

# NextG Cellular Antenna Appeals

County Board of Supervisors  
March 16, 2010



10APL-00000-00002  
10APL-00000-00003  
10APL-00000-00004  
10APL-00000-00005  
10APL-00000-00006  
10APL-00000-00007  
10APL-00000-00008

# Overview

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- Brief Background

- Telecommunications Act
- FCC Declaratory Ruling
- Litigation Framework

- Project Details

- 7 Individual Sites

- Staff Recommendations

# Federal Telecommunications Act of 1996

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- General local zoning authority preserved “over decisions regarding placement, construction, and modification of personal wireless service facilities” 47 USCA 253(b)
- Some limitations:
  - “Shall not unreasonably discriminate”
  - “Shall not prohibit or have the effect of prohibiting”
  - “Shall act...within a reasonable period of time”
  - “Shall not regulate...on basis of perceived health effects”

# FCC Declaratory Ruling November 18, 2009

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- “Shot Clock” requirements, presumptive “reasonable time”:
  - 90 days to process collocation applications
  - 150 days to process all other applications
- State or local government cannot deny an application solely because service is available from another provider
- Affirmed that local governments do not have the flexibility to deny or delay action on applications based on perceived health effects of RF emissions

# Litigation Framework

- 1) County can deny a wireless communication facility permit application for aesthetic reasons, if both:
  - Substantial evidence supports its decision; and
  - Not an “effective prohibition” on providing wireless service
  
- 2) To overcome denial, Applicant must show:
  - Prevented from filling a significant gap in its own service coverage; and
  - Proposal to fill that significant gap is the “least intrusive means.”
  
- 3) If Applicant makes the above showing, the County must then show both:
  - Potentially available and technologically feasible alternative location; and
  - Proposed alternative location(s) would close the significant gap in coverage.

# Litigation Framework

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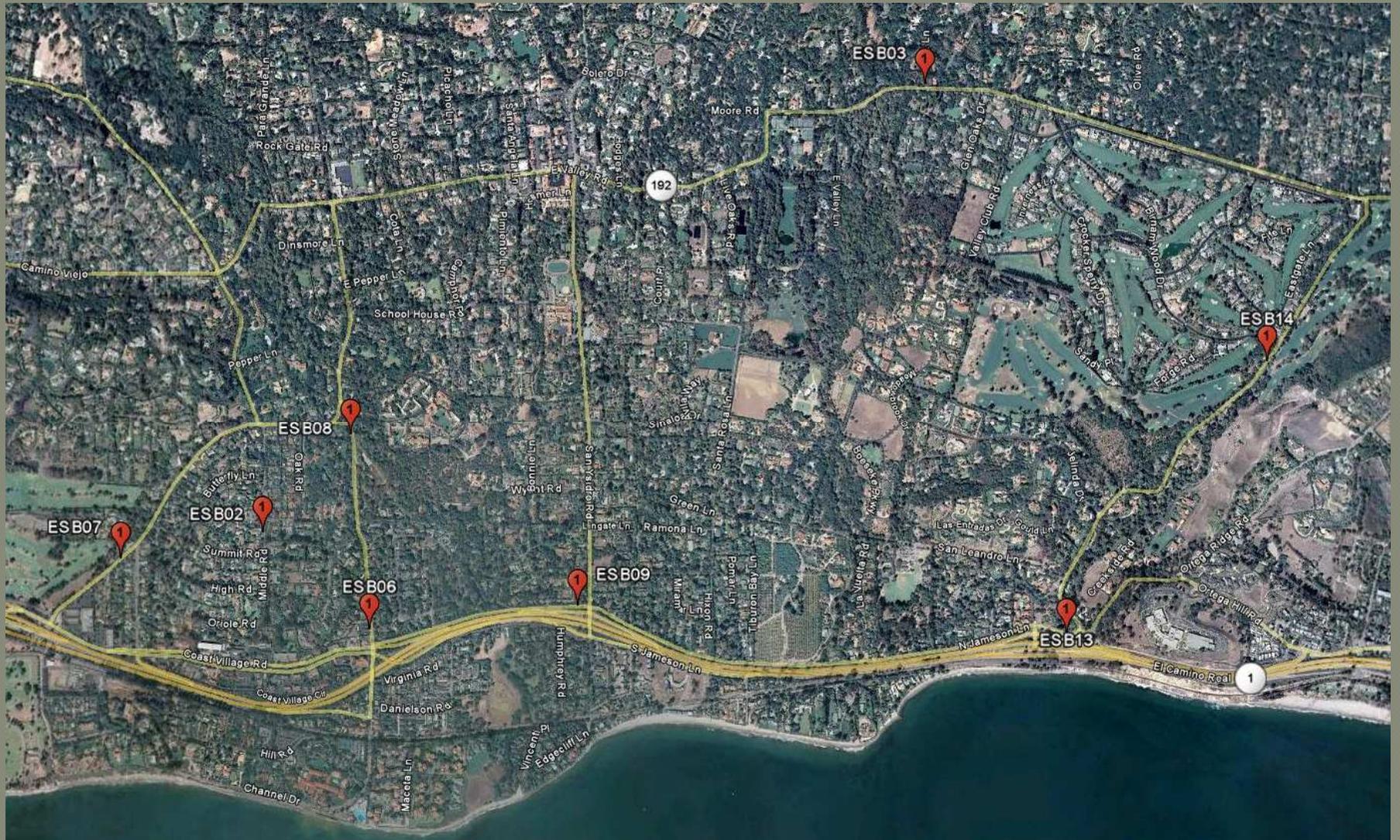
1) The County denies for  
“**aesthetic reasons**” using  
“**substantial evidence**”



2) Applicant shows  
“**significant gap**” and  
“**least intrusive means**”

3) County shows **alternative**  
location would close the  
“**significant gap**”

\*NextG alternative analyses



# Project Details

- Existing utility poles
- (1) 26-inch whip antenna
- (1) 33"x6"x6" box
- Exempt:
  - Fiber optic cabling (not included)
- *Ordinance limits antennas to 2 per pole*





# Review Process

- Federal Requirements
  - Telecommunications Act
  - FCC Health & Safety Stds.
- Local Requirements
  - Ordinance
  - Comprehensive Plan
- Site specific review
  - Project improvements
    - Carrier's limitations



# Review Process

- Federal Requirements
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# Individual Sites

Agenda No.	Site ID No.	Appeal Case No.	Street
4	ESB02	10APL-00000-00007	Middle Road
5	ESB03	10APL-00000-00008	Park Lane
6	ESB06	10APL-00000-00005	Olive Mill Road
7	ESB08	10APL-00000-00004	Olive Mill Road
8	ESB09	10APL-00000-00003	San Ysidro Road
9	ESB13	10APL-00000-00002	N. Jameson Lane
10	ESB14	10APL-00000-00006	Sheffield Drive

# Agenda Item No. 4 ESB02 Middle Road



# Agenda Item No. 5 ESB03 Park Lane



# Agenda Item No. 6 ESB06 Olive Mill Road



# Agenda Item No. 7

## ESB08 Olive Mill Road



# Agenda Item No. 8

## ESB09 San Ysidro Road



Agenda Item No. 9  
ESB13 N. Jameson Lane



Agenda Item No. 10  
ESB14 Sheffield Drive



# Appeal Issues

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- Projects went to MPC on appeal
- MPC denied all 7 projects
- NextG appealed the MPC's action

NextG Appeal application letter (Feb. 5, 2010):

- *Complies with Tier 1 requirements*
- *Complies with development standards*
- *Tier 4 is applicable to projects that do not comply with Tiers 1-3*

# Staff Recommendations

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- Board's review:

- May affirm, reverse or modify the MPC's action
- Is a *de novo* review

- Staff's recommendation:

- Uphold NextG's appeals and approve the projects
- Alternatively, refer back to staff
  - Revised approval (alternate site); or
  - Denial based on aesthetics, establish "substantial evidence"

# NextG Antenna Appeals

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County Board of Supervisors  
March 16, 2010

# Agenda Item No. 4

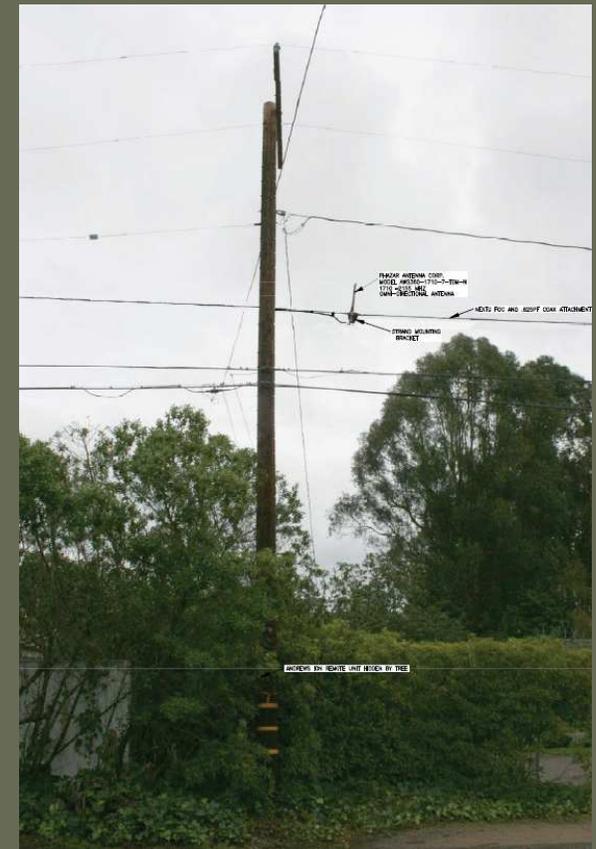
## 10APL-00000-00007

09CDP-00000-00052  
Middle Road  
ESB02



### Recommendations:

- Make the required findings for the project specified in Attachment A of the Board Letter dated March 16, 2010, including CEQA findings.
- Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 15061(b)3, 15301(b), 15301(c), 15302(c) and 15304(f) of the CEQA Guidelines included as Attachment C to the MPC staff report dated Feb. 5, 2010.
- Approve the project subject to the conditions included as Attachment B to the MPC staff report dated Feb. 5, 2010, as revised by errata memo dated Jan. 27, 2010.



Pole: 39'0" Antenna: 27'0" Box: 12'5"

# Agenda Item No. 5

## 10APL-00000-00008

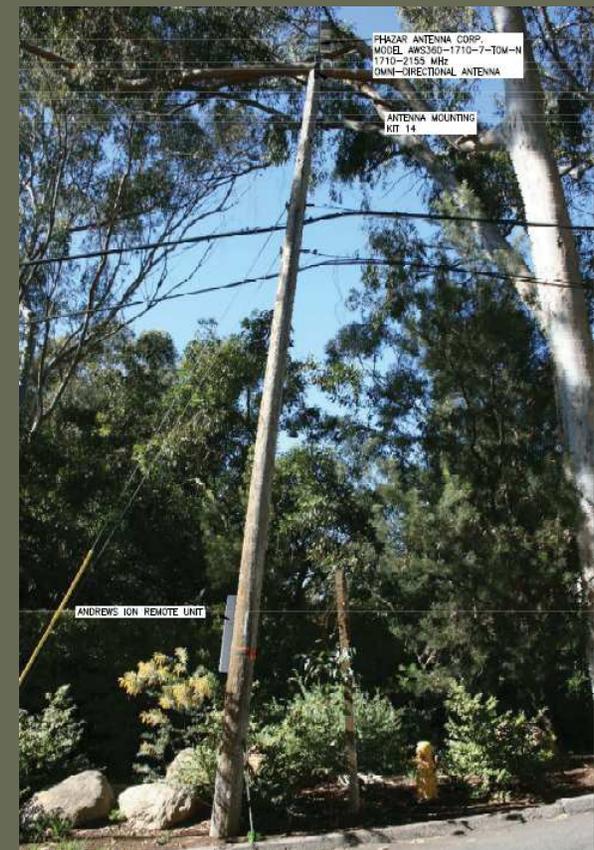
09LUP-00000-00381

Park Lane  
ESB03



### Recommendations:

- Make the required findings for the project specified in Attachment A of the Board Letter dated March 16, 2010, including CEQA findings.
- Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 15061(b)3, 15301(b), 15301(c), 15302(c) and 15304(f) of the CEQA Guidelines included as Attachment C to the MPC staff report dated Feb. 5, 2010.
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Pole: 40'0" Antenna: 42'0" Box: 12'5"

# Agenda Item No. 6

## 10APL-00000-00005

09CDP-00000-00053  
Olive Mill Road  
ESB06



### Recommendations:

- Make the required findings for the project specified in Attachment A of the Board Letter dated March 16, 2010, including CEQA findings.
- Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 15061(b)3, 15301(b), 15301(c), 15302(c) and 15304(f) of the CEQA Guidelines included as Attachment C to the MPC staff report dated Feb. 5, 2010.
- Approve the project subject to the conditions included as Attachment B to the MPC staff report dated Feb. 5, 2010, as revised by errata memo dated Jan. 27, 2010.



Pole: 37'0" Antenna: 31'0" Box: 12'6"

# Agenda Item No. 7

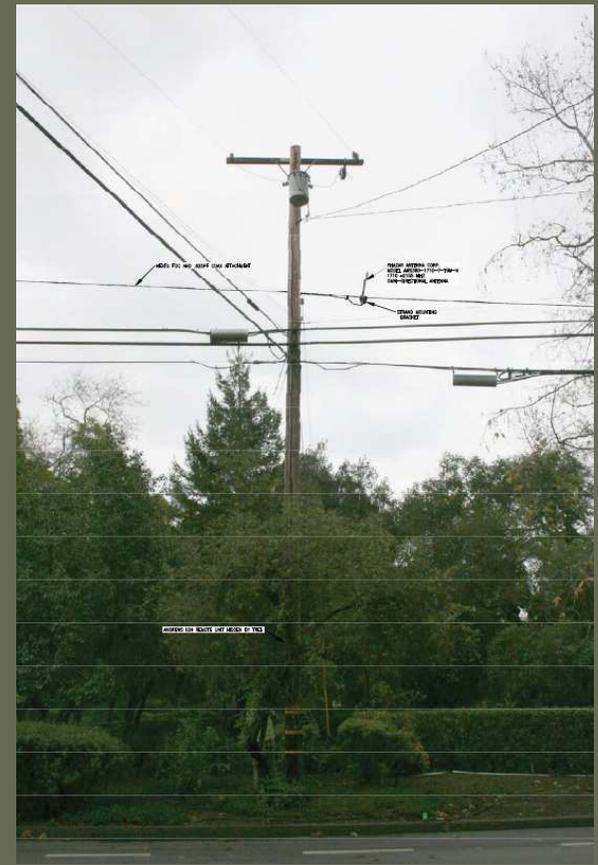
## 10APL-00000-00004

09LUP-00000-00317  
Olive Mill Road  
ESB08



### Recommendations:

- Make the required findings for the project specified in Attachment A of the Board Letter dated March 16, 2010, including CEQA findings.
- Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 15061(b)3, 15301(b), 15301(c), 15302(c) and 15304(f) of the CEQA Guidelines included as Attachment C to the MPC staff report dated Feb. 5, 2010.
- Approve the project subject to the conditions included as Attachment B to the MPC staff report dated Feb. 5, 2010, as revised by errata memo dated Jan. 27, 2010.



Pole: 43'5" Antenna: 32'9" Box: 12'5"

# Agenda Item No. 8

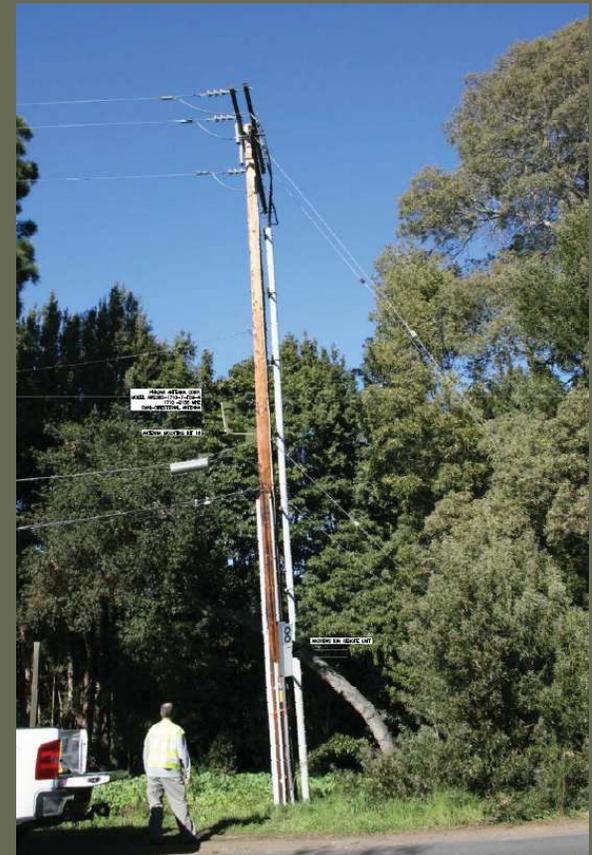
## 10APL-00000-00003

09CDP-00000-00055  
San Ysidro Road  
ESB09



### Recommendations:

- Make the required findings for the project specified in Attachment A of the Board Letter dated March 16, 2010, including CEQA findings.
- Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 15061(b)3, 15301(b), 15301(c), 15302(c) and 15304(f) of the CEQA Guidelines included as Attachment C to the MPC staff report dated Feb. 5, 2010.
- Approve the project subject to the conditions included as Attachment B to the MPC staff report dated Feb. 5, 2010, as revised by errata memo dated Jan. 27, 2010.



Pole: 47'0" Antenna: 30'7" Box: 12'5"

# Agenda Item No. 9

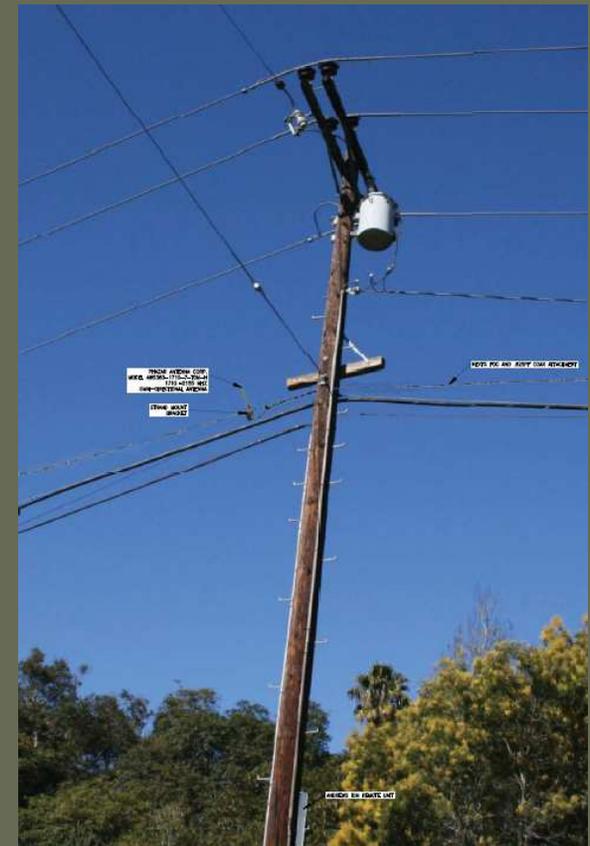
## 10APL-00000-00003

09CDP-00000-00056  
N. Jameson Lane  
ESB13



### Recommendations:

- Make the required findings for the project specified in Attachment A of the Board Letter dated March 16, 2010, including CEQA findings.
- Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 15061(b)3, 15301(b), 15301(c), 15302(c) and 15304(f) of the CEQA Guidelines included as Attachment C to the MPC staff report dated Feb. 5, 2010.
- Approve the project subject to the conditions included as Attachment B to the MPC staff report dated Feb. 5, 2010, as revised by errata memo dated Jan. 27, 2010.



Pole: 44'8" Antenna: 31'9" Box: 12'5"

# Agenda Item No. 10

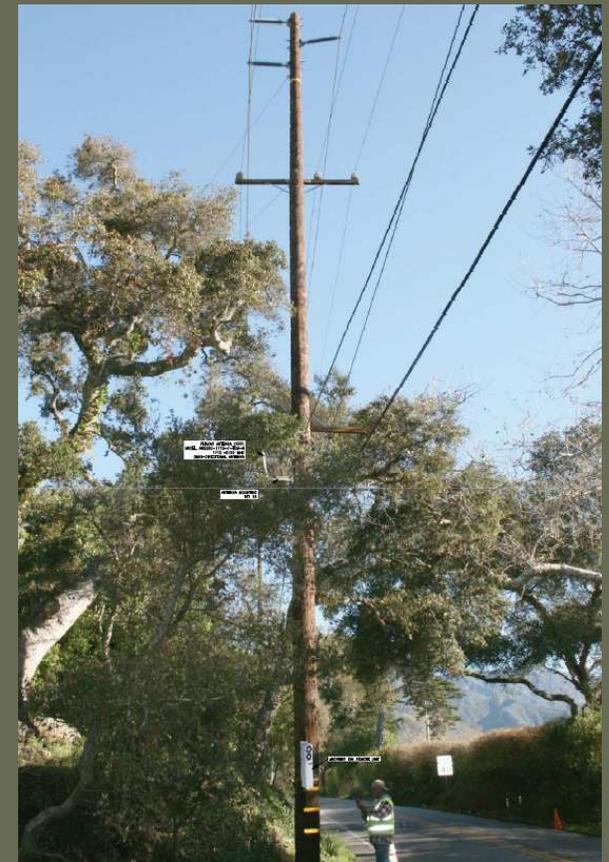
## 10APL-00000-00006

09LUP-00000-00319  
Sheffield Drive  
ESB14



### Recommendations:

- Make the required findings for the project specified in Attachment A of the Board Letter dated March 16, 2010, including CEQA findings.
- Accept the exemption to CEQA prepared and adopted by the Public Utilities Commission, the lead agency, as adequate pursuant to sections 15061(b)3, 15301(b), 15301(c), 15302(c) and 15304(f) of the CEQA Guidelines included as Attachment C to the MPC staff report dated Feb. 5, 2010.
- Approve the project subject to the conditions included as Attachment B to the MPC staff report dated Feb. 5, 2010, as revised by errata memo dated Jan. 27, 2010.



Pole: 71'5" Antenna: 36'1" Box: 12'6"