TOWN OF MORAGA
PLANNING COMMISSION MEETING

Moraga Library Meeting Room — March 1, 2010
1500 Saint Mary's Road
Moraga, CA 94556 — 7:30 P.M.

MINUTES

I. CALL TO ORDER

Chairman Obsitnik called the Regular Meeting of the Planning Commission to order at 7:30 P.M.

ROLL CALL

Present: Commissioners Driver, Levenfeld, Richards, Socolich, Whitley, Wykle, Chairman Obsitnik
Absent: None
Staff: Lori Salamack, Planning Director
Richard Chamberlain, Senior Planner

B. Conflict of Interest

There was no reported conflict of interest.

II. ADOPTION OF MEETING AGENDA

On motion by Commissioner Whitley, seconded by Commissioner Levenfeld and carried unanimously to adopt the meeting agenda, as shown.

III. ANNOUNCEMENTS

A. Swearing in of New Planning Commissioners

Planning Director Lori Salamack presented the Oath of Office to newly appointed Planning Commissioners Tom Richards and Roger Wykle

IV. PUBLIC COMMENTS

There were no comments from the public.

V. ADOPTION OF THE CONSENT CALENDAR

A. January 4, 2010 Minutes

On motion by Commissioner Levenfeld, seconded by Commissioner Driver and carried unanimously to adopt the Consent Calendar, as shown.

VI. PUBLIC HEARINGS

Given that the applicant for the first agenda item, UP-02-09 was not yet present, the Commission moved to Public Hearing Item B at this time.

B. UP-07-09 - AT&T Wireless Transmitter Facility / Shannon McDougall (Applicant) for AT&T, PG&E (Transmission Tower Owner), Rancho Laguna, LLC (Property Owner): A public hearing to consider a Conditional Use Permit for a new AT&T Telecommunication facility consisting of nine antenna panels to be located on an existing PG&E transmission tower located on the Rancho Laguna property adjacent to the EBMUD Fayhill Reservoir. The equipment associated with the antennas is to be located approximately 53 feet south of the PG&E tower legs and 53 feet southeast of the 4-foot high barbed wire fence enclosure around the Fayhill Reservoir. Each of the nine antennas will be approximately 6 feet high, 1-foot wide and 6 inches deep. The antennas will be mounted 42 feet above the ground near the middle of the 105-foot high PG&E transmission tower. The equipment enclosure will be 36 feet wide and 17 feet deep with a 4-foot high retaining wall behind it and a 6-foot high chain link fence around it. Three cabinets measuring 69 inches high, 51 inches wide and 36 inches deep will be installed initially with splice boxes for two additional cabinets in the future. The purpose of the new transmitter facility is to provide cellular phone service to Rheem Valley and the Campolindo High School areas. The property is zoned OSM-DT (Open Space – MOSO [Moraga Open Space Ordinance] - Density Transfer). APN 256-040-024.

Senior Planner Richard Chamberlain presented the staff report dated February 22, 2010 for a public hearing to consider a conditional use permit for a new AT&T telecommunication facility consisting of nine panel antennas to be located on an existing PG&E transmission tower located adjacent to the East Bay Municipal Utility District (EBMUD) Fayhill Reservoir on the Rancho Laguna property. He reported that a public hearing notice had been mailed to property owners within 300 feet of the project site on February 19. No correspondence had been received from the public either by e-mails, telephone calls or by regular mail.

The wireless telecommunication application was a co-location on a PG&E transmission tower with Verizon Wireless, Inc. The new transmitter facility was intended to provide cellular phone service to Rheem Valley and the Campolindo High School areas.

The PG&E tower was 1005 feet from Rheem Boulevard at the closest point and 2008 feet from the intersection of Rheem Boulevard and Moraga Road. The project was not subject to the Scenic Corridor Ordinance because it was farther than 500 feet from the designated scenic corridor roads.

The nine antennas would be mounted 42 feet above the ground near the middle of the 105-foot high PG&E transmission tower. Each of the antennas would be approximately 6 feet high, 1-foot wide and 6 inches deep. The equipment associated with the antennas would be located 53 feet south of the PG&E tower legs and 53 feet southeast of the 4-foot high barbed wire fence enclosure around the Fayhill Reservoir. The equipment enclosure would be 36 feet wide and 17 feet deep with a 4-foot high retaining wall behind it and a 6-foot high chain link fence around it. Three cabinets measuring 69 inches high, 51 inches wide and 36 inches deep would initially be installed with splice boxes for two additional cabinets in the future. The PG&E tower was located on the crest of the ridge but the equipment enclosure would be located 20 feet below the top of the ridge and 60 feet from the centerline of the ridge.

Mr. Chamberlain explained that the regulations for wireless communication facilities and miscellaneous antennas were included in Moraga Municipal Code (MMC) Chapter 8.144. There were also Open Space MOSO District issues for the Planning Commission to consider. Pursuant to MMC Section 8.144.060-A, he read the exceptions to the prohibition of development within the Town's open space and ridgeline areas for wireless facilities, as follows

1. No wireless communication facility shall be located within 500 feet of a major ridgeline unless it has a conditional or temporary use permit as of April 28, 1999 (the effective date of the wireless ordinance).

Mr. Chamberlain advised that the ridgeline northeast of Rheem Boulevard was not defined as a "major ridgeline" under MMC Section 8.52.080.

2. No wireless communication facility shall be located on the crest of a minor ridge with an elevation of 800 feet or greater as defined in MOSO, nor shall the silhouette of an antenna be visible above the ridge as viewed from a lower elevation perspective generally available to the public, unless it had a conditional or temporary use permit as of April 28, 1999.

Mr. Chamberlain explained that under MMC Section 8.52.140, development is prohibited "on the crests of minor ridgelines" in the MOSO district. The existing PG&E tower straddles the centerline of the minor ridgeline at an elevation of 953.9 feet. The addition of the wireless antennas to the existing tower would not be considered "construction or erection of a structure" under the definition of development in the MOSO guidelines. The addition of the antennas would be a modification of the existing structure. The proposed location for the equipment enclosure is at an elevation of 934.4 feet, which is 20 feet lower than the elevation at the crest of the minor ridgeline. The enclosure is also 53 feet from the base of the tower.

3. No wireless communication facility shall be located in areas where the slope has a grade of 20 percent or greater in MOSO open space unless it has a conditional or temporary use permit as of April 28, 1999.

Mr. Chamberlain stated that the PG&E tower was on a slope of less than two percent. After MOSO had been approved by the voters on April 26, 1986, the Town Council adopted the MOSO Guidelines, which defined slope with a grade of 20 percent or greater as "land which contains an average slope of 20 percent or greater within a "cell" that contains the development. The definition of "cell" in the MOSO Guidelines includes a minimum 10,000 square foot. "polygonal shaped area" with an average slope less than 20 percent. He added that staff had met with both Verizon Wireless and AT&T to suggest that they have an engineer prepare a MOSO cell exhibit containing both of their proposed equipment enclosures. A drawing showing a 10,220 square foot cell with an average slope of 18 percent had been prepared but it had not shown a rectangle at the location for the AT&T equipment. The surveyor who had prepared the drawing was to revise it to include the AT&T enclosure.

Mr. Chamberlain stated that MMC Section 8.144.060-B required wireless facilities to comply with the required development standards unless the applicant establishes and it is determined by the Planning Commission that there were no other optimal location(s) for the carrier to provide adequate coverage, and it is determined that compliance with these standards would violate federal law. He stated that the burden shall be on the applicant to prove to the satisfaction of the Planning Commission that there were no optimal locations where adequate coverage could be provided.

Mr. Chamberlain explained that AT&T had previously submitted use permit applications for a "flagpole" wireless transmitter at 475 Moraga Road and a co-location with T-Mobile at the Rheem Theater. AT&T's radio frequency engineers ultimately rejected both of those sites because they were not at a high enough elevation to bring coverage to a significant portion of the Rheem Valley area or the Campolindo area. At an elevation of approximately 1,000 feet on the PG&E tower, the signal was expected to reach the majority of the properties in the Rheem Valley and Campolindo areas.

Mr. Chamberlain advised that was significant in light of the decision by the Ninth Circuit Court of Appeals in the case of T-Mobile U.S.A., Inc. versus the City of Anacortes. The Ninth Circuit Court concluded that the denial by the city amounted to an effective prohibition in violation of the Federal Telecommunications Act of 1996 because the city failed to establish the existence of alternative sites that were feasible and available to the wireless communications provider. As such, if the Town denied an application for a wireless facility that was needed to fill a significant gap in coverage, the burden would then shift to the Town to establish feasible alternatives and available sites.

Mr. Chamberlain explained that all potential optimal locations for cellular transmission sites were located on ridges within the OS (Open Space) or OS-M (Open Space-MOSO) zoned areas. Most of the significant ridges in the Town were designated as "major ridges." Since variances were no longer possible to allow installations on any major ridgeline, the choice of optimal locations was very limited.

With regard to MMC Section 8.144.060-C, Mr. Chamberlain stated that the Town had recently learned that the limit of five years for a use permit under MMC Section 8.144.080-B was contrary to State Bill (SB) 1627. The Town Attorney had ruled that Government Code Section 65964(b) prohibited the Town from limiting the Conditional Use Permit (CUP) to less than ten years. As such, the Town Council would consider that change to the wireless ordinance on its next agenda.

Mr. Chamberlain explained that MMC Section 8.144.030 listed the general development standards for wireless communication facilities. Subsection A stated that all ground-mounted wireless communication equipment shall be:

1. Of a minimal functional height or no greater than 20 feet, whichever is less.

   Mr. Chamberlain advised that the equipment enclosure would have a six-foot high chain link fence around it. Since the back of the enclosure would have a 4-foot high retaining wall, the effective height of the fence at the back would be 10 feet high. All of the equipment cabinets within the enclosure would be less than 6 feet high. The existing PG&E tower is 103 feet high. The AT&T antennas would be mounted approximately 42 feet above the ground and would not increase the existing height of the tower. Since the project was in MOSO, the development standards such as height would need to be set by the Planning Commission as part of approval of the use permit.

2. The equipment shall have a non-reflective finish and shall be painted or otherwise treated to minimize visual impacts.

   The applicant's statement indicated that the facility was designed to produce minimal visual impact and that no advertizing signage or identifying logos would be installed. However, the color of the fenced enclosure and antennas had not been specified. The applicant had provided color simulations showing the appearance of the antennas on the PG&E tower.

3. The equipment shall be sited to be screened by existing development, topography or vegetation to the extent consistent with proper operation of the wireless communication facility. Additional new vegetation and its proper irrigation where practical or other screening may be required as a condition of approval.

Mr. Chamberlain stated that the application did not include any new landscaping. The southwest side of the equipment enclosure would be the only side that could be visible from offsite. He added that since the southwest side was adjacent to Fayhill Road, any new landscaping to help screen the view of the enclosure would have to be across the road from the enclosure.

Mr. Chamberlain referred to subsection C of MMC Section 8.144.030 and advised that a wireless communication facility shall comply with all applicable Federal Communications Commission (FCC) standards for radio frequency (RF) emissions and shall not adversely affect the public health, safety or welfare. He explained that the applicant's submittal had stated that the facility would comply with all applicable FCC standards for RF emissions. AT&T would measure the actual RF levels once the proposed facility was in operation.

Mr. Chamberlain reported that the requirement under MMC Section 8.144.080-B for annual testing to verify compliance with FCC RF emissions standards had recently been challenged. The Town Attorney's opinion was that a strong legal argument could be made that annual testing was permissible, but the question was still an open issue as to whether a local government could require proof of compliance. He added that as long as the Town did not impose more stringent emissions regulations than those imposed by the FCC, the Town Attorney believed that the Town would not be preempted by federal law. Staff recommended testing every five years rather than every year.

Speaking to subsection D of MMC Section 8.144.030, Mr. Chamberlain stated that all new wireless communication facilities shall be co-located with existing and/or with other planned new facilities whenever feasible and aesthetically desirable. Co-location was discouraged when it would increase visual impacts. Service providers were encouraged to co-locate with other facilities such as water tanks, light standards and other utility structures where the co-location was found to minimize the overall visual impact.

Mr. Chamberlain reported that the proposed project was co-located with the existing PG&E transmission tower and the equipment enclosure would be 53 feet from the EBMUD Fayhill Reservoir site, where the trees around the water tank would help to reduce the visual impact of the enclosure.

Noting that it could be argued that the new antennas on the PG&E tower would increase the visual impacts, Mr. Chamberlain explained that the tower was located more than 1000 feet from the nearest residence. The visual simulations showed that the impact of the new antennas on the PG&E tower would be very minor.

With respect to subsection E, Mr. Chamberlain stated that any exterior lighting shall be manually operated and used only during night maintenance or emergencies. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. He explained that the applicant's statement did not address exterior lighting, although the performance standard could be included as a condition of approval.

Mr. Chamberlain spoke with respect to subsection H where all proposals for wireless communication facilities shall include a description of the site selection process undertaken, including coverage objectives and alternative site analysis. He stated that the applicant's statement included the site selection process included as Exhibit B to the staff report on Page 3, alternative location analysis.

Further with respect to subsection I, antennas and equipment buildings shall not be located closer than 300 feet from a residential structure and 100 feet from a residential property line. The proposed antennas and the equipment enclosure were not within 300 feet of any existing or proposed residential structures. The closest existing residential structures were located on Via Barcelona and Buckingham Drive. The home at 3 Via Barcelona was 1,126 feet from the PG&E tower and the home at 98 Buckingham Drive was 1,253 feet from the tower. The RF emissions would not have any measurable effect on any existing housing in Moraga.

Mr. Chamberlain stated it was unlikely that any new housing could be constructed closer than 300 feet to the PG&E tower due to the steep topography at the sides of the ridge and the MOSO restrictions on development.

Pursuant to MMC Section 8.136.040-B, Mr. Chamberlain stated that a Hillside Development Permit (HDP) would be required for the equipment enclosure and construction of the concrete block wall at the back of the enclosure. Hillside land was defined as any land that had a slope of 20 percent or greater and grading, clearing, construction upon or alteration of hillside land required approval of an HDP. Generally, minor work on hillside land, such as landscaping work that did not otherwise require a grading or building permit or post holes for fencing, had been exempt from an HDP. The proposed excavation for the pad of the equipment enclosure might not require a grading permit from the Town depending upon the exact measurements for the excavation.

The amount of soil to be removed for the equipment pad would be approximately 15.8 cubic yards, which would be less than the 50-cubic yard threshold for a permit. If the depth of the cut at the deepest point exceeded 3 feet, then a grading permit would be required. A building permit could be required for the retaining wall at the back of the enclosure because the Building Department measured the height of the retaining wall from the footing, which often increased the overall height, even if the depth of the cut was less than 3 feet.

Since the notice for the use permit hearing did not include any notice of an HDP, Mr. Chamberlain recommended that the HDP be considered by the Design Review Board (DRB) prior to issuance of a building permit for the retaining wall if the use permit was approved.

Mr. Chamberlain recommended that the Planning Commission approve the Conditional Use Permit for the AT&T wireless communication facility on the Rancho Laguna site. The required findings to approve a Conditional Use Permit from MMC Section 8.12.120 had been included in a draft resolution for the project. Applicable general conditions from MMC Section 8.144.070 had also been included in the draft resolution. He advised that the Planning Commission may include conditions of approval deemed necessary to ensure visual and land use compatibility with the surroundings. Approval of the use permit would result in allowing the use and not necessarily the design of the project. If the use permit was approved, the DRB may be asked to review the paint color for the antennas, the design of the equipment enclosure, and the feasibility of installing landscaping to help screen the fenced enclosure.

When asked, Mr. Chamberlain clarified that the homes in Rancho Laguna would not be affected due to the existing minor ridge. Homes in the valley were higher but no closer than Via Barcelona. The homes on the other side near Woodford Drive and the older existing neighborhoods were also sufficiently far enough away. He noted that a home on Buckingham Drive, the closest, was 1,200 feet away from the proposed facility.

Mr. Chamberlain commented that the Town had received an application for Rheem Valley Estates on the Whiterock property with the possibility that some of those homes could be closer than 1,000 feet but not closer than 300 feet to the proposed site.

Chair Obsitnik asked whether or not there were any material differences between the AT&T and Verizon applications, and if not, why the two applications were being considered separately.

Mr. Chamberlain acknowledged that both applications were similar, with both applicants working closely together. Verizon Wireless had filed first with the Town as a separate application. Verizon also had a 12-foot additional extension to the tower with the antennas on what was called the "top hat" on the tower and an emergency backup generator. In addition, the cabinets for Verizon would be 7 feet high inside the enclosure where AT&T's would be only 6 feet or less in height. He noted that the antennas were almost identical, although AT&T's antennas must be at least ten feet from the insulators supporting the wires which established their height on the tower.

Commissioner Whitley spoke to the Municipal Code, specifically Section 8.144.060, and the discussion of development restrictions in MOSO related to wireless telecommunication facilities. He clarified with staff that the tower on which the antennas would be placed was situated on a MOSO minor ridge and the elevation of the tower was 800 feet. He noted, however, that the Municipal Code indicated that no wireless communication facility with either a conditional or a temporary use permit shall be located on the crest of a minor ridge with an elevation of 800 feet or greater. As such, he suggested that the staff interpretation of the MMC had defined development under MOSO.

Mr. Chamberlain explained that the prohibition of building on the crest was because of MOSO and had been integrated into the wireless ordinance. The MOSO ordinance would not allow development on a 20 percent slope. In the guidelines, 20 percent meant an average slope of 20 percent within a cell, with the definition of a cell. It had not included modification of an existing structure, but building something new on a ridgeline. He added that co-location of wireless telecommunication facilities was also encouraged.

Commissioner Whitley commented that MOSO was strictly intended to protect ridgelines and viewsheds. In this case, the antennas would be visible from a scenic corridor and viewsheds in the Town. If the use permit was approved by the Planning Commission, he did not want to be in violation of one or more of the Town's ordinances. With respect to development in the guidelines, specifically related to Section II.A.6 of the development guidelines, he questioned the placement of any material such as a structure, or in this case a freestanding antenna.

Mr. Chamberlain pointed out that no grading would occur on the ridgeline. He clarified that the placement of material had been worked out in the grading ordinance, with fill as opposed to cutting.

Commissioner Whitley remained concerned with the interpretation of the MMC. He added that a silhouette of the antenna was not to be visible above the ridgeline.

Commissioner Whitley commented that the silhouette analysis prohibited the antennas above the minor ridges. If there were antennas above the minor ridges, it would be in violation of the MMC.

Mr. Chamberlain suggested that even if the silhouette was increased, the tower was so far away that a visual impact, per the visual simulations, would be minimal. He added that PG&E was adding the top hat portion of the structure and could do so without Town approval. PG&E could also add more wires to the top hat. He pointed out that the PG&E towers had been in place prior to the Town's incorporation. He also noted that if the antennas were not placed at that location there was a concern with respect to compliance under the FCC regulations.

Commissioner Whitley questioned the adequacy of the alternative location analysis. He referenced the information in the staff report related to the Ninth Circuit Court case with respect to approvals of wireless telecommunication antennas and understood that the Town had the burden to come up with alternative locations if the application was denied. In the case of the AT&T application, the alternative location analysis had shown only two cell sites in the Town which he questioned given that the location on the subject site could be in violation of the MMC. He asked whether or not the Town had conducted an alternative location analysis or had just accepted the carrier's analysis.

Mr. Chamberlain explained that most sites where there would be a signal were located on major ridgelines where such equipment could not be located given the restrictions on major ridgelines, or were within 300 feet of a residence. The subject site would provide coverage down into the Rheem Boulevard area. The other sites that had been considered and attempted unsuccessfully by other wireless location carriers were located within 300 feet of a residence.

Commissioner Whitley reiterated the intent of the alternative location analysis for both the Town and the applications. Verizon and AT&T would both have fenced enclosures with equipment, resulting in grading, pad and equipment placement. The equipment would be visible from the scenic corridor unless it was screened.

Mr. Chamberlain acknowledged that the fenced enclosure would be visible, although that visibility would be very small given the distance.

Commissioner Whitley noted that per the MMC, if the structure was visible from the scenic corridor or the skyline, vegetative screening was required unless there was a hill behind it. Based on the photomontage, there would be a skyline behind it. He asked whether or not landscaping across the road could be required.

Mr. Chamberlain explained that landscaping across the road could be required and would not be a problem since it involved the same property owner, and since in this case vegetation could not be planted right in front of the enclosure.

PUBLIC HEARING OPENED

Shannon McDougall, representing AT&T, agreed with the staff report and conditions of approval. As to the alternative location analysis, she explained that the first application from AT&T had proposed co-location on a new flagpole although their signal could only be 20 feet in height and would not reach anyone. Another co-location opportunity on an existing T-Mobile site had also been found to be unfeasible given the height restrictions and limited coverage. She clarified that the only way to reach coverage in peak and valley areas was to go higher. The closest antenna location for AT&T was off of Alta Mesa.

Chair Obsitnik expressed concern with the photo simulations since they were so far away from the site. He also expressed concern adding bulk to an existing tower.

Ms. McDougall explained that the proposal would add antennas to the existing tower but would not add anything to the tower itself. There would be three separate sectors and no more than three antennas would be visible at any one time. The antennas would be dispersed on the tower evenly. The AT&T equipment cabinet would also be separate from Verizon's. She clarified, when asked, that no new road would be added to the site. The construction of the facility would take four to six weeks, with said work to commence in the spring.

Given that the two applications for wireless telecommunication facilities were similar in nature for both AT&T and Verizon, the Planning Commission decided to hear the next public hearing item prior to taking action on either of the two items. The Chair clarified that each application was separate and distinct.

A. UP-02-09 - Verizon Wireless, Inc. / Charnel James for NSA Wireless, Inc. (Applicant), PG&E (Transmission Tower Owner), Rancho Laguna, LLC (Property Owner): A public hearing to consider a Conditional Use Permit for a new Verizon Wireless telecommunication facility consisting of nine 6-foot high panel antennas to be located on a 12-foot extension of the existing 105-foot high PG&E transmission tower located on the Rancho Laguna property adjacent to the EBMUD Fayhill Reservoir. The equipment associated with the antennas is to be located approximately 53 feet southwest of the PG&E tower legs and five feet south of the 4-foot high barbed wire fence enclosure around the Fayhill Reservoir. The equipment enclosure will be 35 feet wide and 17 feet deep with a 4-foot high retaining wall behind it and a 6-foot high chain link fence around it.

A 30 KVA generator for emergency power will be inside the enclosure, in addition to the cellular transmitter cabinets, battery cabinets and step-down transformer. The purpose of the new transmitter facility is to provide cellular phone service to Rheem Valley and the Campolindo High School areas. The property is zoned OSM-DT (Open Space - MOSO - Density Transfer). APN 256-040-024.

Senior Planner Chamberlain presented the staff report dated February 19, 2010 and reiterated that the application was similar to the AT&T application although the Verizon application involved nine 6-foot high panel antennas to be located on a 12-foot extension of the existing 105-foot high PG&E transmission tower located on the Rancho Laguna property adjacent to the EBMUD Fayhill Reservoir. The equipment associated with the antennas was to be located approximately 53 feet southwest of the PG&E tower legs and five feet south of the 4-foot high barbed wire fence enclosure around the Fayhill Reservoir. The equipment enclosure would be 35 feet wide and 17 feet deep with a 4-foot high retaining wall behind it and a 6-foot high chain link fence around it. A 30 KVA generator for emergency power would be inside the enclosure in addition to the cellular transmitter cabinets, battery cabinets and step-down transformer.

Mr. Chamberlain noted that both applications would bring the tower up through a trench all the way to Rheem Boulevard. He referenced the possibility that there were funds that could be available for repaving Rheem Boulevard and depending on the timing of that work could impact the trenching work.

Mr. Chamberlain explained that all of the issues relating to development on major ridgelines applied to the Verizon application the same as the AT&T application. In terms of alternative locations, Verizon had shown their other facilities, with a site at Saint Mary's College. The subject location would be a major filling in of an area where Verizon did not currently enjoy coverage.

When asked why the Verizon antennas could not be placed lower on the tower, Charnel James, NSA Wireless, Inc. explained that there were requirements for the placement of the antennas in terms of a required 10-foot separation. Placing the antennas lower would not meet their objectives. The antennas needed to be 65 feet off of the ground and they were at 100 feet. The antennas were as close to the PG&E lines as they could get, as were AT&T's antennas. She added that PG&E would be replacing an existing peak at the top of the tower with a top hat, although the top hat would be at the same height as the peak.

Ms. James also clarified the photo simulations that had been presented. She explained that Verizon would not be hanging its antennas in that the work would be done by PG&E which had strict requirements related to access to its towers. The nine antennas would be 6 feet in height within the framework of the top hat.

Ms. James suggested that no more than two of the antennas at a time would be visible unless someone was standing at the water tank.

When asked what measures would be taken to minimize the visual impacts of the antennas, Ms. James advised that the antennas consisted of a baked enamel material to match the existing tower and to minimize the distant lines, gaps, or spacing and would appear more like an extension of the tower. The baked enamel would not fade or change color in the future. The proposed 30 KVA generator would have a capacity of 132 gallons and use diesel fuel. The project would be exempt from the requirements of the California Environmental Quality Act (CEQA) based on the type of installation, although the generators would have to comply with all environmental requirements.

Ms. James referred to the propagation maps used by Verizon noting that the installation would cover much of their outdoor loss but not much of their indoor loss where three or four sites throughout the Town would be required. The installation would create a seam between the cities of Orinda, Lafayette and Moraga, primarily covering the Moraga area. She also clarified the differences between indoor and outdoor coverage and what limited the coverage. She reiterated that a number of alternatives had been considered.

Ms. James added that the Post Office site and a tree near the high school had been considered, although based on the data those two sites would only cover a small percentage to what the subject site would cover. The Rheem Theater site would not offer enough space for the equipment or the antennas. The 24-Hour Fitness site had also been considered but had been vetoed due to interference. A tall antenna tree near the high school would likely not have been supported by the Town. Efforts had also been made to locate on the Water Department building, although the space was found to be inadequate for the placement of the antennas. The PG&E tower site had ultimately been selected and AT&T had already commenced with its application which was the reason that Verizon had to place its antennas higher.

When asked, Ms. James affirmed that Verizon had worked with AT&T and the Town to achieve a design that would impose the least impact to the Town.

Charles Simkins, 16 Via Barcelona, Moraga, commented that the PG&E towers were visible from his property although the impacts would not be that great. He commented on the loss of cellular signal in the area. He suggested that the PG&E tower was an ideal location for the co-location of the antennas. He also suggested there would be few visual impacts since the tower was so far away. He was unaware of any opposition to the applications.

PUBLIC HEARING CLOSED

Chair Obsitnik opened the discussion of the Verizon Wireless application at this time.

When asked about the alternative location analysis, Mr. Chamberlain reiterated that the property was the best location for the co-location of the antennas, as previously discussed. He added that the Wireless Telecommunication Ordinance encouraged co-location of antennas. Other sites would likely have more impacts. The antennas could be placed on a different tower than the subject tower, although that could result in more visual impacts.

Mr. Chamberlain suggested that story poles could be installed when the project was considered by the DRB to better visualize where the equipment would be placed. He reiterated that an HDP would be required for any alteration of more than 20 percent slope. Minor landscaping improvements and the like would not require an HDP although the retaining wall may require an HDP.

Commissioner Levenfeld was comfortable with the applications and supported the Conditional Use Permit for both applications, as proposed.

Commissioner Whitley remained concerned with the language in the ordinance regarding structures on crest lines of minor ridges and the silhouettes of the antennas visible above the ridge as viewed above the ridge. He stated that the silhouette of the antennas would be visible above the ridge for both applications. An antenna could not be located on the crest of a minor ridge, and therefore not on a tower. He agreed with the staff's determination of development within MOSO. As to the AT&T application, he recognized that a structure was not being constructed. In his opinion, the Verizon application involved an extension on the tower, which was building a structure and placing the antennas on that was building a structure. It was his opinion that the placement of the antennas on a minor ridgeline in MOSO above 800 feet was in opposition to the MOSO voter initiative.

Commissioner Whitley referenced the provision in the MMC where the project must comply with the development standards unless the applicant had shown and the Planning Commission had determined that there were no other optimal locations for the carrier to provide adequate coverage. He suggested there was sufficient showing that there were no other optimal locations for the carrier to provide adequate coverage. While weak as to the alternatives, he suggested that both AT&T and Verizon and staff had made significant showing as to their analyses on alternative locations. As a result, the Town should accept that there were no other optimal locations, or the Town should show that there were other optimal locations, and staff had already testified there were not.

Commissioner Whitley commented that in his opinion, the findings in the resolutions could not be made to support the applications, suggesting that the resolutions should be changed to reflect that the applications could potentially be in violation of the MMC and that specific findings must be made that there was no other optimal location.

Mr. Chamberlain advised that he could add an additional WHEREAS clause in the resolutions reflecting that there was no other optimal location.

Commissioner Whitley referenced Section 8.144.060 of the MMC and reiterated that antennas could not be located on the ridgeline and the silhouette could not be viewed from a lower elevation generally visible to the public. In his opinion, both applications failed in terms of views from a public place. The AT&T application did not involve the top hat but the Verizon application in his opinion involved the development of a structure.

Commissioner Richards pointed out that the PG&E tower had been erected long before MOSO. He recognized the need to protect the open space in MOSO. In his opinion, the alteration to the existing structure would be minimal in that the tower was at a distance. In his opinion, the antennas would not scar the hillside and would offer additional cellular coverage to Moraga residents.

Commissioner Socolich commented that with no reasonable alternatives, he was satisfied with the application.

Commissioner Driver was ready to move forward with an important public utility. He recognized that there was no another contender for the site identified by staff. If the Planning Commission were to deny the application, he suggested that the Town could end up with a problem with aesthetic impacts. He was comfortable with the location, and in his opinion the visibility of the antenna was subjective. He did not believe that the antennas would change the view from a public place. He was ready to move forward.

Commissioner Wykle suggested that while the silhouette of the antennas may be visible to the public, the benefits offered would outweigh that concern.

Speaking to the resolutions for both AT&T and Verizon Wireless, Commissioner Socolich requested that the first sentence of Condition 2, be revised to read:

> *Within thirty (30) days after completion of the new installation, and every five years thereafter, Verizon Wireless shall conduct tests to verify compliance with FCC radio frequency emission standards and provide such test results to the Moraga Planning Department.*

Commissioner Whitley clarified that the finish of the antenna to match the tower would be addressed by Condition 4c.

The applicants for both AT&T and Verizon clarified that a chain link fence had been proposed, although wood slats could be used.

Commissioner Whitley wanted to make sure that the fence would blend in with the hillside.

The Commission recommended the following additional modification to Condition 4b for both resolutions:

> *Plans for the equipment and for fencing of the enclosure, including the color of the fencing and equipment to blend with the natural color of the dried grass as it appears for the majority of the year.*

On motion by Commissioner Socolich, seconded by Commissioner Levenfeld to adopt Resolution next in number to approve **UP-02-09** for **Verizon Wireless, Inc.** at the PG&E transmission tower on the Rancho Laguna LLC property, subject to the findings and conditions as shown and as amended, as follows:

- To modify the first sentence of Condition 2, to read:

Within thirty (30) days after completion of the new installation, and every five years thereafter, Verizon Wireless shall conduct tests to verify compliance with FCC radio frequency emission standards and provide such test results to the Moraga Planning Department.

- To modify Condition 4b to read:

Plans for the equipment and for fencing of the enclosure, including the color of the fencing and equipment to blend with the natural color of the dried grass as it appears for the majority of the year.

The motion carried by the following vote:

Ayes:	Commissioners Driver, Levenfeld, Richards, Socolich, Wykle, Obsitnik
Noes:	Commissioner Whitley
Abstain:	None
Absent:	None

Mr. Chamberlain advised that there was a ten day right of appeal for anyone wishing to appeal the decision of the Planning Commission to the Town Council by submitting a statement and through the payment of an appeal fee, through the Planning Department.

On motion by Commissioner Driver, seconded by Commissioner Socolich to adopt Resolution next in number to approve **UP-07-09** for **AT&T Wireless Transmitter Facility** at the PG&E transmission tower on the Rancho Laguna LLC property, subject to the findings and conditions as shown and as amended, as follows:

- To modify the first sentence of Condition 2, to read:

Within thirty (30) days after completion of the new installation, and every five years thereafter, Verizon Wireless shall conduct tests to verify compliance with FCC radio frequency emission standards and provide such test results to the Moraga Planning Department.

- To modify Condition 4b to read:

Plans for the equipment and for fencing of the enclosure, including the color of the fencing and equipment to blend with the natural color of the dried grass as it appears for the majority of the year.

The motion carried by the following vote:

Ayes:	Commissioners Driver, Levenfeld, Richards, Socolich, Wykle, Obsitnik
Noes:	Commissioner Whitley
Abstain:	None
Absent:	None

Mr. Chamberlain advised that there was a ten day right of appeal for anyone wishing to appeal the decision of the Planning Commission to the Town Council by submitting a statement and through the payment of an appeal fee, through the Planning Department.

VII. PUBLIC MEETING

A. None

VIII. ROUTINE & OTHER MATTERS

A. None

IX. COMMUNICATIONS

A. None

X. REPORTS

A. Planning Commission

Commissioner Socolich reported that he had been the Commission liaison at the last meeting of the Design Review Board at which time the installation of a vapor recovery system at the gas station at Saint Mary's and Moraga Roads had been approved, as had the conversion of a home at the corner of Woodford and Moraga Road to a senior board and care facility to house up to six persons. The DRB also approved a covered carport for the same application.

Mr. Chamberlain presented the history of the application and clarified that the DRB had only approved the carport, not the use, which was regulated by the State and the County Health Department.

B. Staff

1. Update on Town Council actions and future agenda items.

Mr. Chamberlain reported that the Town Council had not yet completed the appeal of the Rancho Laguna development which would be agendized for Town Council consideration in April. He also reported that the Planning Commission meeting of April 5 would include an application for another wireless telecommunication facility located on Alta Mesa for Clear Wire Communications. He updated the Commission on the situation with respect to the Jack in the Box restaurant which had experienced significant drainage problems and which was being remodeled.

XII. ADJOURNMENT

On motion by Commissioner Whitley, seconded by Commissioner Levenfeld to adjourn the Planning Commission meeting at approximately 9:45 P.M. to a regular meeting of the Planning Commission on Monday, March 15, 2010 at 7:30 P.M. at the Moraga Library Meeting Room, 1500 Saint Mary's Road, Moraga, California.

A Certified Correct Minutes Copy

Secretary of the Planning Commission