

ATTACHMENT 2

SANTA BARBARA MONTECITO PLANNING COMMISSION

**Staff Report for the Appeal of
NextG Networks Cellular Antenna #ESB03**

Hearing Date: January 27, 2010
Staff Report Date: January 8, 2010
Case No.: 10APL-00000-00001

Deputy Director: Dave Ward
Division: Development Review South
Supervising Planner: Anne Almy
Supervising Planner Phone #: 568-2053
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Environmental Document: Exempt Pursuant to CEQA Guidelines Sections 1506b3, 15301b, 15301c, 15302c and 15304f

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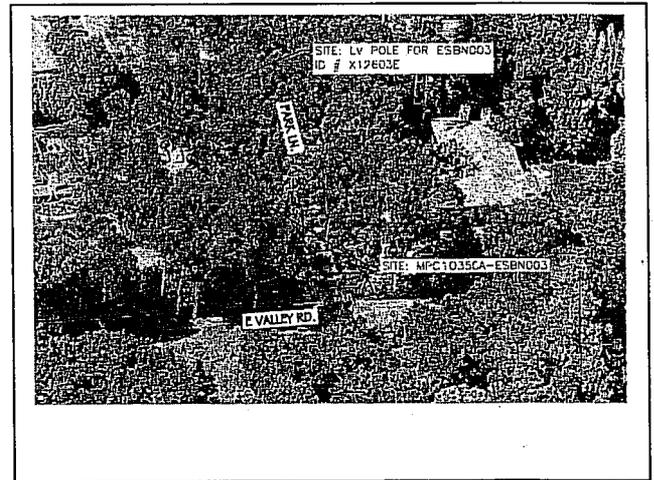
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This site is identified as a utility pole in the public right of way on Park Lane adjacent to Assessor Parcel Number 007-120-013, Montecito, 1st Supervisorial District.

Application Filed: September 14, 2009
Permit Approved: January 6, 2010
Appeal Filed: January 13, 2010

1.0 REQUEST

Hearing on the request of Susan Basham of Price, Postel and Parma LLP, on behalf of named appellants, [appeal filed on January 13, 2010] to consider the Appeal 10APL-00000-00001 of the Director's decision to approve 09LUP-00000-00381, in compliance with Chapter 35.492 of the Montecito Land Use and Development Code on property located in the 2-E-1 zone; and acknowledge that 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 California Environmental Quality Act sections 15061(b)(3), 15301(b), 15301(c), 15302(c), and 15304(f). The application involves the public right-of-way adjacent to AP No. 007-120-013, located on Park Lane in the Montecito area, First Supervisorial District.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and deny the Appeal, Case No. 10APL-00000-00001, and approve the project, Case No. 09LUP-00000-00381 marked "Officially Accepted, County of Santa Barbara January 27, 2010 Montecito Planning Commission Attachment B", based upon the project's consistency with the Comprehensive Plan, including the Montecito Community Plan, and based on the ability to make the required findings.

Your Commission's motion should include the following:

1. Make the required findings for the project specified in Attachment A of this staff report, including CEQA findings.
2. Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 1506b3, 15301b, 15301c, 15302c and 15304f of the CEQA Guidelines included as Attachment C.
3. Approve the project subject to the conditions included as Attachment B.

Alternatively, refer back to staff if the Montecito Planning Commission takes other than the recommended action for appropriate findings and conditions.

3.0 JURISDICTION

3.1 Appeal Jurisdiction

This project is being considered by the Montecito Planning Commission based on Section 35.492.040.A of Montecito Land Use and Development Code which states that "Any decision of the Director to approve, conditionally approve or deny an application for a Coastal Development Permit or Land Use Permit," (with the exception of permits for temporary uses), "may be appealed to the Montecito Commission provided the appeal complies with the requirements of Subsection 35.492.020.C through Subsection 35.492.020.E."

3.2 Jurisdictional Limitations

Santa Barbara County's jurisdictional authority, and therefore your Commission's authority, in regulating telecommunications facilities is restricted by Federal law, namely the Telecommunications Act of 1996, which sets the framework for a local agency's regulatory authority.

The Federal Telecommunications Act of 1996 amended the Communications Act of 1932 to establish federal regulatory authority over the deployment of telecommunications facilities across the nation. The Federal Act set health and safety emissions thresholds and specifically restricted the regulatory treatment of telecommunications facilities by local agencies (i.e. cities and counties) in that regard.

The Federal Telecommunications Act preempts local authorities from prohibiting any telecommunications service, stating "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." (47 U.S.C.A. § 253 (b).)

However, the Federal Telecommunications Act acknowledges that although local authorities may not prohibit telecommunications facilities, their general local zoning authority is preserved "over decisions regarding placement, construction, and modification of personal wireless service facilities," (47 U.S.C.A. § 332 (c)(7)) within certain limitations.

Although the County can influence siting and design of personal wireless service facilities, there are limitations as to the County's authority to regulate such facilities. Specifically, the purview of local agencies to apply zoning requirements is limited by the Federal Telecommunications Act as follows:

"LIMITATIONS.--

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." (47 U.S.C.A. § 332 (c)(7)(B).)

These limitations not only ensure due process for wireless applications but they ensure each carrier's rights to exercise their FCC licenses and provide full coverage to their network areas. In fact, denying a carrier the ability to provide full coverage may constitute as a "prohibition" of wireless services with these limitations. In the *MetroPCS Inc. v. City & County of San Francisco* case in 2005, the Ninth Circuit determined that "[A] locality can run afoul of the Telecommunications Act 'effective prohibition' clause if it prevents a wire-less provider from closing a 'significant gap' in service coverage." Should a local agency deny a facility, and the applicant (carrier) challenges the denial, the applicant must show that they 1) are prevented from filling a significant gap in their own service coverage; and 2) their proposed way to fill that significant gap is the "least intrusive means." If the applicant makes the above showing, the County, not the carrier, must then show "[S]ome potentially available and technologically feasible alternative sites;" which "close the gap" in coverage.

3.3 Federal "Shot Clock" Ruling November 18, 2009

On July 11, 2008, CTIA – The Wireless Association® filed a petition requesting that the Federal Communications Commission issue a Declaratory Ruling, concerning provisions in 47 U.S.C. Sections 253 and 332(c)(7), regarding state and local review of wireless facility siting applications. On November 18, 2009, the Federal Communications Commission adopted and released its Declaratory Ruling in that matter, WT Docket No. 08-165.

Briefly addressing arguments that the FCC should deny CTIA's petition because of health hazards that commenters attributed to radiofrequency emissions, the Declaratory Ruling stated,

...To the extent commenters argue that State and local governments require flexibility to deny personal wireless service facility siting applications or delay action on such applications based on the perceived health effects of RF emissions, this authority is denied by statute under Section 332(c)(7)(B)(iv). Accordingly, such arguments are outside the scope of this proceeding.

The first major part of the Declaratory Ruling defines what is a presumptively “reasonable time” beyond which a local jurisdiction’s inaction on a siting application constitutes a prohibited “failure to act” under 47 U.S.C. Section 332(c)(7). The FCC found that a “reasonable period of time” is, presumptively:

- 90 days to process personal wireless service facility siting applications requesting collocations; and
- 150 days to process all other applications.

Accordingly, if state or local governments do not act upon applications within those timeframes, then a prohibited “failure to act” has occurred and personal wireless service providers may seek redress in court within 30 days, as provided in 47 U.S.C. Section 332(c)(7)(B)(v). The state or local government, however, would have the opportunity to rebut the presumption of reasonableness.

Within the first major part of the Declaratory Ruling, the FCC also adopted a general rule for currently pending applications that a “failure to act” will occur 90 days (for collocations) or 150 days (for other applications) after the November 18th release of the Declaratory Ruling. But, a party whose application already has been pending for the newly-established timeframes, or longer, as of the release date of the Declaratory Ruling, may, after providing notice to the relevant State or local government, file suit under Section 332(c)(7)(B)(v) if the State or local government fails to act within 60 days from the date of that notice.

The second major part of the Declaratory Ruling concluded that a state or local government violates 47 U.S.C. Section 332(c)(7)(B)(i)(II) if they deny a personal wireless service facility siting application solely because that service is available from another provider.

The third major part of the Declaratory Ruling denied CTIA’s request for preemption of ordinances that impose blanket variance requirements on the siting of wireless facilities. The Declaratory Ruling stated, “CTIA does not present us with sufficient information or evidence of a specific controversy on which to base such action or ruling,” and concluded that any further consideration of blanket variance ordinances should occur within the context of specific cases.

3.4 Exposure Limits Routine Evaluation Preemption

The County's regulatory authority over routine evaluation measurements for compliance with FCC standards, as expressed in current ordinance, is preempted. Although local agencies up until this point have held that there is flexibility in applying RF emissions compliance requirements to permits for telecommunications facilities in the interest of protecting citizens from health hazards, the recent FCC Declaratory Ruling on November 18, 2009 (discussed above) reiterated the preemption of local authorities stating:

"Radiofrequency (RF) Emissions. Several commenters argue that we should deny CITA's Petition in order to protect local citizens against the health hazards that these commenters attribute to RF emissions. Section 332(c)(7)(B)(iv) of the Act provides that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." To the extent commenters argue that State and local governments require flexibility to deny personal wireless service facility siting applications or delay action on such applications based on the perceived health effects of RF emissions, this authority is denied by statute under Section 332(c)(7)(B)(iv)."

Furthermore, Section 1.1307(b)(1) of the Code of Federal Regulations (CFR) categorically exempts certain facilities from such evaluations and explicitly states "a determination of compliance with the exposure limits in §1.1310 or §2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section." (Emphasis added.)

The proposed NextG facility operates within the PCS bandwidth between 1710-2155 MHz, with a Maximum Effective Radiated Power of 48.6 W, and therefore does not qualify under "table 1" as a facility requiring evaluation nor under paragraph (b)(2). Therefore Condition No. 8 ("Continued Verification") of the subject permit is not applicable to the proposed project. Staff recommends, as reflected in the recommended actions under Section 2.0 of this staff report, the conditions of approval be amended as follows:

"8. 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. Compliance shall be governed by the following provisions:*

- a. **Initial Verification.** *The Permittee shall hire a qualified professional acceptable to the County (wholly independent of the Permittee), to perform radio frequency ("RF") field*

test that measures actual RF electromagnetic exposure at the Project site. This RF field-testing shall measure all ambient sources of RF energy at the site and report the cumulative RF exposure which includes contributions from the site together with other sources of RF energy in the environment as a whole. The measurements shall be made by the responsible professional who will author the report to the County. This report of the measurement results and the author's/professional's findings with respect to compliance with federally established MPE standards shall be submitted to the County within 30 days of the Final Building Inspection Clearance. The Permittee shall pay for the cost of undertaking the field measurements and preparing the report. The facility shall cease and desist commercial operations until it complies with, or has been modified to comply with, applicable RF standards.

b. ~~**Continued Verification.** Every five years the Permittee shall hire a qualified professional acceptable to the County to perform RF field testing (as described in section "a" above) to evaluate compliance with current federally established MPE standards. In the event the adopted RF standards change, the Permittee shall submit a report with calculations of the maximum potential public RF exposure from the Project with respect to the revised RF public exposure standards, within 90 days of the date said change becomes effective. If calculated levels exceed eighty percent (80%) of the applicable RF standards, the Permittee shall notify the County and submit a MPE compliance verification report with the results from current RF field testing, (as described in section one above), at the site. The Permittee shall pay for the cost of preparing the reports. However, for joint carrier sites, cumulative reporting may be delegated to one carrier upon the agreement of all carriers at the site. Procedures, penalties and remedies for non compliance (or alleged non-compliance) with these reporting requirements shall be governed by the provisions of the Telecommunications Ordinance and the FCC regulations.~~

c. **Equipment Addition and Replacement.** 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. Once the new equipment has been installed, the Permittee shall perform Initial Verification as stated in "a" above.

Plan Requirements: The Permittee shall restate the provisions for MPE compliance on all building plans. **Timing:** Initial verification of compliance with RF public MPE standards shall be accomplished not later than 30 days following the Final Building Inspection Clearance. ~~Continued verification of compliance with MPE requirements shall be accomplished by RF field test reports, (as described in section one above), submitted by the applicant, at a minimum of every five years following initial verification.~~ **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 at intervening times between regular test periods.

Should your Commission deny the appeal and uphold the permit, your action should reflect this change by approving the permit as amended, in Attachment B.

3.5 Permitting Framework – Santa Barbara County Telecommunications Program

The County Telecommunications Ordinance provides for a four tiered permitting system that requires: ministerial permits (staff level review) for small unobtrusive facilities; Director review (discretionary) for more visible facilities; and Zoning Administrator or Planning Commission review (discretionary) for larger, more complex projects. The theory behind this approach is that the review process for minor projects would be minimized and streamlined while still providing a higher level of review of larger projects. That is, as the size and complexity of the facility and potential for environmental impacts or policy inconsistencies increased, the decision-making body shifted upward (e.g., from the Director to the Zoning Administrator).

Project Level Tier	Zones Where Allowed	Permit Requirements	Review Authority
Tier 1 Project (Small antenna installed on an existing utility pole)	All zones	Coastal Development Permit or Land Use Permit	Staff
Tier 1 Project (Antennas entirely concealed within an existing structure)	Nonresidential zones	Coastal Development Permit or Land Use Permit	Staff
Tier 2 Project (Tenant improvements and architectural projections)	Nonresidential zones	Development Plan approved by the Director	Director
Tier 2 Project (Additions to existing structures or New structure within height limit)	Nonresidential zones, except not allowed in the Recreation (REC) zone	Development Plan approved by the Director	Director
Tier 3 Project (New structure exceeding height limit but not to exceed 50 ft.)	Nonresidential zones, except not allowed in the Recreation (REC) zone	Minor Conditional Use Permit	Zoning Administrator
Tier 4 Project (All others)	All zones	Conditional Use Permit	Planning Commission

The County’s tiered permit process, shown in the chart above, allows for “very small facilities” more commonly known as Distributed Antenna Systems (DAS) in all zone districts, including residential, under the Tier 1 processing requirements. The intention of this provision is to encourage only small facilities in residential areas to the extent feasible, as opposed to the larger new tower sites, allowed in other zone districts.

4.0 APPEAL ISSUE SUMMARY

The appeal group consists of nine individuals in addition to the Montecito Association, all represented by Susan Basham of Price, Postel & Parma LLC. The grounds for appeal are specified in Section III of the appellants' letter, authored by Susan Basham on behalf of the appellant group, and are organized in subsections A – F below. Staff will address the points of contention identified in each of the sections below. Please see Attachment E for a complete copy of the appeal application and letter, dated December 14, 2009.

A. "The Facilities Approved by this Permit Do Not Merit Approval under the County's Commercial Telecommunications Facilities Ordinance"

In this section the appellants contend that "P&D abused its discretion in processing each of the individual permit applications as a Tier 1 project requiring only 'ministerial' review when, viewed as a Distributed Antenna System in which all of the facilities are inter-dependent, they clearly require a higher level of review under the MLUDC and the California Environmental Quality Act (CEQA)." The appellants also contend that P&D has not made the required Land Use Permit findings (MLUDC 35.472.110.E) nor the additional required findings for telecommunications facilities (MLUDC 35.444.010.G) necessary to approved said permit.

Staff agrees that the "project" under CEQA requires environmental review of all of the components of the Distributed Antennas System network across the South Coast. Consistent with this, the entirety of the network was reviewed as a whole project under CEQA by the California Public Utilities Commission (CPUC), who assumed the lead agency status for purposes of CEQA. On July 20, 2009, the CPUC found the entirety of the "project" exempt under guidelines sections 15061, 15301b, 15301c, 15302c and 15304f, including all antenna installations, equipment installations, aerial cabling and trenching for the network throughout the South Coast of Santa Barbara County (including the cities of Goleta, Santa Barbara, and Carpinteria).

However, with respect to of the County's Montecito Land Use Development Code (MLUDC) permit requirements, the proposal could fall within either of two different permit routes: individual Tier 1 ministerial permits per antenna installation, or a network Tier 4 permit for all antennas. Section 35.444.010.C.1 of the Montecito LUDC specifically allows for "small facilities" mounted on existing utility poles, such as the antennas proposed as part of this Distributed Antenna System, to be permitted under Tier 1 ministerial permits. This tier was specifically created to encourage such installations, since they are small in nature, utilize existing infrastructure and therefore have minimal, if any, potential for environmental impacts (personal communication, Noel Langle October 10, 2009). The consideration of these types of networks intrinsically assumes that multiple antennas are needed to provide licensed coverage. Permitting the network under this tier imposes limitations in respect to size restrictions, and design requirements. The second option, also allowed by the ordinance Section 35.444.010.C.4, would have

been to apply for a Tier 4 permit for the entirety of the network within the County's jurisdiction. Due to the cross-jurisdictional components, with some sites in coastal areas and others in inland, and some in the Montecito Planning Commission's purview and others within the County purview, multiple permits would also be necessary under this option. Ultimately, the permit path determination was left to the applicant, as both options are permitted under the MLUDC.

Tier 1 ministerial permits are subject to required zoning ordinance development findings, including both Land Use Permit findings as well as additional telecommunications facility findings. These findings are articulated in Attachment A of this staff report. The proposed project meets all required standards, and all applicable findings can be made.

B. "Health Risks Associated with Electromagnetic Frequency Exposures Are A Legitimate Community Concern"

In this section the appellants contend that "P&D abused its discretion when it approved the subject permit without adequate regard for the aesthetic and safety impacts resulting from the placement of facilities in the proposed project, which are well within the County's authority to regulate" noting that the Telecommunications Act "preserves local zoning authority over the decisions regarding the placement, construction and modification of personal wireless service device facilities."

The Telecommunications Act does indeed preserve local authority over placement, construction and modification of such facilities; however it does so with specific limitations. Namely, the limitation that "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." (47 U.S.C.A. § 332 (c)(7)(B)iv.) However, as stated, local agencies can ensure that a facility complies with the FCC's regulations. The County required NextG to submit a report assessing the proposed project's emissions and compliance with applicable safety limits. The report confirmed that the proposed facility would operate well below the applicable FCC safety limits (specifically at 0.3% of the Maximum Permissible Exposure limit at 26 ft. from the antenna). Therefore the County cannot regulate on this basis.

C. "The County's Police Power Includes Regulations of Land Uses Based upon Aesthetic Impacts"

Although recent court cases¹ have challenged a local jurisdiction's authority to regulate cellular facilities on the basis of aesthetics, it is staff's understanding at this time that

¹ *Sprint v. County of San Diego*

aesthetics and assessing visual impacts of cellular facilities is within the County's purview. All telecommunications facility projects are reviewed for visual impacts and compliance with the County's telecommunications design requirements and development standards. The subject project constituting one 26-inch whip antenna and one 6"l x6"w x2'h utility box, both painted brown to blend with the utility pole, was determined by P&D to not have a significant visual impact as it meets the "small facility" criteria, is mounted on an existing utility pole and does not require the construction of a new freestanding support structure or the addition of large equipment components. The utility box is not as wide as the pole and therefore would not protrude visually in an intrusive way.

D. "Approval of the Permit is Contrary to the Montecito Community's Goals and Undermines the Character of the Community"

In this section the appellants contend that the proposed project is so "unsightly" and "aesthetically unacceptable" that the project "contradicts...community goals, and undermines the community's effort to preserve its semi-rural character." Therefore the appellants hold that P&D failed to make the required findings for approval of the permit, namely those relating to compatibility with the character of the area, as well as requirements to underground support facilities.

The permit is subject to required findings, including both Land Use Permit findings, as well as additional telecommunications facility ordinance findings that require consideration of compatibility with the character of the area. These findings are included in Attachment A of this staff report. The proposed project meets all required standards and all applicable findings can be made. As previously discussed, P&D found the project to be compatible the character of the area; the proposed design is arguably one of the least intrusive facility designs in comparison to typical wireless communication facilities installed by other carriers and is intended to recede visually due to its de minimus presence along the street.

The County recognizes that while telecommunications facilities are, intrinsically, aesthetically undesirable, they serve a utility function that transcends commercial areas and travel corridors. There is an ever-growing reliance on cell phones for safety needs during times of emergencies and natural disasters. In residential areas, land lines are becoming more and more obsolete as people use cell phones as their primary (or only) phone, thus increasing the areas in which carriers are needing to provide coverage. Additionally, with increasing numbers of cell phone users and other personal communications devices (i.e. PDA, Blackberry, Smart-phones), capacity needs have also greatly increased. As a result, cellular carriers are now applying for facilities located in the residential areas to provide the needed coverage. This in turn, requires the utilitarian technology to "blend" with the character of the community to the extent feasible. The facilities never cease to be utilitarian in design therefore the extent to which they "blend"

is limited by the constraints of the technology. The County has found acceptable solutions to include painting the equipment a color that coincides with the surrounding environment; incorporate landscaping; utilize existing infrastructure such as buildings, light standards, or utility poles; or utilizing RF transparent materials to mimic manmade (i.e. windmills, water tanks, church steeples) or natural features (trees, rocks) in the environment.

Typically wireless communication facilities thus far processed by the County, include anywhere between three to twelve panel antennas at a single location; panel antennas are typically between four to six feet in length, and are mounted on new structures between 30 and 65 feet in height. Support facilities for the antennas tend to vary based on the specific carrier's network technology. Support facilities range from multiple ground mounted cabinets (typically 4'1 x3'w x5'h) to full sized equipment shelters (typically 10'1 x20'w x10'h). However, the proposed NextG design utilizes existing infrastructure in the community and equipment that is significantly smaller than the typical facilities. The NextG facility only requires a single antenna, approximately 2 feet in length, and a single cabinet approximately 6"1 x6"w x2'h, mounted on an existing pole. By using existing the existing infrastructure, the facility does not introduce any additional vertical elements to the area and is maintaining the existing character of the area (see Attachment F, visual comparison).

Telecommunications facilities are required to comply with development standards found in MLUDC Sections 35.444.010.D.1-3, unless the decision maker finds grounds for exempting the project from one or more standards. Development Standard 2.d requires support facilities (i.e. cabinets and shelters) be undergrounded if feasible. Because the cabinet for this particular facility is small, and is mounted on an existing utility pole where similar transformer boxes are commonly found, undergrounding the cabinet would not significantly decrease the visibility of the facility. Furthermore, the additional grading and increased project footprint associated with undergrounding would increase the potential for environmental impacts. Therefore, the approved permit on appeal was premised on the fact that the proposed design qualified for an exemption from the Telecommunications Development Standard 2d.

“Pole-Mounted Equipment Conflicts with the Community’s Goal of Undergrounding Utilities”

While the County encourages undergrounding of utility poles, it does not have authoritative discretion over long term plans for utility poles. The proposed project requires authorization by the utility pole owners, the Southern California Joint Pole Committee (JPC),² to locate the equipment on the specified pole. The JPC has discretion

² “The Joint Pole Committee is made up of a group of member representatives of utilities and municipalities in Southern California who hold joint equity interest in utility poles. Established by telephone, electricity and railroad companies, the Committee has existed since October 10, 1906. It was formed as a result of the need to limit the

over which poles are available candidates for equipment collocation and considers the physical capacity, the technological compatibility, and future development intentions (undergrounding) for each pole. The JPC issued authorization for NextG to pursue development permits to locate their equipment on the specific pole. However, it should be noted that the subject permit does not prohibit the pole owners from future undergrounding plans. Rather, the County's telecommunications ordinance considers this possibility, stating "If at a later date the utility poles are proposed for removal as part of the undergrounding of the utility lines, the permit for the facilities shall be null and void." (MLUDC 35.444.010.C.1.a.2)

"Both the Land Use Development Code and the Montecito Community Plan Call for Adequate Setbacks between Habitable Structures and Telecommunications Facilities"

The Montecito Community Plan, "Electromagnetic" Section includes Goal E-M-1: to "Protect citizens from elevated electromagnetic fields until the potential risk from EMF exposure can be determined." This goal is followed by Policy E-M-1.1 which states that "In reviewing permits for EMF sensitive uses (e.g., residential, schools, etc.), RMD shall require an adequate building setback from EMF-generating sources to minimize exposure hazards." However, it should be noted that per the Telecommunications Act limitations the County is restricted from regulating "on the basis of health affects to the extent that the proposed facility is shown to comply with the Commission's regulations concerning such emissions." (47 U.S.C.A. § 332 (c)(7)(B)(iv).)

For all telecommunications facilities, emissions reports are required to address the emissions of the particular facility's equipment and location, as well as whether additional setbacks or fencing requirements are needed to comply with the FCC's health and safety standards for public exposure. A report by Jerrold Bushberg, Ph.D., dated April 29, 2009, was submitted for the proposed project that concludes that the facility operates well below the FCC's health and safety standards, therefore no additional setbacks are required for the proposed facility. The report notes that at a distance of 26 feet from the antenna (i.e., at essentially ground level), the facility emits at 0.3% of the FCC Maximum Permissible Exposure level.

The appellants also raise the issue of setback requirements in the telecommunications ordinance. Although most of the County permitting Tiers require setbacks from residentially zoned properties, the ordinance doesn't preclude facilities from being located within those setbacks or even being located on a residential parcel itself; rather, if a facility is located in those setbacks or on a residentially zoned parcel, then a Tier 4 permit is required, and the decision-maker must be able to make the finding that "the area proposed to be served by the telecommunications facility would otherwise not be served by the carrier proposing the facility." The only exception to this requirement is for Tier 1 "small

facilities” which can be located in all zone districts, including residential, without the additional setback requirements (MLUDC 35.444.010.C.1).

E. “Impacts of the Permit Will Be Compounded by Connection to NextG’s System and by Anticipated Co-Location”

In this section the appellants argue “P&D abused its discretion in not considering the impacts of the project as a whole, including its potential cumulative impacts, particularly since the approval of one antenna facilitates the creation of the Distributed Antennas System and this reasonably foreseeable consequence must be assessed.” As discussed in subsection “A” above, the project was considered as a “whole” under CEQA and was found to be categorically exempt by the CPUC on July 20, 2009. In the event additional antennas are proposed to be connected to the NextG network in the future, additional permits and CEQA review would be required at that time.

F. “P&D Issued the Permit Based Upon Inadequate, Incomplete or Unreliable Data”

“P&D Based its Permit Decision on Inadequate Information Concerning Project Alternatives”

The appellants contend that “NextG’s permit applications provide no substantive alternative site analysis” and that “P&D did not require NextG to justify its facility location on any scientific basis, particularly ‘gap of service.’” The County did require NextG to submit a coverage map to demonstrate their need for service. Because Metro PCS, the carrier that will be providing the cellular service through the NextG network is new to Santa Barbara County, it does not have existing sites in the areas and therefore absent the DAS, Metro PCS has no coverage, thus a complete gap in service, throughout the South Coast. The submitted coverage map shows complete coverage of the South Coast urban areas through deployment of the DAS system as proposed. Because the proposed project complied with all applicable ordinance standards and so was approvable, a demonstration of alternative sites was not warranted.

“P&D Has Not Established that the Proposed Location May Be Used Legally as Proposed”

The proposed facility would be mounted on an existing utility pole, in the public right of way. The pole was legally erected and therefore continues to be a legal use. NextG was deemed a “public utility” by the Public Utilities Commission on January 30, 2003 and therefore has legal access to the utility pole.

P&D examined the County’s franchise ordinance with Southern California Edison (“SCE”) to determine whether:

- A separate franchise agreement is required or permissible before allowing a telecommunications provider (e.g. NextG) to install facilities in the right-of-way; and
- Whether a telecommunications provider is entitled to attach its equipment to SCE poles and structures.

California Public Utilities Code Section 7901, and the sections following, establish a statewide franchise for telephone companies. As a result, P&D understands that the County is preempted from collecting franchise fees from a telecommunications provider if that provider holds a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission ("CPUC"). Such providers are entitled to use public rights-of-way without charge under this statewide franchise. NextG Networks was granted a Certificate of Public Convenience and Necessity by the CPUC on April 12, 2007.

The County Franchise Agreement with SCE provides at Section 2.5 that "Except in those cases where Grantee (SCE) is required by State or Federal law to provide access to its Facilities, use of Grantee's Facilities for any purpose other than the uses permitted by this Ordinance shall require notice and consent by County."

As allowed by federal law, the California Public Utilities Commission ("CPUC") regulates telecommunications activities within the state. CPUC Decision 98-10-058, known as the *Rights-of-Way Decision* ("the *Decision*"), regulates telecommunications access to electric utility poles. The *Decision* requires electric utilities to allow pole access to telecommunications providers possessing a Certificate of Public Convenience and Necessity from the CPUC.

Since the CPUC requires that SCE provides access on their poles to telecommunications providers possessing a Certificate of Public Convenience and Necessity, P&D understands that the provision of the County Franchise Agreement with SCE requiring notice and consent of the County is inapplicable, and that no franchise or other charge may be imposed on a telecommunications provider for the use of County rights-of-way.

"P&D Acted upon Information Inadequate to Establish Compliance with Federal Communications Commission Regulations"

As discussed previously, consistent with MLUDC Section 35.444.010.E.1.a, NextG submitted a radiofrequency emissions report that predicts the proposed project's consistency with FCC standards based on modeling methods. This report concluded that the facility would not only comply with FCC limits, but would operate at 0.3% of the applicable Maximum Permissible Exposure standards. FCC's guidelines specifically note that "Where a site contains only one antenna array, the maximum exposure at any point in

the horizontal plane can be predicted by calculations.”³ Therefore, additional measurements were not required. The report was written by a qualified third party engineer, Jerrold Bushberg, Ph.D., and raised no concerns warranting peer review.

The field of radiofrequency analysis and FCC emissions compliance is limited in resources. The technicians who work in this field are either in the industry or do consulting for the industry. When the County initially implemented its telecommunications ordinance, all carriers submitted emissions reports prepared by their own companies. However, since 2005, the County of Santa Barbara began requiring that the report be prepared by a qualified third party, meaning a hired third party not directly employed by the company. This change was made to ensure that the radiofrequency engineers designing the site were not the same ones preparing reports for emissions compliance. In the event that these reports were unclear, poorly written, or raised concern, the County required the report to be peer reviewed by a different radiofrequency engineer. Mr. Bushberg has acted in the capacity of the County’s peer reviewer in a number of cases. He has not, and would not have been asked to review a report he himself had written. It is standard practice for the County to accept the conclusions of reports prepared by the experts in the field, regardless of whether those experts were hired directly by the applicant, barring staff level review raising questions requiring expert review. Many consultants have acted in the capacity of the County’s peer review on one project and an applicant’s expert on another not unlike Bushberg.

“P&D Has Not Addressed Critical Issues Raised by the Board of Supervisors”

The Board of Supervisor Hearings on October 20, 2009 and December 1, 2009 were informational briefings in which no action was taken by the Board. Consistent with the Board’s direction on December 1, 2009, staff is returning to the Board of Supervisors on January 19, 2010 to present a proposed work plan for a possible Telecommunications Ordinance update.

5.0 PROJECT INFORMATION

5.1 Site Information

Site Information	
Comprehensive Plan Designation	SRR-0.5
Ordinance, Zone	Montecito Land Use Development Code, 2-E-1
Site Size	Existing utility pole (no footprint)
Present Use & Development	Utility pole, residence adjacent
Surrounding Uses/Zone(s)	<i>North: Residential</i>

³ Kennard, William E., et al. “A Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance,” June 2, 2000, p. 1.

Site Information	
	<i>South: Residential</i> <i>East: Residential</i> <i>West: Residential</i>
Access	Road right-of-way, Olive Mill Road
Public Services	Water Supply: N/A Sewage: N/A Fire: Montecito Fire Department Other: N/A

5.2 Setting

The proposed project is located in a residential area in Montecito, in the right of way Park Lane near its intersection with East Valley Road adjacent to the property at 619 Park Lane. The proposed antenna and equipment box would be mounted on an existing utility pole at this situs. The pole is set back approximately 80 feet from the nearest habitable structure.

5.4 Approved Project Description

The project is a request by the agent, Sharon James, for the applicant, NextG Networks of California, Inc., for a Land Use 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 619 Park Lane in the public right of way.

The applicant is proposing to construct an unmanned wireless facility that would include one 26" whip omni antenna. The antenna is omnidirectional and would be mounted on an existing wood 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 East Valley Rd. and Park Lane with a range of approximately 1500 – 2000 feet in each direction.

All equipment for the antenna would be located on the existing wood utility pole. 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. The proposed facility would not require grading.

Access to the facility would be from the public road. The visible equipment could be painted brown or other color as recommended by the County.

5.5 Background Information

NextG Networks has applied for permits to deploy a Distributed Antenna System (DAS) throughout the south coast of Santa Barbara County. They have also applied for, and obtained in some cases, similar permits from other local municipalities such as City of Goleta, City of Santa Barbara, and the City of Carpinteria.

NextG Networks submitted 39 Tier 1 applications (LUP/CDP/CDH) to the County on August 5, 2009. The applications are for the installation of 39 different "node" or antenna sites throughout the south coast, including areas in Goleta, Santa Barbara, Montecito and Summerland (see Exhibit B for a standard visual simulation).

According to their applications, each of the node sites would consist of one (1) 26-inch omnidirectional whip antenna to be placed on an existing utility pole along with a 32" x 6" x 5" equipment box, also to be mounted on the pole. The facilities would be unlit and would not require any vegetation removal.

Also required as part of the network, is the addition of fiber optic cabling to connect the individual node sites. The cabling would either be strung along the existing aerial power lines, or trenched underground. Aerial and undergrounded cabling installations are generally exempt from development permits, with the exception of underground trenching in the Coastal zone. NextG currently has five applications undergrounding cabling in the Coastal zone.

Until this point, the County has permitted wireless communication coverage in residential areas proposed by carriers by siting facilities on the fringes of urban areas and directing the signal towards the needed coverage area. However, with the increasing number of cell phone users and other personal communications devices (i.e. PDA, Blackberry, Smart-phones), coverage (and capacity) needs have greatly increased. Specifically, in residential areas, land lines are becoming more and more obsolete as people use their cell phones as their primary (or only) phone. As a result, cellular carriers are now applying for facilities (e.g. macrocells camouflaged as "monopines") located in the residential areas to provide the needed coverage.

The DAS network is a different approach to coverage in the urban area. It uses multiple node sites that work in conjunction with each other to distribute coverage throughout the residential areas in which they are located; this is different than traditional cellular facilities that have several (3-12) large (4-6 ft.) antennas at one location, requiring a large support structure to reach the same coverage objective. Additionally, DAS technology allows for coverage by multiple carriers without additional infrastructure consistent with the County's adopted policy encouraging collocation.

6.0 PROJECT ANALYSIS

6.1 Environmental Review

The California Public Utilities Commission (CPUC), assumed the lead agency status for purposes of CEQA. On July 20, 2009, the CPUC found the entirety of the “project” exempt under guidelines sections 15061, 15301b, 15301c, 15302c and 15304f, including all antenna installations, equipment installations, aerial cabling and trenching for the network throughout the South Coast of Santa Barbara County (including the cities of Goleta, Santa Barbara, and Carpinteria). The approved permit on appeal, involved a single antenna and equipment box (which was a small part of the entire project considered under CEQA) was premised on the fact that the entire network qualified for an exemption (copy available on the project website <http://www.sbcountyplanning.org/projects/09CNS-00032NextG/index.cfm> and P&D office).

6.2 Comprehensive Plan Consistency

REQUIREMENT	DISCUSSION
<i>Land Use Element</i>	
Land Use Development Policies, Policy 4. <i>Public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development.</i>	Consistent. The existing road and utility pole are sufficient to serve the proposed project as evidenced by the Joint Pole Agreement issued on March 16, 2009 by the Southern California Joint Pole Committee for NextG to place their equipment on the subject pole.
Visual Resources, Policy 1. <i>All commercial, industrial, and planned developments shall be required to submit a landscaping plan to the County for approval.</i>	Consistent. The CPUC recognizes NextG as a utility. Additionally, the subject pole sited amongst existing vegetation, and the proposed facility has been designed to blend in with the existing utility infrastructure (not impacting any ground footprint). Therefore, this policy does not apply.
Visual Resources, Policy 3. <i>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.</i>	Consistent. No new structures are being erected as a part of this project.
Visual Resource Policies, Policy 5. <i>Utilities, including television, shall be placed underground in new developments in accordance with the rules</i>	Consistent. No new developments are proposed as a part of this project, but rather the project utilizes existing infrastructure on which the facility

REQUIREMENT	DISCUSSION
<i>and regulations of the California Public Utilities Commission, except where cost of undergrounding would be so high as to deny service.</i>	would be mounted. In the event that the utility pole is undergrounded in the future, the subject permit would be null and void per Section 35.444.010.C.1.a.2 of the MLUDC.
Montecito Community Plan	
Goal LU-M-2. <i>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.</i>	Consistent. The proposed project has been designed as Distributed Antenna System (DAS) to minimize the size and visibility of the facility, and to blend with the existing character of the area. Tier 1 facilities are required to comply with size requirements as well as the telecommunications facility development standards of the MLUDC. The proposed project complies with both.
Visual, Goal VIS-M-2. <i>Protect public and private open space as an integral part of the community's semi-rural character and encourage its retention.</i>	Consistent. The subject project has been designed to be as minimally visually intrusive as possible; the equipment meets the "small facility" criteria and would be mounted on an existing utility pole (reducing the need for construction of a new freestanding support structure) and the components would be painted to blend with the utility infrastructure. Moreover, the components are small with the equipment box narrower than the pole and extending only 6" in depth and the whip antenna only 26" in length. By minimizing the presence of the facility in these ways, the project preserves the existing streetscape character of the area.
Electromagnetic, Goal E-M-1. <i>The protection of citizens from elevated electromagnetic fields until the potential risk from EMF exposure can be determined.</i>	Consistent. "FCC rules require transmitting facilities to comply with RF exposure guidelines. The limits established in the guidelines are designed to protect the public health with a very large margin of safety. These limits have been endorsed by federal health and safety agencies such as the Environmental Protection Agency and the Food and Drug Administration. The FCC's rules have been upheld by a Federal Court of Appeals. As discussed below, most facilities create maximum exposures that are only a small fraction of the limits. Moreover, the limits themselves are many times below levels that are

REQUIREMENT	DISCUSSION
	<p>generally accepted as having the potential to cause adverse health effects.”⁴</p> <p>An RF/EMF report was prepared by Jerrold Bushberg Ph.D. on April 29, 2009 for the proposed project which evaluated the emissions for the proposed NextG facility. 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.</p>
<p>Electromagnetic, Policy E-M-1.1. <i>In reviewing permits for EMF sensitive uses (e.g., residential, schools, etc.), P&D (formerly RMD) shall require an adequate building setback from EMF-generating sources to minimize exposure hazards.</i></p>	<p>Consistent. As discussed above, the proposed project complies with all applicable FCC health and safety requirements, and as such no additional setbacks are required for this project.</p>

6.3 Zoning: Montecito Land Use and Development Code Compliance

REQUIREMENT	DISCUSSION
<i>Tier 1 Requirements</i>	
<p>Requirement 1. Antennas shall be limited to panel antennas or omnidirectional antennas. Antennas and associated equipment shall not exceed a combined volume of one cubic foot.</p>	<p>Consistent. The proposed antenna is an omnidirectional antenna. Additionally, the volume of the antenna (183 cubic inches) and associated equipment (1488 cubic inches), combined, equals 1671 cubic inches (0.967 cubic feet). Therefore the project complies with this standard.</p>
<p>Requirement 2. The antenna shall be mounted on either an existing operational public utility pole or similar support structure (e.g., streetlight standard) that is not being considered for removal, as determined by the Director, or the roof of an existing structure. More than two antennas shall not be located on a single utility pole or similar structure unless it is determined that there will not be a negative visual impact. If at a later date the</p>	<p>Consistent. The proposed facility would be mounted on an existing utility pole. While the County encourages undergrounding of utility poles, it does not have authoritative discretion over long term plans for utility poles. The proposed project requires authorization by the utility pole owners, the Southern California Joint Pole Committee (JPC), to locate the equipment on the specified pole. The JPC has discretion over which</p>

⁴ Kennard, William E., et al. “A Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance,” June 2, 2000, p. 1.

REQUIREMENT	DISCUSSION
<p>utility poles are proposed for removal as part of the undergrounding of the utility lines, the permit for the facilities shall be null and void.</p>	<p>poles are available candidates for equipment collocation and considers the physical capacity, the technological compatibility, and future development intentions (undergrounding) for each pole. The JPC issued authorization for NextG to pursue development permits to locate their equipment on the specific pole, and therefore it is assumed that no current plans for undergrounding apply to this pole.</p>
<p>Requirement 3. The highest point of the antenna either does not exceed the height of the existing utility pole or similar support structure that it is mounted on, or in the case of an omnidirectional antenna, the highest point of the antenna is no higher than 40 inches above the height of the structure at the location where it is mounted.</p>	<p>Consistent. The proposed antenna would be mounted on the existing 40' utility pole at a height of 40' (not exceeding 42') and therefore complies with this requirement.</p>
<p><i>Section 35.444.010.D.1 Development Standards</i></p>	
<p>Standard 1.a. The facility shall comply with the setback requirements of the zone district that the facility is located in except as follows: (1) Antennas may be located within the setback area without approval of a modification in compliance with Subsection 35.82.060.I (Conditions, restrictions, and modifications) or Subsection 35.82.080.H (Conditions, restrictions, and modifications) provided they are installed on an existing, operational, public utility pole, or similar existing support structure. (2) 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.</p>	<p>Consistent. The proposed facility would be installed on an existing, operational, public utility pole.</p>
<p>Standard 1.b. In the Inland area antennas and associated antenna support structures (e.g., lattice, tower, monopole) are limited to 100 ft. in height and shall comply with the height limits specified in [MLUDC Section 35.444.010.C]..."</p>	<p>Consistent. The proposed antenna would be mounted on an existing 40' utility pole. The top of the antenna would not exceed 42'. Therefore the facility would comply with the 100 ft. requirement, as well as the height requirement by Subsection C identified.</p>
<p>Standard 1.c. In the Coastal Zone antennas and associated antenna support structures (e.g., lattice tower, monopole) are limited to 50 feet in height</p>	<p>Consistent. The proposed project is not in the Coastal Zone.</p>

REQUIREMENT	DISCUSSION
<p>and shall comply with the height limits specified in [MLUDC Section 35.444.010.C]...”</p>	
<p>Standard 1.d. The general public is excluded from the facility by fencing or other barriers that prevent access to the antenna, associated support structure and equipment shelter.</p>	<p>Consistent. The proposed equipment would be mounted on an existing utility pole, at a height (9’) above reach of the general public.</p>
<p>Standard 1.e. Facilities proposed to be installed in or on a structure or site that has been designated by the County as a historical landmark shall be reviewed and approved by the Historical Landmark Advisory Commission, or the Board on appeal.</p>	<p>Consistent. The proposed project is not located in or on a designated historical landmark.</p>
<p>Standard 1.f. The facility shall comply at all times with all Federal Communication Commission rules; regulations, and standards.</p>	<p>Consistent. A radiofrequency emissions report was submitted as part of the project application. The report by Jerrold Bushberg, Ph.D., dated April 29, 2009, concluded that the proposed facility would meet the FCC requirements. As a part of the project conditions, a verification measurement report would be required within 30 days of final building inspection to confirm these projections.</p>
<p>Standard 1.g. The facility shall be served by roads and parking areas consistent with the following requirements: (1) New access roads or improvements to existing access roads shall be limited to the minimum required to comply with County regulations concerning roadway standards and regulations. (2) Existing parking areas shall be used whenever possible, and new parking areas shall not exceed 350 square feet in area. (3) Newly constructed roads or parking areas shall, whenever feasible, be shared with subsequent telecommunication facilities or other allowed uses.</p>	<p>Consistent. The proposed facility would be located in the road right-of-way in which access would be provided. Temporary parking for maintenance activities would be provided by on-street public parking in the vicinity.</p>
<p>Standard 1.h. The facility shall be unlit except for a manually operated or motion-detector controlled light that includes a timer located above the equipment structure door that shall be kept off except when personnel are actually present at night.</p>	<p>Consistent. No lighting is proposed however a standard condition of approval is proposed to ensure compliance with this standard.</p>
<p>Standard 1.i. The facility shall not be located within the safety zone of an airport unless the airport operator indicates that it will not adversely affect the operation of the airport.</p>	<p>Consistent. The facility is not located within the airport safety zone.</p>

REQUIREMENT	DISCUSSION
<p>Standard 1.j. The visible surfaces of support facilities (e.g., vaults, equipment rooms, utilities, equipment enclosures) shall be finished in non-reflective materials.</p>	<p>Consistent. The antennas, mounting brackets and equipment boxes would be painted brown with non-reflective paint or other non-reflective finish to blend into the utility pole.</p>
<p>Standard 1.k. Structures, poles, towers, antenna supports, antennas, and other components of each telecommunication site shall be initially painted and repainted as necessary with a non-reflective paint. The lessee shall not oppose the repainting of their equipment in the future by another lessee if an alternate color is deemed more appropriate by a review authority in approving a subsequent permit for development.</p>	<p>Consistent. The proposed facility would be painted brown to blend with the utility pole. Painting would be confirmed by condition compliance monitoring prior to final building inspection. In addition, standard conditions of approval require the facility be maintained in a state of good condition and repair for the life of the facility.</p>
<p>Standard 1.l. The facility shall be constructed so as to maintain and enhance existing vegetation through the implementation of the vegetation protection measures.</p>	<p>Consistent. No new structures are proposed to be constructed therefore no disturbance to existing vegetation is proposed.</p>
<p>Section 35.444.010.D.2 Development Standards</p>	
<p>Standard 2.a. The primary power source shall be electricity provided by a public utility. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Any new underground utilities shall contain additional capacity (e.g., multiple conduits) for additional power lines and telephone lines if the site is determined to be suitable for collocation.</p>	<p>Consistent. Primary power to the facility would be provided by Southern California Edison via the utility pole. No new utility conduits, or back-up generators are proposed.</p>
<p>Standard 2.b. In the Inland area, disturbed areas associated with the development of a facility shall not occur within the boundaries of an environmentally sensitive habitat area.</p>	<p>Consistent. No new structural development is proposed as part of the project, nor is the proposed project located within an environmentally sensitive area.</p>
<p>Standard 2.c. Collocation on an existing support structure shall be required unless:</p> <ol style="list-style-type: none"> 1) The applicant can demonstrate that reasonable efforts, acceptable to the decision-maker, have been made to locate the antenna(s) on an existing support structure and such efforts have been unsuccessful; or 2) Collocation cannot be achieved because there are no existing facilities in the vicinity of the proposed facility; or 	<p>Consistent. The proposed project is collocating on an existing utility pole.</p>

REQUIREMENT	DISCUSSION
<p>3) The review authority determines that collocation of the proposed facility would result in greater visual impacts than if a new support structure were proposed.</p>	
<p>Standard 2.d. 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).</p>	<p>Consistent. The support facilities consist of 6"x 5"x 2'8" equipment box, painted brown and mounted on the utility pole, no ground disturbance is proposed. Since the box meets the criteria for Tier 1 "small facilities" it would not significantly increase the visibility of the facility. The equipment box is slimmer than the utility pole and extrudes no further than 6" from the pole. Therefore, it is largely camouflaged and no more obtrusion than other utility boxes on utility poles. Additionally, the whip antenna is only 26" in height. Furthermore, not undergrounding the equipment box reduces the potential for potential impacts associated with grading or ground disturbance. Therefore, this project qualifies for an exemption from this standard and can be found consistent.</p>
<p>Standard 2.e. In the Coastal Zone, disturbed areas associated with the development of a facility shall be prohibited on prime agricultural soils. An exemption may be approved only upon a showing of sufficient evidence that there is no other feasible location in the area or other alternative facility configuration that would avoid or minimize impacts to prime soils.</p>	<p>Consistent. The proposed project is not within the Coastal Zone.</p>
<p>Standard 2.f. In the Coastal Zone, facilities shall be prohibited in areas that are located between the sea and the seaward side of the right-of-way of the first through public road parallel to the sea, unless a location on the seaward side would result in less visible impact. An exemption may be approved only upon showing of sufficient evidence that there is no other feasible location in the area or other alternative facility configuration that would avoid or minimize visual impacts.</p>	<p>Consistent. The proposed project is not within the Coastal Zone.</p>
<p>Section 35.444.010.D.3 Development Standards</p>	
<p>Standard 3.a. A facility shall not be located so as to silhouette against the sky if substantially visible</p>	<p>Consistent. The proposed facility would include a 26" whip antenna mounted on an existing utility</p>

REQUIREMENT	DISCUSSION
<p>from a state-designated scenic highway or roadway located within a scenic corridor as designated on the Comprehensive Plan maps.</p>	<p>pole amongst surrounding trees and development, therefore the facility itself would not silhouette against the sky nor would it be substantially visible.</p>
<p>Standard 3.b. A facility shall not be installed on an exposed ridgeline unless it blends with the surrounding existing natural or manmade environment in a manner that ensures that it will not be substantially visible from public viewing areas (e.g., public road, trails, recreation areas) or is collocated in a multiple user facility.</p>	<p>Consistent. The proposed facility is not proposed to be located on an exposed ridgeline however the facility has been designed to blend with the existing utility infrastructure to minimize its visibility from the surrounding area.</p>
<p>Standard 3.c. A facility that is substantially visible from a public viewing area shall not be installed closer than two miles from another substantially visible facility unless it is an existing collocated facility situated on a multiple user site.</p>	<p>Consistent. There are no significantly visible (large monopole facilities) nearby. Although there are other similar proposed facilities within 2 miles of the proposed project location, the other proposed facilities and the subject facility are designed to blend with the existing utility infrastructure and would not be substantially visible, as discussed above under Standard 2.d.</p>
<p>Standard 3.d. Telecommunication facilities that are substantially visible from public viewing areas shall be sited below the ridgeline, depressed or located behind earth berms in order to minimize their profile and minimize any intrusion into the skyline. In addition, where feasible, and where visual impacts would be reduced, the facility shall be designed to look like the natural or manmade environment (e.g., designed to look like a tree, rock outcropping, or streetlight) or designed to integrate into the natural environment (e.g., imbedded in a hillside). These facilities shall be compatible with the existing surrounding environment.</p>	<p>Consistent. The proposed project has been designed to blend with the existing utility infrastructure. The whip antenna is only 26" in height and the equipment box is slimmer than the utility pole and extrudes no further than 6" from the pole. Additionally, the equipment would be painted brown to match the pole. Therefore, it is largely camouflaged and no more obtrusion than other utility boxes on utility poles.</p>
<p>Standard 3.e. In the Coastal Zone, disturbed areas associated with the development of a facility shall not occur within the boundaries or buffer of an environmentally sensitive habitat area. An exemption may be approved only upon showing of sufficient evidence that there is no other feasible location in the area or other alternative facility configuration that would avoid impacts to environmentally sensitive habitat areas. If an exemption is approved with regard to this standard,</p>	<p>Consistent. The proposed project is not located within the Coastal Zone or in an environmentally sensitive habitat area.</p>

REQUIREMENT	DISCUSSION
<p>the County shall require the applicant to fully mitigate impacts to environmentally sensitive habitat consistent with the provisions of the certified Local Coastal Program. Associated landscaping in or adjacent to environmentally sensitive habitat areas shall be limited to locally native plant species appropriate to the habitat type and endemic to the watershed. Invasive, non-indigenous plant species that tend to supplant native species shall be prohibited.</p>	

6.4 Design Review

Per Section 35.444.010.B Table 4-10 footnote (2), states that telecommunications facilities are exempt from design review by the Board of Architectural Review, unless “the facility includes the construction of a new structure or the remodel of or addition to an existing structure that is otherwise subject to Design Review in compliance with Section 35.472.070 (Design Review)” or unless “the facility is under the jurisdiction of the Montecito Commission.” The utility pole on which the facility would be located would not otherwise require design review, nor is a Tier 1 permit under the jurisdiction of the Montecito Commission. Therefore design review was not required.

7.0 APPEALS PROCEDURE

The action of the Planning Commission may be appealed to the Board of Supervisors within 10 calendar days of said action. The appeal fee to the Board of Supervisors is \$643.

ATTACHMENTS

- A. Findings
- B. Approved Permit, with amended conditions
- C. Exemption
- D. Approved Permit, with original text
- E. Appeal Application
- F. Visual Comparison Photo
- G. Project Photo Simulation
- H. Project Plans

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, 15301b, 15301c, 15302c and 15304f of the Guidelines for Implementation of the California Environmental Quality Act (CEQA) by the California Public Utilities Commission (CPUC). Please see Attachment C, Notice of Exemption, prepared by the CPUC on July 20, 2009.

2.0 MONTECITO LAND USE DEVELOPMENT CODE

2.1 Land Use Permit Findings

- 2.1.1 *The proposed development conforms: (1) To the applicable provisions of the Comprehensive Plan including the Montecito Community Plan; and (2) With the applicable provisions of this Development Code or falls within the limited exception allowed in compliance with Chapter 35.491 (Nonconforming Uses, Structures, and Lots).*

As discussed in Sections 6.2 and 6.3 of this staff report, and incorporated herein by reference, the project would be in conformance with all applicable provisions of the Development Code, Comprehensive Plan and the Montecito Community Plan.

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

The proposed project is located within the public right-of-way, on an existing utility pole, therefore this finding does not apply.

- 2.1.3 *The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement 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 Chapter 35.491 (Nonconforming Uses, Structures, and Lots).*

The utility pole upon which the facility would be mounted was legally erected and does not constitute a zoning violation.

2.2 Commercial Telecommunication Facility Findings

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

As discussed in Sections 4.0 and 6.3 of the staff report and incorporated here by reference, the facility is designed to retain the visual character of the area by utilizing the existing utility pole and utilizing equipment that conforms to the Tier 1 “small facilities” requirements. Moreover, the equipment box is slimmer than the utility pole and extrudes no further than 6” from the pole; it is largely camouflaged and no more obtrusion than other utility boxes on utility poles. Furthermore, the antennas would be painted brown to blend with the pole. 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 is designed to blend with the utility infrastructure and therefore minimize its appearance as a telecommunications facility. Therefore this finding can be made.

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

As discussed in Sections 4.0 and 6.3 of the staff report and incorporated here by reference, collocating on the existing utility infrastructure blends the facility with the existing visual character of the area. 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 Subsection D.*

As analyzed in Sections 4.0 and 6.3 of the staff report and incorporated herein by reference, the proposed project complies with all required development standards of the telecommunication ordinance, with the exception of D.2.d. Development standard 2.d requires support facilities (i.e. cabinets and shelters) be undergrounded if feasible. Because the cabinet for this particular facility is small, and is mounted on an existing utility pole (similar to common transformer boxes), undergrounding the cabinet would not significantly decrease the visibility of the facility. Furthermore, the additional grading and increased project footprint of a non-pole project would increase the potential for environmental impacts, more than the proposed project. Therefore, the proposed design qualifies for an exemption from the Telecommunications Development Standard 2d 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 this project application. 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. As a part of the project conditions, a verification measurement report would be required within 30 days of final building inspection to confirm these projections.

2.2.6 *Telecommunication facilities shall comply with the following development standards [MLUDC 35.444.010.D.2] in all instances, except that the review authority may exempt a facility from compliance with one or more of the following development standards if requested by the applicant. However, an exemption may only be granted if the review authority finds, after receipt of sufficient evidence, that failure to adhere to the standard in the specific instance either will not increase the visibility of the facility or decrease public safety, or it is required due to technical considerations 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 it would avoid or reduce the potential for environmental impacts.*

Because the cabinet for this particular facility is small, and is mounted on an existing utility pole where similar transformer boxes are commonly found, undergrounding the cabinet would not significantly decrease the visibility of the facility. Furthermore, the additional grading and increased project footprint associated with undergrounding would increase the potential for environmental impacts. Therefore this finding can be made.

ATTACHMENT B: APPROVED PERMIT (AMENDED)



COUNTY OF SANTA BARBARA

Planning and Development

LAND USE PERMIT NO: 09LUP-00000-00381

Project Name: NextG Networks Cellular Antenna #ESB03
Project Address: Public Right-of-Way on Park Lane, Montecito
A.P.N.: Adjacent to 007-120-013
Zone: 2-E-1

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

FINAL APPROVAL DATE: January 6, 2010

APPEAL PERIOD BEGINS: January 7, 2010

APPEAL PERIOD ENDS: January 19, 2010

DATE OF PERMIT ISSUANCE: (if no appeal filed) January 20, 2010

NOTE: This final approval may be appealed to the Montecito Planning Commission by the applicant, owner, or any aggrieved person adversely affected by such decision. The appeal must be filed in writing and submitted with the appropriate appeal fees to the Planning and Development Department either at 123 East Anapamu Street, Montecito or 624 West Foster Road, Suite C, Santa Maria, prior to 5:00 p.m. on the APPEAL PERIOD ENDS date identified above. (CLUDC Section 35.102.020/MLUDC Section 35.492.020) If you have questions regarding this project please contact the planner Megan Lowery at 568-2517.

PROJECT DESCRIPTION SUMMARY: See attached.

PROJECT SPECIFIC CONDITIONS: See attached.

ASSOCIATED CASE NUMBERS: None.

PERMIT COMPLIANCE CASE:

No Yes; Permit Compliance Case (PMC) #: _____

BOARD OF ARCHITECTURAL REVIEW (BAR): No Yes; BAR Case #: _____

TERMS OF PERMIT ISSUANCE:

- Posting of Notice.** Notice of the project shall be posted by the applicant utilizing the language and form of the notice provided by the Planning and Development Department. The notice shall remain posted continuously until at least 10 calendar days following action on the permit. (CLUDC Section 35.106.050/MLUDC Section 35.496.050)
- 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 Land Use Permit and/or any other required permit (e.g., building permit).

ATTACHMENT A CONDITIONS OF APPROVAL

1. This Land Use 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 Land Use 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 619 Park Lane in the public right of way.

The applicant is proposing to construct an unmanned wireless facility that would include one 26" whip omni antenna. The antenna is omnidirectional and would be mounted on an existing wood 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 East Valley Rd. and Park Lane with a range of approximately 1500 – 2000 feet in each direction.

All equipment for the antenna would be located on the existing wood utility pole. 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. The proposed facility would not require grading.

Access to the facility would be from the public road. The visible equipment could be painted brown or other color as recommended by the County.

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. **Abandonment/Site Restoration.** If use of the facility is discontinued for a period of more than one year, the facility shall be considered abandoned. Except or unless the period is extended in the time and manner permitted by the County Code, the facility shall be removed and the site shall be restored to its natural state; provided, further that the landowner may request that the facility remain and obtains the necessary permits. The Applicant shall remove all support structures, antennas, equipment and associated improvements and restore the site to its natural pre-construction state within 180 days of the date of receipt of the County's notice to abate. If such facility is not removed within 180 days, the County may remove the facility at the Applicant's expense. **Plan Requirements:** The Applicant shall restate the provisions for abandonment/site restoration on the construction plans. **Timing:** Prior to issuance of the Land Use Permit for the construction of the facility, the Applicant shall post a performance security in order to cover the cost of removal in the event that such facility is abandoned. The security shall equal 10 percent of the installation value of the facility as determined at the time of granting the building permit. **Monitoring:** P&D staff shall conduct a site inspection 12 months after notification is received by the County that the facility will no

longer be in use to ensure that such facility has been removed. The performance security shall be retained until this condition is fully satisfied.

3. **Colors and Painting.** All exposed equipment and facilities (i.e., antennas, equipment cabinets, etc.) shall be finished in non-reflective materials (including painted surfaces) and shall be painted Frazee Bon Nuit-CL3277N (or equivalent) to match the existing pole. **Plan Requirements and Timing:** Color specifications shall be identified on final building plans submitted by the Permittee to the County. **Monitoring:** P&D staff shall conduct a Project Compliance Inspection prior to and as condition precedent to obtaining Final Building Inspection Clearance.
4. **Construction Hours.** Construction activity for site preparation and placement of the proposed communications equipment shall be limited to the hours between 7 a.m. and 4 p.m. Monday through Friday (excluding state holidays). Construction equipment maintenance shall be limited to the same hours. Non-noise generating construction activities such as interior painting are not subject to these restrictions. **Plan Requirements:** A sign stating these restrictions shall be provided by the applicant and posted at the project site. **Timing:** The sign shall be in place prior to land use clearance and throughout grading and construction activities. Agreements shall be submitted prior to Land Use Permit issuance for any development. **Monitoring:** Building Inspectors and Permit Compliance shall spot check and respond to complaints.
5. **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.
6. **Exterior Lighting.** Except as otherwise noted in the Project Description and approved 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 light fixture shall be fully shielded, full cut off and downcast so as to avoid spillage onto adjacent areas and shall be kept off except when maintenance personnel are actually present at night. **Plan Requirements:** The Permittee shall restate the lighting limitations on the construction plans. Plans for exterior lighting, if any are provided, shall be submitted to the County for review and approval. **Timing:** This condition shall be satisfied prerequisite to approval of building permit issuance. **Monitoring:** P&D staff shall conduct a Project Compliance Inspection prior to and as condition precedent to obtaining Final Building Inspection Clearance and respond to any complaints.
7. **Underground Utilities.** Except as otherwise noted in the Project Description and approved plans, all utilities necessary for facility operation, including coaxial cable, shall be placed underground. Conduit shall be sized so as provide additional capacity to accommodate utilities for other telecommunication carriers should collocation be pursued in the future. **Plan Requirements:** The Permittee shall restate the provisions for utility undergrounding on all building and grading plans. **Timing:** This condition shall be satisfied prerequisite to building permit issuance for the Project. **Monitoring:** P&D shall check plans prior to approval of building plans for the Project.
8. **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. Compliance shall be governed by the following provisions:
 - a. **Initial Verification.** The Permittee shall hire a qualified professional acceptable to the County (wholly

independent of the Permittee), to perform radio frequency ("RF") field test that measures actual RF electromagnetic exposure at the Project site. This RF field-testing shall measure all ambient sources of RF energy at the site and report the cumulative RF exposure which includes contributions from the site together with other sources of RF energy in the environment as a whole. The measurements shall be made by the responsible professional who will author the report to the County. This report of the measurement results and the author's/professional's findings with respect to compliance with federally established MPE standards shall be submitted to the County within 30 days of the Final Building Inspection Clearance. The Permittee shall pay for the cost of undertaking the field measurements and preparing the report. The facility shall cease and desist commercial operations until it complies with, or has been modified to comply with, applicable RF standards.

~~b. **Continued Verification.** Every five years the Permittee shall hire a qualified professional acceptable to the County to perform RF field testing (as described in section "a" above) to evaluate compliance with current federally established MPE standards. In the event the adopted RF standards change, the Permittee shall submit a report with calculations of the maximum potential public RF exposure from the Project with respect to the revised RF public exposure standards, within 90 days of the date said change becomes effective. If calculated levels exceed eighty percent (80%) of the applicable RF standards, the Permittee shall notify the County and submit a MPE compliance verification report with the results from current RF field testing, (as described in section one above), at the site. The Permittee shall pay for the cost of preparing the reports. However, for joint carrier sites, cumulative reporting may be delegated to one carrier upon the agreement of all carriers at the site. Procedures, penalties and remedies for non-compliance (or alleged non-compliance) with these reporting requirements shall be governed by the provisions of the Telecommunications Ordinance and the FCC regulations.~~

c. **Equipment Addition and Replacement.** 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. Once the new equipment has been installed, the Permittee shall perform Initial Verification as stated in "a" above.

Plan Requirements: The Permittee shall restate the provisions for MPE compliance on all building plans. **Timing:** Initial verification of compliance with RF public MPE standards shall be accomplished not later than 30 days following the Final Building Inspection Clearance. ~~Continued verification of compliance with MPE requirements shall be accomplished by RF field test reports, (as described in section one above), submitted by the applicant, at a minimum of every five years following initial verification.~~ **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 at intervening times between regular test periods.

10. **Project Review.** Five years after issuance of the Land Use Permit for the Project and no more frequently than every five years thereafter, the Director 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 pursuant to the County Code.

Plan Requirements: The Permittee shall restate the provisions for emissions compliance on all building plans.

Timing: Building permit valuation data 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 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.

11. **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.
12. **Additional Permit Requirements.** The use and/or construction of the building, structure or other development authorized by this approval cannot commence until this Land Use Permit has been issued and all necessary Building and/or Grading Permits obtained from P&D. Prior to the issuance of the Land Use Permit, all of the project conditions that are required to be satisfied prior to issuance of the Land Use Permit must be satisfied.
13. **Traffic Control Permit Required.** The use and/or construction of the building, structure or other development authorized by this approval cannot commence until a Traffic Control Permit has been obtained from the Public Works Department.
14. **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. **Timing:** This condition shall be satisfied prior to Final Building Inspection Clearance. **Monitoring:** P&D staff shall check plans and conduct compliance inspections as needed to ensure permit compliance.
15. **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. **Time Extension.** If the applicant requests a time extension for this permit/project, the permit/project 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. Mitigation fees shall be those in effect at the time of approval of a Land Use Permit.

15. **Permit Expiration.** Unless a permit extension is obtained, this Land Use Permit shall expire two years from the date of issuance if the use and/or structure for which the permit was issued has not been established or commenced in compliance with the effective permit.
16. **Print & Illustrate Conditions on Plans.** All applicable final conditions of approval shall be printed in their entirety on applicable pages of grading/construction or building plans submitted to P&D or Building and Safety Division. These shall be graphically illustrated where feasible.
17. **Compliance Fee.** The applicant shall ensure that the project complies with all approved plans and all project conditions. To accomplish this, the applicant agrees to:
 - a. Contact P&D 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. Contact P&D staff at **least two weeks** prior to commencement of construction activities to schedule an on-site pre-construction meeting with the owner, compliance staff, other agency personnel and with key construction personnel.
 - c. Pay a deposit fee of **\$500.00 prior to issuance** of the Land Use Permit as authorized under ordinance and to cover costs of monitoring as described above. This may include additional 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 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.
 - d. In the event that staff determines that any portion of the project is not in compliance with the conditions of approval of this permit, or approved plans an immediate STOP WORK ORDER may be issued.
18. **Fees Required.** Prior to issuance of the Land Use Permit, the applicant shall pay all applicable P&D permit processing fees in full.
19. **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.
20. **Indemnity and Separation Clauses.** Developer shall defend, indemnify and hold harmless the County or its agents, 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 the Land Use Permit. In the event that the County fails promptly to notify the 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.
21. **Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other mitigation 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 within 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 County and substitute conditions may be imposed.

ATTACHMENT C: EXEMPTION

Notice of Exemption

Form D

To: Office of Planning and Research
PO Box 3044, 1400 Tenth Street, Room 212
Sacramento, CA 95812-3044

From: (Public Agency) California Public Utilities Commission
505 Van Ness, SF CA, 94102
(Address)

County Clerk
County of

Project Title: Santa Barbara Distributed Antenna System (DAS) project

Project Location - Specific:

Santa Barbara, Montecito, Summerland, Carpentryia

Project Location - City: Santa Barbara, etc Project Location - County: Santa Barbara

Description of Project:

Installation of DAS nodes, including but not limited to, micro-antenna,
underground/overhead fiber optic lines, utility poles.

Name of Public Agency Approving Project: California Public Utilities Commission

Name of Person or Agency Carrying Out Project: NextG on behalf of Metro PCS

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
 Declared Emergency (Sec. 21080(b)(3); 15269(a));
 Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
 Categorical Exemption. State type and section number: 1506b3; 15301b/c; 15301c; 15302c; 15304f
 Statutory Exemptions. State code number:

Reasons why project is exempt:

Under D.07-04-045, the CPUC determined that the DAS projects proposed by NextG would
qualify under one or more categorical exemptions under CEQA.

Lead Agency
Contact Person: Jensen Uchida Arca Code/Telephone/Extension: 415 703 5484

If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: [Signature] Date: 7/20/09 Title: Analyst

Signed by Lead Agency Date received for filing at OPR:
 Signed by Applicant

January 2004

ATTACHMENT D: APPROVED PERMIT (ORIGINAL)



COUNTY OF SANTA BARBARA

Planning and Development

LAND USE PERMIT NO: 09LUP-00000-00381

Project Name: NextG Networks Cellular Antenna #ESB03
Project Address: Public Right-of-Way on Park Lane, Montecito
A.P.N.: Adjacent to 007-120-013
Zone: 2-E-1

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

FINAL APPROVAL DATE: January 6, 2010

APPEAL PERIOD BEGINS: January 7, 2010

APPEAL PERIOD ENDS: January 19, 2010

DATE OF PERMIT ISSUANCE: (if no appeal filed) January 20, 2010

NOTE: This final approval may be appealed to the Montecito Planning Commission by the applicant, owner, or any aggrieved person adversely affected by such decision. The appeal must be filed in writing and submitted with the appropriate appeal fees to the Planning and Development Department either at 123 East Anapamu Street, Montecito or 624 West Foster Road, Suite C, Santa Maria, prior to 5:00 p.m. on the APPEAL PERIOD ENDS date identified above. (CLUDC Section 35.102.020/MLUDC Section 35.492.020) If you have questions regarding this project please contact the planner Megan Lowery at 568-2517.

PROJECT DESCRIPTION SUMMARY: See attached.

PROJECT SPECIFIC CONDITIONS: See attached.

ASSOCIATED CASE NUMBERS: None.

PERMIT COMPLIANCE CASE:

No Yes; Permit Compliance Case (PMC) #: _____

BOARD OF ARCHITECTURAL REVIEW (BAR): No Yes; BAR Case #: _____

TERMS OF PERMIT ISSUANCE:

- 1. Posting of Notice.** Notice of the project shall be posted by the applicant utilizing the language and form of the notice provided by the Planning and Development Department. The notice shall remain posted continuously until at least 10 calendar days following action on the permit. (CLUDC Section 35.106.050/MLUDC-Section 35.496.050)
- 2. 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 Land Use Permit and/or any other required permit (e.g., building permit).

ATTACHMENT A CONDITIONS OF APPROVAL

1. This Land Use 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 Land Use 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 619 Park Lane in the public right of way.

The applicant is proposing to construct an unmanned wireless facility that would include one 26" whip omni antenna. The antenna is omnidirectional and would be mounted on an existing wood 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 East Valley Rd. and Park Lane with a range of approximately 1500 – 2000 feet in each direction.

All equipment for the antenna would be located on the existing wood utility pole. 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. The proposed facility would not require grading.

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3. **Colors and Painting.** All exposed equipment and facilities (i.e., antennas, equipment cabinets, etc.) shall be finished in non-reflective materials (including painted surfaces) and shall be painted Frazee Bon Nuit-CL3277N (or equivalent) to match the existing pole. **Plan Requirements and Timing:** Color specifications shall be identified on final building plans submitted by the Permittee to the County. **Monitoring:** P&D staff shall conduct a Project Compliance Inspection prior to and as condition precedent to obtaining Final Building Inspection Clearance.
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8. **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. Compliance shall be governed by the following provisions:
 - a. **Initial Verification.** The Permittee shall hire a qualified professional acceptable to the County (wholly

independent of the Permittee), to perform radio frequency ("RF") field test that measures actual RF electromagnetic exposure at the Project site. This RF field-testing shall measure all ambient sources of RF energy at the site and report the cumulative RF exposure which includes contributions from the site together with other sources of RF energy in the environment as a whole. The measurements shall be made by the responsible professional who will author the report to the County. This report of the measurement results and the author's/professional's findings with respect to compliance with federally established MPE standards shall be submitted to the County within 30 days of the Final Building Inspection Clearance. The Permittee shall pay for the cost of undertaking the field measurements and preparing the report. The facility shall cease and desist commercial operations until it complies with, or has been modified to comply with, applicable RF standards.

- b. **Continued Verification.** Every five years the Permittee shall hire a qualified professional acceptable to the County to perform RF field testing (as described in section "a" above) to evaluate compliance with current federally established MPE standards. In the event the adopted RF standards change, the Permittee shall submit a report with calculations of the maximum potential public RF exposure from the Project with respect to the revised RF public exposure standards, within 90 days of the date said change becomes effective. If calculated levels exceed eighty percent (80%) of the applicable RF standards, the Permittee shall notify the County and submit a MPE compliance verification report with the results from current RF field-testing, (as described in section one above), at the site. The Permittee shall pay for the cost of preparing the reports. However, for joint-carrier sites, cumulative reporting may be delegated to one carrier upon the agreement of all carriers at the site. Procedures, penalties and remedies for non-compliance (or alleged non-compliance) with these reporting requirements shall be governed by the provisions of the Telecommunications Ordinance and the FCC regulations.
- c. **Equipment Addition and Replacement.** 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. Once the new equipment has been installed, the Permittee shall perform Initial Verification as stated in "a" above.

Plan Requirements: The Permittee shall restate the provisions for MPE compliance on all building plans. **Timing:** Initial verification of compliance with RF public MPE standards shall be accomplished not later than 30 days following the Final Building Inspection Clearance. Continued verification of compliance with MPE requirements shall be accomplished by RF field test reports, (as described in section one above), submitted by the applicant, at a minimum of every five years following initial verification. **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 at intervening times between regular test periods.

10. **Project Review.** Five years after issuance of the Land Use Permit for the Project and no more frequently than every five years thereafter, the Director 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 pursuant to the County Code.

Plan Requirements: The Permittee shall restate the provisions for emissions compliance on all building plans.

Timing: Building permit valuation data 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 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.

11. **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.
12. **Additional Permit Requirements.** The use and/or construction of the building, structure or other development authorized by this approval cannot commence until this Land Use Permit has been issued and all necessary Building and/or Grading Permits obtained from P&D. Prior to the issuance of the Land Use Permit, all of the project conditions that are required to be satisfied prior to issuance of the Land Use Permit must be satisfied.
13. **Traffic Control Permit Required.** The use and/or construction of the building, structure or other development authorized by this approval cannot commence until a Traffic Control Permit has been obtained from the Public Works Department.
14. **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. **Timing:** This condition shall be satisfied prior to Final Building Inspection Clearance. **Monitoring:** P&D staff shall check plans and conduct compliance inspections as needed to ensure permit compliance.
15. **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. **Time Extension.** If the applicant requests a time extension for this permit/project, the permit/project 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. Mitigation fees shall be those in effect at the time of approval of a Land Use Permit.

15. **Permit Expiration.** Unless a permit extension is obtained, this Land Use Permit shall expire two years from the date of issuance if the use and/or structure for which the permit was issued has not been established or commenced in compliance with the effective permit.
16. **Print & Illustrate Conditions on Plans.** All applicable final conditions of approval shall be printed in their entirety on applicable pages of grading/construction or building plans submitted to P&D or Building and Safety Division. These shall be graphically illustrated where feasible.
17. **Compliance Fee.** The applicant shall ensure that the project complies with all approved plans and all project conditions. To accomplish this, the applicant agrees to:
 - a. Contact P&D 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. Contact P&D staff at **least two weeks** prior to commencement of construction activities to schedule an on-site pre-construction meeting with the owner, compliance staff, other agency personnel and with key construction personnel.
 - c. Pay a deposit fee of **\$500.00 prior to issuance** of the Land Use Permit as authorized under ordinance and to cover costs of monitoring as described above. This may include additional 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 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.
 - d. In the event that staff determines that any portion of the project is not in compliance with the conditions of approval of this permit, or approved plans an immediate STOP WORK ORDER may be issued.
18. **Fees Required.** Prior to issuance of the Land Use Permit, the applicant shall pay all applicable P&D permit processing fees in full.
19. **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.
20. **Indemnity and Separation Clauses.** Developer shall defend, indemnify and hold harmless the County or its agents, 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 the Land Use Permit. In the event that the County fails promptly to notify the 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.
21. **Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other mitigation 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 within 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 County and substitute conditions may be imposed.

ATTACHMENT E: APPEAL APPLICATION



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: Public right of way on Park Lane, Montecito

ASSESSOR PARCEL NUMBER: adjacent to APN 007-120-013

PARCEL SIZE (acres/sq.ft.): Gross n.a. Net n.a.

COMPREHENSIVE/COASTAL PLAN DESIGNATION: _____ ZONING: 2-E-1

Are there previous permits/applications? no yes numbers: _____
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? no yes numbers: _____

1. Appellant: See attached list Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

Applicant **Owner: NextG Networks of California, Inc.** Phone: (805) 683-4326 FAX: _____

Mailing Address: 5720 Thornwood Drive, Goleta, CA 93117 E-mail: _____
Street City State Zip

3. Agent: _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

4. Attorney: Susan M. Basham Phone: (805) 962-0011 FAX: (805) 965-3978
Price, Postel & Parma LLP

Mailing Address: 200 E. Carrillo St., #400, Santa Barbara, CA E-mail smb@ppplaw.com
Street City State Zip 93101

10APL-00000-00001

Case Nu NEXTG NETWORK CELLULAR ANNTENA #ESB
Supervi 0 PARK 1/13/10
Appical
Project 1
Zoning I SANTA BARBARA 111-111-111

COUNTY USE ONLY

Companion Case Number: _____
Submittal Date: _____
Receipt Number: _____
Accepted for Processing _____
Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE :

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title NextG Networks Cellular Antenna #ESB03

Case No. 09CUP-00000-00381

Date of Action January 6, 2010

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? _____

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and "aggrieved party" as defined on page two of this appeal form:

See attached appeal letter

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

See attached appeal letter

Specific conditions imposed which I wish to appeal are (if applicable):

- a.

- b.

- c.

- d.

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Price, Postel & Parma LLP by Susan M. Basham Susan M. Basham 1/13/10

Print name and sign - Firm _____ Date

Susan M. Basham, Attorney for Appellants Susan M. Basham 1/13/10

Print name and sign - Preparer of this form _____ Date

Print name and sign - Applicant _____ Date

Print name and sign - Agent _____ Date

Print name and sign - Landowner _____ Date

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Print name and sign - Firm	<i>Don and Susan Fisher</i>	<i>1-7-2010</i>	Date
Print name and sign - Preparer of this form	<i>Joanne Shefflin J. Shefflin</i>	<i>1/11/2010</i>	Date
Print name and sign - Applicant	<i>Shawn Tomson [Signature]</i>	<i>1/11/2010</i>	Date
Print name and sign - Agent	<i>CARLA Tomson [Signature]</i>	<i>1/11/2010</i>	Date
Print name and sign - Landowner	<i>JOHN ABRAHAM Power [Signature]</i>	<i>1/12/2010</i>	Date
	<i>Cynthia Feinberg [Signature]</i>	<i>1/13/2010</i>	Date
	<i>Peter van Duinwyk [Signature]</i>	<i>1/13/10</i>	Date
	<i>Montecito association</i>		

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APPELLANTS
09LUP-00000-00381

<u>Name</u>	<u>Montecito Address</u>
Lead Appellants:	
Susan and Don Fuhrer	619 Park Lane
Co-Appellants:	
Cindy Feinberg	1350 Arroyico Lane
Joanne Shefflin	995 Lilac Drive
John Abraham Powell	425 Lemon Grove Lane
Carla and Shaun Tomson	214 Middle Road
Montecito Association	1469 East Valley Road

PRICE, POSTEL & PARMA LLP

COUNSELLORS AT LAW

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SANTA BARBARA, CALIFORNIA
93101-2190

MAILING ADDRESS P. O. BOX 99
SANTA BARBARA, CA 93102-0099

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SUSAN M. BASHAM
STEVEN K. MCGUIRE

RETIRE PARTNERS

GERALD S. THEDE
DAVID K. HUGHES

OUR FILE NUMBER

22124.1

JAMES H. HURLEY, JR.
J. TERRY SCHWARTZ
DAVID W. VAN HORNE
PETER D. SLAUGHTER
DOUGLAS D. ROSSI
ERIC P. HVOLBØLL
CRAIG A. PARTON
CLYDE E. WULLBRANDT
KENNETH J. PONTIFEX
CHRISTOPHER E. HASKELL
TIMOTHY E. METZINGER
TODD A. AMSPOKER
MARK S. MANION
MELISSA J. FASSETT
IAN M. FISHER
SHEREEF MOHARRAM
SAM ZODEH
KRISTEN M.R. BLABEY
LESLEY E. CUNNINGHAM
DARRYL C. HOTTINGER

January 13, 2010

Chair Michael Phillips
and Members of the Montecito Planning Commission
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

Re: Appeal of 09LUP-00000-00381
NextG Networks Cellular Antenna #ESB03
Park Lane, adjacent to APN 007-120-013

Dear Chair Phillips and Commissioners:

Appellants Don and Susan Fuhrer, Joanne Shefflin, Carla and Shaun Tomson, Cynthia Feinberg, John Abraham Powell, and the Montecito Association have asked us to assist them in preparing their appeal of the above-captioned Land Use Permit for one of the 39 telecommunications facilities applications submitted by NextG Networks of California, Inc. ("NextG" or "Applicant").

On January 6, 2010 the Planning and Development Department ("P&D") issued its notice and intent to approve Land Use Permit No. 09LUP-00000-00381, with an appeal period ending January 19, 2010. Appellants are filing this appeal within the requisite appeal period.

This letter is intended to provide the framework for the appeal and to identify the grounds for appeal in summary fashion. Appellants expect to provide additional information and fully-developed arguments in support of their appeal prior to the Commission's hearing on this appeal, and they reserve their right to do so.

I. Project on Appeal

NextG has proposed the construction and use of an unmanned wireless telecommunications facility within the public right of way in an area zoned for residential use. It intends to attach its facilities to an existing wooden utility pole located in the public right of way

adjacent to privately-owned real property identified by the County Assessor as APN 007-120-013, also identified as 619 Park Lane. The proposed facilities to be mounted on the pole include one 26-inch whip omnidirectional antenna and an equipment box measuring 32" x 6" x 5" (inexplicably not described specifically in the approved project description). The antenna would have a range of approximately 1500 to 2000 feet in each direction.

While the pending permit indicates "none" where asked to identify "associated case numbers," this pending permit is part of a larger package of "Tier 1" permit applications from NextG, through which it intends to install a "Distributed Antenna System" throughout the south coast areas of Santa Barbara County. The permit at issue here is one of 39 proposed for the South County, with 13 proposed for Montecito. NextG has identified Metro PCS as the carrier that would use these facilities to provide wireless service. In addition, NextG's plans include installation of fiber-optic cabling to connect all of the antennas. With the exception of cabling requiring trenching in coastal zone areas, the placement of cable is exempt from zoning permits. Installation of aerial cabling requires no permits, and installation of underground cable will require only road encroachment permits. This cabling is designed to support up to five carriers, each of which presumably would seek to co-locate its antennas on the same poles included in the NextG network of facilities, including the pole at issue in this particular permit.

In addition to the permit at issue here, Appellants expect to appeal P&D's decisions to approve some of these additional facilities where the proposed locations are similarly in conflict with the community's goals and with the interests of its citizens.

II. Appellants Have Standing As Aggrieved Persons

Appellants are all aggrieved persons adversely affected by P&D's decision within the meaning of Chapter 35.500 of the Montecito Land Use and Development Code, which defines an "aggrieved person" as "[a]ny person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the local government of the nature of his concerns or who for good cause was unable to do either." The permit here appealed was issued administratively; therefore none of the appellants had an opportunity to attend a public hearing concerning the specific action. However, appellants have participated in several hearings before the Board of Supervisors that were characterized by P&D as informational briefings related to the NextG Distributed Antenna System and numerous pending NextG applications, including the application for the permit at issue here. These hearings were prompted by members of the community, including some of the appellants, who expressed concern regarding the NextG projects during the public comment period at the Board's October 6, 2009 hearing, requesting that the Board impose a moratorium on the processing of

applications for additional facilities to allow time for research and review of standards for approval of such facilities. As a result, the Board requested Staff briefings on the permitting framework for such applications and considered public testimony on October 20, 2009 and December 1, 2009.

The lead appellants, Don and Susan Fuhrer, own the property at 619 Park Lane immediately adjacent to the pole location. They and the other individual appellants have written letters to the County to express their concerns and have attended one or more Board of Supervisors meetings related to the NextG permits. The Montecito Association has expressed its views in writing and its representatives have attended the Board of Supervisors meetings. Cindy Feinberg, in addition, has expressed her opposition publicly through local media including the Montecito Journal, the Independent, and KEYT News. Many of the appellants have called or emailed P&D staff with their concerns.

In summary, all of the appellants have appeared at a public hearing focused on this matter or otherwise have made their concerns known to P&D during the time when P&D was processing the permit application.

III. Grounds for Appeal

A. The Facilities Approved by this Permit Do Not Merit Approval under the County's Commercial Telecommunications Facilities Ordinance

Chapter 35.444 of the Montecito Land Use and Development Code (and Chapter 35.44 of the County Land Use and Development Code) ("LUDC") provides that commercial telecommunications facilities are to be considered under "tiered" standards, with a "very small facility" in a residential zone treated as a Tier 1 project requiring a Land Use Permit. While the processing requirements for Tier 1 projects are limited, the LUDC includes more demanding development standards applicable to all telecommunication facilities. Appellants contend that certain of these development standards have not been met and that the permit was approved in error.

Except for very small facilities that qualify under Tier 1, all wireless facilities proposed to be located in any residential zone require a Major Conditional Use Permit under the jurisdiction of the Planning Commission. Appellants contend that P&D abused its discretion in processing each of the individual permit applications as a Tier 1 project requiring only "ministerial" review when, viewed as a Distributed Antenna System in which all of the facilities

are inter-dependent, they clearly require a higher level of review under the LUDC and the California Environmental Quality Act ("CEQA").¹

In issuing a Land Use Permit for a telecommunications facility, the review authority must make certain required findings, including the finding that the proposed development will conform to the applicable provisions of the County's Comprehensive General Plan including the Montecito Community Plan and the LUDC. (LUDC § 35.472.100) Appellants contend that P&D did not make this or other required findings and could not have made these findings, as discussed within this letter.

Moreover, Chapter 35.444 requires that the review authority must make certain additional required findings in the issuance of any permit for telecommunications facilities, including Land Use Permits. These include the following:

1. The facility will be compatible with the existing and surrounding development in terms of land use and visual qualities.
2. The facility is located to minimize its visibility from public view.
3. The facility is designed to blend into the surrounding environment to the greatest extent feasible.
4. The facility complies with all required development standards unless granted a specific exemption by the review authority as provided in Subsection D. (Additional development standards for telecommunications facilities) above.
5. The applicant has demonstrated that the facility shall be operated within the frequency range allowed by the Federal Communications Commission and complies with all other applicable safety standards.

P&D has made none of these findings in the permit at issue and, as Appellants will show, cannot make these findings based upon the facts and evidence readily available concerning this project. Accordingly, Appellants contend that the decision to issue the permit was inconsistent with the provisions and purposes of the County's Zoning Ordinances and other applicable law

¹ In a letter dated October 26, 2009, NextG has asserted that the California Public Utilities Commission is the "lead agency" under CEQA and "the only entity with broad discretionary decision-making authority over NextG's proposed services, facilities, and construction throughout the state." Appellants contend that the County of Santa Barbara has a responsibility under CEQA as a responsible agency if not as a lead agency and is responsible for assessing the environmental impacts of the proposed project within its own jurisdiction.

and was not supported by the evidence presented for consideration. They maintain that P&D abused its discretion and acted in error in issuing the permit.

B. Health Risks Associated with Electromagnetic Frequency Exposures Are a Legitimate Community Concern

As Appellants have stated in the Board of Supervisors hearings and in their written communications, they are extremely concerned about the health risks of exposure to electromagnetic frequencies ("EMF") associated with wireless communications, particularly where NextG proposes to add substantially to existing and presently unavoidable exposures all around us. Their concerns have not been addressed in Condition 8 of the Conditions of Approval associated with this permit, which requires compliance with Federal Communications Commission exposure limitations. The federal standards have not been updated to reflect the most recent scientific knowledge, which was presented to the Board of Supervisors during its several hearings, and the federal standards provide inadequate protection against health risks as they are understood today.

The Board of Supervisors has expressed the same concerns in its Resolution 09-339, approved on November 10, 2009, where the Board objected to lobbying efforts by the Cellular Telecommunications Industry of America to have the Federal Communications Commission impose even greater restrictions on a local government's authority to undertake meaningful review of all aspects of telecommunications projects. Instead, the Board urged repeal of the sections of the 1996 Telecommunications Act that pre-empt local control and prevent local governments from considering health effects. At the same time, the Board authorized the County's legislative advocates "to actively seek and support state legislation that would give local governments greater flexibility to regulate the placement of cellular facilities within the road right of way."

Appellants join the Board of Supervisors in their frustration with constraints under the 1996 Telecommunications Act of 1996. However, they recognize that the Telecommunications Act does not prevent the County from denying applications on other grounds. Specifically, the Act preserves local zoning authority over decisions regarding the placement, construction, and modification of personal wireless service facilities as long as regulation does not have the effect of prohibiting the provision of personal wireless services. (47 USC §§ 253(b), 332(c)(7).) Appellants contend that P&D abused its discretion when it approved the subject permit without adequate regard for the aesthetic and safety impacts resulting from the placement of facilities in the proposed project, which are well within the County's authority to regulate.

C. The County's Police Power Includes Regulation of Land Uses Based upon Aesthetic Impacts

The California Constitution, Article XI section 7, establishes the County's authority to "make and enforce within its limits all local, police, and other ordinances and regulations not in conflict with general laws." This constitutional police power is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people. Under California law, a local government's exercise of police power is valid if its restrictions bear a reasonable relation to the general welfare. *City of Los Angeles v. County of Kern* (C.D.Cal. 2006) 462 F.Supp.2d 1105. One California court has described the police power as follows:

[P]olice power is not a circumscribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economic, moral, and intellectual evolution of the human race.

(*Richeson v. Helal* (2007) 158 Cal.App.4th 268.)

Certainly consideration of the impacts of new technologies such as the network proposed by NextG is amenable to the exercise of the County's authority as it keeps pace with both the growth of knowledge and the need for expansion to meet conditions of modern life. Certainly, too, the "belief in the popular mind" concerning the NextG Distributed Antenna System is that the County should exercise its authority in the interest of the public health, safety and welfare.

Both state and federal courts have determined that regulation to protect aesthetic interests is within the exercise of the police power. In *Metromedia, Inc. v. San Diego* (1981) 453 U.S. 490, the United States Supreme Court determined that even if the only interest implicated in the selected location is aesthetic, that aesthetic concern is a legitimate and significant governmental interest. In *Echevarrieta v. City of Rancho Palos Verdes* (2001) 86 Cal.App.4th 472, the California Court of Appeal concluded that the exercise of governmental authority for aesthetic purposes is clearly a legitimate exercise of traditional police power. The *Echevarrieta* Court agreed with the trial court in that case that "[t]he concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic, [and] monetary." (*Echevarrieta*, 86 Cal.App.4th at p. 478.)

The regulation of visual blight as an aesthetic concern is certainly within the County's authority. For example, in *Crown Motors v. City of Redding* (1991) 232 Cal.App.3d 173, the Court of Appeal concluded that the power of government to advance the quality of life in the

community included eliminating the visual blight created by two proposed reader boards. (*Crown Motors*, 232 Cal.App.3d at pp. 178-179.) The court reasoned that the governmental interest in attempting to preserve “the quality of urban life” is one that must be accorded high respect.

The *Crown Motors* Court went a step farther in determining that the aesthetic condition of a community is related to public health. The court reasoned that the term “public health” must be interpreted according to the circumstances in which it is used. It “takes on new definitions when new conditions arise, but generally speaking, it means the wholesome condition of the community at large.” (*Crown Motors*, supra 233 Cal.App.3d at p. 178 [quoting *Chisholm v. California Jockey Club* (1958) 164 Cal.App.2d 367, 369].)

The “wholesome condition” of the Montecito community is at the heart of this appeal because that is what this NextG permit jeopardizes. The NextG facilities will create a visual blight on a well-traveled thoroughfare where they will be seen daily by many Montecito residents, all of whom chose to live in the community because of its semi-rural character. By impacting the quality of life in the community, NextG’s numerous antennas and equipment boxes may also impact the mental and spiritual well-being of some residents. They certainly will create a visual distraction for drivers, raising traffic and safety concerns on the community’s roads, particularly in the vicinity of schools. Whip antennas and equipment boxes mounted on poles throughout the community conflict with the aesthetics of the community and cannot possibly be in concert with the public health and safety.

D. Approval of the Permit is Contrary to the Montecito Community’s Goals and Undermines the Character of the Community

To approve this permit, P&D must find that the proposed facility will be compatible with the existing and surrounding development in terms of land use and visual qualities. P&D also must find that the facility is located to minimize its visibility from public view and that it is designed to blend into the surrounding environment to the greatest extent feasible. (LUDC § 35.444.010(G).) P&D has not made these findings and cannot make such findings.

When members of the Montecito community prepared the Montecito Community Plan in 1992, they stated as an over-arching goal the preservation of a semi-rural residential quality of life, and they identified the features of the community that establish its character, including the presence of narrow winding roads and the absence of urbanizing features. The Montecito Community Plan is integral to the County’s Comprehensive General Plan, and its policies must be considered in the review of any permit for the Montecito planning area.

Aesthetic considerations and preservation of the character of the community are paramount throughout the Community Plan as well as the Montecito Architectural Guidelines and Development Standards. The Community Plan includes Goal LU-M-2:

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.

The Guidelines state as goals: "To maintain the semi-rural character of the roads and lanes" and "To preserve, protect and enhance the existing semi-rural environment of Montecito." Accordingly, when reviewing a proposed new residential development, the Board of Architectural Review must find, among other things, that there is "a harmonious relationship with existing developments in the surrounding neighborhood."

The installation of pole-mounted antennas, equipment boxes and a cable network along narrow, winding roadways throughout the community contradicts these stated community goals and undermines the community's effort to preserve its semi-rural character. Appellants contend that P&D abused its discretion when it failed to consider these goals in approving the permit.

Moreover, under Section 35.44.010(D)(2) of the LUDC, all commercial telecommunications facilities must meet particular development standards, among which is the following:

- d. 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 road, trails, recreational areas).

The review authority may grant an exemption only if it "finds, after receipt of sufficient evidence, that failure to adhere to the standard in the specific instance either will not increase the visibility of the facility or decrease public safety, or it is required due to technical considerations 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 it would avoid or reduce the potential for environmental impacts."

The facilities in question include a 26 inch whip antenna and an unsightly equipment box that will hang on the utility pole, fully visible from a public road and adjacent areas. This area of the community is particularly scenic because of its Eucalyptus windrows and mountain-views. The Montecito Community Plan includes Action VIS-M-1.3.1, indicating that the County should initiate proceedings to designate East Valley Road as a State Scenic Highway. In addition, the

Park, Recreation and Trails Maps of the Comprehensive General Plan show a proposed on-road trail that travels westerly along East Valley Road and continues on Park Lane. The proposed antenna by itself is visually intrusive, and the equipment box makes it completely unacceptable aesthetically. The visual effects of the proposed facilities would render them inconsistent with Goal VIS-M-2 of the Montecito Community Plan, which states "Protect Public and Private Open Space as an Integral Part of the Community's Semi-Rural Character and Encourage its Retention." Under Subsection (D)(2), these facilities should be located underground because they are visible from public viewing areas. Clearly NextG wants to install its facilities exactly as it has proposed, but to Appellants' knowledge, NextG has not provided information sufficient for P&D to conclude that there are no possible alternatives.

P&D is required to make a finding that the facility "complies with all required development standards unless granted a specific exemption by the review authority as provided in Subsection D." The permit at issue includes no grant of an exemption from this requirement, nor would it qualify for such an exemption based upon the criteria provided in the ordinance. Accordingly, Appellants contend that P&D abused its discretion by issuing a permit for facilities that do not comply with this development standard.

1. Pole-Mounted Equipment Conflicts with the Community's Goal of Undergrounding Utilities

Recognizing the aesthetic aspects of the community's character, Appellant Montecito Association recently adopted an Overhead Utility Policy, which states the following:

The Montecito Association affirms its long-term support for the elimination of overhead utilities. This is consistent with our long-standing support of the Montecito Community Plan goals to sustain and enhance the exceptional beauty and semi-rural character of the Montecito community as well as to maintain property values and a high quality living environment.

Indeed, undergrounding of utilities has been a priority in the Montecito Community for many years. In 1968 the Board of Supervisors approved an undergrounding district at the intersection of East Valley and San Ysidro Roads (Resolution No. 68-486), and in 1986 the Board of Supervisors approved a Rule 20A district on San Ysidro Road (Resolution 86-151). The Board also has approved a district along East Valley Road between Hot Springs Road and Santa Angela Lane, (Resolution 05-102), for which construction has not yet begun. Considering that the NextG facilities are part of a network of interdependent antennas, it makes little sense to approve the installation of antennas on any poles that are likely to be proposed for removal as part of undergrounding projects in the future.

Notably, LUDC section 35.44.010(C)(a)(2) states: "If at a later date the utility poles are proposed for removal as part of the undergrounding of the utility lines, the permit for the facilities shall be null and void." This provision provides little comfort to Appellants, since it is highly unlikely that NextG would accept an automatic nullification of a permit on which it has relied for an installation that it may claim is integral to its network.

2. Both the Land Use and Development Code and the Montecito Community Plan Call for Adequate Setbacks between Habitable Structures and Telecommunications Facilities

In 1992 wireless communications were in their infancy. Even so, the Montecito Community Plan included as Goal E-M-1 the protection of citizens from elevated electromagnetic fields until the potential risk from EMF exposure can be determined. The Plan recognized the County's authority to protect the community from this potential hazard by requiring "adequate building setbacks from EMF-generating sources to minimize exposure to this hazard."

As it has turned out, the EMF hazard remains a concern and building setbacks have taken on broader significance as telecommunications systems have changed. With antennas and large equipment boxes mounted on numerous poles throughout the community, setbacks from buildings are important so as not to block the views or otherwise compromise the enjoyment of adjacent private property, consistent with the Community Plan's goals.

Similarly, as the County has updated its Commercial Telecommunications Facilities ordinances, it has included as a requirement that in a residential zone, the base of any new freestanding antenna support structure shall be set back from adjacent residential property "a distance equal to five times the height of the antenna and antenna support structure, or a minimum of 300 feet, whichever is greater." While LUDC Section 35.444.010(D) includes an exception from setback requirements for antennas installed on existing public utility poles, the exception contradicts the basic premise of setbacks – that two uses are either fundamentally incompatible or are made so by proximity to each other.

Aesthetically an antenna and equipment box mounted on an existing pole may be as intrusive visually as a new freestanding antenna support system. The appellants who live near the permit at issue here certainly find the prospect of looking at them every day a visual intrusion on their area.

Once telecommunications facilities are installed, the future use of the adjacent property is compromised. Regardless of whether the Telecommunications Act recognizes health risks as a legitimate basis for denying a project, people in the community generally are aware that scientists have raised substantial exposure concerns and they do not want to live close to antennas when proximity can be avoided. The installation of an antenna next to a residential property effectively limits the property owner's opportunity to expand or remodel his residence in the area closest to the antenna.

For these same reasons, the presence of any telecommunications equipment close to residential uses may jeopardize the long-term value of the adjacent residential properties. Appellants are aware of other situations in the community where properties have lost substantial value after the installation of nearby telecommunications equipment.

In short, approving any pole mounted facilities is contrary to County policies and a step backward from the 1992 Montecito Community Plan. Appellants contend that P&D abused its discretion in permitting the installation of any NextG antennas on poles where the requisite setback from existing structures cannot be achieved, thereby compromising the interests of private residential property owners.

E. Impacts of this Permit Will Be Compounded by Connection to NextG's System and by Anticipated Co-Location

This permit cannot be viewed as though it approves a single whip antenna and single equipment box on a single pole. As objectionable as these facilities are in their own right, they must be seen as enabling something far more damaging to the community: an interdependent network of similar installations that together will create a Distributed Antenna System, causing an immeasurable change in the community's character. NextG has proposed 39 pole locations today, and its Distributed Antenna System, if approved, will pave the way for up to five antennas on each pole, including the pole at issue in this permit.

As discussed throughout this letter, Appellants object to P&D's decision to consider each of the proposed antennas as a single "Tier 1" project pursuant to the LUDC section 35.444.010, requiring only ministerial review. P&D explained to the Board of Supervisors in its December 1, 2009 Agenda Letter that the theory behind a tiered approach is that "as the size and complexity of the facility and potential for environmental impacts or policy inconsistencies increased, the decision-making body shift[s] upward." Under this theory, the NextG permit applications and the entire Distributed Antenna System should have been viewed as one project subject to higher scrutiny.

Moreover, in accepting each of NextG's multiple applications as a single "Tier 1" permit application, P&D concluded that only a "ministerial" permit is required and therefore apparently concluded that, apart from NextG's contentions concerning the California Public Utilities Commission as the "lead agency," that each such "ministerial" project is exempt from review under the CEQA. To the extent that the California Public Utilities Commission is responsible for certain environmental review, Appellants have seen no evidence of the Commission's review or any evidence that the County was given notice and the opportunity to comment on an environmental document. Appellants contend that P&D abused its discretion in not considering the impacts of the project as a whole, including its potential cumulative impacts, particularly since the approval of one antenna facilitates the creation of the Distributed Antenna System and this reasonably foreseeable consequence must be assessed. They maintain that P&D should have conducted this level of review not solely because of CEQA but also because the project requires a higher level of scrutiny under the LUDC.

F. P&D Issued the Permit Based Upon Inadequate, Incomplete or Unreliable Data

1. P&D Based its Permit Decision on Inadequate Information Concerning Project Alternatives

NextG's permit applications provide no substantive alternative site analysis as is required before an application may be deemed complete. Instead, NextG asserts in its applications that it has selected its pole locations "based on their network efficiency allowing the least number of equipment installations as well as structural integrity and constructability." The presumptions in this "analysis" pre-determine the conclusion. NextG proposes a particular kind of network – a Distributed Antenna System – in which the maximum separation between its antennas is determined by design and environmental factors. To Appellants' knowledge, P&D did not require NextG to justify its facility location on any scientific basis, particularly "gap of service."

But for the fact that NextG wants to install this particular type of system, other options would be available. Even accepting the practical limitations of this type of system, alternative locations and configurations certainly are available within the Montecito community. Such alternatives might have been pursued as a result of a thorough peer review. They certainly would have been reviewed in a CEQA analysis, which requires consideration of project alternatives, including the "no project" alternative. However, P&D did not avail itself of either source of information and relied on insufficient information from the applicant. Appellants contend that P&D abused its discretion in not fully exploring project alternatives, including but not limited to alternative locations for the facilities at issue in this permit.

2. P&D Has Not Established that the Proposed Location May Be Used Legally as Proposed

LUDC section 35.472.100(E) states, among the required findings for issuance of a Land Use Permit, that the proposed development must be “located on a legally created lot” and that the subject property is “in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and other applicable provisions of this Development Code.” P&D has not made either required finding in the subject permit and, to Appellants’ knowledge, no analysis has been completed that would warrant such a finding.

Among other things, P&D has not addressed the specific limitations on use of the utility easements where the poles are located. Each of the poles proposed for location of NextG facilities, including the pole at issue in this appeal, is located in a public right of way and is owned or maintained by another utility. Appellants do not yet know the specifics of the easement affected by the permit at issue. However, they have seen no evidence that P&D has considered those specifics in approving this permit. For example, the right of way may exist under an easement granted by an adjacent property owner who continues to own the fee in the land, and the use of the easement may be restricted in a way that would prevent the County from extending rights to a particular user. The lead appellants in this appeal own property immediately adjacent to the proposed antenna location and anticipate reviewing their title to determine whether the easement in question was granted with such limitations.

In addition, the pole may be owned by Southern California Edison or another utility that has the authority to limit NextG’s use. In its December 1, 2009 Agenda Letter, P&D explained to the Board of Supervisors that the County’s franchise agreement with Southern California Edison provides: “Except in those cases where Grantee (SCE) is required by State or Federal law to provide access to its Facilities, use of Grantee’s Facilities for any pursue other than the uses permitted by this ordinance shall require notice and consent by County.” P&D also explained that the California Public Utilities Commission requires electrical utilities to allow pole access to telecommunications providers possessing a Certificate of Public Convenience and Necessity from the Commission. However, P&D did not state whether NextG has such a Certificate, and Appellants are not aware of one.

In the absence of information establishing the legal status of the location and NextG’s right to occupy it, P&D cannot make the required findings. Appellants contend that P&D abused its discretion in issuing the permit without adequate foundation.

3. P&D Acted upon Information Inadequate to Establish Compliance with Federal Communications Commission Regulations

In its October 20, 2009 Agenda Letter, P&D stated that it had asked NextG to provide “site-specific cumulative emissions tests in order to be able to affirmatively make the finding of the installation’s compliance with FCC’s emissions thresholds. Upon receipt of the site specific radio frequency emissions tests, the County will have the reports peer reviewed for accuracy; following, decisions on these LUP, CDP and CDH permit applications will be rendered.” Appellants have been unable to obtain any information that would indicate completion of the reports.

Moreover, Appellants are aware that P&D selected for its peer review expert a Mr. Bushberg who has worked extensively for major telecommunications carriers throughout the state, including but not limited to NextG. The county maintains a list of accepted consultants in various fields and, to Appellants’ knowledge, Mr. Bushberg is not among them. Clearly Mr. Bushberg had a conflict of interest if asked to provide an unbiased peer review of reports prepared by or on behalf of his current or potential future client. It is Appellants’ understanding that this type of conflict of interest is not tolerated by P&D for consultants in other disciplines. To the extent that he may have provided any peer review of the subject permit, his review cannot be relied upon.

To approve this permit, P&D must make the required finding that “[t]he applicant has demonstrated that the facility shall be operated within the frequency range allowed by the Federal Communications Commission and complies with all of the applicable safety standards.” To Appellants’ knowledge, P&D did not receive reports and/or did not complete the peer review of this project and therefore cannot make this finding. Under these circumstances, P&D abused its discretion and issued the permit in error.

4. P&D Has Not Addressed Critical Issues Raised by the Board of Supervisors

On October 20, 2009, after hearing public testimony, the Board of Supervisors voted to direct staff to explore, among other things, the “role of CEQA in the regulatory/permitting process, relocation of existing sites, issues related to third-party/peer review, conflict of interest/revolving door policies and laws, . . . [and] cumulative impacts of such facilities.” The December 1, 2009 Agenda Letter did not address these concerns in any detail and Appellants do not believe that Staff’s oral report expanded the response significantly.

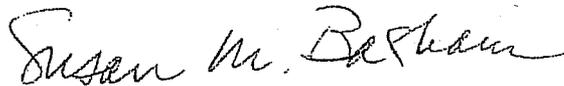
Chair Michael Phillips
and Members of the Montecito Planning Commission
January 13, 2010
Page 15

Appellants understand that part of the Board's focus was the proposed moratorium on the processing of new permit applications, but the 39 NextG applications were pending and the information requested by the Board was as relevant to the substantive consideration of those permits as to the prospect of a moratorium ordinance. Had P&D presented an explanation of each of these areas of concern, it is possible that the processing of the permits would have been done with greater "transparency," as the Board suggested, and with greater attention to the matters that have resulted in flawed permits.

* * * * *

In summary, Appellants have concluded that P&D issued the permit in error because the NextG network, and the subject permit in particular, did not receive the full and complete review that state and County law and community policies require. Required findings were not made and, on the facts, cannot be made. Accordingly, P&D should have denied the permit. Appellants are continuing to investigate their concerns and remain open to considering additional information. We look forward to presenting their appeal in greater detail for your consideration at hearing.

Very truly yours,

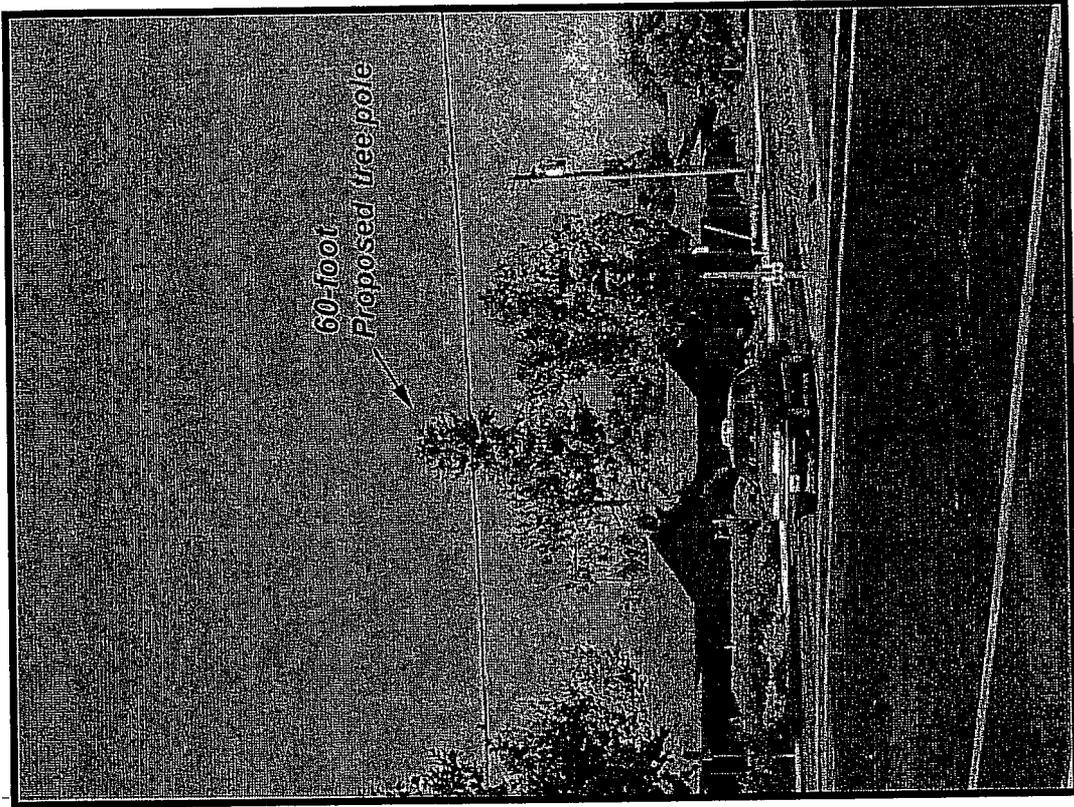


Susan M. Basham
for PRICE, POSTEL & PARMA LLP

SMB:lkh

cc: Appellants (see appeal list)

ATTACHMENT F: VISUAL COMPARISON PHOTO

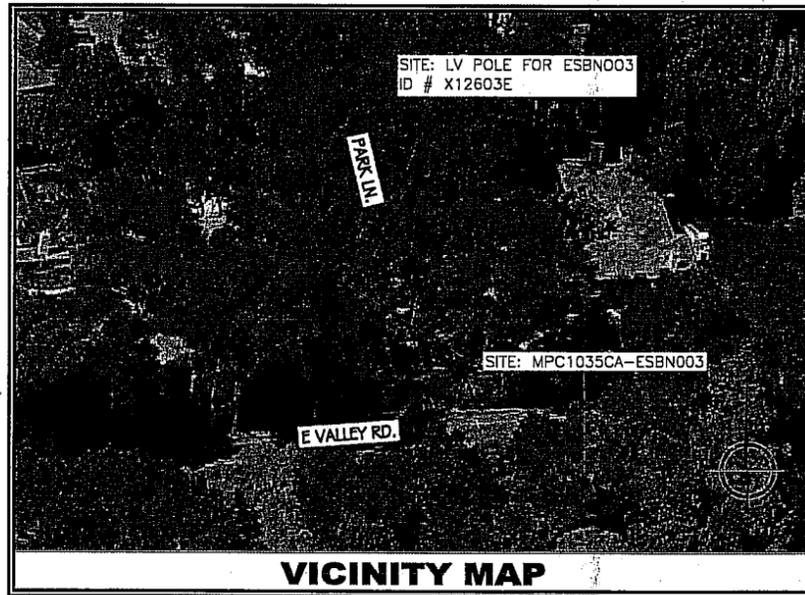


ATTACHMENT G: PHOTO SIMULATION

ATTACHMENT H: PROJECT PLANS



NextG Networks, Inc.
MPC1035CA-ESBN003
EAST SANTA BARBARA
SANTA BARBARA, CA 93108



VICINITY MAP

09LUP-00000-00381
 NEXTG NETWORK CELLULAR ANTENNA #ESB
 0 PARK 9/14/09
 SANTA BARBARA 111-111-111

 NextG Networks, Inc.
 2218 D'AVOLE AVE.
 SAN JOSE, CALIFORNIA 95131
 PHONE: (408) 954-1580

PROJECT INFORMATION:

MPC1035CA-ESBN003
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

02/10/2009

PERMIT SUBMISSION:

REV. DATE: DESCRIPTION: BY:

REV.	DATE	DESCRIPTION	BY

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

13341 Temescal Cyn. Rd.
 Corona, CA. 92885
 PHONE: (951) 471-1919

PLANS APPROVED BY:

 NextG Networks, Inc.

REP:

COMMENTS:

SHEET TITLE:

TITLE SHEET

SHEET NUMBER: REVISION:

1 1 OF 6

ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUED TO PERMIT WORK NOT CONFORMING TO THE AREAS GOVERNING CODES.

1. STATE ADMINISTRATIVE CODE	5. STATE PLUMBING CODE
2. STATE BUILDING CODE	6. STATE ELECTRIC CODE
3. AISI/EIA-222-F LIFE SAFETY CODE NFPA-101-1990	7. LOCAL BUILDING CODE
4. STATE MECHANICAL CODE	8. CITY/COUNTY ORDINANCES

CODE COMPLIANCE

PROPERTY INFORMATION

CUSTOMER: NEXT G NETWORKS INC.
 PROJECT: EAST SANTA BARBARA
 NODE: MPC1035CA-ESBN003
 LATITUDE: 34.43979
 LONGITUDE: -119.61845
 STREET ADDRESS: 619 PARK LN.
 CITY, STATE: SANTA BARBARA, CA 93108
 JURISDICTION: COUNTY OF SANTA BARBARA
 POLE#: GT110929
 POLE TYPE: WOOD UTILITY POLE
 RAD CENTER / ANTENNA HEIGHT: 40'-11"
 ANTENNA TYPE: AWS360-1710-7-T0-N
 AZIMUTH FOR ANTENNA: N/A
 POWER TO POLE: SECONDARY
 POLE ACCESS: ON ROAD
 POLE OWNER: N/A
 POLE LOCATION & DESCRIPTION: NW CORNER OF PARK LN & HIGHWAY 192

PROJECT SUMMARY



THE PROJECT CONSISTS OF THE INSTALLATION AND OPERATION OF ANTENNAS AND ASSOCIATED EQUIPMENT CABINETS FOR NEXTG. THE INSTALLATION OF GROUND MOUNTED EQUIPMENT CABINETS, ANTENNAS ON AN EXISTING STREET LIGHT, WOOD POLE, TRAFFIC SIGNAL AND NEW STEEL POLES.

PROJECT DESCRIPTION

INSTALL / PLACE NEW FIBER TO NEW OR EXISTING POLE. INSTALL EITHER OMNI OR PANEL ANTENNAS AND ALL ASSOCIATED BRACKETS IN ACCORDANCE TO CONSTRUCTION SPECIFICATIONS. REARRANGE ANY EXISTING FACILITIES IN ACCORDANCE TO GOVERNING CONSTRUCTION GUIDELINES.

PROJECT SCOPE

DIG ALERT

 1-800-227-2600
 CALL AT LEAST TWO DAYS BEFORE YOU DIG
 UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA
 TICKET # _____

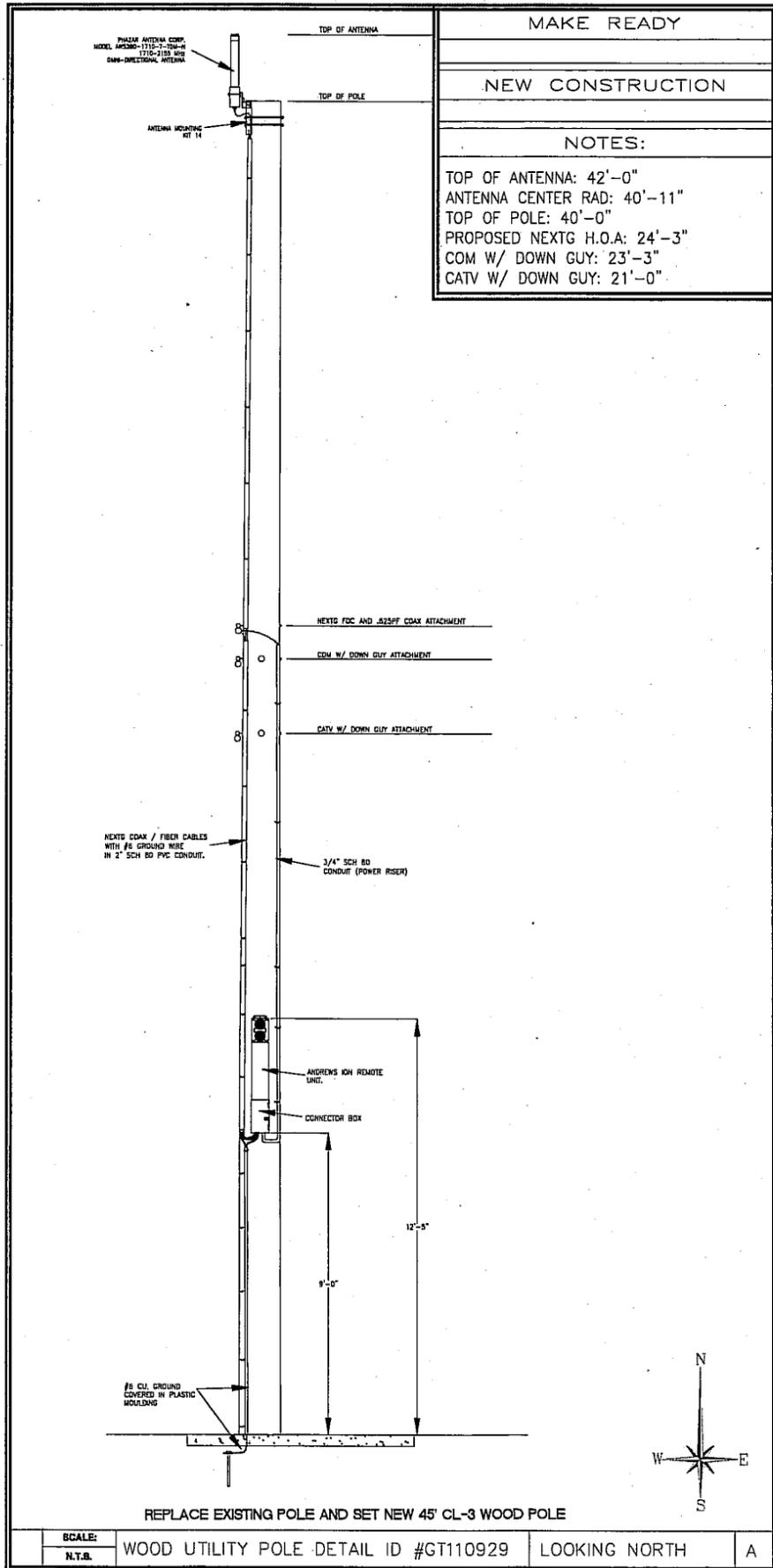
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2	UTILITY NODE / REPEATER POLE EQUIPMENT PROFILES	0
3	UTILITY POWER POLE EQUIPMENT PROFILES	0
4	MAPS	0
5	TYPICALS	0
6	TYPICALS	0

SHEET INDEX

DO NOT SCALE DRAWINGS

CONTRACTOR SHALL VERIFY ALL PLANS AND EXISTING DIMENSIONS AND CONDITIONS ON THE JOB SITE AND SHALL IMMEDIATELY NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME.

GENERAL CONTRACTOR NOTES



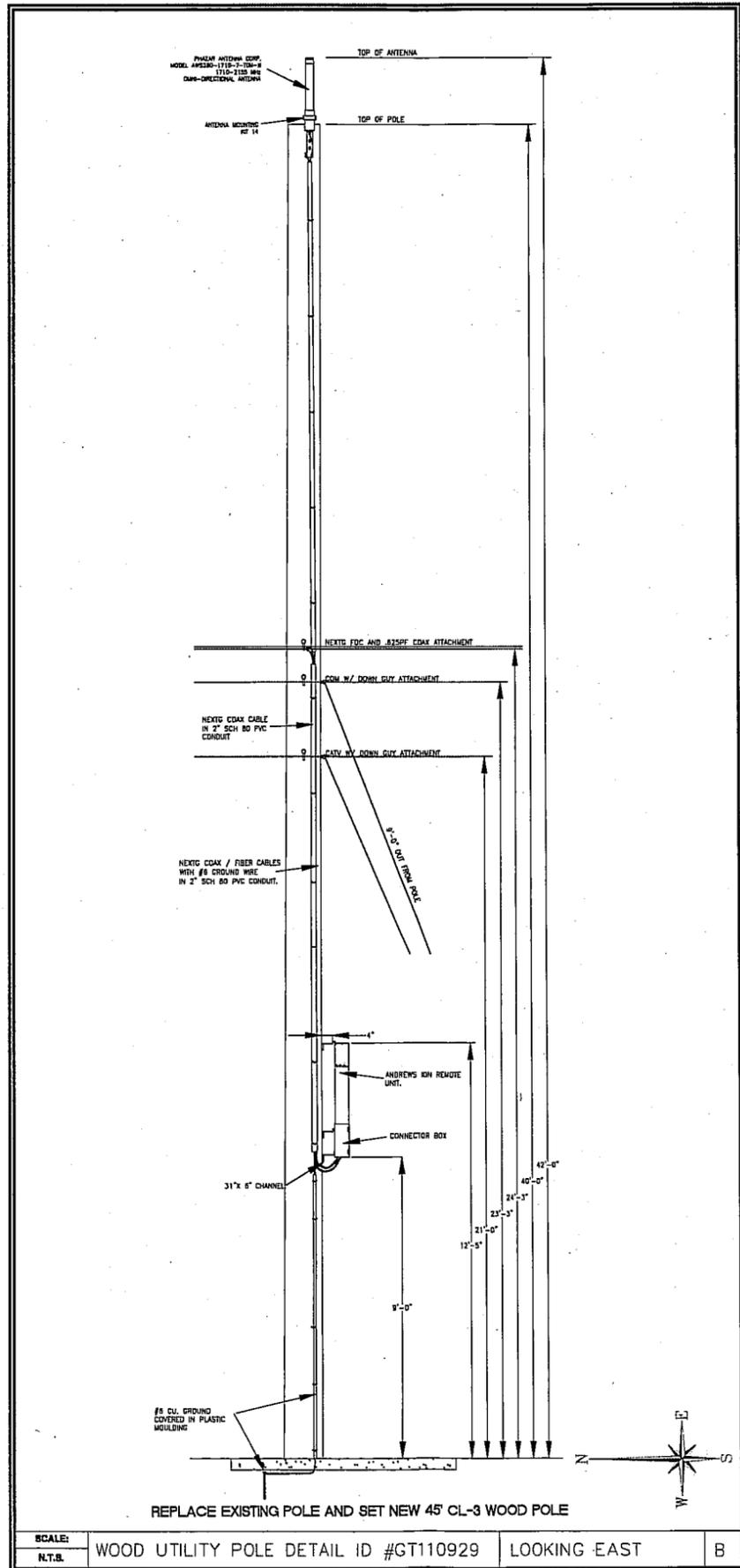
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NEW CONSTRUCTION

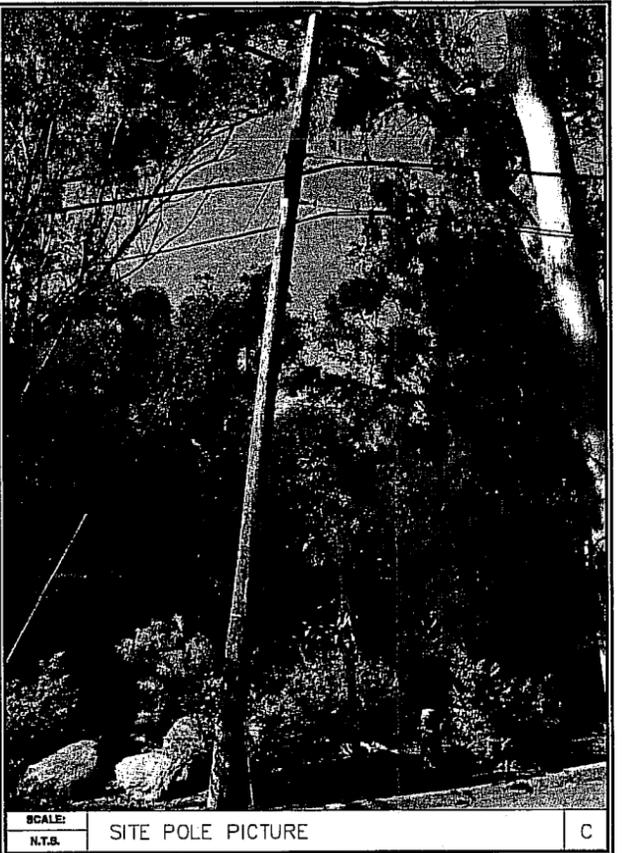
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 ANTENNA CENTER RAD: 40'-11"
 TOP OF POLE: 40'-0"
 PROPOSED NEXTG H.O.A: 24'-3"
 COM W/ DOWN GUY: 23'-3"
 CATV W/ DOWN GUY: 21'-0"

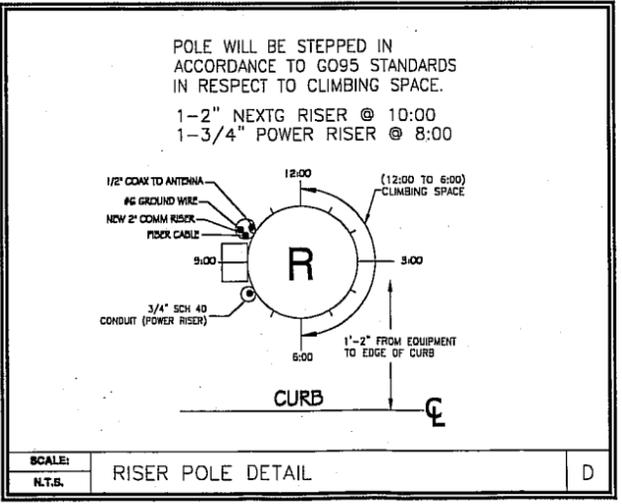
SCALE: N.T.S. WOOD UTILITY POLE DETAIL ID #GT110929 LOOKING NORTH A



SCALE: N.T.S. WOOD UTILITY POLE DETAIL ID #GT110929 LOOKING EAST B



SCALE: N.T.S. SITE POLE PICTURE C



SCALE: N.T.S. RISER POLE DETAIL D

DIGALERT

1-800-227-2600
 CALL AT LEAST TWO DAYS BEFORE YOU DIG

UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA

TICKET # _____

NextG Networks, Inc.
 2316 D'AVOILE AVE.
 SAN JOSE, CALIFORNIA 95131
 PHONE: (408) 954-1580

PROJECT INFORMATION:

MPC1035CA-E8BN003
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

02/10/2009

PERMIT SUBMISSION:

REV. DATE: DESCRIPTION: BY:

REV.	DATE	DESCRIPTION	BY

PLANS PREPARED BY:

HP COMMUNICATIONS INC.
 13341 Tamescal Cyn. Rd.
 Corona, CA, 92883
 PHONE: (951) 471-1919

PLANS APPROVED BY:

NextG Networks, Inc.
 REP:

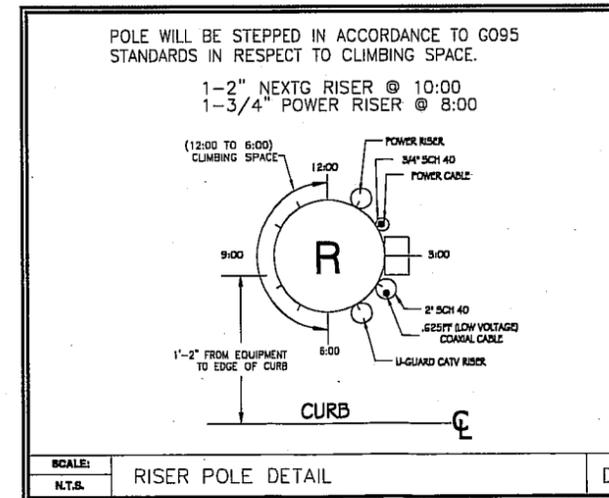
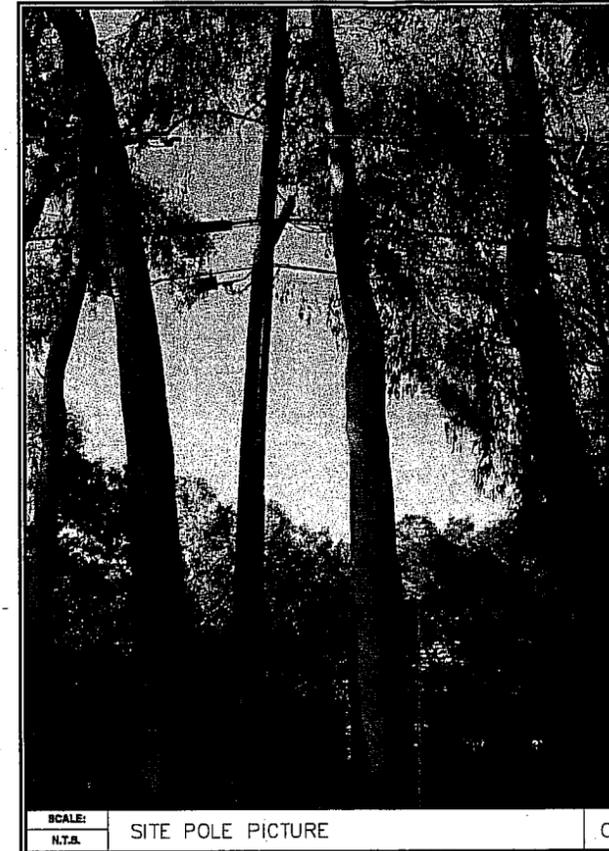
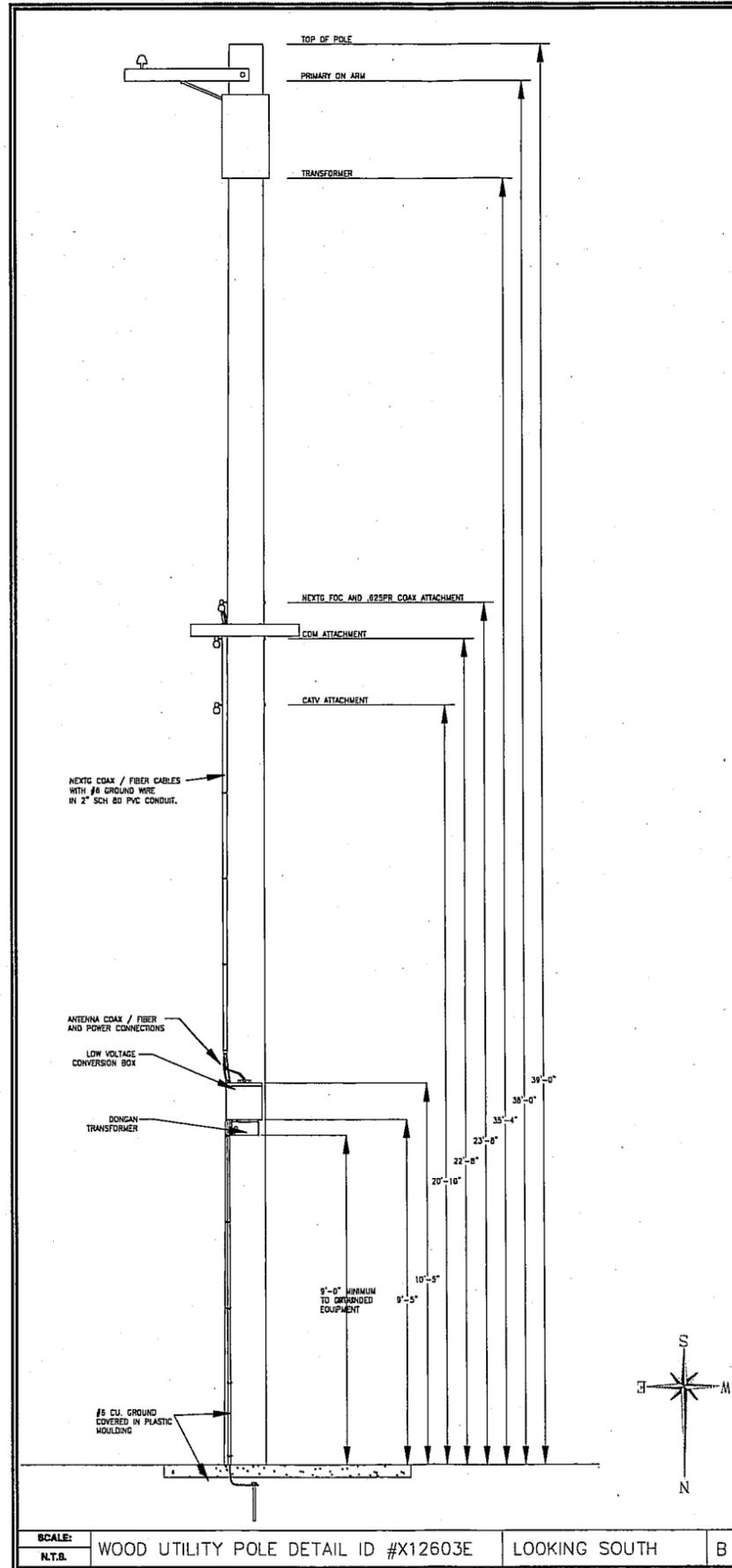
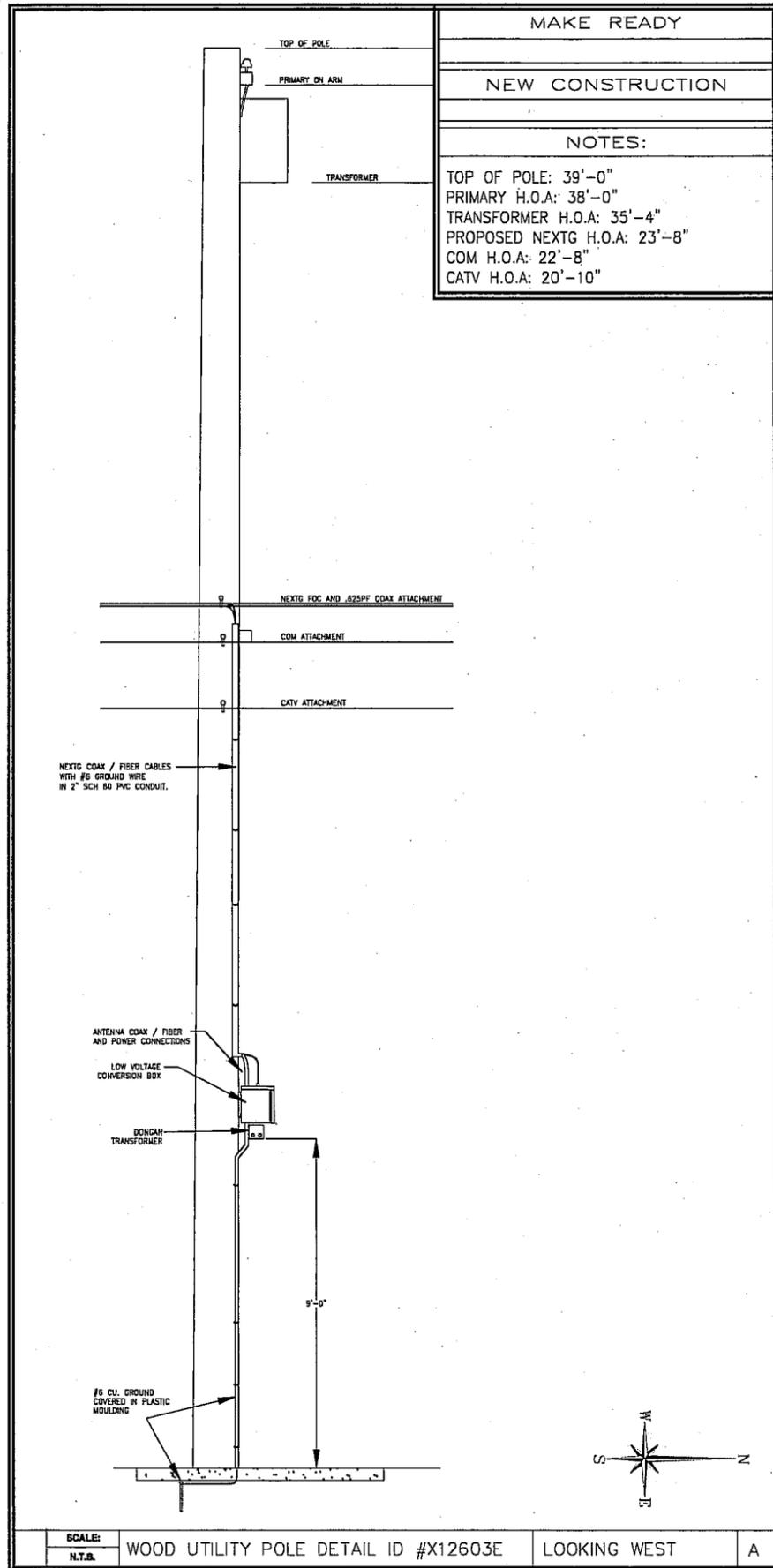
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PROFILES

SHEET NUMBER: REVISION:

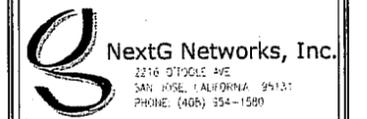
2 **2 OF 6**



1-800-227-2600
CALL AT LEAST TWO DAYS BEFORE YOU DIG

UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA

TICKET # _____



PROJECT INFORMATION:

MPC1035CA-EBB003
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

02/10/2009

PERMIT SUBMISSION:

REV. DATE: DESCRIPTION: BY:

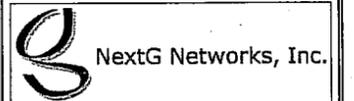
REV.	DATE	DESCRIPTION	BY

PLANS PREPARED BY:

HP COMMUNICATIONS
INC.

13341 Tamescol Cyn. Rd.
Corona, CA 92883
PHONE: (951) 471-1819

PLANS APPROVED BY:



REP:

COMMENTS:

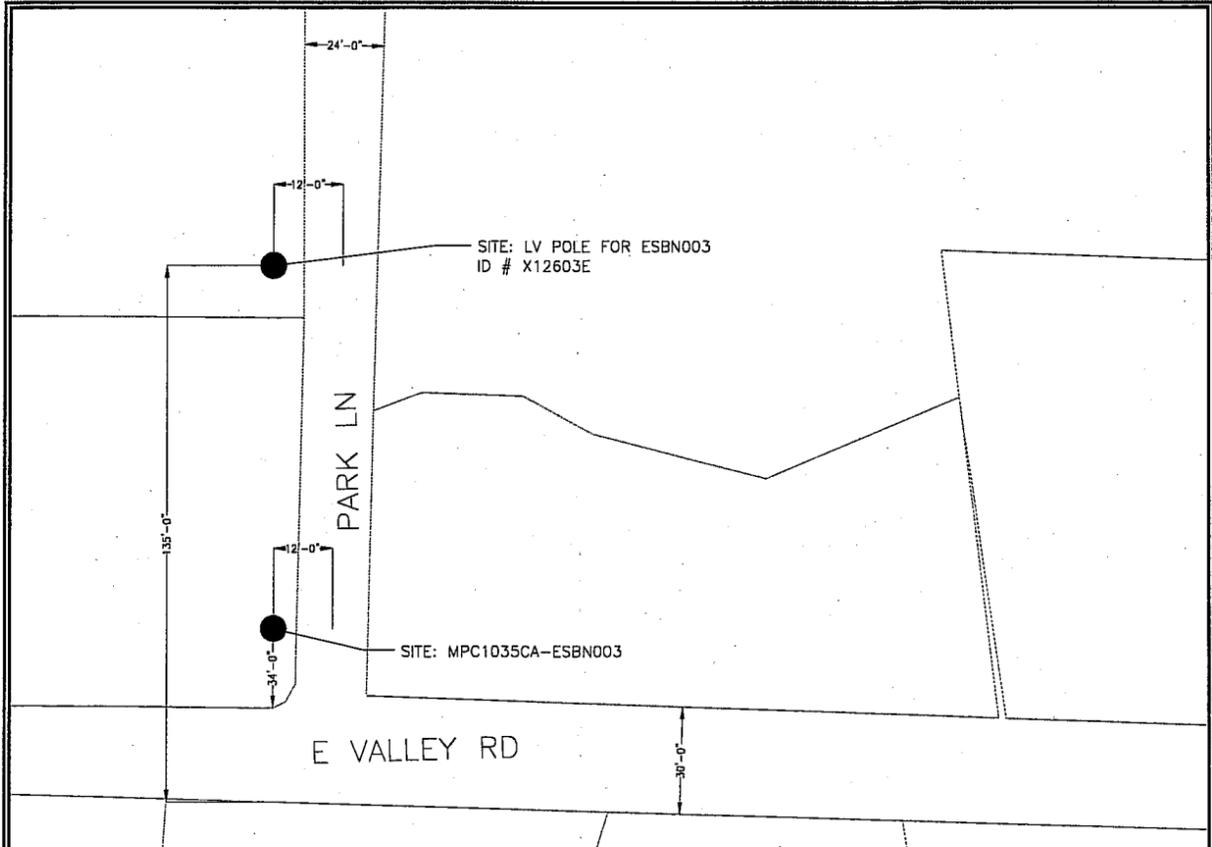
SHEET TITLE:

PROFILES

SHEET NUMBER: REVISION:

3

3 OF 6



SCALE: N.T.S. MAP



SCALE: N.T.S. MAP

NextG Networks, Inc.
 2219 D'ISOLE AVE
 SAN JOSE, CALIFORNIA 95131
 PHONE (408) 254-1980

PROJECT INFORMATION:

**MPC1035CA-ESBNO03
 EAST SANTA BARBARA
 SANTA BARBARA, CA 93108**

CURRENT ISSUE DATE:

02/10/2009

PERMIT SUBMISSION:

REV. DATE: DESCRIPTION: BY:

REV.	DATE	DESCRIPTION	BY

PLANS PREPARED BY:

**HP COMMUNICATIONS
 INC.**
 13341 Tarnescal Cyn. Rd.
 Corona, CA. 92883
 PHONE: (951) 471-1919

PLANS APPROVED BY:

NextG Networks, Inc.
 REP:

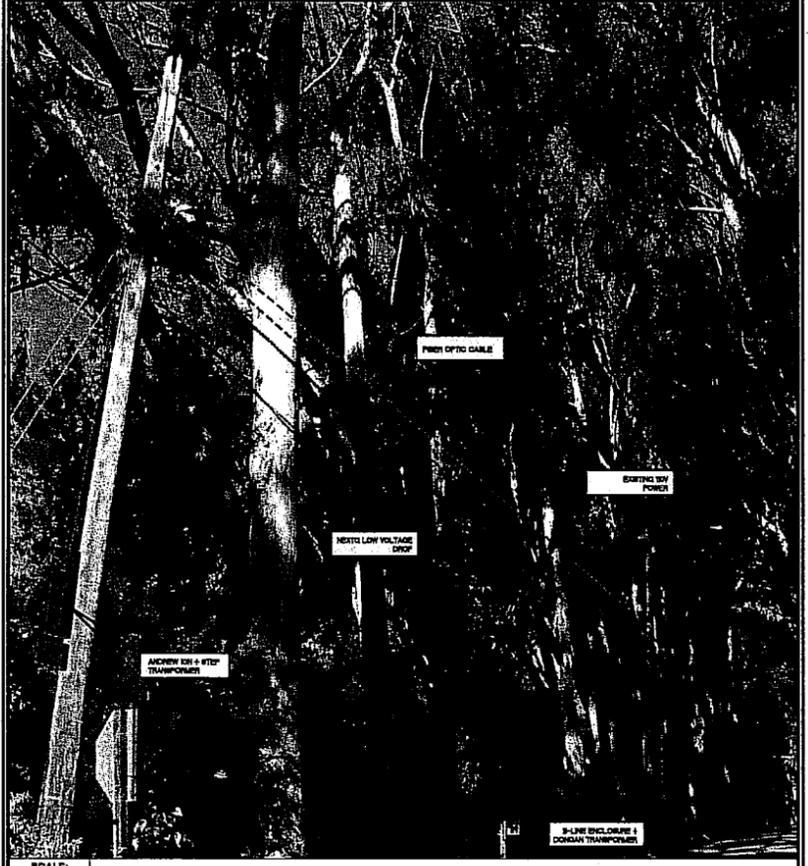
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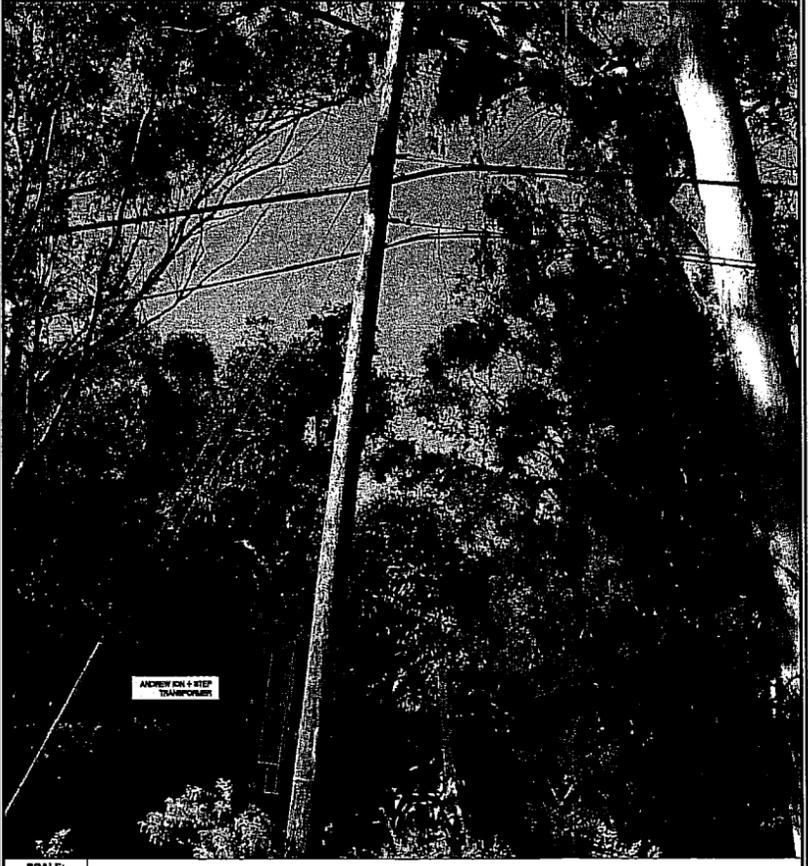
**MAP/SYSTEM
 OVERVIEWS**

SHEET NUMBER: REVISION:

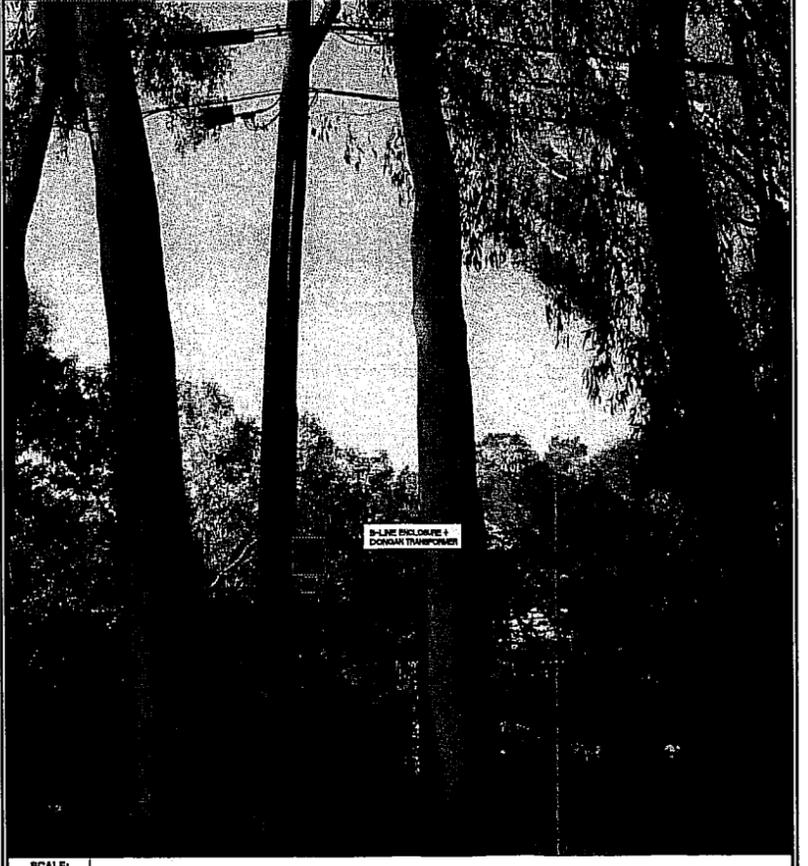
4 **4 OF 6**



SCALE: N.T.S. PHOTO / EQUIPMENT REPRESENTATION



SCALE: N.T.S. ANDREWS ION POLE

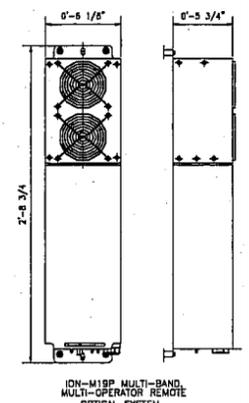


SCALE: N.T.S. POWER SUPPLY POLE

ION-M19P
 ANDREW ION-M19P IS A MULTI-BAND MULTI-OPERATOR REMOTE UNIT WITH VARIOUS EXTENSION UNITS.
 IT IS USED IN CONJUNCTION WITH A MASTER UNIT IN THE ION OPTICAL DISTRIBUTION SYSTEM.
 THIS SYSTEM TRANSPORTS MULTIPLE FREQUENCY BANDS SIMULTANEOUSLY (1900 MHZ AND 1700/2100 MHZ),
 PROVIDING A COST-EFFECTIVE SOLUTION FOR DISTRIBUTING CAPACITY FROM ONE OR MORE BASE STATIONS.

ELECTRICAL	
POWER SUPPLY	85 TO 264
MAINS POWER, VAC	115 OR 230
POWER CONSUMPTION, WATTS	350
OPTICAL	
CONNECTORS	E2000/APC 6"
OPTICAL RETURN LOSS, DB	45 MINIMUM
FIBER TYPE, MM	SINGLE MODE E9/125
OPTICAL LINK BUDGET, DB	9 TO 10
COMPOSITE INPUT POWER	1500MHZ
OPT. MASTER SIDE, DEM.	+3 COMPOSITE
1700/2100 MHZ	+5 COMPOSITE
INTERFACE	
BTS SIDE	4
NUMBER OF CONNECTORS	4
1700/2100 MHZ	4
SYSTEM OPTIMIZED FOR BTS POWER, DBM	43
ANTENNA PORT	
CONNECTOR	N FEMALE
OUTPUT POWER	SEE BAND SPECIFICATION
1900 MHZ	
FREQUENCY RANGE, MHZ	1850 TO 1915
UPLINK	1930 TO 1995
DOWNLINK	
OUTPUT POWER PER CARRIER*, DBM	
NUMBER OF CARRIERS	1 2 3 4
GSM	43 40 37 34
TDMA/EDGE	43 40 37 34
CDMA/EV-DO	43 40 37 34
WCDMA/HSPA	43 40 37 34
SPURIOUS EMISSION	
DL OUTPUT TOLERANCE OVER FREQUENCY, DB	+1
DL OUTPUT TOLERANCE OVER TEMPERATURE, DB	+0.5

INPUT ICP	
ICP3 OPTIMIZED	-12
NOISE FIGURE OPTIMIZED	-18
NOISE FIGURE, DB	
ICP3 OPTIMIZED	11
NOISE FIGURE OPTIMIZED	6
1700/2100 MHZ (IN EXTENSION UNIT)	
FREQUENCY RANGE, MHZ	1710 TO 2155
UPLINK	2110 TO 2155
DOWNLINK	1710 TO 1755
OUTPUT POWER PER CARRIER*, DBM	
CDMA/EV-DO	WCDMA/HSPA/HSDPA
	+43 @ 1 CARRIER
	+40 @ 2 CARRIERS
	+37 @ 4 CARRIERS
	+34 @ 8 CARRIERS
SPURIOUS EMISSION	
ADJACENT CHANNEL POWER, DBM	-13 DBM / 1 MHZ
DL OUTPUT TOLERANCE OVER FREQ., DB	+1
DL OUTPUT TOLERANCE OVER TEMP., DB	+0.5
INPUT ICP3, DBM	
ICP3 OPTIMIZED	-12
NOISE FIGURE OPTIMIZED	-18
* APPLICABLE TO SINGLE MODULATION MODE ONLY	
** WITH ACTIVE COOLING	



ION-M19P MULTI-BAND MULTI-OPERATOR REMOTE OPTICAL SYSTEM

Phazar Antenna Corp.

1710-2155 MHZ OMNI-DIRECTIONAL ANTENNA
 -RUGGED, FIBERGLASS RADOME
 -FREQUENCY COVERAGE FOR ENTIRE AWS BAND

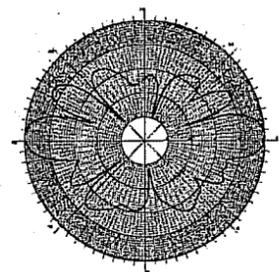
MODEL AWS360-1710-7-T0-N

ELECTRICAL SPECIFICATIONS:

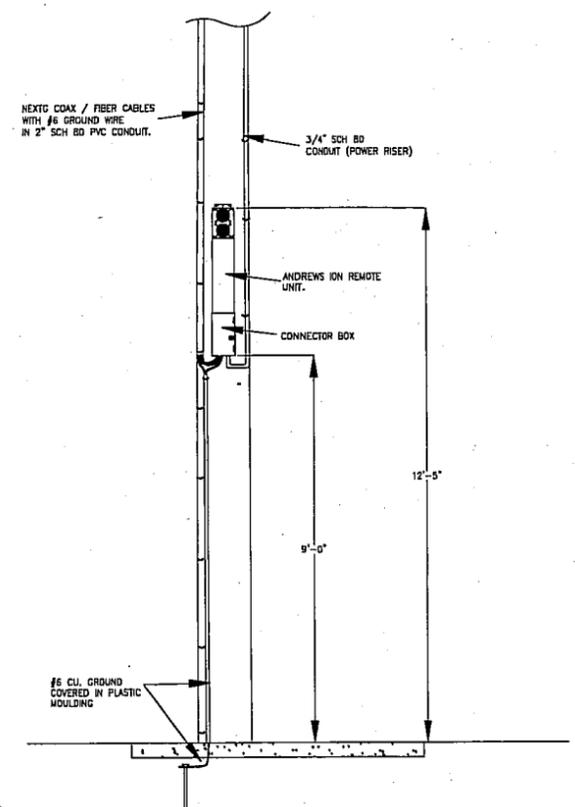
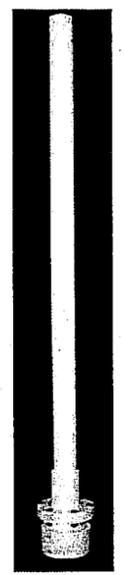
FREQUENCY RANGE	1710-2155 MHz
VSWR	1.7:1 VSWR MAX
FORWARD GAIN	7 dBi
POLARIZATION	VERTICAL
MAXIMUM POWER INPUT	200 WATTS
INPUT IMPEDANCE	50 OHMS
VERTICAL-3dB BEAMWIDTH	16±1° (NOMINAL)
HORIZONTAL-3dB BEAMWIDTH	360°
AZIMUTH RIPPLE	±.5 dB
ELECTRICAL DOWNTILT	2 AND 4° (T2 AND T4 FOR PART NUMBER)

MECHANICAL & ENVIRONMENTAL SPECIFICATIONS:

CONNECTOR	TYPE 'N' MALE OR 716 DIN
MOUNTING	SIDE MOUNT, CLAMPS PROVIDED
DIMENSION AND WEIGHT	26 INCHES X 2.0 INCH O.D./<10 lbs.
COLOR	WHITE STANDARD (COLOR OPTIONS AVAILABLE)
WIND SURVIVAL	120 MPH
LIGHTNING PROTECTION	DIRECT GROUND

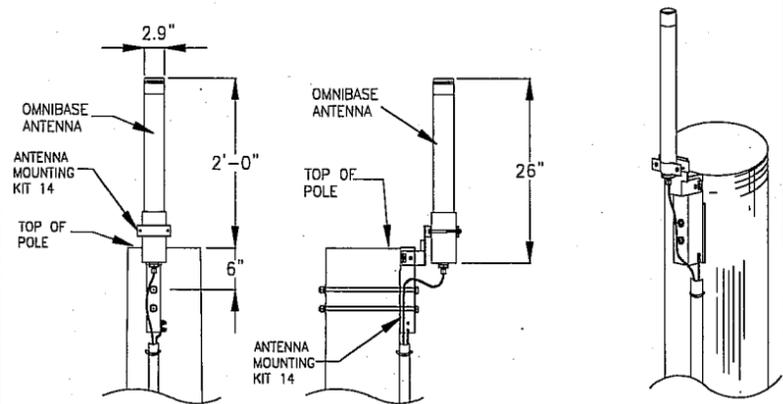


SCALE: N.T.S. ANTENNA SPECIFICATIONS B

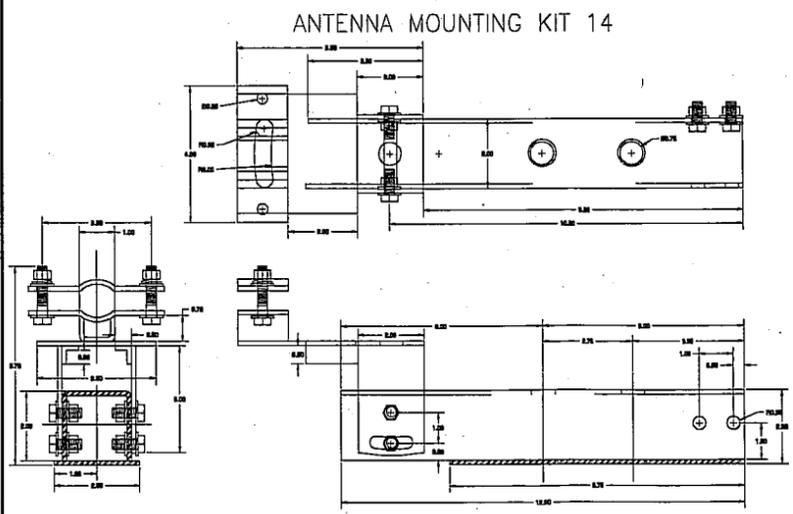


SCALE: N.T.S. REPEATER EQUIPMENT AND MOUNTING CHASIS CONFIGURATION C

SCALE: N.T.S. REPEATER EQUIPMENT DIMENSIONS A



SCALE: N.T.S. ANTENNA MOUNTING CONFIGURATION D



SCALE: N.T.S. ANTENNA MOUNTING KIT 14 E



PRIMARY VOLTS 120 X 240,
 SECONDARY VOLTS 16/32
 PART NUMBER 85-Y025

GENERAL INFORMATION:

kVA	.500
Hz	50/60
WEIGHT	19 lbs.

WINDING SPECIFICATIONS:

TAPS	0
MAXIMUM AMPS	
PRIMARY	4.1/2.0
MAXIMUM AMPS	
SECONDARY	31.2/15.6
CONNECTION	
DIAMETER	19

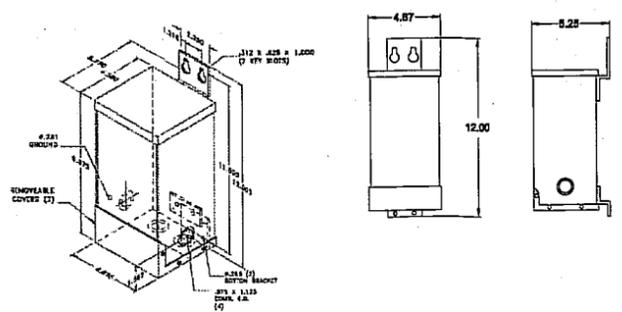
PRIMARY VOLTS 120 X 240,
 SECONDARY VOLTS 16/32
 PART NUMBER 85-Y030

GENERAL INFORMATION:

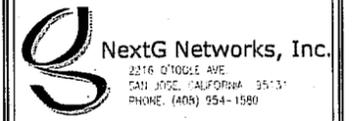
kVA	.750
Hz	50/60
WEIGHT	23 lbs.

WINDING SPECIFICATIONS:

TAPS	0
MAXIMUM AMPS	
PRIMARY	6.2/3.1
MAXIMUM AMPS	
SECONDARY	46.8/23.4
CONNECTION	
DIAMETER	19



SCALE: N.T.S. DONGAN TRANSFORMER SPECIFICATIONS F



PROJECT INFORMATION:

MPC1030CA-EBN003
 EAST SANTA BARBARA
 SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

02/10/2009

PERMIT SUBMISSION:

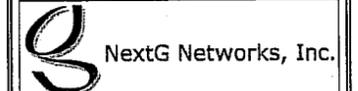
REV. DATE: DESCRIPTION: BY:

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

13341 Tamescol Cyn. Rd.
 Corona, CA. 92883
 PHONE: (951) 471-1919

PLANS APPROVED BY:



REP:

COMMENTS:

SHEET TITLE:

TYPICALS PAGE 1

SHEET NUMBER: REVISION:

5 5 OF 6



TYPE 3R SMALL CONTINUOUS HINGE COVER

- STANDARDS:
- UL 50 LISTED, TYPE 3R
 - CSA C22.2 NO. 40 CERTIFIED, TYPE 3R
 - CONFORMS TO NEMA STANDARD FOR TYPE 3R
 - IEC 60529, IP32

PART # 12126 RHC

ENCLOSURE SIZE: HEIGHT X WIDTH X DEPTH

INCHES 12.00 X 12.00 X 6.00
 MM 305 X 305 X 152

KNOCKOUT PATTERN:

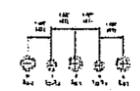
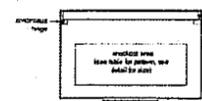
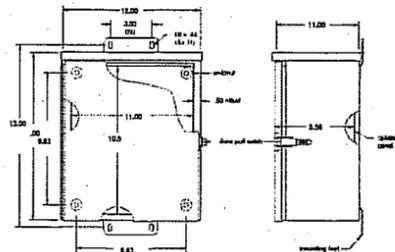


PANEL CATALOG NUMBER:

SOLID N1212P
 PERFORATED N1212PP

PANEL HEIGHT X WIDTH

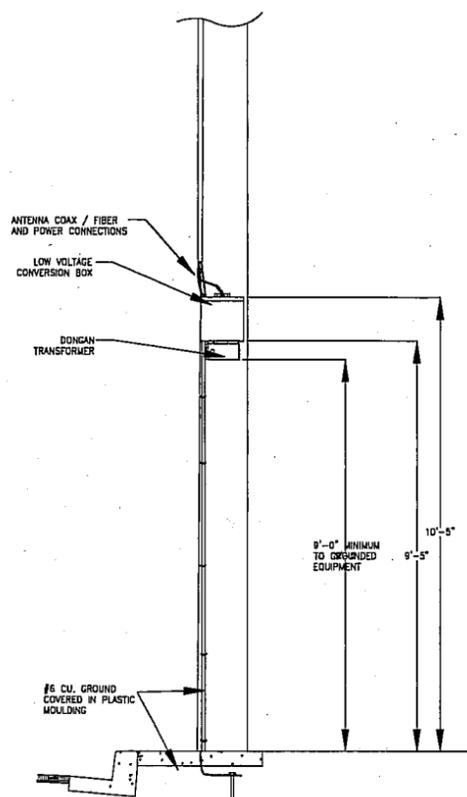
INCHES 10.25 X 10.25
 MM 260 X 260



Grounding Diagram Note: See table for applicable knockout pattern

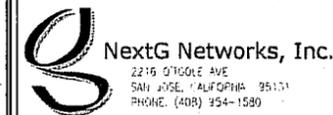
SCALE: N.T.S. B-LINE ENCLOSURE SPECIFICATIONS

G



SCALE: N.T.S. L.V. POWER EQUIPMENT AND MOUNTING CONFIGURATION

H



PROJECT INFORMATION:

MPC1035CA-E8BN003
EAST SANTA BARBARA
SANTA BARBARA, CA 93108

CURRENT ISSUE DATE:

02/10/2009

PERMIT SUBMISSION:

REV. DATE DESCRIPTION BY:

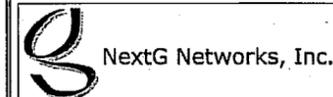
REV.	DATE	DESCRIPTION	BY

PLANS PREPARED BY:

HP COMMUNICATIONS INC.

13341 Temescal Cyn. Rd.
Corona, CA 92883
PHONE: (951) 471-1919

PLANS APPROVED BY:



REP:

COMMENTS:

SHEET TITLE:

TYPICALS PAGE 2

SHEET NUMBER: REVISION:

6

6 OF 6

**COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Montecito Planning Commission

CC: Dianne Black, Director, Development Services, P&D
Dave Ward, Deputy Director, DRS, P&D
Anne Almy, Supervising Planner, P&D
Rachel Van Mullem, County Counsel

FROM: Megan Lowery, Planner

DATE: January 27, 2010

RE: NextG Antenna Appeals Case Nos.:
09APL-00000-00034, 09CDP-00000-00056 (ESB13);
09APL-00000-00035, 09CDP-00000-00055 (ESB09);
09APL-00000-00037, 09CDP-00000-00053 (ESB06); and
09APL-00000-00039, 09CDP-00000-00052 (ESB02).

-
- The CEQA exemption citation on page 1 (header) and page 2, (Section 2.0 Recommendations and Procedures) should read “15061(b)(3)” not “1506b3.”
 - Condition No. 7 in the permit in Attachment B, should be corrected to read as follows:

*7. **Underground Utilities.** Except as otherwise noted in the Project Description and approved plans, all utilities necessary for facility operation, including coaxial cable, shall be placed underground. Conduit shall be sized so as provide additional capacity to accommodate utilities for other telecommunication carriers should collocation be pursued in the future. If at a later date the utility poles are proposed for removal as part of the undergrounding of the utility lines, the permit for the facilities shall be null and void. **Plan Requirements:** The Permittee shall restate the provisions for utility undergrounding on all building and grading plans. **Timing:** This condition shall be satisfied prerequisite to building permit issuance for the Project. **Monitoring:** P&D shall check plans prior to approval of building plans for the Project.*

- Condition No. 8, in the permit in Attachment B, and cited on page 7 (Section 3.4), should be corrected to read as follows:

*8. **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.—Compliance shall be governed by the following provisions:

- a. ~~**Initial Verification.** The Permittee shall hire a qualified professional acceptable to the County (wholly independent of the Permittee), to perform radio frequency (“RF”) field test that measures actual RF electromagnetic exposure at the Project site. This RF field testing shall measure all ambient sources of RF energy at the site and report the cumulative RF exposure which includes contributions from the site together with other sources of RF energy in the environment as a whole. The measurements shall be made by the responsible professional who will author the report to the County. This report of the measurement results and the author's/professional's findings with respect to compliance with federally established MPE standards shall be submitted to the County within 30 days of the Final Building Inspection Clearance. The Permittee shall pay for the cost of undertaking the field measurements and preparing the report. The facility shall cease and desist commercial operations until it complies with, or has been modified to comply with, applicable RF standards.~~
- b. ~~**Continued Verification.** Every five years the Permittee shall hire a qualified professional acceptable to the County to perform RF field testing (as described in section “a” above) to evaluate compliance with current federally established MPE standards. In the event the adopted RF standards change, the Permittee shall submit a report with calculations of the maximum potential public RF exposure from the Project with respect to the revised RF public exposure standards, within 90 days of the date said change becomes effective. If calculated levels exceed eighty percent (80%) of the applicable RF standards, the Permittee shall notify the County and submit a MPE compliance verification report with the results from current RF field testing, (as described in section one above), at the site. The Permittee shall pay for the cost of preparing the reports. However, for joint carrier sites, cumulative reporting may be delegated to one carrier upon the agreement of all carriers at the site. Procedures, penalties and remedies for non compliance (or alleged non compliance) with these reporting requirements shall be governed by the provisions of the Telecommunications Ordinance and the FCC regulations.~~
- c. ~~**Equipment Addition and Replacement.** 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. Once the new equipment has been installed, the Permittee shall perform Initial Verification as stated in “a” above.~~

Plan Requirements: The Permittee shall restate the provisions for MPE compliance on all building plans. **Timing:** Initial verification of compliance with RF public MPE standards shall be accomplished not later than 30 days following the Final Building Inspection Clearance. ~~Continued verification of compliance with MPE requirements shall be~~

~~accomplished by RF field test reports, (as described in section one above), submitted by the applicant, at a minimum of every five years following initial verification. 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—~~at intervening times between regular test periods.~~~~

- Attachment A, Findings, should also include the following:

2.2.6 Telecommunication facilities shall comply with the following development standards [Article II Sec. 35-144F.4.2] 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; (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 resources, including but not limited to sensitive habitat, coastal waters, and public access.

Because the cabinet for this particular facility is small, and is mounted on an existing utility pole where similar transformer boxes are commonly found, undergrounding the cabinet would not significantly decrease the visibility of the facility. Furthermore, the additional grading and increased project footprint associated with undergrounding would increase the potential for environmental impacts. Therefore this finding can be made.

- NextG's submittal to CPUC regarding the entire project and the basis for the NOE is available for review at the Planning & Development office upon request, and is also available online at the County's NextG project website:
<http://www.sbcountyplanning.org/projects/09CNS-00032NextG/index.cfm>