

Attachment 11

Subject:

Southern California Gas Company Response to October 14, 2020 Montecito Planning Commission Recommended Language for Proposed Ordinance Subsection 33.444.030.D.1.(i)(7)

Submittal Date (via Email):

October 27, 2020

Author:

Southern California Gas Company (SoCalGas)

Text:

SoCalGas supports the original language approved by the SB County Planning Commission as written in section D.1.(i)(7).

Below is why SCG feels that the proposed amended language would not work:

- As written, the proposed language is too vague and is subject to interpretation by the County Staff Planner. The vagueness of the language would add a discretionary component to a ministerial Zoning Clearance which goes against County Staff's ability to make a precise, non-discretionary determination as to whether or not SCG is to be granted the Zoning Clearance for its projects.
- Ordinance Is Tailored to Protect Environmental Resources: The County and SoCalGas have been working closely since SoCalGas requested an amendment in 2016. Staff has taken great care to draft the ordinance such that it protects the County's important cultural, biological, and aesthetic resources, while also maintaining public access. Prohibiting new poles within 100 feet of trails and walkways does not further this purpose and imposes a restrictive burden on applicants with no public or environmental benefit that is not already provided for by the existing language.
- As the Montecito Planning Commission's Findings note, the proposed Ordinance is "consistent with sound zoning and planning practices to regulate land uses for the overall protection of the environment and community values." The Staff Report [Attachment 10 to the Board Letter for the December 8, 2020, hearing] recognizes that the Ordinance as drafted is consistent with the Montecito Community Plan's goals and policies regarding watershed resources, biological resources, geology and soils, noise, flood hazard areas, historical and archaeological sites, public facilities, designated and eligible scenic highways, and visual resources. The Montecito Planning Commission has not demonstrated that prohibiting the facilities on new poles within 100 feet of walkways or trails serves to further protect such resources in a manner that the Ordinance does not already provide for.
- The "Encroachment" Standard Is Too Strict: As "Encroachment" suggests any permanent erection upon one's land. As drafted, the Ordinance already protects public spaces and walkways, ensuring that the public's ability to access trails and public spaces are not impermissibly "impeded," by the proposed facilities. Location of a new pole within 100 feet of a public walkway does not amount to an impediment warranting prohibition of new poles. Utilizing the "encroachment" standard

imposes a blanket prohibition on new poles within 100 feet of walkways and trails, without furthering the goal of allowing for unencumbered public use of the land.

- Proposed Revision Would Ultimately Swallow the Ordinance: The Ordinance outlines proposed development standards in order to create a ministerial process to permit installation of natural gas telecommunications devices. The proposed revision would ultimately preclude SoCalGas from locating new poles within 100 feet of a “trail or walkway.” Because “walkway” can be understood to mean sidewalk, SoCalGas would be precluded from installing facilities within the public right of way. These revisions would potentially “swallow the whole,” prohibiting the placement of any new poles under the Ordinance.
- Should the revisions be adopted, the Ordinance’s other development standards (that were carefully drafted to allow for the placement of new poles while protecting the County’s environmental resources) may be rendered obsolete. For instance, other sections of the Ordinance dictate that new poles may be located in disturbed right-of-way so long as the new pole is located at least 200 feet from ESH boundaries. Accordingly, the revisions are stricter than the provisions in the Ordinance that are directly tied to protecting the County’s biological resources. The revisions may even prohibit the placement of a new pole in disturbed right-of-way that meets the ESH distance requirements.
- In addition, SoCalGas is required to collocate the devices, unless the existing structures do not allow for the required physical distancing or line-of-site wireless signal transmitting and/or receiving devices. The revisions do not allow for SoCalGas to provide supporting documentation in line with the collocation requirements showing that locating the facility more than 100 feet from a public walkway is infeasible.
- “Public Walkways” Is Vague: It is unclear what is meant by “walkways” in the proposed revision. Does this apply to disturbed right-of-way, or any other location that a member of the public could safely walk? Greater clarity is required to ensure SoCalGas may be able to proceed with the project from a technical standpoint.