year. The City is looking at having another Council Member serve on the Policy Advisory Committee. He requested that VTA conduct a more extensive version of this presentation so that this individual is up to speed on the Policy Advisory Committee.

Mayor Kennedy requested additional copies of the VTP 2030 Plan be provided to each Council member.

Council Member Carr said that it was pointed out to the Council that the VTP 2020 Plan includes a definition for South County and that this definition has changed in the VTP 2030 Plan to include more of south San Jose and all of Coyote Valley. He inquired as to the reason and what potential changes does this mean for Morgan Hill, Gilroy and the unincorporated Santa Clara County.

Mr. Augustine said that VTA has been made aware of the change in definition. He stated that VTA has looked at the definition and looked at running the numbers both ways. He indicated that the numbers do not change very much. He said that VTA would be happy to include the VTP 2020 boundary and present this information in the Plan. He said that it was nice to have a South County sub area where all projects in this area can be listed.

Mayor Kennedy said that recently VTA was able to work out an agreement with Union Pacific to get some additional commuter rail trains, noting that these additional rail trains are north bound in the morning. He indicated that the reverse commute is not included in the additional track agreement. He requested that VTA look into a reverse commute rail capability in Morgan Hill as it is a large employer with the largest business park in Silicon Valley. He did not believe that it is sufficient to simply add north bound trains. He thanked VTA staff for incorporating some of the changes requested by Morgan Hill, especially the widening of Highway 101 from Cochrane Road to south of Gilroy as well as the transportation system.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *By consensus, the City Council* ***Received*** *the Presentation from VTA Staff on the Proposed Valley Transportation Plan (VTP) 2030.*

Redevelopment Agency Action

OTHER BUSINESS:

7. EXTENSION OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (ERN) WITH EL TORO BREWING

Director of Business Assistance and Housing Services Toy informed the Council that two letters from El Toro Brewing have been placed on the Dias as information for the Agency Board. He informed the Agency Board that the Economic Development Committee (EDC) is recommending an extension to El Toro Brewing and the Exclusive Right to Negotiate agreement from December 30, 2004 to June 24, 2005. The EDC is recommending an extension with financial penalties in the event that deadlines are not met. The EDC further recommends that the City move forward and prepare the Disposition and Development Agreement (DDA). He addressed performance key milestones. He said that the letters before the Council express concern regarding the financial penalties contained within the document.

Agency Member Sellers inquired as to the anticipated completion date should El Toro Brewing stick to the deadlines and pull permits by October 30.

Chairman Kennedy opened the floor to public comment.

Geno Acevedo stated that he would concur with staff recommended actions with one exception. He said that he is working hard to get this business open. He expects to be able to meet the schedule as it is a generous one. However, in the process, he has found that things take place that are beyond his control. The way the document is written, should he miss a deadline due to an issue beyond his control; there is the possibility of losing $5,000 each time he falls behind. He finds the financial penalty overly burdensome. If he is experiencing problems, he inquired how penalizing him would help. He requested the Council delete the financial penalties. He is hoping that his representation this evening demonstrates that he is willing to move the project forward as he has the contractor, architect and all professionals on board.

Cindy Acevedo requested that the Council allow them to move forward with the project. She felt that the Exclusive Right to Negotiate has served its purpose. She requested that the Council direct that the DDA be prepared and the specific timelines be incorporated into the DDA. She noted that the Council has agreed to accept their offer to purchase with the intent to open their brew pub. Therefore, she did not believe that there were negotiations on the sale and development of the property on the table. She requested that the Agency grant the extension. She indicated that they are pushing their contractors to a four-month turn around timeframe. It is their goal to meet all deadlines. She indicated that a stumbling block was that the bank changed the terms. There was to be a 10% cash injection and now they are at a 30% cash injection. She said that there were delays attributed to a title change, and switching financing company midstream. She said that these issues have been resolved and that they are ready to proceed with the construction lender. They need to update their financial information to reflect the refinancing. She stated that they met with their architect who has reviewed the document before the Agency Board and expressed concern with timeline constrictions. However, she was confident that the timeline could be met.

No further comments were offered.

Vice-chairman Tate agreed that the EDC was extremely generous with the timeframes. The EDC wanted to give some notion of a penalty, and that they did not believe that the penalties had to be enforced due to the generosity of the timeframe. He felt that the penalties were extremely mild and that should every penalty apply, the Acevedos would pay $20,000 out of pocket. He felt that it was unlikely that they would have to pay all penalties. He said that the penalty would be applied similarly to that of an exception to loss of building allocations under Measure C. If it is outside of the control of the developer, the City could grant an exception.

Agency Member Carr was pleased to hear that Mr. Acevedo agreed with the timelines and that they are workable timelines. He stated that he would not characterize the dollars as penalties. He said that there are milestones included when deposit dollars become hard monies as in significant real estate transaction. He noted that this is an asset owned by the Redevelopment Agency and the taxpayers. The idea behind the penalties is not to provide hindrances or stumbling blocks, but to be supportive as possible and work out any issues that may come up. He felt that staff has put together a plan that is workable; one that should be adopted.

Chairman Kennedy inquired whether staff or the EDC looked at other ways to push this project forward other than cash penalties.

Vice-chairman Tate said that the EDC looked at a way to get a rigid timeline in place as an objective. It was determined that penalties would help achieve adherence to the timeline.

Agency Member Carr clarified that the EDC worked with a schedule brought to them by El Toro Brewery and their team working on this project; noting that the EDC added extra time to their timeline.

Agency Member Sellers said that prodding this project along should not be the issue. He said that there is a significant difference with this project from other projects. He said that the City is not out any money if someone fails to build on their land. In this case, it is costing money under two different pots. He noted that the City has land sitting vacant and that the City is not receiving the funds it should have received some time ago. He said that a business should be in operation that generates sales tax revenue and that it is not the case. He noted that by the time the project builds out, it has been a two year delay. He said that the Agency Board is trying to cover the City's assets. Had the project proceeded as planned, the project would be underway and the City would not be losing money and be receiving income from sales tax. These are the reasons the City should retain the penalties. He stated that he would not support any options that do not include penalties as the City needs to recover a modest portion of its assets that has been invested into this project.

Chairman Kennedy inquired whether this was the mechanism that staff would use to handle a situation where the applicant or partner falls behind an agreement.

Mr. Toy said that other cities require a cash commitment to make sure that a project meets the performance milestones and that there would be a forfeiture of funds should a developer not meet the performance milestones. He said that in this case the penalties are broken out so that they are paid incrementally. He stated that asking for non refundable deposits and having cash financial implications for performance milestones is common. He indicated that in one of Mr. Acevedo's documents, he requests clarification or the deletion of the completion of the construction drawing documents. He said that staff is asking, in the first deadline, that the construction drawings and estimates necessary for the bank to begin the loan document be completed. These drawing may not need to be at the level of where Mr. Acevedo is ready to submit building permits, but at a level where they are ready to provide this information to the bank. He said that it was his understanding from the bank that they will need cost estimates from the general contractor and not necessarily having the working drawings completed.

Mr. Toy stated that it was his understanding from the bank that there is enough information included in the basic construction drawings to allow a general contractor to derive estimates that can be used by the bank. The bank uses these numbers to give to the appraiser. He did not believe that plans need to be at a level such that they are ready to submit for building permit.

Mr. Acevedo informed the Council that his general contractor identified how he can put together the estimates and his level of confidence to the point where the bank will accept it. He indicated that the

general contractor has given him estimates based on square footage and his familiarity with this type of project. He stated that three weeks into the process, an exploratory demolition can be done to determine where the columns and the location of the baring walls. Once this is done, the architect can move forward and the structural engineer can advise what needs to be done. Five to six weeks into the process, through the drawings, the general contractor should have a close estimate and that the bank will be satisfied with these estimates. At 100% through the process, the general contractor will have had his contractors walk through and provide bids. By the time the construction drawings are completed, the contractors estimate should be 100% complete.

Mr. Toy said that it would be reasonable to grant extension(s) to the developer if the delay is beyond the City's control (e.g., delay caused by outside agencies).

Agency Member Sellers said that if there is a problem with the health department, it is incumbent upon the applicant and the City to place pressure on the County to advice as to the importance of this project. However, a delay at the fault of the developer is a different situation.

Executive Director Tewes indicated that Mr. Toy has explained how staff would interpret the language to address the issues raised by the architect.

Agency Member Tate felt that a motion could be made to state that given this interpretation, the Agency Board could approve the item, as presented.

Action: *Vice-Chairman Tate made a motion, seconded by Agency Member Carr, to* ***Authorize*** *the Executive Director to Prepare and Execute a Second Amendment to the ERN with El Toro Brewing, Extending the ERN Deadline to June 24, 2005, with the Ability to Grant Administrative Extensions. There is to be an understanding that certain delays would authorize administrative extensions while others would not.*

Agency Member Carr agreed that delays associated with this project have to be as a result of an outside agency processing and not as a result of the agencies inability to process the application because the project is not ready for them to process entitlements.

Agency Member Grzan felt that outside agencies were going to do their job. He expressed concern that should the City include clauses, the City could be potentially finger pointing at who is at fault. He stated that he would agree to allow the extension(s) to remain as recommended by staff without the inclusion of exception clauses. He felt that staff and the EDC built in enough lead time so that if there are any problems, they can be adjusted to within this timeframe.

Vice-chairman Tate clarified that the intent of his motion was one that would not be incorporating specific language as he does not believe that there will be an issue.

Agency Member Carr stated that he wanted to clarify in the motion a specific example that may occur. He did not believe that the City needs to add new extensions to the timeline.

Vice-chairman Tate stated that his recommendation would be similar to the terminology for exception to loss of building allocations not the result of developer inaction.

Agency Counsel Leichter said that she was not sure what the motion was directing staff to include in the amendment to the ERN. She inquired whether the Agency Board is directing staff to include the Exception to Loss of Building Allocation (ELBA) language which stipulates "delay not the result of developer inaction" or to be silent on this policy. If the default timelines are triggered, the applicant would more than likely request that his application be agendized for Agency Board consideration.

Chairman Kennedy supported the inclusion of the language that stipulates "development not the result of the applicant's action."

Vice-chairman Tate would support inclusion of ELBA language as part of his motion, if easy to do.

Agency Member Carr inquired whether an ELBA, in this case, was a process that could be handled administratively.

Agency Counsel Leichter indicated that should the ELBA language be included as part of the ERN, staff would make the determination whether or not it was the outside agency that has caused the delay or whether it was the developer that triggered the delay and was at fault. If the applicant did not concur with staff's determination, the developer could request that this item return to the Council/Agency Board for review and action.

Executive Director Tewes recommended that the Agency Board grant staff the administrative authority to review the ELBA.

Agency Member Carr indicated that he would not see that a delay is caused by scheduling the ELBA to come before the Council/Redevelopment Agency agendas.

Action: *Vice-chairman Tate clarified that the inclusion of an ELBA clause was the intent of his motion.*

Agency Member Sellers stated that he was reluctantly supporting the motion this evening. He said that when the ERN for this project was initially considered, it was an ambitious timeline and an exciting proposal. He recollected that at the time he felt that it was a project too good to be true and that part of him felt that it has proven to be the case. It was his hope that maintenance of the building continues and that it does not become a worse eye sore as you head toward the downtown. He said that it is time to move forward with the project. He said that he understands that delays have been caused for a variety of reasons. However, he stated that he would not support another extension. He said that he was anxious about the ERN because should the project not be able to proceed, he does not want to be in a position where the City turned over ownership to an entity that could not perform. It is his hope that this is the last time the Agency Board hears about this project until the Board is invited to a grand opening. If this

item does happen to return to the Agency Board, he would have a hard time being supportive and would recommend that the Agency Board look at other alternatives.

Vote: *The motion carried unanimously (5-0).*

Action: *On a motion by Vice-chairman Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0)* ***Authorized*** *the Executive Director to Begin Preparation of a Disposition and Development Agreement (DDA).*

City Council Action (Continued)

OTHER BUSINESS:

8. PUBLIC-PRIVATE PARTNERSHIP AT THE OUTDOOR SPORTS COMPLEX REQUEST FOR PROPOSALS

Recreation and Community Services Manager Spier presented the staff report, requesting Council approval of the request for proposal (RFP) document. She referred the Council to the proposed timeline of the RFP, informing the Council that staff is recommending that the RFP be released on February 7, 2005 with proposals due on March 15, 2005. Interviews would take place in March or April 2005 and that a staff recommendation would return to the Agency Board in April 2005. Should the Agency Board determine that there is a private proposal that should be investigated further; staff would recommend that the City proceed with an inclusive right to negotiate. She noted that staff is requesting a $20,000 deposit in order to move to the second stage. She stated that this timeline may have an affect on the CYSA's current lease of the Condit soccer complex, noting that there is a lease in place through the end of October; followed by a month to month lease option. She said that it has not been determined whether the City will be able to meet all the timeline to take action in November. She said that staff has been receiving requests for rental by leagues who want to use the facility. She informed the Council that proposers would have the ability to move things around the site plan as long as program goals are met.

Mayor Kennedy inquired as to how much latitude exists on the part of the proposer to submit something different from what is being requested.

City Manager Tewes clarified that the purpose of the RFP is to set the requirements that the City is looking for in proposals and to establish an evaluation criteria. The RFP would give the proposers an idea of what the City is looking for with some precision and what information the City would need. Staff is not asking for ideas, but is requesting proposals as structured.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Sellers stated that he was pleased that the City has gotten to this point as it represents a lot of work on the part of staff, the Parks and Recreation Commission and members of the community. This also represents an opportunity for the City to move to the next level with what the Council is trying

to achieve. He said that concerns have been expressed that there may be too many individuals using the facility and making this project regional in nature. He noted that Morgan Hill had a large deficit in recreational opportunities in Morgan Hill for a long time. He felt that the City is close to meeting the deficit. Now, the City has an opportunity to enhance recreational services beyond what can be provided as a community. He said that the City is providing recreational services and providing a variety of activities. He said that the City has to wait and see what the proposals hold before there is a quantitative sense of what the proposal will entail. He felt that this was a great step and commended the Parks and Recreation Commission and staff for their hard word.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0)* ***Directed*** *Staff to Proceed with the Process of Request for Proposals (RFP) for Potential Public-Private Partnership of the Outdoor Sports Complex.*

9. PRESENTATION BY MORGAN HILL AQUATIC CENTER, INC.

Recreation and Community Services Manager Spier presented the staff report, indicated that per Council direction, she has been requested to provide information on the Morgan Hill Aquatic Center, Inc. She requested that the former president of the organization provide information, noting that Geno Acevedo is the current president. She indicated that the Council's packet includes the information provided to staff. She said that one specific item raised relates to the donations made by the Morgan Hill Aquatic Center, Inc. She said that the donations from the Morgan Hill Aquatic Center, Inc. made to date include off season user fee payments ($27,000); backstroke flags ($285); three starting blocks; Colorado counsel and cabling pace clock; water polo score board; main line replacement parts; and a storage shed that results in approximately $39,731 in donations, thus far, to the aquatics center. She informed the Council that staff has not been a part of the Morgan Hill Aquatic Center, Inc. or part of the organization.

Council Member Sellers requested that staff explain how the $27,000 fee evolved and how they are controlled. As he recollected, a call went out to members of the aquatics clubs/groups to determine how many lanes they would like to acquire/reserve. He inquired whether the Morgan Hill Aquatic Center, Inc. donates directly to the center through the City or through the club.

Ms. Spier said that the lane assignments were specifically related to the two swim teams. Regarding the process for payment of the lanes, she indicated that the City was not involved directly. She stated that the City is receiving a check from the Morgan Hill Aquatic Center, Inc. in support of the aquatics center. She informed the Council that staff did not allocate funds based on Morgan Hill Aquatic Center, Inc. support. The City's commitment starts with the requirement of $1,000 per lane as approved by the Council in terms of rental terms. She said that the $1,000 per lane is a commitment from the swim club, but that staff does not trail the money from the Morgan Hill Aquatic Center, Inc. to the aquatic center.

Council Member Sellers felt that there was a difference in receiving a check from a "club" to pay for the expenses versus receiving a check from the Morgan Hill Aquatic Center, Inc. that goes to a specific

entity. He noted that the City does not have a legal agreement with the Morgan Hill Aquatic Center, Inc., and that City staff has accepted payment; placing the payments into an account.

Mayor Kennedy opened the floor to public comment.

Gino Acevedo, speaking on behalf of the Morgan Hill Aquatics Center, Inc., informed the Council that the Morgan Hill Aquatics Foundation is a name that they are beginning to adopt. He said that the organization did not use the term "Foundation" initially due to concerns that there would be confusion between this foundation and the newly formed Morgan Hill Community Foundation. He stated that since that time, other foundations have been established and there seems to be no confusion. He informed the Council that the Morgan Hill Aquatic Center, Inc. has started to do business as the foundation. He stated that he was not prepared to present the Council with a full presentation this evening. However, he presented a brief summary of the Morgan Hill Aquatic Center, Inc. He indicated that the organization was formed in 2001, and that Mayor Kennedy recommended that John Rick become president. This was agreed to and that he was appointed Vice-president; Martin Kapetanic, treasurer; and Bill Thompson, secretary. At that time, John Rick was also the president of the Morgan Hill Swim Club. He was on the board of directors for Silicon Valley Aquatic Associations and Bill Thompson was CEO of this association as well as head coach. He said that there appears to be some confusion and mix up about the Morgan Hill Swim Club and the activities of the Foundation. He said that the Aquatics Center, Inc. is a private foundation. He felt that the reason this item is before the Council is attributed to complaints and dispute resolution. It was his understanding that complaints made by the Silicon Valley Aquatics Association are that they have not been receiving their share of the monies that are in the foundation's account.

City Attorney Leichter said that it was her understanding that the Morgan Hill Aquatics Foundation is not a legal entity and that the registration with the Secretary of State as a 501c3 is as the Morgan Hill Aquatic Center, Inc. Therefore, legally, this is their name and identification. She stated that she was not aware that the organization was in the midst of changing their name.

Mayor Kennedy said that initially, the organization was going to name itself the Morgan Hill Aquatics Center Foundation. Therefore, you will see a lot of titles with the term "Foundation." He sated that they are one and the same.

Mr. Acevedo clarified that the organization is operating as the Morgan Hill Aquatics Center, Inc. He said that the organization will pick up the name "Foundation" as a DBA and that both names will be used interchangeably. He clarified that the Morgan Hill Aquatic Center, Inc. is a foundation and has not incorporated the term "Foundation" in the legal title.

Council Member Grzan requested that Morgan Hill Aquatic Center, Inc. no longer use the name Morgan Hill Aquatics Foundation in any materials sent to the Council to avoid confusion.

Mr. Acevedo said that the original intent of the Morgan Hill Aquatics Center, Inc. was to take over the operations of the aquatics center from the time that the recreational aspect was closed until the City

chose to reopen. Because of disputes before the Council, this changed. As this changed, some of the way funds were spent changed. He said that it was intended that all non profit swim organizations, water polo and any other competitive aquatics sports organization would report to the Morgan Hill Aquatics Center, Inc. who in turn would make lane assignments and figure out the fair rate to charge/collect and then pay for all the maintenance and operation of the aquatics center. However, the City Council decided otherwise in September. He stated that everything planned was placed on hold in order to go through the lean months. He clarified that the swim club leases the lanes.

Council Member Grzan noted that the City retains the responsibility of the aquatics center and has opened it for anyone/organization to lease the lanes. He expressed concern that the Morgan Hill Aquatics Center, Inc. is using funds to subsidize the efforts of one club. He inquired whether resources are being distributed equitably or whether they have been distributed to one club over another.

Mr. Acevedo said that prior to the winter months, all swim organizations were going to be covered under the Morgan Hill Aquatics Center, Inc. umbrella. This organization would make up any deficits and provide subsidies, as necessary. He said that part of the requirement was that the organizations not interfere with the revenue stream of the Morgan Hill Aquatic Center, Inc. At this time, the Morgan Hill Swim Club dropped its mini MACO program, the primary fundraiser for the organization. The Silicon Valley Aquatics Association decided that its primary fundraiser would be their "learn to swim," and pre competitive, and recreation swim programs. He said that the Morgan Hill Swim Club chose not to be covered by the foundation. He stated that they chose to pull out from the umbrella of the foundation. He clarified that Morgan Hill Aquatics Center, Inc. is not supporting the Morgan Hill Swim Club because of the choices they have made.

Council Member Grzan felt that matters such as these should go before the Parks & Recreation Commission. He recommended that this matter be referred to the Parks & Recreation Commission for their review of an equitable use of the aquatics center.

Mayor Pro Tempore Tate inquired as to the role of the board? What is the role of the advisory board? How does the organization operate? Why are there only five directors on the board as it was his believe that this was a small board?

Mr. Acevedo indicated that any corporations, including non profits, are only required to have two board members: president and a secretary. He said that the advisory board currently meets once a year, indicating that at the beginning they met approximately 3-4 times to decide on operations and development of the bylaws. He said that the organization has an advisory board. He stated that the advisory board has not met, but do attend Board meetings from time to time. The Board also established policies and that at the last meeting, they re-elected officers and clarified polices. He said that the Board does not hold formal meetings per sea, but talks amongst themselves. He requested that the City Attorney advise the City Council as to the amount they can consider regarding a private non profit organization.

Mayor Kennedy inquired whether the City has an obligation with respect to the foundation

City Attorney Leichter said that a relevant question for Council inquiry would be whether the Morgan Hill Aquatic Center, Inc. has taken steps, under the auspices of the City's name, to conduct fundraising events or other steps which have been represented to be a part of the City or running the aquatics center. She stated that based on the presentation by Mr. Acevedo, she has grave concerns about whether the Morgan Hill Aquatics Center, Inc. is a legal 501c3 corporation based on the fact that they do not meet and that they are not following their bylaws. She said that these are not questions for the Council, but for the foundation member and the Secretary of State. She felt that the City was within its proprietary functions to determine whether it is spending money on this group. If this group is fundraising in the City's name, it is not known what they are doing with these funds. She did not believe that the City has any contractual relation or obligation with respect to the Morgan Hill Aquatics Center, Inc.

Donna Cretcher apologized for having to get the City involved in this situation. She indicated that her letters and phone calls raised questions about the foundation, specifically, how they are fundraising, the City co-sponsorship of events, and that the money is going to a special interest group. She felt that the storage shed appears to be a donation to the aquatics center for the use of a special interest group. She said that the score board and the pace clock are being used by the Morgan Hill Water Polo team. She said that the user fee is money that went from the foundation via the Morgan Hill Swim Club. She said that when the Morgan Hill Aquatic Center, Inc. is no longer allowed to manage the aquatics center during the winter months, and that there is a passive aggressive act to make sure that the Morgan Hill Swim Club does not receive funding. This devastated the Club and resulted in the loss of a head coach and members. She requested that the Council no longer support the Morgan Hill Aquatics Center, Inc. by continuing to sponsor fundraising events for them or to accept money via this group. She felt that this organization has been hostile to her Club and operates under business practices that do not support all children in Morgan Hill. Should the City continue to support the foundation, the outcome will continue to create bias and unfair access by the community, especially the children, the greatest victims in this matter. She suggested the City assist in developing another group to raise money for the center or to request donations from other community foundations, if necessary, to operate the aquatics center. She stated that she believes in choice and not monopolies. She stated her support of two swim clubs in the community as competition is good.

Leonard Cretcher said that there is confusion when you read about the Morgan Hill Aquatics Foundation and the Morgan Hill Aquatics Center, Inc. in the newspaper. He felt that there was borderline misinformation that would lead individuals to believe that money donated to the Morgan Hill Aquatics Center, Inc. was actually for the aquatics center. He indicated that his family, swim clubs and others have made donations under this precept, including time, noting that other swim clubs have not received money and have received false promises regarding donations. He has been told that the fundraising bricks would not be installed at the aquatics center until all 2,000 bricks are sold. Yet, he does not see the donations being handed out equitably amongst the groups as individuals were donating toward the aquatics center and not the Morgan Hill Aquatics Center, Inc.

David Leiser indicated that his family purchased a couple of bricks two years ago. He agreed that there is a lot of confusion. He said that there appears to be a quasi public entity that is trying to support the

aquatics center over the winter months. He requested the Council clarify this issue. He felt that there is a real opportunity for kids who want to swim in the spring, summer and fall that do not want to be on a swim team, compete or travel. They just want to get exercise and improve their skills and physical fitness. He requested that the Council offer this program as it would be another great revenue generator for the aquatics center.

Bill Thompson, former head coach of Silicon Valley Aquatics Association, informed the Council that he was the site director for the El Toro Aquatics for 2.5 years. He stated that the program just mentioned is a program referred to by Mr. Acevedo as being in competition with a City program. He disagreed with this position. He indicated that two summers ago, his organization offered a program called "Swim America," a learn to swim program for children 3 years and older. In an effort to be supportive of the aquatics center, the learn to swim program and the aquatics programs for children were discontinued at a loss of revenue to the organization now struggling. However, the organization made a commitment, in taking over the El Toro Aquatics, to stay the course in Morgan Hill as it was their belief that they could offer something different than what the Morgan Hill Swim Club offered; including different coaching styles and other programs that are innovative that no one else offers. He stated that he has been a member of the board of directors of the Morgan Hill Aquatics Foundation, and that it was his understanding that he was still on the board of directors. Based on his perception on how things are turning out, he was relieved that he was not on the board. As far as expenditure of monies that went out of the foundation, he was not privileged to this information. He said that the El Toro Aquatics of Silicon Valley never agreed to not be a part of any benefit that a public benefit 501c generated; indicating that his organization participated in some of these fundraising efforts.

No further comments were offered.

In response to Council Member Carr's inquiry, Ms. Spier said that it was her understanding that the items listed as donations are a permanent part of the City. She acknowledged that the storage shed is used by one swim team. The water polo and masters swim program equipment have been taken over by the City. Should an entity wish to use the equipment, they would need to make the request to the City's aquatics center supervisor.

Council Member Sellers indicated that he requested that this item be agendized to clarify some issues. He said that he led the effort to form the Morgan Hill Community Foundation. He has also assisted with the formation of Leadership Morgan Hill, has been on the Board of Independence Day, Inc. and a variety of other non profit groups. He said that he is very familiar with the requirements of a non profit entity and the requirement for interaction between public entities and non profit organizations. He said that it could be stated that this is a non profit organization and that the City has no business talking about the organization. He noted that every other non profit organization in the City has come before the Council willingly and understands the opportunity of getting their message out to the community about the great work they are doing. In this case, it is even more direct for the reasons pointed out. He said that the City has allowed an entity to use the community center for their fundraising efforts and co sponsored them with direct involvement in this regard. In addition, the City accepted funds from the entity. He felt that this constitutes a relationship, on the part of the City, that the Council needs to monitor. He was not

suggesting that there was anything unusual about the Morgan Hill Aquatics Center, Inc. group with the exception of pointing out that it is within the purview of the City to question the funds that comes in from a non profit entity. The City needs to know whether there have been any practices that are inappropriate and to verify them. He felt that there is an issue when an entity states that funds are to be used by certain individuals and not others. He said that there are significant issues that the Morgan Hill Aquatics Center, Inc. needs to be aware of as a non profit. If this group is dispensing funds on a regular basis, they need to hold regular meetings. He noted that there have been previous council members who have been fined for having a direct involvement with a non profit organization which the City dispensed funds to. He said that this is an issue that everyone needs to be aware of and recommended that the Mayor and Council use caution in being involved with a non profit. He felt that there were a lot of issues that were troubling. He stated that he would support the recommendation of forwarding a lot of the issues being discussed to the Parks & Recreation Commission. However, he felt that there were housekeeping, logistical and legal issues that the Council needs to discuss.

Mayor Kennedy clarified the origin of the Morgan Hill Aquatics Center, Inc. He said that the City started several foundations to help several organizations move forward such as the Morgan Hill Community Foundation. He stated that he started this process years ago. This was a foundation the City started to help bring benefits to the City that were not being provided at the time. The Council also formed the Morgan Hill Community Health Foundation. He noted that the City provided funding to these foundations to help get them started. He stated that the Aquatics Center Foundation was different as the City did not provide funding to start this foundation. The foundation chose to move forward on its own. There was talk about having a Council member as an ex officio member. He noted that this was never enacted when the bylaws were created. Therefore, no one on the Council is on the Aquatics Center Foundation board. He said that the original foundation started with a broad based group, noting that the El Toro Swim Club was represented and that the Acevedos were members of this team. A change evolved over a period of time to what is seen today. He said that the Morgan Hill Aquatic Center, Inc. is an organization that is in place and falls under State and federal laws and that this is not a City organization. He said that many individuals volunteered to help get this foundation going, working on fundraising events as did members of the El Toro Swim Team. There were funds raised for the aquatics center; both capital and operating costs. He recommended that the Morgan Hill Aquatics Center Foundation broaden their base and look to get back to the original mission: to be an organization that truly supports the aquatics center. With respect to the El Toro Swim Team, he recommended that members make a formal request for funds from the foundation, indicating that it was his understanding that a request for funds has not been made.

Council Member Grzan said that he echoes all the concerns expressed by the Council this evening. He said that it was his understanding that a foundation exists and that a foundation takes money in; equitably distributing dollars to support aquatics in the community. However, it was his understanding that this may not be the case, and that there may be some members in the community who are receiving more resources than others. He did not believe it possible for the Council to study the issue in the timeframe given. He felt that it would be appropriate for the Parks & Recreation Commission to review the details, looking at a better way of addressing the equitable use of the facility. He supported the idea of being more inclusive as an organization. He expressed concern with the City's liability in working

with the foundation that may not be operating by the law(s). He recommended that the City Attorney look into this matter to see if the Council has anything that it should be concerned about in dealing with an organization based on what is being represented this evening.

City Manager Tewes indicated that the report to be considered by the Council on February 2 is not about the Morgan Hill Aquatics Center, Inc. The report is about the City of Morgan Hill's aquatic center, its management, and the issue of how to allocate lanes; a scarce resource in demand. He indicated that the Council needs to establish policies on how the lanes are to be allocated for the period beginning March 2005. Review of the policies in March will provide advance notice of the policy to those who have an interest in using lanes. He said that the issue this evening is a report from the Morgan Hill Aquatics Center, Inc. and that it is not an appropriate issue for the Parks & Recreation Commission to consider. The issue of the management of the City's aquatics center is an appropriate subject for the Parks & Recreation Commission to consider, but pointed out that in terms of the timeliness, it has been the Council who has adopted the operating policies and procedures in the past.

Council Member Grzan felt that matters of this type need to go to a commission who can spend time on the issue and come up with an equitable solution. He stated that items placed on the Council's agenda are allocated a timeframe, noting that the time allocated for this item has been exceeded. He felt that it would be better use of the Council's time to use its committees and commissions who could address issues similar to this item. He recommended that the Council direct staff to take this issue and the review of the aquatics center policies to the Parks & Recreation Commission for a recommended policy to the Council for equitable distribution of resources, lane assignments, etc.

Mayor Pro Tempore Tate indicated that he respectfully disagrees with Council Member Grzan's recommendation. He said that this item was supposed to be a presentation by the Morgan Hill Aquatics Center, Inc. He noted that Council Member Sellers requested the presentation and that he supported the request as he knows very little about the "foundation." He wanted to know who they are, what they are doing, and how they are doing it. This would allow the Council to understand whether issues existed and whether these issues should be referred to the Parks & Recreation Commission. Before referring an item to the Parks & Recreation Commission, he felt that the Council needs to identify what policy matter it wants the Commission to review. He stated that the Council has some knowledge about the Morgan Hill Aquatics Center, Inc. If there is a follow up activity that the Council or Commission needs to undertake, he did not know specifically what it could be at this time.

Council Member Carr disclosed that he is a member of the El Toro Brew Masters Water Polo Team. However, he has not been very active recently. He said that it was his hope that the Morgan Hill Aquatic Center, Inc. has heard a message this evening and would take it to hear. He said that he was pleased that a presentation was made this evening as he did not understand how the Morgan Hill Aquatic Center, Inc. worked, what items were being subsidized, purchased, etc. At the time the Morgan Hill Aquatics Center, Inc. became organized, there was a request for seed money from the City. It was his recollection that the request was made after the Council agreed to provide seed money to the Morgan Hill Community Foundation. The Council had the discussion about how many foundations the City would start/support. The idea for the Community Foundation was to provide support for recreation purposes in Morgan Hill

as well as other items. It was members of the founding board who were in attendance at a Council meeting requesting that the City not start another foundation when they are just getting up and running. He said that the report appears to be guidelines for individuals seeking funding. He referred to a bullet point contained in the report that reads "Do not compete with the Morgan Hill Aquatics Center, Inc. for the same revenue sources." It was his believe that this is where a question exists. He noted that Mr. Acevedo explained that the El Toro Aquatics was operating in direct competition with the Morgan Hill Aquatics Center, Inc.'s revenue source while Coach Thompson states that he does not believe that they are in direct competition. He felt that there is a dispute or question with this regard, and that he was not sure how this issue gets worked out. He was not sure whether all of the foundation information needs to be referred to the Parks & Recreation Commission. He noted that the City does not have a contractual arrangement with this foundation. It was his hope that the foundation and the board of directors will be more cooperative with the City and the recreation department in dialogues and in moving the discussions forward; finding a more equitable way of doing so. He stated that the Council has the authority on the management of the lanes which will be discussed on February 2. He said that it was his understanding that the issue boils down to the use of the pool and that this is what the City controls. He said that the Council could set the policy and pricing as it deems appropriate. He stated that he would like both swim teams to be a partner with the City on this. He felt that the policies to be put into place would help both swim teams in this matter. He would like to make sure that the lanes are used equitably by both teams.

Mayor Kennedy inquired whether there was time to refer a policy direction to the Parks & Recreation Commission and have them work through the policies following the Council's February 2 review of the aquatics center policies.

Ms. Spier said that time is a factor as staff has committed to the swim teams that the City would provide lane assignments for the March 1 – August 31 swim season. She said that a timeframe is needed for continuity of the use of lanes so that staff can focus on the programming and revenue generating activities. She informed the Council that the Parks & Recreation Commission meets on the third Tuesday of the month. She said that it would be appropriate to refer the policy matter to the Parks & Recreation Commission, but that it would not be timely to give a response back to the teams for them to market for March. She said that the lane reservations could be delayed for everyone and the City could continue to collect $1,000 per lane in place at this time; maintaining the current lane assignments.

Mayor Pro Tempore Tate did not believe that the policy decision should be delayed.

Council Member Sellers said that the Council has heard reasons why this item should not be referred to the Parks & Recreation Commission. He said that there is an issue that he would like to refer back to staff for further consideration. He said that the City is in a position now, as structured, where the Morgan Hill Aquatics Center, Inc. could withhold funds and the aquatics center would be in a lot of trouble. He expressed concern about this relationship because the City is at the mercy of an entity in which it has no control as constituted. He recommended that there be an annual contractual commitment from the foundation that states that they would provide a certain amount of funding for programs. This would provide the City with assurance for funding. He stated that he suspects that this is the reason the

other group has not met with the foundation. If the other group has no say over the entity and where the funds are coming from, the funds could be taken away. He felt that this was another issue. He agreed with the sentiments of Mayor Kennedy and Council Member Carr that the board expands as it was his belief that it needs to be a larger entity. This entity should have a broader base and broader scope, including members of the community. He requested that staff go back and reconsider the relationship between the two entities and how to strengthen this relationship in a way that does not place the City in a vulnerable position. He noted that the City went out on a limb to keep the aquatics center open this winter. He felt that this was an internal issue that needs to be resolved so that the City does not face this issue or threat in the future.

Ms. Spier clarified that the City does not have a direct relationship with the Morgan Hill Aquatics Center, Inc. She said that staff treats both teams as rental users for the aquatics center facility just as it would the community and cultural center. Staff does not ask where rental funds come from, but does request for a contractual commitment per the City's reservation form. She clarified that the relationship evolved because the City started out with the Morgan Hill Aquatic Center, Inc. as the organization that was going to operate the facility in the off season, noting that this did not come together. In order to keep the aquatics center facility operational, the City needed to make a decision.

Mayor Kennedy noted that it does not appear that there is enough time to refer this item to the Parks & Recreation Commission before the Council's February 2 meeting.

Council Member Grzan stated that he would like to see the Council make better use of staff and its commissions. He felt that this is certainly an appropriate item to refer to the Parks & Recreation Commission. However, should the Council wish to consider the item, he would be willing to do so.

City Manager Tewes said that staff would not be asking that the Council or the Parks & Recreation Commission to make lane assignments as it is staff's responsibility to do so. The Council will be discussing the policy to be adopted on lane assignments so that staff will know how to implement the policy. If the Council needs input from the Parks & Recreation Commission, he stated that this would be an appropriate item to discuss.

Mayor Kennedy stated that it would be helpful to have the agenda item clearly talk about the policy issues.

Action: *By consensus, the City Council* ***Received*** *the Report From the Morgan Hill Aquatic Center, Inc.*

10. DOWNTOWN TRAFFIC CALMING CONTINUED CONSIDERATION (Continued from 01/19/05 Meeting)

Director of Public Works Ashcraft presented the staff report, indicating that the Council continued this item to tonight's meeting. He stated that he has put together a summary of traffic calming options originally presented as well as new options presented at the last meeting for Council consideration. He

presented a photo simulation of what a trial bulb out at the intersection of Monterey Road and Dunne Avenue would look like should the City use 2-3 foot high delineators. He said that Monterey Road would be narrowed as cars enter the downtown. He said that the installation of a permanent bulb out with concrete, new curb, gutter, sidewalks and planters would cost approximately $75,000. He said that the suggestion of the installation of a temporary bulb out with the use of asphalt beams would be a problem. The temporary solution would result in the collection of dirt, dust, and trash that would be difficult to clean. Therefore, staff believes that the delineators would be a better alternative for slowing individuals down as they drive through this area. He felt that the long term solution, at a cost of $75,000, is the best solution.

Police Chief Cumming said that one of the options presented last week was to look at enforcement in the downtown area. He said that $5,000 would provide 80 hours of police officer traffic enforcement. He said that the City could deploy a police officer approximately two hours a day, five days a week for approximately eight weeks. He said that the days and times of traffic enforcement could vary during the week. Officers would be directed to focus on pedestrian, speeding, and red light violations on Monterey Road between Main and Dunne Avenues. He felt that the City would get better results for its money by having police officers in the downtown on a consistent basis. He cautioned that there are many other areas in the City where he receives constant complaints about traffic and the need for additional enforcement.

Mayor Kennedy felt that the timing of the traffic signals seems to favor Monterey Road traffic and tends to cause traffic to speed up through the downtown. He inquired whether there was anything that can be done such as modifying the traffic signals to slow the traffic down through the downtown area.

Mr. Ashcraft said that timing is based on traffic and volume counts during certain times in the day. You look at the peak traffic and where it is heading; setting traffic controllers to help the traffic through town. This alleviates undo congestion/delays and reduces air pollution. To give Second Street a lot of time that is not needed for traffic to cross is not a reason to install traffic signals and would result in traffic backing up on Monterey Road. He said that traffic could be delayed with traffic signal operations, but it is not usually recommended by traffic engineers.

Mayor Kennedy noted that Dunne Avenue is a high volume street and that he has waited long periods of time to cross Main Avenue as well because Monterey Road has the priority. He felt that there was a conflict between the desire to move traffic through quickly and the need to slow traffic down in the downtown area. He did not believe that you could have both. If the City wants to slow traffic down through the downtown, the City needs to create a way to slow traffic down. The City could use traffic lights to slow traffic down at Main and Dunne Avenues to help alleviate some of the problems with high speed traffic. He said that this might be a low cost way to accomplish some of the objectives.

Mr. Ashcraft indicated that staff can take a look at this issue and bring back the timing of the signals as an option, noting that this is not typically looked at as a traffic calming measure.

City Manager Tewes said that last week staff provided the Council with a report on speed. He said that staff's recommendation still remains as presented last week. He informed the Council that during the intervening week, staff received a question as to what a permanent bulb out at Dunne and Monterey would look like. He said that staff could design the permanent bulb out to look similar to the others as much as possible.

Mayor Pro Tempore Tate noted that the cost for the temporary bulb out is $10,000 and the he did not know why it was so costly.

Mr. Ashcraft clarified that the estimate for the temporary bulb out is at approximately $5,000 to pay for paint and delineators.

Council Member Grzan inquired whether the City would be measuring the success of slowing traffic down with the implementation of the recommendations as outlined.

Mr. Ashcraft said that staff can measure speed at a cost of $500 by placing a speed counter on the street for 7-10 days. The other alternatives would require a couple of months to determine success of traffic calming upon installation. He said that the identified calming measures, with the exception of the installation of the permanent bulb out, could be installed within a couple of months. Staff could monitor the speed and report back to the Council with respect to reducing traffic speed in the downtown. However, he did not believe that there was a scientific way to find out whether the pedestrian crossing experience was made easier.

Council Member Grzan said that if it is the intent of the Council to implement traffic calming measures with a goal of enhancing pedestrian safety, he inquired how you would measure pedestrian safety.

Police Chief Cumming said that pedestrian safety is a perception. You could measure pedestrian safety by asking the downtown organization and/or the merchants in the downtown to advice whether they feel safer crossing Monterey Road. He indicated that there are very few traffic accidents occurring in the downtown area.

Mayor Kennedy indicated that there have been two pedestrian fatalities crossing the street in the downtown approximately four years ago.

Council Member Grzan stated that it was his hope that there would be some form of measurement of pedestrian safety at this time and what it should be. If the City was to implement $125,000 for traffic calming issues, there should be an indication of traffic calming results. It was his hope that the City would be able to measure results and not just receive a perception.

Mayor Kennedy felt that the City needs to identify specific goals and than track these goals.

Mayor Pro Tempore Tate said that everything he has heard states that when traffic is traveling 25 mph or less, pedestrians feel safer and that it is the right atmosphere for the downtown. He felt that 25 mph should be the goal.

Mayor Kennedy said that he would like to review the goals of the Downtown Association. Some of the goals should include pedestrian and traffic safety, giving a sense of safety and comfort when you shop or walk in the downtown area. A goal could be an improved environment for the businesses as a goal(s) to strive for.

Council Member Grzan inquired whether this item was considered by the Planning Commission.

City Manager Tewes said that the Downtown Master Plan went before the Planning Commission which recommended that the City conduct a study of traffic calming measures. However, the traffic calming measures were not considered by the Planning Commission.

Mayor Kennedy opened the floor to public comment.

Dan Craig, representing the Morgan Hill Downtown Association and its membership, stated that he was well versed on the items that were studied. He informed the Council that the Downtown Association's recommendations have not changed from last week's Council meeting based on the understanding that there was a $125,000 budget that the City is working with. The Downtown Association disagrees with the report that states that speeding is not a problem in the downtown. He stated that a goal of the Downtown Plan calls for a small town, pedestrian oriented environment. He felt that perceptions from the merchants and the public are significant. He said that speeding can be monitored with "before" and "after" results. If traffic speed slows down, he did not believe that the pedestrian crossing measures would be as critical. He was surprised that the speed monitors are no longer of the table as this was a recommendation from the Downtown Association. He indicated that the Downtown Association supports the following: traffic enforcement; reducing the lane width; and raised platforms at the crosswalks. He said that there is a feeling that if traffic slows down, cars would tend to yield. He stated that he did not understand how the temporary bulb out alternative would curb speed, and felt that it looked ridiculous. He noted that the use of embedded lights would cost $100,000. He did not believe that this alternative could be considered with the current budget. He would recommend that this alternative be deferred following the evaluation of the first phase of traffic calming implementation measures. He said that he has seen the use of embedded crosswalk lines and felt that it creates a flashy, emergency looking feel to the downtown, an unattractive appearance to their use. He stated that the Downtown Association identified a recommendation for gateway treatments, including the use of street banners. He said that the costs for the use of banners appear to be high. He stated that he would be happy to look into the California Downtown Associations network and inquire how other towns are handling this.

No further comments were offered.

Action: *Council Member Sellers made a motion, seconded by Mayor Kennedy, to* ***adopt*** *the refinement list as prepared by staff (A2, A3, A4 and Options 1 and 3), excluding item B2 (embedded lights) and Other Option 2, the bulb out; bringing the total cost of the items to $120,000. The remaining $5,000 to be used for the enhancement of the two gateway entrances for the use of banners; directing staff to work with the Downtown Association in developing the design of the banner poles and the long term administration of the banners.*

Mayor Kennedy inquired whether some of the $5,000 could be used for traffic monitoring (speed survey) before and after the implementation of the traffic calming measures.

Council Member Sellers noted that the Council was informed last week that a monitoring system was going to be installed by Britton Middle School.

City Manager Tewes indicated that traffic monitoring does not need allocation of resources as the City conducts this monitoring from time to time and that the City has resources to accomplish the traffic monitoring. Regarding adjusting the timing of the traffic signal lights, he would like to look at the adopted general plan goals as there may be a potential conflict. He said that one way to reduce traffic is to install a stop sign it at every block. However, this would not be consistent with the general plan goal.

Council Member Sellers recommended that staff take a look at adjusting the timing of the signal lights. He noted that traffic could quickly back up to Cochrane Road, underneath the underpass. If the traffic lights are to be adjusted, it needs to be done carefully. He would support adjusting the timing of the traffic signals as long as it is approached cautiously and that further problems are not created.

Mayor Pro Tempore Tate did not believe that the adjustment of the traffic signals was the right approach for traffic control. He said that the Council had staff and the traffic consultant make recommendations. He noted that one of the recommendations made was the installation of a bulb out as it was felt that its installation would be significant in terms of reducing speed. He was skeptical of this alternative and that it was his belief that the Council was also skeptical about this alternative. He felt that the Council should give this alternative a chance and follow the advice of the traffic experts. He understands that the solution does not look good, but recommended that this alternative be tried for a month to see if it has the affect of slowing traffic down. He did not believe that it costs $5,000 to implement this temporary solution.

Mayor Kennedy acknowledged that the bulb out looks bad, but stated his support of trying the temporary bulb out alternative.

Council Member Carr felt that a permanent bulb out may be a good idea. It may be that the Council does not wish to spend half of the money for traffic calming in the downtown for this one piece. However, if the experts state that this alternative will calm traffic down, it should be explored. He would support a temporary bulb out for a month to see if it meets the traffic calming criteria being sought. It was his hope that ultimately, the City will figure out a way to install a permanent bulb out. He stated that at the

last meeting, he was supportive of coming back and allocating funds for traffic enforcement. However, it was stated that this is not an area of high priority for additional police time. While everyone would like to support additional traffic enforcement in the downtown, if the police department does not believe that this is the highest priority for additional enforcement, he would have a hard time spending additional dollars in the downtown for traffic enforcement. He said that in these tight budget cycles, police enforcement should be applied where needed. He was not convinced that the banner poles were of high priority, especially with cables being strung across Monterey Road. He noted that the City has spent a lot of time trying to underground wires and now it is being suggested to install $40,000 of cable over Monterey Road with no idea how to reconcile the aesthetics of the cable wire. Therefore, it is not a high priority to him. He indicated that the Council does not need to spend the entire dollar amount this evening and could allocate funding for the items to be implemented at this time. Should these alternatives not work, the Council still has money available to perform other solutions.

Action: *Council Member Sellers made a motion, seconded by Mayor Kennedy, to amend the motion to include the temporary installation of the bulb out. If it is found that this is a viable traffic calming solution, staff is to find the resources to make this a permanent solution.*

Council Member Sellers said that the banner poles have a dual purpose; traffic calming and an enhancement with a careful design. If to be eliminated for funding at this time, he recommended that further research be conducted.

Mayor Kennedy recommended that staff be directed to return with different design alternatives for the banner poles.

City Attorney Leichter informed the Council that banners are prohibited in the City's Municipal Code unless approved by special permit. She said that there are significant first amendment concerns any time a City installs/administers such a structure.

Council Member Grzan stated that he would support items A2, A3 and A4 at this time with the recommendation that these traffic calming items be measured. Further, that the Downtown Association review and return with comments on the installation of the bulb out.

Mayor Kennedy recommended that all items identified in the motion proceed with the exception of the installation of the curb bulb out until after there has been some monitoring of traffic counts and speeds. He would support the installation of the banner poles, subject to taking a look at what they will look like.

Council Member Sellers stated that he would concur with Mayor Kennedy's recommendation.

Mayor Pro Tempore Tate noted that the design/look of the banner poles would need to return to the Council. Therefore, he recommended that they not be approved at this time.

Council Member Sellers stated that he would agree to remove the banner poles from his motion.

Council Members Carr stated that he would like to be able to provide more enforcement in the downtown, but that he has heard the Chief of Police state that downtown traffic enforcement would not be the highest priority for overtime. He would like to be able to find a way to provide more police enforcement in the downtown, but noted that the City is in a tough budget time and that the Council should be allocating police resources where law enforcement experts believe it is needed.

Council Member Grzan concurred with Council Member Carr's comments as it relates to downtown traffic enforcement.

Council Member Sellers felt that with the items to be approved, they would create a whole different feeling in the downtown.

Mayor Kennedy stated that he would support using general fund reserves to conduct traffic enforcement at other locations as well.

City Manager Tewes suggested that staff return with a traffic enforcement analysis with the budget recommendations.

Action: *Council Member Sellers made a motion, seconded by Mayor Kennedy, to amend the motion and approved Action items A2, A3, A4, and option 3. The motion carried unanimously (5-0).*

Mayor Pro Tempore Tate recommended that the Council proceed with the temporary curb bulb out on a temporary basis.

Mayor Kennedy recommended that the City proceed with the items just approved, review the results, and then proceed with the curb bulb out as a second phase action item.

Mayor Pro Tempore Tate felt that it was important to perform these measures at the same time to really measure the overall affect and not try to piecemeal it.

Action: *Mayor Pro Tempore Tate made a motion, seconded by Council Member Carr, to try the temporary bulb out for a one month trial period.*

Council Member Grzan reiterated that he would like to see the results of the items approved and install the temporary bulb out at a later date, if necessary. He did not understand what was wrong with piecemealing the traffic calming measures as it does not result in a change in cost.

Mayor Kennedy stated that even though it might work, the bulb out appearance would get a bad reputation whether it works or not. With the traffic calming measures approved this evening, he would

like to proceed with the installation of a permanent bulb out, even it if is an additional expenditure. Therefore, he would not be supporting the motion.

Vote: *The motion failed 2-3 as follows: Ayes: Carr, Tate; Noes: Grzan, Kennedy, Sellers.*

Council Member Sellers stated that he would try to do everything he can to get the bulb out installed on a permanent basis.

11. DOWNTOWN AREA BUILDING ALLOTMENT (Continued from 01/19/05 Meeting) – *Resolution No. 5888*

Planning Manager Rowe presented the staff report, identifying the Planning Commission's recommended allocation distribution for the downtown. He informed the Council that the Planning Commission recommends a two-year Measure C downtown competition with allocations going into a third year to finish projects. He informed the Council that the resolution before the Council identifies the recommended distribution. Should the Council agree to move up the filing deadline, that it be no earlier than July 1. This is being recommended as time is needed to make changes to the evaluation criteria. He informed the Council that the current criterion does not work well for the small vertical mixed use category. He informed the Council that the Planning Commission will be appointing a subcommittee at their February 8 meeting and that one of the work items for the subcommittee is to look at developing a new set of evaluation criteria for the small vertical mixed use projects so that they can qualify to receive building allocations. The subcommittee will also be looking at adjustments in the other evaluation categories to fix problems identified with the changes that have occurred as a result of implementing Measure C. He indicated that the recommended action before the Council this evening is to adopt a resolution that would change the distribution for Fiscal Year 2007-08; increasing the set asides for the downtown and to authorize the additional 50 units in each of the outlying years to be earmarked specifically for the downtown. Further, to establish the filing date. He said that there is an opportunity this evening to give direction to the Planning Commission on what the Council would like the subcommittee to address to increase the likelihood that other downtown projects would receive allocations. He said that the minimum passing scores are established in Measure C. He said that the City may want to look at a criterion to increase the likelihood that downtown projects will achieve 160 points or better. Further, Measure C contains a specific formula to determine the available building allocation on any given year and that the City cannot deviate from this number.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Sellers thanked the Planning Commission for all their work and recommendation, but felt that there is still a lot more that needs to be done. He said that there are several reasons for increasing the number of houses in the downtown: good planning, establishing a critical mass, and creating a community that would benefit the downtown, as a whole. He felt that the sooner the downtown residential projects are built, the better it will be for the downtown retail and the downtown community. He said that a lot of the projects in the downtown do not work when they are phased out. He felt that there may be an opportunity to build the downtown projects as they tend to be smaller projects.

While he supports moving forward with this item this evening, he felt that this is a large issue the City needs to address. He stated that he would like to take the 250 units and get as close to this number in two years and not go out to the year 2010. He said that he would like to increase the building allotment numbers in the downtown. He was pleased to see that the Planning Commission would be evaluating the criteria for downtown development, and that he would like to see the evaluation criteria broadened. He would like to have another opportunity to review this item when it is not so late in the evening. He said that high density is not needed on Cochrane Road, but that it is needed in the downtown. He would like to see the Downtown Association and others who have a stake to review the criteria and identify the changes needed.

Council Member Carr agreed with front loading the building allotments for the downtown, but that he does not know how this can be done without changing the market.

Mr. Rowe said that should the City shift additional building allocations to provide a higher building allotment to the downtown in a single year, it will harm ongoing projects. He noted that the City advertised the number of allocations that would be made available to developers. He indicated that the City received 24 applications and that 1,200 units are being requested in total. Placing all efforts for a one or two year period for the downtown would state to the outlining projects that they will not be able to develop in these years. He said that staff is not aware whether any downtown projects can absorb a large number of units in this period of time.

Council Member Sellers said that he would support the recommended action, but recommended that focus be given to completing projects versus phasing out projects; looking at individual opportunities.

Mayor Kennedy stated his support of the idea of trying to build mixed use rapidly in the downtown. He felt that the Planning Commission and staff have done an excellent job in trying to accommodate the Council's objectives. He said that he was not convinced the demand would be there to support this rapid build out. He felt that the action will get the downtown going and would allow the Council to see what the market will provide.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0)* ***Adopted*** *Resolution No. 5888.*

Action: *On a motion by Mayor Pro Tempore/Vice-chairman Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0)* ***Agreed*** *to extend the meeting time to 11:30 p.m.*

12. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) RE-PROGRAMMING OF FUNDS

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that last week; Mayor Kennedy requested that the Council consider reprogramming of CDBG funds from the Friendly Inn renovation project to the Dayworker Center project. He informed the Council that the City

allocated approximately $64,000 for the Friendly Inn Restoration project this fiscal year and that $28,000 of these funds would be used for the master plan. This results in approximately $36,000 being made available for reprogramming to other eligible activities. He said that there is no impact on the timeline for the Friendly Inn Restoration project. Should the Council agree to the reprogramming, the applicant would have to apply for the current CDBG cycle to get the funding replaced. The Council could chose not to reprogram funding at this time and include the reprogramming as part of the current CDBG cycle. These funds would be made available in July 2005. He requested direction regarding the reprogramming of funds. He noted that the Dayworker Center project has received approximately $100,000 in CDBG funds to date.

Mayor Kennedy said that the Davis-Bacon Act entered into play and raised the cost for the Dayworker Center project that was not anticipated. He stated that he has been meeting with the Dayworker Committee for the past several meetings. He took a look at the numbers provided, indicating that they only have approximately $2,000-$3,000 in their capital fund. He stated that the Dayworker Committee has raised some funds for operating costs and are reserving these funds in order to operate the facility. He said that several issues have increased the cost of the project [e.g., electrical work required by the contractors to comply with the Davis-Bacon requirement (outstanding bill of $15,000); handicapped parking space and walkway to the ramp ($10,000); installation of handicapped access ramps ($5,000)]. He said that it was his understanding that the Committee has found an individual who may be able to help reduce these costs.

Mayor Kennedy opened the floor to public comment.

Mario Banuelos, South County Dayworker Committee member, stated that the Committee is requesting Council approval of the reprogramming of the CDBG funds to the Dayworker Center project due to unforeseen costs (e.g., relocating portable, Davis-Bacon requirement). He said that when the Committee first put together the budget for the project, it was felt that the initial $100,000 in CDBG funding would be sufficient to complete the project. He said that the Committee has fallen short of its goal of having the center up and operational. He informed the Council that all of the interior work for the center has been completed. He said that the work remaining includes the parking facility and the electrical work. He said that the Dayworker Committee is requesting $25,000 of the reprogrammed $35,724 CDBG funding reallocation. He stated that the Committee could make good use of the entire amount. He said that that the Committee estimates $25,000 is needed to complete the on site improvements: $15,000 for contractor costs for electrical hookups, and approximately $10,000 for the handicap ramps and the parking improvements.

Chris Hauge said that the Dayworker Committee is coming back to the Council because it got to a point where it did not have other funding options, indicating that this project is close to completion. He said that Techcon Landscape and Landmark Construction have indicated that they may be willing to finish the exterior part of the project that would include the parking lot, handicap ramps, etc. They have estimated that this work can be done at a cost of approximately $10,000. He said that Techcon would like to clarify some items before they agree to perform the work and have indicated a desire to move forward with the project upon clarifying these points.

No further comments were offered.

Council Member Sellers said that he was not originally going to support the request due to the fact that this is a third request for funding. However, he would agree to support the funding request as the $25,000 is needed to complete the project and that funding would come from unallocated CDBG funds. He stated that he would be reluctant to award funds if the funds had been allocated or were non CDBG funds. He felt that there is a commitment by the Dayworker Committee to finish this project. However, he felt that the cost overruns should have been anticipated. He said that the Davis-Bacon requirement was one that was known. He felt that the other expenditures should also been anticipated. He said that he would hate to see the Dayworker Center completed and still have the same number of individuals standing outside because the doors are not open as there is no one available to operate the center. He stated that he was inclined to allocate more than the $25,000 being requested to give assurance that there is money in place should there be cost overruns, noting that the CDBG funds are not specifically allocated at this time.

Council Member Carr stated that he would like to support the request in order to complete the project. He indicated that he met with Mayor Kennedy this evening to review the numbers and budget. He said that he was concerned about granting more funding than needed. He acknowledged that there is an outstanding $15,000 bill. He said that the Dayworker Committee has a 20-30% contingency fund in their capital dollars. He stated that he would be comfortable with proceeding at a not to exceed amount of $25,000 with staff having oversight of the expenditures. He noted that the City has allocated over $100,000 in CDBG funds without knowing how the funds have been spent.

Council Member Tate stated his concurrence with Council Member Carr's comments and recommended that the requested $25,000 be allocated, supporting the completion of the Dayworker Center.

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0)* ***Approved*** *Re-Programming of $35,724 in FY 2004-2005 CDBG Funds.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0)* ***Authorized*** *the City Manager to do Everything Necessary and Appropriate to Re-Program CDBG Funds, Including the Execution of All Required Documents to Transfer Funds to the Day Worker Center Site Improvements Project at a not to exceed $25,000 with staff oversight; Subject to Review and Approval by the City Attorney.*

City Manager Tewes noted that the staff report states that because CDBG funds are County funds, they would not be made available for two months. If it is the Council's direction, the City could advance these funds to be reimbursed at a later date from CDBG funding. He said that Council authorization is necessary to take this action.

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0)* ***Authorized*** *Advancement of the funds, subject to Santa Clara County approval.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items, indicating that a clerical error occurred with agenda item 2. Item 2 should have been listed as legal authority to call the closed session under Government Code Section 54956.9(a).

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Case Name:	Jackson v. City Morgan Hill
Case Number:	San Jose WCAB SJO246465
Attendees:	City Manager, City Attorney, Human Resources Director

3.

CONFERENCE WITH LABOR NEGOTIATOR:

Legal Authority:	Government Code Section 54957.6
Agency Negotiators:	City Manager; Human Resources Director
	Employee Organizations:
	AFSCME Local 101
	Morgan Hill Community Service Officers Association

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor Kennedy adjourned the meeting to Closed Session at 11:20 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 11:43 p.m.

CLOSED SESSION ANNOUNCEMENT

Agency Counsel/City Attorney Leichter announced that authority was given to accept the settlement offer in the Jackson Case in the amount of $66,260.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 11:44 p.m.

MINUTES RECORDED AND PREPARED BY:

_____

IRMA TORREZ, AGENCY SECRETARY/
CITY CLERK/COMMISSION SECRETARY

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: February 16, 2005

Agenda Item # 10

Prepared By:

_____
Council Services & Records Manager

Submitted By:

_____
City Manager

REPORT FROM THE CITY COUNCIL'S APPOINTED 2006-CENTENNIAL STEERING COMMITTEE

RECOMMENDED ACTION(S):

1) Consider Report/Recommendations from the 2006-Centennial Steering Committee; and
2) Appoint a two-member Council subcommittee to assist the 2006-Centennial Committee, if deemed appropriate.

EXECUTIVE SUMMARY:

At the Council's June 23, 2004 meeting, the Council agreed to establish a 2006-Centennial Steering Committee. The Council agreed to a seven-member steering committee and that each Council Member would appoint one individual, with the Mayor appointing three individuals to the steering committee.

At the July 28, 2004 Council meeting, Council members raised questions regarding the expectations of the steering committee. Mayor Kennedy recommended the following:

- The steering committee to begin the planning process that would include an organization, similar to that of the Independence Day Inc., who would plan a year long centennial celebration
- The organization to have different groups conducting different parts in the preparation of the centennial celebration, inviting all segments of the community (e.g., Chamber of Commerce, churches, Sister Cities Committee, service clubs such as the Rotary, Lions Club, Kiwanis, etc.).
- Invite an advisory committee of the Historical Society founding members to assist.
- Steering committee to return to the Council; identifying the organizational structure, timeline, and recommended budget for the centennial celebration.

On August 18, 2005, the City Council made the following appointments to the 2006-Centennial Steering Committee: Brad Jones, Marilyn Libers and Jennifer Tate (Mayor Kennedy's appointments); Lorraine Welk (former Council Member Chang's appointment; Janie Knopf (Council Member Tate's appointment); Ellie Weston (Council Member Carr's appointment); and Vivian Varela (Council Member Sellers appointment). Following the appointments, Ms. Varela advised that her schedule would not afford her the time to be an active member on this Committee. Staff understands that Ms. Varela's schedule now allows her the opportunity to be a part of this committee. Council Services & Records Manager Torrez has been serving as City staff liaison to the 2006-Centennial Celebration Steering Committee.

Staff will report that the 2006-Centennial Steering Committee has been very active; meeting almost every month since appointment. A report from the 2006-Centennial Steering Committee is attached for Council consideration. The report includes recommended actions from the Committee to the Council.

Mayor Kennedy, in prior meetings, recommended that the Council appoint a two-member Council subcommittee to assist the 2006-Centennial Committee. It would be appropriate to identify the two Council members who would be working with the 2006-Centennial Committee at this time, if deemed appropriate.

FISCAL IMPACT: Fiscal impact would depend on whether the Council agrees to provide funding assistance to the 2006-Centennial Committee in its planning and start up efforts. Funding Sources: 1) $11,400 earmarked in the Fiscal Year 2004-05 Community Promotion's budget for community activities; 2) General Fund Reserves; and/or Redevelopment Agency's Economic Development Fund for special events that will promote the downtown.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: February 16, 2005

Agenda Item #11

Prepared By:

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Deputy Director PW

Approved By:

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Department Director

Submitted By:

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City Manager

DEPOT STREET UTILITY UNDERGROUNDING

RECOMMENDED ACTION: Direct staff to proceed with undergrounding existing overhead utilities along Depot St. from Main Ave. to E. Dunne Ave.

EXECUTIVE SUMMARY: On December 15, 2004, the Metropolitan Transportation Commission (MTC) approved a City grant proposal to improve five blocks of Depot Street (from Main Avenue to Fifth St.). The grant, known as the Transportation for Livable Communities capital grant, will make $2,626,638 available to the City to upgrade Depot Street in conformance with the Downtown Plan. Construction on the project is scheduled to begin in the summer of 2006.

To properly complete the improvements described in the grant proposal it will be necessary, however, to place the existing overhead utility lines along Depot Street underground. This undergrounding work is not eligible under the grant program and must be addressed as a separate project. Staff has studied two potential methods for accomplishing the undergrounding work. The use of PG&E's Rule 20A funds is one option and using the City's underground in-lieu fee fund balance is another.

The Depot Street undergrounding is eligible under the Rule 20A program; however, the long lead time to complete projects under this program due to PG&E scheduling requirements makes this alternative unacceptable. Under the Rule 20A program the actual placement of overhead lines underground would take a minimum of 18 months if started now. This approach would not meet the schedule needs of the Depot Street grant project.

Staff recommends the use of the City's underground in-lieu fund balance to complete the project. Underground in-lieu fees are collected from developers who request payment of a fee in lieu of actually undergrounding overhead lines across their frontage or if development occurs at locations where the utility lines have already been placed underground. In fact, the developer of the Granary project and the Day Worker project along Depot St. were granted permission to pay the in-lieu fee instead of placing the utilities underground as allowed for by the Municipal Code. The estimated cost to place the existing overhead lines underground from Main Street to E. Dunne Ave. is $900,000. The bulk of the expense is payment to PG&E for plan approval and for work to make the conversion to underground. Sufficient funds are in the developer in-lieu fee fund at this time. Utilizing this method, the undergrounding work can be completed prior to the start of construction on the Depot Street grant project in 2006.

FISCAL IMPACT: None at this time. Upon approval to proceed, staff will incorporate this project into the FY 2005/06 Capital Improvement Program budget and prepare planning and design documentation to allow PG&E to invoice the City for the work. Staff will put before the Council a complete cost estimate and funding request at a future date.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: February 16, 2005

Agenda Item # 12

Prepared By:

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Assistant Engineer

Approved By:

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Public Works Director

Submitted By:

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City Manager

MONTEREY UNDERGROUND UTILITIES PROJECT

RECOMMENDED ACTION (S): Direct staff to proceed with a public information meeting and report back to Council.

EXECUTIVE SUMMARY: In the continued effort to remove all overhead utility lines, poles and associated overhead structures along Monterey Road using PG&E Rule 20A funds, it will be necessary to establish an Underground Utility District (UUD) for the next phase between Dunne Avenue and Cosmo Avenue.

Two previous UUD projects were completed along Monterey Road:

- Keystone Avenue to Third Street (1985).
- Third Street to Dunne Avenue (1991).

Per Chapter 12.12 of the Municipal Code, the process for establishing a UUD requires a legally noticed public hearing with notice to all affected property owners. The boundaries of the proposed UDD are identified on Exhibit "A". If, after said public hearing, the Council adopts a UUD, all affected property owners will be noticed that they shall accommodate the conversion of their individual service connections from overhead to underground. Electric Rule 20A includes an option to fund the cost of the individual service conversions up to $1,500 per service as well as the installation of the service conduit up to 100 feet from the street right-of-way. Staff will recommend the City utilize this option.

The PG&E Rule-20-A Underground Conversion fund was established by the California Public Utilities Commission in 1968 and it requires electrical utility providers to annually allocate underground conversion funding to communities within its service area based on the number of overhead meters served within that community. The undergrounding of the electric distribution system along Monterey Road from Dunne Avenue to Cosmo Avenue qualifies for funding under electric Rule 20A

Upon establishment of the UUD by the City, PG&E and the other affected pole mounted utility companies will be notified to prepare design documents and arrange for their lines and facilities to be put underground. Due to scheduling logistics for PG&E's limited construction crews, it is estimated that actual construction may begin anywhere from 18 to 24 months from the establishment of the UUD (see Exhibit B). SBC will underground telephone facilities at their expense under the provisions of Rule 32.A.1. Cable TV will underground at their expense as well. A preliminary budget for the project is attached as Exhibit "B".

If directed, staff will hold a public information meeting with the affected property owners and businesses to explain the proposal to underground the overhead facilities and the establishment of the UUD. Staff will report back to Council after the information meeting and recommend the formation of the UUD by noticing the required public hearing. Exhibit "C" is a proposed schedule of activities associated with this effort.

FISCAL IMPACT: The current balance of Rule 20A funding for Morgan Hill is approximately $1,200,000. The City has the ability to borrow an additional 5 year allocation (approximately $500,000). To complete the underground work from Dunne Avenue to Cosmo Avenue will require $1,700,000 of Rule 20A funds plus approximately $118,500 in additional monies for work outside the eligibility limits of Rule 20 A. The additional monies may be funded through the City's underground in-lieu fee fund.

EXHIBIT B
Cost Analysis for Project

Description	**Units**	**Cost per Unit**	**Total**	**Funding Source**
Cost to Underground from Dunne to Cosmo Avenue	4500 LF	$350/LF	$1,575,000	PG&E Rule 20A Funding
Cost to install service conduit (assume 50 feet/service and $50/ foot)	1050 LF 21 EA. @ 50 LF=1050 LF	$50/LF	$52,500	PG&E Rule 20A Funding
Total funded from Rule 20A			**$1,627,000**	
Install new street lights (including base, conduit and boxes)	30 EA	$5,000/EA	$150,000	City Underground in-lieu Fee Funds
Credit from PG&E for service panel conversions	21 EA	$1,500	($31,500)	Credited from PG&Eto PG&E Rule 20A Funding to City of Morgan Hill
Total Funded from City Underground in-lieu Fee Funds			**$118,500**	
Total project costs			**$1,745,500**	

EXHIBIT C

Preliminary Schedule *

Phase	Activities	Duration
Underground Utility District (UUD) Phase	o Information only staff report o Public meeting for affected property owners/businesses o Second staff report to council. Include comments from neighborhood meeting. o Set Public Hearing to establish formation of UUD o Third staff report. Public Hearing. o Council passes resolution forming UUD.	2/05 – 4/05
Notify PG&E of approved resolution	o Project is placed in PG&E queue	5/05 – 9/05
Design Phase*	o PG&E to coordinate trench design o Pole mounted utilities prepare their requirements and present to PG&E o City prepares streetlight requirements and present to PG&E o PG&E prepares its underground design o PG&E prepares Form B describing cost sharing o PG&E completes electric design	10/05-2/07
Construction Phase*	o Prepare service panels to receive underground service o Install service conduit from property line to service panel o Install distribution conduits and substructures (PG&E) o Begin utility installation o Transfer services to underground system (utilities) o Install streetlights (City) o Remove poles (utility)	3/07 - 11/07

* Based on input from PG&E. Subject to change.

CITY OF MORGAN HILL

CITY COUNCIL/REDEVELOPMENT AGENCY STAFF REPORT

Agenda Item #13

Prepared/Submitted By:

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City Manager

MEETING DATE: February 16, 2005

INVESTMENTS IN CAPITAL EXPENDITURES WITH POTENTIAL RETURN ON INVESTMENT

RECOMMENDED ACTION(S):

1. Appropriate $600,000 of RDA funds for Projects at the Aquatics Center identified as "category A" in the attached report; and

2. Provide policy direction for preparation of FY 07 Budget

EXECUTIVE SUMMARY:

At the annual goal setting retreat, the Council reiterated its policy of encouraging proposals for capital expenditures that had high return to the General Fund from either expansion of the tax base, or reduction of operating costs.

The City Manager's Recommended Budget for FY 07 will include a series of recommendations.

Attached are two memoranda from the Recreation and Community Services staff outlining potential projects at the Community Center and the Aquatics Center. The Aquatics recommendations are being brought forward at this time because of the potential for immediate revenue enhancements if they are installed prior to the summer season.

The Council has informally identified two potential sources to finance capital expenditures with potential for high return on investment: General Fund reserves and $1.3 million of currently unallocated RDA funds. The $1.3 million is the remainder available after shifting funds formerly allocated for flood control to the library project. However, the Council was not able to establish policy direction for the remaining RDA funds during the goal setting retreat.

The Recommended Budget will include specific recommendations for these two sources. Because of the need to move forward with the Aquatics Projects, we are recommending that $600,000 of RDA funds be appropriated at this time. The report identifies a range of choices for specific projects. We are recommending that $600,000 be established as a "not to exceed" level of capital investment in the Category A projects.

In the light of the continuing operating deficits in the General Fund and the need for a comprehensive revenue strategy, we believe it is more appropriate to use the RDA funds than General Fund operating reserves. The Council may want to provide policy direction regarding the allocation of the balance of the funds for consideration of the FY 07 Budget.

FISCAL IMPACT: $600,000 to be appropriated from the unallocated Redevelopment Agency Funds, leaving $700,000 remaining for other public projects.

CITY COUNCIL/REDEVELOPMENT AGENCY (RDA) STAFF REPORT
February 16, 2005

Agenda Item # 14

Prepared By:

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Council Services & Records Manager

Submitted By:

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City Manager

CONSIDER CHANGE IN CITY COUNCIL/RDA MEETING TIME/STREAMLINING MEETINGS

RECOMMENDED ACTION(S):

1. Discussion/Direction on the Council/RDA meeting start time;
2. Discussion/Direction regarding the order of the agenda;
3. Direct staff to return with Ordinance Amendment, if deemed appropriate
4. Amend Council Policies, as deemed appropriate; and/or
5. Amend RDA Bylaws, as deemed appropriate

EXECUTIVE SUMMARY:

Per Council's direction from the January 19, 2005 City Council meeting, staff has agendized the discussion of changing the Council meeting start time. Staff was also requested to schedule the discussion of streamlining the Council meetings.

To help the Council facilitate its discussion, staff has provided the Council with the following:

- **Chapter 2.04.010 of the Municipal Code**: Meetings – Time and Location. This section of the Municipal Code states that the City Council is to hold regular meetings every 1st and 3rd Wednesday of each month with meeting start times of 7:00 p.m. Should the Council wish to change the meeting start time, staff should be directed to return with an ordinance amendment to facilitate this direction.

- **City Council Policy, CP-97-01: Rules of Conduct of City Council Meetings**. This Policy addresses the conduct of City Council meetings. Staff will refer the Council to Section 5. This section addresses the order of Council business. Section 7 identifies the procedures for the conduct of meetings.

- **City Council Policy, CP-98-02: Time Established for City Council Public Hearings**. This Policy states that Public Hearings are to be set no earlier than 7:30 p.m.

- **Amended and Restated Bylaws of the Redevelopment Agency**. Article III, Section 2 states that the Agency Board is to meet on the Fourth Wednesday of each month at 7:00 p.m. and Section 6 identifies the order of business.

- **Section VIII of the League of California Cities "Mayors and Council Members Resource Guide – Leadership Tips for Elected Officials**." Council Member Grzan suggests that Council Members review and consider the "Making Meetings Manageable" section of the League of California's Mayors and County Members Resource Guide 2005

Staff awaits direction from Council regarding:

1. The Council's meeting date/start time. A change in meeting time will require a change in the municipal code via an ordinance.
2. Agency Board's direction regarding meeting start time/order of business.
3. Changes to Policy CP-97-01 regarding the order of Council Business.
4. Changes to Policy CP-98-02 that would change the time for holding public hearings.
5. Any other direction(s) from the City Council/Agency Board.

FISCAL IMPACT: No budget adjustment required.

CITY COUNCIL/REDEVELOPMENT AGENCY STAFF REPORT

CITY OF MORGAN HILL

Agenda Item # 15

Prepared/Approved By:

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Council Services & Records Manager/ Agency Secretary

Submitted By:

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City Manager/ Executive Director

MEETING DATE: *February 16, 2005*

CITY COUNCIL/REDEVELOPMENT AGENCY UPCOMING AND SUMMER MEETING SCHEDULE

RECOMMENDED ACTION: Discussion and Direction Regarding Upcoming and Summer Meeting Schedule

EXECUTIVE SUMMARY:

Traditionally, the City Council/Agency Board cancels one of its meetings during the months of July and August. Staff would like to take this opportunity to discuss with the Council and Agency Board its recommendation for meetings to be held during the summer months. Should the Council and Agency Board decide to cancel a meeting(s) during the summer month(s); staff will update all listings to ensure that the public is made aware of the change(s) in the meeting schedule. Staff will schedule items before the City Council and Agency Board accordingly. If issues arise that require City Council and/or Agency Board action, staff will apprise you and a meeting can be scheduled. Staff has attached City Council/Redevelopment Agency meeting schedule for the months of June, July, and August 2005 for Council/Agency Board reference.

As the Council/Agency Board will be reviewing its summer meeting schedule, the Council/Agency Board may wish to take this opportunity to review and discuss upcoming meeting dates, and make adjustments accordingly.

FISCAL IMPACT: Preparation of this staff report is accommodated in the Council Services & Records Manager's operating budget.