

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Appeal Filed: 10/7/2010
49th Day: Waived
Staff: A.T.
Staff Report: 12/2/2010
Hearing Date: 12/15/2010



Item W11a

STAFF REPORT: APPEAL **SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-STB-10-094

APPLICANT: NextG Networks of California, Inc.

APPELLANT: Joanne Shefflin

PROJECT LOCATION: Public right-of-way of San Leandro Lane near its intersection with Tiburon Bay Lane (adjacent to APN 007-300-006), Montecito, Santa Barbara County

PROJECT DESCRIPTION: Construction of an unmanned telecommunications facility, including one 26-inch whip omni antenna mounted at a height of 32'1" on a bracket connected to an existing 70'9" metal pole in the public right of way, a 3'x5'x3' underground vault, two 2'x4'x3' underground air vents on either side of the vault, minor vegetation removal, and installation of a gravel footbase around the vault, with a total footprint of 4'x14' area in the utility easement right-of-way.

SUBSTANTIVE FILE DOCUMENTS: Staff Report for County of Santa Barbara, Montecito Planning Commission, Malibu Coastal Development Permit No. 09CDH-00000-00030, dated February 5, 2010; Coastal Development Permit No. 09-CDH-00000-00030, approved by the County Board of Supervisors on September 21, 2010; County of Santa Barbara Board of Supervisors, Minute Order, dated September 21, 2010.

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that **no substantial issue exists** with respect to the appellant's assertion that the project is not consistent with the policies of the County of Santa Barbara's certified Local Coastal Plan (LCP) regarding: (1) visual resources and telecommunications facilities standards, and (2) noticing requirements. The appellant also raised concerns with Santa Barbara County's determination that the subject telecommunication facility is exempt from California Environmental Quality Act (CEQA).

The proposed project is for construction of an unmanned wireless telecommunications facility that would include one 26-inch omni whip antenna mounted on a bracket connected to an existing utility pole in the public right-of-way of an existing road, and installation of an underground utility vault and vents within the right-of-way. The small antenna and the top of the undergrounded utility vault will be painted with non-reflective paints to blend in with the surrounding environment and vegetation will be planted around the underground vault. The site is in a residentially zoned area of Montecito and the approved project will not result in the removal of any native vegetation or native trees. The proposed project will comply with the LCP policies related to visual resources and telecommunication facility requirements that all equipment be undergrounded. Thus, the proposed design will reduce the visibility of the facility by the public. Additionally, there is no evidence to indicate that noticing of the project was inadequate under the certified LCP policies.

In addition, the appellant asserts that the project approval does not comply with CEQA. The grounds for appeal of a local government approval of development is limited to whether the development does not conform to the standards of the certified Local Coastal Program or the public access policies of the Coastal Act. Thus, the allegation that the approval of the project is not in compliance with CEQA requirements is not a valid grounds for appeal of a coastal permit. Further, staff notes that the project is categorically exempt from CEQA requirements, as determined by the Public Utilities Commission in this case.

As described in detail in the findings, the County's record adequately supports its position that the proposed project is consistent with all applicable LCP policies. Further, the proposed development is relatively minor in scope, does not have a significant adverse effect on significant coastal resources, has little precedential value, and does not raise issues of regional or statewide significance. Therefore, staff recommends that the Commission find that the appeal does not raise a substantial issue as to the County's application of the cited policies of the LCP. The motion and resolution for no substantial issue begin on **Page 4**.

I. APPEAL JURISDICTION

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permit applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603[a]). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]). Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5]).

In this case, the project site is located in the public right-of-way on San Leandro Lane in the Montecito Area, Santa Barbara County. (Exhibit 1). The County's approval is appealable because the site is located within 100 feet of San Ysidro Creek. Additionally, the County's approval of the local Coastal Development Permit (CDP) is also appealable to the Coastal Commission because the proposed development of an unmanned wireless telecommunications facility is not a principally permitted use within the zoning district, 2-E-1 (Single Family Residential, minimum lot size 2 acres (gross)).

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code. (Coastal Act Section 30603[b][1])

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the Commissioners present is required to determine that the Commission will not hear an appeal. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue does exist, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the entire proposed development is in conformity with the certified Local Coastal Program. Thus, the Commission's

review at the de novo hearing is *not* limited to the appealable development as defined in the first paragraph of this Section I. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On September 21, 2010, the County of Santa Barbara Board of Supervisors approved Coastal Development Permit Case No. 09-CDH-00000-030. The Notice of Final Action for the project was received by Commission staff on October 4, 2010. Notice was provided of the ten working day appeal period, which began on October 5, 2010.

The subject appeal was filed during the appeal period, on October 7, 2010. Commission staff notified the County, the applicant, and all interested parties that were listed on the appeal and requested that the County provide its administrative record for the permit. The administrative record was received on November 1, 2010.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-STB-10-094 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds **No Substantial Issue**, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No.. A-4-STB-10-094 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The County of Santa Barbara Board of Supervisors approved Coastal Development Permit 09-CDH-00000-030 for the construction of an unmanned telecommunications facility, including one 26-inch whip omni antenna mounted at a height of 32'1" on a bracket connected to an existing 70'9" metal pole in the public right of way, a 3'x5'x3' underground vault, two 2'x4'x3' underground air vents on either side of the vault, minor vegetation removal, and installation of a gravel footbase around the vault, with a total footprint of 4'x14' area. The small antenna and the top of the undergrounded utility vault will be painted with non-reflective paints to blend in with the surrounding environment and vegetation will be planted around the underground vault. (Exhibit 2)

The project site is within the public right-of-way along San Leandro Lane near its intersection with Tiburon Bay Lane in Montecito, Santa Barbara County. The site is in a semi-rural residentially zoned area of Montecito, zoned, 2-E-1, Single Family Residential, minimum lot size 2 acres (gross). The approved project will not result in the removal of any native vegetation or native trees. Further, the project would be located outside any environmentally sensitive habitat areas. (Exhibit 1)

The project was originally heard and approved by the Montecito Planning Commission on February 24, 2010. The Montecito Planning Commission's approval was appealed by the appellant and several other parties and was originally heard by the Board of Supervisors on August 3, 2010 (Case No. 10APL-00000-00009). After the project applicant, NextG Networks, agreed to modify the proposed project to underground the utility equipment vault, the project was brought back to the County Board of Supervisors who denied the appeal of the Montecito Planning Commission's approval (Case No. 10APL-00000-00009) and approved the project, Case No. 09-CDH-00000-030 on September 21, 2010.

B. APPELLANT'S CONTENTIONS

The County's action was appealed by Joanne Shefflin. The appeal was filed on October 7, 2010, attached as **Exhibit 3**. The appeal asserts that the project will be inconsistent with the County of Santa Barbara's Local Coastal Plan because it will violate policies and implementation measures related to visual resources and telecommunications facilities. The appellant also raised the issue of improper noticing under Santa Barbara County's Coastal Zoning Ordinance provisions. Lastly, the appellant raised concerns with Santa Barbara County's determination that the subject telecommunication facility is exempt from California Environmental Quality Act (CEQA) requirements.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to

the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellant did not cite the public access policies of the Coastal Act as a ground for appeal or raise any public access-related issues. Thus, the only legitimate grounds for this appeal are allegations that the “appealable development” is not consistent with the standards in the certified LCP.

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission’s regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government’s decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, for the reasons discussed below, the Commission determines that the appeal raises no substantial issue with regard to the grounds on which the appeal has been filed, as discussed below, including visual and wireless telecommunication facility standards, as well as noticing provisions.

The appellant has also appealed the County’s final action on the issue of CEQA compliance, which does not meet the requirements of section 30603(b)(1) regarding legitimate grounds for an appeal of a coastal development permit (CDP) to the Commission. The legitimate grounds for appeal are limited to an allegation that the action does not conform to the LCP or public access policies of the Coastal Act. The appellant raises an issue of the County’s compliance with CEQA and asserts that the CEQA exemption issued for the project was improper because of the cumulative visual impacts of wireless telecommunication facilities. However, the appellant did not state how that CEQA determination will result in non-conformance with LCP policies. Thus, the allegation that the County’s decision is not in compliance with CEQA requirements is not a valid ground for appeal of a coastal permit and is not discussed below. Further, in this case, the California Public Utilities Commission is the appropriate agency for CEQA compliance on this project and the California Public Utilities Commission filed a Notice of Exemption on July 20, 2009 pursuant to CEQA.

Visual Resources and Telecommunications Facility Standards

The appellant did not specifically cite each of the LCP Policies related to visual resources. However, the appellant noted that Coastal Act Section 30251, Scenic and Visual Qualities, is incorporated into the LCP and asserts that the proposed telecommunication facility does not comply with this policy. The appellant did specifically cite LUP Policy 4-7. Staff notes that Coastal Act Section 30251 is referenced in the Santa Barbara County LUP under Section 3.4 Visual Resources.

Section 3.4 Visual Resources- Section 3.4.3 Policies

Policy 4-2

All commercial, industrial, planned development, and greenhouse projects shall be required to submit a landscaping plan to the County for approval.

Policy 4-4

In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. Clustered development, varied circulation patterns, and diverse housing types shall be encouraged.

Policy 4-7

Utilities, including television, shall be placed underground in new developments in accordance with the rules and regulations of the California Public Utilities Commission, except where cost of undergrounding would be so high as to deny service.

The following Montecito Community Plan Policies also relate to visual resources:

Goal LU-M-1

Preserve roads as important aesthetic elements that help to define the semi-rural character of the community. Strive to ensure that all development along roads is designed in a manner that does not impinge upon the character of the roadway.

Goal VIS-M-2

Protect public and private open space as an integral part of the community's semi-rural character and encourage its retention.

The following Santa Barbara County Coastal Zoning Ordinance (Article II) sections relate specifically to commercial telecommunication facilities:

Section 35-144F.7 Additional Findings.

In addition to the findings required by be adopted by the decision-maker pursuant to Sections 35- Article II - Coastal Zoning Ordinance 234

Replacement Page March 2008 169, 35-172 and 35-174, in order to approve an application to develop a telecommunication facility, the decision-maker shall also make the following findings:

- 1. The facility will be compatible with existing and surrounding development in terms of land use and visual qualities.**
- 2. The facility is located so as to minimize its visibility from public view.**
- 3. The facility is designed to blend into the surrounding environment to the greatest extent feasible.**

...

Section 35-144-F.4.2.c

In addition to the development standards contained in Section 35-144F.3, commercial telecommunication facilities, other telecommunication facilities as specified in Section 35-144F.3.3.b or Section 35-144F.3.4.b, and non-commercial telecommunication facilities used in conjunction with an agricultural operation as specified in Section 35-144F.3.3.c shall also comply with the following development standards unless otherwise indicated.

2. Telecommunication facilities shall comply with the following development standards in all instances except that the decision-maker may exempt a facility from compliance with one or more of the following development standards. However, such an exemption may only be granted if the decision-maker finds, after receipt of sufficient evidence, that failure to adhere to the standard in the specific instance (a) will not increase the visibility of the facility, and will not decrease public safety, and will not result in greater impact to coastal resources, including but not limited to sensitive habitat, coastal waters, and public access; or (b) is required due to technical considerations such that if the exemption were not granted the area proposed to be served by the facility would otherwise not be served by the carrier proposing the facility; or (c) would avoid or reduce the potential for environmental impacts, and will not increase the visibility of the facility, and will not decrease public safety, and will not result in greater impact to coastal

c. Support facilities (e.g., vaults, equipment rooms, utilities, equipment enclosures) shall be located underground, if feasible, if they would otherwise be visible from public viewing areas (e.g., public roads, trails, recreational areas).

...

The appellant asserts that the 26-inch omni whip pole-mounted antenna is not visually compatible with the character of the surrounding highly scenic area. Specifically, the appellant asserts that the County has not made the proper findings in order for the telecommunications facility to be approved under LIP Section 35-144.F.7. First, the appellant states that the facility is incompatible with the surrounding development in terms of land use and visual qualities because “the surrounding area is developed with residential uses only and is otherwise open space and agricultural in nature.” The

appeal states that the facility is “proposed adjacent to San Ysidro Creek and the San Ysidro Creek Preserve, a 44 acre preserve with Monarch butterfly habitat and a public hiking trail” and “the existing utility pole to be used is currently devoid of equipment and isolated from other poles and equipment projecting into the sky as viewed from the road.” Next, the appellant asserts that the facility is not located to minimize its visibility from public views because it is located in the public right-of-way, is highly visible to the public and interferes with public views of an otherwise uncluttered roadway and highly scenic surroundings and public views from the San Ysidro Creek Preserve and public hiking trail. The appeal asserts that the policies require telecommunications support facilities to be located underground and the failure to underground the antenna conflicts with the LCP policies. Lastly, the appellant asserts that the telecommunications facility is not “designed to blend into the surrounding environment to the greatest extent feasible, specifically feasible alternative locations on other nearby poles would avoid the visual conflict with the adjacent Preserve and rural and agricultural aesthetic of the immediate area.” Further, the appellant raises concerns over the cumulative visual impact of telecommunication facilities in the area.

The first factor in evaluating the issue of whether the appeal raises a substantial issue, is the degree of factual and legal support for the local government’s decision that the development is consistent with the subject provisions of the certified LCP. The County made several factual findings to support the project’s conformance with the visual policies of the LCP. (Exhibit 4) Under Section 35-144F.7, the County found that the facility is designed to retain the visual character of the area by utilizing the existing utility pole within the public right-of-way, by burying the equipment box underground, and by painting the 26-inch omni-whip antenna and the top of the equipment vault brown to blend with the surroundings and ground plane. The County also found that the project would not cause an oversaturation of telecommunications facility equipment at the site because the existing utility pole is presently devoid of any additional equipment. Additionally, several conditions of the County’s permit were added at the County Board of Supervisors hearing on September 21, 2010 related to visual resources. Condition No. 2 of 09CDH-00000-030 was modified to assure that all exposed equipment and facilities (i.e., antennas, support structure, vaults, equipment cabinets, etc.) are finished with non-reflective materials and painted brown to match the existing surroundings. Condition No. 35 of 09CDH-00000-030 was added providing that all excess cable and equipment be tightened or removed and Condition No. 36 was added providing that vegetative screening be installed around the equipment vault to minimize to the vault appearance and blend the facility with the existing ground plane.

The County’s analysis above demonstrates that the County thoroughly evaluated the policies regarding potential visual impacts of the proposed telecommunication facility. The approved project, as conditioned, is consistent with the applicable policies of the LCP. The Commission finds that the County has provided a high degree of support for the decision that the development is consistent with the certified LCP because the antenna will be installed on an existing utility pole and the associated equipment will be undergrounded.

Noticing

The appellant raises the following LCP Policies related to noticing:

Section 35-169.4(2)(d)

Coastal Development Permit for development that is appealable to the Coastal Commission in compliance with Section 35-182 (Appeals) and is not processed in conjunction with a Conditional Use Permit or Development Plan. This Section provides the processing requirements for applications for Coastal Development Permits for development that is appealable to the Coastal Commission in compliance with Section 35-182 (Appeals) and that is not subject to Section 35-169.4.3 below.

d. Notice of the time and place of the hearing shall be given in compliance with Section 35-181 (Noticing).

...
Section 35-181.4

1. Notice for all projects. The following shall be included in all notices required to be provided in compliance with this Section.

a. The date of filing of the application and the name of the applicant.

b. The Planning and Development Department case number assigned to the application.

c. The name of the Planning and Development Department staff person assigned to review the application and their postal mail address, electronic mail address, and telephone number.

d. A description of the project, its location, and a statement that the project is located within the Coastal Zone.

2. Notice for projects that require a public hearing or discretionary decision-maker action. The following shall be included in all notices for projects that require a public hearing or discretionary action by a decision-maker.

a. All information required by Subsection 1, above.

b. The place, date, and general time of the hearing at which the project will be heard by the decision-maker, if the action requires a public hearing. If the project does not require a public hearing, then only the date of pending action or decision of the decision-maker is required.

c. A general description of the County procedures concerning the conduct of public hearings and local actions, including the submission of public comments either in writing or orally before the hearing or local decision, and requirements regarding the procedure to appeal the decision.

d. The procedure for Coastal Commission appeals, including any required appeal fees.

3. Notice for projects that do not require a public hearing or other discretionary decision-maker action. The following shall be included in all notices for projects that do not require a public hearing or discretionary action by a decision-maker.

a. All information required by Subsection 1, above.

b. A general description of the County procedures concerning the review of the application for the Coastal Development Permit or Land Use Permit, including:

1) How to participate in the review of the application for the Coastal Development Permit or Land Use Permit;

2) How to receive notification of any pending review by the Board of Architectural Review, if applicable, and action to approve or deny the Coastal Development Permit or Land Use Permit;

3) How to submit comments either in writing or orally before review by the Board of Architectural Review, if applicable, or action to approve or deny the Coastal Development Permit or Land Use Permit;

4) Requirements regarding the procedure to appeal the decision of the Board of Architectural Review, if applicable, or action by the Director to approve or deny the Coastal Development Permit or Land Use Permit.

c. The date of the pending decision on the Coastal Development Permit or Land Use Permit, and where applicable, the date of expiration of the appeal period.

d. A statement that the public comment period commences upon the date that such notice is given and allows for submission, by mail, in advance of the decision, of public comments on the subject Coastal Development Permit or Land Use Permit

The appellant asserts that the notice given for Coastal Development Permit 09CDH-00000-030 fails to comply with the noticing provisions of Section 35-181.4 because the notice mischaracterized the description of the project in such a way that the public was misled as to the action being considered by the Board. The appeal states: "the notice provides that the Board will consider recommendations regarding the Montecito Planning Commission's denial of the cellular antenna permit, but then indicates that the recommendation [sic] action is to 'deny the appeal...thereby upholding the Montecito Planning Commission's approval.'"

The appellant has not provided an example of the notice the appeal refers to and has not provided the date of the notice referenced. Additionally, the appellant brings up an issue of substance of the notice itself, the description of the action to be taken by the

County Board, and does not assert that she was not notified or that interested persons who requested to be notified were not. Further, any member of the public who received a notification, even if the description was unclear, was on notice of the NextG project and could contact the County Planning and Development Department with any questions, read the County's staff report, or access information related to the project online at Santa Barbara County's website.

Thus, in evaluating the issue of whether the appeal raises a substantial issue with regard to noticing, no evidence was presented by the appellant asserting that the minimum requirements for noticing pursuant to Zoning Ordinance Section 35-181.4 were not followed, including: the date of filing of the application and the name of the applicant; the Planning and Development Department case number assigned to the application; the name of the Planning and Development Department staff person assigned to review the application and their postal mail address, electronic mail address, and telephone number; a description of the project, its location, and a statement that the project is located within the Coastal Zone; the place, date, and general time of the hearing at which the project will be heard by the decision-maker; a general description of the County procedures concerning the conduct of public hearings and local actions, including the submission of public comments either in writing or orally before the hearing or local decision, and requirements regarding the procedure to appeal the decision; and, the procedure for Coastal Commission appeals, including any required appeal fees. Review of the notices contained in the administrative record indicate that they are consistent with the noticing requirements of the LCP. (Exhibit 5) Although several projects were noticed for the same hearing, including several appeals of denials of other NextG Networks projects heard by the Montecito Planning Commission, careful review of the notice indicates that the action noticed was for review of appeal of the Montecito Planning Commission's "approval of the NextG Cellular Antenna ESB18 permit, located in the public right of way of San Leandro Lane, adjacent to APN 007-300-006...". (Exhibit 5) Thus, although the subject development was noticed by the County along with several other hearing items, the notice itself is accurate.

The first factor in evaluating the issue of whether the appeal raises a substantial issue, is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. The issue of visual resources and telecommunications facilities was addressed in the staff report and the Board of Supervisors minute order. As discussed above, the approved project is consistent with the applicable policies and provisions of the LCP. There is adequate factual evidence and legal support for the County's analysis and decision with regard to visual resources, telecommunications facilities, and noticing.

The second factor in evaluating the issue of whether the appeals raise a substantial issue is the extent and scope of the development as approved. As described above, the subject project is for a small unmanned wireless telecommunication facility. The 26-inch antenna would be co-located on an existing utility pole and the utility vault would be undergrounded. As such, the extent and scope of the development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, there would be no significant coastal resources affected by the decision. As previously discussed, the project site is a residentially zoned area within the public right-of-way adjacent to an existing roadway. In addition, the development will not result in the removal of any native vegetation or native trees on site and there is no environmentally sensitive habitat that would be impacted. The antenna would be the only visible development and it would be co-located on an existing utility pole. Thus, no significant coastal resources would be affected by the decision.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. In this case, the permit approved for the project is consistent with the policies and provisions of the LCP for wireless commercial telecommunications facilities and will not result in any adverse impacts to visual resources. As such, the County's decision will have no adverse precedential value for future CDP decisions.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the permit approved for the project is consistent with the policies and provisions of the LCP, will not result in any adverse impacts to visual resources, and does not have any regional or statewide significance.

In conclusion, the Commission finds that the approved project conforms to the visual resource protection policies and provisions of the LCP, that the extent and scope of the subject project is minor, and that no significant coastal resources would be affected. The project approval will not be a precedent for future residential developments and the visual resource and noticing issues raised by the appeal relate only to local issues. Therefore, the Commission finds that the assertions of the appeal that the approved project does not conform to visual resource, telecommunication facility development, and noticing provisions of the LCP do not raise a substantial issue.

D. CONCLUSION

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the County's adopted LCP. Applying the five factors identified above, the Commission finds the County's record adequately supports its position that the proposed project is consistent with the applicable LCP policies. In addition, the development is relatively minor in scope, doesn't have a significant adverse effect on significant coastal resources, has little precedential value, and doesn't raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue as to the County's application of the cited policies of the LCP.

PACIFIC

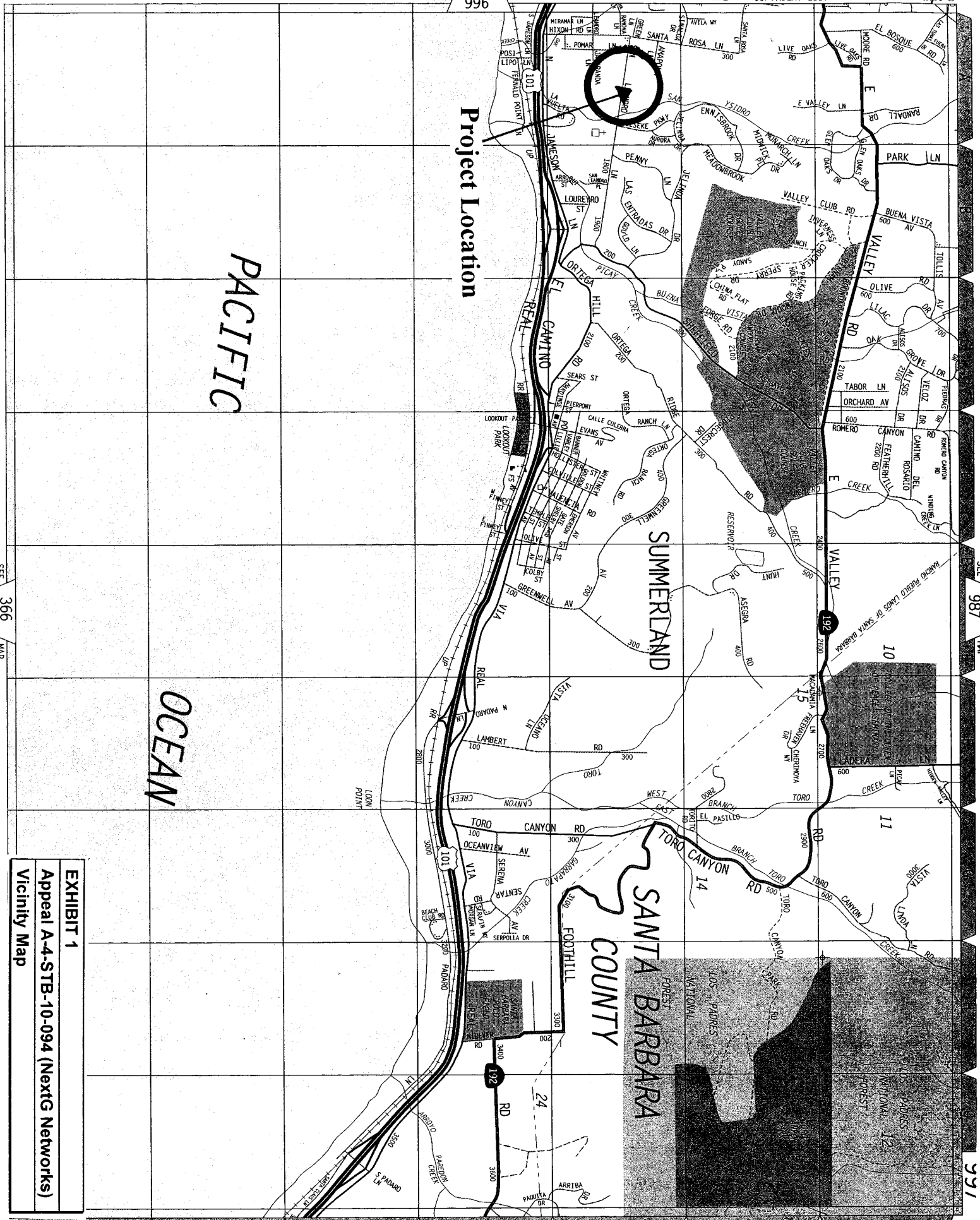
OCEAN

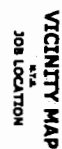
Project Location

SUMMERLAND

SANTA BARBARA COUNTY

EXHIBIT 1
Appeal A-4-STB-10-094 (NextG Networks)
Vicinity Map

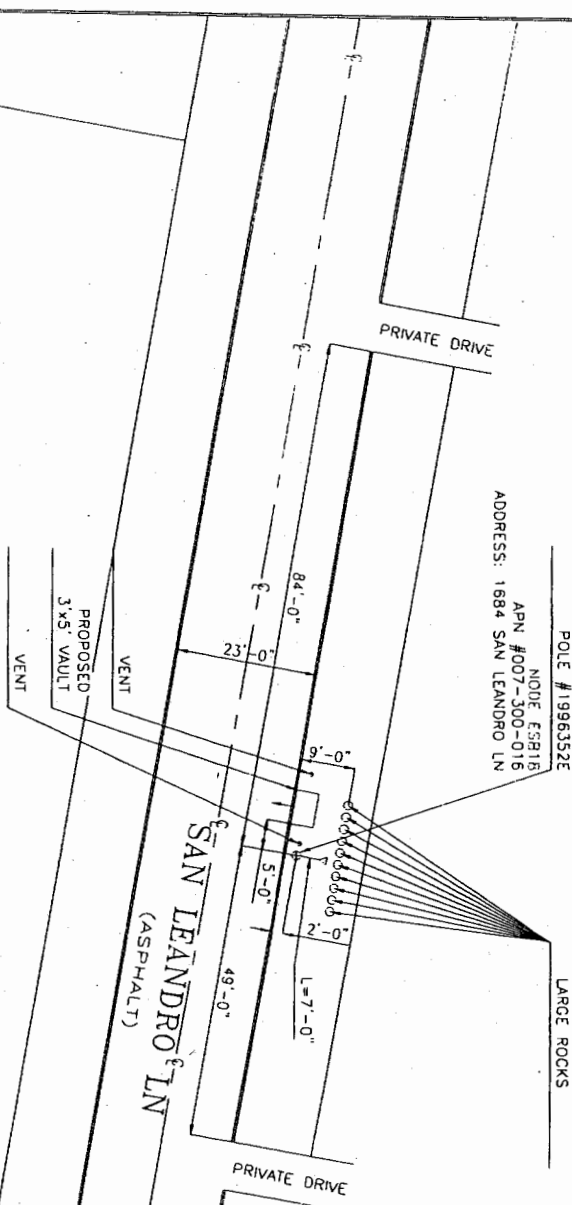






ICINITY MAP
NYL
JOB LOCATION



NOT TO SCALE

[illegible]

 NERG NETWORKS of California, Inc. 3000 N. 1st St. Santa Ana, CA 92705 Phone: (949) 744-1100	PROJECT NUMBER: _____ SUBJECT: _____ DATE: _____ 08/20/2010	DRAWING: _____ REVISION: _____ DESCRIPTION: _____ 0	DRAWING PREPARED BY: _____ HP COMMUNICATIONS INC. 5125 Linderoth Dr. Irvine, CA 92618	DRAWING APPROVED BY: _____  NERG NETWORKS of California, Inc. REF: _____ COMMENTS: _____	SHEET INFO: UTILITY INFORMATION AND SITE ORIENTATION SHEET NUMBER: _____ DIVISION: _____ <div style="text-align: center; font-size: 2em; font-weight: bold;">3</div> <div style="text-align: center;">3 OF 5</div>
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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-4508
VOICE (805) 585-1800 FAX (805) 641-1732

RECEIVED

ARNOLD SCHWARZENEGGER, Governor

OCT 07 2010

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Joanne Shefflin

Mailing Address: 190 Tiburon Bay Lane

City: Montecito

Zip Code: 93108

Phone: 805-565-9160

SECTION II. Decision Being Appealed

1. Name of local/port government:

Santa Barbara CA

2. Brief description of development being appealed:

NextG has sited a location for a telecommunications antenna right next to my backyard. The antenna is ESB18, on San Leandro Rd. in Montecito, CA. I very strongly appose this location and have asked NextG to relocate the antenna to one of "their proposed" alternate sites. I just received a call from Mr. Joe Malone of NextG stating they will not relocate this antenna on one of their proposed alternate locations, per my request. ESB18 is located in the Coastal Commission Zone, thus I am appealing to the Coastal Commission to deny the permit for this location.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

ESB18 is located on San Leandro Lane in Montecito, CA near the Cross street of Tiburon bay Lane.

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-4-STB-10-094

DATE FILED:

DISTRICT:

EXHIBIT 3

Appeal A-4-STB-10-094 (NextG Networks)

Appeal (6 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
- ☒ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: September 21, 2010

7. Local government's file number (if any): #10-00663

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Pat Ryan
NextG Communications
144 Blake St.
Denver, CO 80202

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Marc Chytilo
P.O. Box 92233
Santa Barbara, CA

(2) Cindy Feinberg
1350 Arroyico Lane
Montecito, CA 93108

(3) Abe Powell
425 Lemon Grove Ln.
Montecito, CA 93108

(4) Jo Saxon
270 Santa Rosa Lane
Montecito, CA 93108

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

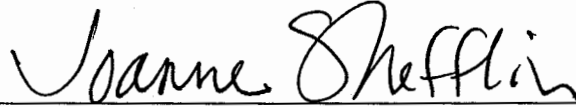
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

Please see "Exhibit A" Attached to this Appeal.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: 10/5/0 Joanne Shefflin

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Exhibit A

Commercial Telecommunication Facility Findings:

Santa Barbara County Coastal Zoning Ordinance Section 35-144.F.7.1 provides that before a CDP for a Telecommunications facility may be approved, a number of findings must be made including that the facility will be compatible with existing and surrounding development in terms of land use and visual qualities (35-144.F.7.1), is located so as to minimize its visibility from public views (35-144.F.7.2), is designed to blend into the surrounding environment to the greatest extent feasible (35-144.F.7.3). These findings cannot be made for 09CDH-00000-00030 because the pole-mounted cellular antenna facility is incompatible with surrounding development both in terms of land use and visual qualities. The area is developed with several residences only and is otherwise open space and agricultural in nature. The facility is proposed adjacent to San Ysidro Creek and the San Ysidro Creek Preserve (also known as the San Ysidro Oak Woodland), a 44 acre preserve with Monarch butterfly habitat and a public hiking trail. The existing utility pole proposed to be used is currently devoid of equipment and isolated from other poles and equipment projecting into the sky as viewed from the road. Moreover, the facility is located in the public right of way, is highly visible to the public and interferes with public views of the otherwise uncluttered roadway and highly scenic surroundings, and public views from the San Ysidro Creek Preserve and public hiking trail. The facility is not designed to blend into the surrounding environment to the greatest extent feasible, specifically feasible alternative locations on other nearby poles would avoid the visual conflict with the adjacent Preserve and rural and agricultural aesthetic of the immediate area.

Coastal Act Article 3, Section 30251 – Scenic and Visual Qualities.

The cellular antenna facility covered by 09CDH-00000-00030 does not comply with this Coastal Act policy (also incorporated verbatim on pages 30 and 33 of the Santa Barbara Local Coastal Plan) because the pole-mounted antenna is not visually compatible with the character of surrounding area, which includes rural agricultural land, and open space, specifically the San Ysidro Creek Preserve. Moreover the facility, located on an existing pole that does not currently have other pole-mounted equipment, is not subordinate to the character of this highly scenic area.

Undergrounding:

While the equipment vault for the facility is proposed to be undergrounded, the antenna is not. The failure to underground the antenna conflicts with Local Coastal Plan Policy 4-7 requiring that utilities be placed underground, and Coastal Zoning Ordinance Section 144-F.4.2.c requiring that telecommunications support facilities be located underground if feasible, if they would otherwise be visible from public viewing areas (e.g. public roads, trails, recreational areas).

Cumulative Impacts:

The facility approved pursuant to 09CDH-00000-00030 is one of numerous facilities constructed, proposed or anticipated by NextG throughout the Coastal Zone in Santa Barbara County, the City of Santa Barbara, and the City of Goleta. The cumulative impact of these facilities, in terms of their visual incompatibility and effects on public views (see Commercial Telecommunication Facility Findings, and Coastal Act Article 3, Section 30251 – Scenic and Visual Qualities, above), is significant. The County found this and other similar facilities proposed by NextG to be exempt from the California Environmental Quality Act pursuant to Public Resources Code sections 15301(b-c), 15302 (c) and 15304 (f), however these exemptions are unavailable because “the cumulative impact of successive projects of the same type in the same place, over time is significant” (Public Resources Code § 15300.2 (b)). Additionally, aside from the significant cumulative impacts of this facility, the claimed CEQA exemptions are unavailable due to the location of the project in a highly scenic area (Public Resources Code § 15300.2 (a)).

Noticing:

Section 35-169.4 (2) (d) of the County of Santa Barbara's Coastal Zoning Ordinance provides that notice of the time and place of the hearing, in compliance with section 35-181 shall be given for all CDPs for appealable development. Here, the notice given for 09CDH-00000-00030 failed to comply with the noticing provisions of section 35-181 because contrary to section 35-181.4 the notice mischaracterized the description of the project in such a way that the public was misled as to the action being considered by the Board. Specifically, the notice provides that the Board will consider recommendations regarding the Montecito Planning Commission's denial of the cellular antenna permit, but then indicates that the recommendation action is to “deny the appeal . . . thereby upholding the Montecito Planning Commission's approval”. This mischaracterization of the recommended action created considerable confusion amongst members of the public as to what action would be taken by the Board.

Santa Barbara Daily Sound Proof of Publication (2015.5C.C.P)

Superior Court of
The State of California
In and for The County of Santa Barbara

In the Matter of: Notice of Public Hearing- Aug 3, 2010/ N

Case Number:

The undersigned, being the principal clerk of the printer of the Santa Barbara Daily Sound, a newspaper of general circulation, printed and published daily in the City of Santa Barbara, County of Santa Barbara, California and which newspaper has been adjudged a newspaper of general circulation by the Superior Court in the County of Santa Barbara, State of California, Adjudication Case No. 1243692; and that affiant is the principal clerk of the Santa Barbara Daily Sound. That the printed notice hereto Annexed was published in the Santa Barbara Daily Sound in the issues following named dates

July 15, 2010

I hereby certify (or declare) under penalty of perjury that foregoing is true and correct.

Executed on July 15, 2010 at Santa Barbara, CA


Allen Feld

NOTICE OF PUBLIC HEARING
OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA
Tuesday, AUGUST 3, 2010
In SANTA BARBARA
The meeting starts at 9:00 a.m.

NOTICE IS HEREBY GIVEN that the following matter will be heard by the Board of Supervisors of the County of Santa Barbara, on Tuesday, AUGUST 3, 2010 at 9:00 a.m. or shortly thereafter in the Board of Supervisors' Hearing Room, 4 Floor, County Administration Building, 105 East Anapamu Street, Santa Barbara, California.

A hearing to continue consideration of NextG appeals of the Montecito Planning Commission's January 27, 2010 denial of the NextG Cellular Antenna ESB03 permit, located in the public right of way of Park Lane adjacent to APN 007-120-013 [10-00202]; NextG Cellular Antenna ESB14 permit, located in the public right of way of Sheffield Drive, adjacent to APN 007-240-012 [10-00205]; NextG Cellular Antenna ESB02 permit located in the public right of way of Middle Road, adjacent to APN 009-170-005 [10-00206]; NextG Cellular Antenna ESB08, located in the public right of way of Olive Mill Road, adjacent to APN 009-13-015 [10-00207]; NextG Cellular Antenna ESB13 permit, located in the public right of way of N. Jameson Lane adjacent to APN 007-350-010 [10-00210]; NextG Cellular Antenna ESB06, located in the public right of way of Olive Mill Rd, adjacent to APN 009-230-027 [10-00212]; NextG Cellular Antenna ESB09, located in the public right of way of San Ysidro Rd, adjacent to APN 009-262-003 [10-00214].

A hearing regarding NextG appeals of the Montecito Planning Commission's February 24, 2010 denial of the NextG Cellular Antenna ESB15 permit, located in the public right of way of School House Road, adjacent to APN 009-080-007 [10-00662]; approval of the NextG Cellular Antenna ESB18 permit, located in the public right of way of San Leandro Lane, adjacent to APN 007-300-006 [10-00663]; and denial of the NextG appeal of the Montecito Planning Commission's June 10, 2010 denial of the NextG Cellular Antenna ESBUFFK39 permit, located in the public right of way of N. Jameson Lane, Ortega Hill Road, Sheffield Drive, and San Leandro Lane, in the Montecito area, First District. [10-00664].

A hearing to consider the appeals of the Planning Commission's and CBAR's denial of the Bean Blossom Lot X single family residence and accessory structures on property located in the AG-II-100 and AG-II-320 zones, APN 081-210-047, located at 14000 Calle Real in the Gaviota area, Third District. [10-00654]

Please see the posted agenda, available on Thursday prior to the meeting for a more specific time for this item. However, the order of the agenda may be rearranged or the item may be continued.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk of the Board at (805) 568-2240. Notification at least 48 hours prior to the meeting will enable the Clerk of the Board to make reasonable arrangements.

If you challenge this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence to the Board of Supervisors at, or prior to, the public hearing. G.C. Section 65009, 6066, and 6062a.

Witness my hand and seal this 13th day of July, 2010

Michael F. Brown
CLERK OF THE BOARD OF SUPERVISORS
Robert Cohen, Deputy Clerk

EXHIBIT 5

Appeal A-4-STB-10-094 (NextG Networks)

Public Notice (3 pages)

**NOTICE OF PUBLIC HEARING
OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA
Tuesday, AUGUST 3, 2010
In SANTA BARBARA**

The meeting starts at 9:00 a.m.

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A hearing to continue consideration of NextG appeals of the Montecito Planning Commission's January 27, 2010 denials of the NextG Cellular Antenna ESB03 permit, located in the public right of way of Park Lane adjacent to APN 007-120-013 [10-00202]; NextG Cellular Antenna ESB14 permit, located in the public right of way of Sheffield Drive, adjacent to APN 007-240-012 [10-00205]; NextG Cellular Antenna ESB02 permit, located in the public right of way of Middle Road, adjacent to APN 009-170-005 [10-00206]; NextG Cellular Antenna ESB08, located in the public right of way of Olive Mill Road, adjacent to APN 009-13-015 [10-00207]; NextG Cellular Antenna ESB13 permit, located in the public right of way of N. Jameson Lane adjacent to APN 007-350-010 [10-00210]; NextG Cellular Antenna ESB06, located in the public right of way of Olive Mill Rd, adjacent to APN 009-230-027 [10-00212]; NextG Cellular Antenna ESB09, located in the public right of way of San Ysidro Rd, adjacent to APN 009-262-003 [10-00214].

A hearing regarding NextG appeals of the Montecito Planning Commission's February 24, 2010 denial of the NextG Cellular Antenna ESB15 permit, located in the public right of way of School Houser Road, adjacent to APN 009-080-007 [10-00662]; approval of the NextG Cellular Antenna ESB18 permit, located in the public right of way of San Leandro Lane, adjacent to APN 007-300-006 [10-00663]; and denial of the NextG appeal of the Montecito Planning Commission's June 10, 2010 denial of the NextG Cellular Antenna ESBUEK39 permit, located in the public right of way of N. Jameson Lane, Ortega Hill Road, Sheffield Drive and San Leandro Lane, in the Montecito area, First District. [10-00664].

A hearing to consider the appeals of the Planning Commission's and CBAR's denial of the Bean Blossom Lot X single family residence and accessory structures on property located in the AG-II-100 and AG-II-320 zones, APN 081-210-047, located at 14000 Calle Real in the Gaviota area, Third District. [10-00654]

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Witness my hand and seal this 13th day of July, 2010

Michael F. Brown
CLERK OF THE BOARD OF SUPERVISORS
Robert Cohen, Deputy Clerk

**NOTICE OF PUBLIC HEARING OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA**

Tuesday, AUGUST 3, 2010

In SANTA BARBARA

The meeting starts at 9:00 a.m.

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A hearing to consider an appeal of the Montecito Planning Commission's February 24, 2010 approval of the NextG Cellular Antenna ESB18 permit, located in the public right of way of San Leandro Rd, adjacent to APN 007-300-006 in Montecito, First District. [10-00663]

Please see the posted agenda, available on Thursday prior to the meeting for a more specific time for this item. However, the order of the agenda may be rearranged or the item may be continued.

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Witness my hand and seal this 13th day of JULY, 2010

Michael F. Brown
CLERK OF THE BOARD OF SUPERVISORS
Robert Cohen, Deputy Clerk

**NOTICE OF PUBLIC HEARING OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA**

Tuesday, AUGUST 3, 2010

In SANTA BARBARA

The meeting starts at 9:00 a.m.

NOTICE IS HEREBY GIVEN that the following matter will be heard by the Board of Supervisors of the County of Santa Barbara, on Tuesday, AUGUST 3, 2010 at 9:00 a.m. or shortly thereafter in the Board of Supervisor's Hearing Room, County Administration Building, 105 E. Anapamu Street, Santa Barbara

A hearing to consider an appeal of the Montecito Planning Commission's February 24, 2010 approval of the NextG Cellular Antenna ESB18 permit, located in the public right of way of San Leandro Rd, adjacent to APN 007-300-006 in Montecito, First District. [10-00663]

Please see the posted agenda, available on Thursday prior to the meeting for a more specific time for this item. However, the order of the agenda may be rearranged or the item may be continued.

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Witness my hand and seal this 13th day of JULY, 2010

CLERK OF THE BOARD OF SUPERVISORS
Robert Cohen, Deputy Clerk

4-STB-10-106

County of Santa Barbara Planning and Development

Glenn S. Russell, Ph.D., Director

Dianne Black, Director of Development Services

Derek Johnson, Director of Long Range Planning



NOTICE OF FINAL ACTION

September 24, 2010

RECEIVED
OCT 04 2010

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

On September 21, 2010 Santa Barbara County took final action on the appealable development described below:

- ☒ Appealable Coastal Development Permit 09CDH-00000-00030
- ☐ Appealable Coastal Development Permit [case number] following discretionary case [#]
- ☐ Discretionary action on a [case type, case#]

Project Applicant:

Sharon James, NextG Networks
5720 Thornwood Drive, Goleta, CA 93117
(805) 683-4326

Project Description: The project is a request by the agent, Sharon James, for the applicant, NextG Networks of California, Inc., for a Coastal Development Permit to allow construction and use of an unmanned, telecommunications facility under provisions of County code zoning requirements for property zoned (2-E-1). The facility would be located adjacent to 1710 San Leandro Lane in the public right of way.

The applicant is proposing to construct an unmanned wireless facility that would include one 26-inch whip omni antenna. The antenna is omnidirectional and would be mounted on a bracket connected to an existing metal pole in the public right of way. The service wattage for the facility would have a maximum Effective Radiated Power (ERP) of 8 watts per channel. The antennas would be operating in the AWS bandwidth at 1710 – 2170 MHz with a maximum of 3 channels. The proposed facility would cover the intersection of San Leandro Lane and Tiburon Bay Lane with a range of approximately 1500 – 2000 feet in each direction, providing service for Metro PCS.

All equipment for the antenna would be located in an underground vault. The equipment vault would be approximately 3'x 5'x 3' and would be flush with the ground. In addition to the vault itself, two 2'x 4'x 3' air vents would also need to be installed on either side of the vault to provide necessary ventilation for the equipment. A foot of gravel base would also be installed around the vault to prevent sinking and ensure the vault remains level over time. The total footprint of the vault with gravel base and air vents combined would result in a ground disturbance and minor vegetation removal of a 4'x 14' area in the utility easement in the road right-of-way. The equipment would be serviced by Southern California Edison via a power pole connection through a connection handhole from existing utilities on an existing utility pole.

Access to the facility would be from the public road. The antenna would be painted brown to match the pole and the top of the vault would be painted brown to blend with the surrounding ground plane.

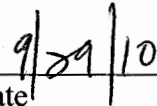
Location: The project is located in the public right of way of San Leandro Lane near its intersection with Tiburon Bay Lane (adjacent to AP No. 007-300-006), located in the Montecito area, First Supervisorial District, Santa Barbara County, California.

The receipt of this letter and the attached materials start the 10 working day appeal period during which the County's decision may be appealed to the Coastal Commission. Appeals must be in writing to the appropriate Coastal Commission district office.

Please contact Megan Lowery, the case planner at (805) 568-2517 if you have any questions regarding the County's action or this notice.



Megan Lowery, Project Planner



Date

Attachments:

Final Action Letter dated September 24, 2010

cc: Sharon James, 5720 Thornwood Drive, Goleta, CA 93117
Joanne Shefflin, 190 Tiburon Bay Lane, Santa Barbara, CA 93108



County of Santa Barbara Planning and Development

Glenn S. Russell, Ph.D., Director

Dianne Black, Director of Development Services

Derek Johnson, Director of Long Range Planning

September 27, 2010

Joanne Shefflin
190 Tiburon Bay Lane
Santa Barbara, CA 93108

BOARD OF SUPERVISORS HEARING OF SEPTEMBER 21, 2010

RE: NextG Cellular Antenna ESB18 Appeal; 10APL-00000-00009

Hearing to consider the NextG Appeal, 10APL-00000-00009 [application filed on March 4, 2010] of the Montecito Planning Commission's February 24, 2010 approval of the NextG Cellular Antenna ESB18 permit, Case No. 09CDH-00000-00030 located in the public right of way of San Leandro Lane (adjacent to AP No. 007-300-0006) in the Montecito area, First Supervisorial District.

Dear Ms. Shefflin:

At the Board of Supervisors' hearing of September 21, 2010, Supervisor Carbajal moved, seconded by Supervisor Centeno and carried by a vote of 5 to 0:

1. Deny the appeal, Case No. 10APL-00000-00009, thereby upholding the Montecito Planning Commission's approval of 09CDH-00000-00030;
2. Make the required findings for approval of Case No. 09CDH-00000-00030, included in Attachment A of the Board Letter, dated September 21, 2010;
3. Accept the exemptions to CEQA described in the Notices of Exemption prepared and adopted by the Public Utilities Commission, the lead agency, as adequate for this project pursuant to sections 15061(b)(3), 15301(b), 15301(c), 15302(c), 15303, and 15304(f) of the CEQA Guidelines included in Attachment B of the Board Letter, dated September 21, 2010; and
4. Grant *de novo* approval of Case No. 09CDH-00000-00030 as revised with vaulted support equipment, subject to the conditions of approval of the permit, included as Attachment C of the staff report, dated September 21, 2010, as revised at this hearing.

REVISIONS TO CONDITIONS OF APPROVAL

Condition No. 2 was amended as follows.

Tel-03 Colors and Painting. All exposed equipment and facilities (i.e., antennas, support structure, vaults, equipment cabinets, etc.) shall be finished in non-reflective materials (including painted surfaces) and shall be painted browns to match the existing surrounds of poles and ground surface.

PLAN REQUIREMENTS: *Color specifications shall be identified on plans prior to permit issuance.*

MONITORING: *P&D compliance monitoring staff shall conduct a Project Compliance Inspection to confirm color selection.*

Condition No. 35 below was added.

Spec-06 Excess Cabling and Equipment Removal. *All excess cable and equipment shall be tightened or otherwise removed to eliminate coils along the fiber optic cabling lines.*

TIMING: *Excess cabling and equipment shall be removed upon installation of the facility.*

MONITORING: *P&D compliance monitoring staff shall confirm excess cabling and equipment removal prior to compliance construction signoff.*

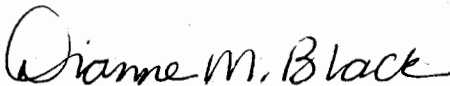
Condition No. 36 below was added.

Spec-07 Vegetative Screening. *Vegetative screening shall be installed around the equipment vault as feasible to minimize the vault appearance and blend the facility with the existing ground plane. Vegetation species should be consistent with the surrounding area and shall be reviewed and approved by Roads Division (Public Works) prior to installation.*

TIMING: *Vegetative screening shall be installed after construction of the facility.*

MONITORING: *P&D compliance monitoring staff shall confirm installation of vegetation prior to compliance construction signoff.*

Sincerely,



DIANNE M. BLACK
DIRECTOR DEVELOPMENT SERVICES

cc: Case File: 10APL-00000-00009
Applicant: Sharon James, NextG Cellular, 5720 Thornwood Drive, Goleta, CA 93117
Montecito Association, P.O. Box 5278, Santa Barbara, CA 93108
Clerk of the Board
County Chief Appraiser
County Surveyor
Fire Department
Flood Control
Park Department
Public Works
Environmental Health Services
APCD
Michael Ghizzoni, Chief Deputy County Counsel
Rachel Van Mullem, Deputy County Counsel
Megan Lowery, Planner

Attachments: **Attachment A - Findings**
 Attachment C - Permit with Conditions of Approval
 Attachment D - Board of Supervisors' Minute Order dated September 21, 2010

DMB:dmv

ATTACHMENT A: FINDINGS

1.0 CEQA

1.1 CEQA Guidelines Exemption Findings

- 1.1.1 The proposed project was found to be exempt from environmental review pursuant to Sections 15061(b)(3), 15301(b), 15301(c), 15302(c), 15303 and 15304(f) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA) by the California Public Utilities Commission (CPUC). Please see the Notices of Exemption, prepared by the CPUC on July 29, 2009 and August 19, 2010 included as Attachment B.

2.0 ARTICLE II ZONING ORDINANCE

2.1 Coastal Development Permit Findings (Sec. 35-169.5)

- 2.1.1 *The proposed development conforms: (1) To the applicable provisions of the Comprehensive Plan, including the Coastal Land Use Plan; and (2) With the applicable provisions of this Article or the project falls within the limited exceptions allowed under Section 35-161 (Nonconforming Use of Land, Buildings and Structures).*

The proposed project would include mounting a single 26-inch omni whip antenna on a bracket attached to the existing utility pole and vaulting the support equipment. The vault would be approximately 3 ft. x 5 ft. and would have two 2 ft. x 4 ft. vents on either side, installed at grade in the right-of-way, and would require only minor ground disturbance. No vegetation removal is proposed. Additionally, all components of the facility are located outside of designated sensitive resource areas. This design would reduce the visibility of the facility by the public to the maximum extent feasible by utilizing existing infrastructure for the antenna support and eliminating the support equipment from view by placing it underground. The minimalistic design preserves the existing semirural character of the roadway and surrounding area. Lastly, the facility would operate well within the Federal health and safety standards established by the Federal Communications Commission. With these features, the proposed project would be in conformance with all applicable provisions of Article II, Comprehensive Plan and the Coastal Land Use Plan. Therefore this finding can be made.

- 2.1.2 *The proposed development is located on a legally created lot.*

The proposed project is located within the public right-of-way therefore this finding can be made.

- 2.1.3 *The subject property and development on the property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks, and any other applicable provisions of this Article, and any applicable zoning violation enforcement fees and processing fees have been paid. This subsection shall not be interpreted to impose new requirements on legal nonconforming uses and structures in compliance with Division 10 (Nonconforming Structures and Uses).*

The utility pole upon which the antenna would be mounted was legally erected and does not constitute a zoning violation. Additionally, the provisions for telecommunications facilities in Section 35-144F.4.1.a.2 of Article II specifically states that "underground equipment (e.g., equipment cabinet) may be located within the setback area and rights-of-way provided that no portion of the facility shall obstruct existing or proposed sidewalks, trails, and vehicular ingress or egress." The proposed vault would be installed at grade and therefore would not obstruct access at this location. Therefore this finding can be made.

2.1.4 *The development will not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.*

A designated trail easement runs along San Leandro Lane. However, the only visible component of the facility would be a 26-inch omni whip antenna that would be mounted on a bracket on an existing operational utility pole. The equipment box for the facility would be placed in an underground vault, removing it from public view, consistent with this policy. Therefore this finding can be made.

2.1.5 *The development is compatible with the established physical scale of the area.*

The proposed 26-inch antenna would be placed on an existing 70'9" utility pole. The antenna is slim in design and would easily blend with the existing utility infrastructure. Therefore this finding can be made.

2.1.6 *The development will comply with the public access and recreation policies of this Article and the Comprehensive Plan including the Coastal Land Use Plan.*

As discussed above, a trail easement exists along San Leandro Lane, however the proposed facility has been designed to reduce its visibility by utilizing existing infrastructure and eliminating major components from public view by placing them in an underground vault. The vault would be installed flush with grade, and would not impede traffic or use of the right-of-way. Therefore the proposed project complies with the public access and recreation policies of both Article II and the Comprehensive Plan, including the Coastal Land Use Plan and this finding can be made.

2.2 Commercial Telecommunication Facility Findings (Sec. 35-144F.7)

2.2.1 *The facility will be compatible with existing and surrounding development in terms of land use and visual qualities.*

The facility is designed to retain the visual character of the area by utilizing the existing utility pole and utilizing an antenna that conforms to the Tier 1 "very small facilities" requirements. Furthermore, the antenna would be painted brown to blend with the pole, and the equipment box would not be visible since it would be vaulted underground. Therefore the proposed project preserves the existing streetscape character of the area and this finding can be made.

2.2.2 *The facility is located so as to minimize its visibility from public view.*

The facility support equipment would be placed underground in a vault, and therefore would not be visible to the public. The top of the vault would be painted brown to blend in with the ground plane. The proposed antenna would be mounted on an existing operational utility pole and would blend with the existing infrastructure. Therefore the facility has been located so as to minimize its visibility from public view and this finding can be made.

2.2.3 *The facility is designed to blend into the surrounding environment to the greatest extent feasible.*

The proposed antenna design uses a 26-inch omni whip antenna that would be painted brown and mounted on a bracket attached to the existing utility pole. Mounting the antenna on the existing pole would effectively blend the antenna with the existing utility infrastructure. Furthermore, the support equipment would be placed in an underground vault and would

therefore not be visible in the existing environment. The top of the vault would be painted brown to blend in with the ground plane. Therefore this finding can be made.

2.2.4 *The facility complies with all required development standards unless granted a specific exemption by the decision-maker as provided in Section 35-144F.4.*

The telecommunications facility development standards require facilities be designed to protect the public safety; utilize existing infrastructure; reduce visibility from public viewing areas; preserve ridgelines, existing vegetation, historic structures, environmentally sensitive habitats, prime agricultural soils, etc. As discussed above, the proposed antenna would be collocated on an existing operational utility pole in the road right of way and the equipment would be placed in an underground vault. This design is consistent with the development standards since the facility is collocated, the support equipment is undergrounded, no sensitive resources (including biological habitats, historic structures, prime agricultural soils, etc.) are impacted, and the facility would be secured from public tampering and would operate within the FCC public health and safety standards. Lastly, conditions of approval have been included to minimize vegetation removal associated with installation of the equipment vault and require protection and replacement of surrounding vegetation in the event that the ground disturbance causes surrounding vegetation to subsequently die. As such, the project meets all of the development standard requirements and therefore no exemption is required from the decision-maker and this finding can be made.

2.2.5 *The applicant has demonstrated that the facility will be operated within the allowed frequency range permitted by the Federal Communications Commission and complies with all other applicable health and safety standards.*

The applicant submitted a projected emission report by Jerrold Bushberg, Ph.D., dated April 29, 2009, as a part of the project application for 09CDH-00000-00030.¹ The report concludes that RF exposure from the proposed telecommunications facility would be less than 0.3% of the applicable FCC public exposure limit at ground level (approximately 26 feet) and therefore the facility is well within the FCC's health and safety limits. Therefore this finding can be made.

2.3 Montecito Community Plan Overlay District Findings (Sec. 35-215)

2.3.1 *In addition to the findings that are required for approval of a development project (as development is defined in the Santa Barbara County Coastal Plan), as identified in each section of Division 11 - Permit Procedures of Article II, a finding shall also be made that the project meets all the applicable development standards included in the Montecito Community Plan of the Coastal Land Use Plan.*

The project has been designed to retain the semi-rural character of the Montecito Community by utilizing existing infrastructure and eliminating major components from public view by placing them in an underground vault. Additionally, the facility also complies with the Federal health and safety standards required and therefore the location of the facility does not require any additional setbacks or buffers. Therefore the proposed project would be in conformance with all applicable provisions of the Montecito Community Plan of the Coastal Land Use Plan and this finding can be made.

2.3.2 *For projects subject to discretionary review, a finding shall be made that the development will not adversely impact recreational facilities and uses.*

The proposed project is located in the public right-of-way on San Leandro Lane near its intersection with Tiburon Bay Lane, which is zoned residential (2-E-1). No parks or recreational facilities exist within the immediate vicinity of the proposed project, although a designated trail easement is located on San Leandro Lane. The proposed project has been designed to be minimally invasive by utilizing existing infrastructure and removing major components from public view by placing them in an underground vault. The vault would be installed at grade, and would not impede traffic or use of the right-of-way. Therefore this finding can be made.

2.4 Water and Other Public Services Findings (Sec. 35-60)

2.4.1 *Prior to issuance of a Coastal Development Permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and/or the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development.*

The proposed project consists of an unmanned wireless telecommunications facility. Construction and operation of the proposed facility would not require any water or sewer services. The antenna would be mounted on an existing operational utility pole in the public right of way along San Leandro Lane, to which access will be provided. Therefore this finding can be made.



COUNTY OF SANTA BARBARA

Planning and Development

COASTAL DEVELOPMENT PERMIT

Case No.: 09CDH-00000-00030

Project Name: NextG Networks Cellular Antenna #ESB18

Project Address: Public Right-of-Way on San Leandro Lane, Montecito

Assessor's Parcel No.: Adjacent to 007-300-006

Applicant Name: Sharon James, NextG Communications

The Planning and Development Department hereby approves this Coastal Development Permit for the development described below, based upon the required findings and subject to the attached terms and conditions.

Date of Approval: September 21, 2010

Associated Case Number(s): none

Project Description Summary: See attached.

Project Specific Conditions: See attached.

Permit Compliance Case: ☒ Yes ☐ No

Permit Compliance Case No.:

Appeals: The final action by the County on this Coastal Development Permit may be appealed to the California Coastal Commission after the appellant has exhausted all local appeals.

Terms of Permit Issuance:

- 1. Work Prohibited Prior to Permit Issuance.** No work, development, or use intended to be authorized pursuant to this approval shall commence prior to issuance of this Coastal Development Permit and/or any other required permit (e.g., Building Permit). **Warning! This is not a Building/Grading Permit.**
- 2. Date of Permit Issuance.** This Permit shall be deemed effective and issued on October 8, 2010 provided an appeal of this approval has not been filed with the California Coastal Commission and all prior to issuance conditions have been completed.
- 3. Time Limit.** The approval of this Coastal Development Permit shall be valid for one year from the date of approval. Failure to obtain a required construction, demolition, or grading permit and to lawfully commence development within two years of permit issuance shall render this Coastal Development Permit null and void.

NOTE: Approval and issuance of a Coastal Development Permit for this project does not allow construction or use outside of the project description, terms or conditions; nor shall it be construed to be an approval of a violation of any provision of any County Policy, Ordinance or other governmental regulation.

Owner/Applicant Acknowledgement: Undersigned permittee acknowledges receipt of this pending approval and agrees to abide by all terms and conditions thereof.

Heidi Payne [Signature] 9/27/10

Print Name

Signature

Date

Planning and Development Department Approval by:

Dianne M. Block Dianne M. Block 9/27/10
Print Name Signature Date

Planning and Development Department Issuance by:

Print Name Signature Date

ATTACHMENT A: PROJECT SPECIFIC CONDITIONS

1. This Coastal Development Permit is based upon and limited to compliance with the project description, the exhibits, and conditions of approval set forth below. Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project description is as follows:

The project is a request by the agent, Sharon James, for the applicant, NextG Networks of California, Inc., for a Coastal Development Permit to allow construction and use of an unmanned, telecommunications facility under provisions of County code zoning requirements for property zoned (2-E-1). The facility would be located adjacent to 1710 San Leandro Lane in the public right of way.

The applicant is proposing to construct an unmanned wireless facility that would include one 26-inch whip omni antenna. The antenna is omnidirectional and would be mounted on a bracket connected to an existing metal pole in the public right of way. The service wattage for the facility would have a maximum Effective Radiated Power (ERP) of 8 watts per channel. The antennas would be operating in the AWS bandwidth at 1710 – 2170 MHz with a maximum of 3 channels. The proposed facility would cover the intersection of San Leandro Lane and Tiburon Bay Lane with a range of approximately 1500 – 2000 feet in each direction, providing service for Metro PCS.

All equipment for the antenna would be located in an underground vault. The equipment vault would be approximately 3'x 5'x 3' and would be flush with the ground. In addition to the vault itself, two 2'x 4'x 3' air vents would also need to be installed on either side of the vault to provide necessary ventilation for the equipment. A foot of gravel base would also be installed around the vault to prevent sinking and ensure the vault remains level over time. The total footprint of the vault with gravel base and air vents combined would result in a ground disturbance and minor vegetation removal of a 4'x 14' area in the utility easement in the road right-of-way. The equipment would be serviced by Southern California Edison via a power pole connection through a connection handhole from existing utilities on an existing utility pole.

Access to the facility would be from the public road. The antenna would be painted brown to match the pole and the top of the vault would be painted brown to blend with the surrounding ground plane.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above, the referenced exhibits, and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved exhibits and conditions of approval hereto. All plans (such as Landscape and Tree Protection Plans) shall be implemented as approved by the County.

2. **Tel-03 Colors and Painting.** All exposed equipment and facilities (i.e., antennas, support structure, vaults, equipment cabinets, etc.) shall be finished in non-reflective materials (including painted surfaces) and antenna shall be painted gray to match the pole and the top of the vault painted brown to blend with the ground surface.
PLAN REQUIREMENTS: Color specifications shall be identified on plans prior to permit issuance.
MONITORING: P&D compliance monitoring staff shall conduct a Project Compliance Inspection to confirm color selection.
3. **Tel-05 Exterior Lighting.** Except as otherwise noted in the Project Description and development plans, the antenna support structure shall not be lighted. The leased premises shall likewise be unlit except for a manually operated light which limits lighting to the area of the equipment in the immediate vicinity of the antenna support structure. The manually operated light fixture shall be brought to the site as necessary to conduct repairs and shall be kept off except when maintenance personnel are actually present at night.
MONITORING: P&D compliance monitoring staff shall respond to any complaints.
4. **Tel-07 Vegetation Protection.** Existing vegetation should be preserved and protected to the maximum extent feasible throughout construction activities through the use of protective fencing. Underground lines serving the facility shall be routed to avoid damage to tree root systems and any trenching required within the dripline or sensitive root zone of any specimen tree shall be done by hand. Trees or shrubs which are significantly damaged or subsequently die as a result of construction activities shall be replaced with those of a comparable size, species and density as approved by P&D staff. Graded areas, including trench routes, shall be reseeded with matching plant composition.
TIMING: Fencing shall be installed prior to the pre-construction meeting, and shall be in place during all ground disturbance and construction activities.
MONITORING: P&D compliance monitoring staff shall confirm fencing installation at the pre-construction meeting.
5. **Spec-01 FCC Compliance.** The facility shall, at all times, be operated in strict conformance with: (i) all rules, regulations standards and guidance) published by the Federal Communications Commission ("FCC"), including but not limited to, safety signage, Maximum Permissible Exposure ("MPE") Limits, and any other similar requirements to ensure public protection or (ii) all other legally binding, more restrictive standards subsequently adopted by federal agencies having jurisdiction. Prior to the addition or replacement of equipment which has the potential to increase RF emissions at any public location beyond that estimated in the initial application and within the scope of the project description, the Permittee shall submit, to the Director, a report providing the calculation of predicted maximum effective radiated power including the new equipment as well as the maximum cumulative potential public RF exposure expressed as a percentage of the public MPE limit attributable to the site as a whole.
MONITORING: P&D staff shall review, or obtain a qualified professional to review, all RF field test reports and estimated maximum cumulative RF exposure reports providing calculations of predicted compliance with the public MPE standard. P&D staff shall monitor changes in RF standards, as well as equipment modifications, additions and RF exposures at the Project site as reported by the applicant that might trigger the requirement for field-testing.
6. **Tel-09 Project Review.** Five years after issuance of the Coastal Development Permit for the project and no more frequently than every five years thereafter, the Director of P&D may undertake inspection of the project and require the Permittee to modify its facilities subject to the following parameters:

- a. **Modification Criteria.** Modifications may be required if, at the time of inspection it is determined that: (i) the Project fails to achieve the intended purposes of the development standards listed in the Telecommunications Ordinance for reasons attributable to design or changes in environmental setting; or (ii) more effective means of ensuring aesthetic compatibility with surrounding uses become available as a result of subsequent technological advances or changes in circumstance from the time the Project was initially approved.
- b. **Modification Limits.** The Director's decision shall take into account the availability of new technology, capacity and coverage requirements of the Permittee, and new facilities installed in the vicinity of the site. The scope of modification, if required, may include, but not be limited to a reduction in antenna size and height, collocation at an alternate permitted site, and similar site and architectural design changes. However, the Permittee shall not be required to undertake changes that exceed ten percent (10%) of the total cost of facility construction. The decision of the Director as to modifications required herein shall be deemed final unless appealed in compliance with the provisions of the County Code.

TIMING: Applicant submitted valuation data supported by receipts shall be used for the purpose establishing the estimated cost of installing the facility. At the time of subsequent inspection and upon reasonable notice, the Permittee shall furnish supplemental documentation as necessary to evaluate new technology, capacity and coverage requirements of the Permittee.

MONITORING: P&D compliance monitoring staff shall conduct periodic inspections and ascertain whether more effective mitigation is available with regard to design and technology. In the event of violation, the permit shall be referred to Zoning Enforcement for abatement.

10. **Tel-10 Collocation.** The Permittee shall avail its facility and site to other telecommunication carriers and, in good faith, accommodate all reasonable requests for collocation in the future subject to the following parameters: (i) the party seeking the collocation shall be responsible for all facility modifications, environmental review, Mitigation Measures, associated costs and permit processing; (ii) the Permittee shall not be required to compromise the operational effectiveness of its facility or place its prior approval at risk; (iii) the Permittee shall make its facilities and site available for collocation on a non-discriminatory and equitable cost basis; and (iv) the County retains the right to verify that the use of the Permittee's facilities and site conforms to County policies.
11. **Tel-11 Transfer of Ownership.** In the event that the Permittee sells or transfers its interest in the telecommunications facility, the Permittee and/or succeeding carrier shall assume all responsibilities concerning the Project and shall be held responsible by the County for maintaining consistency with all conditions of approval. The succeeding carrier shall immediately notify the County and provide accurate contact and billing information to the County for remaining compliance work for the life of the facility.

PLAN REQUIREMENTS: The Permittee shall notify the County of changes in ownership to any or all of the telecommunications facility.

TIMING: Notification of changes in facility ownership shall be given by the Permittee and/or succeeding carrier to the County within 30 days of such change.
12. **Tel-12 Site Identification.** The Permittee shall clearly identify each piece of equipment installed at a site with the Permittee's name and site number to distinguish from other telecommunication carriers' equipment, including but not limited to: antennas, microwave dishes, equipment shelters, support poles, and cabinetry. The Permittee shall be responsible for clearly marking with permanent paint, tags, or other suitable identification all facility equipment belonging to the Permittee as stated on the site plans.

MONITORING: P&D permit processing planner shall check plans and P&D compliance monitoring staff shall conduct compliance inspections as needed to ensure permit compliance.

13. **Tel-13 Facility Maintenance.** The facility shall be maintained in a state of good condition at all times. This includes, but is not limited to: painting; landscaping; site identification; equipment repair; and keeping the facility clear of debris, trash, and graffiti.
14. **Tel-14 Road Encroachment Permit.** The Owner/Applicant shall obtain a road encroachment permit from the Roads Division (Public Works) prior to permit issuance.
15. **Tel-16 Abandonment-Revocation.** The Permittee shall remove all support structures, antennas, equipment and associated improvements and restore the site to its natural pre-construction state within one year of discontinuing use of the facility or upon permit revocation. Should the Permittee require more than one year to complete removal and restoration activities the Permittee shall apply for a one-time time extension. In the event the Owner requests that the facility or structures remain, the Owner must apply for necessary permits for those structures within one year of discontinued use. Compliance shall be governed by the following provisions:
 - a. The Permittee shall post a performance security at prior to permit issuance. The security shall equal 10 percent of the installation value of the facility as proven by the applicant to permit compliance staff. The performance security shall be retained until this condition is fully satisfied.
 - b. Prior to demolition of the facility, the Permittee shall submit a restoration plan of proposed abandonment to be reviewed and approved by a County approved biologist as necessary.
 - c. If use of the facility is discontinued for a period of more than one year and the facility is not removed the County may remove the facility at the Permittee's expense.
16. **Bio-01c Tree Protection Plan-Unexpected Damage and Mitigation.** In the event of unexpected damage or removal, this condition shall include but is not limited to posting of a performance security and hiring an outside consulting biologist or arborist to assess damage and recommend mitigation. The required condition shall be done under the direction of P&D prior to any further work occurring on site. Any performance securities required for installation and maintenance of replacement trees will be released by P&D after its inspection and approval of such installation and maintenance.

Damaged trees shall be mitigated on a minimum 3:1 ratio. If it becomes necessary to remove a tree not planned for removal, if feasible, the tree shall be boxed and replanted. If a P&D approved arborist certifies that it is not feasible to replant the tree, it shall be replaced on a 3:1 basis with trees with 10-gallon or larger size saplings grown from locally obtained seed. If replacement trees cannot all be accommodated on site, a plan must be approved by P&D for replacement trees to be planted off site.

17. **Bio-03 Arborist Report Requirement.** The Owner/Applicant shall hire a P&D-approved arborist/biologist to evaluate all proposed native tree and shrub removals within 25 ft of potential ground disturbances. The arborist/biologist report shall present biologically favorable options for access roads, utilities, drainages and structure placement taking into account native tree and shrub species, age, and health with preservation emphasized. All development and potential ground disturbances shall be designed to avoid the maximum number of natives possible.

PLAN REQUIREMENTS: The Owner/Applicant shall submit the above report to P&D for review and approval.

TIMING: The Owner/Applicant shall submit the above report prior to permit issuance. Recommendations in the report shall be incorporated into the project prior to construction.

MONITORING: P&D processing planner shall check all plans for incorporation of recommendations and P&D compliance monitoring staff shall site inspect as appropriate.

18. **CulRes-09 Stop Work at Encounter.** The Owner/Applicant and/or their agents, representatives or contractors shall stop or redirect work immediately in the event archaeological remains are encountered during grading, construction, landscaping or other construction-related activity. The Owner/Applicant shall retain a P&D approved archaeologist and Native American representative to evaluate the significance of the find in compliance with the provisions of Phase 2 investigations of the County Archaeological Guidelines and funded by the Owner/Applicant.
PLAN REQUIREMENTS: This condition shall be printed on plans prior to permit issuance.
MONITORING: P&D compliance monitoring staff shall spot check in the field throughout grading and construction.
19. **Spec-02 Archeological Discovery.** If human remains are discovered during the project the specific protocol, guidelines and channels of communication outlined by the Native American Heritage Commission (NAHC), and in accordance with Section 7050.5 of the Health and Safety Code, Section 5097.98 of the Public Resources Code (Chapter 1492, Statutes of 1982, Senate Bill 297), and SB 447 (Chapter 44, Statutes of 1987) shall be followed. Section 7050.5 (c) shall guide the potential Native American involvement, in the event of discovery of human remains, at the direction of the County Coroner. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she will contact the NAHC by telephone within 24 hours.
PLAN REQUIREMENTS AND TIMING: This condition shall be printed on plans prior to permit issuance.
MONITORING: Permit Compliance, P&D staff and/or Grading and Building Inspectors shall conduct spot checks in the field and shall ensure compliance with this condition.
20. **Noise-02 Construction Hours.** The Owner /Applicant, including all contractors and subcontractors shall limit construction activity, including equipment maintenance and site preparation, to the hours between 7:00 a.m. and 4:00 p.m., Monday through Friday. No construction shall occur on weekends or State holidays. Non-noise generating construction activities such as interior plumbing, electrical, drywall and painting (depending on compressor noise levels) are not subject to these restrictions. Any subsequent amendment to the Comprehensive General Plan, applicable Community or Specific Plan, or Zoning Code noise standard upon which these construction hours are based shall supersede the hours stated herein.
PLAN REQUIREMENTS: The Owner/Applicant shall provide and post one sign stating these restrictions at the construction site.
TIMING: Signs shall be posted prior to commencement of construction and maintained throughout construction.
MONITORING: The Owner/Applicant shall demonstrate that required signs are posted prior to grading the pre-construction meeting. Permit compliance staff shall spot check and respond to complaints.
21. **Spec-03 Traffic Control.** On all roads on which work would occur, including but not limited to San Leandro Lane, at a minimum one lane shall remain open and passable for vehicles, pedestrians and bicyclists at all times for the duration of the project. Any proposed change to this condition shall require review and approval by both P&D and the Santa Barbara County Roads Division.
PLAN REQUIREMENTS AND TIMING: Prior to the commencement of construction, the applicant shall provide the name and contact information of the general contractor or designee thereof who shall be available and responsible for rectifying any violation of this condition as directed by P&D and/or the Roads Division.

MONITORING: Permit Compliance staff shall conduct spot checks and ensure compliance with this condition and shall respond to complaints.

22. **WatCons-05 Reclaimed Water For Dust Suppression.** Reclaimed water shall be used for all dust suppression activities during grading and construction.

TIMING: Prior to the commencement of earth movement, the Owner/Applicant shall submit to P&D permit processing planner an agreement/contract with a company providing reclaimed water stating that reclaimed water shall be supplied to the project site during all ground disturbances when dust suppression is required.

MONITORING: P&D compliance monitoring staff shall inspect activities in the field to ensure non-potable water is being used in water trucks.

23. **Spec-04 Erosion Control.** The following measures shall be implemented to reduce erosion from construction activities, to prevent sediment in storm water discharges, and to minimize non-storm water pollutants at the project site.

- a. Temporary stockpiles at the project site shall be protected from erosion by the combined use of surface stabilization, upslope runoff diversions, temporary berms around the perimeter, perimeter interceptor ditches, and temporary downstream catchments, as necessary and appropriate and/or as directed by P&D staff and grading and building inspectors. If stockpiles are present during the rainy season (designated the following period for this project: November 15 to April 1) they shall be protected from erosion due to direct precipitation or runoff during the winter by the use of surface stabilization (such as erosion control blankets or temporary seed cover).
- b. BMPs to prevent discharge of construction materials, contaminants, washings, concrete, fuels, and oils shall include the following measures:
 - 1) Vehicles and equipment shall be maintained properly to prevent leakage of hydrocarbons and other fluids, and shall be examined for leaks on a daily basis. All maintenance shall occur in designated offsite areas, which shall include spill containment devices and absorbent materials to clean up spills.
 - 2) Any accidental spill of hydrocarbons or other fluids that may occur at the work site shall be cleaned immediately. Spill containment devices and absorbent materials shall be maintained on the work site for this purpose.
 - 3) All fuel, lubricants, paints and other construction liquids shall be stored in secured and covered containers within a bermed or otherwise contained area at least 100 feet from any creek, drainage or waterbody.
 - 4) All refueling of vehicles and heavy equipment shall occur only within designated refueling areas located at least 200 feet from any creek, drainage or waterbody. All refueling locations shall be contained with an impervious material surrounded by an earthen berm. Designated refueling areas shall include spill containment devices (e.g. drain pans) and absorbent materials to clean up spills.
 - 5) Equipment washing and major maintenance is prohibited at the project site, except for washdown of vehicles to remove dirt only.

- 6) Waste and debris generated during construction shall be stored in designated waste collection areas and containers away from drainage features, and shall be disposed of regularly.
- 7) If visual or aromatic evidence suggests contamination during dewatering activities, discharge shall stop until an appropriate collection and disposal system for the discharge has been developed and appropriately implemented.
- 8) Convenient portable sanitary/septic facilities shall be provided during construction activities. These facilities shall be well maintained and serviced, and wastes shall be treated and disposed of in accordance with State and local requirements.

MONITORING: Permit Compliance staff shall conduct inspections of BMPs throughout grading and construction and shall ensure compliance with this condition.

24. Air-01 Dust Control. The Owner/Applicant shall comply with the following dust control components at all times including weekends and holidays:

- a. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site.
- b. During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, use water trucks or sprinkler systems to prevent dust from leaving the site and to create a crust after each day's activities cease.
- c. During construction, use water trucks or sprinkler systems to keep all areas of vehicle movement damp enough to prevent dust from leaving the site.
- d. Wet down the construction area after work is completed for the day and whenever wind exceeds 15 mph.
- e. When wind exceeds 15 mph, have site watered at least once each day including weekends and/or holidays.
- f. Order increased watering as necessary to prevent transport of dust off-site.
- g. Cover soil stockpiled for more than two days or treat with soil binders to prevent dust generation. Reapply as needed.
- h. If the site is graded and left undeveloped for over four weeks, the Owner/Applicant shall immediately:
 - i. Seed and water to re-vegetate graded areas; and/or
 - ii. Spread soil binders; and/or
 - iii. Employ any other method(s) deemed appropriate by P&D or APCD.

PRE-CONSTRUCTION REQUIREMENTS: The contractor or builder shall provide P&D monitoring staff and APCD with the name and contact information for an assigned onsite dust control monitor(s) who has the responsibility to:

- a. Assure all dust control requirements are complied with including those covering weekends and holidays.
- b. Order increased watering as necessary to prevent transport of dust offsite.
- c. Attend the pre-construction meeting.

TIMING: The dust monitor shall be designated prior to permit issuance. The dust control components apply from the beginning of any grading or construction throughout all development activities.

MONITORING: APCD inspectors shall respond to nuisance complaints.

25. Rules-03 Additional Permits Required. The use and/or construction of any structures or improvements authorized by this approval shall not commence until the all necessary planning and building permits are obtained. Before any Permit will be issued by Planning and Development, the

Owner/Applicant must obtain written clearance from all departments having conditions; such clearance shall indicate that the Owner/Applicant has satisfied all pre-construction conditions. A form for such clearance is available from Planning and Development.

26. **Rules-05 Acceptance of Conditions.** The Owner/Applicant's acceptance of this permit and/or commencement of use, construction and/or operations under this permit shall be deemed acceptance of all conditions of this permit by the Owner/Applicant.
27. **Rules-10 CDP Expiration-No CUP or DVP.** A Coastal Development Permit shall expire two years from the date of issuance if the use, building or structure for which the permit was issued has not been established or commenced in conformance with the effective permit. Prior to the expiration of such two year period the Director may extend such period one time for one year for good cause shown, provided that the findings for approval required in compliance with Section 35-169.5, as applicable, can still be made.
28. **Rules-31 Monitoring Required.** The Owner/Applicant shall ensure that the project complies with all approved plans and all project conditions including those which must be monitored after the project is built and occupied. To accomplish this, the Owner/Applicant shall:
 - a. Contact P&D compliance staff as soon as possible after project approval to provide the name and phone number of the future contact person for the project and give estimated dates for future project activities;
 - b. Pay a deposit fee of **\$500.00** prior to permit issuance as authorized by ordinance and fee schedules to cover full costs of monitoring as described above, including costs for P&D to hire and manage outside consultants when deemed necessary by P&D staff (e.g. non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance. In such cases, the Owner/Applicant shall comply with P&D recommendations to bring the project into compliance. The decision of the Director of P&D shall be final in the event of a dispute;
 - c. Contact P&D compliance staff at least two weeks prior to commencement of construction activities to schedule an on-site pre-construction meeting to be led by P&D Compliance Monitoring staff and attended by all parties deemed necessary by P&D, including the permit issuing planner, grading and/or building inspectors, other agency staff, and key construction personnel: contractors, sub-contractors and contracted monitors among others.
29. **Rules-32 Contractor and Subcontractor Notification.** The Owner/Applicant shall ensure that potential contractors are aware of County requirements. Owner / Applicant shall notify all contractors and subcontractors in writing of the site rules, restrictions, and Conditions of Approval and submit a copy of the notice to P&D compliance monitoring staff.
30. **Rules-23 Fees Required.** Prior to permit issuance, the applicant shall pay all applicable P&D permit processing fees in full.
31. **Spec-05 Change of Use.** Any change of use in the proposed building or structure shall be subject to environmental analysis and appropriate review by the County including building code compliance.
32. **Rules-33 Indemnity and Separation.** The Owner/Applicant shall defend, indemnify and hold harmless the County or its agents or officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of this project. In the event that the County fails promptly to notify

the Owner / Applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

33. **Rules-34 Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought in the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the review authority and no approval shall be issued unless substitute feasible conditions/measures are imposed.
34. **Rules-37 Time Extensions-All Projects.** The Owner / Applicant may request a time extension prior to the expiration of the permit or entitlement for development. The review authority with jurisdiction over the project may, upon good cause shown, grant a time extension in compliance with County rules and regulations, which include reflecting changed circumstances and ensuring compliance with CEQA. If the Owner / Applicant requests a time extension for this permit, the permit may be revised to include updated language to standard conditions and/or mitigation measures and additional conditions and/or mitigation measures which reflect changed circumstances or additional identified project impacts.
35. **Spec-06 Excess Cabling and Equipment Removal.** All excess cable and equipment shall be tightened or otherwise removed to eliminate coils along the fiber optic cabling lines.
TIMING: Excess cabling and equipment shall be removed upon installation of the facility.
MONITORING: P&D compliance monitoring staff shall confirm excess cabling and equipment removal prior to compliance construction signoff.
36. **Spec-07 Vegetative Screening.** Vegetative screening shall be installed around the equipment vault as feasible to minimize the vault appearance and blend the facility with the existing ground plane. Vegetation species should be consistent with the surrounding area and shall be reviewed and approved by Roads Division (Public Works) prior to installation.
TIMING: Vegetative screening shall be installed after construction of the facility.
MONITORING: P&D compliance monitoring staff shall confirm installation of vegetation prior to compliance construction signoff.



County of Santa Barbara
BOARD OF SUPERVISORS

Minute Order

September 21, 2010

Present: 5 - Supervisor Carbajal, Supervisor Wolf, Supervisor Farr, Supervisor Gray,
and Supervisor Centeno

PLANNING AND DEVELOPMENT

File Reference No. 10-00663

RE: HEARING - Consider recommendations regarding the NextG appeal of the Montecito Planning Commission's February 24, 2010 denial of the NextG Cellular Antenna ESB18 permit, Case No. 09CDH-00000-00030 located in the public right of way of San Leandro Lane at its intersection with San Ysidro Road (adjacent to APN 007-300-006) in Montecito, First District, as follows: (EST. TIME: 24 MIN.)

- a) Deny the appeal, Case No. 10APL-00000-00009, thereby upholding the Montecito Planning Commission's approval of 09CDH-00000-00030;
- b) Make the required findings for approval of Case No. 09CDH-00000-00030;
- c) Accept the exemptions to CEQA described in the Notices of Exemption prepared and adopted by the Public Utilities Commission, the lead agency, as adequate for this project pursuant to sections 15061(b)(3), 15301(b), 15301(c), 15302(c), 15303, and 15304(f) of the CEQA Guidelines; and
- d) Grant de novo approval of Case No. 09CDH-00000-00030 as revised, subject to the conditions of approval of the permit.

COUNTY EXECUTIVE OFFICER'S RECOMMENDATION: POLICY

HEARING TIME: 1:30 P.M. - 3:00 P.M. (90 MIN.)

Received and filed staff presentation and conducted public hearing.

A motion was made by Supervisor Carbajal, seconded by Supervisor Centeno, that this matter be Acted on as follows:

- a) Upheld appeal of Case No. 10APL-00000-00009, overturning the Montecito Planning Commission's denial of 09CDP-00000-00030;
- b) Approved the required findings for approval of the permit;
- c) Accepted the exemptions to CEQA described in the Notices of Exemptions; and
- d) Granted de novo approval of Case No. 09CDP-00000-00030 as revised for underground vaulting of support equipment, subject to the conditions of the approval of the permit.

Directed staff to include requirements to:

- 1) remove remaining excess wire coils where already in place on some sites; and
- 2) vegetation to be installed, where feasible, to shield vaulting.
- 3) use color to camouflage vault surface.

Further directed staff to return as appropriate with draft language to revise current County Telecommunications Ordinance regarding issues of conditional approval, BAR participation and additional concerns outlined in previous direction from the Board.

The motion carried by the following vote:

Ayes: 5 - Supervisor Carbajal, Supervisor Wolf, Supervisor Farr, Supervisor Gray,
 and Supervisor Centeno