TOWN OF MORAGA
PLANNING COMMISSION MEETING

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

April 18, 2016

7:00 P.M.

MINUTES

1. CALL TO ORDER

Chairperson Marnane called the Regular Meeting of the Planning Commission to order at 7:00 P.M.

A. ROLL CALL

Present: Commissioners D'Arcy, Korpus, Kovac, Mallela*, Woehleke, Chairperson Marnane
*Commissioner Mallela arrived after Roll Call

Absent: Commissioner Kuckuk

Staff: Ellen Clark, Planning Director
Brian Horn, Associate Planner

B. Conflict of Interest

There was no reported conflict of interest.

C. Contact with Applicant(s)

There was no reported contact with applicants.

2. PUBLIC COMMENTS

There were no public comments.

3. ADOPTION OF CONSENT AGENDA

A. February 16, 2016 Minutes
B. January 25, 2016 Special Joint Meeting Minutes

On motion by Commissioner D'Arcy, seconded by Commissioner Woehleke to approve the February 16, 2016 Minutes, as submitted. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Korpus, Kovac, Woehleke, Marnane
Noes:	None
Abstain:	Commissioner Mallela
Absent:	Commissioner Kuckuk

On motion by Commissioner Woehleke, seconded by Commissioner D'Arcy to approve the January 25, 2016 Special Joint Meeting Minutes, as submitted. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Korpus, Kovac, Woehleke, Marnane
Noes:	None
Abstain:	Commissioner Mallela
Absent:	Commissioner Kuckuk

4. ADOPTION OF MEETING AGENDA

On motion by Commissioner Woehleke, seconded by Commissioner Korpus to adopt the Meeting Agenda, as shown. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Korpus, Kovac, Mallela, Woehleke, Marnane
Noes:	None
Abstain:	None
Absent:	Commissioner Kuckuk

Given that the applicant was not yet present for Agenda Item 5A, the Planning Commission moved forward with Agenda Item 6 at this time.

6. ROUTINE AND OTHER MATTERS

A. Consider Appointment of One Planning Commission Representative to the Hillsides and Ridgelines Steering Committee

Chairperson Marnane reported that the Planning Commission had previously discussed the recommended appointment when Commissioners Kuckuk and Woehleke had expressed an interest in serving on the Hillsides and Ridgelines Steering Committee. The Town Council had recently directed that one current Planning Commission representative be appointed to the Committee. Since Commissioner Kuckuk was currently unable to serve in that capacity due to an injury, he asked whether Commissioner Woehleke wanted to be appointed to the Committee.

Commissioner Woehleke expressed his continued interest in the appointment.

On motion by Commissioner D'Arcy, seconded by Commissioner Korpus to appoint Commissioner Woehleke as the Planning Commission Representative to the Hillsides and Ridgelines Steering Committee. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Korpus, Kovac, Mallela, Woehleke, Marnane
Noes:	None
Abstain:	None
Absent:	Commissioner Kuckuk

B. Consider Nomination and Selection of Planning Commission Chair and Vice-Chair

Chair

Chairperson Marnane nominated Steve Woehleke to serve as Chair of the Planning Commission. Commissioner D'Arcy second the nomination. There were no other nominations. The nominations were closed. ***Steve Woehleke*** was unanimously selected to serve as Chair of the Planning Commission.

Vice-Chair

Commissioner Woehleke nominated Tom Marnane to serve as Vice-Chair of the Planning Commission. Commissioner Kovac seconded the nomination. There were no other nominations. The nominations were closed. ***Tom Marnane*** was unanimously selected to serve as Vice-Chair of the Planning Commission.

The Planning Commission returned to Agenda Item 5A at this time.

Former Chairperson Marnane continued to serve as Chair for the remainder of the meeting.

5. PUBLIC HEARING

A. 1199 Alta Mesa Drive, T-Mobile

Applicant: Ginbar Ketema, Crown Castle, 10 Rollins Road, Suite 202, Millbrae, CA 94032

Conduct a Public Hearing and Consideration of PC Resolution __-2016 for Renewal of a Conditional Use Permit (CUP 09-15) for an Existing Wireless Communications Facility at 1199 Alta Mesa Drive. APN 258-160-062

Associate Planner Brian Horn presented the staff report dated April 18, 2016, and advised that the T-Mobile wireless communication facility was consistent with the provisions of the Wireless Communications Ordinance, the Zoning Ordinance, and the General Plan, with the criteria for renewal of the Use Permit as established in Use Permit 03-99. He recommended that the Planning Commission adopt a resolution to approve Use Permit 09-15, subject to the Conditions of Approval as contained in Attachment A to the staff report.

Commissioner Woehleke confirmed with Mr. Horn the application was a renewal of an existing wireless communications facility and the only change was the replacement of the wood fencing material to a non-flammable material. The applicant had no plans to change any equipment or anything else at this time, nor were there any plans to increase power.

Planning Director Ellen Clark clarified that the application had expired and while the Town could have taken action to revoke the permit at any time once the permit time had expired, in this case the Town had taken no such action.

Commissioner Korpus clarified with staff the recommendation for the fencing to consist of a standard gray coated chain link fence material. She also clarified with staff the reason behind the 10-year renewal as opposed to a five-year renewal.

Commissioner Korpus referenced Senate Bill (SB) 1627 and Government Code Section 65964-b, which prevented the Town from unreasonably limiting a permit duration to less

than 10 years. She questioned how that provision would apply to the extension of a permit given that the subject permit had been in existence for 15 years and the Town had already allowed the permit to continue beyond the minimum 10-year requirement of the Government Code. Under the Moraga Municipal Code (MMC), she understood that only a 5-year extension could be permitted.

Ms. Clark acknowledged that staff had not reviewed that component of Government Code regulations, although she suggested the Town would be in compliance with State law if it allowed a 10-year extension.

Mr. Horn commented that the Town had approved another provider (Sprint) for a 5-year period. In that case, Sprint had returned to request an extension under the State provisions and the Planning Commission at that time had ultimately extended that particular permit. He recalled that extension had been for a 10-year period.

Commissioner Korpus read into the record Government Code Section 65964-b and stated that since the permit had already exceeded the 10-year duration, the Town could be going beyond the authority provided by the Municipal Code by granting a 10-year versus a 5-year extension.

Chairperson Marnane understood that based on his reading of the Government Code, anything less than 10 years would be in violation of the State's guidance, although the MMC identified a 5-year extension. He understood the State regulations superseded the local jurisdiction and he asked staff to opine how that issue could be resolved.

Ms. Clark recognized a lack of clarity between local and State regulations. In this case, the risk was the potential for an appeal if the Town did something inconsistent with State law. She suggested one way to address the issue would be to issue two retroactive 5-year extensions of the permit, which together would amount to a 10-year extension, to be effective on the date the permit would have expired in 2010, allowing the applicant another five years to come back. The language in the resolution would have to be modified to address a retroactive extension.

Commissioner Kovac clarified with staff the physical barrier of "the fence" and its function as it related to radio frequency (RF) emissions, but which did not limit RF emissions. He expressed concern with the lack of enforcement, and while a 10-year extension made sense, he found that the applicant had not shown the subject location was the only suitable location for a wireless communications facility. He cited the existing communications facilities near Rancho Laguna and the area of Mulholland Ridge, and questioned why those sites had not been considered by T-Mobile. He also asked staff to clarify why the application did not constitute "new development."

Ms. Clark clarified that the application was for the renewal/extension of an existing Conditional Use Permit. The action to be taken by the Planning Commission would allow the existing facilities which had been legally installed and found to be consistent with the laws at the time. The facilities already existed and there would be no "new construction" activities that would meet the definition of "new development."

Commissioner Kovac disagreed the project did not meet the definition of "new development" given the fence that had been proposed. He again questioned whether the location was the best location for a wireless communication facility.

Commissioner Woehleke provided his knowledge of the background of the application when the original antenna towers had been installed on Alta Mesa, and at which time he had been a member of the Design Review Board (DRB). He detailed the ultimate antenna design, commented on the fact there had been locations in Moraga which had not enjoyed cell phone coverage for years, and referenced the Town Council direction that all antenna towers should be co-located where possible rather than spread throughout the Town. He would have a hard time trying to find a reason to justify the relocation of the existing facility.

Commissioner Korpus understood the issue had been addressed repeatedly by the Planning Commission which had decided on multiple occasions the best location for the wireless communication facility. She too understood the local ordinance required co-location to the extent feasible if it reduced visual impacts on the hillsides. Given the existing location, in her opinion it would impact the hills the least to leave it where it was located.

Chairperson Marnane emphasized that the Planning Commission had exhaustively covered the location issue in the past.

Commissioner Kovac also questioned the adequacy of the width of the access road to accommodate the Moraga-Orinda Fire District (MOFD). He asked whether the MOFD had provided any comment on the application.

Mr. Horn explained that the previous Use Permit had shown that the MOFD had stipulated a width of 12.5 feet for the access road. He affirmed the MOFD had reviewed the plans and had provided comments only on the proposed redwood fence.

Commissioner Kovac pointed out the access road was only 10 feet in width. He suggested that may be an oversight that should be addressed with the MOFD given concerns with the potential for fire hazards and impacts to the nearby neighborhood. He also referenced Section 503.2.5 of the MOFD code which required dead-end roads to have a turnaround for vehicles. Based on an aerial photograph he had seen of the site, it did not appear that a turnaround for the MOFD had been provided on the property.

Mr. Horn was uncertain where the access road traveled in this case other than up the hill, and whether the road was a dead end.

Ms. Clark explained that the Town relied on the MOFD to review the plans based on MOFD code requirements. The MOFD had not provided comments that any additional access would be required.

Commissioner Kovac suggested it was the responsibility of the Town to tell the MOFD that the road width was not as wide as required, and that the access road may not have provided a required turnaround. He asked that the MOFD sign off on the plans.

Commissioner Kovac also commented that the staff report had identified the slope as variable, although Section 503.2.7 of the MOFD code required a grooved concrete access with slopes of 16 to 20 percent. The road in this case was a dirt road. He understood that anything over 20 percent would be prohibited absent written authorization by the MOFD. He recommended that the application be postponed until such time as the concerns he had identified had been addressed with the MOFD to avoid placing the Town at risk.

Ms. Clark commented that while those questions could be asked of the MOFD, she understood there were different characterizations of fire roads, and fire access and roads with limited access did not necessarily require to be paved.

Commissioner D'Arcy asked why RF Reports were not being provided on a yearly basis in compliance with the requirements of the Federal Communications Commission (FCC). She suggested that T-Mobile should conduct annual testing and share that information with the Town, as should the other carriers on the site if the extension was granted. She also requested clarification as to whether an on-site inspection or computer modeling had been conducted as part of the SiteSafe Report contained in Attachment D. She asked the applicant to clarify that issue.

Speaking to the issue of annual compliance, Commissioner Korpus agreed that should be strongly enforced. As part of that requirement, she wanted to see an additional requirement that the applicant provide in its annual report evidence the signage and barrier requirements were being met including photographic proof, particularly since other wireless communication facilities in the area had experienced issues with respect to signage and barriers.

Commissioner Mallela understood the application was consistent with the landscaping requirements but asked staff to clarify those requirements.

Mr. Horn explained that the applicant had established landscaping in compliance with the previous Use Permit, and would be required to maintain the existing landscaping as part of the conditions of Conditional Use Permit 03-99.

Commissioner Kovac questioned a statement on Page 13 of the staff report that the towers had been shielded by native vegetation. Based on his review, the towers had not been shielded, and the use of oleander plant material was not native vegetation. He asked that the initial landscape screening requirements be enforced by the Town.

Mr. Horn explained that the T-Mobile site was just an enclosure which had been screened from views off-site. He acknowledged the other antenna towers on the hillside were visible and that the vegetation helped to break the views. T-Mobile did not have any antenna towers on the hillside. It was recommended that the enclosure be enclosed with chain link fencing given that it would not be visible off-site.

Commissioner Kovac suggested the required screening had not been met, nor was the vegetation.

Ms. Clark was uncertain the screening was intended to entirely screen the antenna towers which were at a height that would require tall trees to be planted and which may themselves appear inherently unnatural given the grassy hillside. The intent was to screen the enclosure from view.

Commissioner Kovac pointed out that no vegetation screened the equipment on the right hand side of the site, and while that was not T-Mobile, the landscape screening requirement should be followed and met.

PUBLIC HEARING OPENED

Ginbar Ketema, Crown Castle, 10 Rollins Road, Suite 202, Millbrae, explained that Crown Castle was the property owner of the tower and T-Mobile the operator. She clarified in response to Commissioner D'Arcy that the SiteSafe inspection report, as reflected in Attachment D, had been conducted through computer modeling.

Commissioner Kovac questioned why the fence would be at a height of 9 feet when the MMC only permitted fences at a maximum of 6-feet in height, to which Mr. Horn stated the fence was intended to replace an existing redwood fence of similar height.

Commissioner Woehleke understood that a 9-foot fence had been proposed given the commercial site as opposed to a standard maximum 6-foot high fence that would be allowed in a residential area.

Ms. Ketema cited Sheet A-4 of the plans that had been provided and explained that a 9-foot high fence had been designed to screen the existing cabinet and that the fence height had been brought up to the height of the cabinet. As to the landscape screening, she understood when the site had initially been approved the landscaping had not been meant to screen the entire facility. Depending on the type of landscaping the Town desired, T-Mobile would have to ensure it would not affect the antenna towers' line of sight. In terms of how high the landscaping could be without interfering with the antenna towers, she estimated the landscaping could be as high as 13 feet.

Ms. Ketema also clarified Attachment D, Site Compliance Report, and the reference to *PL328 Moraga*, which identified the site number and how the site had been referenced in the Report. She was uncertain why the Report had shown numbers for two antenna towers and three faces for the antenna towers when T-Mobile only had two antenna towers at the site. She would have to contact the engineers who had prepared the Report to clarify that information.

Commissioner Woehleke again spoke to his knowledge of the history of the application, clarified they were speaking of two antenna towers, noted that one of the towers had two antenna towers on it and given the topography they would need three antennas; one facing down covering Sanders Ranch and old Moraga, one opposite towards Rheem Boulevard, and the other pointing towards Moraga Country Club and opposite that there would be coverage up the ridge, which was the reason the applicant had originally desired 75-foot high antenna towers to provide broad coverage through panel antennas.

Commissioner D'Arcy pointed out that Sheet A-4 had shown one tower with one antenna, and one tower with two antennas.

Ms. Clark acknowledged that the description in the staff report had not been clear. The application had involved two towers described as antennas, but which actually housed three antennas, which Ms. Ketema affirmed was accurate.

Commissioner Kovac questioned the adequacy and accuracy of the report contained in Attachment D, the lack of data, and the lack of required annual reporting, with a request for cumulative RF data to be provided by the applicant.

Ms. Ketema did not respond to Commissioner Kovac's concerns but clarified the description of the facility as: *two 16-foot, 4-inch tall antenna structures or towers containing a total of three antennas,* and noted that the antennas did not extend above the 16-foot, 4-inch height.

PUBLIC HEARING CLOSED

Commissioner D'Arcy expressed concern with the Report contained in Attachment D, prepared by SiteSafe RF Compliance Experts, expressed concern with the measurements that had been taken, and described the report as difficult to read. She was uncertain what the measurements had been based on. She liked the fact the facility was not "new development" and had been co-located with other carriers, and she found that the site did not affect the hillsides and ridgelines given its existence since 1992. She sought assurance that the facility was compliant with FCC regulations regarding RF emissions and testing, which she wanted to impose as a condition of approval.

Chairperson Marnane suggested that the application could be approved with the 10-year extension of the permit, contingent upon T-Mobile demonstrating that on-site measurements had been based on actual measurements, and that T-Mobile complied with the safety issues involved.

Commissioner Mallela understood the discussions related to an existing facility which had been in place for a significant period of time, with review and thoughtful consideration for its location. He too questioned how the Report in Attachment D could be interpreted and supported an approval contingent upon the submittal of actual measurements to ensure compliance with FCC regulations.

Commissioner Kovac pointed out the staff report had identified the T-Mobile application as having two antennas, which was the reason he had requested clarification. He agreed that real data was needed to make a decision. He supported an additional condition that the MOFD sign-off on the width of the access road, turnaround, and slope requirements. He noted that people had become reliant on technology and he would like to see it used wisely and safely. He supported the 10-year extension from the expiration date of the current permit based on the additional recommended conditions.

Commissioner Korpus supported the application generally but would like to see conditions imposed with any approval to be structured as two five-year renewals; one being retroactive, which was reasonable pursuant to the Government Code and which allowed a

five-year extension into March 2020 to meet the requirements of the MMC. If the decision was challenged, it could be considered for an extension at that time absent setting a precedent not meeting the State or MMC requirements.
In terms of the issues raised, Commissioner Korpus agreed with the approval being contingent upon approval of actual FCC compliance evidence and data. She was also convinced that if approval was provided, additional feedback should be provided from the MOFD, which might have overlooked the potential safety concerns.

Commissioner Korpus also asked that an additional condition be imposed that the annual reports on FCC compliance not only include the annual reports of FCC compliance based on the subject application's approval, but based on actual, not computer modeling data, and the appropriate barriers and appropriate signage be confirmed every year with photographs. In addition, if there was a discrepancy between the description in the application and what was actually on-site, the description should be corrected to ensure accurate information on file. She recommended the following revisions to Attachment A of the resolution:

- Replace the sixth WHEREAS clause as shown on Page 1 of the resolution to read:

  ***WHEREAS**, Use Permit 03-99 was granted for an initial period of five years with an expiration date of March 22, 2005, but the Town of Moraga allowed such use to continue thereafter without interruption in compliance with SB 1627 (Government Code Section 65964-b) which provides that absent public safety concerns or substantial land use reasons; 1) local jurisdictions' cannot reasonably limit the duration of a wireless permit; and 2) anything less than a period of 10 years for such permit is deemed unreasonable;*

- And replace the resolution statement as shown on Page 2, to read:

  ***NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the Town of Moraga hereby approves: 1) the retroactive five-year extension of Conditional Use Permit 03-99 in compliance with SB 1627 effective from March 22, 2010 through March 22, 2015; and 2) a current five-year extension effective from March 22, 2015 to March 22, 2020 of Conditional Use Permit 03-99 to allow for the continued operation of a wireless facility consisting of two 16 foot 4 inch tall panel antennas, four tower mounted amplifiers, GPS antenna, T-Mobile 6102 BTS cabinet, T-Mobile Ericsson BTS cabinet, Ciena and UAM unit, telco box, and an electric meter and subpanel based on the findings listed below and subject to the conditions listed herein:*

Commissioner Woehleke recognized the facility had been in operation for some time without impacts, although he acknowledged the concerns expressed. As a result of those concerns he leaned towards a recommendation to continue the item. Due to the issues with the application description, he asked the Town Attorney to opine and provide clarification to ensure that future amendments were not required.

In response to the MOFD concerns, Commissioner Woehleke was familiar with the site and acknowledged there was no turnaround, although he was confident there was enough

room for MOFD vehicles to turn around. He agreed that issue should be clarified by the MOFD. As to the concerns with RF emissions and RF frequency, and the request for annual reporting, the assurance the measurements met the levels as modeled, and that they be more than a simulation since it had not been done for years, he agreed there was value to imposing that requirement. He recognized that even if the item was continued, service to T-Mobile's customers would continue and would not be interrupted.

Commissioner Woehleke suggested the concerns with barriers and signage was more of an issue with the other operators who were non-compliant, and suggested that was more of a message to staff that the condition should be enforced. In terms of the vegetation and screening, he recalled the trees to be planted would be similar type trees to the area, an issue beyond the application. He agreed it was a valid concern whether the vegetation should or should not be native species. He could not recall that the facility was to be completely screened from view given the need to ensure a line of sight. Due to the number of proposed conditions and concerns, he supported a continuance.

Ms. Clark suggested in this case it might be prudent to continue the application to allow the applicant to provide the information requested. She agreed it would also be wise to check compliance with State law prior to inserting that clause into the resolution.

On motion by Commissioner Woehleke, seconded by Commissioner Kovac to continue CUP 09-15 for T-Mobile at 1199 Alta Mesa Drive, to a date uncertain. The motion carried by the following vote:

Ayes:	Commissioners D'Arcy, Korpus, Kovac, Mallela, Woehleke, Marnane
Noes:	None
Abstain:	None
Absent:	Commissioner Kuckuk

After the vote was taken, Mr. Horn and Ms. Clark advised of the direction to the applicant to provide an RF field survey, MOFD comments, accurate description of towers and antennas, and clarify provisions regarding the terms of the extension, and the landscaping, as discussed.

7. REPORTS

A. Planning Commission

Commissioner Woehleke reported that he had attended the last two DRB meetings as the Planning Commission Liaison when the DRB had approved a design for an exterior kitchen, welcomed three new DRB members, selected a new Chair and Vice-Chair, and appointed a representative to the Arts in Public Spaces Subcommittee. He took this opportunity to thank Chairperson Marnane for his leadership over the past year.

Commissioner Kovac reported that he had attended a Caltrans one-day seminar "Draft Strategic Highway Safety Plan," with a discussion on bicycle and pedestrian safety; and met with representatives from the Metropolitan Transportation Commission (MTC) and the Contra Costa Transportation Agency (CCTA) to ask questions about the MCSP.

B. Staff

Ms. Clark reported that Planning Department administrative staff had prepared a new roster of Planning Commission assignments to the monthly Liaison Meeting with Commissioners encouraged to contact staff in the event a Commissioner was unable to attend a meeting. She updated the Planning Commission on the April 13 Town Council meeting when the Town Council had been provided the results of the Town-wide community survey for the Livable Moraga Road Project – Segment 3 (Donald Drive to Corliss Drive). By a vote of 3-2, the Town Council had supported Option 1 as opposed to Option 3, as the majority of the respondents had supported. The entire Livable Moraga Road Project would come back to the Town Council in a month for further discussion. At its April 27 meeting, the Town Council would consider a list of improvements as part of recommendations from the Citizens Advisory Committee (CAC) for the Pedestrian Bicycle Master Plan; and the Hacienda Conceptual Plan. At its next meeting, the Planning Commission would hold a study session/workshop for a new Chase Bank to be located at the corner of Moraga Way and School Street on vacant property; and an appeal for the remodel of a residential home located at 287 Rheem Boulevard.

Ms. Clark welcomed Commissioner Korpus to the Planning Commission. She added with respect to the April 27 Town Council meeting, that the Town Council would also be considering the recommendations for the repair of the sinkhole at Rheem Boulevard; and a possible waiver to the Town's signage regulations to assist business owners in the area of the sinkhole.

8. ADJOURNMENT

On motion by Commissioner Woehleke, seconded by Commissioner Mallela and carried unanimously to adjourn the Planning Commission meeting at approximately 8:35 P.M.

A Certified Correct Minutes Copy

Secretary of the Planning Commission